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SURFACE TRANSPORTATION BOARD

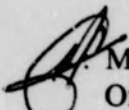
Memorandum

193240



DATE: February 3, 1999

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

FROM :  Mel Clemens, Director
Office of Compliance and Enforcement

ENTERED
Office of the Secretary

FEB 04 1999

Part of
Public Record

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

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

Attachments

cc: Chairman Morgan
Vice Chairman Clyburn
Rich Armstrong
Ron Douglas
Charles Renninger

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

J. Randall Evans
Vice President-Acquisition Development

February 3, 1999

Melvin F. Clemens, Jr.
Director Office of Compliance and Enforcement
Surface Transportation Board
Washington, DC 20423-0001

Dear Mr. Clemens:

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

The reports are presented in the following order:

Labor Implementing Agreements	Page 1
Labor Task Force	Page 2
Construction and Other Capital Projects Table	Pages 3-4
Information Technology	Pages 5-9
Customer Service	Pages 10
Training	Pages 11

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

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

Very truly yours,

J. Randall Evans

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

Paul R. Hitchcock - J150
Senior Counsel

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CSX TRANSPORTATION, INC.
STB OPERATIONAL MONITORING REPORT
As of January 31, 1999

Table of Contents

The reports are presented in the following order:

Labor Implementing Agreements	Page 1
Labor Task Force	Page 2
Construction and Other Capital Projects Table	Pages 3-4
Information Technology	Pages 5-9
Customer Service	Pages 10
Training	Pages 11

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

STB OPERATIONAL MONITORING REPORT

As of January 31, 1999

LABOR

The status of the Labor Implementing Agreements is as follows:

Labor Organization	Status
International Brotherhood of Boilermakers, Iron-Ship Builders, Blacksmiths, Forgers and Helpers	Implementing agreement reached.
United Railway Supervisors Association - on behalf of the claim agents	Implementing agreement reached.
United Railway Supervisors Association - on behalf of the engineering supervisors	Implementing agreement reached.
National Conference of Firemen & Oilers	Implementing agreement reached.
American Railway and Airway Supervisors Association, Division of TCU, representing bridge inspectors	Implementing agreement reached.
Fraternal Order of Police	Implementing agreement reached.
American Train Dispatchers Department of the Brotherhood of Locomotive Engineers	Implementing agreement reached.
International Brotherhood of Electrical Worker	Implementing agreement reached.
Sheet Metal Workers International Association	Implementing agreement reached.
United Railway Supervisors Association on behalf of Mechanical Department Supervisors	Implementing agreement reached.
United Transportation Union	Implementing agreement reached.
United Transportation Union - Yardmasters Department	Implementing agreement reached.
Brotherhood of Locomotive Engineers	Implementing agreement has been reached subject to union ratification. Results are due on February 17, 1999.
*Brotherhood of Maintenance of Way Employes	Arbitration was held from December 15 through 18. The arbitrator has issued an award which establishes the implementing agreement.
Brotherhood of Railway Signalmen	Implementing agreement has been reached.
International Association of Machinist	Implementing agreement has been reached.
Transportation Communication International Clerks Union	Implementing agreement has been reached.
*Brotherhood Railway Carmen Division - TCU and Transport Workers Union of America	Implementing agreement has been reached with TCU (BRC). Arbitration with TWU was held on January 22, 1999. A decision is due by February 23, 1999.
* The Notice provided for by Section 4 of the <u>New York Dock</u> conditions has been served on each of these unions.	

STB OPERATIONAL MONITORING REPORT

As of January 31, 1999

LABOR

Labor Management Task Force

CSXT continues to send an invitation to each union with which an implementing agreement has been reached and which will continue to represent employees on CSXT to participate in a labor task force similar to the one established with the United Transportation Union. A letter was sent to the Brotherhood of Railway Signalmen following the parties agreeing to an implementing agreement. To date, the National Conference of Firemen & Oilers and the International Brotherhood of Boilermakers, Ironship Builders, Blacksmiths, Forgers and Helpers have responded affirmatively to our invitation to participate in a labor task force similar to the one established with the United Transportation Union.

The International Association of Machinist and Aerospace Workers also was invited to establish a labor task force. The Organization respectfully declined the invitation citing its current participation in the CSXT labor/management safety program and the SACP Program currently being sponsored by the Federal Railroad Administration. The IAM did, however, state that it "will always be willing to meet with representatives of CSXT and other rail labor representatives to discuss specific issues concerning the application of our implementing agreement and safety related issues as deemed necessary and appropriate."

STB OPERATIONAL MONITORING REPORT

As of January 31, 1999

CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location		Project	Status	Expected Completion Date
1)	Greenwich, Ohio to Pine Junction, Indiana	Construct 2 nd main track with TCS on B&O including connections.	Complete	4Q 98
2)	Quaker to Greenwich, Ohio	Construction by Conrail of 2 nd main track with TCS.	Complete	4Q 98
3)	Willard, Ohio	Yard Expansion	Substantially Complete	1Q 98
4a)	Crestline, Ohio	a) Construct or rehabilitate connection tracks with Indianapolis Line.	a) Underway	1Q 98
4b)	Sidney, Ohio	b) Connection Track	b) Complete	4Q 98
4c)	Marion, Ohio	c) Rehabilitate Connection Track	c) Complete	4Q 98
5)	Carleton, Michigan	Connect track with Conrail	Complete	4Q 98
6a)	Alice, Indiana	a) Siding Extension	a) Complete	a) 3Q 98
6b)	Harwood, Indiana	b) Siding Extension	b) Complete	b) 4Q 98
7a)	Chicago, Illinois	a) Intermodal Expansions	a) Complete	a) 3Q 98
7b)	Cleveland, Ohio	b) Intermodal Expansions	b) Substantially Complete	b) 1Q 98
7c)	Philadelphia, Pennsylvania	c) Intermodal Expansions	c) Underway	c) 1Q 98
7d)	Little Ferry, New Jersey	d) Intermodal Expansions	d) Complete	d) 3Q 98
8)	Philadelphia, Pennsylvania	Rebuild Eastwick connection track with Conrail.	Complete	4Q98
9)	Hobart, Indiana to Tolleston, Indiana	Restoration of connection and main track between Hobart & Tolleston.	Substantially Complete	1Q 99

STB OPERATIONAL MONITORING REPORT

As of January 31, 1999

CONSTRUCTION AND OTHER CAPITAL PROJECTS

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

STB OPERATIONAL MONITORING REPORT

As of January 31, 1999

INFORMATION TECHNOLOGY

Information Technology

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

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

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

STB OPERATIONAL MONITORING REPORT

As of January 31, 1999

INFORMATION TECHNOLOGY

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

STB OPERATIONAL MONITORING REPORT

As of January 31, 1999

INFORMATION TECHNOLOGY

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

STB OPERATIONAL MONITORING REPORT

As of January 31, 1999

INFORMATION TECHNOLOGY

Operating Area	Implementation Strategy	Status	Training
Transportation Locomotive Management	<p>CSX Locomotive Management System (LMS) will be used to manage locomotives in CSX acquired territory beginning on Day 1. This will occur from the Operations Center in Philadelphia, PA for approximately 180 days after Day 1. The management team in Philadelphia will consist of two locomotive managers and one senior locomotive manager. Dual entry of locomotive assignments will be made to the Conrail Locomotive Distribution System. Shutdown of Conrail LDS will accompany field roll-out and will be dependent upon other Conrail Systems (TRIMS & TMS) no longer relying on assignments being passed from Conrail LDS.</p> <p>Within 180 days after Day 1, locomotive management for the acquired Conrail territory will be relocated to the Kenneth Dufford Center in Jacksonville. Two CSX Locomotive Managers will manage the acquired territory at that time.</p>	<p>System Testing is in progress and on schedule;</p> <p>One training class of CR personnel on CSX LMS was completed.</p>	<p>Locomotive managers for the acquired Conrail territory will be trained on the CSX Locomotive Management System 60 days prior to Day 1 with sessions in both Jacksonville, FL and Philadelphia, PA. Management will conduct the training and will include cross training of CSX and Conrail cultures.</p>

STB OPERATIONAL MONITORING REPORT

As of January 31, 1999

INFORMATION TECHNOLOGY

Operating Area	Implementation Strategy	Status	Training
Transportation Train Dispatching	<p>Train dispatchers will continue to use current Conrail systems. Phase 1 geographic realignments will separate dispatchers into CSX, NS & SAC entities within current division offices. Phase 1 will complete 90-120 days after Day 1.</p> <p>Phase 2 division realignment will move dispatchers to acquiring road's division. CSX Cleveland East dispatcher in Dearborn, MI will move to CSX headquarters in Indianapolis, IN. CSX Chesapeake & Riverline dispatchers in Mt. Laurel, NJ will move to CSX headquarters in Albany, NY. Phase 2 will complete 90-120 days after an implementing agreement has been reached.</p> <p>Phase 2 moves are contingent upon Phase 1 realignment completion for territory being transferred. Also contingent upon an implementing agreement being in place with the ATDD.</p>	<p>Systems development has been completed and implementation is proceeding on schedule.</p> <p>Phase 1 realignments : Albany, & Indianapolis complete.</p> <p>Dearborn Division started.</p> <p>Philadelphia Division scheduled to start 3/15/99</p> <p>Phase 2 realignments will start 3/22/99.</p> <p>Phase 2 projected to complete 30-60 days after Day 1.</p> <p>Implementing agreements are now in place.</p>	<p>Dispatchers will be trained on their new territory using the current processes in place at Conrail.</p>

STB OPERATIONAL MONITORING REPORT

As of January 31, 1999

CSX Customer Service Progress Report

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

The Transition Process

Meetings with the Shared Area management continue, with the objective of defining data reporting hand-off procedures between Shared Area personnel and CSXT/NS at terminals located in Detroit, and in North and South Jersey. A task force was set up to define train-by-train procedures for all acquired territories, including Shared Areas. *These procedures have now been written, subject to last-minute changes in the operating plan. They define how to handle the hand-off between systems and between the CSC in Jacksonville and the NCSC in Pittsburgh.*

Personnel

An implementing agreement has been reached with the Transportation Communications Union, enabling the contract employee selection process for CSXT, NS, and the Shared Areas to begin. On November 20, 1998, CSXT issued notice of intent to acquire 183 clerical employees for the operation of the CSXT acquired areas, to be headquartered temporarily in the Pittsburgh NCSC facility. The roll-down process has been completed. As many as 20% of the new employees are already on the positions they will occupy on Day One. *Training classes have now begun, and we expect to have all clerical employees at the NCSC on their chosen positions and trained by Day One.*

Non-contract managers continue to co-locate in both Pittsburgh and Jacksonville as these procedures are worked out. The objective is to promote a seamless integration of CR/CSXT operations and cultures.

Customer Familiarization

Shipping guides providing essential information on doing business with CSX have been mailed to customers in the acquired areas. Similar guides, customized for the purpose, have been sent to customers in the Shared Areas.

STB OPERATIONAL MONITORING REPORT

As of January 31, 1999

STB Status Report on Training

Scheduling Office

Major training efforts began in January, completing over 50 of the 800 planned classes. Approximately 95% of the trainers were trained and 5% of the total Conrail population received training. Database software setup was completed to record and track all class attendance information. Weekly and monthly reporting systems were established to track class scheduling, attendance and cancellations.

Train & Engine Service Training

Pre Day One Training for train and engine service employees began during the month of January, 1999. Crews assigned to inter-territorial runs will begin training during the first week of February, 1999. All Pre-Day One training is scheduled for completion by June 1, 1999.

Clerical Training

Additional meetings were held with CR Service Lane Administrative Managers. We pinpointed additional training needs for Service Lane clerical employees to insure our training will touch all of their areas of responsibility. Based on our conversations and feedback, we are on target with the plan. Additional system servers have been placed at Philadelphia, Toledo, and Buffalo to provide access to self-paced application training.

Crew Management

Crew management training is in the process of updating Transportation Employee Calling System schedules to coincide with the new split date. During January we conducted an eight-day TECS session in Dearborn to pilot test split date materials.

Trainmasters & Yardmasters

Day One Operations training for trainmasters and yardmasters is under way at five central locations on existing CR territory. Arrangements are being made to add new training rooms in Philadelphia and possibly Cleveland. We will continue to conduct training, possibly pushing back yardmaster sessions closer to split date.

Engineering & Train Control

Materials for Engineering and Train Control non-contract training are complete. Materials for contract training are being finalized this month. Seventeen instructors have now completed train-the-trainer sessions. One non-contract class was conducted in January prior to the new split date announcement. Since that time, training schedules have been revised to reflect a start date of March 15 with all classes finishing by mid-May.

Intermodal

Training materials have been designed and pilot tested. Train-the-trainer sessions were also completed in January. Implementation plans are being adjusted to reflect the new split date.

Norfolk Southern Corporation

STB Operational Monitoring Report

As of January 31, 1999

Reporting Requirement	Page
Item 1. Labor Implementing Agreements.....	2
Item 2. Construction and Other Capital Projects	4
Item 3. Information Technology	9
Item 4. Customer Service.....	12
Item 5. Power and Rolling Stock	*
Item 6. Car Management, Crew Management and Dispatching	10
Item 7. Shared Assets Areas	**
Item 8. Monongahela Coal Area	4
Item 9. Cleveland Operations	4
Item 10. Chicago Gateway Operations	**
Item 11. Yards and Terminals	**
Item 12. On Time Performance.....	**
Item 13. The Conrail Transaction Council.....	*
Item 14. Labor Task Forces.....	3

Note: Bold print indicates changes from previous report.

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

** Data not required at this time.

Surface Transportation Board Operational Monitoring Report

As of January 31, 1999

LABOR

Labor Implementing Agreements

Labor Organization	Status
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers	Implementing Agreement reached
United Railway Supervisors Association – on Behalf of claim agents	Implementing Agreement reached
United Railway Supervisors Association – on behalf of engineering supervisors	Implementing Agreement reached
United Railway Supervisors Association – on Behalf of the mechanical department supervisors for the Conrail properties operated by NS	Implementing Agreement reached
National Conference of Firemen & Oilers	Implementing Agreement reached
American Railway and Airway Supervisors Association, Division of TCU, representing Bridge inspectors	Implementing Agreement reached
Fraternal Order of Police	Implementing Agreement reached
International Brotherhood of Electrical Workers	Implementing Agreement reached
Sheet Metal Workers' International Association	Implementing Agreement reached
American Train Dispatchers Department, Brotherhood of Locomotive Engineers	Implementing Agreement reached
International Association of Machinists and Aerospace Workers	Implementing Agreement reached
Transportation•Communications International Union	Implementing Agreement reached.
United Transportation Union	Implementing Agreement reached
Brotherhood of Railroad Signalmen	Implementing Agreement reached
United Transportation Union – Yardmasters Department	Implementing Agreement reached
Brotherhood of Locomotive Engineers	Agreement reached, subject to ratification
Brotherhood Railway Carmen – Div. TCU and Transport Workers Union of America	Agreement reached with BRC. Arbitration with TWU held on January 22, 1999.
Brotherhood of Maintenance and Way Employees	Arbitrated Implementing Agreement rendered January 14, 1999.

Note: Bold print indicates changes from previous report.

Surface Transportation Board Operational Monitoring Report

As of January 31, 1999

LABOR

Labor-Management Task Forces

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

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

A task force meeting with the American Train Dispatchers Department was held on November 17, 1998, at which ongoing training and qualifications procedures were reviewed. **A task force meeting has been scheduled with the Brotherhood of Railroad Signalmen for February 18, 1999.**

Note: Bold print indicates changes from previous report.

Surface Transportation Board Operational Monitoring Report

As of January 31, 1999

CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location	Project	Dept	Phase	Status
Alexandria	IN Construct track connection Estimated Completion Date: Complete	Track	Design	Complete
			Grading	Complete
			Const	Complete
		Signal	Design Const	Complete Complete
Allentown - Reading	PA Traffic Control System	Signal	Design	In progress
	PA Estimated Completion Date: 4Q99		Const	
Angola	NY Upgrade existing siding, construct new siding Estimated Completion Date: Complete	Track	Design	Complete
		Bridge	Grading	Complete
			Const	Complete
		Signal	Design	Complete
			Const	Complete
Attica	IN Extend siding 4,580 track feet Estimated Completion Date: Complete	Track	Design	Complete
			Grading	Complete
		Signal	Const	Complete
			Design Const	Complete Complete
Boundbrook	NJ Extend siding 15,000 track feet Estimated Completion Date: 1Q00	Track	Design	Project being defined.
			Grading	
		Signal	Const Design Const	
Bristol	VA Extend siding 14,255 track feet Estimated Completion Date: Complete	Track	Design	Complete
			Grading	Complete
			Const	Complete
		Bridge	Design	Complete
			Const	Complete
		Signal	Design Const	Complete Complete
Bucyrus	OH Construct track connection Estimated Completion Date: 1Q99	Land		Complete
		Track	Design	Complete
			Grading	Complete
		Signal	Const	Complete
			Design Const	Complete In progress
Buffalo - Cleveland	NY Traffic control system and remove pole line.	Signal	Design	In progress
	OH Estimated Completion Date: 4Q99		Const	In progress
Butler	IN Construct track connection Estimated Completion Date: 4Q99	Track	Design	Project being defined.
			Grading	
		Signal	Const Design Const	
Chicago	IL Expand and improve 47th St Yard Intermodal Terminal Estimated Completion Date: 4Q99	Track	Design	In progress
			Grade/Pave	

Surface Transportation Board Operational Monitoring Report

As of January 31, 1999

CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location	Project	Dept	Phase	Status
Cloggsville	OH Track Rehabilitation	Track	Design	Complete
	Estimated Completion Date: Complete		Const	Complete
Cloggsville	OH Construct second main Estimated Completion Date: 4Q99	Track	Design	In progress
			Grading	
		Bridge	Design	In progress
		Signal	Design	
Columbus	OH Construct track connection Estimated Completion Date: 1Q99	Track	Design	Complete
			Grading	Complete
		Signal	Const	In progress
			Design	Complete
Crockett	VA Construct 9,100 foot new siding Estimated Completion Date: Complete	Land	Design	Complete
			Grading	Complete
		Track	Const	Complete
			Design	Complete
		Bridge	Const	Complete
			Design	Complete
		Signal	Const	Complete
			Design	Complete
Croxtan	NJ Expand and improve intermodal terminal Estimated Completion Date: 4Q99	Track	Design	Complete
			Grade/Pave	In progress
E-Rail	NJ Expand and improve intermodal terminal Estimated Completion Date: 3Q99	Track	Design	In progress
Erie	PA Erie Track Realign Project Estimated Completion Date: 4Q99	Track	Design	In progress
			Grading	
		Signal	Design	
Flemington	NJ Construct 12,500 foot siding Estimated Completion Date: 1Q00	Track	Design	Project being defined.
			Grading	
		Signal	Design	
Hadley Jct (Ft Wayne)	IN Double tracking Estimated Completion Date: 4Q99	Track	Design	Project being defined.
			Grading	
		Signal	Design	
Hagerstown Sec (Greencastle)	PA Construct siding Estimated Completion Date: 1Q99	Track	Design	Complete
			Grading	Complete
		Signal	Const	Complete
			Design	Complete
Hagerstown Sec	PA Traffic Control Estimated Completion Date: 4Q99	Signal	Design	Project being defined.

Surface Transportation Board Operational Monitoring Report
As of January 31, 1999

CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location	Project	Dept	Phase	Status
Harrisburg (Rutherford)	PA Construct intermodal terminal Estimated Completion Date: 2Q00	Track	Design	In progress
Harrisburg - Reading	PA Traffic Control System and remove pole line Estimated Completion Date: 4Q99	Signal	Design	In progress
KD Tower - Cumberland Falls	KY Extending double track 40,120 feet Estimated Completion Date: 2Q99	Track	Design	Complete
			Grading	In progress
		Signal	Const Design Const	Complete To do
Knoxville - Chattanooga	TN Double Stack Clearances Estimated Completion Date: Complete	Track	Design	Complete
		Bridge	Const Design	Complete Complete
Marshfield	IN Upgrade and extend siding 7,908 feet Estimated Completion Date: Complete	Land Track	Design Grading Const	Options Complete Complete Complete
		Bridge	Design Const	Complete Complete
		Signal	Design Const	Complete Complete
Oak Harbor	OH Construct track connection Estimated Completion Date: 1Q99	Land Track	Design Grading Const	Complete Complete Complete
		Signal	Design Const	Complete In progress
Pattensburg	NJ Clearance-9 Bridges Estimated Completion Date: 1Q99	Bridge	Design Const	In progress In progress
Pattensburg	NJ Siding Extensions Estimated Completion Date: Complete	Track	Design Grading Const	Complete Complete Complete
		Signal	Design Const	Complete Complete
Pattensburg	NJ Tunnel Clearance Estimated Completion Date: 2Q99	Bridge	Design Const	Complete In progress
Philadelphia	PA Construct crossover - Zoo Estimated Completion Date: 4Q99	Track	Design Grading Const	Project being defined.
		Signal	Design Const	
Piney Flats	TN Extend siding 6,610 feet Estimated Completion Date: Complete	Land Track	Design Grading Const	Complete Complete Complete
		Signal	Design Const	Complete Complete

Surface Transportation Board Operational Monitoring Report

As of January 31, 1999

CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location	Project	Dept	Phase	Status
Port Reading	NJ Chemical Coast Clearance Projects Estimated Completion Date: 4Q99	Track	Design	In progress
		Bridge	Const Design Const	In progress
Rader	TN Extend siding 5,189 feet Estimated Completion Date: Complete	Land		Complete
		Track	Design	Complete
			Grading	Complete
			Const	Complete
		Bridge	Design	Complete
			Const	Complete
		Signal	Design	Complete
			Const	Complete
Reading -	PA Traffic Control System and remove pole line	Signal	Design	In progress
Philadelphia	PA Estimated Completion Date: 2Q00		Const	
Riverton Jct -	VA Clearance projects	Bridge	Design	Complete
Roanoke	VA Estimated Completion Date: Complete		Const	Complete
Sandusky (Bellevue)	OH Construct Triple Crown Terminal Estimated Completion Date: 1Q99	Track	Design	Complete
			Grade/Pave	Complete
		Building	Const	In progress
Sidney	IL Construct track connection Estimated Completion Date: Complete	Track	Design	Complete
			Grading	Complete
			Const	Complete
		Signal	Design	Complete
Sido	MO Double tracking 36,458 track feet Estimated Completion Date: Complete		Const	Complete
		Track	Design	Complete
			Grading	Complete
			Const	Complete
		Bridge	Design	Complete
			Const	Complete
		Signal	Design	Complete
			Const	Complete
			Const	Complete
Sloan	IL Extend siding 5,027 track feet Estimated Completion Date: Complete	Track	Design	Complete
			Grading	Complete
			Const	Complete
		Signal	Design	Complete
			Const	Complete
			Const	Complete
Southern Tier	NY Southern Tier Rehabilitation Estimated Completion Date: 4Q99	Track	Const	
		Bridge	Design Const	In progress
St Louis (Mitchell)	MO Expand Mitchell Triple Crown Terminal Estimated Completion Date: 2Q99	Track	Design	In progress
		Signal	Grade/Pave Design Const	In progress
Toledo	OH Intermodal Teminal Estimated Completion Date: 4Q99	Track	Design Grade/Pave	Project being defined.

Surface Transportation Board Operational Monitoring Report

As of January 31, 1999

CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location	Project	Dept	Phase	Status
Tolono	IL Track Connection Estimated Completion Date: 1Q99	Track	Design	Complete
			Grading	Complete
			Const	Complete
		Signal	Design	Complete
			Const	In progress
Vermillion	OH Track Connection Estimated Completion Date: 1Q99	Land		Complete
		Track	Design	Complete
			Grading	Complete
			Const	Complete
		Signal	Design	Complete
			Const	In progress

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

Surface Transportation Board Operational Monitoring Report

As of January 31, 1999

INFORMATION TECHNOLOGY

Systems Integration

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

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

In order to prepare for the implementation of the new systems, each project must go through a planning stage and a development stage. The planning stage of the systems integration process involves the analysis and preparation of functional and technical specifications for the systems and the subsequent development stage involves the construction (coding), and testing of the systems.

There are three phases of testing through which our transportation and operations systems must undergo: unit, systems and integration. All of the operations systems have completed or are nearly finished with integration testing. The integration testing of the transportation systems is underway and will be complete in the Second Quarter of 1999. Once the new systems are implemented across all of the NS geography, use of the Conrail systems will be discontinued.

Note: Bold print indicates changes from previous report.

Surface Transportation Board Operational Monitoring Report

As of January 31, 1999

INFORMATION TECHNOLOGY

Systems and Personnel Training

Operating Area	Project	Status
TRANSPORTATION		
Car Management and Movement	Systems – Multiple projects	Development, Systems and integration testing Estimated completion date: 2Q99
Includes Thoroughbred Yard Enterprise System (TYES) and Central Yard Operations (CYO) System	Personnel Training	
	Prepare training materials for TYES and CYO	Complete
	Trainer orientation	In progress
	TYES training at Conrail locations	Estimated beginning date: 1Q99
Train Dispatching	Systems	Development complete; Currently in implementation Estimated Completion date: 1Q99
	Personnel Training	
	Prepare computer-based training materials for Norfolk Southern Train Information System (TIS) and Train System Accident Reporting System (TSAR).	Complete
	Train Conrail employees at Dearborn, Pittsburgh, and Mt. Laurel	Estimated beginning date: 1Q99
Locomotive Management	Systems	Development complete; Integration testing in progress Estimated completion date: 2Q99
	Personnel Training	
	Prepare training materials; conduct pilot sessions	Complete
	Trainer orientation	Estimated beginning date: 1Q99
	Train employees at 8 Conrail locations	Estimated completion date: 1Q99

Surface Transportation Board Operational Monitoring Report

As of January 31, 1999

INFORMATION TECHNOLOGY

Operating Area	Project	Status
OPERATIONS PERSONNEL		
Crew Management	Systems	Final stages of integration testing Estimated completion date: 1Q99
	Personnel Training	
	Prepare training materials	Complete
	Train Conrail employees	Estimated completion date: 1Q99
Train and Engine (T&E) Payroll	Personnel Training	
	Prepare training materials; conduct pilot sessions	Complete
	Train T&E crews	Estimated beginning date: 2Q99
Non-Train and Engine Payroll	Personnel Training	
	Prepare training materials; conduct pilot sessions	Complete
	Trainer orientation	In progress
	Train Conrail employees	Estimated completion date: 1Q99
CUSTOMER SERVICE		
Electronic Customer Connectivity	Systems	Development and testing Estimated completion date: 2Q99
	Personnel Training	
	Testing new systems	Estimated completion date: 1Q99
	Customer Coordination	
	Information to be distributed to customers	In progress
National Customer Service Center	Personnel Training	
	Prepare training materials	Complete
	Train employees in Pittsburgh and Atlanta	In progress

Note: Bold print indicates changes from previous report.

Surface Transportation Board Operational Monitoring Report

As of January 31, 1999

CUSTOMER SERVICE

Transition Process

Transition team members for NS have been selected and confirmed to work in Philadelphia in Customer Service for an undetermined period of time after split date. Space has been defined and equipment will be set up in the near future for this group to operate from.

Personnel

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

Customer Awareness

NS continues to host customer meetings to evaluate and provide feedback on the Company's planning processes and strategies.

The Customer Resource Guide has been completed and is in the process of being distributed. This guide will provide customers with all resources and information necessary for doing business with the new NS.

The Help Desk Directory, to be released at a later date, will also provide a way for customers and employees to easily obtain information about NS. This guide to services and benefits will list key phone numbers that will connect users to areas that may assist them in answering questions about NS. It will be available in three formats: a pocket guide for employees, a list for customers and an expanded version available for downloading from the internet.

Note: Bold print indicates changes from previous report.

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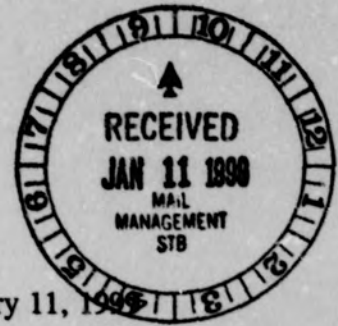
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SURFACE TRANSPORTATION BOARD

Memorandum

192954

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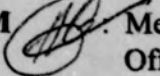


JAN 11 1999

DATE: January 11, 1999

Part of
Public Record

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

FROM  Mel Clemens, Director
Office of Compliance and Enforcement

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

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

Attachments

cc: Chairman Morgan
Vice Chairman Clyburn
Ron Douglas
Charles Renninger

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

J. Randall Evans
Vice President-Acquisition Development

January 11, 1999

Melvin F. Clemens, Jr.
Director Office of Compliance and Enforcement
Surface Transportation Board
Washington, DC 20423-0001

Dear Mr. Clemens:

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

The reports are presented in the following order:

Labor Implementing Agreements	Page 1
Labor Task Force	Page 2
Construction and Other Capital Projects Table	Pages 3-4
Information Technology	Pages 5-9
Customer Service	Pages 10-11
Training	Pages 12-13

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

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

Very truly yours,

J. Randall Evans

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

Paul R. Hitchcock - J150
Senior Counsel

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CSX TRANSPORTATION, INC.
STB OPERATIONAL MONITORING REPORT
As of December 31, 1999

Table of Contents

The reports are presented in the following order:

Labor Implementing Agreements	Page 1
Labor Task Force	Page 2
Construction and Other Capital Projects Table	Pages 3-4
Information Technology	Pages 5-9
Customer Service	Pages 10-11
Training	Pages 12-13

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

STB OPERATIONAL MONITORING REPORT

As of December 31, 1999

LABOR

The status of the Labor Implementing Agreements is as follows:

Labor Organization	Status
International Brotherhood of Boilermakers, Iron-Ship Builders, Blacksmiths, Forgers and Helpers	Implementing agreement reached.
United Railway Supervisors Association - on behalf of the claim agents	Implementing agreement reached.
United Railway Supervisors Association - on behalf of the engineering supervisors	Implementing agreement reached.
National Conference of Firemen & Oilers	Implementing agreement reached.
American Railway and Airway Supervisors Association, Division of TCU, representing bridge inspectors	Implementing agreement reached.
Fraternal Order of Police	Implementing agreement reached.
American Train Dispatchers Department of the Brotherhood of Locomotive Engineers	Implementing agreement reached.
International Brotherhood of Electrical Worker	Implementing agreement reached.
Sheet Metal Workers International Association	Implementing agreement reached.
United Railway Supervisors Association on behalf of Mechanical Department Supervisors	Implementing agreement reached.
<i>United Transportation Union</i>	<i>Implementing agreement reached.</i>
<i>United Transportation Union - Yardmasters Department</i>	<i>Implementing agreement reached.</i>
Brotherhood of Locomotive Engineers	Implementing agreement has been reached subject to union ratification.
<i>*Brotherhood of Maintenance of Way Employes</i>	<i>Arbitration was held from December 15 through 18. The arbitrator's decision is due on January 14, 1999.</i>
<i>Brotherhood of Railway Signalmen</i>	<i>Implementing agreement has been reached.</i>
International Association of Machinist	Implementing agreement has been reached.
Transportation Communication International Clerks Union	Implementing agreement has been reached.
<i>*Brotherhood Railway Carmen Division - TCU and Transport Workers Union of America</i>	<i>Implementing agreement has been reached with TCU (BRC). Arbitration is set with TWU for January 22, 1999.</i>
* The Notice provided for by Section 4 of the <u>New York Dock</u> conditions has been served on each of these unions.	

LABOR

Labor Management Task Force

CSXT will continue to send an invitation to each union with which an implementing agreement has been reached and which will continue to represent employees on CSXT to participate in a labor task force similar to the one established with the United Transportation Union. To date, the National Conference of Firemen & Oilers and the International Brotherhood of Boilermakers, Ironship Builders, Blacksmiths, Forgers and Helpers have responded affirmatively to our invitation to participate in a labor task force similar to the one established with the United Transportation Union.

The International Association of Machinist and Aerospace Workers also was invited to establish a labor task force. The Organization respectfully declined the invitation citing its current participation in the CSXT labor/management safety program and the SACP Program currently being sponsored by the Federal Railroad Administration. The IAM did, however, state that it "will always be willing to meet with representatives of CSXT and other rail labor representatives to discuss specific issues concerning the application of our implementing agreement and safety related issues as deemed necessary and appropriate."

STB OPERATIONAL MONITORING REPORT

As of December 31, 1999

CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location		Project	Status	Expected Completion Date
1)	Greenwich, Ohio to Pine Junction, Indiana	Construct 2 nd main track with TCS on B&O including connections.	Complete	4Q 98
2)	Quaker to Greenwich, Ohio	Construction by Conrail of 2 nd main track with TCS.	Complete	4Q 98
3)	Willard, Ohio	Yard Expansion	Substantially Complete	1Q 98
4a)	Crestline, Ohio	a) Construct or rehabilitate connection tracks with Indianapolis Line.	a) Underway	1Q 98
4b)	Sidney, Ohio	b) Connection Track	b) Complete	4Q 98
4c)	Marion, Ohio	c) Rehabilitate Connection Track	c) Complete	4Q 98
5)	Carleton, Michigan	Connect track with Conrail	Complete	4Q 98
6a)	Alice, Indiana	a) Siding Extension	a) Complete	a) 3Q 98
6b)	Harwood, Indiana	b) Siding Extension	b) Complete	b) 4Q 98
7a)	Chicago, Illinois	a) Intermodal Expansions	a) Complete	a) 3Q 98
7b)	Cleveland, Ohio	b) Intermodal Expansions	b) Substantially Complete	b) 1Q 98
7c)	Philadelphia, Pennsylvania	c) Intermodal Expansions	c) Underway	c) 1Q 98
7d)	Little Ferry, New Jersey	d) Intermodal Expansions	d) Complete	d) 3Q 98
8)	Philadelphia, Pennsylvania	Rebuild Eastwick connection track with Conrail.	Complete	4Q98
9)	Hobart, Indiana to Tolleston, Indiana	Restoration of connection and main track between Hobart & Tolleston.	Substantially Complete	1Q 99

STB OPERATIONAL MONITORING REPORT

As of December 31, 1999

CONSTRUCTION AND OTHER CAPITAL PROJECTS

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

STB OPERATIONAL MONITORING REPORT

As of December 31, 1999

INFORMATION TECHNOLOGY

Information Technology

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

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

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

STB OPERATIONAL MONITORING REPORT

As of December 31, 1999

INFORMATION TECHNOLOGY

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

STB OPERATIONAL MONITORING REPORT

As of December 31, 1999

INFORMATION TECHNOLOGY

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

STB OPERATIONAL MONITORING REPORT

As of December 31, 1999

INFORMATION TECHNOLOGY

Operating Area	Implementation Strategy	Status	Training
Transportation Locomotive Management	<p>CSX Locomotive Management System will be used to manage locomotives in CSX acquired territory beginning on Day 1. This will occur from the Operations Center in Philadelphia, PA for 180 days after Day 1. The management team in Philadelphia will consist of two locomotive managers and one senior locomotive manager. Dual entry of locomotive assignments will be made to the Conrail Locomotive Distribution System. Shutdown of Conrail LDS will accompany field roll-out and will be dependent upon other Conrail Systems (TRIMS & TMS) no longer relying on assignments being passed from Conrail LDS.</p> <p>Within 180 days of Day 1, locomotive management for the acquired Conrail territory will be relocated to the Kenneth Dufford Center in Jacksonville. Two CSX Locomotive Managers will manage the acquired territory at that time.</p>	Systems development in process and on schedule	Locomotive managers for the acquired Conrail territory will be trained on the CSX Locomotive Management System 60 days prior to Day 1 with sessions in both Jacksonville, FL and Philadelphia, PA. Management will conduct the training and will include cross training of CSX and Conrail cultures.

INFORMATION TECHNOLOGY

Operating Area	Implementation Strategy	Status	Training
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STB OPERATIONAL MONITORING REPORT

As of December 31, 1999

<p>Transportation Train Dispatching</p>	<p>Train dispatchers will continue to use current Conrail systems. Phase 1 geographic realignments will separate dispatchers into CSX, NS & SAC entities within current division offices. Phase 1 will complete 90-120 days after Day 1.</p> <p>Phase 2 division realignment will move dispatchers to acquiring road's division. CSX Cleveland East dispatcher in Dearborn, MI will move to CSX headquarters in Indianapolis, IN. CSX Chesapeake & Riverline dispatchers in Mt. Laurel, NJ will move to CSX headquarters in Albany, NY. Phase 2 will complete 90-120 days after an implementing agreement has been reached.</p> <p>Phase 2 moves are contingent upon Phase 1 realignment completion for territory being transferred. Also contingent upon an implementing agreement being in place with the ATDD.</p>	<p>Systems development has been completed and implementation is proceeding on schedule.</p> <p>Phase 1 realignments for the Albany, Indianapolis, and Dearborn Divisions are complete.</p> <p>Phase 1 realignment for the Philadelphia Division scheduled to start 1/18/99.</p> <p>Implementing agreements are now in place.</p>	<p>Dispatchers will be trained on their new territory using the current processes in place at Conrail.</p>
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STB OPERATIONAL MONITORING REPORT

As of December 31, 1999

CSX Customer Service Progress Report

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

The Transition Process

Meetings with the Shared Area management continue, with the objective of defining data reporting hand-off procedures between Shared Area personnel and CSXT/NS at terminals located in Detroit, and in North and South Jersey. *A task force has been set up to draw up train-by-train procedures for all acquired territories, including Shared Areas. These procedures will define how to handle the hand-off between systems and between the CSC in Jacksonville and the NCSC in Pittsburgh. The goal is to have a detailed procedural plan by the end of January.*

In the Technology area, realignment of the Conrail computer system to work with CSXT and NS has been completed. Data is now passing from the Conrail system into the CSXT mainframe, and it is being incorporated into CSXT car movement records.

Personnel

An implementing agreement has been reached with the Transportation Communications Union, enabling the contract employee selection process for CSXT, NS, and the Shared Areas to begin. On November 20, 1998, CSXT issued notice of intent to acquire 183 clerical employees for the operation of the CSXT acquired areas, to be headquartered temporarily in the Pittsburgh NCSC facility. *The roll-down process has been completed. As many as 20% of the new employees are already on the positions they will occupy on Day One. Managers are making plans to provide the necessary training, and to migrate the remainder into their newly awarded positions.*

Non-contract managers continue to co-locate in both Pittsburgh and Jacksonville as these procedures are worked out. The objective is to promote a seamless integration of CR/CSXT operations and cultures.

STB OPERATIONAL MONITORING REPORT

As of December 31, 1999

Customer Familiarization

In connection with the Customer Familiarization process, Revenue Accounting has published the following operational guidelines:

- Waybills issued on or after Split Day will show CSXT in the route and will be handled by CSXT (712) for all acquired territories. Waybills pre-dating Split Day will be handled to conclusion by Conrail (190) in Philadelphia.
- Freight Station Accounting Codes and Open and Prepay Station List numbers have been converted to CSXT versions to be effective on Split Day.
- The waybill will govern to whom Loss and Damage claims are to be addressed – i.e., Conrail or CSXT.
- Overcharge claims involving waybills dated on or after Split Day should be addressed to CSXT; claims involving waybills prior to that date should be addressed to Conrail.
- CSXT will assume responsibility for settlement of interline switching charges on cars delivered or received on or after Split Day; Conrail will handle prior movements to conclusion.
- Settlement agreements will be entered into by CSXT with short lines connecting with acquired territories, and Car Accounting and Car Repair billing will be handled by CSXT on and after Split Day.

Addresses and Telephone numbers are being provided for the offices within CSXT handling each type of transaction outlined above.

STB OPERATIONAL MONITORING REPORT

As of December 31, 1999

STB Status Submission Report on Training

Clerical Employees

The Clerical Training Team has completed eighty percent of the development for computer systems training. We conducted our first Pilot Session in Jacksonville in early December. We continue to work with Technology to identify the types of equipment being placed at specific field locations. The first field training Pilot Session is being conducted the week of January 4 in Philadelphia.

System servers are available at Selkirk, Indianapolis, and West Springfield. This provides hands-on self-paced training materials for the standard applications training.

We continue to move as planned with our training milestones. Technology is working closely with us to help provide information for additional training requirements.

Train & Engine Service Employees

The initial development of Pre-Day One Training has been completed. Five new training officers have been added to the Training and Development staff specifically for Conrail acquisition training. The officers have become familiar with the Conrail Acquisition Training Materials during Train-the-Trainer sessions held in late December 1998.

Acquired T&E employees Pre-Day One Training Schedules are being developed for implementation beginning mid January. Train-the-Trainer sessions are scheduled for contract T&E trainers who will be utilized to facilitate the Pre-Day One training beginning on January 7, 1999.

Preliminary Field Roll-Out Training materials are being developed for T&E employees.

Crew Management

CMC T&D will deliver TECS new hire training to Conrail crew dispatchers and crew managers beginning January 11, 1999. Regular scheduled training to begin April 12, 1999. All curriculum development is complete, and training railroad tested and ready.

We completed development of the T&E reference manuals for the TECS system. Manuals are to be distributed during Pre-Day One training. We continue development on the Transportation officer, and Union representative manuals. Completion date February 1, 1999.

STB OPERATIONAL MONITORING REPORT

As of December 31, 1999

STB Status Submission Report on Training

- Customer Service** *A very successful one-week pilot session tested the newly developed materials (user reference guide and student exercises), the Training Railroad sites, and the classroom equipment. The pilot demonstrated that one week is the appropriate time for training. A few minor problems were identified and corrected. Day One preparation is complete. A preliminary training schedule identifying instructors and locations is developed.*
- Field roll-out materials are being developed with testing planned for early first quarter. The field roll-out training is a four week session addressing train consisting for all train types, processing demurrage records, managing yard systems, and correcting errors. The training will be instructor led using Training Railroad to give students in depth practice on each topic.*
- Field Transportation Supervisors** *Field Operations training is underway. Field Operations trainers have been trained. Six Terminal Operations classes were conducted in 1998, with 50 more scheduled for 1999.*
- Intermodal** *CSX Intermodal has its training organized, designed, and developed. The training facilitators are in the process of finalizing their preparations for delivery. Training plans call for terminal training to begin the middle of January and finish up right before Split Date.*
- Scheduling** *A centralized Scheduling Office has been established to handle class establishment, room reservations, class enrollment, class confirmations and attendance records. Departmental responsibilities have been identified for each of these functions and formal procedures written and distributed. Database software setup has begun to record all class attendance information. A Master Training Schedule has been developed to track all acquisition related training activities.*

Norfolk Southern Corporation

STB Operational Monitoring Report

As of December 31, 1998

Reporting Requirement	Page
Item 1. Labor Implementing Agreements	2
Item 2. Construction and Other Capital Projects	4
Item 3. Information Technology	9
Item 4. Customer Service	12
Item 5. Power and Rolling Stock	*
Item 6. Car Management, Crew Management and Dispatching	10
Item 7. Shared Assets Areas	**
Item 8. Monongahela Coal Area	4
Item 9. Cleveland Operations	4
Item 10. Chicago Gateway Operations	**
Item 11. Yards and Terminals	**
Item 12. On Time Performance	**
Item 13. The Conrail Transaction Council	*
Item 14. Labor Task Forces	3

Note: Bold print indicates changes from previous report.

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

** Data not required at this time.

Surface Transportation Board Operational Monitoring Report

As of December 31, 1998

LABOR

Labor Implementing Agreements

Labor Organization	Status
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers	Implementing Agreement reached
United Railway Supervisors Association – on Behalf of claim agents	Implementing Agreement reached
United Railway Supervisors Association – on behalf of engineering supervisors	Implementing Agreement reached
United Railway Supervisors Association – on Behalf of the mechanical department supervisors for the Conrail properties operated by NS	Implementing Agreement reached
National Conference of Firemen & Oilers	Implementing Agreement reached
American Railway and Airway Supervisors Association, Division of TCU, representing Bridge inspectors	Implementing Agreement reached
Fraternal Order of Police	Implementing Agreement reached
International Brotherhood of Electrical Workers	Implementing Agreement reached
Sheet Metal Workers' International Association	Implementing Agreement reached
American Train Dispatchers Department, Brotherhood of Locomotive Engineers	Implementing Agreement reached
International Association of Machinists and Aerospace Workers	Implementing Agreement reached
Transportation•Communications International Union	Implementing Agreement reached.
United Transportation Union	Implementing Agreement reached
Brotherhood of Railroad Signalmen	Implementing Agreement reached
United Transportation Union – Yardmasters Department	Implementing Agreement reached
Brotherhood of Locomotive Engineers	Agreement reached, subject to ratification
Brotherhood Railway Carmen – Div. TCU and Transport Workers Union of America	Agreement reached with BRC. Arbitration set for TWU for January 22, 1999.
Brotherhood of Maintenance and Way Employees	Arbitration hearing held December 15-18, 1998.

Note: Bold print indicates changes from previous report.

Surface Transportation Board Operational Monitoring Report

As of December 31, 1998

LABOR

Labor-Management Task Forces

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

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

Note: Bold print indicates changes from previous report.

Surface Transportation Board Operational Monitoring Report
As of December 31, 1998

CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location	Project	Dept	Phase	Status
Alexandria	IN Construct track connection Estimated Completion Date: Complete	Track	Design	Complete
			Grading	Complete
			Const	Complete
		Signal	Design Const	Complete Complete
Allentown - Reading	PA Traffic Control System	Signal	Design	In progress
	PA Estimated Completion Date: 4Q99		Const	
Angola	NY Upgrade existing siding, construct new siding Estimated Completion Date: Complete	Track	Design	Complete
			Grading	Complete
			Const	Complete
		Bridge	Design	Complete
		Signal	Const	Complete
			Design Const	Complete Complete
Attica	IN Extend siding 4, 580 track feet Estimated Completion Date: Complete	Track	Design	Complete
			Grading	Complete
			Const	Complete
		Signal	Design Const	Complete Complete
Boundbrook	NJ Extend siding 15,000 track feet Estimated Completion Date: 4Q99	Track	Design	Project being defined.
			Grading	
		Signal	Const Design Const	
Bristol	VA Extend siding 14,255 track feet Estimated Completion Date: Complete	Track	Design	Complete
			Grading	Complete
			Const	Complete
		Bridge	Design	Complete
		Signal	Const	Complete
			Design Const	Complete Complete
Bucyrus	OH Construct track connection Estimated Completion Date: 1Q99	Land		Complete
		Track	Design	Complete
			Grading	Complete
			Const	Complete
		Signal	Design Const	Complete In progress
Buffalo - Cleveland	NY Traffic control system and remove pole line.	Signal	Design	In progress
	OH Estimated Completion Date: 4Q99		Const	In progress
Butler	IN Construct track connection Estimated Completion Date: 4Q99	Track	Design	Project being defined.
			Grading	
		Signal	Const Design Const	
Chicago	IL Expand and improve 47th St Yard Intermodal Terminal Estimated Completion Date: 4Q99	Track	Design Grade/Pave	In progress
Cloggsville	OH Track Rehabilitation Estimated Completion Date: Complete	Track	Design Const	Complete Complete

Surface Transportation Board Operational Monitoring Report
As of December 31, 1998

CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location	Project	Dept	Phase	Status
Cloggsville	OH Construct second main Estimated Completion Date: 4Q99	Track	Design	In progress
			Grading	
		Bridge	Design	In progress
Columbus	OH Construct track connection Estimated Completion Date: 1Q99		Const	
		Signal	Design	
			Const	
Crockett	VA Construct 9,100 foot new siding Estimated Completion Date: Complete	Track	Design	Complete
			Grading	Complete
			Const	In progress
		Signal	Design	Complete
			Const	In progress
		Land		Complete
		Track	Design	Complete
			Grading	Complete
			Const	Complete
Croxtton	NJ Expand and improve intermodal terminal Estimated Completion Date: 4Q99	Bridge	Design	Complete
			Const	Complete
		Signal	Design	Complete
E-Rail	NJ Expand and improve intermodal terminal Estimated Completion Date: 3Q99		Const	Complete
		Track	Design	Complete
			Grade/Pave	In progress
Erie	PA Erie Track Realign Project Estimated Completion Date: 4Q99	Track	Design	In progress
			Grading	
		Signal	Design	
Flemington	NJ Construct 12,500 foot siding Estimated Completion Date: 4Q99		Const	
		Track	Design	Project being defined.
			Grading	
Hadley Jct (Ft Wayne)	IN Double tracking Estimated Completion Date: 4Q99		Const	
		Signal	Design	
			Const	
Hagerstown Sec (Greencastle)	PA Construct siding Estimated Completion Date: 1Q99	Track	Design	Complete
			Grading	Complete
			Const	Complete
Hagerstown Sec	PA Traffic Control Estimated Completion Date: 4Q99	Signal	Design	Complete
			Const	In progress
				Project being defined.
Harrisburg (Rutherford)	PA Construct intermodal terminal Estimated Completion Date: 2Q00	Track	Design	In progress
			Grade/Pave	

Surface Transportation Board Operational Monitoring Report

As of December 31, 1998

CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location	Project	Dept	Phase	Status
Harrisburg - Reading	PA Traffic Control System and remove pole line PA Estimated Completion Date: 4Q99	Signal	Design Const	In progress
KD Tower - Cumberland Falls	KY Extending double track 40,120 feet KY Estimated Completion Date: 2Q99	Track	Design Grading Const	Complete In progress
		Signal	Design Const	Complete
Knoxville - Chattanooga	TN Double Stack Clearances TN Estimated Completion Date: Complete	Track	Design Const	Complete Complete
		Bridge	Design	Complete
Marshfield	IN Upgrade and extend siding 7,908 feet Estimated Completion Date: Complete	Land Track	Design Grading Const	Optioned Complete Complete Complete
		Bridge	Design Const	Complete Complete
		Signal	Design Const	Complete Complete
Oak Harbor	OH Construct track connection Estimated Completion Date: 1Q99	Land Track	Design Grading Const	Complete Complete Complete Complete
		Signal	Design Const	Complete In progress
Pattensburg	NJ Clearance-9 Bridges Estimated Completion Date: 1Q99	Bridge	Design Const	In progress In progress
Pattensburg	NJ Siding Extensions Estimated Completion Date: Complete	Track	Design Grading Const	Complete Complete Complete
		Signal	Design Const	Complete Complete
Pattensburg	NJ Tunnel Clearance Estimated Completion Date: 2Q99	Bridge	Design Const	Complete In progress
Philadelphia	PA Construct crossover - Zoo Estimated Completion Date: 4Q99	Track	Design Grading Const	Project being defined.
		Signal	Design Const	
Piney Flats	TN Extend siding 6,610 feet Estimated Completion Date: Complete	Land Track	Design Grading Const	Complete Complete Complete Complete
		Signal	Design Const	Complete Complete
Port Reading	NJ Chemical Coast Clearance Projects Estimated Completion Date: 4Q99	Track	Design Const	In progress
		Bridge	Design Const	In progress

Surface Transportation Board Operational Monitoring Report
As of December 31, 1998

CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location	Project	Dept	Phase	Status
Rader	TN Extend siding 5,189 feet Estimated Completion Date: Complete	Land		Complete
		Track	Design	Complete
			Grading	Complete
			Const	Complete
		Bridge	Design	Complete
			Const	Complete
		Signal	Design	Complete
			Const	Complete
Reading - Philadelphia	PA Traffic Control System and remove pole line	Signal	Design	In progress
	PA Estimated Completion Date: 2Q00		Const	
Riverton Jct - Roanoke	VA Clearance projects	Bridge	Design	Complete
	VA Estimated Completion Date: Complete		Const	Complete
Sandusky (Bellevue)	OH Construct Triple Crown Terminal Estimated Completion Date: 1Q99	Track	Design	Complete
		Building	Grade/Pave	Complete
			Const	In progress
Sidney	IL Construct track connection Estimated Completion Date: Complete	Track	Design	Complete
			Grading	Complete
			Const	Complete
		Signal	Design	Complete
			Const	Complete
Sido	MO Double tracking 36,458 track feet Estimated Completion Date: Complete	Track	Design	Complete
			Grading	Complete
			Const	Complete
		Bridge	Design	Complete
			Const	Complete
		Signal	Design	Complete
Sloan	IL Extend siding 5,027 track feet Estimated Completion Date: Complete	Track	Design	Complete
			Grading	Complete
			Const	Complete
		Signal	Design	Complete
			Const	Complete
Southern Tier	NY Southern Tier Rehabilitation Estimated Completion Date: 4Q99	Track	Const	Project being defined.
		Bridge	Design	In progress
St Louis (Mitchell)	MO Expand Mitchell Triple Crown Terminal Estimated Completion Date: 2Q99	Track	Design	In progress
			Grade/Pave	
		Signal	Design	In progress
Toledo	OH Intermodal Terminal Estimated Completion Date: 4Q99	Track	Design	Project being defined.
			Grade/Pave	
Tolono	IL Track Connection Estimated Completion Date: 1Q99	Track	Design	Complete
			Grading	Complete
			Const	Complete
		Signal	Design	In progress
			Const	

Surface Transportation Board Operational Monitoring Report
As of December 31, 1998

CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location	Project	Dept	Phase	Status
Vermillion	OH Track Connection	Land		Complete
	Estimated Completion Date: 1Q99	Track	Design	Complete
			Grading	Complete
			Const	Complete
		Signal	Design	Complete
			Const	In progress

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

Surface Transportation Board Operational Monitoring Report

As of December 31, 1998

INFORMATION TECHNOLOGY

Systems Integration

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

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

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

Note: Bold print indicates changes from previous report.

Surface Transportation Board Operational Monitoring Report

As of December 31, 1998

INFORMATION TECHNOLOGY

Systems and Personnel Training

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

Surface Transportation Board Operational Monitoring Report

As of December 31, 1998

INFORMATION TECHNOLOGY

Operating Area	Project	Status
OPERATIONS PERSONNEL		
Crew Management	Systems	Development stage Estimated completion date: 1Q99
	Personnel Training	
	Prepare training materials	Complete
	Train Conrail employees	Estimated completion date: 1Q99
Train and Engine (T&E) Payroll	Personnel Training	
	Prepare training materials; conduct pilot sessions	Complete
	Train T&E crews	Estimated beginning date: 2Q99
Non-Train and Engine Payroll	Personnel Training	
	Prepare training materials; conduct pilot sessions	Complete
	Trainer orientation	In progress
	Train Conrail employees	Estimated completion date: 1Q99
CUSTOMER SERVICE		
Electronic Customer Connectivity	Systems	Development stage Estimated completion date: 1Q99
	Personnel Training	
	Testing new systems	Estimated completion date: 1Q99
	Customer Coordination	
	Information to be distributed to customers	In progress
National Customer Service Center	Personnel Training	
	Prepare training materials	Complete
	Train employees in Pittsburgh and Atlanta	In progress

Note: Bold print indicates changes from previous report.

Surface Transportation Board Operational Monitoring Report

As of December 31, 1998

CUSTOMER SERVICE

Transition Process

Transition team members for NS have been selected and confirmed to work in Philadelphia in Customer Service for an undetermined period of time after split date. Space has been defined and equipment will be set up in the near future for this group to operate from.

Personnel

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

Customer Awareness

NS continues to host customer meetings to evaluate and provide feedback on the Company's planning processes and strategies.

The Customer Resource Guide has been completed and is in the process of being distributed. This guide will provide customers with all resources and information necessary for doing business with the new NS.

The Help Desk Directory, to be released at a later date, will also provide a way for customers and employees to easily obtain information about NS. This guide to services and benefits will list key phone numbers that will connect users to areas that may assist them in answering questions about NS. It will be available in three formats: a pocket guide for employees, a list for customers and an expanded version available for downloading from the internet.

Note: Bold print indicates changes from previous report.

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DEC 23 1998

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Public Record

MARY GABRIELLE SPRAGUE
(202) 942-5773

ARNOLD & PORTER

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

(202) 942-5000
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NEW YORK
DENVER
LOS ANGELES
LONDON

December 23, 1998



BY HAND DELIVERY - Original and 25 Copies

The Honorable Vernon 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 is the Settlement Agreement Between the Four City Consortium and CSX Transportation, Inc. The Settlement Agreement incorporates the conditions imposed by the Board in Decision No. 89, Appendix Q, Environmental Condition 21.

Condition 21(i) requires that representatives of the Applicants and the Four City Consortium attend regular meetings. In Decision No. 96, the Board elaborated upon Condition 21(i) by specifying certain information Applicants would provide to the Four City Consortium at the meetings. The Settlement Agreement supersedes the modification of Condition 21(i) with respect to CSX, and provides that CSX shall provide the Four City Consortium with certain other information specified in Section VI of the Settlement Agreement.

This Settlement Agreement is submitted to the Board with the concurrence of the Four City Consortium.

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

Respectfully yours,

Mary Gabrielle Sprague

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

157504

ARNOLD & PORTER

The Honorable Vernon A. Williams

December 23, 1998

Page 2

Enclosure

cc: Elaine K. Kaiser
J. Justin Murphy

Finance Docket No. 33388
Settlement Agreement Between
the Four City Consortium and CSX Transportation, Inc.

The following is a Settlement Agreement between the Cities of East Chicago, Hammond, Gary, and Whiting, Indiana (the "Four City Consortium") and CSX Transportation, Inc. ("CSX"). It is understood that by ratifying this proposal, the parties' remaining differences over the terms and conditions of CSX operations will be resolved and the Four City Consortium will not undertake a judicial appeal of Finance Docket No. 33388. The Agreement would not, however, limit the Four City Consortium's right to petition the Board for relief during the imposed five (5) year oversight period governing the proceeding should it determine such action is necessary based upon events occurring after the execution of the Agreement.

Promptly upon execution of this Agreement, the parties will notify the Surface Transportation Board of the Settlement; the parties will provide it with a copy of this Agreement; and, the parties will request that the Board adopt its terms as a condition under its Decision approving the Conrail application.

Preamble: In the Surface Transportation Board Finance Docket 33388, Decision 89, Condition 21, the Board ordered the following mitigation measures among others to be undertaken by CSX to alleviate Acquisition-related highway/rail at-grade crossing traffic delay and safety concerns in East Chicago, Hammond, Gary, and Whiting, Indiana through operational improvements and safety measures as follows:

- a) CSX shall upgrade the highway/rail at-grade crossing signal warning systems with constant warning time circuits to reduce crossing blockage time and the likelihood of motorists driving around the gate at the highway/rail at-grade crossings listed below on the Pine Junction to Barr Yard rail line segment and the Tolleston to Clark Junction rail line segment.
- Sheffield Avenue
 - Hohman Avenue
 - Calumet Avenue
 - Columbia Avenue
 - Indianapolis Boulevard
 - Railroad Avenue
 - Kennedy Avenue
 - 5th Avenue (U.S. 20)

- b) CSX shall make Operation Lifesaver programs available to schools and other community organizations in the vicinity of the Pine Junction to Barr Yard rail line segment, Tolleston to Clark Junction rail line segment, and the Tolleston to Hobart portion of the Warsaw to Tolleston rail line segment.
- c) CSX shall upgrade the track structure and signal systems to allow 40 mph train operations, consistent with safe operating practices, between Pine Junction and Barr Yard.
- d) CSX shall install temporary notification signs or message boards consistent with Condition No. 1(B) at least 30 days before initiating new train traffic between the Tolleston and Clark Junction rail line segment and the Hobart to Tolleston portion of the Warsaw to Tolleston rail line segment. CSX shall certify to the Board that it has complied with this condition before increasing traffic on these rail line segments.
- e) CSX shall improve coordination between Pine Junction and Barr Yard at Indiana Harbor Belt Railroad interlockings where CSX rail lines cross or join, to reduce railroad congestion and blockage at highway/rail at-grade crossings to the extent practicable.
- f) CSX shall reroute train traffic as much as practicable from the Pine Junction to Barr Yard rail line segment to other rail lines in the area.
- g) CSX shall instruct its train crews not to stop trains in positions where they would block major highway/rail at-grade crossings identified by the Four City Consortium on the Pine Junction to Barr Yard rail line segment whenever practicable and consistent with safe operating practices.
- h) CSX shall work with the Four City Consortium to better coordinate train movements and emergency response. If practicable, CSX shall install a train location system by interconnecting the grade crossing warning devices to nearby traffic signals and provide a display in the local emergency response center showing the position of the grade crossing warning signals.
- i) Applicants shall attend regularly scheduled meetings with representatives of the Four City Consortium for 3 years following the effective date of the Board's final decision. Representatives of the

Indiana Harbor Belt Railroad shall also be invited. These meetings would provide a forum for assessing traffic delay, emergency response, and driver compliance with railway grade crossing warning systems through improved education and enforcement.

- I. **STB Ordered Mitigation.** The parties agree to abide by all requirements outlined in the Surface Transportation Finance Docket 33388, Decision 89, as clarified in Decision 96, except to the extent that CSX and the Four City Consortium agree to modify the requirements.

- II. **The Former Pennsylvania Railroad ("PRR") line between Hobart and Clarke Junction.**

- A. CSX Railroad Safety Fund for Gary. CSX agrees to dedicate \$50,000 in a Railroad Safety Fund to be used for safety upgrades on the former Pennsylvania Railroad line between Hobart and Clarke Junction. The fund could be used for crossing protection upgrades, median barriers, rubberized crossings, or other safety related activities. The City of Gary shall determine how the money is spent although the funds will stay at CSX and any work will be done either by CSX or contractors working for CSX. Any upgrades relating to types of at grade warning protection devices need to first be approved by the Indiana Department of Transportation. All projects must be consistent with generally approved railroad operating practices and federal and state regulations.

- III. **The Baltimore, Ohio, and Chicago Terminal Railroad ("BOCT") line between Pine Junction and Calumet Park.**

- A. CSX Railroad Safety Fund for East Chicago. CSX agrees to dedicate \$50,000 in a Railroad Safety Fund to be used for safety upgrades on the Baltimore, Ohio and Chicago Terminal Railroad line between Pine Junction and Calumet Park. The fund could be used for crossing protection upgrades, median barriers, rubberized crossings, or other safety related activities. The City of East Chicago shall determine how the money is spent although the funds will stay at CSX and any work will be done either by CSX or contractors working for CSX. Any upgrades relating to the types of at-grade warning protection devices need to first be approved by the Indiana Department of Transportation. All projects must be consistent with generally approved railroad operating practices and federal and state

regulations.

- B. Hammond At-Grade Crossings. To the extent practicable and consistent with safe operating practices, CSX will ensure that its trains are operated in a fashion such that the following existing at-grade highway/rail crossings on the line are not blocked by stopped trains.

- Sheffield Avenue;
- Hohman Avenue;
- Calumet Avenue; and
- Columbia Avenue.

- C. Average Daily Number of Trains

1. The CSX revised operating plan states that approximately 31.7 trains are expected to move over the BOCT line on a daily average. The parties understand that Condition 50 of the Surface Transportation Board's Decision 89, gives the parties the ability to petition the Board for relief for five years from the Board's final decision if there is a material change in the facts or circumstances (including the average daily number of trains if the Board determines that there is a material increase) upon which the Board relied in making its decision.
2. CSX agrees to cooperate with the Four City Consortium to reroute train traffic as much as practicable from the Pine Junction to Barr Yard line to the IHB line or other rail lines in the area. This shall include working with the IHB and other entities to secure necessary public funding for the cost of rehabilitating and upgrading the IHB elevated line and appropriate connections for use in the movement of through trains between Willow Creek and Calumet Park.

- D. Railroad Avenue Easement. CSX will cooperate with the City of East Chicago in developing a grade-separated truck route over the line at Railroad Avenue, including conveying to the City an appropriate easement and a monetary contribution toward the project in the amount of seven and one-half percent (7.5%) of total project costs to facilitate construction of the grade separation. The total contribution from CSX will not exceed \$187,500. In consideration of this monetary contribution, the rail crossing at Railroad Avenue will be closed upon completion of the grade separation project. CSX will

consider a higher percentage contribution in exchange for additional grade crossing closures in the City.

IV. Whiting Park. To the extent practicable and consistent with safe operating practices, CSX will ensure that its trains are operated in a fashion such that the existing at-grade highway/rail crossings at the entrance and exit to Whiting Park at 117th Street and White Oak Avenue and 119th Street and Front Avenue are not blocked simultaneously by stopped trains.

V. Review of Gary At-Grade Crossings. CSX will cooperate with the City of Gary and provide reasonable and appropriate expertise and assistance in conducting a city-wide review of all CSX highway/rail at-grade crossings. This review will determine whether operational and/or structural improvements/closings are necessary to help promote highway safety and provide for the orderly, predictable, and safe movement of all vehicular, rail, and pedestrian traffic.

VI. Monthly Reports.

A. As specified in Finance Docket No. 33388, CSX shall provide the Four City Consortium with reports on a monthly basis providing the information described by the Board in Decision No. 96 pertaining to condition 21(i). However, the parties have mutually agreed to not have CSX report average train speeds and have also agreed to limit the reporting requirements on train traffic volumes to the following information:

Throughout the Board's five (5) year oversight period in Finance Docket No. 33388, CSX shall report, on a daily average basis (calculated monthly), the number of trains per day operated in both (and separately in each) direction over the following rail line segments:

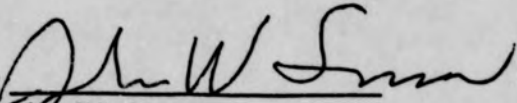
- The Pine Junction-to-State Line Tower portion of the Pine Junction-to-Barr Yard line segment (C-023);
- Tolleston-to-Clarke Junction rail line (C-024); And
- The Tolleston-to-Hobart portion of the Warsaw-to-Tolleston line segment (C-026).

B. The parties understand that the Board's condition 21(i) provides for different conditions than those agreed to in section VI (A) of this

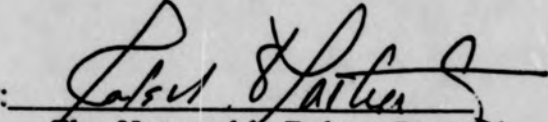
agreement. As part of this settlement agreement, the parties will advise the Board of their acceptance of this modified reporting format in lieu of that provided in Decision No. 96. The parties Agreement does not affect reporting requirements imposed on Norfolk Southern Railroad under condition 21(i).

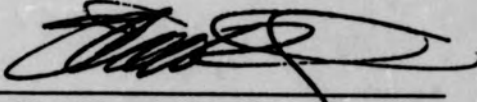
In witness whereof, the parties have caused this agreement to be executed by their duly authorized representatives on this date, October 26, 1998.

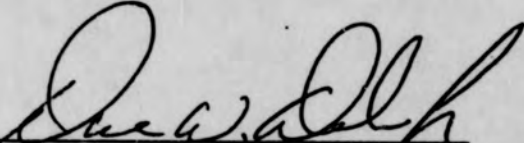
CSX Transportation

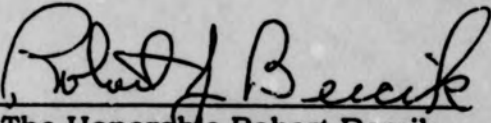
By: 
John W. Snow
Chairman, CEO, and President, CSX Corporation

The Four Cities Consortium

By: 
The Honorable Robert Pastrek
Mayor, City of East Chicago, Indiana

By: 
The Honorable Scott King
Mayor, City of Gary, Indiana

By: 
The Honorable Duane Fedelow
Mayor, City of Hammond, Indiana

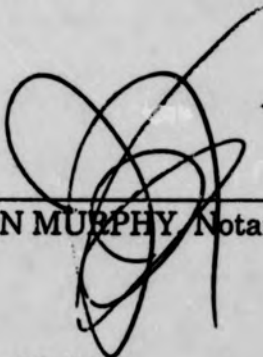
By: 
The Honorable Robert Bercik
Mayor, City of Whiting, Indiana

STATE OF INDIANA)
)
COUNTY OF LAKE)

VERIFICATION

I, J. Justin Murphy, a Notary Public in and for the above-mentioned state and county, hereby declare that on the 26th day of October, 1998, John W. Snow, Chairman, CEO, and President of CSX Corporation, The Honorable Robert Pastrick, Mayor of the City of East Chicago, Indiana, The Honorable Scott King, Mayor of the City of Gary, Indiana, and The Honorable Robert Bercik, Mayor of the City of Whiting, Indiana, personally appeared before me and executed the foregoing Settlement Agreement between CSX Corporation and the Four Cities Consortium.

I further verify that The Honorable Duane Dedelow, Mayor of the City of Hammond, Indiana, did also appear before me and execute in my presence the Settlement Agreement between CSX Corporation and the Four Cities Consortium on the 28th day of October, 1998.



J. JUSTIN MURPHY, Notary Public

My Commission Expires: November 13, 2001

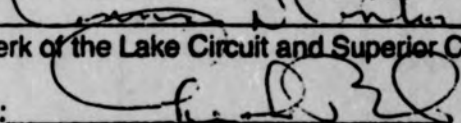
My County of Residence: Lake

CERTIFICATION OF CLERK

As legal custodian I hereby certify that the above and foregoing is a true and complete copy of the original on file with this office in the cause stated thereon.

Witness my hand and the seal of the court this
28 day of October, 1998.

Clerk of the Lake Circuit and Superior Courts

By: 
Deputy Clerk

STB

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ZUCKERT SCOUTT & RASENBERGER, L.L.P.

ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-3309

Telephone [202] 298-8660 Fax [202] 342-0683

RICHARD A. ALLEN

DIRECT DIAL (202) 973-7902
raallen@zsrlaw.com

December 17, 1998

BY HAND

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

ENTERED
Office of the Secretary

DEC 18 1998

Part of
Public Record



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

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and 25 copies of NS-73, "Response of Norfolk Southern To Petition Of CSX Corporation And CSX Transportation, Inc. Regarding Certain CSX Intermodal Transportation Contracts." Also enclosed is a 3-1/2" computer disk for the same 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,

Handwritten signature of Richard A. Allen in cursive script.

Richard A. Allen

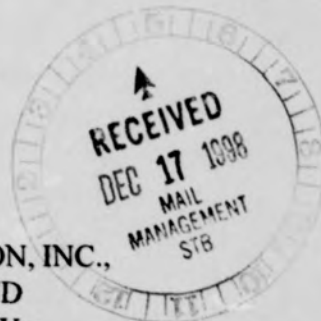
Counsel for Norfolk Southern
Corporation and Norfolk
Southern Railway Company

Enclosures

cc: Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388



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

RESPONSE OF NORFOLK SOUTHERN
TO PETITION OF CSX CORPORATION
AND CSX TRANSPORTATION, INC.
REGARDING CERTAIN CSX INTERMODAL
TRANSPORTATION CONTRACTS

JAMES C. BISHOP, JR.
WILLIAM C. WOOLDRIDGE
J. GARY LANE
GEORGE A. ASPATORE
GREG E. SUMMY
JOHN V. EDWARDS
MAQUILING B. PARKERSON
Norfolk Southern Corporation
Three Commercial Place
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RICHARD A. ALLEN
SCOTT M. ZIMMERMAN
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

December 17, 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 NORFOLK SOUTHERN
TO PETITION OF CSX CORPORATION
AND CSX TRANSPORTATION, INC.
REGARDING CERTAIN CSX INTERMODAL
TRANSPORTATION CONTRACTS



Introduction

In a Petition submitted to the Surface Transportation Board ("STB" or "Board") on December 2, 1998, CSX¹ argues that the allocation and operation of Conrail assets on "Day One" pursuant to the NS/CSX/Conrail Transaction Agreement ("Transaction Agreement") will transform two particular CSXI Intermodal ("CSXI") transportation contracts (together the "CSXI Contracts") -- one between Conrail and CSXI (the "Conrail Contract") and one between NSR, NYS&W and CSXI (the "NS Contract") -- into unlawful "pooling" contracts with anti-competitive effects. To remedy this perceived problem, CSX asks the Board to declare the

¹ CSX Corporation ("CSXC") and CSX Transportation, Inc. ("CSXT") and their wholly-owned subsidiaries, and also the wholly-owned Consolidated Rail Corporation ("CRC") subsidiary to be known as New York Central Lines LLC ("NYC"), are referred to collectively as "CSX." Norfolk Southern Corporation ("NSC") and Norfolk Southern Railway Company ("NSR") and their wholly-owned subsidiaries, and also the wholly-owned CRC subsidiary to be known as Pennsylvania Lines LLC ("PRR"), are referred to collectively as NS. Conrail Inc. ("CRR") and CRC, and also their wholly-owned subsidiaries other than NYC and PRR, are referred to collectively as "Conrail" or "CR." CSX, NS and Conrail are referred to collectively as "Applicants."

minimum requirements provisions in the two CSXI Contracts null and void, eliminating CSXI's obligation to tender any traffic under those contracts.

In Decision No. 106,² the Board raised the possibility that, if CSX's arguments are accurate, enforcing the requirements provisions of the CSXI Contracts after Day One could "weaken the CSX vs. NS competition we intended to create in the Chicago-Northern New Jersey corridor." Decision No. 106, slip op. at 1. The Board recognized that CSX had not raised the issue in a timely manner, but nevertheless sought NS's reply. In doing so, the Board noted that "[p]erhaps the future handling of this matter could reflect the way it might have been handled if these contracts had been 'on the table' during the negotiation of the CSX/NS/CR Transaction Agreement and had been subject, at that time, to the general give-and-take that accompanied the negotiation of that agreement." *Id.* at 3.³

For the reasons discussed below, NS submits that the CSXI Contracts do not constitute illegal pooling. Moreover, the Conrail Contract should not be construed as presenting any anti-competitive issues because it will be no different than any other Conrail contract that is subject to Section 2.2(c) of the Transaction Agreement. Furthermore, NS is willing to have that contract assigned to CSX for performance. Accordingly, NS believes that no relief at all is necessary with respect to that contract.

² Finance Docket No. 33388, CSX Corp. and CSX Transp., Inc., Norfolk Southern Corp. and Norfolk Southern Ry. Co. -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corp. ("Control Proceeding"), Decision No. 106 (served December 7, 1998).

³ The Board also asked NS to address "a question that will arise if we decide to order CSX not to comply with the requirements provisions in the two CSXI contracts: What then will become of the liquidated damages provisions?" In answer to this question, NS submits that granting that relief would moot the liquidated damages provisions in the CSXI Contracts, because there would then be no minimum requirement for CSXI to breach.

With regard to the NS Contract, CSX has raised arguably valid concerns about its competitive effect after Day One, although the contract will certainly not be illegal and it is debatable whether the relief sought by CSX is warranted.⁴ In any event, those are issues CSX should have raised with NS when the Transaction Agreement was negotiated, or, failing agreement, with the Board long before its final decision. If CSX had raised these issues before now and sought the modifications it now requests from the Board, NS certainly would have sought, in exchange, modification of another Conrail intermodal contract which raises very similar competitive concerns which NS was unaware of at the time -- namely, the contract between Conrail and American President Lines ("APL"). If the Board concludes that the relief sought by CSX with respect to the NS Contract is warranted, then it would be equally appropriate, and would be entirely consistent with the Board's goal of fostering competition in the Chicago-New Jersey intermodal market, for the Board to provide similar relief with respect to the APL contract, as discussed below.

⁴ The argument relies on the proposition that there is an identity of interest between CSX and its intermodal subsidiary CSXI. While this may be the case, it seems inconsistent with representations CSX has made before. In Finance Docket No. 33220, CSX represented to the Board that CSXI is "managed and operated independently from CSXT." Finance Docket No. 33220, CSX Corp. and CSX Transp., Inc. -- Control and Merger -- Conrail Inc. and Consolidated Rail Corp., Decision No. 7, 1997 STB LEXIS 8, at *7 n.9 (served January 24, 1997).

I. The CSXI Contracts do not constitute pooling, and even if they do, the Board's order approved any such pooling.

Pooling requires a sharing of revenues or expenses by competitors on a basis other than the services provided by a railroad.⁵ Under the NS Contract, NS will bear its own expenses and collect its own revenues on the traffic it handles. Consequently, the NS Contract clearly does not involve pooling.

CSX's claim that the Conrail Contract will involve pooling after Day One is strained, but in any event, any pooling effect was expressly approved by the Board. Under Section 2.2(c) of the Transaction Agreement, the parties will divide the performance of all covered Conrail contracts, including the Conrail Contract at issue here. The parties will strive for an equal division, in which case there is no pooling. To the extent the division comes out unequal, the practical effect is that there will be revenue/expense sharing,⁶ and to that degree the Board has expressly approved and immunized any resulting pooling.

For reasons extensively argued in the Conrail control proceeding, it is operationally expedient to have -- and the Board approved -- a division of certain contracts between NS and CSX, at least during a six-month start-up period. The Conrail Contract falls into this Section

⁵ The ICC has defined pooling as "a situation where carriers which otherwise would be competitors take a common position toward the public and divide the benefits and costs equally or by special agreement, rather than according to individual performance." Union Pac. R.R. Co. -- Trackage Rights Over Lines of Chicago and North Western Transp. Co., 7 I.C.C.2d 177, 184 (1990).

⁶ "[T]he revenues and expenses associated with the Existing Transportation Contracts and related services shall be allocated and accounted for between CSXT and NSR in accordance with the Percentage Division to the extent that the performance of contracts allocated by Percentage Division departs from the Percentage Division." Transaction Agreement, Section 2.2(c)(ii).

2.2(c) category. The Board's order also approved any other pooling which might be construed to arise from implementation of the Transaction:

To the extent that the ownership interests and control by CSX and NS over CRR, CRC, NYC, or PRR, or any other matter provided for in the Transaction Agreement or in the Ancillary Agreements referred to therein, may be deemed a pooling or division by CSX and NS of traffic or services or any part of the earnings of CSX, NS, or Conrail within the scope of 49 U.S.C. 11322, such pooling or division is approved pursuant to 49 U.S.C. 11321 and 11322.⁷

If the Board believes CSX's concerns have merit and chooses to deal with the CSXI Contracts at all, it can assess their impact on competition without having to venture out on the thin ice of CSX's pooling allegation.

II. The Conrail Contract is not unreasonably anti-competitive and no relief is necessary in respect of that agreement.

If the Conrail Contract is allocated to CSX under Section 2.2(c) of the Transaction Agreement, it would present no competitive issue and would not warrant any action by the Board. NS contemplates that the Conrail Contract would be assigned to CSX for performance under Section 2.2(c) and has made that offer to CSX. NS would, of course, abide by a directive from the Board to allocate this particular contract to CSX for performance of service under Section 2.2(c). As a result, CSX would handle all the traffic covered by that contract. Far from detracting from CSX's ability to compete for intermodal traffic in the New Jersey-Chicago corridor, the Conrail Contract could represent CSX's base load in that corridor. Under the Transaction Agreement, the traffic will remain part of the Section 2.2(c) "pot" -- that is, contracts with "Dual" service points where performance must be allocated to either NS or CSX -- and NS will be entitled to handle compensating 2.2(c) traffic elsewhere. If the overall division does not

⁷ Control Proceeding, Decision No. 89, Ordering Paragraph 11 (served July 23, 1998), slip op. at 175-76.

come out equal for purposes of a true-up, NS or CSX will then be entitled to the difference as provided in Section 2.2(c) -- all as expressly approved by the Board in the Control Proceeding. If CSX performs the Conrail Contract, that result will not present a competitive problem but will simply be a result of the Transaction Agreement and of the manner by which CSX has chosen to conduct its intermodal business. *

The Board, then, need not address the Conrail Contract at all, even under CSX's premises, other than to require its allocation to CSX for performance of service under Section 2.2(c) of the Transaction Agreement. The issue, if CSX's premises are accepted, lies with the NS Contract, not the Conrail Contract.

III. Relief, if any is warranted, should be limited to the NS Contract and then only for the period after Day One.

NS recognizes that the Board did not, during the Control Proceeding, specifically consider the potential impact of the NS Contract on post-Day One commercial activities. Of course, this was due to CSX's failure to raise the issue forthrightly during the Control Proceeding. Nevertheless, NS recognizes the Board's larger concern with ensuring competition in the Northern New Jersey intermodal market and ensuring that both NS and CSX will be able to compete effectively in that market. Specifically, in Decision No. 106 the Board expressed concern that the existence of volume obligations in the two CSXI Contracts may serve to

* CSX could have its intermodal service administered and marketed by CSX Transportation, Inc. ("CSXT"), but has chosen instead to have the administration and marketing of intermodal transportation handled by its non-rail subsidiary, CSXI, even though the actual transportation is normally performed by CSXT.

diminish the vigorous head-to-head competition sought to be achieved in the Transaction, especially in the Chicago-Northern New Jersey intermodal market.

As indicated above, the Conrail Contract should not concern the Board in that respect if, as NS proposes, that contract is allocated to CSX for performance under Section 2.2(c). If any action is warranted at all, the concerns expressed by the Board can be addressed by relieving CSXI of its volume requirements under the NS Contract and leaving the Conrail Contract in effect and unchanged. The Conrail Contract then would be no different from any other 2.2(c) contract involving traffic to and from northern New Jersey.⁹

In any event, it is clear from CSX's Petition that any anti-competitive effect that may result from the CSXI Contracts will not occur, if at all, until after Day One. *See CSX Petition at 17, 20.* The corollary is that no such concern lies with either of the CSXI Contracts for any period prior to Day One. Indeed, CSX has initiated an arbitration to resolve claims under the NS Contract. Therefore, CSX and CSXI are not seeking from the Board, and should not be given, any relief with respect to breaches of those agreements occurring before Day One. Whatever action the Board takes with respect to the NS Contract and/or the Conrail Contract, the Board

⁹ If the NS Contract were rendered unenforceable after Day One, CSX would still handle the traffic moving under the Conrail Contract. Its only concern then would be that such traffic would be counted in determining whether a "true-up" might be required under 2.2(c). That concern, however, does not depend on the identity of the shipper -- whether it is an affiliate of CSX -- but on the function and purpose of Section 2.2(c). The same concern -- having to compensate for other traffic -- applies in the case of any contract subject to 2.2(c). The Board may recall that CSX argued eloquently and strenuously in favor of Section 2.2(c). That provision was expressly approved by the Board.

should specify that its action has no bearing on pre-Day One claims arising under either contract.¹⁰

IV. The Board should not invalidate the requirements term in either CSXI Contract unless it also invalidates the volume commitments in the intermodal contract covering traffic at APINY.

A. Fully informed negotiations would have achieved a more competitive outcome in the involved intermodal market.

NS acknowledges that CSX's Petition raises arguably valid concerns with respect to the effects of the NS Contract on intermodal competition between CSX and NS after Day One. Furthermore, NS's general position throughout this proceeding has been strongly supportive of the most vigorous competition between CSX and NS after Day One.

Nevertheless, NS submits there is no basis for the Board's granting the relief CSX requests -- elimination of the requirements provisions in either of the CSXI Contracts -- unless the Board also acts correspondingly to ensure that another important segment of the intermodal market between New Jersey and Chicago -- traffic handled at the APL intermodal terminal in northern New Jersey (the "APINY Terminal") -- is opened up to full and effective competition between NS and CSX. That is so for several reasons. First, CSX has no unilateral entitlement to the relief it seeks with respect to the NS Contract. The fact that that contract may foreclose CSX and NS from competing for a certain segment of traffic after Day One does not, in and of itself, make that contract illegal or warrant its being set aside. Every Conrail transportation contract

¹⁰ The CSX Petition states (at p. 7) that "NS has demanded that CSX Intermodal pay Conrail liquidated damages in the amount of \$3.8 million for CSX's alleged failures to make sufficient use of Conrail's services under the Conrail Contract. . . ." The Board does not need to deal with the status of a pre-existing \$3.8 million Conrail claim, or the other pre-Day One issues, even if it accepts CSX's post-Day One concerns. Any decision should avoid prejudicing pre-Day One claims.

that remains in effect after Day One and that could have been performed by either NS or CSX to some extent will have the same effect. Furthermore, much of the problem stems from CSX's own decision to market its intermodal services through CSXI.

Second, if CSX had specifically raised with the Board its concerns with the NS Contract in a timely fashion -- i.e., well before the Board's final decision -- the parties might then have negotiated an equitable resolution which the Board could have reviewed and approved. But CSX did not do so. Instead, it "hid the ball" on the CSXI Contracts issue. CSX had advised the Board that CSXI is "managed and operated independently from CSXT,"¹¹ and advised that CSXI would not favor its affiliates in its dealings with customers.¹² It also vigorously urged the Board to approve without qualification the mechanism in Section 2.2(c) of the Transaction Agreement for allocation of Conrail transportation contracts. Accordingly, NS submits, there is no basis now, five months after its final decision, for the Board to grant CSXI unilateral relief from its contract with NS. If the Board were to act now, it should do so only in a way that provides mutual competitive benefits and that endeavors to replicate the result that the parties would have reached if CSX had sought to negotiate the relief it now seeks at an earlier date.

Indeed, Decision No. 106 suggests precisely this framework for analyzing CSX's petition. In that decision, the Board asked how the issue of the CSXI Contracts "might have been handled if these contracts had been 'on the table' during the negotiation of the CSX/NS/CR Transaction Agreement and had been subject, at that time, to the general give-and-take that accompanied the

¹¹ See footnote 3.

¹² See Control Proceeding, Decision No. 91, served August 19, 1998, slip op. at p. 3, n.5, citing the verified statement of CSXI's president (former Conrail officer), Lester Passa, in denying APL's petition to stay implementation of the transaction.

negotiation of that agreement." (Emphasis supplied).¹³ As we discuss below, if CSX had sought to obtain the relief it now seeks in negotiations with NS and if NS then had the knowledge it now has regarding Conrail's intermodal contracts, at the least NS would certainly have required in exchange that APL be relieved of its volume commitments under its contract with Conrail.

The result which CSX has suggested as appropriate to the Board would lead to NS's participation in far less traffic between Chicago and Northern New Jersey than would be the case as the agreements now stand. The problem CSX now finds in the CSXI Contracts is that their applicability to certain volumes of freight might be incompatible with unfettered intermodal competition. APL's situation at the APINY Terminal presents precisely the same deficiency. It involves a contract and commercial relationship (described in the following sections) for which, if full knowledge about it had been "on the table" when the Transaction Agreement was negotiated, NS would assuredly have made provision. Indeed, NS tried to make sure it could compete effectively for APL's business but because the details of the contract and commercial relationship were not "on the table," the provisions negotiated by NS have proven to be ineffectual.

B. The operation of the APL Transportation Services Agreement and directly-related Lease Agreement inhibits effective competition.

APL's commercial relationship with Conrail consists of the APL Transportation Services Agreement (the "TSA") and directly-related Lease Agreement (the "APINY Lease"). The Board

¹³ Control Proceeding, Decision No. 106, slip op. at 3.

is familiar with these arrangements from APL's filings in the Control Proceeding,¹⁴ but the commercial relationship between APL and Conrail is summarized below.

In the late 1980s, APL and Conrail entered into a long term agreement covering the transportation of intermodal traffic (the TSA) along with the APINY Lease, which gives APL land on which it could (and did) construct a rail unloading facility from which to conduct its Northern New Jersey transportation operations. APL's contractual commitment to tender certain volumes to Conrail was in exchange for the favorable rates and terms described in the TSA. As part of the deal, Conrail agreed to lease the APINY facility property to APL for \$1.00 per year and APL's commitment to create a rail unloading terminal. The TSA and APINY Lease expire on May 31, 2004, with an option in favor of APL to renew the lease if the TSA is extended or a similar arrangement is reached. The TSA contains an anti-assignment clause of the type recognized by the Board as providing a right to terminate 180 days after Day One. The long-term volume commitment contained in the TSA is tied to the concessionary lease of the property at which APL operations are based. APL has invested \$25 million in the terminal¹⁵ and has leased other facilities from third parties which are in close proximity to its APINY facility. The terms of the APINY Lease provide that if the APL TSA is terminated, then APL loses its lease.¹⁶ In the capacity-constrained Northern New Jersey terminal area, APL cannot feasibly move, and

¹⁴ See APL-26, Petition to Stay of APL, filed July 31, 1998; APL-27, Petition of APL Limited for Clarification of Decision No. 89, filed Aug. 12, 1998; APL-28, Response of APL Limited to Petition of Applicants CSX Corporation and CSX Transportation, Inc. for Clarification of Decision Nos. 87 and 89, filed Sept. 1, 1998.

¹⁵ See APL-27 at 1-2.

¹⁶ See APL-27 at 2, n.6.

certainly cannot move without sacrificing its terminal investment and the benefits of its lease of APINY and nearby facilities.

Ownership of the land underlying the APL rail terminal is allocated to CSX. If, pursuant to Decision No. 89, APL exercises the option, granted by the Board specifically to enhance competition, to terminate the TSA, it could also lose its use of the APINY terminal facility. This draconian result hurts not just APL, but the vitality of competition in the New Jersey-Chicago intermodal market because of the large volume of traffic handled over APINY in that market.¹⁷ In the real world, APL does not have a unilateral termination option. APL's very substantial traffic represents a major block of the Northern New Jersey and New York area intermodal business which will not receive the competitive benefits of the transaction.¹⁸ In essence, APINY becomes an enormous island of local service (to CSX) in a much diminished ocean of competition. Clearly, neither NS nor the Board intended such a result.

This arrangement is anti-competitive on its face. While the APL TSA and APINY Lease may have been proper when they were entered (since there was no rail transport alternative, the tie did not enhance rail market power), after Day One they could be construed to be a tie of transportation services to a real estate agreement, which under the circumstances has every

¹⁷ In 1996, APL's New York-Chicago business handled under its contract with Conrail amounted to 91,000 containers. APL-18, Brief of APL Limited, filed February 23, 1998, at Volume 1, pages 3 and 35. NS believes this is a full 20% of all Conrail Northern New Jersey-Chicago intermodal traffic, based on the first eight months of 1998.

¹⁸ While APL conceivably might go to CSX after 180 days to try to renegotiate the TSA, CSX's control of APL's rail terminal deprives APL of the competitive leverage other shippers have and leaves it subject to terms dictated by CSX, since the interrelationship of the TSA and the APINY Lease effectively makes APL local to CSX.

earmark, without additional inquiry, of an anti-competitive restraint.¹⁹ The Board does not need to determine that this arrangement will amount to an illegal tying agreement; it is sufficient for the Board to take the self-evident badge of restraint into account in assessing the anti-competitive impact of the contract. The contract threatens to keep NS from competing effectively with CSX for one of the largest blocks of Northern New Jersey area intermodal business, so the traffic is deprived of the full competitive benefits of the transaction.

C. NS attempted to assure competitive access to traffic at APINY.

NS did not know of the tie of the APINY Lease to the TSA when it negotiated the Transaction Agreement. Nor did NS know that CSX would later assert claims that certain facilities allocated to the Shared Assets Areas should instead be allocated to CSX, as discussed below.

NS had initially envisaged that the APINY Terminal would be part of the Shared Assets Area, and the April 8, 1997 Letter Agreement between NS and CSX simply provided that "CSXT will be assigned CR's . . . South Kearny (non-APL portion) intermodal [terminal]."²⁰ CSX, perhaps better informed than NS,²¹ insisted in the negotiation (despite the "non-APL portion" language just quoted) that the property underlying the APL Terminal be allocated to it. Not being aware of the tie between the TSA and the APL Lease, and believing it would be assured the ability to serve APL, NS ultimately agreed to the change. The provision of the Transaction

¹⁹ Northern Pac. Ry. v. United States, 356 U.S. 1 (1958) (contract provision linking rail traffic to a lease conclusively presumed to be unreasonable).

²⁰ Exhibit A to Letter Agreement, Control Proceeding Primary Application Vol. 8A, p. 370.

²¹ The Board will recall that CSX and Conrail had entered into a merger agreement and shared information prior to negotiation of the Transaction Agreement.

Agreement referring to the APL facility²² reflected the change and the concept that NS would continue to have the ability to compete for APL's business. NS thought it would receive effective commercial access to APL and to any successor to APL, as described in the language just footnoted.

NS's position, with which CSX appeared to agree at the time of the negotiations, was that both parties would have a level playing field with respect to commercial access to APL or any successor tenant occupying the APL premises. However, the commercial access for which NS negotiated could be rendered meaningless if the tie between the TSA and the APINY Lease is left in place.²³ The tie came to light after the Transaction Agreement was executed, and indeed, considerably after the Application was filed.

In addition to not knowing of the tie, NS was not aware that CSX later would assert a claim to the Conrail support facilities used to provide service to APL -- facilities that were to be part of the Shared Assets Area. Because APINY business was served from Meadows Yard,²⁴ consisting of Conrail support tracks north of the APINY facility, NS contemplated that the

²² "South Kearny intermodal terminal including APL leased areas; however, NSR to have access to the APL leased terminal and NSR to have the right to serve APL and any successor lessee to APL using such leased premises." Schedule 1 to Transaction Agreement, Control Proceeding Primary Application, Vol. 8B, p. 85.

²³ Even though the Board's intent in Decision No. 89 was to accord APL treatment equal to that of all other SAA intermodal customers, if APL wishes to keep APINY and the APINY Lease, it has no choice but to keep the TSA in effect until 2004 as a 2.2(c) contract, without being afforded the competition that other intermodal customers will enjoy. If the TSA is terminated in 180 days, CSX could use its unequal bargaining power, which was not contemplated by either NS or the Board, to induce APL to commit the traffic to CSX in a novation protecting APL's continued use of its (CSX-controlled) terminal.

²⁴ As part of the Shared Assets Area, Meadows Yard also supports other SAA operations such as local carload freight and other intermodal business.

Shared Assets Area operator (i.e., continuing Conrail) -- the services of which will be available on a neutral basis to either NS or CSX -- would continue to own and use Meadows Yard and other tracks for that purpose, among others. The map attached to and made a part of the Transaction Agreement accordingly left Meadows Yard and other support tracks in adjacent Kearny yard as part of the Shared Assets Area. A major intermodal terminal needs yard support for the staging, switching and assembly of equipment. APINY business cannot receive competitive service without such essential infrastructure. However, CSX has initiated an arbitration²⁵ attempting to further consolidate its lock on APL by arrogating the Meadows Yard and other tracks to itself, an action which threatens to deprive Conrail, as the operator of the Shared Assets Areas, of facilities necessary to enable both NS and CSX to serve APINY.

As the Transaction Agreement's provision for NS commercial access to APL shows, NS would have dealt with the tie in negotiations if it had been "on the table." Because both parties took the approach of facilitating competition for New York/New Jersey area intermodal business -- the parties did agree to NS and CSX access to APL -- NS would have insisted on a solution that ensured effective competition by NS. One approach would have been to insist that only the non-APL portion of the South Kearny intermodal terminal be allocated for CSX's use, thereby leaving the APL portion (the APINY facility) as part of the Shared Assets Area to be served by both competitors (this was CSX's original agreement, as reflected in the April 8, 1997 Letter

²⁵ This is one of *seven* arbitrations filed by CSX relating to the Conrail transaction (NS has not filed any arbitrations). Two of the arbitrations were brought following CSX demands which would choke the Shared Assets Areas' ability to provide neutral access to significant markets. The seven arbitrations together raise a total of twelve issues, most of which NS believes are clearly dealt with in the Transaction Agreement (in most cases, explicitly by the map incorporated as part of it) and/or were resolved through mutual agreement after the Transaction Agreement was entered into.

Agreement, see footnote 19). NS also could have insisted on "de-linking" the APL transportation contract from the APL terminal lease in some manner. Certainly these results are as likely, or more likely, than NS's presumed willingness to terminate the CSXI Contracts on Day One, if they had been raised in negotiations. The likely resolution already appears on the record:²⁶ NS would have agreed to the termination of the NS Contract effective Day One in exchange for achieving true, not illusory, competition with CSX.

Conclusion

NS recognizes the Board's interest in assuring that the pro-competitive benefits of the Shared Assets Areas concept are not thwarted by conditions and circumstances of which the Board was unaware. NS did not initiate a request for Board intervention on any of these matters, but if the Board does decide that action is warranted to address the matters raised in CSX's Petition, consistency demands addressing the matters discussed in this Response. If there is a means by which the Board decides to provide the relief requested by CSX on either the Conrail Contract or the NS Contract, that vehicle should be used to specify that APL can continue to have the benefit of the APINY Lease in accordance with its real estate related terms regardless of whether it elects to terminate the TSA after 180 days. One straightforward mechanism which could be used by the Board to assure such a result -- a mechanism similar to that sought by CSX in its Petition -- would be to relieve APL from the volume commitment contained in the TSA, and provide that relief from such commitment should not affect the APINY Lease. The objective

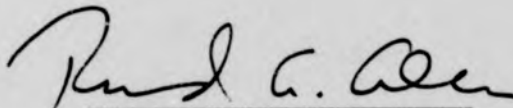
²⁶ See Exhibit A to CSX Petition, the May 28, 1998, letter from NS Vice President Intermodal Thomas L. Finkbiner to former Conrail, then CSXI, officer Lester M. Passa, offering to terminate the NS Contract in exchange for de-linking APL's right to use its terminal from its transportation contract.

is for NS and CSX each to have equal access to APINY, and to the Shared Asset Area assets used to serve APINY.

Thus, NS's position in this Response is summarized as follows:

1. Any relief which the Board grants CSX should be prospective from Day One only, since the parties are engaged in arbitration with respect to pre-Day One matters. The Board's action should have no bearing on pre-Day One claims arising under either of the CSXI Contracts.
2. There is no need for the Board to grant relief to CSX in connection with the Conrail Contract, because this contract may simply be allocated to CSX for performance of service under Section 2.2(c) of the Transaction Agreement. It would still be included in the calculating the "true-up," if any is required, under Section 2.2(c).
3. If CSX is granted relief from the operation of the volume commitment contained in either of the CSXI Contracts, the Board should relieve APL from its volume commitment in the TSA and the tie of such commitment to the APINY Lease, so that NS and CSX will be on a level playing field in Northern New Jersey with respect to this significant portion of the market, and so that APINY traffic gets the competition the parties intended, and the Board thought it was authorizing, when the Transaction Agreement was entered into and subsequently approved.

Respectfully submitted,



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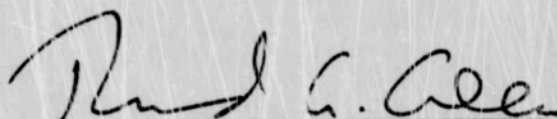
Counsel for Norfolk Southern Corporation
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December 17, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of December, 1998, I have served the foregoing NS-73, Response Of Norfolk Southern To Petition Of CSX Corporation And CSX Transportation, Inc. Regarding Certain CSX Intermodal Transportation Contracts, on all parties of record in Finance Docket No. 33388 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
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A handwritten signature in dark ink, appearing to read "Richard A. Allen", written over a horizontal line.

Richard A. Allen

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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 -- Petition of CSX filed December 2, 1998 (CSX-168)**

Dear Secretary Williams:

On December 2, 1998, we filed on behalf of CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") a petition, designated CSX-168 (the "Petition"), relating to two contracts for intermodal rail movements between the Chicago area and Buffalo, which contained volume and train-set commitments. One involved NS (the "NS Contract") and the other involved Conrail (the "Conrail Contract"). In Decision No. 106, the Board granted CSX's request for expedited treatment, somewhat modified, and made certain observations concerning the issues raised by the Petition.

In particular, at page 3 of the Decision, the Board said the following:

(2) Given the Board's concern about the effect of the contracts on the competition that the Board intends to begin in the Chicago-Northern New Jersey corridor on Day One between CSX and NS, we encourage NS to address, in its reply to the CSX-168 petition, a question that will arise if we decide to order CSX not to comply with the requirements provisions in the two CSXI contracts: What then will become of the liquidated damages provisions? Perhaps the future handling of this matter could reflect the way it might have been handled if these contracts had been "on the table" during the

ARNOLD & PORTER

Hon. Vernon A. Williams
December 18, 1998
Page 2

negotiation of the CSX/NS/CR Transaction Agreement and had been subject, at that time, to the general give-and-take that accompanied the negotiation of that agreement.

While the Board "encouraged" only NS to address this topic, the topic was not directly addressed in our Petition, and so we trust the Board will not consider it a "reply to a reply" if CSX itself also addresses that issue. We also do, in Part 3, respond to a completely irrelevant suggestion made by NS respecting a Rail Transportation Contract of a large shipper, APL.

1. As the Board pointed out in Decision No. 106, both of the Contracts in question contain liquidated damages provisions if the contractually agreed-upon volume of shipments, based again not on fixed numbers but on the volumes actually available to CSX's intermodal affiliate for transportation, do not in fact move as required on the Contracts in question. The liquidated damages provided for in the texts of the Contracts are substantial. Those in the NS Contract are "75% of the difference between (a) the revenues which would have been paid if the minimum number of units required by Section 4A had moved pursuant to this Agreement's requirements, and (b) the charges actually paid." Those in the Conrail Contract are fixed amounts, \$140 per loaded "FEU." An FEU means a container of 40 or more feet in size or two containers of 20-foot size each. There is a "cap" on liquidated damages under the Conrail Contract, but to date no liquidated damages have been paid by CSX (and CSX believes that none have accrued). The Board can perceive the high relationship between these liquidated damages and the rates under the caption "Buffalo (DH Interchange), NY" on page B-1 of Exhibit B to the Conrail Contract.

It is fair to say that both provisions make it almost as expensive not to ship under the volume requirements contained in the two contracts as to ship under them. (Moreover, in addition to the expense of not shipping as required under the two contracts, there will be the expense of shipping outside the Contracts, that is, on CSX Transportation, Inc.)

The liquidated damages have the effect of compensating NS or Conrail for the loss of the movement on the basis of (to put it mildly) an extremely aggressive allocation of variable and fixed costs away from the "lost" movement. Presumably, the customers of CSX's intermodal affiliate would not be interested in paying substantial sums to CSX's affiliate both (1) not to have their containers shipped under the NS Contract or the

ARNOLD & PORTER

Hon. Vernon A. Williams

December 18, 1998

Page 3

Conrail Contract **AND** (2) to have those containers shipped on the CSX service between Greater New York and the Chicago area. So if CSX's intermodal company attracted business for a CSX move after the Split Date and the two NS and Conrail Contracts were still in effect, as an enterprise CSX, unless it shipped under the Contracts, would have to both (1) move the customers' containers from Greater New York to Chicago and (2) pay someone else a large fee for not moving them.

It is "black-letter law" that the normal method of enforcement of contractual provisions, in the case of breach of a contract, is the payment of damages. Restatement (Second) of Contracts, § 346 (1979); John Edward Murray, Jr., Murray on Contracts § 220 (1974). The remedy of specific performance is an extraordinary remedy and is rarely awarded in the case of services that the courts view as fungible with similar services and where breach can be compensated for by the payment of damages. Restatement (Second) of Contracts, § 359; Murray on Contracts, *supra*, § 220. The presence of the liquidated damages clause in each of the two contracts, in fact, as a practical matter gives CSX's intermodal affiliate the option of either (a) shipping under the NS or Conrail Contract **OR** (b) paying the liquidated damages.

As set forth in CSX's Petition (page 22 n.12 and Exhibit B), there are disputes as to whether NS or CSX has failed to perform the Contracts as of the present time, that is, while Conrail is operating as a unitary railroad system, whether independently (prior to August 22, 1998) or controlled by CSX and NS (thereafter). There are issues as to whether (and, if so, to what extent) CSX and NS are or may be liable for damages, liquidated or otherwise, in that period. The present Petition to the Board has nothing to do with that; CSX seeks no relief as to it from the Board. The Petition does not deal with the period when the Contracts were pro-competitive. The issues of breach on either side, CSX's intermodal affiliate's or NS/Conrail's, during that period can be left to the arbitration processes under the two Contracts. The discussion that follows deals with the post-Split period and the issue of whether NS or Conrail (58% owned by NS) should be compensated through liquidated damages covering the post-Split period to make up for the revenues that they will lose for not having the bonanza of greatly increased revenues available reflecting the work of the CSX intermodal marketing efforts once CSX has its own highly competitive route on the Water Level and revitalized B&O lines between Greater New York and Chicago.

CSX contends that upon the Split Date these two Contracts, which were originally intended as pro-competitive, will become grossly anti-competitive and will amount to

Hon. Vernon A. Williams

December 18, 1998

Page 4

pooling agreements not approved by the Board and, accordingly, violative of 49 U.S.C. § 11322. This because at the time, the Contracts were between the two parties who had no competitive service between Greater New York and Chicago; on the Split Date, this route will be their most important competitive route, as the Application made plain. It is one of the characteristics of a pooling agreement that the parties to it divide revenues (moneys) in an agreed-upon fashion in a way which does not reflect competition but reflects their agreement as to who should get what portions of the revenue. To make a party to an unlawful pooling agreement pay substantial liquidated damages for not living up to the pooling agreement would be to directly enforce the pooling agreement. While the Contracts were in the form of customer contracts, they were in fact contracts by enterprises providing rail transportation – rail transportation which, on the Split Date, will become competitive. Pooling has to do with the allocation of money. The liquidated damages provision transfers money – the paying participant's money, in lieu of the customers' money -- from one of the pooling participants to another, thereby making the recipient "whole," at least for what the recipient party has lost through the failure of the paying party to observe the pooling arrangements. Thus, simply absolving CSX from observing and performing the Contracts by having the moves physically made on NS or Conrail, pursuant to the texts of the Contracts, will not solve the problem. The alternative means of enforcing the pooling, through the payment and collection of liquidated damages, must also be prohibited by the Board.

Cases decided by the federal courts in situations of antitrust violations indicate a similar result. In *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72 (1982), Kaiser Steel, which both produced coal itself and bought coal from other mines for use in its steel-making operations, resisted payment of amounts otherwise due from it under the National Bituminous Coal Wage Agreement of 1974, the nationwide collective bargaining agreement with the United Mine Workers. It paid the amounts due to the UMW welfare fund by way of the per-ton charge on its own coal production but resisted payment of amounts due under a "purchased coal" clause (sometimes called a "hot-cargo" clause) which required it to pay per-ton amounts on coal purchased from mines which had not paid the per ton charge on their own production (*i.e.*, non-unionized mines). The basis of refusal was that the "purchased coal" clause was unlawful under the Sherman Antitrust Act and that the defense of illegality was available to justify nonpayment by Kaiser. The Supreme Court quoted earlier authorities enunciating the rule followed in the federal courts that "no court will lend its assistance in any way towards carrying out the terms of an illegal contract." *Id.* at 77. Applying that principle to the case before it, the Court pointed out that

Hon. Vernon A. Williams
December 18, 1998
Page 5

If Kaiser's undertaking is illegal under the antitrust or the labor laws, it is because of the financial burden which the agreement attached to purchases of coal from non-UMW producers, even though they may have contributed to other employee welfare funds. It is plain enough that to order Kaiser to pay would command conduct that assertedly renders the promise an illegal undertaking under the federal statutes.

Id. at 79.

That reasoning applies here: Requiring the payment of liquidated damages to reimburse a participant in an unlawful pooling under Section 11322 would be to "command conduct that . . . renders the promise an illegal undertaking under the federal statutes." Paying the liquidated damages carries out the operation of the "pool" and disincentives -- in fact, precludes -- CSX from competing by burdening its successful competition with the added costs of paying large sums under the pool arrangements.

Indeed, requiring payment for transportation not performed (via the liquidated damages clause) would be more violative of public policy than requiring CSX's intermodal arm to pay NS or Conrail for transportation rendered as a result of the pooling that actually was performed. That distinction was made by the court in Carpa, Inc. v. Ward Foods, Inc., 536 F.2d 39 (5th Cir. 1976), where the court pointed out that if the services which were part of an illegal scheme had in fact been provided, it could be said that "one should not be able to get something for nothing." Id. at 55. See also Kelly v. Kosuga, 358 U.S. 516 (1959); Continental Wall Paper Co. v. Louis Voight & Sons Co., 212 U.S. 227, 267-71 (1909) (dissent of Justice Holmes). Here, the exact opposite would be the case; if CSX were relieved from paying liquidated damages, no one would be getting "something for nothing"; on the other hand, if CSX were made to pay liquidated damages, Conrail and NS would be getting "something for nothing." Moreover, that payment of "something for nothing" would create a situation "where the judgment of the Court would itself be enforcing the precise conduct made unlawful by the Act." That was held to be unlawful and unenforceable in Kelly v. Kosuga, 358 U.S. at 520. In short, the basic purpose of a pooling agreement is to allocate monies among competitors in an agreed-upon fashion, and the provision for liquidated damages does just that. Thus, it violates the standard of both the Kaiser Steel and Kelly v. Kosuga cases, the two leading Supreme Court cases on the subject. The Board should apply those principles here.

Hon. Vernon A. Williams

December 18, 1998

Page 6

2. In the passage from Decision No. 106 already quoted, the Board suggested that:

Perhaps the future handling of this matter could reflect the way it might have been handled if these contracts had been "on the table" during the negotiation of the CSX/NS/CR Transaction Agreement and had been subject, at that time, to the general give-and-take that accompanied the negotiation of that agreement.

Quite obviously, any testimony that the parties might give now as to what they would have done then will be subject to suspicion of bias, but it is clear that CSX would never have agreed to giving up its freedom to attract shippers' business, not already contracted by the shippers with Conrail, through solicitation for Chicago area/New York City area movements from and after the Split Date. It is also clear that it would never have agreed to pay NS, Conrail (58% owned by NS), or anyone else three quarters or thereabouts of the rate payable for the Buffalo to Chicago segment of such movements as the price of CSX's carrying them itself. At most, if the matter was to be disposed of, it would have been disposed of based on a few months' performance of the existing contracts based on their historic levels (that is, on an interchange route dominated by the old Conrail's through service). That amount would have been so *de minimis* that it probably would not have had any substantive effect on the allocation of the purchase price, and certainly it would not have affected the allocation of the routes. The Board in this regard might be guided by Section 8.2(b)(v) of the Transaction Agreement, which says that as to matters between NS and CSX, each party shall "bear the burden, without adjustment in the Percentage or other consideration" of conditions imposed by the Board. CSX/NS-25, Vol. 8B, at 59. The present matter seems analogous even assuming innocent oversight about the Contracts on both sides. The rule as just quoted from the Transaction Agreement is also applicable as to settlement agreements. Because of these principles, CSX has borne, without compensation from NS or adjustment involving NS, the imposition of trackage rights in favor of another Class I rail carrier on the East of the Hudson line to the Bronx and Queens; the imposition of conditions in Buffalo which diminished CSX's position there; and the additional compromises which CSX worked out with the City of Indianapolis to obtain its support; and many environmental "fixes" uniquely or disproportionately affecting it.

Hon. Vernon A. Williams
December 18, 1998
Page 7

In the final analysis, however, it is not productive to speculate what would have happened had NS's intentions with respect to the NS Contract (and with respect to the Conrail Contract, the requirements of which were made known to NS at the time of the negotiation of the NS Contract since they materially affected the commitment made to NS). It is not possible now to say whether NS would have insisted on attempting to have the Board approve the two contracts, what it would have demanded for their cancellation at the Split Date, or what CSX's expense would have been since there were many other issues between the parties and an obvious mutual desire to effectuate the filing as quickly as possible, to the extent indeed of requesting and receiving from the Board a waiver of 49 C.F.R. § 1180.4(b)'s requirement of a three-month hiatus between the filing of a notice of intent and of the Application. The philosophy of Transaction Agreement Section 8.2(b)(v) should be applied here, and the Board should grant the relief prayed for by CSX.

3. There is no other way effectively to dissolve the pooling than to void the requirements provisions of the Contracts. Assigning the Conrail Contract to CSX for operation (as suggested by NS) will not accomplish anything, since as a Section 2(c)(iii)(C)(cc)(2) contract (Shared Assets Area to Dual) the revenues are to be shared 50-50 – in other words, pooled. See CSX/NS-25, Vol. 8B at 27. The result is the same regardless of who is the operator.

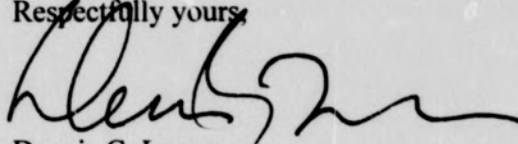
Opening up the APL contract on Day 1 rather than Day 181 and/or giving APL other relief, suggested in an apparent desperate effort by NS as a "spoiler," is irrelevant and should not be done. APL is not a rail carrier and was not an applicant in the case. APL made an extraordinarily detailed, voluminous and vigorous presentation in Finance Docket No. 33388 and was extremely successful in getting its contractual commitments reduced to six months at its option. See Decision No. 89 at 72-76, 113-14, 175. The record as to APL in the case was complete. APL made a number of post-Decision filings about its lease and other matters, and the Board considered them carefully. See APL-25, APL-26, APL-27, APL-28; Decision Nos. 90 *passim*, 91 *passim*, 96 at 10-11 and n.29. The disposition of APL's requests was made on a record which did not reflect the existence of the NS Contract or the CSX Contract. So nullifying the requirements of those two Contracts would not affect the competitive situation as it was presented to the Board on the voluminous record. It would in fact alter the competitive situation for the Board to take any action with respect to the APL contract, since the Board was never told about the NS Contract and the Conrail Contract. NS's request that the Board do

ARNOLD & PORTER

Hon. Vernon A. Williams
December 18, 1998
Page 8

something for APL is unfounded and is violative of the Transaction Agreement. See Section 8.4(a), CSX/NS-25, Vol. 8B at 59.*

Respectfully yours,



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

cc: All Parties of Record

* NS discusses (NS-73 at 13-16) various arbitrations CSX and NS are involved in and NS's purported desires for balanced competition. CSX believes that NS's positions in those arbitrations, involving Kearny Yard and elsewhere, are unfounded and indeed destructive of competition. The disputes presently in those arbitrations are very fact-intensive and are completely irrelevant to the issues presented by CSX's Petition and now before the Board.

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RICHARD A. ALLEN

ENTERED
Office of the Secretary

December 18, 1998

DEC 21 1998

BY HAND

Part of
Public Record

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

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

Dear Secretary Williams:

I am writing on behalf of Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS") to request a 30-day extension, to and including January 17, 1999, of a reporting obligation imposed in Decision No. 96 in this proceeding.

Decision No. 96 addressed, among other things, certain issues raised by Indianapolis Power & Light Company ("IP&L") and Indiana Southern Railroad ("ISRR") regarding the condition the Board imposed in Decision No. 89 requiring a new competitive NS routing to serve IP&L's Stout Plant via an interchange with ISRR at milepost 6.0. In response to contentions that milepost 6.0 is not a practical interchange point, the Board stated:

From the record before us, we cannot determine whether an interchange at milepost 6 is sufficient to provide the relief we contemplated. Accordingly, we will direct applicants and ISRR to negotiate a mutually satisfactory solution to this problem and report back to us in 60 days. If the parties are unable to agree on a solution, we will fashion one.

Decision No. 96 at 14.

Pursuant to that directive, NS has had several meetings and other discussions with CSX, IP&L and ISRR regarding this issue in an effort to negotiate a mutually satisfactory solution. NS

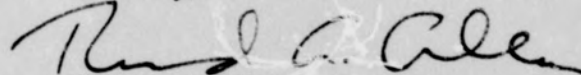
December 18, 1998

Page 2

is hopeful that an agreement can be reached shortly, but to date an agreement has not been reached. NS therefore respectfully requests an additional 30 days to pursue its efforts to negotiate a resolution of this issue and to file a report concerning those efforts.

I am authorized to state that IP&L and ISRR do not object to this extension request, although IP&L has asked NS to represent to the Board that IP&L does not believe that any further extension should be necessary. I understand that CSX will be filing a similar request.

Sincerely,



Richard A. Allen

Counsel for Norfolk Southern
Corporation and Norfolk
Southern Railway Company

Enclosures

cc: Dennis G. Lyons, Esq.
Michael F. McBride, Esq.
Karl Morell, Esq.

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Fred R. Birkholz*
Senior Counsel

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December 18, 1998

Via Fax: 202-565-9004
and U. S. Mail

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

ENTERED
Office of the Secretary

DEC 18 1998

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Public Record



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

Dear Mr. Williams:

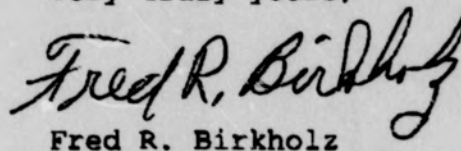
In Ordering Paragraph No. 8 of Decision No. 96, decided October 19, 1998 in the above-referenced proceeding, the Board ordered CSX, Norfolk Southern, the Indiana Rail Road, and Indianapolis Power & Light Company to "attempt to negotiate a mutually satisfactory solution respecting any MP 6.0 interchange problems (and respecting any related problems that may be necessarily incidental to a MP 6.0 interchange problem)," and to advise the Board, no later than December 18, 1998, of the status of their negotiations.

CSX hereby advises the Board that there have been discussions among the relevant parties, but that a mutually satisfactory solution has not yet been reached. Accordingly, CSX respectfully requests the Board to give the parties an additional 30 days in which to negotiate in good faith toward such a solution.

The Honorable Vernon A. Williams
December 18, 1998
Page 2

I am informed by counsel for Norfolk Southern that Norfolk Southern intends to file a report and request substantially similar to that set out above.

Very truly yours,


Fred R. Birkholz

cc (via fax and U. S. Mail):
Richard Allen, Norfolk Southern (202-342-1608)
Michael McBride, IP&L (202-986-8143)
Karl Morell, ISRR (202-783-6947)
John Broadley, INRD (202-639-6066)

s:\staff\egh\Fred\Williams98Dec18

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DONALD E. CROSS (1923-1986)

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Office of the Secretary

DEC 14 1998

December 11, 1993

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Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW, Room 711
Washington, DC 20423-0001

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

Report of the State of Ohio Concerning Negotiations
with Applicants CSX Corporation, CSX Transportation
Inc., Norfolk Southern Railway Company
regarding highway/rail at grade crossing improvements
on rail corridors within the state of Ohio.

Dear Secretary Williams:

The State of Ohio by and through the Ohio Attorney
General, Ohio Rail Development Commission and the Public
Utilities Commission of Ohio hereby submit their report on the
status of negotiations with CSX Corporation, CSX Transportation,
Inc., Norfolk Southern Corporation and Norfolk Southern Railway
Company (Applicants) pursuant to condition 8(B) Appendix Q of
Decision 89 in this proceeding. In that Decision the Board
granted Ohio's request that a 120 days period be provided for
negotiations with the applicants regarding highway/rail at grade
crossing improvements on a corridor approach. In this regard the
Board found the request both reasonable and consistent with STB's
intent to allow flexibility for applicants to work with states
and local communities to develop mutually acceptable alternative
safety mitigation.

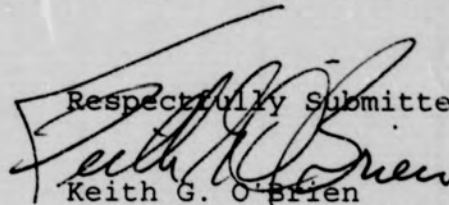
Since issuance of the Board's decision Ohio has
continued negotiations with applicants concerning grade crossing
needs in corridors that will be affected by the forthcoming

Hon. Vernon A. Williams
December 11, 1998
Page Two

division of Conrail routes. These negotiations have included participation by responsible representatives of Ohio communities affected by the 29 crossings identified for remedial attention in the Environmental Impact Statement.

While the parties have worked diligently in an effort to complete negotiations within the 120 day period that time frame has proved to be overly ambitious in light of the many competing demands on the resources of all concerned. Nevertheless Ohio and applicants have made considerable progress and are committed to completing negotiations as expeditiously as possible in the interest of all concerned. Ohio therefore respectfully requests that the Board extend Decision No. 89's provision for negotiations regarding commitments to jointly fund highway/rail at grade crossing improvements in affected corridors by an additional 60 days to permit the parties to complete the negotiating process in the interest of all concerned. We are authorized to represent that the applicants concur in this request.

Respectfully Submitted



Keith G. O'Brien
Counsel for the State of Ohio
Parties of Record

cc: Richard Allen, Esq.
Dennis C. Lyons, Esq.
Elaine K. Kaiser

STB

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CHARLES A. SPITULNIK
(202) 835-8196

December 9, 1998

Hon. Vernon A. Williams
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

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Office of the Secretary

DEC 10 1998

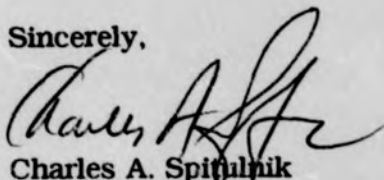
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Re: CSX Corporation and CSX Transportation Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation, Finance Docket No. 33388

Dear Sir:

Enclosed are an original and twenty-five (25) copies of the Joint Reply of New York City Economic Development Corporation and the State of New York By and Through Its Department of Transportation to Providence & Worcester Railroad Company's Request for Mediation (NYC-22/NYS-31) for filing in the above-referenced proceeding. An additional copy is enclosed for file stamp and return with our messenger. Please note that a copy of this filing is also enclosed on a 3.5-inch diskette in Word 97 format.

Sincerely,



Charles A. Spitulnik

Enclosure

cc: The Honorable Jacob Leventhal
All Parties of Record



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NYC-22/NYS-31

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Office of the Secretary

DEC 10 1998

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Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388



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

**JOINT REPLY OF NEW YORK CITY ECONOMIC DEVELOPMENT
CORPORATION AND NEW YORK STATE BY AND THROUGH ITS DEPARTMENT OF
TRANSPORTATION TO PROVIDENCE & WORCESTER
RAILROAD COMPANY'S REQUEST FOR MEDIATION**

New York City Economic Development Corporation ("NYCEDC") and the State of New York, by and through its Department of Transportation ("New York"), by counsel, hereby submit their Joint Reply to Providence & Worcester Railroad Company's (P&W) Request for Mediation. On November 19, 1998, P&W filed a letter with the Board requesting mediation to facilitate discussions with CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") in accordance with Ordering Paragraph No. 31 of Decision No. 89 in this proceeding (service date July 23, 1998). As CSX recognized in its letter response dated November 24, 1998, P&W's letter is in the nature of a Motion or Petition. NYCEDC and New York, therefore, submit this Joint Reply in accordance with 49 C.F.R. § 1104.13(a).

Ordering Paragraph No. 31 of the Board's Decision No. 89 provides:

CSX must discuss with P&W the possibility of expanded P&W service over trackage or haulage rights on the line between Fresh Pond, NY, and New

Haven, CT, focusing on operational and ownership impediments related to service over that line.

As set forth in P&W's November 19, 1998 letter to the Board, these discussions are meant, in part, to encourage the enhancement of rail competition east of the Hudson River in New York. (Decision No. 89 at 83.) NYCEDC and New York support this additional competitive rail service.

In its November 19, 1998 letter, P&W details that its attempt to secure this expanded service has been hindered by an unwillingness on the part of CSX to explore the possibility of expanded P&W service. CSX has not yet responded substantively to P&W's filing. However, it is clear that the parties have not been successful in implementing Condition No. 31.

In light of the specific terms of Condition No. 31, NYCEDC and New York support P&W's request for discussions with CSX.¹ The procedure P&W requests is consistent with the Board's practice when two (or more) parties require direction and a neutral party, and is well-suited to the task of catalyzing discussions between P&W and CSX, as required by the Board's Order and Condition No. 31. *See, e.g., Review of Rail Access and Competition Issues, Ex Parte 575* (service date April 17, 1998)(the Board appointed an administrative law judge to assist in resolution of issues involving competitive access and revenue adequacy.) For these reasons, NYCEDC and New York support P&W's request for mediation and urge that it be granted.

¹ The situation in which P&W finds itself is quite different from the current dispute between CP and CSX over proper implementation of Condition No. 28. The Board's Condition No. 28 provides clear directions and standards to be applied to the grant of unrestricted access rights over the Hudson Line to CP. In the case of P&W, the Board required that the parties meet and discuss the possibility of trackage rights. Given that the Board did not specifically prescribe the access relief (if any) to be afforded P&W, mediation is appropriate as a first step.

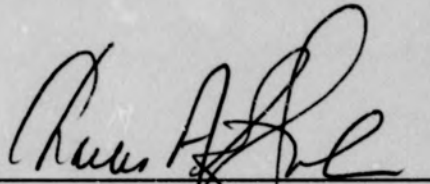
WHEREFORE, NYCEDC and New York respectfully request that the Board establish a procedure for mediation as P&W has requested, in order to fulfill the objective stated in Condition No. 31 of Decision No. 89.

Dated: December 9, 1998

Respectfully submitted,

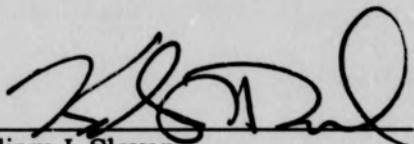
STATE OF NEW YORK BY AND
THROUGH ITS DEPARTMENT
OF TRANSPORTATION

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Counsel for the State of New York

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 1998, a copy of the foregoing Joint Reply of New York City Economic Development Corporation and the State of New York By and Through Its Department of Transportation to Providence & Worcester Railroad Company's Request for Mediation (NYC-22/NYS-31) 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

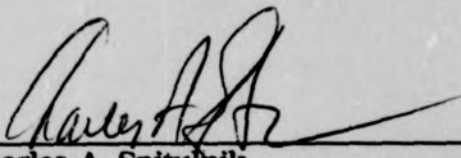
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Harkins Cunningham
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Suite 600
Washington, D.C. 20036

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



Charles A. Spitulnik

STB

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ARNOLD & PORTER555 TWELFTH STREET, N.W.
WASHINGTON, D.C. 20004-1206(202) 942-5000
FACSIMILE: (202) 942-5999DENNIS G. LYONS
(202) 942-5858December 9, 1998
VIA HAND DELIVERYENTERED
Office of the Secretary

DEC - 9 1998

Part of
Public Record

The Honorable Vernon 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:

On November 19, 1998, counsel for the Providence and Worcester Railroad Company ("P&W") sent you a letter complaining of CSX Corporation's and CSX Transportation, Inc.'s (collectively, "CSX") alleged non-compliance with a condition imposed by the Board in Decision No. 89, served July 23, 1998, namely, the condition set forth in Ordering Paragraph No. 31 at page 178, which reads as follows:

31. CSX must discuss with P&W the possibility of expanded P&W service over trackage or haulage rights on the line between Fresh Pond, NY, and New Haven, CT, focusing on operational and ownership impediments related to service over that line.

P&W requested that the Board require a mediation process between CSX and P&W, conducted by an Administrative Law Judge, to resolve P&W's complaints. P&W also requested that if the mediation did not resolve matters to P&W's satisfaction, the matter be considered by the Board.

On November 24, 1998, the undersigned wrote you stating that the P&W submission appeared to be in the nature of a petition and that a reply on behalf of CSX would be submitted on or before December 9, 1998. This letter provides that reply on behalf of CSX.

Some background of this matter should be briefly presented, as follows:

1. P&W filed a notice of intent to participate in the above-referenced docket in July 1997.
2. CSX and P&W, on August 6, 1997, entered into a settlement agreement under which P&W pledged "unconditional support for approval of the Application" which CSX and the Norfolk Southern companies had filed in the above docket.
3. The settlement agreement contained broad independent rate-making authority to P&W which, from and after the "Split Date," gave it the power, without discussion with or notice to CSX, to make rates for joint movements over the P&W lines and the prospective CSX lines (former Conrail lines) from New Haven to New York City to interchange with the New York & Atlantic Railroad at Fresh Pond Junction in Queens.
4. The August 6, 1997 agreement was broad and covered all commodities (except coal) and included intermodal movements. The agreement was confidential at that time and was not filed with the Board. Its contents were described in very broad and general terms in subsequent filings with the Board - in no more detail than in the preceding paragraph and this paragraph. Yet, the rights given to P&W were quite broad and promotive of competition. Since the confidentiality provision of the agreement expired on October 1, 1998, and since the agreement has already been the subject of a public filing in litigation, CSX is providing a copy of the agreement with this letter for the information of the Board.
5. Despite the settlement agreement, P&W took a number of actions from and after August 6, 1997, that were in breach of the settlement agreement's pledge of "unconditional support for approval of the Application." The Application, among other things, had sought the Board's override of any and all provisions which would hamper the allocation of Conrail's assets to CSX and Norfolk Southern, to be used and enjoyed to the same extent that Conrail itself could use and enjoy them. In this regard, P&W committed the following breaches of the settlement agreement:

(a) P&W filed an action in the United States District Court for the District of Columbia in 1997, as successor to the Special Court established under the 3 R's Act, claiming that the filing of the Application triggered a right of purchase of Conrail's rail assets in the City and Town of New Haven and a portion of a nearly Conrail yard (the "New Haven Properties"). That suit was dismissed by the Court in early 1998 as unripe.

(b) P&W continued in the above docket, despite the settlement agreement, to take a position adverse to the Application by insisting that the Board not override the

provisions of the Special Court order granting it a purchase option with respect to the New Haven Properties mentioned above.

(c) After the Board, in its Decision No. 89, served July 23, 1998, in fact overrode the Special Court's order with respect to those purchase rights in connection with the CSX/NS/Conrail transaction, P&W sought a stay from the Board's order, in effect seeking to freeze the present ownership and use of the New Haven Properties in Conrail, thereby seeking to affect the transactions contemplated by the Application as part of the Split Date. The Board rejected that stay.

(d) In September 1998, P&W filed an action in the United States District Court for the District of Columbia as successor to the Special Court, seeking a preliminary and permanent injunction against the transfer of the New Haven Properties on the Split Date and requiring that the Properties be sold to P&W. The action was brought against Conrail and CSX, but the Board, in order to protect its jurisdiction and the jurisdiction of the Court of Appeals as the sole court authorized to review and determine the validity of orders of the Board, was constrained to intervene in the action and make appropriate representations to the court. A preliminary injunction request by P&W was denied by the court, through Judge Sporkin.

(e) Simultaneously in September 1998, P&W filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and thus once again was engaging in activity contrary to the settlement agreement, seeking (at least on this occasion, in the appropriate forum, although still in violation of its contractual agreements) to set aside the Board's order.

(f) After the transfer of P&W's Court of Appeals case to the United States Court of Appeals for the Second Circuit, P&W filed a motion for a stay with that Court, to which the Board and CSX have made responses. The stay is before the Court of Appeals for decision; if granted, it would cause upset to the transactions contemplated on the Split Date, including possible renegotiation of implementing agreements already reached under the New York Dock decision with affected labor organizations.

6. Despite these repeated violations of the settlement agreement, in which P&W promised unconditional support for the Application (excused by P&W on the premise that since the overall requests for override of anti-assignment clauses and other bars to the full enjoyment of Conrail's assets by CSX, which include the New Haven Properties, did not expressly in terms refer to the New Haven Properties, they were ineffective), CSX has not exercised any power to terminate the settlement agreement and the valuable commercial rights given to P&W under the settlement agreement. The settlement agreement, of course, has not achieved the normal purposes of a settlement agreement

because of (a) P&W's continued assertion of claims to the New Haven Properties in violation of the agreement and (b) the Board's action in imposing the condition in Ordering Paragraph No. 31 despite the settlement agreement.

* * * * *

Pursuant to the Board's order, CSX and P&W have met and discussed the possibility of expanded P&W service through trackage rights or haulage rights on the track between Fresh Pond Junction, NY and New Haven, CT. In the confidential attachment to this filing, which CSX does not propose to make available to any of the parties to this case other than P&W since it relates to ongoing negotiations, unless the Board otherwise orders, we present to the Board correspondence between CSX and P&W relating to these negotiations. These negotiations have taken place partly through an in-person meeting and partly through telephone contacts and correspondence. Some of the correspondence invokes the protections of Rule 408 of the Federal Rules of Evidence and, pursuant to that Rule, CSX states that it is not submitting the correspondence "to prove liability for or invalidity of [any] claim or amount" but is simply submitting the same to show the positions of the parties in the negotiations.

In essence, as set forth in the October 1, 1998 letter of Ms. Eddins, P&W's General Counsel, P&W's goal in the negotiations is "unrestricted trackage rights for P&W to service the line between New Haven, Connecticut and Fresh Pond Junction (Queens), New York." CSX's position is that if the Board meant that, it would have said so, as it did do in connection with the negotiation of trackage rights over the "East of the Hudson" line to Fresh Pond Junction with Canadian Pacific Railway Company, set forth on the preceding page of the Decision in question, at Ordering Paragraph No. 28, page 177.

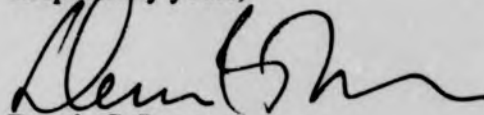
As the correspondence also discloses, P&W's position is that the New Haven Properties, or some substantial portion of them, ought to be conveyed to it, and it has injected this matter, which is clearly pending in proceedings before two courts, into the negotiations concerning the service between Fresh Pond Junction and New Haven.

CSX's position is that: While it does not relish having to defend itself in two courts against the claims which P&W has filed in violation of the settlement agreement, it will not let that stand in the way of attempting to work out beneficial business arrangements with P&W, as contemplated by Ordering Paragraph No. 31. See the letter of Paul Hitchcock, Esq., counsel for CSX, dated September 10, 1998. CSX's position in the discussions is that when individual movements with individual shippers are presented by one party or the other that would be mutually beneficial but which are not covered by the settlement agreement or as to which P&W believes a haulage or trackage rights

arrangement is appropriate, these opportunities are to be discussed on a specific basis. Some such opportunities have in fact been discussed, as the correspondence reveals. Presumably more will be presented when the Split Date occurs and CSX actually commences operations in New England. Such negotiations are somewhat constrained in that the matter is viewed by P&W as a one-way street, in other words, that mutually advantageous proposals for CSX which involve haulage or trackage rights over P&W's freight rights or ownership are not welcome. Hitchcock letter of September 10, 1998. The statement in P&W counsel's letter of November 19, 1998 to the Board that CSX claims the August 6, 1997 agreement satisfies the condition imposed by the Board is not accurate. See Hitchcock letters of November 5, 1998 and September 10, 1998.

While it is clearly up to the Board to determine whether the process requested by P&W would be constructive, since the premise of P&W's request appears to be that the Board has, in effect, ordered unrestricted trackage rights from New Haven to Fresh Pond Junction, the most constructive action the Board might take would be, we suggest, to enter a declaratory order as to whether that is what the Board intended or whether the Board wished the parties to explore specific beneficial moves (with specific shippers, for example) on a case-by-case basis. In CSX's view, stating its views on that subject would be a more constructive action on the part of the Board than an attempt to reconcile the parties apparently irreconcilable views of the meaning of the Board's order through "mediation" would be. The real goal of P&W is to get unrestricted trackage rights on the whole line and as long as P&W is free to argue that that is what the Board's order mandates, it will have no interest (and it has shown little interest) in less ambitious, specifically tailored arrangements. With that issue resolved, the discussions could be more productive. CSX notes that the occasions for consideration of such individually-tailored arrangements may be presented more frequently once the Split Date comes and CSX commences operations in New England. CSX also notes the Board's express intention to "follow the progress of these [CSX-P&W] negotiations as part of our [its] oversight process". Decision No. 89 at 84.

Respectfully yours,



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

cc: All Parties of Record

4B

Revenue And Service Agreement

This Revenue And Service Agreement (the "Agreement"), dated as of August 6, 1997, is by and between CSX Transportation, Inc. ("CSXT") and CSX Intermodal, Inc. ("CSXI") on the one hand and Providence and Worcester Railroad Company ("P&W") on the other.

Whereas, CSXT, in conjunction with other parties, has filed an application with the Surface Transportation Board (the "Board") in Finance Docket No. 33388 (the "Application") to acquire and/or control certain rail lines of Consolidated Rail Corporation ("Conrail"), as more specifically described in the aforementioned Application; and

Whereas, P&W has agreed to file a letter of support of the Application with the Board in exchange for the agreement of CSXT to provide certain revenue requirements and service parameters over a Conrail line that is to be acquired or controlled by CSXT pursuant to the Application; and

Whereas, the parties now desire to specify the terms of their agreement;

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

1. EFFECTIVE DATE AND TERM. This Agreement shall take effect as of the date shown above and shall have a term (the "Agreement Term"), unless otherwise terminated as provided herein, from the effective date through December 31, 2048.

2. SUPPORT OF APPLICATION. P&W shall submit a letter of support to the Board expressing unconditional support for approval of the Application. If the letter has not been received by the Board on or before September 1, 1997, then this Agreement shall automatically terminate with no further right or obligation remaining with either party.

3. UNRESTRICTED REVENUE FACTOR. (A) Beginning on the first date that CSXT begins operations (the "Initial Operating Date") over the current Conrail line between New Haven, Connecticut and Fresh Pond Junction, New York (the "Line") and continuing for the remaining term of this Agreement, CSXT agrees to grant an unrestricted revenue factor (the "CSXT Factor(s)") to P&W for all commodities (excluding coal) in all car types (including intermodal) that are transported by CSXT in joint line service between interchange with P&W at New Haven, Connecticut and the New York & Atlantic Railway ("NYA") or its successor at Fresh Pond Junction, New York. The CSXT Factor(s) are not a grant of trackage rights or haulage rights over the Line. CSXT will continue to be

shown as a linehaul carrier in all applicable contracts, tariffs and circulars. The CSXT Factor(s) do, however, specify the amount of revenue that CSXT charges for providing the aforementioned linehaul services in connection with P&W and NYA.

(B) The CSXT Factor(s) may be used by P&W to establish joint line rates for tariffs, circulars or contracts for any traffic to be moved over the Line for interchange with P&W. Prior consultation with CSXT is not required, but CSXT must be shown as a participating carrier in the rates and routes and must be a party to all tariffs, circulars or contracts and related documents.

4. EXISTING SAND AND STONE SERVICE. This Agreement does not include or affect P&W's existing rights to handle sand and stone between New Haven, Connecticut and Fresh Pond Junction, New York. Such rights are contained in two separate agreements, each dated October 3, 1996, entitled "Grant, Assignment and Assumption Agreement" and "Grant, Assignment and Assumption Agreement - Amtrak" between P&W and various parties. Copies of both agreements, identified as Exhibit "A" and Exhibit "B", respectively, are attached to this Agreement.

5. INITIAL CSXT FACTOR(S). The initial CSXT Factors for providing linehaul service over the Lines for a one (1) year period from the Initial Operating Date are as follows:

(i) Carload Shipments (all except intermodal)

<u>Volume</u>	<u>CSXT Factor*</u>
1-500 shipments	\$300.00 per shipment
501-1000 shipments	\$270.00 per shipment
1001-5000 shipments	\$250.00 per shipment
5001 - 7000	**
7001 shipments and above	***

* Includes the empty return of the car via the reverse route.

** CSXT and P&W agree that in the event volumes exceed 5000 shipments, CSXT and P&W will negotiate in good faith to develop appropriate and mutually satisfactory CSXT Factor(s) and service parameters for such traffic. If no agreement is reached either party may refer the issue to AAA for resolution as set forth in paragraph 6.

*** Shipments of more than 7000 are outside the scope of this Agreement; the amount is the otherwise applicable rate on the date of shipment.

CSXT shall collect the "full" CSXT Factor amount, i.e. initially \$300.00, as increased during the Contract Term pursuant to Paragraph 6, for all carload shipments. Within six (6) months after each anniversary of the Initial Operating Date, P&W shall submit an application for refunds to CSXT. The "reduced" CSXT Factors will also be increased using the same procedures referenced above. The application will contain a list of the applicable Bills of Lading, dates and car reporting marks together with a total amount of each refund application. The application will be sent to an address provided by CSXT to P&W from time to time. Verified refunds will be provided to P&W within sixty (60) days of receipt of each application. (Example: Using the current refund amounts, an application based upon 2000 carloads in one year would result in a total refund of \$65,000.00 [\$0+\$15,000.00 + \$50,000.00].

(11) Intermodal Shipments (trailers, container or Roadrailer)

The CSXT Factor for intermodal shipments are based in part on the type of service that may be requested by P&W, as described below.

(A) In the absence of a request from P&W, intermodal shipments will be transported in scheduled general merchandise trains in existence on the date of tender to CSXT at either New Haven or Fresh Pond Junction. The initial CSXT Factor, as increased during the Agreement Term pursuant to Paragraph 6, is \$80.00 per unit; i.e., per trailer, container or Roadrailer, in each direction, regardless of whether the unit is loaded or empty.

(B) P&W may, but is not required to, ask that CSXT transport the intermodal shipments in a dedicated intermodal train between New Haven and Fresh Pond Junction. P&W agrees to provide CSXT not less than seven (7) days notice that it expects to require a dedicated intermodal train. Unless otherwise agreed, P&W must issue a separate notice for each dedicated intermodal train that it requests. In addition, appropriate operating personnel of P&W will contact appropriate operating personnel of CSXT not less than twenty-four (24) hours prior to the anticipated time of interchange for each group of cars in order to coordinate the actual interchange times and to reduce unnecessary delays.

The initial CSXT Factors for this service are:

TRAIN SIZE

CSXT FACTOR

1-40 units

\$4,000 per round trip train
plus \$50.00 per unit (loaded or
empty)

41-80 units

\$5,000 per round trip train
plus \$50.00 per unit (loaded or
empty)

Both components of the initial CSXT Factors, i.e. the train size and unit charges, are subject to increase during the Agreement Term pursuant to the Increases To CSXT Factor(s) paragraph.

(C) Assuming that the time of interchange has been properly coordinated, as provided in subparagraph (B), if P&W is delayed in interchanging the train to CSXT for longer than six (6) hours, after the projected interchange time, so that CSXT locomotive(s) and crew(s) are idled, P&W will pay CSXT a liquidated damages charge of One Thousand Dollars (\$1,000) for each twenty-four (24) hours of delay, or fraction thereof, until time of tender of interchange.

(D) The transportation of Roadrailer equipment is subject to the approval of CSXT or CSXI, which will not be unreasonably withheld. It is anticipated that any disapproval will be primarily, but not exclusively, based upon the operating compatibility of Roadrailers with trailer/container flatcars in the same train. If Roadrailers are included in any train by P&W without the prior consent of CSXT or CSXI, P&W will pay a charge of Three Hundred Dollars (\$300.00) per unit in addition to the CSXT Factor.

(E) P&W understands that CSXT intermodal service is currently marketed by CSXI, a CSXT affiliated company. Unless otherwise advised to the contrary in writing from CSXT, P&W agrees that the CSXT Factor for intermodal shipments shall be made directly from P&W to CSXI.

6. INCREASES TO CSXT FACTOR(S). (A) The CSXT Factor(s) shall be adjusted once each year on each anniversary of the Initial Operating Date by the percentage increase, if any, in the Rail Cost Adjustment Factor, unadjusted for productivity (the "RCAF(u)") during the immediately preceding year. If there is a decrease in the RCAF(u), the CSXT Factor(s) will remain the same.

(B) If the RCAF(u) is discontinued CSXT and P&W shall negotiate in good faith for a period of not less than thirty (30) days in an attempt to agree upon a substitute index that would most substantially contain the criteria used by the RCAF(u). If no agreement is reached, either party may refer the issue to the American Arbitration Association (the "AAA") for resolution pursuant to its commercial Arbitration Rules. Venue will be in Washington, D.C. unless otherwise mutually agreed. Each party will bear its own expenses and all fees and expenses of the AAA will be equally shared by the parties.

(C) If CSXT's costs in providing transportation pursuant to this Agreement are increased by more than twenty percent (20%) of the then current CSXT Factor for carload shipments (1-500 shipments) at any time during the Agreement Term due to changes in federal, state or local statutes, regulations or ordinances, excluding any such increases that are reflected in the RCAF(u), then notwithstanding the other provisions of this Agreement, CSXT

is entitled to increases in the CSXT Factor(s) to reflect such increases. The parties shall negotiate in good faith for a period of not less than thirty (30) days in an attempt to agree upon an appropriate increase to the CSXT Factor(s). If no agreement is reached, either party may refer the issue to the AAA for resolution pursuant to the same procedures outlined in this paragraph.

7. SERVICE STANDARDS. (A) CSXT will transport shipments over the Line with reasonable dispatch, consistent with the volume of shipments, track conditions and operating contingencies. Upon request, CSXT will provide P&W with any current schedule. CSXT recognizes that consistency of service is a benefit to both CSXT and P&W. Accordingly, CSXT will make reasonable efforts to meet its schedules, subject to force majeure, shortages of equipment and/or personnel, strikes, government intervention or matters beyond its control. CSXT does not currently plan to operate over the Line on weekends or CSXT holidays. CSXT may, in its sole discretion, adjust its schedules from time to time to reflect traffic volumes and operating efficiencies. CSXT will provide P&W with notice of such adjustments in its schedule.

(B) In providing reasonable dispatch, all parties recognize that certain intermodal shipments in joint P&W/CSXT service, such as food, beverages, consumer goods and manufactured products are time sensitive in keeping with "just in time" inventory levels of some receivers. The parties also recognize that the operating "windows" for intermodal shipments on the Northeast Corridor in the New York City area and between New York City and Boston, Massachusetts are limited and that Interstate 95 is also congested in the same areas. Accordingly, the parties agree to take reasonable steps in the interchange and scheduling of intermodal service in order to attempt to compete with truck service for such shipments to the extent that the intermodal services are practical, profitable and provided with reasonable dispatch.

(C) CSXT agrees that, once a total of not less than thirty (30) P&W loaded cars have been received at either New Haven or Fresh Pond Junction, that such cars will be included in the next scheduled general merchandise train to depart New Haven or Fresh Pond Junction, as appropriate, and that the transit time between New Haven and Fresh Pond Junction shall be no more than thirty-six (36) hours from the time of departure. The foregoing transit time will not apply during weekends, strikes or labor disruptions, CSXT holidays, force majeure conditions, for shipments that are enroute during such periods or for shipments that are "bad ordered" while enroute.

(D) CSXT will keep records of the transit times of the shipments described in subparagraph (C) on a calendar month basis. If the combined average transit time of all applicable trains during the month subject to the exceptions contained in subparagraph (C) exceeds thirty-six (36) hours, then CSXT will pay liquidated damages to P&W in the amount of One Hundred Dollars for each loaded car for each twenty-four (24) hour period, or fraction

thereof, whose actual transit time exceeded 36 hours during that month. Payment will be made within thirty (30) days after the end of the applicable calendar month. This charge is subject to increase during the Agreement Term pursuant to Section 6 hereof as if it were a CSXT Factor.

8. RIGHT OF FIRST OFFER. Should CSXT desire to sell, lease or abandon its interest in all or any portion of the Line during the term of this Agreement, P&W shall have a period of sixty (60) days from the date of notice from CSXT within which to make an offer to purchase the applicable portion of the Line pursuant to the price and conditions specified by P&W. CSXT will consider the P&W offer but is not required to accept it. If CSXT declines to accept the P&W offer, CSXT may, subject to the provisions of this paragraph, proceed to abandon, lease or sell its interest in the Line to a third party. For a period of one (1) year after declining the P&W offer, CSXT agrees that it will not agree to sell its interest in the Line at a price and terms that are less or as favorable to CSXT without first giving P&W a ninety (90) day option to match the third party's offer. Any sale, lease or abandonment is subject to any required regulatory approvals that are in effect at the time of sale or abandonment.

9. CONFIDENTIALITY.

The provisions of this Agreement shall not be disclosed by either party, except to parent, subsidiary or affiliated companies through October 1, 1998. Notwithstanding the foregoing, and after the Board has approved the Application, all parties may discuss the operational and marketing features (minus rates) with their customers and governmental officials. During the confidentiality period, either party may disclose the existence of the Agreement without disclosing the specific provisions and P&W may discuss the general operational and marketing features with government officials in the states in which P&W operates. After October 1, 1998, CSXT has no objection to the showing of the New Haven-Fresh Pond Junction line as a P&W line in any P&W maps or advertising.

10. DEFAULT.

Each party will provide written notice to the other parties in the event of an alleged default, specifying the nature of such default. The party against whom the alleged default is claimed shall have sixty (60) days within which to correct the default. If the default has not been corrected, or if the appropriate party has not acted with due diligence to correct a default that may still be continuing within that time, the non-defaulting party may take all legal steps (including but not limited to injunctive relief) to protect its interests.

11. CHANGE OF CONTROL.

CSXT has entered into this Agreement based upon the assumption that P&W will continue to be operated as an independent entity. Should P&W be acquired by: (A) Norfolk Southern Corporation and/or Norfolk Southern Railway Company (jointly "NS") or their successors or (B) by a third party that also controls NS, by sale of stock, lease, trust agreement, merger or some other form of agreement so that executive control has passed directly or indirectly to NS or the third party that controls NS, then notwithstanding any other provision of this Agreement, CSXT may cancel this Agreement upon thirty (30) days notice to P&W.

12. ASSIGNMENT. MERGER. SUCCESSORS.

This Contract may not be assigned without the written consent of the other parties, except that the rights and obligations of CSXI may be assigned to CSXT upon notice. Notwithstanding the foregoing, this Agreement shall inure to a purchaser, successor or assignee of all or substantially all of the rail properties of P&W and the successors by merger of the parties except as set forth in Paragraph 11.

13. MISCELLANEOUS. (A) This Agreement is the result of the mutual negotiation of the parties and shall not be construed against any party as the drafter.

(B) Paragraph titles are for the convenience of the parties and are not substantive in nature.

(C) If any provision of this Agreement is found to be void, illegal or otherwise unenforceable, the remaining provisions shall continue in full force and effect.

(D) All notices issued between the parties must be in writing and sent via either: (i) 1st Class Mail; (ii) overnight express carriers; (iii) confirmed telefax or (iv) other mutually agreeable method and sent to the other party at the addresses shown below or subsequent address supplied from time to time.

To P&W
Secretary and General Counsel
Providence and Worcester
Railroad Company
75 Hammond Street
Worcester, MA 01610

To CSXT
VP Merchandise Marketing
CSX Transportation, Inc.
500 Water Street, J120
Jacksonville, FL 32202

To CSXI
VP Planning
CSX Intermodal, Inc.
301 West Bay Street, J720
Jacksonville, FL 32202

(E) The execution of this Agreement by P&W acting by and through its President is subject to ratification and approval of P&W's Board of Directors, which ratification and approval shall occur by a special board meeting to be held no earlier than August 26, 1997. Upon such ratification and approval, P&W may advise its shareholders and investment community by means of a letter and press release that it has executed this Agreement with CSXT and CSXI for the movement of traffic between New Haven, Connecticut and Fresh Pond Junction, New York and indicating P&W's support of the Application. The press release will be issued no earlier than November 1, 1997. CSXT shall be provided opportunity to review and comment on such letter and press release and the letter required by paragraph 2.

14. ENTIRE UNDERSTANDING. This Agreement represents the entire understanding of the parties and may not be waived except in writing or modified except by a written amendment. It has been executed by the duly authorized official of each party.

PROVIDENCE AND WORCESTER
RAILROAD COMPANY

By: 

Title: PRESIDENT

CSX TRANSPORTATION, INC.

By: 

Title: VP-Corporate Development

CSX INTERMODAL, INC.

By: 

Title: VP Rail Sales & Contract
M. D. Collins

STB

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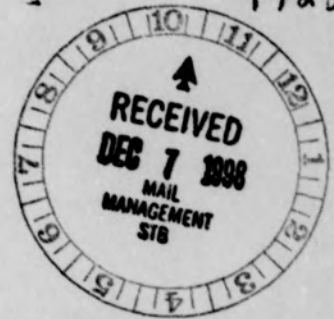
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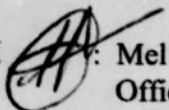
SURFACE TRANSPORTATION BOARD

Memorandum



DATE: December 7, 1998

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

FROM :  Mel Clemens, Director
Office of Compliance and Enforcement

D

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

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

Attachments

cc: Chairman Morgan
Vice Chairman Owen
Ron Douglas
Charles Renninger

J. Randall Evans
Vice President-Acquisition Development

December 7, 1998

Melvin F. Clemens, Jr.
Director Office of Compliance and Enforcement
Surface Transportation Board
Washington, DC 20423-0001

Dear Mr. Clemens:

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

The reports are presented in the following order:

Labor Implementing Agreements	Page 1
Labor Task Force	Page 2
Construction and Other Capital Projects Table	Pages 3-4
Information Technology	Pages 5-9
Customer Service	Pages 10-11
Training	Pages 12-13

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

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

Very truly yours,

J. Randall Evans

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

Paul R. Hitchcock - J150
Senior Counsel

CSX TRANSPORTATION, INC.
STB OPERATIONAL MONITORING REPORT
As of November 30, 1998

Table of Contents

The reports are presented in the following order:

Labor Implementing Agreements	Page 1
Labor Task Force	Page 2
Construction and Other Capital Projects Table	Pages 3-4
Information Technology	Pages 5-9
Customer Service	Pages 10-11
Training.....	Pages 12-13

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

STB OPERATIONAL MONITORING REPORT

As of November 30, 1998

LABOR

The status of the Labor Implementing Agreements is as follows:

Labor Organization	Status
International Brotherhood of Boilermakers, Iron-Ship Builders, Blacksmiths, Forgers and Helpers	Implementing agreement reached.
United Railway Supervisors Association - on behalf of the claim agents	Implementing agreement reached.
United Railway Supervisors Association - on behalf of the engineering supervisors	Implementing agreement reached.
National Conference of Firemen & Oilers	Implementing agreement reached.
American Railway and Airway Supervisors Association, Division of TCU, representing bridge inspectors	Implementing agreement reached.
Fraternal Order of Police	Implementing agreement reached.
American Train Dispatchers Department of the Brotherhood of Locomotive Engineers	Implementing agreement reached.
International Brotherhood of Electrical Worker	Implementing agreement reached.
Sheet Metal Workers International Association	Implementing agreement reached.
<i>United Railway Supervisors Association on behalf of Mechanical Department Supervisors</i>	<i>Implementing agreement reached.</i>
United Transportation Union	Implementing agreement has been reached subject to union ratification.
<i>United Transportation Union - Yardmasters Department</i>	<i>Arbitration on single issue has been concluded in CSXT's favor. Balance of agreement has been negotiated and is out for union ratification. (Balance of agreement ratified 12/1)</i>
Brotherhood of Locomotive Engineers	Implementing agreement has been reached subject to union ratification.
<i>*Brotherhood of Maintenance of Way Employees</i>	<i>Arbitration is scheduled for December 15 through 18.</i>
<i>*Brotherhood of Railway Signalmen</i>	<i>Arbitration is scheduled for December 4.</i>
International Association of Machinist	Implementing agreement has been reached.
Transportation Communication International Clerks Union	Implementing agreement has been reached.
<i>*Brotherhood Railway Carmen Division - TCU and Transport Workers Union of America</i>	<i>Implementing agreement has been reached with TCU (BRC). Arbitration set with TWU.</i>
* The Notice provided for by Section 4 of the <u>New York Dock</u> conditions has been served on each of these unions.	

STB OPERATIONAL MONITORING REPORT

As of November 30, 1998

LABOR

Labor Management Task Force

CSXT continues to send invitations to the unions with which an implementing agreement has been reached and which will continue to represent employees on CSXT to participate in a labor task force similar to the one established with the United Transportation Union. Since the October report invitation letters have also been sent to the Transportation Communications International Union and the International Association of Machinists. To date, the National Conference of Firemen & Oilers and the International Brotherhood of Boilermakers, Ironship Builders, Blacksmiths, Forgers and Helpers has responded to our invitation to participate in a labor task force similar to the one established with the United Transportation Union. CSXT anticipates that many of the other unions will similarly accept the invitation to participate with CSXT in labor task forces.

STB OPERATIONAL MONITORING REPORT

As of November 30, 1998

CONSTRUCTION AND OTHER CAPITAL PROJECTS

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

STB OPERATIONAL MONITORING REPORT

As of November 30, 1998

CONSTRUCTION AND OTHER CAPITAL PROJECTS

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

STB OPERATIONAL MONITORING REPORT

As of November 30, 1998

INFORMATION TECHNOLOGY

Information Technology

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

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

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

STB OPERATIONAL MONITORING REPORT

As of November 30, 1998

INFORMATION TECHNOLOGY

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

STB OPERATIONAL MONITORING REPORT

As of November 30, 1998

INFORMATION TECHNOLOGY

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

STB OPERATIONAL MONITORING REPORT

As of November 30, 1998

INFORMATION TECHNOLOGY

Operating Area	Implementation Strategy	Status	Training
Transportation Locomotive Management	<p>CSX Locomotive Management System will be used to manage locomotives in CSX acquired territory beginning on Day 1. This will occur from the Operations Center in Philadelphia, PA for 180 days after Day 1. The management team in Philadelphia will consist of two locomotive managers and one senior locomotive manager. <i>Dual entry of locomotive assignments will be made to the Conrail Locomotive Distribution System. Shutdown of Conrail LDS will accompany field roll-out and will be dependent upon other Conrail Systems (TRIMS & TMS) no longer relying on assignments being passed from Conrail LDS.</i></p> <p>Within 180 days of Day 1, locomotive management for the acquired Conrail territory will be relocated to the Kenneth Dufford Center in Jacksonville. <i>Two CSX Locomotive Managers will manage the acquired territory at that time.</i></p>	Systems development in process and on schedule	<p>Locomotive managers for the acquired Conrail territory will be trained on the CSX Locomotive Management System 60 days prior to Day 1 with sessions in both Jacksonville, FL and Philadelphia, PA. Management will conduct the training and will include cross training of CSX and Conrail cultures.</p>

STB OPERATIONAL MONITORING REPORT

As of November 30, 1998

INFORMATION TECHNOLOGY

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

STB OPERATIONAL MONITORING REPORT

As of November 30, 1998

CSX Customer Service Progress Report

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

The Transition Process

Data reporting and billing requirements for the MGA coal area and Ashtabula, mentioned in the last report, are still under negotiation with the NS. *A meeting is set for December 9 to seek agreement on how the basic reporting requirements will be met between the two companies.*

Meetings with the Shared Area management continue, with the objective of defining data reporting hand-off procedures between Shared Area personnel and CSXT/NS at terminals located in Detroit, and in North and South Jersey.

In the Technology area, realignment of the Conrail computer system to work with CSXT and NS has been completed. Data is now passing from the Conrail system into the CSXT mainframe, and it is being incorporated into CSXT car movement records.

Personnel

An implementing agreement has been reached with the Transportation Communications Union, enabling the contract employee selection process for CSXT, NS, and the Shared Areas to begin. On November 20, 1998, CSXT issued notice of intent to acquire 183 clerical employees for the operation of the CSXT acquired areas, to be headquartered temporarily in the Pittsburgh NCSC facility. The roll-down process begins December 1, 1998.

Training pilots have now been conducted, and fine tuning of the curriculum is underway. Full-scale training will begin early in the first quarter of 1999. Emphasis will be placed first on training new incumbents in the existing Conrail systems and procedures, and then shift to training these same employees in the CSXT systems they will need to understand to perform their work.

Non-contract managers continue to co-locate in both Pittsburgh and Jacksonville as these procedures are worked out. The objective is to promote a seamless integration of CR/CSXT operations and cultures.

Customer Familiarization

In reference to the Board's inquiry, we will have our Customer Request Log (CRL) System set up to code Conrail acquisition issues and problems. We will be able to identify and run reports upon request. This task is included in our Day One project plan to be completed in November and will be available on Split Day. *We have created and had professionally printed a Customer Welcome Kit that provides a detailed description of our Day One operations from the Customers' perspective. It will be distributed in January.*

STB OPERATIONAL MONITORING REPORT

As of November 30, 1998

Customer Service Progress Report

In connection with the Customer Familiarization process, Revenue Accounting has published the following operational guidelines:

- *Waybills issued on or after Split-Day will show CSXT in the route and will be handled by CSXT (712) for all new acquired territories. Waybills pre-dating Split-Day will be handled to conclusion by Conrail (190) in Philadelphia.*
- *Freight Station Accounting Codes and Open and Prepay Station List numbers have been converted to CSXT versions to be effective Split-Day.*
- *The waybill will govern to whom Loss and Damage claims are to be addressed – i.e., Conrail or CSXT.*
- *Overcharge claims involving waybills dated on or after Split-Day should be addressed to CSXT; claims involving waybills prior to that date should be addressed to Conrail.*
- *CSXT will assume responsibility for settlement of interline switching charges on cars delivered or received on or after Split-Day; Conrail will handle prior movements to conclusion.*
- *Settlement agreements will be entered into by CSXT with short lines connecting with acquired territories, and Car Accounting and Car Repair billing will be handled by CSXT on and after Split-Day.*

Addresses and Telephone numbers are being provided for the offices within CSXT handling each type of transaction outlined above.

STB OPERATIONAL MONITORING REPORT

As of November 30, 1998

STB Status Submission Report on Training

CR Train Control Training Status Report

CSXT Train Control, with support from CSXT Human Resources, has completed its orientation sessions in Jacksonville for the Conrail Train Control managers who will be joining CSXT. CSXT Train Control has selected a team of traveling transition trainers who are making plans to attend their own training in Jacksonville in early January.

Detailed lesson plans, for use by Train Control transition trainers during Split-Date training on the acquired property starting in January, are still in development. These lessons plans will include use of instructional videos, group discussions, hands-on practice, and take-away reference manuals for each participant.

CR Engineering Training Status Report

Engineering training materials development and delivery plans are both still on schedule for rollout in early January and completion by mid-February. A portion of the training materials is already complete and being piloted at selected CR locations to gather formative feedback. The project team, consisting of both CSXT and CR personnel, is finalizing training locations at six sites and finalizing an implementation schedule.

Teams of transition trainers (drawn from the Engineering departments of both CSXT and CR) will conduct training sessions using a detailed instructor's guide and supported by instructional videos, group discussions, hands-on practice, and take-away reference manuals. Members of those teams are preparing for their own training session, to be held in Jacksonville in early January.

Customer Service

During November a pilot class was conducted in Pittsburgh the week of November 16 to test training materials developed for Customer Service Representative at the National Customer Service Center in Pittsburgh. A tentative schedule for training during the first quarter was developed in preparation for Split-Date. Minor changes will be required to the materials prior to start-up of the training. Programming was also completed for the Training RR database that will be used as a basis for hands-on practice exercises for the Customer Service and field operations training.

STB OPERATIONAL MONITORING REPORT

As of November 30, 1998

STB Status Submission Report on Training

Field Transportation Training

A pilot training class was conducted in Jacksonville in early November to test materials for Yardmasters. Local and general chairman attended, representing their craft, and provided some solid recommendations that have now been incorporated into the training curriculum and plan. A schedule of classes has been developed for both Yardmasters and field managers for the Split-Date classes. The new training staff that will deliver this training in the field also came on board and received their trainer training the week of November 16. Actual training for field officers will begin in early December.

A similar pilot training session is being planned for T&E union representatives. A list of facilitators who will assist with training crews in the field has been identified and will receive their trainer training in early January.

Training Sites

Construction is continuing at Buffalo and Stanley Yard. A site test was performed at the West Springfield, Indianapolis and Selkirk facilities.

Norfolk Southern Corporation

STB Operational Monitoring Report

As of November 30, 1998

Reporting Requirement	Page
Item 1. Labor Implementing Agreements.....	2
Item 2. Construction and Other Capital Projects	4
Item 3. Information Technology	9
Item 4. Customer Service.....	12
Item 5. Power and Rolling Stock	*
Item 6. Car Management, Crew Management and Dispatching.....	10
Item 7. Shared Assets Areas	**
Item 8. Monongahela Coal Area	4
Item 9. Cleveland Operations	4
Item 10. Chicago Gateway Operations	**
Item 11. Yards and Terminals	**
Item 12. On Time Performance.....	**
Item 13. The Conrail Transaction Council.....	*
Item 14. Labor Task Forces.....	3

Note: Bold print indicates changes from previous report.

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

** Data not required at this time.

Surface Transportation Board Operational Monitoring Report

As of November 30, 1998

LABOR

Labor Implementing Agreements

Labor Organization	Status
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers	Implementing Agreement reached
United Railway Supervisors Association – on behalf of claim agents	Implementing Agreement reached
United Railway Supervisors Association – on behalf of engineering supervisors	Implementing Agreement reached
United Railway Supervisors Association – on behalf of the mechanical department supervisors for the Conrail properties operated by NS	Implementing Agreement reached
National Conference of Firemen & Oilers	Implementing Agreement reached
American Railway and Airway Supervisors Association, Division of TCU, representing bridge inspectors	Implementing Agreement reached
Fraternal Order of Police	Implementing Agreement reached
International Brotherhood of Electrical Workers	Implementing Agreement reached
Sheet Metal Workers' International Association	Implementing Agreement reached
American Train Dispatchers Department, Brotherhood of Locomotive Engineers	Implementing Agreement reached
International Association of Machinists and Aerospace Workers	Implementing Agreement reached
Transportation•Communications International Union	Implementing Agreement reached.
Brotherhood Railway Carmen – Div. TCU and Transport Workers Union of America	Agreement reached with BRC. Arbitration set for TWU.
United Transportation Union	Agreement reached, subject to ratification
United Transportation Union – Yardmasters Department	Agreement reached, subject to ratification
Brotherhood of Locomotive Engineers	Agreement reached, subject to ratification
Brotherhood of Maintenance and Way Employees	Arbitration hearing set for December 15-18, 1998.
Brotherhood of Railroad Signalmen	Arbitration hearing set for December 4, 1998.

Note: Bold print indicates changes from previous report.

Surface Transportation Board Operational Monitoring Report

As of November 30, 1998

LABOR

Labor-Management Task Forces

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

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

Note: Bold print indicates changes from previous report.

Surface Transportation Board Operational Monitoring Report

As of November 30, 1998

CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location		Project	Dept	Phase	Status
Alexandria	IN	Construct track connection Estimated Completion Date: 4Q98	Track	Design	Complete
				Grading	Complete
				Const	Complete
			Signal	Design Const	Complete Complete
Allentown - Reading	PA	Traffic Control System	Signal	Design Const	In progress
Angola	NY	Upgrade existing siding, construct new siding Estimated Completion Date: Complete	Track	Design	Complete
				Grading	Complete
				Const	Complete
			Bridge	Design Const	Complete Complete
			Signal	Design	Complete
				Const	Complete
Attica	IN	Extend siding 4, 580 track feet Estimated Completion Date: 4Q98	Track	Design	Complete
				Grading	Complete
				Const	In progress
			Signal	Design Const	Complete In progress
Boundbrook	NJ	Extend siding 15,000 track feet Estimated Completion Date: 4Q99	Track	Design	Project being defined.
				Grading	
			Signal	Const Design Const	
Bristol	VA	Extend siding 14,255 track feet Estimated Completion Date: 4Q98	Track	Design	Complete
				Grading	Complete
				Const	Complete
			Bridge	Design Const	Complete Complete
			Signal	Design	Complete
				Const	Complete
Bucyrus	OH	Construct track connection Estimated Completion Date: 4Q98	Land		Complete
			Track	Design	Complete
				Grading	Complete
				Const	In progress
			Signal	Design Const	Complete In progress
Buffalo - Cleveland	NY	Traffic control system and remove pole line.	Signal	Design	In progress
	OH	Estimated Completion Date: 4Q99		Const	In progress
Butler	IN	Construct track connection Estimated Completion Date: 2Q99	Track	Design	Project being defined.
				Grading	
			Signal	Const Design Const	
Chicago	IL	Expand and improve 47th St Yard Intermodal Terminal Estimated Completion Date: 4Q99	Track	Design Grade/Pave	In progress

Surface Transportation Board Operational Monitoring Report

As of November 30, 1998

CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location		Project	Dept	Phase	Status
Cloggsville	OH	Track Rehabilitation Estimated Completion Date: 4Q98	Track	Design	Complete
				Const	In progress
			Bridge	Design Const	In progress
Cloggsville	OH	Construct second main Estimated Completion Date: 4Q99	Track	Design Grading Const	In progress
			Bridge	Design Const	In progress
			Signal	Design Const	
Columbus	OH	Construct track connection Estimated Completion Date: 1Q99	Track	Design Grading Const	Complete In progress In progress
			Signal	Design Const	Complete In progress
Crockett	VA	Construct 9,100 foot new siding Estimated Completion Date: 4Q98	Land		Complete
			Track	Design Grading Const	Complete Complete Complete
			Bridge	Design Const	Complete Complete
			Signal	Design Const	Complete Complete
					Complete
Croxtan	NJ	Expand and improve intermodal terminal Estimated Completion Date: 4Q99	Track	Design Grade/Pave	In progress
E-Rail	NJ	Expand and improve intermodal terminal Estimated Completion Date: 3Q99	Track	Design Grade/Pave	In progress
Erie	PA	Erie Track Realign Project Estimated Completion Date: 4Q99	Track	Design Grading Const	In progress
			Signal	Design Const	
Flemington	NJ	Construct 12,500 foot siding Estimated Completion Date: 4Q99	Track	Design	Project being defined.
			Signal	Grading Const Design Const	
Hadley Jct (Ft Wayne)	IN	Double tracking Estimated Completion Date: 4Q99	Track	Design	Project being defined.
			Signal	Grading Const Design Const	

Surface Transportation Board Operational Monitoring Report
As of November 30, 1998

CONSTRUCTION AND OTHER CAPITAL PROJECTS

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

Surface Transportation Board Operational Monitoring Report

As of November 30, 1998

CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location	Project	Dept	Phase	Status
Philadelphia	PA Construct crossover - Zoo	Track	Design	Project being defined.
	Estimated Completion Date: 4Q99	Signal	Grading Const Design Const	
Piney Flats	TN Extend siding 6,610 feet	Land		Complete
	Estimated Completion Date: 4Q98	Track	Design	Complete
			Grading	Complete
			Const	In progress
		Signal	Design	Complete
			Const	In progress
Port Reading	NJ Chemical Coast Clearance Projects	Track	Design	In progress
	Estimated Completion Date: 4Q99	Bridge	Const Design Const	In progress
Rader	TN Extend siding 5,189 feet	Land		Complete
	Estimated Completion Date: 4Q98	Track	Design	Complete
			Grading	Complete
			Const	In progress
		Bridge	Design	Complete
			Const	Complete
		Signal	Design	Complete
			Const	Complete
Reading - Philadelphia	PA Traffic Control System and remove pole line	Signal	Design	In progress
	PA Estimated Completion Date: 2Q00		Const	
Riverton Jct - Roanoke	VA Clearance projects	Bridge	Design	Complete
	VA Estimated Completion Date: 4Q98		Const	In progress
Sandusky (Bellevue)	OH Construct Triple Crown Terminal	Track	Design	Complete
	Estimated Completion Date: 4Q98		Grade/Pave	In progress
Sidney	IL Construct track connection	Track	Design	Complete
	Estimated Completion Date: 4Q98		Grading	Complete
			Const	Complete
		Signal	Design	Complete
			Const	In progress
Sido	MO Double tracking 36,458 track feet	Track	Design	Complete
	Estimated Completion Date: 4Q98		Grading	Complete
			Const	In progress
		Bridge	Design	Complete
			Const	Complete
		Signal	Design	Complete
			Const	Complete
Sloan	IL Extend siding 5,027 track feet	Track	Design	Complete
	Estimated Completion Date: Complete		Grading	Complete
			Const	Complete
		Signal	Design	Complete
			Const	Complete

Surface Transportation Board Operational Monitoring Report
As of November 30, 1998

CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location		Project	Dept	Phase	Status
Southern Tier	NY	Southern Tier Rehabilitation	Track	Const	Project being defined.
		Estimated Completion Date: 4Q99	Bridge	Design Const	In progress
St Louis (Mitchell)	MO	Expand Mitchell Triple Crown Terminal	Track	Design	In progress
		Estimated Completion Date: 2Q99	Signal	Grade/Pave Design Const	In progress
Toledo	OH	Intermodal Terminal	Track	Design	Project being defined.
		Estimated Completion Date: 4Q99		Grade/Pave	
Tolono	IL	Track Connection	Track	Design	Complete
		Estimated Completion Date: 1Q99		Grading Const	Complete
			Signal	Design Const	In progress
Vermillion	OH	Track Connection	Land		Complete
		Estimated Completion Date: 1Q99	Track	Design	Complete
				Grading Const	Complete
			Signal	Design Const	In progress
				Design Const	Complete
					In progress

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

Surface Transportation Board Operational Monitoring Report

As of November 30, 1998

INFORMATION TECHNOLOGY

Systems Integration

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

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

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

Note: Bold print indicates changes from previous report.

Surface Transportation Board Operational Monitoring Report

As of November 30, 1998

INFORMATION TECHNOLOGY

Systems and Personnel Training

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

Surface Transportation Board Operational Monitoring Report

As of November 30, 1998

INFORMATION TECHNOLOGY

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

Note: Bold print indicates changes from previous report.

Surface Transportation Board Operational Monitoring Report

As of November 30, 1998

CUSTOMER SERVICE

Transition Process

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

Personnel

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

Customer Awareness

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

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

Note: Bold print indicates changes from previous report.

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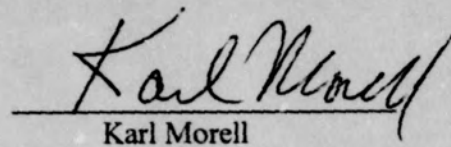
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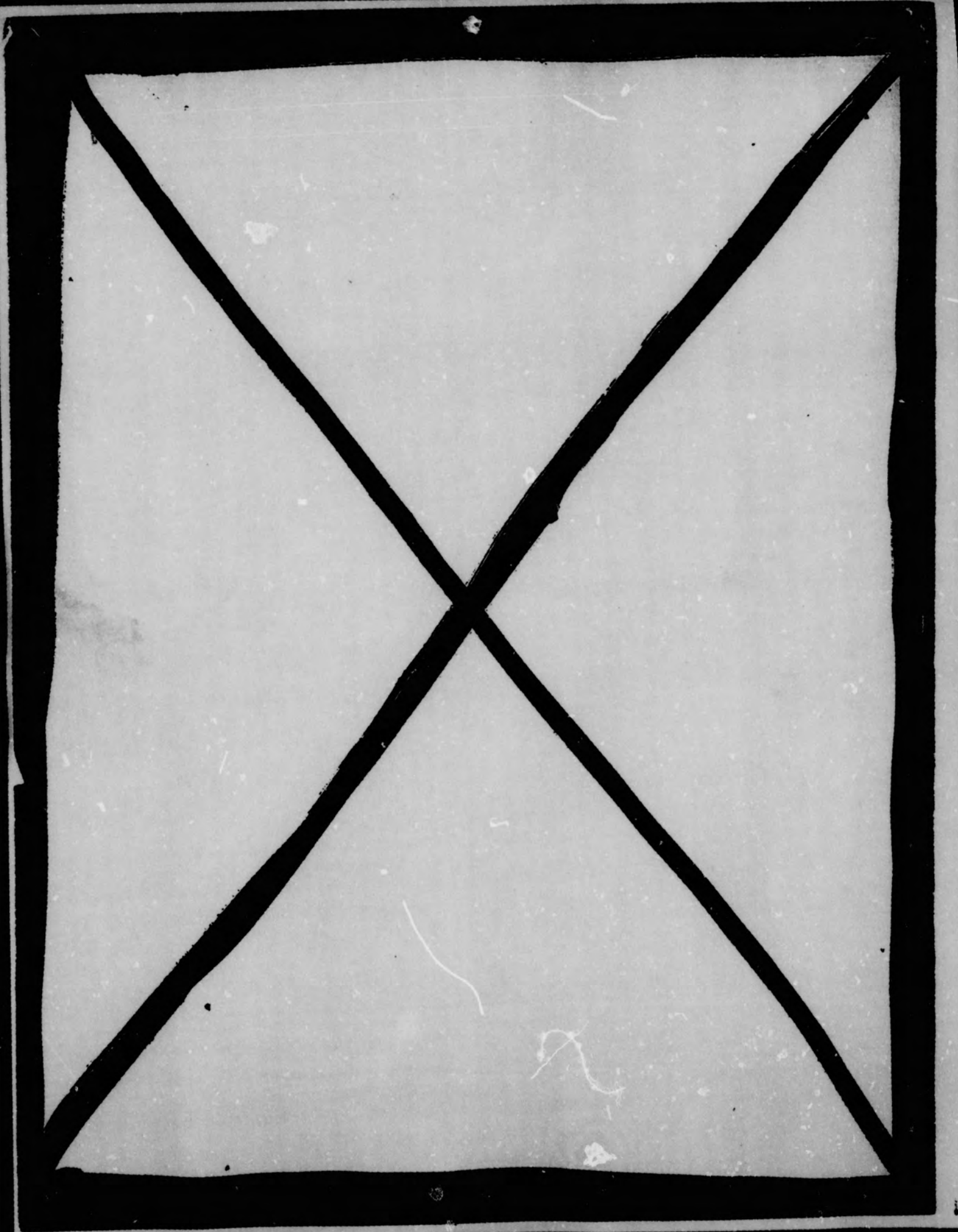
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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 1998, I caused a copy of the Rebuttal of Indiana Southern Railroad, Inc. (ISRR-9), to be served on counsel for Primary Applicants by Hand Delivery and on Administrative Law Judge Jacob Leventhal and all other Parties of Record by first class mail, postage prepaid.


Karl Morell



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12-4-98

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ZUCKERT SCOUTT & RASENBERGER, L.L.P.
ATTORNEYS AT LAW

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Telephone [202] 298-8660 Fax [202] 342-0683

RICHARD A. ALLEN

DIRECT DIAL (202) 973-7902
raallen@zsrllaw.com

ENTERED
Office of the Secretary

December 4, 1998

DEC 04 1998

Part of
Public Record

BY HAND

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



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

Dear Secretary Williams:

I enclose herewith an original and 25 copies of NS-72, Reply of Norfolk Southern to CSX Request for Expedited Consideration of CSX Petition for Order Declaring Certain Contract Provisions Null and Void. A 3-1/2" computer disk of this document in Wordperfect 5.1 format, which is capable of being read by Wordperfect for Windows 7.0 is also enclosed.

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

cc: All Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388



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

**REPLY OF NORFOLK SOUTHERN TO CSX REQUEST FOR EXPEDITED
CONSIDERATION OF CSX PETITION FOR ORDER DECLARING CERTAIN
CONTRACT PROVISIONS NULL AND VOID**

JAMES C. BISHOP, JR.
WILLIAM C. WOOLDRIDGE
J. GARY LANE
GEORGE A. ASPATORE
GREG E. SUMMY
JOHN V. EDWARDS
Norfolk Southern Corporation
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(757) 629-2838

RICHARD A. ALLEN
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Suite 600
Washington, D.C. 20006-3309

Counsel for Norfolk Southern Corporation
and Norfolk Southern Railway Company

December 4, 1998

NS-72

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388



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

**REPLY OF NORFOLK SOUTHERN TO CSX REQUEST FOR EXPEDITED
CONSIDERATION OF CSX PETITION FOR ORDER DECLARING CERTAIN
CONTRACT PROVISIONS NULL AND VOID**

Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") were served late December 2, 1998 with a copy of a "Petition of CSX Corporation and CSX Transportation, Inc. For Order Declaring Certain 'Requirements' Provisions of Certain Contracts of their Intermodal Affiliate Which Would Have An Anti-competitive Effect After the 'Split Date' Null and Void" (CSX-168). Appended to that petition is a "Request for Expedited Treatment" which asks "that the Board expedite its consideration of this matter and to assist in that, to require that NS file its reply within twelve (12) days of this filing, as the Board is entitled to provide under 49 C.F.R. § 1104.13(a)."

NS intends to file a reply in opposition to the substantive relief sought in CSX's petition, and intends to do so within 20 days of the service of that petition (i.e., on or before December 22, 1998) as provided by 49 C.F.R. § 1104.13(a) unless the Board orders otherwise. NS files this

reply to the CSX request for expedited consideration. NS does not object to the Board's giving prompt consideration to CSX's petition, but it does object to and oppose CSX's request that NS be required to answer the petition in less than the normal 20 days that § 1104.13(a) provides for replies.

CSX provides no plausible reason for requiring NS to reply to its petition in less than the normal 20 days. Although meritless, CSX's petition raises a number of novel theories and seeks unprecedented relief that would have a substantial adverse impact on NS. Those issues warrant a full and careful response from NS.

Furthermore, CSX offers no explanation for why it or CSX Intermodal waited until December 2, 1998 to bring this matter to the Board's attention. If there is any need for expedited consideration of this matter, it is the result solely of their failure to raise it sooner. The gist of CSX's petition is that two transportation contracts entered into years ago, one between CSX Intermodal and Conrail and one among CSX Intermodal, NS and a third railroad, will become anti-competitive on the "Split Date" and therefore should be invalidated by the Board. CSX, however, acknowledges that neither it nor CSX Intermodal ever raised this alleged competitive problem with the Board, either in the Conrail control proceeding Application or thereafter. If CSX Intermodal had concerns about the allocation of one of its transportation contracts, or if CSX truly believed that a particular Conrail transportation contract would present competitive problems after consummation of the Transaction and should be invalidated, surely it was incumbent upon CSX Intermodal or CSX to bring those concerns to the Board's attention in the Application, or at least long before the Board's final decision approving the Application.¹

¹ See, Finance Docket No. 33388, CSX Corp. and CSX Trans., Inc., Norfolk Southern Corp. and Norfolk Southern Ry. Co. - Control and Operating Leases/Agreements - Conrail Inc. and (continued...)

Certainly NS had no obligation or reason to raise with the Board concerns of CSX with which NS does not agree. NS is not even a party to one of the contracts at issue and was unaware of its terms until after the Board's decision approving the Application became effective.

In short, CSX's inaction provides no basis for reducing the time available to NS to address the substantial issues raised by CSX's petition. Moreover, if NS files its response on or before December 22, 1998, the Board will have ample time to rule on CSX's petition before the "Split Date" targeted for March 1, 1999.

Finally, neither the interests of competition nor CSX's interest demand haste in this matter. CSX acknowledges that it has means available to it to avoid the threatened harm it perceives (CSX Pet. at 21). Further, while it professes concern that those means might lead NS to claim breach of contract and to seek redress by arbitration (*id.*), CSX should know that CSX Intermodal already has initiated arbitration over the one contract to which NS is a party.² That arbitration directly relates to the minimum volumes and trainset requirements complained of by CSX in its petition to the Board. CSX Intermodal also has attempted to terminate, and is not moving any traffic under, that contract.

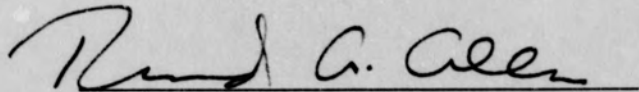
(...continued)

Consolidated Rail Corp., Decision No. 93, served September 3, 1998 (denying the petition of the Indiana Rail Road Company -- another CSX subsidiary -- to intervene after the Board's approval of the Application).

² Indeed, since both of the contracts at issue, as well as the Transaction Agreement among CSX, NS and Conrail, require arbitration of all disputes arising under them, there is a substantial question whether the Board is the proper forum for the issues raised by CSX's petition.

Accordingly, the Board should deny CSX's request that NS be required to file its response to CSX's petition within 12 days.

Respectfully submitted,



RICHARD A. ALLEN

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JAMES C. BISHOP, JR.
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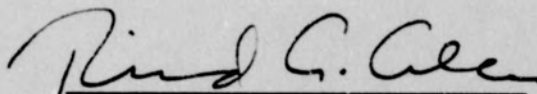
Counsel for Norfolk Southern Corporation
and Norfolk Southern Railway Company

December 4, 1998

CERTIFICATE OF SERVICE

I, hereby certify that on this 4th day of December, 1998, I have served the foregoing NS-72, Reply Of Norfolk Southern To CSX Request for Expedited Consideration of CSX Petition For Order Declaring Certain Contract provisions Null and Void, 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



Richard A. Allen

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FACSIMILE: (202) 942-5000

DENNIS G. LYONS
(202) 942-5858

NEW YORK
DENVER
LOS ANGELES
LONDON

December 2, 1998

VIA HAND DELIVERY

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

ENTERED
Office of the Secretary

DEC 02 1998

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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 -- Sub-No. 69, Responsive Application -- State of New York, et al. -- CSX-167**

Dear Secretary Williams:

As promised in my letter of November 30, 1998, filing CSX-167, I now enclose the manually signed original of the Verified Statement of R.R. Downing, which was submitted to the Board on November 30 only in "faxed" form.

Respectfully yours,

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

Enclosure

cc: All Parties to the Service List
for Sub-No. 69

192479

VERIFIED STATEMENT OF
R.R. DOWNING



My name is R. R. Downing and I am General Manager-Service Delivery for Conrail's Albany Division, a position that I assumed in June, 1996. I began my railroad career with Conrail in 1977 in Philadelphia and since that time have held a variety of positions in Conrail's Transportation Department. In my current position, I have responsibility for transportation matters on Conrail's Albany Division which includes the line between Selkirk Yard and Oak Point Yard and Fresh Pond Junction in New York City.

The purpose of my statement is to describe the trackage between Selkirk and Fresh Pond Junction and to explain the train operations over that trackage today. I will also detail what I perceive CP's operations over this trackage to be following the split of Conrail's property.

It is approximately 125 miles between Oak Point Yard in the Bronx and Conrail's Selkirk Yard in Albany. The trackage north of Milepost 75.8 between Poughkeepsie and Albany is owned by Conrail. Currently, Conrail has two main line tracks between Poughkeepsie and Albany. Conrail operates over Track No. 1 and Amtrak operates over both Track No. 1 and Track No. 2.

The trackage south of Milepost 75.8 to the Oak Point Link Running Track in the Bronx is owned by Metro North Commuter Railway ("Metro North"). The Oak Point Link Running Track is owned by the State of New York and connects Metro North's trackage to Oak Point Yard in the Bronx. The Harlem River Trailvan Terminal is an intermodal facility that is located approximately one (1) mile from Oak Point Yard. The trackage owned by Metro North between Mileposts 75.8 and 7 is comprised of no less than double track the entire distance. At some points along the trackage there are three (3) tracks and closer to New York City there are four (4) main line tracks.

At approximately Milepost 33, Conrail owns and maintains its Croton West Yard. There are no passing sidings on this stretch of railroad between Oak Point Yard and Albany although Conrail may use its Track No. 2 between Mileposts 94 and 89 to meet and pass trains, but only if absolutely necessary and at considerable expense to Conrail.

The trackage described above is extremely congested today. Metro North operates 47 commuter trains northbound and 55 commuter trains southbound on a daily basis between Harmon and Grand Central Terminal. Metro North operates 26 commuter trains northbound and 25 commuter trains southbound on a daily basis between Poughkeepsie and Grand Central Terminal. Amtrak operates 13 trains northbound and 12 trains southbound on a daily basis between Poughkeepsie and Albany on Conrail's Hudson Line and on Metro North's portion of the Hudson Line.

Conrail operates one (1) merchandise train per day in each direction between Oak Point Yard and Selkirk Yard. In addition, Conrail operates approximately two (2) trash trains a week in each direction between Oak Point Yard and Selkirk Yard. Conrail has been advised that the number of trash trains in the future is expected to increase to seven day a week service with as many as two (2) trash trains per day in each direction.

Finally, today Conrail provides local service between Oak Point Yard and Selkirk Yard through the use of three (3) local trains. One (1) local operates daily between Oak Point Yard and Croton West Yard. A second local operates daily from Poughkeepsie to Croton West Yard. The third local operates 5 to 6 days a week from Selkirk to the ADM plant at Hudson.

With respect to the volume of traffic handled by Conrail on its Hudson Line between Selkirk Yard and Oak Point Yard, I estimate that approximately 80 percent of that traffic originates or terminates in the Bronx, Queens, or by interchange with the New York and Atlantic. Almost all of this is going to or coming from Selkirk and beyond. Obviously, if the number of trash trains dramatically increases as I have been led to believe, this percentage will become even higher.

The two (2) merchandise through trains which are operated daily by Conrail switch crews just south of Poughkeepsie. In other words, the crew that starts out at Oak Point Yard on the northbound train returns to Oak Point Yard on the southbound train. The crew that starts out on the southbound train from Selkirk Yard returns to Selkirk on the northbound train.

Conrail interchanges traffic in New York City's Borough of Queens with the New York and Atlantic Railroad ("NY&A") at Fresh Pond Junction. In order to accomplish this interchange, Conrail traverses its 7.6 mile Freemont Industrial Branch out of Oak Point Yard to Fresh Pond Junction, which includes crossing the Amtrak-owned Hell Gate Bridge.

Because of the heavy congestion on Metro North's trackage between Milepost 7 and Milepost 75.8 at Poughkeepsie, Conrail has only an eight (8) hour window in which it can operate on that segment of trackage. That operating window of opportunity is between 8:30 p.m. and 4:30 a.m. Even during that eight (8) hour period Conrail trains are frequently delayed because of the commuter traffic, and ongoing maintenance on Metro North's trackage.

With respect to CP operating on the trackage between Albany and Oak Point Yard, I would suggest that CP enter Conrail property at its connection with Conrail's Albany Secondary Track and proceed approximately 7.1 miles to Selkirk. CP already operates over

this segment of trackage today to interchange with Conrail. At Selkirk, the preferred handling will be over a progressive switch connection to be constructed by CP from the Albany Secondary Track to Conrail's Selkirk Branch at CP SK. Thereafter, the movement will traverse Conrail's Selkirk Branch which is approximately 12.7 miles long. The Selkirk Branch will take CP to Conrail's Hudson Line at approximately Milepost 125 where CP will use Conrail's Track No. 1 to Poughkeepsie. At Poughkeepsie, CP will enter Metro North's trackage to the Oak Point Link Running Track in New York City. The Oak Point Link Running Track will take CP to Oak Point Yard. When operating over Metro North's trackage south of Poughkeepsie, CP will be subject to the same eight (8) hour window that Conrail operates under today.

TRANSMISSION VERIFICATION REPORT

TIME : 11/30/1998 11:07
NAME :
FAX :
TEL :

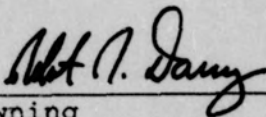
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VERIFICATION

I, R.R. Downing, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on November 30, 1998.



R.R. Downing

STB

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10-30-98

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LAW OFFICES

REA, CROSS & AUCHINCLOSS

ENTERED
Office of the Secretary

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KEITH G. O'BRIEN

BRYCE REA, JR.

BRIAN L. TROLANO

ROBERT A. WIMBISH

OCT 30 1998

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Public Record

DONALD E. CROSS (1923-1986)



October 30, 1998

ORIGINAL

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

RE: CSX Corporation/Norfolk Southern Corporation
-- Control and Operating Leases/Agreements --
Conrail; Finance Docket No. 33388

Dear Secretary Williams:

I am writing on behalf of the Wheeling & Lake Erie Railway Company ("W&LE"), in connection with the above-captioned proceeding, to respond to a letter drafted by counsel for CSX Corporation and CSX Transportation, Inc. (hereafter, "CSX") and filed with the Board on October 23, 1998. This letter addresses, and should hopefully resolve, that there is no basis for claimed confusion regarding the status of negotiations between CSX and W&LE on the issue of W&LE's access to Lima, Ohio. I am submitting this letter because Counsel for CSX specifically requests W&LE to further explain its report on Lima access issues as presented in W&LE-10. See, CSX letter filing of October 23, 1998 at 3.

The fact is, while negotiations between W&LE and CSX have been fruitful, W&LE has always maintained the position that the Board extended to it access to industry at Lima. (As it represented in W&LE-10, local access to industry at Lima gives the Board's protective conditions sufficient scope and application to sustain W&LE's prospective operations to this new market.) W&LE's negotiations with CSX have progressed despite disagreement over the scope of W&LE's presence at Lima and as to W&LE's local rights between Benwood and Brooklyn Junction. At no point in its negotiations with CSX did W&LE ever represent that it was relinquishing its position regarding its asserted right to access local industry at Lima.

W&LE asks the Board to consider that W&LE negotiated with NS in an identical context with respect to W&LE's proposed operations to and from Toledo, Ohio. As is the case with CSX and W&LE on the Lima access issue, W&LE and NS do not agree on the

proper interpretation of the Board's Decision No. 89 as it bears on W&LE's newly-gained access to Toledo. Specifically, W&LE believes that the Board has granted it access to local industry at Toledo, while NS asserts that the Board permitted W&LE Toledo access for the much more limited purpose of permitting W&LE only to interchange with the Canadian National and the Ann Arbor Railroads. See, W&LE-10 at 5 and 17, 18 and NS report of 10/21. Nonetheless, W&LE and NS agreed to disagree, understanding that they would have to appeal to the Board for further instruction on the Toledo access issue, and moved forward with the remaining business of identifying the route by which W&LE would reach Toledo and establishing the trackage rights fees W&LE would pay for overhead trackage rights operations. NS' counsel properly understood that the arrangements the parties had agreed to concerning Toledo did not constitute the beginning and end of negotiations.

The situation with CSX and W&LE at Lima is no different. From the outset of negotiations W&LE has made it very clear that it seeks access to local industry at Lima as a component of the protective relief the Board extended to W&LE.¹ CSX, like NS has done with Toledo, rejected any proposal that would permit W&LE to serve industries at Lima. But that disagreement did not deter the parties from designating a W&LE trackage rights route to Lima or forging an agreement on the overhead trackage rights fees W&LE would pay to get to Lima. W&LE understood that the parties were expected to reach an accord where they could, and seek additional guidance from the Board where impasse blocked full resolution. W&LE never represented to CSX that the agreements it had reached concerning Lima

¹ To prove that CSX was well aware of W&LE's position on Lima, we have attached as Exhibit A a copy of a meeting summary for August 13, 1998, which was prepared subsequent to a scheduled settlement meeting of NS, CSX and W&LE representatives. This document was distributed to all three parties, and shows that, among the matters discussed at that meeting was W&LE's proposed access to Lima industry. More than that, correspondence between the parties confirms that impasse exists regarding the scope of W&LE's presence at Lima. Attached hereto as Exhibit B are two letters from W&LE to Mr. John H. Friedmann (NS Director of Strategic Planning) as evidence of the Lima impasse. The first letter, dated October 2, 1998, emphasizes W&LE's conviction that the Board granted it access to industry at Lima. The second letter, dated October 16, 1998, informs Mr. Friedmann that W&LE and CSX have reached an impasse on the scope of W&LE's access to Lima. As the letters show, copies of each were delivered to Peter J. Shudtz, Esq. -- CSX's Vice President Law and General Counsel.

Hon. Vernon A. Williams
October 30, 1998
Page Three

constituted a comprehensive arrangement. Nor did W&LE ever convey to CSX that it was abandoning any claim to serve local industry at Lima. Thus, given the similarity between W&LE's negotiations with NS and CSX, W&LE is mystified as to why and how CSX's counsel could have come to conclusions about Lima that contrast so starkly to NS-W&LE negotiations on Toledo.

W&LE does not take issue with David Houchin's verified statement (hereafter, "Houchin V.S."), attached to CSX's October 23rd letter. Indeed, it appears to be a short and concise statement of where and to what extent CSX and W&LE have been able to reach an accord on Lima. Importantly however, Mr. Houchin does not allege that he was misled concerning the scope of the agreements he had reached with W&LE as to Lima. Mr. Houchin never represents that the agreements forged between W&LE and CSX constituted what he understood to be a "comprehensive" agreement on all aspects of W&LE's proposed service to Lima. Finally, Mr. Houchin does not express dismay, or confusion at the fact that W&LE's report to the Board (W&LE-10) identifies a remaining impasse between CSX and W&LE regarding the scope of W&LE's access to Lima and access to the Benwood to Brooklyn Junction line.

Mr. Houchin acknowledges that he had no discussions with W&LE concerning the "right to serve local customers along the route [to Lima]." Houchin V.S. at 1-2. He does not assert, however, that he interpreted the lack of discussions on this matter to mean that W&LE no longer sought access to industry at Lima.² To the contrary, W&LE's president and COO, Steven Wait, met personally with Mr. Houchin on the Lima matter. As Mr. Wait recalls, although the two men reached agreements on some Lima-related matters, he did not engage in conversations with Mr. Houchin regarding local access to Lima industry for two reasons. First, he did not believe that Mr. Houchin had been authorized to make any concessions on this specific subject. See, Verified Statement of Steven W. Wait ("Wait V.S."), attached hereto as Exhibit C. Second, Mr. Wait understood that the parties were exploring agreements for Lima to the extent that they could agree, and that any further discussions on local access to Lima

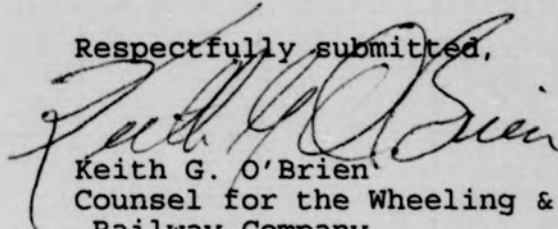
² W&LE must point out that it never asked for local trackage rights to Lima, such that it would be permitted to serve all customers along the Carey - Upper Sandusky - Lima route. Instead, W&LE believes that the Board extended to it the right to develop traffic at Lima sufficient to sustain its operations to this market, including access to local industry at that location. Thus, W&LE would not have engaged in any discussions to serve local customers along the route to Lima, as Mr. Houchin properly noted.

Hon. Vernon A. Williams
October 30, 1998
Page Four

industry (if any, considering the pre-existing impasse) would have to be pursued by other W&LE and CSX officials -- specifically, William Callison and Larry Parsons of W&LE and Peter Shudtz of CSX. Id. at 2. Finally, Mr. Wait makes very clear that he did not convey to Mr. Houchin that W&LE was, by virtue of the agreements successfully reached, abandoning its position that the Board granted to W&LE access to industry at Lima. Id. at 2. Again, W&LE invites the Board to compare counsel's interpretation of CSX-W&LE Lima issues against the NS-W&LE agreements (and remaining impasse) concerning Toledo.

As stated at the beginning of this submission, W&LE offers this response to CSX's October 23rd letter. Indeed, as W&LE has endeavored to make absolutely clear by this letter, there is no basis for confusion or misunderstanding of W&LE's consistent position concerning local access at Lima. The facts simply do not support the proposition that W&LE and CSX had come to a "comprehensive" agreement on all Lima issues. W&LE hopes that it has made at least that much clear through this letter.

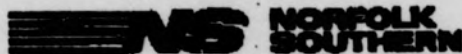
Respectfully submitted,



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

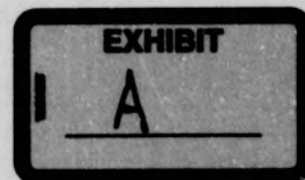
cc (via hand delivery):

Dennis Lyons, Esq.
Richard Allen, Esq.



Norfolk Southern Corporation
Strategic Planning
Three Commercial Place
Norfolk, Virginia 23510-2191
757 629-2987

John H. Friedmann
Director, Strategic Planning



Writer's Direct Dial Number

(757) 533-4943
FAX: (757) 533-4884

Mr. Larry R. Parsons
Chairman and Chief Executive Officer
Wheeling and Lake Erie Railway Company
100 East First Street
Brewster, OH 44613
August 19, 1998

Dear Larry:

Please find below a summary of the items discussed at our meeting of August 13.

Although we are negotiating these items as an overall package, I have tried to narrow the issues by noting those sub-items on which agreement was reached. Please let me know if you feel anything on the summary is inaccurate.

I will be in contact soon to arrange the hi-rail to Toledo.

Sincerely,

John H. Friedmann

cc: John Edwards
Chris Jenkins
Jim McClellan
Peter Shultz

Copies to:
Lip
[Signature]

Operating Subsidiary: Norfolk Southern Railway Company

W&LE/CSX/NS Meeting Summary

August 13, 1998

Rights to Toledo

- Agree that W&LE will reach Ann Arbor and CN
- W&LE believes STB granted rights to directly serve local Toledo industry
- NS and CSX believe no such industry access was granted
 - ACTION: John Friedmann will provide a summary of AA and CN reciprocal switching rights in Toledo so W&LE can determine if this is an issue or not
- Agree W&LE will use trackage rights rather than haulage rights
 - Capital investment is required at Bellevue (see below)
- Agree compensation will be NS/CSXT standard
- NS proposed two routes
 - Bellevue - Toledo via NS
 - Requires W&LE purchase of NS bridge
 - NS willing to sell bridge for nominal sum in exchange for trackage rights over bridge
 - W&LE asked for usage of tracks in NS Homestead Yard for interchange with AA
 - Bellevue - Toledo via NS - Oak Harbor - CR (with use of portion of CSXT to get to AA, CN)
- ACTION: NS will provide W&LE with hi-rail inspection of these lines (John Friedmann is contact)
- No head-on-connection exists at Bellevue between W&LE lines and NS route to Toledo
 - Capital investment required to restore head-on connection
 - ACTION: John Friedmann to investigate pending changes to "mini-plant" interlocking at Bellevue to see what would be required to restore such a connection.

Rights To Lima

- Agree that W&LE will reach Indiana and Ohio Railway
- W&LE believes STB granted rights to serve Lima industry
- NS and CSX believe no such industry access was granted
- Agree W&LE will use trackage rights rather than haulage rights
- Agree that compensation will be NS/CSXT standard
- Three routes were discussed
 - Carey - Upper Sandusky - Lima via CSXT
 - Carey - Fostoria - Deshler - Lima via CSXT (not discussed in detail)
 - Bellevue - Fostoria - Lima via NS
 - Capital investment will be required to make connection with I&O due to lack of connection tracks (existing tracks are interchange tracks)
- ACTION: NS and CSXT to provide W&LE with hi-rail inspection of these lines (John Friedmann is NS contact, Steve Potter is CSXT contact)

Extension of Huron Dock Lease:

- NS is unwilling to sell Huron Dock
- NS proposed extending term of 5 years
- W&LE proposed extending term of 15 years
- W&LE would like to reduce commodity restrictions
 - ACTION: W&LE will provide a list of exceptions to commodity restrictions they would like NS to consider.
- Rental increase to be negotiated
 - No specifics discussed
 - ACTION: NS has appraisal under way (not discussed at meeting)

Mutually Beneficial Items

- No mutually beneficial aggregate-related items have been identified to date
- W&LE believes it was granted local access to CSXT Benwood - Brooklyn Junction line
- CSXT believes no access to Benwood - Brooklyn Junction was granted

Other Items

- W&LE offered NS trackage rights between Orrville and Bellevue
 - Terms and value exchange not discussed
- CSXT asked W&LE to consider portions of W&LE system that might be for sale (NS not in room for discussion)

WHEELING & LAKE ERIE RAILWAY COMPANY

Larry R. Parsons
Chairman & Chief Executive Officer

100 East First Street
Brewster, OH 44613

330-767-3401 (Ext. 1293)

Fax: 330-767-4327

VIA FAX AND MAIL

October 2, 1998

Mr. John H. Friedmann
Director, Strategic Planning
Norfolk Southern
Three Commercial Plaza
Norfolk, VA 23510-2191

Dear John:

Thank you for the recent hi-rail trip which you hosted from Bellevue to Toledo, Ohio. It was a great opportunity to see both NS and CR routes. Based on that trip we elect to move W&LE traffic via NS - Homestead - Front Street-Maumee River Bridge to AA and CN direct via trackage rights at the rate agreed to. We send this letter as a follow-up to your letter and to summarize our position to move negotiations forward.

To begin with issues involving Toledo, W&LE was granted "access to Toledo," with connections to AA and other railroads. This would include interchanges with NS and CSX as well as all other railroads in Toledo. We believe the STB's decision contemplates W&LE access to local industries and does not limit connections at Toledo only to Ann Arbor and CN. However, in the spirit of compromise we would be willing to accept reciprocal switch rights within the terminal area with charges set at the lowest current published rate of \$184/car. We have agreed to trackage rights charges at your NS/CSXT "merger" rate of 29¢/car mile and, as noted above, we elect to take the current NS route to Toledo. We will attempt to negotiate appropriate facilities at Homestead Yard. We would initiate trackage rights to Toledo through Bellevue after merger implementation but propose that the former Toledo connection at Bellevue be reconstructed in a timely manner with an equal capital contribution by NS and the W&LE. The reconstruction of the Toledo connection would allow both railroads to operate more efficiently through the miniplant and for the NS it would also decrease congestion in this critical area. We would propose the reconstruction of the connection after mutually agreeing on costs and estimates of engineering, signaling and construction plans. We also propose that maintenance of the new diamond and connection be based upon our proportionate share of the traffic over the new joint facilities.

The STB directed that W&LE is to be afforded rights to Lima with a connection to IORY. We believe the Board intended, in order to make those rights viable, that the W&LE have access to serve local industry. We propose that access be accomplished through a reasonable reciprocal switch rate with the Applicants equal to the lowest current rate. Again, we agree to a trackage rights charge of 29¢/car mile. We look forward to choosing an appropriate route and to see these routes on a joint CSXT/CR hi-rail trip on October 12 or 13 as is currently being arranged by Dave Houchin of CSXT.

John H. Friedmann
October 2, 1998
Page Two.

As you know from our discussions, continued access to Lake Erie at Huron Dock is critical to the customer we serve and to our survival. We propose a 15-year extension of the Lease with continuous fifteen-year rollovers. We propose that NS only have the right to terminate if W&LE is found in default of the Lease and W&LE will have the right to terminate on six months notice if business off the dock diminishes. We would agree to continue the reasonable compensation currently in place until the lease payments equal an agreed upon appraised value, at which time the Dock would become the property of the W&LE. The trackage rights to the dock should likewise be modified and made permanent. Finally, we propose those commodity restrictions for traffic on and off the dock to be lifted, except that we would agree to a coal commodity restriction.

The STB also directed us to negotiate an agreement concerning mutually beneficial arrangements "including allowing W&LE to provide service to aggregate shippers or to serve shippers along CSX's line between Benwood and Brooklyn Junction" and to inform the Board of agreements reached. We believe that the Board expected that the parties would negotiate agreements and asked that we implement them with mutually agreeable terms. We have accepted, for example, both NS and CSX trackage rights charges. However, the CSX and NS take the position that W&LE rights from Benwood to Brooklyn Junction are not mutually beneficial to CSX and thus there is nothing to negotiate. You conclude the STB did not intend to grant W&LE access to Benwood-Brooklyn Junction. NS and CSX have also stated that there are no aggregate-related issues that are mutually beneficial or worthy of discussion. We believe these positions are contrary to the requirements of the STB order.

We appreciate finding areas where we can agree and remain committed to negotiating good faith resolutions, however with your current positions we remain far short of meaningful remedial measures which could keep us viable. We would appreciate knowing as soon as possible your response to our proposals and we are prepared to meet in person or by phone at anytime to attempt to resolve our issues.

Very truly yours


Larry R. Parsons

LRP:sld

C: James W. McClellan, NS-Senior VP Planning
Peter J. Shultz, Esq., CSX-VP Law & General Counsel
Christopher P. Jenkins, CSX-VP Chemicals Marketing

BC: S. W. Wait
R. M. Thompson
W. B. Callison

(Signed and initialed by company)

K. G. O'Brien

WHEELING & LAKE ERIE RAILWAY COMPANY

Larry R. Parsons
Chairman & Chief Executive Officer

100 East First Street
Brewster, OH 44613

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Fax: 330-767-4327

VIA FAX: (757) 533-4884
AND U.S. MAIL

October 16, 1998

Mr. John H. Friedmann
Director, Strategic Planning
Norfolk Southern
Three Commercial Plaza
Norfolk, Va 23510-2191

Dear John:

This letter will attempt to clarify issues discussed in our conference call of the 15th.

TOLEDO

We have agreed to use the NS route to Oak Harbor - Homestead Yard - Maumee River Bridge to interchange with CN and AA and other Toledo railroads. You have agreed to investigate the issues of the connection at the mini-plant at Bellevue. We have agreed that NS and W&LE will share costs of the reconstructed Toledo connection up to a reasonable cap. We anticipate we will begin using the Toledo Trackage rights on the "closing" date. You will tell us when you will no longer need the Maumee River Bridge and at that time sell the bridge to us for \$1.00. We have agreed to trackage rights charges at the NS/CSX merger rate of 29¢/car mile and NS will draft the trackage rights agreement and the NS rights back over the bridge with a reasonable per car bridge charge. Your letter rejects any access by Wheeling to Toledo local industry. Since you decline to discuss any alternative access except interchange, we are apparently at an impasse on this issue.

LIMA

Because we have chosen the CSXT Lima route we need to discuss Lima issues with CSXT but we again have impasse on the issue of local access.

HURON DOCK

We understand your proposal to be an initial five year term with a yet unknown lease rate with another five year term with the lease rate to be agreed upon at the end of the first 5 years or submitted to binding arbitration.

John H. Friedmann
October 16, 1998
Page Two.

We propose the following for your consideration. An initial 5 year term at the current lease rate with 5 additional 5 year rollovers. At the end of each five year term the lease rate would either be agreed upon or submitted to binding arbitration. We would accept sharing the dock with NS for a mutually agreeable rental reduction so long as NS did not unreasonably interfere with our use of the dock. The following are the commodities we would like the freedom to move off the dock:

- 1) Iron or Steel Articles, including
 - Hot Iron Briquettes or Pellets
 - Cold Iron Briquettes or Pellets
 - Iron Fines
 - Scrap Iron or Steel
- 2) Iron Ore
- 3) Lime Products and Lime Stone Products
- 4) Gypsum
- 5) Cement/Concrete/Cement Products

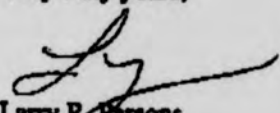
We would like your expedited consideration of this proposal so we can decide whether we can reach agreement on Huron Dock issues or submit the issue to the STB for expedited determination.

AGGREGATES AND BENWOOD TO BROOKLYN JUNCTION

We understand that single line issues relating to aggregate traffic have been resolved. We understand that NS and CSX intend to handle the aggregate traffic from the quarry and to the destinations we requested in our Responsive Application and that only "new" or current aggregate truck traffic is open for consideration. We do not believe that the aggregate traffic now moving by truck would move to NS destinations in sufficient volume to be of any real benefit to W&LE. CSXT refuses to discuss Benwood to Brooklyn Junction or even to allow a hi-rail inspection so we clearly are at an impasse on these issues.

We continue to believe that trackage rights from Bellevue to Orrville would be mutually beneficial and continue our offer of those rights.

Very truly yours,


Larry R. Parsons

LRP:sld

C: James W. McClellan - NS, Senior VP Planning
Peter J. Shultz, Esq. - CSX, VP Law & General Counsel
Christopher P. Jenkins - CSXT, VP Chemicals Marketing

bcc: LRP-SWW-RMT-WAC-MDM

VERIFIED STATEMENT OF

STEVEN W. WAIT

My name is Steven W. Wait. I am the President and Chief Operating Officer of the Wheeling & Lake Erie Railway Company ("W&LE"). My business address is 100 East First Street, Brewster, Ohio 44613. I am tendering this verified statement in response to a Surface Transportation Board filing dated October 23, 1998, submitted by CSX Corporation's and CSX Transportation, Inc.'s (collectively, "CSX") Washington, D.C.- based counsel.

I entered into negotiations with CSX's David Houchin -- the author of the verified statement attached to CSX's October 23rd filing -- with the objective of securing for W&LE the route and the general terms for trackage rights to Lima, and with the understanding that we would not be discussing the scope of W&LE's local access to Lima. Local access issues, I understood, were beyond the scope of the meetings that Mr. Houchin and I had scheduled. Thus, W&LE concluded that, even though it might not agree with CSX concerning the scope of W&LE's access to industry at Lima, this should not deter the parties from securing for W&LE trackage rights to get to Lima. This is what we had also done with NS - agreed where we could and allowed impasses to go to STB.

To move negotiations forward where we could, I met with CSX's David Houchin to discuss W&LE's trackage rights to Lima and inspected with him (and other CSX and CR personnel) by hi-rail the route by which W&LE has agreed to reach Lima (the route described in W&LE-10). Together, Mr. Houchin and I established the trackage rights fees W&LE would pay (\$0.32/car/mile) and certain operating restrictions for W&LE to run its own trains to and from Lima. These terms are more onerous than the NS trackage rights agreement regarding Toledo trackage rights but we agreed to CSX's terms in order to reach agreement where we could.

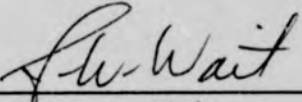
I am pleased that W&LE was able to make progress with CSX, despite certain areas of impasse that I understood we would not be able to resolve (including W&LE Lima access rights and local access rights between Benwood and Brooklyn Jct., W. Va.). But I am disappointed that CSX is now trying to depict our efforts to reach

common ground on Lima trackage rights as an implicit representation that we had altogether abandoned our position concerning local access at Lima. My discussions with Mr. Houchin were on the very plain assumption that he and I both knew that our respective companies had "agreed to disagree" as to local access. Indeed, W&LE expected that any further talks on local access at Lima would not be initiated by Mr. Houchin or me. Rather, W&LE expected that, if any further discussions were to take place on the Benwood to Brooklyn Junction or the Lima access issues, that they would be taken up by such officials as Larry Parsons and William Callison (for W&LE) and Peter Shudtz (for CSX).

Neither I nor anyone else at W&LE has ever represented to CSX that W&LE was abandoning its efforts to secure local access at Lima, so I do not know what might have given CSX a contrary impression. While Mr. Houchin is correct that we did not ask for customer access along the Lima route, I am certain that I never told him that W&LE was relinquishing any right it might have to request clarification of the STB for local access rights in the Lima terminal area.

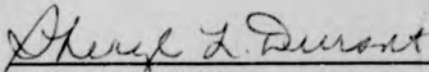
VERIFICATION

Steven W. Wait, being duly sworn this 29th day of October, 1998, deposes and says that he has read the foregoing, and that the same is true and accurate to the best of his knowledge and belief.



Steven W. Wait

SWORN TO BEFORE ME and subscribed in my presence
this 29th day of October, 1998.



Notary Public

Sheryl L. Durant
Notary Public, State of Ohio
My Commission Expires August 29, 1999

STB

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LONDON

ENTERED
Office of the Secretary October 21, 1998

OCT 22 1998

BY HAND
Part of
Public Record

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

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



Dear Mr. Williams:

This letter is submitted on behalf of CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") pursuant to Ordering Paragraph No. 68, page 181, of Decision No. 89 in the above matter, served July 23, 1998.

In pertinent part, Ordering Paragraph No. 68 provides as follows:

As indicated in this decision, applicants must (a) grant W&LE overhead haulage or trackage rights access to Toledo, with connections to AA and other railroads at Toledo, (b) extend W&LE's lease at, and trackage rights access to, NS' Huron Dock on Lake Erie, and (c) grant W&LE overhead haulage or trackage rights to Lima, OH, with a connection to IORY at Lima. Applicants and W&LE must attempt to negotiate a solution with regard to these matters; and, if negotiations are not fully successful, may submit separate proposals no later than October 21, 1998.

CSX has negotiated with Wheeling & Lake Erie Railway Company ("W&LE") with respect to providing W&LE with the rights contemplated by the provisions just quoted. In those negotiations, W&LE made it plain that it was not looking to CSX, but rather to Norfolk Southern Railway Co. ("NS"), to provide the rights to Toledo (item (a)) and to Huron Dock (item (b)) there specified. Presumably, any report as to the status of

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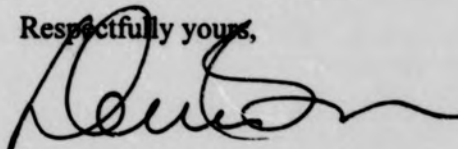
The Hon. Vernon A. Williams
October 21, 1998
Page 2

the negotiations with respect to the Toledo and the Huron Dock rights will come from NS.

W&LE did indicate to CSX that it was looking to CSX to provide the rights to Lima, OH, referred to in item (c), and negotiations with respect to those rights have been conducted. An agreement in principle has been reached to provide W&LE trackage rights over CSX to Lima, with a connection to IORY there. A definitive agreement has been presented, and it is contemplated that it will be executed within a day or two.

The final sentence of Ordering Paragraph No. 68 directs applicants and W&LE to attempt to negotiate an agreement or agreements concerning mutually beneficial arrangements for other service to shippers. Various proposals have been made by CSX and W&LE in this regard, but at this time, no such arrangements have been agreed upon. Pursuant to the final sentence of Ordering Paragraph No. 68, CSX will advise the Board of any such arrangements with W&LE reached to which CSX is a party.

Respectfully yours,



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

cc (via hand delivery):

Keith G. O'Brien, Esq.
REA, CROSS & AUCHINCLOSS
Counsel for Wheeling & Lake Erie
Railway Company

Richard A. Allen, Esq.
ZUCKERT, SCOUTT & RASENBERGER
Counsel for Norfolk Southern Railway Company

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ARNOLD & PORTER

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OCT 22 1998

October 21, 1998

**Part of
Public Record**

BY HAND

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

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



Dear Mr. Williams:

This letter is submitted on behalf of CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") pursuant to Ordering Paragraph No. 28, page 177, of Decision No. 89 in the above matter, served July 23, 1998. That paragraph directs CSX to attempt to negotiate with Canadian Pacific ("CP") an agreement relating to haulage rights or trackage rights over the East-of-the-Hudson Conrail line running between Selkirk, NY and Fresh Pond Jct. in the Borough of Queens, City of New York. A report as to the status of the negotiations and as to whether they have resulted in an agreement is required by Ordering Paragraph No. 28 by October 21, 1998.

CSX and CP have negotiated diligently in an effort to reach agreement. The parties have reached agreement on almost all points and will endeavor to reach final agreement and prepare and complete definitive documentation within the next 20 days. Accordingly, CSX respectfully requests that an extension of the time period provided in Ordering Paragraph No. 28 through and including Tuesday, November 10, 1998, be granted by the Board. CP has been advised of this letter.

Respectfully yours,

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

ARNOLD & PORTER

The Hon. Vernon A. Williams
October 21, 1998

cc:

(via facsimile and FedEx)

Lee I. Larson, Assistant Vice President
Marketing and Sales
CANADIAN PACIFIC RAILWAY
SOO Line Building
105 South Fifth Street
Minneapolis, MN 55402

STB

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ZUCKERT SCOUTT & RASENBERGER, L.L.P.
ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-5509
Telephone [202] 298-8660 Fax [202] 542-0685



RICHARD A. ALLEN
ENTERED
Office of the Secretary

OCT 21 1998

October 21, 1998

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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:

Pursuant to Ordering Paragraph 68 of Decision No. 89 in this proceeding, I am submitting an original and 10 copies of the Report and Proposal of Norfolk Southern Regarding Conditions Imposed By Decision No. 89 concerning the Wheeling and Lake Erie Railroad, together with a 3-1/2" computer disk for the same in Wordperfect 5.1 format, which is capable of being read by Wordperfect for Windows 7.0.

I am also submitting under seal 10 copies of the foregoing Report and Proposal containing two highly confidential attachments, a lease agreement and a trackage rights agreement between Norfolk and Western Railway Company and Wheeling and Lake Erie Railroad. I ask the Board to treat the attachments as confidential and not to place them in the public file or disclose them to other persons.

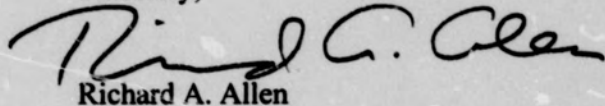
The Honorable Vernon A. Williams

October 21, 1998

Page 2

Should you have any questions regarding this, please call.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard A. Allen". The signature is fluid and cursive, with the first name "Richard" being more prominent and the last name "Allen" following in a similar style. The signature is written over the word "Sincerely,".

Richard A. Allen

Counsel for Norfolk Southern
Corporation and Norfolk
Southern Railway Company

Enclosures

cc: Keith O'Brien, Esq.
Dennis G. Lyons, Esq.

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OCT 21 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

**REPORT AND PROPOSAL OF NORFOLK SOUTHERN REGARDING
CONDITIONS IMPOSED BY DECISION NO. 89 CONCERNING
THE WHEELING AND LAKE ERIE RAILWAY**

JAMES C. BISHOP, JR.
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*Counsel for Norfolk Southern Corporation
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October 21, 1998

PUBLIC VERSION**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**

**REPORT AND PROPOSAL OF NORFOLK SOUTHERN REGARDING
CONDITIONS IMPOSED BY DECISION NO. 89 CONCERNING
THE WHEELING AND LAKE ERIE RAILWAY**

Applicants Norfolk Southern Corporation and Norfolk Southern Railway (collectively "NS") submit this Report and Proposal in compliance with Ordering Paragraph No. 68 of the Board's Decision No. 89, served July 23, 1998, in this proceeding.

INTRODUCTION

Ordering Paragraph No. 68 in Decision No. 89 provides as follows:

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

Pursuant to this directive, Applicants NS and CSX Corporation and CSX Transportation, Inc. (collectively "CSX") have negotiated both jointly and separately with

W&LE with regard to the matters specified. NS has negotiated separately with W&LE about matters (a) and (b), i.e., overhead haulage or trackage rights access to Toledo and connections there to the Ann Arbor Railroad ("AA") and the Canadian National Railway that W&LE sought in its responsive application, and extending W&LE's lease at and trackage rights access to NS's Huron Dock. CSX has negotiated about matter (c) - overhead haulage or trackage rights to Lima, OH with a connection to the Indiana & Ohio Railway Company ("IORY") at Lima. This Report and Proposal concerns only the matters about which NS has negotiated with W&LE; CSX will report separately on its negotiations with W&LE. Because the attachments to this submission consist of confidential commercial information, those attachments are being redacted from the public version of this submission and are being submitted separately under seal.

NS, CSX and W&LE have had several meetings, telephone conferences and exchanges of correspondence to attempt to negotiate the matters specified in Ordering Paragraph 68. All three parties met together in Pittsburgh on August 13, 1998. Since that initial meeting, NS and W&LE have had a number of telephone conferences and have exchanged correspondence between themselves regarding access to Toledo, the Huron Dock lease and other subjects. W&LE and NS have inspected the alternative routes to Toledo. NS believes the negotiations have been productive and have been conducted by both sides in a sincere and diligent effort to reach agreement.

NS and W&LE have reached agreement on most of the issues regarding W&LE's access to Toledo, including the following four key points, each arising from W&LE

proposals.¹ First, they have agreed that NS will provide trackage rather than haulage rights to W&LE. Second, they have agreed on the route over which W&LE will have trackage rights to Toledo. Specifically, W&LE will have rights over the current NS route from Bellevue via Oak Harbor and Holmstead Yard to interchange points with AA and CN in Toledo. In that connection, NS will sell the Maumee River Pivot Bridge in Toledo to W&LE (subject to a retention of trackage rights by NS) for \$1.00 when NS no longer needs to use it on a regular basis, which NS expects to be soon.² Third, they have agreed that the compensation that W&LE will pay NS for its trackage rights will be the same rate as the rate specified in the trackage rights agreements NS and CSX have negotiated with each other, which are set forth in Volume 8 of the Primary Application; that rate is \$.29 per car mile subject to periodic adjustment as specified in those agreements. Fourth, they have agreed that the trackage rights granted to W&LE should be effective on Day One, the date NS and CSX commence separate operations over Conrail's lines

NS and W&LE have not yet reached agreement on two other points: (1) whether W&LE is entitled to local trackage rights that would give it the right to serve shippers in Toledo; and (2) certain terms of the Huron Dock lease extension. These will be discussed further below. NS believes that NS and W&LE have reached an impasse on these two issues and that they will have to be resolved by the Board.

¹ NS offered W&LE the option of either haulage or trackage rights and the choice of one of two routes from Bellevue to Toledo. W&LE requested trackage rights over the present NS route.

² Decision No. 89 accepted NS's related notice of exemption (STB Docket No. AB-290 (Sub-No. 197X) to discontinue operations over this bridge. Decision No. 89 at 181, Ordering Paragraph 71.

As directed by Ordering Paragraph No. 68, NS and W&LE have also discussed other "mutually beneficial arrangements, including allowing W&LE to provide service to aggregate shippers," but have not yet reached agreement on them. These other matters, which do not relate to trackage rights access to Toledo or the extension of the Huron Dock lease, include W&LE's requests to give W&LE the right to use part of NS's Holmstead Yard and for NS to construct a diamond at Bellevue, OH to facilitate W&LE's operations there, neither of which requests was made in W&LE's responsive application. While NS is willing to consider and to continue to discuss all of these other matters with W&LE, they are not matters for the Board to resolve and will not be discussed further in this Report and Proposal.³

This Report and Proposal first describes and discusses the points relating to Toledo access and the Huron Dock on which NS and W&LE have not agreed and then sets forth in summary form NS's proposed terms for those matters.

POINTS ON WHICH NS AND W&LE HAVE NOT AGREED

1. Local Access for W&LE in Toledo.

In the negotiations, W&LE has insisted that the Board granted it the right to serve shippers in Toledo, either by direct access to them or through switching performed by NS. W&LE has failed to justify this by reference to the Board's decision; instead it alludes generally to the need to make W&LE a more effective competitor.

NS believes the Board did not grant local access rights and submits that there is no basis for W&LE's position. Ordering Paragraph No. 68 stated that "applicants must (a) grant W&LE overhead haulage or trackage rights access to Toledo, with connections to AA and

³ NS will keep the Board fully informed, however, as to any arrangements made with (continued...)

other railroads at Toledo" (emphasis added). The Board's specific and deliberate use of the word "overhead" makes it very clear that the Board has not required Applicants to provide W&LE local rights to serve shippers in Toledo or anywhere else on the trackage rights lines. Furthermore, the Board's decision to limit W&LE to overhead rights was clearly correct, inasmuch as W&LE itself sought only overhead rights in its responsive application. See WLE-4 at 74, 82-83 (verified statement of Stephen W. Wait).⁴

The Board's decision was also clearly correct because there is no competitive or other justification for granting W&LE local access to shippers in Toledo or elsewhere on NS's lines. Certainly, W&LE never claimed any competitive justification for such access. W&LE's only justification for the many conditions it sought were that they were needed to preserve W&LE's financial viability and thus its ability to continue providing essential services; and the Board imposed the conditions at issue here not to remedy any perceived competitive problems but instead "to prevent further erosion of W&LE's financial viability due to this transaction." Decision No. 89 at 109. The overhead rights granted to W&LE are more than ample for that purpose. Indeed, the specific purpose W&LE asserted for its request for haulage and trackage rights to Toledo was "for an interchange with the Ann Arbor Railroad, Canadian National and

(...continued)
respect to these matters.

⁴ Although W&LE's responsive application did not use the term "overhead," it is clear that that is what it sought in requesting "a haulage agreement, with underlying trackage rights from Bellevue to Toledo, OH, a distance of 54 miles, for an interchange with the Ann Arbor Railroad, Canadian National and the Indiana & Ohio Railroad. Also to be included is British Petroleum for movement of coke to Cressup, WVA." WLE-4 at 74. The specific request for access to British Petroleum for one specific movement plainly indicates that the other rights sought are only overhead rights. W&LE's operating plan (WLE-4 at 82-83) also makes clear that local access to shippers in Toledo was not contemplated.

the Indiana and Ohio Railroad.” WLE-4 at 74 (Wait V.S.).⁵ Decision No. 89 gave W&LE exactly the connections it sought.⁶

In any event, W&LE did not seek reconsideration of the Board’s decision limiting it to overhead haulage or trackage rights access to Toledo, and it cannot use this occasion to ask the Board to expand the terms of its decision.

2. Terms of the Huron Dock Lease.

The lease agreement by which W&LE has leased the Huron Dock was for a term that expired on September 27, 1998. This lease specified the compensation payable by W&LE, limited W&LE’s right to use the Dock to the transportation of certain specified commodities, and permitted NS also to use the Dock provided it did not unreasonably interfere with W&LE’s use. The lease and its 50-month term were reviewed by the Interstate Commerce Commission and exempted from prior approval requirements in Finance Docket No. 32516, Wheeling & Lake Erie Railway Company – Lease and Operation Exemption – Norfolk and Western Railway Company’s Dock at Huron, OH, served June 27, 1994. Copies of that lease

⁵ Although W&LE stated a desire to connect with the IORY in Toledo, the IORY is not present in Toledo. Accordingly, the Board granted W&LE rights to Lima, a convenient interchange point with the IORY.

⁶ Although W&LE suggested at one point during negotiations that it is also entitled to interchange in Toledo with CSX as well, that is not correct. Decision No. 89 stated at page 172: “[W]e find that the responsive application filed by Wheeling & Lake Erie Railway Company is consistent with the public interest to the extent it seeks: overhead haulage or trackage rights access to Toledo, OH, with connections to the Ann Arbor Railway and other railroads at Toledo; [etc.]” Since W&LE’s responsive application only sought connections in Toledo with non-Applicant carriers AA and CN, that is all that Decision No. 89 gave it. W&LE currently interchanges with CSX at Willard, OH, and there is no basis to change that interchange location.

and the associated trackage rights agreement are being submitted to the Board under seal because they contain highly confidential terms.

NS has proposed to extend the term for five years - i.e., until September 27, 2003 - without any right of renewal. The other terms of the previous lease would continue unchanged except (1) the compensation would be adjusted by agreement of the parties following an appraisal that is now underway or, if they cannot agree, by the STB,⁷ (2) NS would have no right to terminate before the end of the term except for W&LE's default, and (3) W&LE could terminate on six months' notice if its business through the Dock diminishes. NS would also continue W&LE's trackage rights to reach the Dock with no change in the terms except that the term of the trackage rights would continue as W&LE's lease of the Dock continues.

W&LE's position with respect to the Huron Dock and associated trackage rights seems to have developed over the negotiation period. Although at one time W&LE pressed for a lease with a right to purchase after a stated term, more recently it appears to recognize that the Board did not order NS divestiture, and it appears willing to accept a lease with a fixed term, but wants the right to several additional renewal terms, with a redetermination of the lease rate, by agreement or arbitration, at the end of each term or renewal term. W&LE has also stated its wish for the right to move certain commodities in addition to those specified in the previous lease.

In contrast to W&LE's apparent position, NS believes that its proposal is reasonable and should be adopted by the Board. The five-year extension proposed by NS more than doubles the lease term originally negotiated by W&LE. It should provide W&LE ample time

⁷ The original lease explicitly required renegotiation of the rental for any extension of the original lease.

to adjust its operations and develop new market opportunities in light of the Transaction, and the extended term would be coterminous with the five-year oversight period during which the Board will carefully monitor the effects of the Transaction. W&LE's request for several additional renewal terms, if granted, would unreasonably tie up a potentially valuable NS asset long after W&LE had had the opportunity to reconfigure its operations and markets to fit into the post-Transaction environment. And W&LE's request to handle more commodities than those permitted under its initial lease goes far beyond the "extension" of the lease ordered by the Board.

It is important to understand that the Huron Dock lay dormant for eight years - 1986 to 1994 - and NS was not required in 1994 to lease it to W&LE. NS was willing to do so only if the lease were limited to 50 months and only if were used by W&LE only for the movement of certain commodities. Furthermore, NS had the right to terminate the initial lease on very short notice if it needed the docks for its own purposes. W&LE was happy to accept the lease on those terms.

Against this background, NS believes that its proposal, spelled out below, is a reasonable implementation of the Board's decision and intent to prevent erosion of W&LE's financial position until it could adjust to the post-Transaction operating environment.

NS is willing, as W&LE has proposed, to limit its right to terminate only for breach of the lease. NS's willingness to allow W&LE to terminate the lease on six months notice, while retaining no such right for itself, is highly unusual and effectively puts all market risk during the full term of the lease on NS. NS would certainly not be willing to grant W&LE such an extraordinary termination right on the extension of the lease if the term of the lease were longer or if there were automatic renewal rights. Further, NS is willing to consider, on a case-

by-case basis, exceptions to the commodity restrictions already in place in the lease and associated trackage rights.

NS'S PROPOSED TERMS

NS believes that the following terms fully and reasonably fulfill the conditions imposed by Decision No. 89 and the purpose of those conditions. By giving W&LE its requested connections to AA and CN in Toledo and by extending its Huron Dock lease for longer than its initial term, these terms would amply ensure that the Transaction will not further erode W&LE's financial viability.

A. Access to Toledo

1. NS will provide W&LE overhead trackage rights over the NS line from Bellevue, OH to interchange points with AA and CN in Toledo via Oak Harbor and the Maumee Pivot Bridge.

2. The foregoing trackage rights will be at the rate of \$.29 per car mile, and the trackage rights agreement will contain the same general terms as those in the trackage rights agreements contained in Volume 8B of the Primary Application (CSX/NS-25 at 220 et seq.), including the term for annual adjustment of the trackage rights rate.

3. Promptly after NS has notified W&LE that NS no longer needs use of the Maumee River Pivot Bridge, W&LE will buy the bridge from NS for \$1.00, subject to NS's retention of trackage rights over it on the same terms as W&LE's trackage rights.

4. The foregoing trackage rights will commence on Day One, which is the date NS and CSX will effect the division between them of the operation and use of Conrail's assets.

B. Huron Dock Lease Extension

1. NS will extend W&LE's lease of the Huron Dock for five years beyond its expiration date - i.e., until September 27, 2003 - with no change in terms except the following:

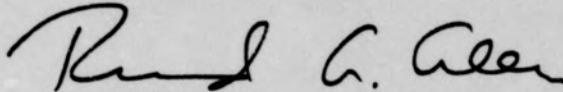
- a. Any renewal or extension thereafter must require concurrence of both parties.
- b. NS can terminate before expiration only on W&LE's breach of a material term of the lease.
- c. W&LE can terminate on six months' notice to NS if, prior to giving such notice, commitments by shippers fall below a stated minimum.
- d. The lease rate will be determined after the completion of an ongoing appraisal of the Dock facilities, either by agreement of the parties or, if they cannot agree, by the Board following submissions by the parties.
- e. NS will extend W&LE's trackage rights to reach the Huron Dock for as long as W&LE's lease of the Huron Dock is in effect; no other change in the trackage rights terms.

. . .

CONCLUSION

The Board should approve and impose the terms proposed by NS for the conditions imposed by Ordering Paragraph 68 of Decision No. 89 respecting the access of W&LE to Toledo, OH and the extension of W&LE lease of NS' Huron Dock.

Respectfully submitted,



RICHARD A. ALLEN
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*Counsel for Norfolk Southern Corporation
and Norfolk Southern Railway Company*

October 21, 1998

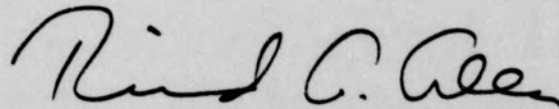
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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 1998, I have served the foregoing NS-71, Report and Proposal of Norfolk Southern Regarding Conditions Imposed by Decision No. 89 Concerning The Wheeling and Lake Erie Railway, by hand delivery on the following counsel for the Wheeling and Lake Erie Railway and for CSX Corporation and CSX Transportation, Inc.:

Keith G. O'Brien
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Charles M. Rosenberger
Senior Counsel

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Not Admitted in Florida

October 20, 1998

Via Airborne Express - Overnight Delivery

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



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

Dear Mr. Williams:

This refers to Decision No. 89 and Decision No. 95 served July 23, 1998 and October 1, 1998, respectively, in the above-captioned proceeding. In Decision No. 89, the Board imposed a condition requiring CSX Transportation, Inc. ("CSXT") to meet with Illinois Central Railroad Company ("IC") to attempt to resolve their dispute regarding dispatching of the Leewood-Aulon line in Memphis, and to advise the Board no later than September 21, 1998 of the status of their negotiations. In Decision No. 95, the Board extended the deadline for submitting a status report until October 21, 1998.

CSXT and IC continue to meet and trade proposals concerning the dispatching of the Leewood-Aulon line in Memphis. However, the parties have still not reached a final resolution of this dispute at this time. Accordingly, the parties respectfully request that the date for the status report of their negotiations be extended until November 20, 1998.

Respectfully submitted,

Charles M. Rosenberger
Senior Counsel

CMR/dam

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
October 20, 1998
Page 2

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

cc: **Mr. Ronald A. Lane**
Mr. Myles L. Tobin
Illinois Central Railroad Company
455 North Cityfront Plaza Drive
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Mr. William C. Sippel
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October 21, 1998



The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, D.C. 20423-0001

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

Finance Docket No. 33388 (Sub-No. 75): New England Central Railroad, Inc.
- Trackage Rights - CSX Transportation, Inc.

Report on Status of Trackage Rights Agreement in Sub-No. 75

Dear Secretary Williams:

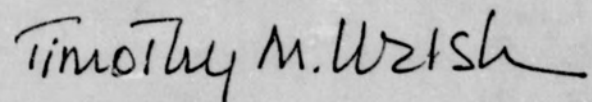
Applicants CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") hereby submit this report on the status of negotiations with New England Central Railroad, Inc. ("NECR") pursuant to Decision No. 89 and Decision No. 94 in this proceeding. The first decision granted NECR's responsive application in Sub-No. 75 "insofar as it seeks to require CSX to grant NECR trackage rights between Palmer, MA and West Springfield, MA" and directed CSX and NECR to "attempt to negotiate the details of such trackage rights" and report to the Board on their progress. The second decision gave CSX and NECR until today to file a further report on the status of those negotiations.

CSX and NECR have continued their negotiations and believe they will be able to resolve all outstanding issues by mutual consent, apart from the matter addressed in NECR's September 21 petition and CSX's October 13 response. See NECR-10 (petition); CSX-164 (response). However, CSX and NECR have concluded that they require additional time in order to do so, and accordingly request that the Board extend the deadline established in

The Honorable Vernon A. Williams
October 21, 1998
Page 2

Ordering Paragraph 64 of Decision No. 89 by an additional thirty days, to November 20, 1998 CSX is authorized to state that NECR concurs in this request.

Respectfully submitted,

A handwritten signature in dark ink, reading "Timothy M. Walsh". The signature is written in a cursive style with a long horizontal flourish at the end.

Timothy M. Walsh
Counsel for CSX Corporation
and CSX Transportation, Inc.

cc: Karl Morell, Esquire

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November 20, 1998

BY HAND DELIVERY - Original and 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

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Office of the Secretary

NOV 23 1998

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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 Quarterly Report Number 1 for CSX Corporation and CSX Transportation, Inc. on Environmental Condition 8(a): Highway/Rail At-Grade Crossings 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 format.

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

Kindly date stamp the additional copy of this filing and return it to our messenger.

Respectfully yours,

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

Enclosure
cc: Elaine K. Kaiser

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Office of the Secretary

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SURFACE TRANSPORTATION BOARD
STB FINANCE DOCKET NO. 33388

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

Decision 89, as Amended by Decision 96
Appendix Q, Environmental Conditions
III. Local or Site-Specific Environmental Conditions
Condition 8(A): Highway/Rail At-Grade Crossings

Quarterly Report Number 1 for
CSX Corporation and
CSX Transportation, Inc.

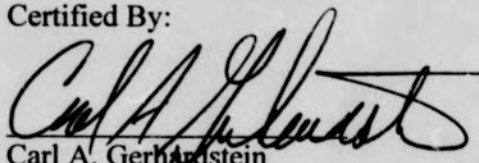
November 19, 1998

CERTIFICATION OF PROJECT COMPLETION

In accordance with Environmental Condition 8(A) set forth in Appendix Q to Decision No. 89 of the Surface Transportation Board in Docket No. 33388, CSX Corporation and CSX Transportation, Inc., (CSXT) hereby certify that CSXT has complied with the requirements of Condition 8(A) with respect to the following five (5) locations:

State	Crossing Name, County, and City	FRA ID	Rail Line Segment ID	Current Warning Device	Proposed Post-Acquisition Device	Completion Date
OH	Main St., Henry, Deshler	155755Y	C-065	Flashing Lights	Gates	Complete 5/28/98
OH	Kellogg Rd., Wood, Bowling Green	155794P	C-065	Passive	Gates	Complete 5/24/98
OH	Middletown Pike, Wood, Haskins	155804T	C-065	Passive	Flashing Lights	Complete 9/3/98
OH	Eckel Jct. Rd., Wood, Perrysburg	155818B	C-065	Passive	Flashing Lights	Complete 5/20/98
OH	Ford Rd., Wood, Rossford	155838M	C-065	Passive	Gates	Complete 5/21/98

Certified By:



Carl A. Gerhardtstein
Director Environmental Engineering

Date: November 19, 1998

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11-20-98

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192323



Charles M. Rosenberger
Senior Counsel

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November 19, 1998

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Via Airborne Express - Overnight Delivery

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

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 Mr. Williams:

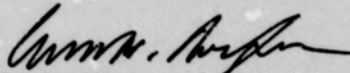
This refers to Decision No. 89, Decision No. 95 and Decision No. 98 served July 23, 1998, October 1, 1998 and October 26, 1998, respectively, in the above-captioned proceeding. Ordering Paragraph No. 36 in Decision No. 89 provides that "CSX must attempt to negotiate, with IC, a resolution of the CSX/IC dispute regarding dispatching of the Leewood-Aulon line in Memphis." The Board further ordered CSX and IC to advise them no later than September 21, 1998 of the status of their negotiations. Decision No. 95 extended the deadline for submitting a status report until October 21, 1998. Decision No. 98 extended the deadline until November 20, 1998.

Since Decision No. 89 was served by the Board on July 23, 1998, representatives of both CSX and IC have met in Memphis to discuss the issues relating to dispatching the Leewood-Aulon line. Following that meeting, CSX sent to IC a dispatching protocol it proposed as a solution to those issues. CSX's proposal is currently being reviewed by IC, and CSX has been advised that IC will submit a proposal of its own to CSX.

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
November 19, 1998
Page 2

As these facts show, the parties continue to actively pursue a resolution to the Leewood-Aulon line dispatching dispute. However, the parties have still not reached a final resolution of this matter at this time. Accordingly, CSX and IC respectfully request that the date for the status report of their negotiations be extended for an additional sixty (60) days, or until January 19, 1999.

Respectfully submitted,


Charles M. Rosenberger
Senior Counsel

CMR/dam

cc: **Mr. Ronald A. Lane**
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STB

FD

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192309

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
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FINANCE DOCKET NO. 33388

192309



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

FINANCE DOCKET NO. 33388 (SUB-NO. 80)

192310

RESPONSIVE APPLICATION OF
WHEELING & LAKE ERIE RAILWAY COMPANY

WLE-12

D

REPLY OF WHEELING & LAKE ERIE RAILWAY COMPANY
TO "RESPONSE" AND ARGUMENT
FILED BY CSX ON NOVEMBER 10, 1998

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Counsel for the Wheeling &
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November 19, 1998

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

FINANCE DOCKET NO. 33388 (SUB-NO. 80)

RESPONSIVE APPLICATION OF
WHEELING & LAKE ERIE RAILWAY COMPANY

WLE-12

REPLY OF WHEELING & LAKE ERIE RAILWAY COMPANY
TO "RESPONSE" AND ARGUMENT
FILED BY CSX ON NOVEMBER 10, 1998

Wheeling & Lake Erie Railway Company ("W&LE") hereby
submits its reply to the "Response of CSX Corporation and CSX
Transportation, Inc. to Petition¹ of Wheeling & Lake Erie Railway
Company for Clarification and Further Instruction" (CSX-166). W&LE

¹ W&LE notes that it did not identify its filing of
October 21, 1998 (WLE-10) as a "Petition." Instead, W&LE
submitted WLE-10 as a status report and a request for additional
Board action (consistent with the Board's directions in Ordering
Paragraph 68 of its Decision No. 89) in an effort to permit its
negotiations to move forward in those instances where the parties
have reached an impasse. WLE-10 was never intended as a formal
"petition," because W&LE understood that the Board's continued
oversight and monitoring of the implementation of protective
conditions did not contemplate or require such procedural
strictures.

submits this reply, as it stated it would do in WLE-11, to address the various substantive claims and arguments CSX has raised against W&LE for the first time during the course of the Board's review and oversight of the subject Transaction. For the reasons set forth below, W&LE urges the Board to see through CSX's rhetoric, reject CSX's narrow interpretation of the protective conditions extended to W&LE, and take action consistent with W&LE's requests in WLE-10 to conclude negotiations between W&LE, CSX and NS.

W&LE submits the subject filing to address the three issues where it has reached an impasse with CSX, and for which W&LE requested and outlined additional Board action in WLE-10. Specifically, W&LE urges the Board to assist in resolving the continuing disputes between the parties over the following issues: (1) the appropriate scope of W&LE's access to Lima, OH (including access to shippers within the Lima terminal area), (2) W&LE's access to shippers along CSX's Benwood-Brooklyn Junction line, and (3) W&LE's access to additional aggregate traffic.

With respect to the first disputed matter, W&LE notes that it was granted, among other things, "haulage or trackage rights access to Lima, OH, including a connection to the Indiana and Ohio Railroad." Decision No. 89 at 109 (emphasis added).² Further, with respect to the second and third subjects in dispute,

² The way that CSX interprets Decision No. 89, one would think that the Board granted W&LE access to Lima "for the sole and exclusive purpose of affecting an interchange there with the Indiana and Ohio Railroad." The Board clearly did not employ this or any other limiting language of that sort. Instead, W&LE believes that the Board left it to the parties to flesh out the details concerning the scope of W&LE's additional access to Lima.

the Board "required" the applicants -- CSX and NS -- to negotiate with W&LE concerning "mutually beneficial" arrangements, "including allowing W&LE to provide service to aggregate shippers or to serve shippers along CSX's main line from Benwood to Brooklyn Junction, WV." Id. As is relevant here, and consistent with the Board's directions, W&LE has engaged in discussions with CSX regarding W&LE's proposed access to Lima because W&LE has selected a trackage rights route to Lima over lines owned and/or to be operated by CSX. Furthermore, W&LE and CSX shippers have attempted to pursue with CSX Benwood-Brooklyn Junction service arrangements. Despite W&LE's efforts to negotiate a settlement consistent with the Board's orders, serious disagreements between W&LE and CSX obviously remain concerning the scope of relief that the Board intended to convey to W&LE, and it is abundantly clear that these fundamental disagreements will persist unless the Board takes further action.

During the course of negotiations with CSX following Decision No. 89, W&LE and CSX agreed to arrangements permitting W&LE to exercise trackage rights to Lima,³ and CSX informed W&LE that, with respect to aggregate and Benwood-Brooklyn Junction matters, there is nothing to negotiate. On these two issues, CSX has consistently defied the Board's instructions by declaring that

³ W&LE is disappointed by CSX's accusation that W&LE has repudiated its trackage rights agreement with CSX. CSX-166 at 6. To the contrary, W&LE intends soon to execute and will abide by the terms of the trackage rights agreement it has already negotiated, but it hastens to point out that the agreement it believes it does have with CSX leaves for further resolution the extent of W&LE's access to industry and other carriers at Lima. W&LE adequately addressed this point in its letter to the Board dated October 30, 1998.

there is nothing "mutually beneficial" in the conditions, and CSX thus dismisses the Board's conditions as mere "suggestions." Further, CSX seems to assert that the Board lacks any real expectation that meaningful arrangements on either of these two subjects would or could be concluded -- that it is enough somehow that the parties simply talk about them.

W&LE access to Lima, OH

As the Board is well aware, W&LE did not request trackage rights or other access to Lima in its responsive application. Thus, while it is pleased to have the opportunity to shore up its financial position by serving this new location, W&LE has never before had the chance to outline its proposed service to Lima. CSX argues, however, that because W&LE did not request access to local industry at Lima (a feat that would require W&LE to read the Board's mind), W&LE should be denied the opportunity to develop a meaningful and competitive presence in this market.⁴ CSX challenges the Board to choose in favor of remediation rendered ineffective by its narrow application, rather than permit W&LE to have a fighting chance to compete for additional traffic in the Lima area in aid of its ability to continue to provide essential

⁴ CSX argues that "overhead trackage rights" access to Lima literally precludes W&LE from the right to serve shippers within the Lima terminal. Consistent with its position regarding its access to Toledo (and the related impasse with NS on this point), W&LE points out that "overhead" trackage rights should be interpreted only to preclude access to shippers until it reaches the Lima terminal. W&LE is not now and never has requested access to customers located between Carey and Lima, OH.

service.

No matter what CSX may claim is the only applicable basis for extending relief to rail carriers, the fact remains that the Transaction clearly threatens W&LE's future viability, and that it therefore threatens also W&LE's ability to furnish essential service to its customers.⁵ (Although CSX seems to want to re-litigate the issue,⁶ the Board has clearly found that W&LE does indeed provide essential services and that these essential services are threatened by the Transaction. Compare, CSX-166 at 12-13 with Decision No. 89 at 108.) The Board extended to W&LE an opportunity to address and compensate for Transaction-related losses, with the intent of preserving W&LE and its essential service. The relief the Board extended to W&LE is intended and designed as a form of remediation, and access to Lima (including effective trackage rights operations to and from this point) is a component of that

⁵ At page 14 of CSX-166, CSX seems to issue an oblique criticism of the Board's decision to grant the relief it did, even when such relief is interpreted in a light most favorable to CSX. Despite the many supportable bases for the Board's statements in favor of promoting regional and short line railroads in an era when major consolidations create vast imbalances between the interests of Class I railroads and their smaller counterparts, CSX seems particularly irate that the Board would base its relief, in part at least, upon the policy objective of cultivating and protecting the important functions of smaller railroads.

⁶ W&LE notes that much of CSX-166 is devoted to the issue of W&LE's projected losses and the legal bases under which the Board may, in major railroad transactions, impose protective conditions in favor of adversely affected railroads such as W&LE. CSX's extensive re-litigation would have been far more appropriate either during the course of the Board's review of W&LE's responsive application or in response to W&LE's request for reconsideration and clarification (WLE-9).

remediation.⁷

As it has asserted in earlier filings, W&LE would be able to derive no appreciable economic benefit from its access to Lima if W&LE is only permitted to interchange what little traffic may develop between IORY and itself. W&LE has also already established why its trackage rights operations to and from Lima would be a far preferable service option. See, WLE-10 at 13-14 (footnote 10). It has proposed to the Board in WLE-10 a reasonable formula for operations to Lima that will work, and that will render W&LE's access meaningful and beneficial. CSX's "proposal" would, on the other hand, render the Board's protective condition ineffective and deprive W&LE of the opportunity to seek out important new traffic opportunities.

To the extent that W&LE requests interchange access to RJ Corman (a Class III carrier serving the Lima area) and, among other access rights, direct access to the Clark Oil Refinery/BP refining complex, CSX is incorrect to assert that W&LE's is truly an "entirely new" request for additional relief. To the contrary, CSX repeatedly quotes from selected portions of WLE-4 (W&LE's responsive application) to allege that, in requesting access to new

⁷ In its latest filing, CSX asks the Board to re-visit the remediation it has extended to W&LE. Perhaps CSX is attempting to have the Board lose sight of the fact that, in the case of Lima (and in other cases where the parties have reached impasse over the interpretation of the Board's directions), the remediation should address the Board's concerns and be effective to the task. If the Lima condition is interpreted to convey to W&LE little or no remedial value (as CSX would prefer), then the Board's objectives are thwarted, and W&LE's essential services remain in jeopardy.

service destinations (such as Toledo and Chicago), W&LE merely sought to expand its access to other rail carriers and its market reach.⁸

Benwood to Brooklyn Junction and aggregate service

W&LE and CSX have strong differences of opinion concerning whether the Board, by requiring the parties negotiate on both Benwood-Brooklyn Junction service and W&LE's access to additional aggregate traffic, intended meaningful, affirmative relief as W&LE believes, or whether the Board's directions serve merely as friendly "suggestions" to explore service arrangements, even if such exploration and negotiations result in no final progress (as CSX interprets the Board's conditions).

On the basis of the record before it, the Board seems to have fully contemplated that the parties would, if urged by the Board, enter into certain arrangements wherein CSX would permit W&LE to provide service to customers along CSX's Benwood-Brooklyn Junction line. (Similarly, the Board appears to have expected that NS and CSX both would, through further negotiations, extend to W&LE access to various stone shippers in Ohio.) The Board has even gone so far as to mention in more than one of its decisions the possibility that such arrangements would help to address the

⁸ In its most recent filing, CSX itself observes that W&LE was granted "conditions designed to give W&LE the opportunity to expand its market reach and to provide a regional network that could offer better service to customers and yield operational benefits to W&LE to help shore up its shaky financial condition." At the very least, as CSX itself acknowledges, the Board has given W&LE "the opportunity to enhance its rail network through connections with other shortline carriers in order to better serve its customers." CSX-166 at 13.

concerns of such shippers as Lafarge Ohio (formerly Redland Ohio, Inc.), Wyandot Dolomite, Inc., National Lime & Stone Company, Bayer,⁹ and PPG Industries. Certainly the Board would not have mentioned such potential arrangements -- and would not have given the above-listed shippers any false hope -- if the Board expected that there would be no meaningful negotiations, and thus no truly beneficial results.

W&LE has approached the Benwood-Brooklyn Junction and aggregate issues with the understanding that they were intended as a part of the affirmative relief it received. Indeed, W&LE perceives this portion of the Board's order to include a mandate to produce meaningful results. Why else would the Board require the parties to report back to it concerning "mutually beneficial" arrangements? If there is nothing of mutual benefit to be derived from negotiations on either subject, then why does CSX nonetheless acknowledge that it is required to participate in what it must regard as "sham" settlement discussions?

Between the lines, CSX conveys a disheartening message regarding the central issue in W&LE's discussions with CSX -- W&LE access to shippers on the Benwood-Brooklyn Junction line. Specifically, in CSX's opinion, the Board's direction concerning this matter is a hollow, ill-informed but perhaps well-intended

⁹ In its Decision No. 96 (footnote 42 at page 18), the Board reiterates its expectation that CSX and W&LE will engage in "good faith" negotiations regarding Bayer "and any other shipper" along the Benwood-Brooklyn Junction line. Good faith negotiations must, of course, be premised on the understanding that there is indeed something to be negotiated.

"suggestion." CSX acknowledges that it has been urged to "negotiate," but asserts that it is under no obligation to "conclude" any such arrangements.¹⁰

Conclusion

CSX-166 speaks volumes concerning the status of negotiations between W&LE and CSX. It demonstrates CSX's unyielding determination to "interpret" the Board's relief in favor of W&LE into oblivion, and to effectively nullify any effective remediation for W&LE. W&LE, on the other hand, proposes a reasonable interpretation of the Board's orders. It has demonstrated why it believes that the Board did not limit W&LE's access to Lima solely for the purpose of interchanging there with IORY, and it has shown why local access to Lima (in addition to interchange with RJ Corman and access to the Clark/BP refinery complex) is consistent with the Board's protective conditions.

CSX has made it abundantly clear that it sees no point in the Board's direction that the parties negotiate arrangements for W&LE's access to CSX's Benwood-Brooklyn Junction line or additional aggregate business. CSX has also made clear its intent to avoid any further progress with W&LE toward a reasonable conclusion of

¹⁰ CSX has announced to the Board that it has already extended to W&LE "a number of proposals" concerning mutually beneficial arrangements. CSX-166 at 6. The CSX proposals contain three movements, but none contemplate W&LE local service for Benwood-Brooklyn Junction customers. W&LE has stated that it will discuss these movements with CSX, but not in exchange for giving up all rights to a protective condition it believes the Board intended and which is critical to its post-merger viability.

Board-ordered negotiations. CSX's position in CSX-166, however, is contradictory, for, while it endeavors to read out of the conditions any true economic benefit to W&LE, CSX also acknowledges that the protective conditions granted to W&LE spring from the Board's abiding concern for W&LE's future viability and W&LE's ability to continue to provide essential services.

The Board should take action to assure that the remediation extended to W&LE is given its full effect. For this reason, and as it has argued in the preceding sections, W&LE respectfully requests that the Board reject CSX's exceedingly narrow interpretation of the protective conditions the Board has extended to W&LE. Instead, W&LE urges the Board to take the expedited action it has promised consistent with what W&LE has requested in WLE-10, and give clear direction to the parties so that the subject negotiations may move forward and reach a prompt resolution of these remaining issues prior to the upcoming "Split Date."

Respectfully submitted,

Keith G. O'Brien

Robert A. Wimbish

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Counsel for the Wheeling & Lake
Erie Railway Company

DATED: November 19, 1998

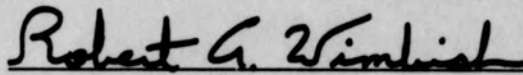
CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of November, 1998, I have served the foregoing W&LE-12 by hand delivery on the following counsel for Norfolk Southern Corporation and Norfolk Southern Railway Company and CSX Corporation and CSX Transportation, Inc.:

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

November 19, 1998



Re: Finance Docket No. 33388; CSX and NS - Control and Acquisition of Conrail

Subject: Certification of Compliance with Environmental Condition 8(A)

Dear Mr. Williams:

Enclosed please find twenty-five (25) hard copies and one electronic copy of Quarterly Report Number 1 for the subject environmental condition, certifying completion in accordance with STB Decision Number 89.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Bruno Maestri".

Bruno Maestri
Assistant Vice President
Public Affairs

Enclosures

cc: Ms. Elaine K. Kaiser (5 copies)

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**SURFACE TRANSPORTATION BOARD
STB FINANCE DOCKET NO. 33388**

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

**Decision 89, as Amended by Decision 96
Appendix Q, Environmental Conditions
III. Local or Site-Specific Environmental Conditions
Condition 8(A): Highway/Rail At-Grade Crossings**

**Quarterly Report Number 1 for
Norfolk Southern Corporation and
Norfolk Southern Railway Company**

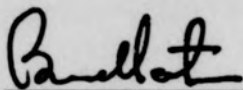
November 19, 1998

CERTIFICATION OF PROJECT COMPLETION

In accordance with Environmental Condition 8(A) set forth in Appendix Q to Decision No. 89 of the Surface Transportation Board in Docket NO. 33388, Norfolk Southern Corporation and Norfolk Southern Railway Company ("Norfolk Southern") hereby certify that Norfolk Southern has complied with the requirements of Condition 8(A) with respect to the following three (3) locations:

State	Crossing Name, County, and City	FRA ID	Rail Line Segment ID	Current Warning Device	Proposed Post-Acquisition Device	Completion Date and Comments
IN	Estella Ave., Allen, New Haven	478216D	N-041	Flashing Lights	Gates	Complete 4/21/98 Gates installed
IN	CR 500 E., Tippecanoe, Buck Creek	484282E	N-046	Passive	Flashing Lights	Complete 4/14/98 Flashing light gate signal installed
OH	Galion-Marseilles Marion, Marion	481546M	N-073	Passive	Flashing Lights	Complete 1/26/98 Flashing light gate signal installed

Certified By:



Bruno Maestri
Assistant Vice President
Public Affairs

Date: November 19, 1998

STB FD 33388 11-13-98 D 192234

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

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November 13, 1998

VIA 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

D



Re: F.D. No. 33388, CSX Corporation, Et Al. -- Control
and Operating Leases/Agreements -- Conrail Inc.,
Et Al., and F.D. No. 33388 (Sub-No. 69), The State
of New York, By and Through Its Department of
Transportation -- Trackage Rights Over Lines of
Consolidated Rail Corporation

192234

192235

Dear Secretary Williams:

On behalf of the State of New York, acting by and through the New York State Department of Transportation ("New York"), we are writing in response to the letters filed on November 10, 1998 by counsel for the Canadian Pacific Railway Company, et al. ("CP"), and on November 12, 1998 by counsel for CSX Corporation and CSX Transportation, Inc. ("CSXT").

CP's letter requests establishment of a schedule for the submission of evidence respecting terms to govern implementation of the conditions imposed by the Board in Ordering Paragraphs 28 and 62 of Decision No. 89 in the referenced proceeding. According to CP, Board resolution is necessary because CP has been unable to reach agreement with CSXT on all of the terms pursuant to which CSXT will grant CP unrestricted trackage and/or haulage rights over Conrail's Hudson Line between Albany/Selkirk and Fresh Pond, NY, as required by Decision No. 89. CSXT's November 12 letter acknowledges the negotiation impasse and concurs in CP's procedural schedule, but also seeks substantive modifications to the Board's conditioning order.

The Honorable Vernon A. Williams
November 13, 1998
Page 2

New York supports CP's request, and urges adoption of the schedule proposed therein. Over three (3) months have elapsed since the Board imposed the Hudson Line conditions, and CP and CSXT still have not agreed on complete terms for its effective implementation. Consistent with Decision No. 89, therefore, Board intervention is both necessary and appropriate.

New York opposes the requests by CSXT that it be permitted to fulfill the Board's East-of-Hudson condition by negotiating with another rail carrier in lieu of CP, or that other parties be invited to submit new responsive applications addressing the East-of-Hudson issues. Upon consideration of the entire record in this proceeding, the Board determined that East-of-Hudson shippers should have full, competitive access to CP service as an alternative to that which otherwise would be provided solely by CSXT, either through a negotiated arrangement between CP and CSXT or Board-prescribed terms and conditions. See Decision No. 89 at 82-83, 177. No party -- CSXT included -- sought reconsideration of this ruling, or filed a timely petition for review challenging it. Despite over three (3) months' effort, CP and CSXT apparently have been unable to come to agreement on acceptable terms through negotiation. In accordance with its prior ruling, the Board should now move forward expeditiously and prescribe them.

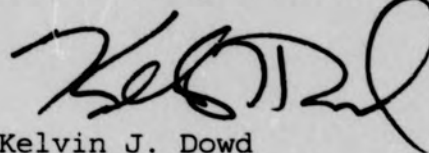
Throughout this proceeding, CSXT has vigorously opposed the pro-competitive relief sought by New York and the New York City Economic Development Corporation (NYCEDC), which relief ultimately was granted by the Board in Decision No. 89. Among other things, CSXT insisted that the requested relief was unnecessary and operationally infeasible, and that no qualified rail carrier would "step forward" to supply competitive rail freight service over the Hudson Line. See CSX/NS-176, Vol.1, Narrative at VIII, 13-19. Against this record of resistance, it is not unreasonable to conclude that the lack of an implementing agreement between CP and CSXT more likely is due to an unduly narrow reading of the Board's conditions by CSXT, than to an overly broad one on the part of CP. Indeed, on information and belief, CSXT has insisted that CP acquiesce to geographic and commodity restrictions on its East-of-Hudson access that were specifically proscribed by the Board's conditioning order. New York is concerned that CSXT now may be intent on seeking out a more malleable carrier willing to accept that which CP would not -- and less than the full measure of access ordered by the Board. On behalf of the shippers and communities that would be directly and adversely affected by such a maneuver, New York urges the Board to reject CSXT's request.

The Honorable Vernon A. Williams
November 13, 1998
Page 3

Likewise, there is no legitimate reason why the Board should re-open this case to entertain new responsive applications. CP's November 10 filing reflects that carrier's commitment to effective rail competition East of the Hudson, and CP already has in place the connecting lines and inter-carrier arrangements (such as its haulage agreement with Norfolk Southern Railway) necessary to offer New York shippers a competitive alternative to CSXT. New York and NYCEDC, the Responsive Applicants in whose favor the Board imposed the conditions at issue, support CP as the carrier best-positioned to succeed in this regard. Given the record, we submit that the proper course for the Board now is to enforce its ruling and move to set the terms of CP's access over the Hudson Line, not to reward CSXT's resistance by entertaining unnamed replacements for CP.

The Board should adopt the procedural schedule proposed by CP in its letter of November 10. CSXT's November 12 request for additional terms should be denied.

Respectfully submitted,



Kelvin J. Dowd
An Attorney for the
State of New York

KJD\cbh

cc: George W. Mayo, Jr., Esq. (via facsimile)
Charles A. Spitulnik, Esq. (via facsimile)
Dennis G. Lyons, Esq. (via facsimile)
All Parties of Record (via U.S. Mail)