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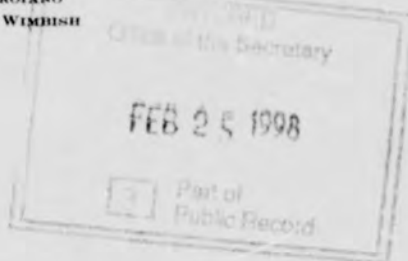
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BRIAN L. TROIANO
ROBERT A. WIMBUSH



February 24, 1998

D



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

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

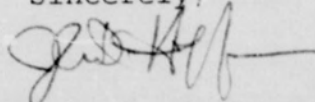
Dear Mr. Williams:

A discovery ruling by Administrative Law Judge Jacob Leventhal and a stipulation and order signed January 29, 1998, the original of which is being filed herewith, provided for the filing of a revised version of the Comments of New York Cross Harbor Railroad (the original version of which was served and filed on October 21, 1997), to omit certain discussion that had been included at page 4 thereof. Enclosed for filing as replacements of the original Comments are an original and 25 copies of the Revised Comments. The stipulated order provides for the filing of the revised version nunc pro tunc to replace the original. Copies of the complete revised Comments are just being filed on Applicants. Other parties of record will just receive the corrected page 4. Parties desiring to receive the complete revised Comments and stipulation of settlement can obtain them by contacting the undersigned. An original and 25 copies are enclosed for filing.

Mr. Vernon A. Williams
February 24, 1998
Page Two

Please date stamp and return for our records two copies
of this filing.

Sincerely,

A handwritten signature in dark ink, appearing to read "John D. Heffner", with a long horizontal stroke extending to the right.

John D. Heffner

Enclosures

cc: All Parties of Record
ALJ Jacob Leventhal
Mr. Robert Crawford
Lawrence Lonergan, Esq.

785-989

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

D

NYCH-5

Revised Comments of the
New York Cross Harbor Railroad

John D. Heffner
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1920 N Street, N. W.
Suite 420
Washington, DC 20036
(202) 785-3700

Counsel for New York Cross
Harbor Railroad

DATED: OCTOBER 21, 1997

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

NYCH-5

Revised Comments of the
New York Cross Harbor Railroad

I.

INTRODUCTION

Pursuant to the schedule adopted by the Surface Transportation Board ("the Board") on July 23, 1997, New York Cross Harbor Railroad ("NYCH") files its comments in the above-captioned proceeding. NYCH conditionally supports the acquisition and partition of Consolidated Rail Corporation ("Conrail") by CSX Transportation ("CSX") and Norfolk Southern Railroad ("NS")¹ provided that the Board addresses certain specific concerns. Specifically, NYCH requests that the Board, as a condition of its approval, require (1) CSX to route traffic between Long Island and points in southern New England and

¹ Collectively referred to as the Applicants.

adjacent New York State, on the one hand, and, on the other hand, points in the Mid Atlantic States and the South and Southwest where NYCH's "Greenville Gateway" represents the shortest, most efficient and most economical routing and (2) both Applicants to guaranty Conrail's pre-closing liabilities to the extent that Conrail lacks sufficient assets after consummation of this transaction to meet such liabilities.

II.

NYCH is a class III short line rail carrier headquartered in Brooklyn, NY. Originally established in 1983, NYCH acquired the assets and franchises of the former New York Dock Railway. It serves about 40 customers along a network of rail lines and sidings on the waterfront near the Bay Ridge section of Brooklyn, operates a car ferry linking float bridges in Brooklyn and Jersey City, NY (Greenville Yard), and serves customers at the Greenville Yard. Historically, NYCH (and the New York Dock Railway before it) provided overhead rail transportation across New York Harbor. For its Brooklyn customers, it provided the principal interstate rail connection to Conrail at Greenville Yard. Second, it provided one of two interstate rail connections between the Long Island Rail Road ("LIRR") and Conrail² by handling traffic brought by the LIRR to

² The second connection is at Fresh Pond Yard, Fresh Pond, NY, where the LIRR tracks will connect with CSX after consummation of the merger. In the Spring of 1997, the LIRR leased its freight facilities and rail operations to the New York & Atlantic Railroad ("NY&A"), a newly former class III railroad.

the 65th Street Yard in Brooklyn. Third, at one time NYCH and New York Dock Railway handled freight traffic as a bridge carrier for Conrail. This traffic moved from southern New England and southern New York points east of the Hudson River via Fresh Pond for movement to Brooklyn. NYCH (and before its formation, New York Dock) floated this freight across the Hudson River to Greenville for interchange back to Conrail before resuming a south or westbound haul. Twenty years ago, New York Dock Railway handled over 20,000 cars per year as a bridge carrier for Conrail and the LIRR. Until 1976, NYCH's predecessor handled in cross harbor float service 50% of the LIRR's western and all of its southern origin and destination freight. Verified Statement of Robert Crawford attached as Exhibit A hereto. Even in 1990, it handled significant (about 6,000) carloadings in interchange service between the LIRR and Conrail. NYCH offers the public significant benefits by operating a direct routing across the New York Harbor. This routing saves substantial time and money on shipments moving to the South and Southwest compared with the use of an all Conrail gateway through Selkirk Yard.³

During the years between 1983 and the present, NYCH's carloadings and revenues fell substantially, by 50%. This

³ The Selkirk routing requires shipments to go up Conrail's New York-Albany Hudson Division along the east side of the river to Selkirk Yard and then down its River Division to its Oak Island (NJ) yard. Aside from adding 300 miles to the trip, the New York-Albany line is a key passenger thoroughfare for both commuter and Amtrak trains and has restrictions on freight movements. This Selkirk detour can add up to 72 to 120 hours in transit time versus NYCH's 45 minute carfloat ride. Crawford V.S.

decline was due in part to actions of Conrail's management to 6 reroute LIRR interline traffic moving to or from the South and Southwest via Fresh Pond and Selkirk, rather than by NYCH's direct carfloat. By the time NYCH's current management acquired the railroad in 1989, what little Conrail-NYCH-Conrail interline traffic remaining had already been rerouted.

NYCH management began to study the causes of its traffic and revenue declines. It found that Conrail had implemented a policy of using predatory pricing to encourage shippers to route traffic via Selkirk rather than NYCH even where NYCH's routing was the only logical move. It also found that Conrail's computers had been programmed to delete NYCH from the routings. In some cases Conrail routed traffic via Selkirk contrary to specific shipper instructions. NYCH concluded that Conrail was improperly withholding revenue divisions owed NYCH to offset car hire payments that Conrail erroneously thought NYCH owed it. NYCH discovered that Conrail had let its interchange facilities with NYCH at Greenville Yard fall into disrepair contrary to the terms of the relevant agreements.

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These events culminated in NYCH's decision in the Spring of 1997 to sue Conrail for antitrust violations. After

service of a "demand letter" upon Conrail, the parties met in an attempt to resolve their differences. When presented with written evidence of traffic reroutings, Conrail officials acknowledged this action terming it a "computer error." Conrail offered to settle this dispute with a modest amount of money which NYCH declined to accept. On June 5, NYCH initiated suit against Conrail under Section 2 of the Sherman Antitrust Act and common law in Federal Court in Brooklyn, NY. Conrail has filed a Motion to Dismiss for failure to state a cause of action. The matter will be briefed, argued, and considered during the next several months.

III.

THE CURRENT PROCEEDING

NYCH requested condition #1

Shortly after NYCH initiated its antitrust litigation, Applicants filed their application with the Board seeking to acquire control and division of Conrail. In many respects, their proposal is good for the eastern part of the country and for NYCH. For the first time, NYCH will enjoy two competitive class I railroad connections, NS and CSX. NS in particular has reached out to NYCH in a way unparalleled in its history. NS has met with NYCH officials and is working hard to develop new traffic flows. NS sees NYCH as its partner for developing business to and from Long Island and southern New England, as well as from NYCH's local customers.

Unfortunately, NYCH has not found the same friendly reception from CSX that it has gotten from NS. CSX has stated in discovery that it will interchange with NYCH at Greenville Yard, one of the shared asset facilities. CSX cannot interchange directly with NYCH on Long Island because NY&A operates an 11 mile line of railroad between Bay Ridge and the NY&A/CSX interchange at Fresh Pond. NYCH hopes that it can negotiate rate or marketing arrangements with NY&A to give NYCH an effective connection to CSX. But even if NYCH and NY&A collaborate to mutual advantage, NYCH needs to convince CSX to work with it to route traffic from southern New York and New England to the South and Southwest via NYCH.

Interrogatories propounded by NYCH to CSX appear to reflect a disinterest on its part to using NYCH's efficient cross harbor route instead of the circuitous Selkirk gateway. For example, NYCH propounded a series of questions to CSX to elicit its likely routings for certain traffic movements that are well suited to NYCH's cross harbor route. In answering a simple routing question, CSX -- after admitting that its diversion study showed that the Conrail acquisition would result in a small amount of diversion (\$20-25,000) from NYCH -- answered the question of whether it would route over or around NYCH -- stating that this decision will depend upon controlling contracts or common carrier rates and routing guides. Elsewhere CSX admitted that it did not have a "routing corridor" between southeastern points and points on Long Island, southern New York, and southern

New England. Instead, it stated that the description of new service lanes in the Operating Plan is intended to portray on a "macro level the directional flow of traffic on the enhanced CSX-Conrail network." Finally, in response to NYCH's inquiry as to how CSX would route traffic that a shipper requested be sent via NYCH from Rocky Mount, NC, to Bridgeport, CT, CSX responded that it would "consider all relevant factors in responding to the shipper's request" and would take into consideration "all relevant market factors in pricing the requested service." See, CSX Responses to the First Set of Interrogatories and Document Requests of New York Cross Harbor Railroad Terminal Corporation, attached here as Exhibit B. Moreover, NYCH understands that CSX operating official Orrison testified in a deposition taken by the New York State Department of Transportation that CSX is reluctant to use NYCH's routings because of its alleged deteriorated condition. NYCH's Chairman Robert Crawford addresses that allegation in his attached Verified Statement. NYCH has spent substantial money to rehabilitate the car float bridge facilities and they are capable of handling about 37,000 rail cars per year, far in excess of current traffic volumes.

The simple factor of the matter is that CSX has not studied how exactly to move traffic to or from the New York Metropolitan Area, including Long Island, southern New York, and southern Connecticut. Instead, it appears to have taken as the gospel truth Conrail's perceptions of NYCH's physical facilities and ability to function as an economical and efficient rail

carrier for the New York. Unlike NS, CSX has made no effort to contact NYCH or its shippers to learn of their needs and capabilities or verify the facts. Absent Board action, NYCH fears that CSX will continue to route traffic around, rather than via NYCH.

Should CSX continue Conrail's practice of diverting all traffic moving to or from points in southern New England, adjacent New York State, and Long Island and southern and southwestern origin and destination points around the cross harbor gateway, NYCH's very ability to continue in business to serve its on line customers will be severely threatened. Accordingly, NYCH requests that the Board require CSX as a condition of this merger to honor all shipper directions, routing traffic between Long Island and points in southern New England and adjacent New York State, on the one hand, and, on the other hand, points in the Mid Atlantic States and the South and Southwest where NYCH's "Greenville Gateway" represents the shortest, most efficient and most economical routing.

NYCH requested condition #2

Applicants have represented that Conrail will be responsible for "certain other liabilities, including among others, certain liabilities related to any suit, action or claim arising on or after the Closing Date that do not relate predominantly to the NYC- or PRR-allocated assets." Later

Applicants provide that, "it is expected that most of the pre-Closing liabilities of CRC, its parent CRR and their subsidiaries will remain in place." According to Applicants, CRC will pay its pre-Closing Date liabilities, including its debt obligations, out of payments received, either directly or through NYC and PRR, from CSXT and NSR in connection with the Allocated Assets and the Shared Assets Areas. Applicants represented that such payments should be more than sufficient to permit CRC and its subsidiaries to discharge and pay all of their obligations. Significantly, Applicants stated, "[h]owever, if for any reason (and none is presently foreseeable) these sources of funds to CRC, its Subsidiaries and CRR provide insufficient to permit them to pay and discharge their obligations, NS and CSX have agreed in the Transaction Agreement (Section 4.3) that CRC Holdings shall provide to CRC the necessary funds." See, Vol. I, Application at 42, 55, and 56.

NYCH's wants the Board to condition its approval of this application on a specific requirement that NS and CSX will be jointly responsible for all of Conrail's pre-closing liabilities in the unlikely event that Conrail lacks the funds after closing to meet those obligations. NYCH believes that its antitrust cause against Conrail is meritorious. Should NYCH prevail in this litigation, its economic damages could run over \$100 million (trebled to over \$300 million) and its punitive damages could exceed \$500 million. Should NYCH and Conrail reach

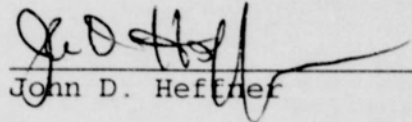
a settlement of the lawsuit, those damages would still likely be fairly substantial.

But for certain statements made at the deposition of CSX and NS witnesses Sparrow and Romig taken by NYCH, statements repeatedly made throughout the application and Transaction Agreements should put to rest any concerns that NYCH should have on the handling of pre-closing Conrail liabilities. Rather than spare the Board with a long recitations of questions and answers from that deposition, NYCH attaches the more relevant pages as its Exhibit C. The bottom line is that CSX's and NS' liability witnesses were unable to confirm the representations made in the application and Transaction Agreements about the handling of Conrail's pre-closing liabilities because they were not lawyers and had no intimate familiarity with the very issues about which they were testifying.

In view of the reluctance of CSX's and NS' "liability witnesses" to confirm what their companies had represented in the application and Transaction Agreements and the size of NYCH's potential litigation damages, NYCH requests that the Board condition its approval of this merger on the following requirement: That Applicants will jointly and severally guaranty Conrail's pre-closing liabilities arising out of litigation (or settlement of litigation) relating to actions by Conrail that occurred prior to closing to the extent that Conrail lacks sufficient assets after consummation of this transaction to meet such liabilities.

CERTIFICATE OF SERVICE

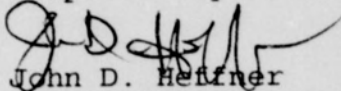
I hereby certify that I have this 24th day of February, 1998, served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed with postage prepaid.



John D. Heffner

Accordingly, with those conditions NYCH supports the proposed acquisition and division of Conrail.

Respectfully submitted,



John D. Heffner
REA, CROSS & AUCHINCLOSS
1920 N Street, N. W.
Suite 420
Washington, DC 20036
(202) 785-3700

Counsel for New York Cross
Harbor Railroad

DATED: OCTOBER 21, 1997

CSX/NS-_____

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

STIPULATION

Applicants and commenter New York Cross Harbor Terminal Railroad Company ("NYCH"), through their counsel, stipulate as follows this 9th day of December, 1997:

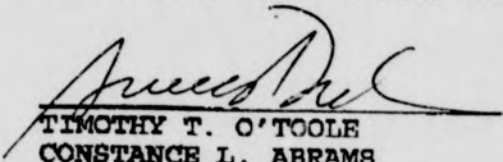
1. NYCH filed Comments on the proposed transaction (NYCH-3) which stated in the last sentence in the middle paragraph on p. 4 that NYCH had "learned" that "certain Conrail management officials" had made certain statements that NYCH regarded as misrepresentations.

2. In the course of discovery, NYCH provided information about the "officials" but designated it Highly Confidential so as to prevent counsel from discussing the information with Conrail.

3. Conrail moved to declassify the information from Highly Confidential to a level that would permit Conrail and its counsel to consult about and investigate NYCH's allegations, and NYCH opposed the motion.

4. At a hearing on December 4, 1997, before Administrative Law Judge Leventhal, NYCH agreed to withdraw the sentence in question in NYCH-3, and to submit a new version of NYCH-3 omitting that sentence, thus making it unnecessary for the ALJ to rule on the motion.

5. To implement NYCH's withdrawal the parties have agreed that a new version of NYCH-3 omitting the sentence in question, a copy of which is attached hereto, be filed nunc pro tunc in lieu of, and physically to replace, the original version of NYCH-3. NYCH shall also serve the new version on the service list, with instructions that it replace the original version.

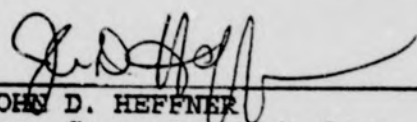


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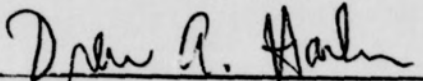
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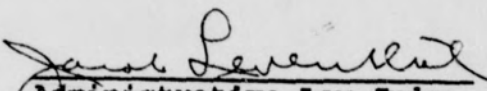
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(202) 429-3000

Counsel for CSX Corporation
and CSX Transportation, Inc.
SO ORDERED:


Administrative Law Judge

Dated: ~~December~~ ^{JANUARY} 29, 1997



VERIFYING STATEMENT

This verifying statement is made by New York Cross Harbor Railroad in response to the Application by Norfolk Southern and CSX to acquire and divide Conrail.

Until 1976 the Long Island Rail Road's freight was served by railroad carfloats from the Greenville Yards for about 50% of its western and all of its southern US origin and destination freight. Today, that service has dropped to less than 5% with the balance being moved by Conrail via the Selkirk, NY rail bridge. This adds 72-120 hours to the freight trip and over 300 miles to the destination of the freight.

The CSX operations has testified before the Board that it will not use the New York Cross Harbor Railroad as the New York City and Long Island gateway to and from the national rail system due to the deteriorated state of the Cross Harbor's rail facilities. New York Cross Harbor has spent over \$250,000 in renovation and refurbishing the rail facilities in the past year. This refurbishing includes the track in the Greenville Yards, which will be completed by October 31, 1997, the renovation to the Bush Yards in Brooklyn that will be continued into the winter, and the continued renovation of the float bridges in both Yards. Currently, New York Cross Harbor Railroad can handle 37,000 rail cars a year. Upon completion of the renovations and refurbishing now underway, the railroad will be able to handle 75,000 per year. After additional capital improvements, approximately \$20,000,000, to existing infrastructure, the railroad will be able to handle over 250,000 railcars, annually. The car float trip across the harbor is approximately 3 miles and takes 45 minutes of time.

A handwritten signature in black ink, appearing to read "Robert R. Crawford".
Robert R. Crawford, President

September 18, 1997

TOTAL P. 02

VERIFICATION

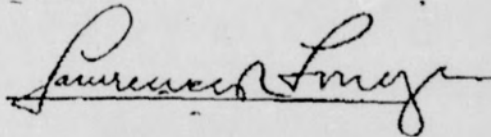
STATE OF New York)
COUNTY OF New York) ss:

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



Subscribed and sworn to before me this 18th day of September, 1997.

Notary Public of New York



My Commission expires:

LAWRENCE R. LONERAGAN
Notary Public, State of New York
No. 8009723
Qualified in New York County
Commission Expires March 16, 1999

- 9 -



Subject to the general objections, CSX responds as follows:

The General Merchandise Study included traffic moving between the geographic areas identified by NYCH. The method of ALK's Advanced Traffic Diversion Model, as described in Mr. Rosen's verified statement, creates candidate routings for post-transaction services, and then estimates a market share for each candidate routing. Hence, the study of routing options suggested by NYCH was inherent in the General Merchandise Study.

8. In its Application, CSXT has discussed various "freight corridors" (i.e., the "Memphis Gateway Service Route" discussed at section 3.2.6 of Volume 3A of the Railroad Control Application), has offered detailed observations concerning how operations would [be] conducted over such "corridors," and has furnished the public with detailed analyses of the rail service improvements shippers will enjoy over such "corridors." NYCH is unaware of any discussion of a proposed CSXT "corridor" or "gateway service route" between (1) southeastern points such as Waycross, GA; Tampa, FL; Rocky Mount, NC; and Hamlet, NC and (2) points on Long Island, NY (such as Babylon or Sayville, NY); points in Westchester, Dutchess, Putnam, Bronx and Columbia Counties, NY; or points in southern New England (such as Stamford or Bridgeport, CT). Assuming NYCH is correct, that CSXT developed no such "corridor" in preparing its Application, please identify that "corridor" or "gateway service route" CSXT would recommend for the movement of a carload of traffic from Rocky Mount, NC to Bridgeport, CT.

Subject to the general objections, CSX responds as follows:

The description of numerous new service lanes in the Operating Plan is intended to portray on a macro level the directional flow of traffic over the enhanced

- 10 -

CSX-Conrail network. A single carload of traffic originating at Waycross, GA, for example, most likely would be routed to Long Island, NY via the Atlantic Coast Service Route, which extends along the east coast from southern Florida to New England. See pages 132-34 of Volume 3A of the Application.

9. Assuming after CSXT's initiation of operations over the New York Central Lines that a shipper in Rocky Mount, NC, desired to send a carload of traffic from Rocky Mount to Bridgeport, CT, via CSXT to Greenville, NJ, thence NYCH to 65th Street Yard in New York City to NYAR, thence NYAR to Fresh Pond, NY, finally CSXT from Fresh Pond to Bridgeport --

(a) would CSXT decline to offer such a routing a favor of some other routing to Bridgeport?

(b) assuming CSXT agreed to such a routing, what considerations would go into CSXT's computation of the appropriate through rate for this route?

Subject to the general objections, CSX responds as follows:

(a) Assuming that a shipper did make such a request, CSX would consider all relevant factors in responding to the shipper's request.

(b) CSX would take into consideration all relevant market factors in pricing the requested service.

10. Has CSXT undertaken any rate or service pricing for traffic to be handled by, and routed via, CSXT between those points listed in Interrogatory No. 7, above? If so, please provide any and all documents CSXT has produced in the course of pursuing or undertaking such rate or pricing analysis.



1 Bill on my left and then ask Bill on the right if
2 he wants to --

3 MR. LYONS: Either way you want to do
4 it. You can mix and match.

5 MR. CALDERWOOD: Perhaps for
6 clarification of the record you should, John,
7 refer to them by their last name --

8 MR. HEFFNER: I will.

9 MR. CALDERWOOD: -- as well so in the
10 transcript we'll know who we're talking to.

11 MR. LYONS: That's up to you. You can
12 mix it up.

13 EXAMINATION BY COUNSEL FOR
14 NEW YORK CROSS HARBOR RAILROAD

15 BY MR. HEFFNER:

16 Q. Mr. Sparrow and Mr. Romig, I have right
17 now 16 questions. I would estimate they will
18 take 30 minutes. I'll try to proceed as quickly
19 as I can. I'll start with Mr. Sparrow first and
20 then I'll pop the same question to Mr. Romig.
21 Mr. Sparrow, did you assist or prepare in --
22 excuse me, did you prepare or assist in preparing
23 those portions of the application that pertain to
24 the handling of liabilities, especially pages 42,
25 55 and 56?

1 Mr. Orrison in another conference room.

2 MR. CALDERWOOD: Could we have an
3 indication on the highly confidential?

4 MR. STONE: Yes, again for the record
5 Scott Stone I have signed both confidentiality
6 undertakings. Off the record.

7 (Discussion off the record.)

8 THE WITNESS: (By Mr. Sparrow) I hadn't
9 anything to do with the writing of these
10 particular sections.

11 BY MR. HEFFNER:

12 Q. Did you assist in the writing?

13 A. (By Mr. Sparrow) No.

14 Q. You had no involvement?

15 A. (By Mr. Sparrow) In the writing of
16 these particular sections.

17 MR. LYONS: May I ask the witness to
18 speak out, and possibly you might want to face
19 the reporter to assist her.

20 THE WITNESS: (By Mr. Sparrow) I had no
21 role in the writing of these particular sections.

22 BY MR. HEFFNER:

23 Q. Mr. Romig, I gather you heard the
24 question. Do you want me to repeat it?

25 A. (By Mr. Romig) No. I did not assist in

1 preparing or prepare the referenced sections. ✓

2 Q. Mr. Sparrow, did you have -- you
3 take -- I gather you sort of took a minute and
4 skimmed it, as it were?

5 A. (By Mr. Sparrow) I did.

6 Q. Mr. Romig, have you had a chance to
7 look at it?

8 A. (By Mr. Romig) I also skimmed it.

9 Q. Okay, great. On page 55 about three
10 lines down, and this will be for Mr. Sparrow
11 first, where it says continuing Conrail
12 activities you see a sentence that begins,
13 However, it is expected that most of the
14 pre-closing liabilities, you see that sentence?

15 MR. LYONS: If counsel will excuse us,
16 since there was no notice that these pages would
17 be called to his attention, counsel and the
18 witness only have one copy so this will slow it
19 up.

20 THE WITNESS: (By Mr. Sparrow) I see
21 the line in question.

22 BY MR. HEFFNER:

23 Q. I was wondering if you know why the
24 qualifier most was used or what do they mean by
25 most as opposed to all?

1 MR. LYONS: Objections, since he's
2 indicated that he has not participated in or in
3 any way in the preparation of these pages, but he
4 may answer.

5 THE WITNESS: (Mr. Sparrow) No.

6 BY MR. HEFFNER:

7 Q. In your verified statement,
8 Mr. Sparrow, on page 2 it indicates that you're
9 familiar with the --

10 MR. CALDERWOOD: Excuse me, are you
11 referring to page 2 of his -- what's the page in
12 the record?

13 MR. HEFFNER: Okay, page in the record
14 would be page 620.

15 BY MR. HEFFNER:

16 Q. I gather based upon what you say on
17 page 620 of the verified statement that you are
18 familiar with the transaction agreements as they
19 pertain to liabilities? ✓

20 A. (By Mr. Sparrow) Yes, I'm familiar with
21 the transaction agreements as they pertain to
22 liabilities.

23 Q. And, Mr. Romig, if I can put the same
24 question to you? ✓

25 A. (By Mr. Romig) Yes, I am also familiar

1 with them.

2 Q. At page 621 of the joint verified
3 statement there's a statement that says that
4 Conrail will pay pre-closing date liabilities.
5 Do you understand the term liability to include ✓
6 liabilities arising out of litigation? Is that
7 what is meant by the term liability or could
8 that -- does that include litigation liabilities?

9 MR. LYONS: Objection since it calls
10 for a legal conclusion and there's no showing
11 that the gentleman is a lawyer, but he can
12 answer.

13 THE WITNESS: (By Mr. Sparrow) Well, I
14 was going to say that being a capitalized term, I
15 would take it that that's actually defined ✓
16 somewhere and therefore subject to legal
17 interpretation, which I'm not qualified to give. ✓

18 BY MR. HEFFNER:

19 Q. Understand. But you said, didn't you,
20 that you are familiar with the transaction
21 agreement?

22 A. (By Mr. Sparrow) Right.

23 Q. Mr. Romig, if I can ask you the same ✓
24 question, do you -- what's your understanding of
25 the term pre-closing date liabilities as used in

1 the joint statement on page 621?

2 MR. CALDERWOOD: I'll object. That ✓
3 really calls for a legal conclusion as to legal
4 interpretation what the term means. The witness
5 can proceed to respond.

6 THE WITNESS: (By Mr. Romig) I'm not
7 familiar with the legal interpretation of that
8 term.

9 BY MR. HEFFNER:

10 Q. Okay. But you are familiar with what ✓
11 is contained in the transaction agreement, aren't
12 you?

13 A. (By Mr. Romig) Yes.

14 Q. Does the transaction agreement provide ✓
15 that Conrail -- and this we'll start with
16 Mr. Sparrow -- Conrail will be responsible for
17 certain other liabilities among others --
18 including among others certain liabilities
19 relating to any suit, action or claim arising on
20 or after closing date that do not relate
21 predominantly to NYC or PRR allocated assets?

22 MR. LYONS: I'm going to object. It
23 sounds as if this is a quotation from somewhere
24 and if it is, I think the witness should be
25 directed to the quotation so he can see it in

1 context.

2 BY MR. HEFFNER:

3 Q. Okay, page 42. This is contained in
4 the actual text of the application, and I made a
5 mistake. I should have said prior to closing
6 date. Have you read the actual application
7 itself?

8 A. (By Mr. Sparrow) 15,000 pages, no, sir.

9 Q. Have you read the initial volume of the
10 application particularly as it pertains to things
11 covered in your verified statement?

12 A. (By Mr. Sparrow) I've read the
13 transaction agreement and various other segments
14 of the application.

15 Q. Have you read that part of the
16 application that deals with liabilities?

17 A. (By Mr. Sparrow) Yes.

18 Q. Okay. Great.

19 A. (By Mr. Sparrow) Several months ago,
20 but yes.

21 MR. LYONS: Counsel, do you want to
22 call his attention to a particular sentence or
23 the like and have him read it now?

24 MR. HEFFNER: Yes. I'd like

25 Mr. Sparrow to read the second sentence under the

1 the witness is being asked about that.

2 THE WITNESS: (By Mr. Sparrow) Conrail
3 is responsible for certain -- for obligations, ✓
4 for -- which arose from events prior to the
5 closing as defined by legal authorities.

6 BY MR. HEFFNER:

7 Q. Mr. Romig, if I can put the question to
8 you and make let me see if I can frame it a
9 little more precisely. Under this statement on
10 page 42 and similar statement contained on page
11 621 that Conrail will pay pre-closing date
12 liabilities and you were partially responsible, I
13 gather, for authoring the statement on page 621, ✓
14 in your opinion would Conrail be legally
15 responsible for paying a judgment that arose out
16 of litigation for events that occurred prior to .
17 closing?

18 MR. CALDERWOOD: I'll object to that.
19 First, there's no indication that Mr. Romig had
20 anything to do with the language that appears on
21 page 42 and secondly that it is -- calls for
22 legal conclusions. The document page 42 stands
23 for itself, and as to, you know, liabilities for
24 lawsuits and so forth, that really pertains to a
25 legal issue and there's no indication that

1 BY MR. HEFFNER:

2 Q. First referring to corporate level
3 liabilities, to what does the word action refer
4 to in the seventh line, actions arising prior to
5 the closing date?

6 MR. LYONS: I will object to that once
7 again, we're putting questions as to legal
8 interpretation of defined terms in an agreement
9 to a nonlawyer, and it's objected to. He can
10 answer subject to that for what it's worth.

11 THE WITNESS: (By Mr. Sparrow) I don't
12 know what the legal definition of action in that
13 particular context means.

14 BY MR. HEFFNER:

15 Q. Looking at your verified statement at
16 page 621, you refer a couple of times to
17 obligations, discharge and pay all obligations.
18 Does obligation include liabilities arising from
19 litigation? ✓

20 A. (By Mr. Sparrow) To a finance person
21 obligations mean obligations to pay money in the
22 course of conduct of business. If such an
23 obligation to pay money arises as a part of
24 litigation, I suppose so.

25 Q. Would your answer be yes then?

1 MR. CALDERWOOD: Objection, calls
2 for --

3 BY MR. HEFFNER:

4 Q. I'm sorry, that Conrail would be
5 required to satisfy?

6 MR. CALDERWOOD: Objection. It calls
7 for a legal conclusion. I'll permit the witness
8 to respond.

9 THE WITNESS: (By Mr. Romig) I have no
10 opinion.

11 BY MR. HEFFNER:

12 Q. On page 621 and 622, Mr. Sparrow, of
13 your -- of the joint verified statement am I
14 correct in understanding that if the liabilities
15 that Conrail accumulated should we say going back
16 to pre-closing activities were insufficient to
17 pay, that the Conrail assets were insufficient to
18 pay any obligations -- you use the term pay and
19 discharge obligations -- that Norfolk Southern
20 and CSX would cover any shortfall or deficiency?

21 MR. LYONS: Is there some specific
22 language that you're --

23 MR. HEFFNER: Yes, there is. It begins
24 with the word however at the bottom of page 621,
25 and it continues really over the first paragraph

1 of page 622.

2 MR. LYONS: Okay. I will have an
3 objection to that since it involves the same
4 issues as to obligations that we've been hacking
5 about for the past half-hour. And subject to
6 that and to the objection that it calls for a
7 legal conclusion, I'll let him proceed.

8 THE WITNESS: (By Mr. Sparrow) As ✓
9 between Norfolk Southern and CSX we have agreed
10 to provide funds to Conrail to meet its
11 obligations.

12 BY MR. HEFFNER:

13 Q. All obligations or where there's what's
14 called a shortfall?

15 MR. LYONS: Same objection. You can
16 answer.

17 THE WITNESS: (By Mr. Sparrow) ✓
18 Essentially where there's a shortfall as between
19 the two of us.

20 BY MR. HEFFNER:

21 Q. So then am I correct in understanding
22 that if Conrail essentially runs out of money to ✓
23 pay lawful obligations, rather than letting it go
24 down the tube, the two companies NS and CSX will
25 satisfy any remaining obligations?

1 A. (By Mr. Sparrow) Yes.

2 Q. If I could go to Mr. Romig for a couple
3 of minutes, have you followed the line of
4 questioning with Mr. Sparrow about corporate
5 level liabilities and retained liabilities?

6 A. (By Mr. Romig) I have.

7 Q. Would the liability that arose through
8 litigation be considered a -- an obligation
9 within the meaning of your verified statement?

10 MR. CALDERWOOD: I'm going to object to
11 that as it's calling for a legal conclusion by
12 the witness. I'll permit him to respond.

13 THE WITNESS: (By Mr. Romig) I do not
14 know.

15 BY MR. HEFFNER:

16 Q. What do you mean then by the term
17 obligations used in your statement?

18 A. (By Mr. Romig) An obligation as
19 intended in our statement is something which has
20 been determined that Conrail is required to pay.

21 Q. Could it include, say, a judgment?

22 A. (By Mr. Romig) If a judgment were an
23 obligation of Conrail, then it would be a
24 required payment.

25 Q. Suppose that your employer, Norfolk

1 MR. HEFFNER: The activities complained
2 of occurred before the control date.

3 MR. LYONS: No, as to the settlement as
4 to the time of settlement.

5 MR. HEFFNER: The settlement would
6 occur after the control date.

7 MR. LYONS: Okay. The witness can
8 answer if he's able subject to the objections
9 that he's not a lawyer and that calls for a legal
10 conclusion.


11 THE WITNESS: (By Mr. Sparrow) Yeah, it
12 seems to call for a legal conclusion that I'm not
13 qualified to make other than to read back the
14 language.

15 BY MR. HEFFNER:

16 Q. But you stated, didn't you, that you're
17 familiar with the transaction agreement?

18 A. (By Mr. Sparrow) In the sense that I
19 have read it. I haven't offered to make any
20 legal interpretations of it.

21 Q. Do you believe the term pre-closing
22 liabilities and the term obligations as you've
23 used in your verified statement would include
24 litigation judgments or settlements with the
25 qualifications that your counsel has -- and I



1 have discussed?

2 MR. LYONS: I object to that since
3 there's no specific reference to what the
4 qualifications are, and I think a generic
5 reference to the -- to the verified statement is
6 vague. And if there's some specific passage of
7 the verified statement that you wish him to
8 address, he could answer that. I don't --
9 otherwise I object to it.

10 MR. HEFFNER: And does that mean he can
11 answer anyway or you're directing him not to?

12 MR. LYONS: He can answer it anyway if
13 he can do it without looking at a particular part
14 of the statement. Certainly you can ask him that
15 question.

16 THE WITNESS: (By Mr. Sparrow) Well, I
17 would respond again that any obligation to pay ✓
18 money which became a legally compelling
19 obligation of Conrail to pay would be an
20 obligation.

21 BY MR. HEFFNER:

22 Q. Okay. Mr. Romig, you've heard these
23 questions, are you in a position to elaborate?

24 MR. CALDERWOOD: I object. There's no
25 indication that has been made that Mr. Romig is

1 MR. CALDERWOOD: Objection. That calls
2 for speculation by the witness on what may or may
3 not happen in some lawsuit. There's no
4 indication he's even familiar with that lawsuit
5 and calls for a legal conclusion. I'll permit
6 him to respond.

7 THE WITNESS: (By Mr. Romig) I have no ✓
8 idea how such an incident would be handled.

9 BY MR. HEFFNER:

10 Q. Are you aware of the lawsuit filed by
11 New York Cross Harbor, you know, predating my
12 telling you about it?

13 A. (By Mr. Romig) I became aware of it
14 yesterday when I learned that you would be at
15 this deposition.

16 Q. And how did you come to learn of the
17 lawsuit?

18 A. (By Mr. Romig) I was informed of it by
19 my counsel.

20 Q. Who was that person?

21 A. (By Mr. Romig) Mr. Calderwood.

22 Q. Would you -- do you have an opinion as ✓
23 to whether or not Norfolk Southern and/or CSX
24 would be responsible to satisfy any judgment that
25 Cross Harbor were to obtain?

1 MR. CALDERWOOD: Objection, calls
2 for --

3 BY MR. HEFFNER:

4 Q. I'm sorry, that Conrail would be
5 required to satisfy?

6 MR. CALDERWOOD: Objection. It calls
7 for a legal conclusion. I'll permit the witness
8 to respond. ✓

9 THE WITNESS: (By Mr. Romig) I have no
10 opinion.

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19 discharge obligations -- that Norfolk Southern ✓
20 and CSX would cover any shortfall or deficiency?

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22 language that you're --

23 MR. HEFFNER: Yes, there is. It begins
24 with the word however at the bottom of page 621,
25 and it continues really over the first paragraph

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4 issues as to obligations that we've been hacking
5 about for the past half-hour. And subject to
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7 legal conclusion, I'll let him proceed.

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14 called a shortfall?

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18 Essentially where there's a shortfall as between
19 the two of us.

20 BY MR. HEFFNER:

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22 that if Conrail essentially runs out of money to ✓
23 pay lawful obligations, rather than letting it go
24 down the tube, the two companies NS and CSX will
25 satisfy any remaining obligations?

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DONALD E. CROSS (1923-1986)

February 23, 1998

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



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

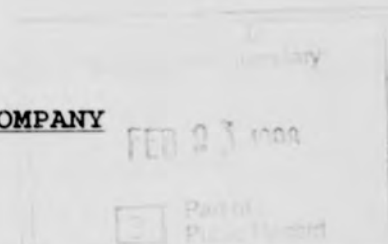
FOPC-6

COMMENTS OF FORT ORANGE PAPER COMPANY

Dear Secretary Williams:

I am submitting the following comments on behalf of Fort Orange Paper Company ("FOPC") in connection with the above-captioned proceeding. As provided under the Board's procedural schedule in Finance Docket No. 33388, FOPC has the right today to submit a brief in support of its "Comments and Request for Conditions of the Fort Orange Paper Company," filed on October 21, 1997, and docketed as "FOPC-3." Considering the scope of its concerns, FOPC does not deem it necessary to file a brief, but it is submitting these comments in lieu thereof in order that the Board may properly address FOPC's concerns and requests for protective conditions.

FOPC hereby states that it fully supports the Responsive Application of the New York State Department of Transportation ("NYSDOT"). In addition, and subject to its support of NYSDOT and the conditions it has requested in FOPC-3, FOPC now states that it no longer opposes the Transaction. For reasons provided below, FOPC's non-opposition to the Transaction is tentatively rendered, primarily because it is as yet unpersuaded that CSX Transportation ("CSX") will not subject it to unjustified rate increases, service reductions or other actions post-Transaction.



Hon. Vernon A. Williams
February 23, 1998
Page Three

discussions that Fort Orange's counsel has had with members of CSX's law department have hopefully enabled CSX to obtain a better understanding of FOPC's issues, CSX has neither offered any assurances that it will not impose any surcharges upon, or reduce service to, FOPC post-Transaction, nor has it indicated clearly that it will take such action against FOPC in the future. Based upon a recent effort at communication with CSX for another shipper client of this firm, I wrote talked with and wrote counsel for CSX on February 17.⁴ His response dated February 20 speaks for itself. By comparison, I can assure you that Norfolk Southern Railway has gone to great lengths to meet with shippers, public officials, and railroads with whom it will serve or connect post-Transaction to hear and attempt to resolve their concerns.

Naturally, CSX's less than enthusiastic reception of FOPC is anything but encouraging, but FOPC has determined to be cautiously optimistic that CSX will aggressively pursue FOPC's business in the future. FOPC has elected not to file a brief at this time because it can only establish that CSX may subject it to unreasonable future rate increases or other actions, but cannot establish that it will certainly suffer harm as a result of the Transaction. Also, considering the lack of commitment it has received from CSX, FOPC continues to support NYSDOT's Responsive Application in full.

FOPC is encouraged by the Board's recent decision to hold a hearing on competition issues in the rail industry. Hopefully, this hearing will bring to light the circumstances under which smaller shippers must deal with their serving rail carriers and will help to shape the Board's approach to related issues in this proceeding. Although FOPC no longer objects to the Transaction, it cannot express support for it (nor can it now specifically endorse CSX). For the reasons set forth above, and as has been presented in its earlier filings, FOPC urges the Board to consider and impose the protective conditions it sought in FOPC-3, and it further urges the Board to grant NYSDOT's Responsive Application.

The Primary Applicants have themselves agreed to Board oversight following consummation of the Transaction, assuming that the Board approves the Primary Application in the first place. FOPC applauds such a step, but insists that Board oversight be imposed for a period of not less than five (5) years from the date of consummation. FOPC gives notice that it intends

⁴ Copies of this correspondence are enclosed for Board review.

On October 21, 1997, in FOPC-3, FOPC expressed concern over the potential harms that it might suffer as a consequence of the series of transactions encompassed by Finance Docket No. 33388.¹ On the basis of these concerns, FOPC registered its opposition to the Transaction, and sought, in the alternative, certain protective conditions outlined at pages 9 and 10 of FOPC-3. Later, in a filing dated December 15, 1997 (docketed as FOPC-5), FOPC stated its support for NYSDOT's efforts to secure expanded access to competitive rail service options for shippers located along what is now Conrail's "Hudson Division."²

Based in Castleton-on-Hudson, NY, FOPC is a small business that receives a modest number of railcars annually. Though its total annual carload figures are comparatively small, FOPC is economically dependent upon rail service. It has also been constrained in its ability to reach other sources for raw material and markets for its products (especially Canadian sources and markets) due to the fact that it lacks cost-effective access to CP Rail System, even though this second carrier operates very near to FOPC's plant. The rail line connecting to FOPC is under no present threat of abandonment, but the line's current operator (Conrail) has limited freight operations on the line directly, and has imposed substantial surcharges³ on FOPC's freight. FOPC had sought in its earlier pleadings in this proceeding to obtain protection against possible future surcharges and other rate increases by CSX post-Transaction. For similar reasons, FOPC had urged competitive access to its facility for another rail carrier.

During the course of this proceeding, FOPC attempted on several occasions to engage in substantive discussions with CSX regarding its service and rate concerns. On each occasion CSX informed Fort Orange's counsel that it not only lacked the time to talk with Fort Orange but it lacked sufficient knowledge about the Conrail lines it would be acquiring. While the limited

¹ The full series of related transactions set forth in Finance Docket No. 33388 and as proposed by the Primary Applicants will be referred to hereafter as the "Transaction."

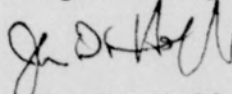
² Specifically, FOPC supports NYSDOT's Responsive Application because it would provide FOPC with access to competitive rail service where today it is "captive" to Conrail. Absent the protective relief sought by NYSDOT, FOPC will continue to be a "captive" shipper (to CSX) post-Transaction.

³ A \$300 per car surcharge on top of a 20% rate increase on deregulated traffic.

Hon. Vernon A. Williams
February 23, 1998
Page Four

to remain a party of record in this proceeding, and that it intends to participate in the Board's oversight process post-consummation as necessary to protect its interests.

Respectfully submitted,



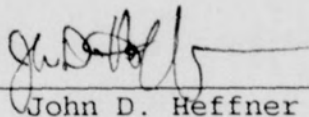
John D. Heffner
Counsel for Fort Orange Paper Company

Enclosures

cc: John P. Hay, Jr.
Daniel D. Luizzi

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of February, 1998, served copies of the foregoing document upon the Primary Applicants, ALJ Jacob Leventhal, and all parties of record by means of U.S. mail, first class postage prepaid, or by means of more expeditious delivery.



John D. Heffner

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DONALD E. CROSS (1923-1986)

BY FAX AND MAIL
904-359-7518

February 17, 1998

John W. Humes, Jr., Esq.
Law Department
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

Dear John:

On behalf of Fort Orange Paper Company, I am writing to follow up our telephone conversation this morning regarding a resolution of our client's concerns over CSX's acquisition and operation of Conrail lines in New York State. As I told both you and Jock Rosenberger, I would think and hope that CSX could accommodate Fort Orange's concerns without too much difficulty. You suggested that I put my client's concerns in writing and you would attempt to get an answer as soon as possible.

Briefly, Fort Orange Paper Company is an "east of the Hudson" Conrail customer located at Castleton, just south of Albany, NY, on the so-called Hudson Division. Fort Orange is a party in the Conrail Acquisition Proceeding having submitted comment and argument on October 21, 1997. While you can refer to our filing for more detail, Fort Orange has specific concerns about the lack of rail competition at its plant, bifurcation of presently single line Conrail service among two carriers (CSX and NS), the possibility that CSX will be reluctant to cooperate on inbound traffic that Conrail presently interchanges without discrimination with NS, and that CSX will continue Conrail's present light density line surcharge on its traffic. Fort Orange would be willing to withdraw from this proceeding if CSX would commit to the following:

1. Upon its acquisition of Conrail lines and services, CSX would cancel the present \$300 per car light density surcharge and will not impose any new surcharge for a period of two years. In addition, CSX will commit to a review of current rate levels to ensure that they encourage customer use of rail. Should CSX conclude that it cannot economically continue to serve Fort Orange, it will meet with Fort Orange to find a commercially acceptable solution before imposing surcharges or other rate related relief.

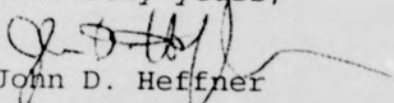
John W. Humes, Jr., Esq.
February 17, 1998
Page Two

2. CSX will commit to preserving through rates and routes so that rates on traffic that presently moves in single line service to or from Conrail points ("one to two points") will be no higher than it is now because any Conrail through route is severed between NS and CSX. Similarly, CSX will commit to routing without discrimination traffic which currently moves or will move post consummation between Fort Orange's facility and NS served points.

3. Finally, CSX will work cooperatively with CP Rail to establish through rates or switching arrangements to allow Fort Orange to use rail on shipments to or from Canadian points for which it now must use motor carrier transportation.

I realize that the CSX law department is extremely busy, as we all are, with the Conrail case; however, this matter is important to my client. I look forward to your early response.

Sincerely yours,


John D. Heffner

cc: John P. Hay, Jr.
Daniel D. Luizzi



John W. Humes, Jr.
Senior Counsel

Admitted in Georgia and Florida

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500 Water Street
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Writer's direct telephone line:

(904) 359-1309

February 20, 1998

VIA FACSIMILE NO. (202) 659-4934 and U.S. MAIL

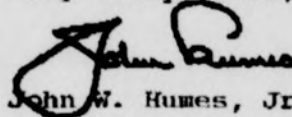
John D. Heffner, Esq.
Rea, Cross & Auchincloss
Suite 420
1920 N Street, N.W.
Washington, DC 20036

Dear John:

Thank you for your letter to me of February 17, 1998 on behalf of Port Orange Paper Company.

Upon review, CSXT feels, at this time, that settlement discussions would not be productive and that each party should continue to advocate its own position before the STB regarding the proposed Conrail transaction. If the transaction is approved, and as CSXT gains experience in the operation of the Conrail lines that are to be allocated to us, I am confident that the CSXT commercial people will be willing to review these items with Fort Orange officials at the appropriate time.

Very truly yours,



John W. Humes, Jr.

JWH/jso

s:\staff\jso\jwh\lthd\heffner

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February 23, 1998

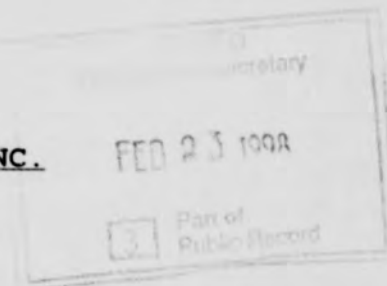
Hon. Vernon A. Williams
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1925 "K" Street, N.W.
Washington, D.C. 20423-0001



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

Redland-4¹

COMMENTS OF REDLAND OHIO, INC.



Dear Secretary Williams:

I am writing on behalf of Redland Ohio, Inc. ("Redland") in connection with the above-captioned proceeding. As is established under the Board's procedural schedule, Redland is permitted today to file with the Board a brief in support of its "Opposition, Comments and Requests for Protective Conditions" filed on October 21, 1997, as "Redland-2."² In lieu of a brief,

¹ On November 26, 1997, Redland Ohio, Inc., submitted a letter addressed to the Board and served on all parties of record which should have borne the designation "Redland-3" but did not. Since the document filed today will be the fourth filing to be included in the Board's procedural record, Redland Ohio, Inc., requests that the Board accept this submission as "Redland-4," and it apologizes for any inconvenience that may have resulted from failing to properly "docket" its letter of November 26th.

² Redland-2 was modified by way of a letter filing of November 26, 1997. (See footnote one, above.) As the record

Hon. Vernon A. Williams
February 23, 1998
Page Two

Redland is offering instead this modest series of comments to clarify its position concerning the series of railroad control and operating transactions encompassed in Finance Docket No. 33388.³

By virtue of Redland's earlier filings, the Board should be aware that Redland objected to the Transaction principally because of its concerns that its rail service post-Transaction will be less satisfactory than that it receives today. (Redland is currently served by all three major class I railroads in the east.) The Board should also be aware that, should it approve the Transaction, Redland has requested protective relief focusing on future CSX service and access to the Wheeling & Lake Erie Railway Company ("W&LE"). (See Conditions 1 and 3, Redland-2 at page 5.) For the reasons set forth below, Redland will withdraw both its opposition to the Transaction and its request for Condition 1 as presented in Redland-2.⁴ However, Redland continues to request that the W&LE be granted access to its facilities by way of trackage or haulage

will reflect, by its letter of November 26, 1997, Redland modified its request for relief by withdrawing one of its requested conditions (Condition 2) and related text found in Redland's filing of October 21, 1997.

³ This series of transactions shall be referred to hereafter as the "Transaction."

⁴ For ease of reference, Condition 1 reads as follows:

1. Where, as a result of the Transaction, NOW will no longer be a necessary participant in the movement of Redland traffic to CSX, the Board must direct that -- (a) CSX is prohibited from insisting that Redland's Woodville traffic be handled by NOW; (b) CSX is required to provide direct switching services to Redland's Woodville facility; and (c) wherever permissible, CSX must arrange to terminate any contracts that require NOW to provide switching or other intermediate services between Redland's Woodville facility and the nearest CSX connection.

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rights to Maple Grove, OH (and to a connection there with the Northern Ohio & Western Railway, Ltd. -- "NOW").

Condition 1 involves Redland's post-Transaction service from CSX. In particular, Redland is alarmed about the possibility that it will be served in an unnecessarily inefficient manner by CSX (and a short line railroad) at Woodville, OH, a point that CSX would be able to serve directly after the Transaction is consummated. Fairly recently, Redland presented its concerns in writing to counsel for CSX. A copy of that letter (hereafter, the "Letter") is attached hereto as Exhibit A. The Letter, dated February 11, 1998, sets forth clearly and in detail the basis for Redland's concerns. Although the service issues set forth in the Letter are presented in a completely straightforward manner, CSX has to this point proven wholly incapable of responding definitively.⁵

Redland could have drafted and filed an extensive brief to address a relatively narrow and very specific rail service issue that either may or may not arise post-Transaction. Redland regards that approach as excessive. It may well be that CSX will ultimately confirm that it will not subject Redland to avoidable and inefficient service, especially since it would not appear to be in CSX's best interests to do so in the first place.⁶ Because of this, Redland need not now burden itself or the Board with a request for protective relief that may ultimately prove unnecessary. Furthermore, although not fully convinced that it will receive acceptable service post-Transaction (compared to what it receives today), Redland is prepared to allow CSX and NS to prove themselves. Therefore, Redland withdraws its opposition to the Transaction.

⁵ At least one CSX representative who spoke with Redland's counsel acknowledged that a NOW-CSX routing for Redland's Woodville traffic did "not seem to make sense."

⁶ Given the relatively simple matter presented in the Letter, Redland is dismayed by just how poorly and slowly CSX has handled its inquiry. If its response to this letter is any indication of the type of service CSX intends to offer in the future, then Redland must convey to the Board its deep concern over CSX's capacity and desire to provide truly responsive, customer-oriented service.

Hon. Vernon A. Williams
February 23, 1998
Page Four

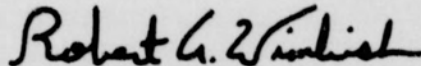
Redland recognizes that the Board will continue to exercise jurisdiction over the Transaction even after it has been consummated, assuming the Board grants the Application in the first place. Redland wishes to make abundantly clear that it intends to participate fully in the oversight phase of the Board's review. If, after it assumes operation of the line serving Redland's Woodville plant, CSX should permit the inefficient handling of Redland's traffic (as outlined in the Letter), then Redland will return to the Board to seek protective relief and any appropriate monetary damages.

As mentioned above, although Redland withdraws its opposition to the Transaction, and will effectively hold in abeyance its concerns regarding future CSX service, Redland continues to stress that it wholeheartedly supports W&LE's request for trackage/haulage rights to Maple Grove, OH. Redland is currently foreclosed economically from competing in those markets that W&LE serves exclusively today, and yet such markets offer Redland some of its greatest opportunity. Redland recognizes that the revenue potential for W&LE at Maple Grove (and interchange there with NOW) would go some distance in keeping W&LE solvent post-Transaction, and Redland is aware that W&LE has requested trackage/haulage rights access to this interchange point. The Board should grant W&LE's request for access to NOW (and, via NOW, Redland).

Redland urges the Board to consider carefully the potential impacts of this Transaction upon smaller-sized shippers such as itself. It has issued these comments today, in lieu of a brief, so as to effectively express its position and so as not to overly tax the Board. Redland's service concerns are valid, and it has duly noted them in the procedural record. As stated above, Redland reserves the right to return to the Board during the oversight phase of this proceeding if CSX should subject it to avoidable operating inefficiencies or similar abuses post-Transaction. Finally, Redland urges the Board to act responsibly toward W&LE, and open up market access that is mutually beneficial to both Redland and this regional railroad.

Hon. Vernon A. Williams
February 23, 1998
Page Five

Respectfully submitted,


Robert A. Wimbish

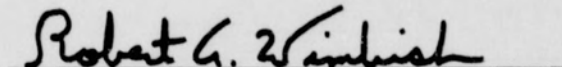
Counsel for Redland Ohio, Inc.

Attachment

cc: David Chapman

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of February, 1998, served copies of the foregoing document upon the Primary Applicants, ALJ Jacob Leventhal, and all parties of record by means of U.S. mail, first class postage prepaid, or by means of more expeditious delivery.


Robert A. Wimbish

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DONALD E. CROSS (1923-1986)

February 11, 1998

Charles M. Rosenberger, Esq.
 Senior Counsel
 CSX Transportation, Inc.
 500 Water Street - J150
 Jacksonville, FL 32202

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

Redland Ohio, Inc.

Dear Jock:

I am writing on behalf of Redland Ohio, Inc. ("Redland"), a CSX customer currently participating in the above-captioned proceeding. As promised, I am writing with the expectation that we may together be able to resolve what appear to be certain misunderstandings about current and future CSX service to and from Redland's facility at Woodville, OH. If we are able to resolve these apparent misunderstandings, and if CSX can confirm how it intends to provide service to and from Redland's Woodville plant post-Transaction, then I would be willing to recommend to Redland that it withdraw from the subject STB proceeding.

As you may recall, Redland's concerns involve only one of its two facilities in the greater Toledo area -- Redland's plant at Woodville, OH. Further, Redland's concerns involve traffic to and from the Woodville facility that is today handled by CSX via the Northern Ohio & Western Railway, Ltd. ("NOW") connection at Tiffin, OH. We understand that if the Transaction is consummated, CSX will acquire a Conrail line that extends from Toledo southward to Woodville, OH. As a result, we have been informed that Redland traffic (from Woodville and Redland's other plant at Millersville, OH) will no longer be interchanged with CSX at Tiffin, and that all Redland traffic handled by CSX will be routed over the newly acquired Conrail line through Toledo.

If our understanding set forth above is correct, then CSX will be able directly to serve Redland's Woodville plant just as Conrail does today. As for Redland's Woodville traffic to and

Charles M. Rosenberger, Esq.
February 11, 1998
Page Two

from CSX, there would no longer be any practical need for NOW to participate in the movement of this business. Indeed, NOW's participation in the handling of traffic from Redland's Woodville plant to a CSX interchange (also at Woodville) obviously would be inefficient, costly and unnecessary for both parties. Nonetheless, according to David Chapman (Redland's traffic supervisor), CSX's Derek Smith has stated that CSX would require Redland's Woodville business to be handled by NOW post-Transaction. Unless there exists some provision in CSX's existing contracts with Redland that necessitate such an operation, we cannot imagine why CSX would take such a position. (Clearly, Redland desires service from CSX directly wherever possible, rather than the less efficient NOW-CSX routing.) Perhaps this is merely a misunderstanding, and if so, we would like to receive written confirmation from CSX that NOW would not be unnecessarily inserted into the movement of CSX traffic to and from Redland's Woodville plant.

If CSX believes that existing contracts between itself and Redland (or Redland's customers) necessitate NOW's handling of Redland's Woodville business post-Transaction, then we would appreciate further explanation of CSX's position. Absent such clarification regarding CSX's perception of its contractual commitments with NOW, Redland expects that CSX will be fully willing and able to confirm in writing that it will serve directly Redland's Woodville facility. Further, we would expect that CSX would commit not to include in future contracts involving Redland's Woodville traffic any provision that would bind Redland or its shippers to rely upon NOW service where direct CSX delivery is -- or in the future will be -- possible.

We wish to make perfectly clear that our concerns focus only on the future role of NOW in the movement of Redland traffic to and from Redland's Woodville facility. We do not ask you to opine as to what existing Conrail contracts with Redland provide, because we do not anticipate that any of those contracts will have terms extending beyond the Transaction's consummation date.

I trust that this letter clarifies Redland's concerns, and I think that you will agree that Redland's objectives in this matter are fully consistent with CSX's interests. If CSX can provide us with confirmation and commitments (as specified above) regarding CSX's service objectives at Woodville post-Transaction, it would be possible for Redland to withdraw its opposition and its remaining request for conditions in this proceeding.

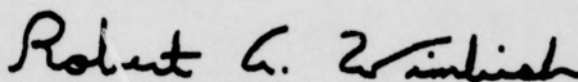
Naturally, I have already begun preparing Redland's brief for February 23rd, but I sincerely hope that it will not need to be filed. I urge you to respond to this letter as soon

Charles M. Rosenberger, Esq.
February 11, 1998
Page Three

as you are able, in order that Redland and CSX may both avoid addressing Redland-related issues on the 23rd. As you know, I will make myself as available to you as possible so that I can quickly respond to your telephone contacts. I do expect that you will need to contact me by phone in response to this letter.

Thank you for your investigation into this matter thus far. I look forward to hearing from you soon.

Sincerely,


Robert A. Wimbish

Counsel for Redland Ohio, Inc.

cc: David Chapman

STB

FD

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D

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TROUTMAN SANDERS LLP

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William A. Mullins

February 23, 1998

202-274-2953

HAND DELIVERY

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



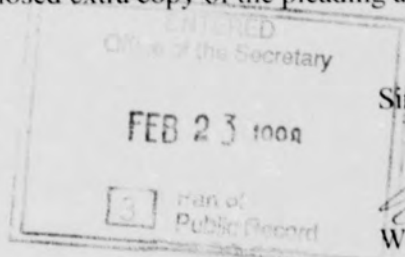
RE: Finance Docket No. 33388, *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation*

Dear Secretary Williams:

~~FD-33388 Sub 35 - 185941~~

Enclosed for filing in the above captioned docket are the original and twenty-five copies of the Withdrawal of Responsive Application by New York State Electric and Gas Corporation and Statement of Support for Primary Application ("NYSEG-21").

The text of this pleading is contained on the enclosed 3.5-inch diskette. Please date stamp the enclosed extra copy of the pleading and return it to the messenger for our files.



Sincerely yours,

William A. Mullins

Attorney for New York State Electric & Gas Corp.

Enclosure

cc: The Honorable Jacob Leventhal
All Parties of Record

185857

NYSEG-21

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

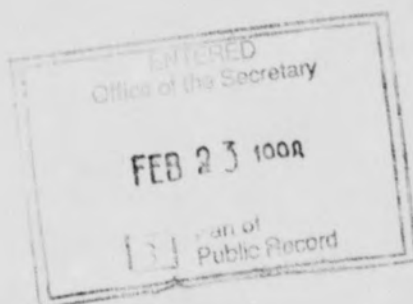
FD-33388-35



185941

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

WITHDRAWAL OF RESPONSIVE APPLICATION BY
NEW YORK STATE ELECTRIC AND GAS CORPORATION
AND STATEMENT OF SUPPORT FOR PRIMARY APPLICATION



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ATTORNEYS FOR NEW YORK
STATE ELECTRIC & GAS
CORPORATION

February 23, 1998

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 33388

FD 33388
- Sub 35

**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**

**WITHDRAWAL OF RESPONSIVE APPLICATION BY
NEW YORK STATE ELECTRIC AND GAS CORPORATION
AND STATEMENT OF SUPPORT FOR PRIMARY APPLICATION**

New York State Electric & Gas Corporation ("NYSEG") hereby withdraws its responsive application filed in this proceeding on October 21, 1997, along with its request that conditions be imposed on the grant of the Primary Application. NYSEG's interest in this matter has been settled. NYSEG now supports the grant of the Primary Application filed in this matter by Norfolk Southern Corporation, CSX Corporation and their affiliates.

Respectfully submitted, this 23rd day of February, 1998.

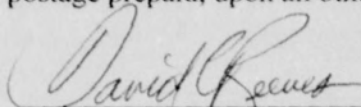


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**ATTORNEYS FOR NEW YORK
STATE ELECTRIC & GAS CORP.**

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing " Withdrawal Of Responsive Application By New York State Electric And Gas Corporation And Statement Of Support For Primary Application" (NYSEG-21) was served the 23rd day of February, 1998, by facsimile to Applicants' counsel and by first class mail, postage prepaid, upon all other parties of record in this proceeding.

A handwritten signature in cursive script, appearing to read "David C. Reeves", is written over a horizontal line.

David C. Reeves

Attorney for New York State Electric & Gas Corp.

185859

GWWR-4

**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**

**BRIEF OF THE GATEWAY WESTERN RAILWAY
AND THE GATEWAY EASTERN RAILWAY**



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**Attorneys for The Gateway Western
Railway and The Gateway Eastern
Railway**

February 23, 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**

**BRIEF OF THE GATEWAY WESTERN RAILWAY
AND THE GATEWAY EASTERN RAILWAY**

INTRODUCTION

Gateway Western Railway Company ("GWR") and Gateway Eastern Railway Company ("GER") (GWR and GER collectively referred to as "Gateway") submit this brief to assist the Surface Transportation Board in determining whether Applicants should be allowed to violate contractual provisions and well-settled Board authority by assigning Conrail's trackage rights over Gateway's lines to CSX without the consent of Gateway, especially in light of the fact that CSX has not presented any evidence to support a statutory override of the contractual consent provisions.

In the Primary Application, CSX and NS requested that the Board allow them to conduct operations over all of the routes of Conrail, even those routes where Conrail operates pursuant to trackage rights agreements and notwithstanding any provisions in such agreements prohibiting Conrail's unilateral assignment of its rights to another entity. (Application, Vol. I at 94-95). Two important trackage rights agreements between Conrail and Gateway are subject to Applicants' request. Those agreements, which grant Conrail access to Gateway's terminal

trackage in East St. Louis, Illinois, expressly require Gateway's consent prior to any assignment of the trackage rights to a third party, such as CSX.

It is undisputed that Applicants did not obtain, nor did they ever seek to obtain, Gateway's consent to the proposed assignment of the trackage rights. Instead, Applicants purport to rely on Section 11321 of the Act to exempt them from obtaining Gateway's consent. Applicants failed to file a terminal trackage rights application pursuant to Section 11102 of the Interstate Commerce Termination Act—as is normally required when attempting to gain access to another carrier's terminal trackage without the owner's consent. Even if Applicants could avail themselves of Section 11321 in this proceeding, Applicants have failed to provide any evidence in their Application or Rebuttal Comments to support such an exemption. Furthermore, because Applicants have wholly ignored the contractual and statutory requirements for an assignment of Conrail's trackage rights to CSX, the Board should deny Applicants' request for relief to the extent that it concerns Gateway's facilities in East St. Louis, Illinois.

STATEMENT OF FACTS

In the Primary Application, CSX and NS requested that the Board issue "a declaratory order that CSX and NS will have the authority to conduct operations over the routes of Conrail covered by Trackage Agreements . . . notwithstanding any clauses in any such agreements purporting to limit or prohibit Conrail's unilateral assignment of its operating rights to another person." (Application, Vol. I at 94-95). It appears that two separate trackage rights agreements between Conrail and Gateway are subject to Applicants' request.¹

¹ The trackage rights agreements at issue are attached as Exhibits 6 and 7 to the Comments Of The Gateway Western Railway And The Gateway Eastern Railway. (GWWR-3, Exhibits 6-7). The agreements also are described in detail in those Comments. (*Id.* at 5-8).

The first agreement, dated November 18, 1988, granted certain trackage rights to Conrail over approximately 2.3 miles of Gateway's tracks between Missouri Avenue and Cahokia Marine Terminal in East St. Louis, Illinois (hereinafter referred to as the "Q to Cahokia segment"). The second agreement, dated January 28, 1994, granted trackage rights to Conrail over approximately 1.9 miles of Gateway's track between the Q Connection and Willows in East St. Louis, Illinois (hereinafter referred to as the "Willows to Q segment"). Each of these agreements contains an express provision prohibiting the assignment of Conrail's trackage rights without the prior written consent of Gateway. (*See* GWWR-3, at 50, 76).

Conrail currently uses the trackage rights granted in the agreements to move its trains from its Rose Lake Yard in St. Louis to the Cahokia Marine Terminal in East St. Louis, Illinois. (*Id.* at 6). Because Conrail has a limited market coverage, it moves a limited number of trains per week across the trackage segments. (*See id.* at 81). In fact, Conrail's limited potential for use of the trackage rights was a primary consideration in Gateway's initial decisions to grant the trackage rights to Conrail. (*Id.* at 6).

Despite the limited use by Conrail, these trackage segments are used heavily by Gateway and other trackage rights tenants. Because the Q Connection is a crossover of the TRRA's line, all of Gateway's traffic interchanged with Conrail and CSX must traverse it and the Willows to Q segment. (*Id.*). In addition, the Q to Cahokia segment, together with a paired track segment jointly owned by Gateway and SPCSL, currently constitute a heavily used route by the owners and trackage rights tenants. (*Id.*). Finally, due to the acquisition of Gateway by Kansas City Southern Transportation Co., Gateway's own traffic on the trackage segments has grown in the past year and continues to do so. (*Id.*).

By their request, Applicants seek to assign Conrail's trackage rights over Gateway's tracks to CSX despite the fact that the trackage rights agreements contain bargained-for provisions that prohibit the assignment of the rights without the express written consent of Gateway. The Board should deny Applicants' request because: (a) Gateway does not consent to the assignment of the trackage rights to CSX; (b) Applicants have failed to file a terminal trackage rights application as required by Section 11102 of the Interstate Commerce Termination Act; (c) Applicants have failed to provide any evidence to demonstrate that CSX's operations over the segments are necessary to carry out the proposed transaction as required by Section 11321 of the Act; and (d) public policy dictates that the Board allow the parties to negotiate privately all of the terms of the proposed trackage rights for CSX.

I. The Board Should Not Allow Applicants To Violate The Express Terms Of The Trackage Rights Agreements Between Conrail And Gateway

The trackage rights agreements between Conrail and Gateway for the Q to Cahokia and Willows to Q segments expressly prohibit the assignment of the trackage rights without the prior written consent of Gateway. It is not disputed that Applicants did not obtain, nor did they seek to obtain, the consent of Gateway for the proposed assignment of Conrail's trackage rights to CSX. Because Gateway does not consent to the proposed assignment, the Board should deny Applicants' request for relief.

The agreement for the Q to Cahokia segment contains the following language which generally prohibits the assignment of the trackage rights without the express consent of Gateway:

Neither party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other party to this Agreement; provided, however, that such consent shall not be necessary if such transfer or assignment is to a purchaser, successor, or assign of all or substantially all of the rail properties

of one of the parties hereto or to a purchaser, successor, or assign of [Gateway's] interest in the Subject Trackage or any portion thereof.

(GWR-3, at 50).²

In addition, the agreement for the Willows to Q segment prohibits the assignment of the trackage rights without the express consent of Gateway:

Neither party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of the other party to this Agreement.

(GWR-3, at 76).

These contractual provisions are in place to protect the parties against the exact type of abuse that Applicants advance here. One of the choices that a party has in considering a business transaction is with whom to transact the business. A party may be willing to enter into a contract with one person, but not with another person, for any number of reasons. For example, the characteristics of one party (with regard to size, trustworthiness, market position, etc.) may be so different from another party so that the risks and benefits of the proposed transaction would drastically change depending on the party with whom the deal is struck. When the proposed transaction is long term, the identity of the contracting parties is even more important. As a result, the contracting parties often agree to prohibit the assignment of the contract to protect against the introduction of a new party that may be materially different from the original parties.

At the time the trackage rights agreements at issue were made, Gateway (or its predecessor) considered and relied upon the characteristics of Conrail in granting the trackage

² Although the agreement for the Q to Cahokia segment contains a provision for the non-consensual assignment by Conrail to a party acquiring "all or substantial all" of Conrail's assets, that provision is inapposite here because CSX is acquiring only approximately 50% of Conrail. By definition, this cannot constitute "all or substantially all" of Conrail's assets. (See GWR-3, at 8).

rights at issue. Conrail was limited in size and served a limited market territory. Based on the characteristics of Conrail, Gateway projected that Conrail's use of the facilities would be limited by the amount of traffic that its system could generate. (See GWWR-3, at 6). For these reasons, Gateway chose to contract with Conrail.

Here, without the consent of Gateway, Applicants seek to assign Conrail's trackage rights to CSX and force Gateway to deal with CSX despite the fact that CSX is drastically different from Conrail. Applicants have made clear that CSX is not simply seeking to purchase and operate the Conrail system as it currently exists. Instead, CSX is seeking to add a portion of Conrail's system to CSX's current system and operate as a unified railroad. As a result, the traffic that CSX potentially would move over Gateway's facilities is significantly more than the traffic Conrail currently moves over this same segment. Because the capacity of Gateway's facilities is limited, a user as large as CSX, especially with the addition of a portion of Conrail, never would have been granted trackage rights over these segments, on the same terms and conditions as Conrail.

In their Application and Rebuttal Comments, Applicants did not dispute that the proposed substitution of CSX in the place of Conrail would drastically change the burdens and benefits of the parties under the trackage rights agreements, nor did they dispute that the agreements prohibit their assignment without Gateway's consent. Under the proposed assignment, Gateway would be forced, without its consent, to deal with a party that is dramatically different than the party with whom it chose to contract. Accordingly, by requesting the Board to disregard the contractual restriction prohibiting the assignment of Conrail's trackage rights without the consent of Gateway, Applicants seek to accomplish the exact abuse that the contractual provision was designed to prevent.

In essence, Applicants seek an order from the Board that allows them to violate the express terms of the trackage rights agreements between Conrail and Gateway. For the foregoing reasons, the Board should not allow Applicants to violate the terms of those agreements by assigning Conrail's trackage rights to CSX without the consent of Gateway.

II. CSX Must File A Terminal Trackage Rights Application Under Section 11102 To Attempt To Gain Access Over Gateway's Facilities

It is true that if certain statutory provisions are followed an owner's consent is not always required for another railroad to obtain access over the tracks of a non-consenting party; Section 11102 of the Interstate Commerce Termination Act sets out the procedure for a rail carrier to attempt to obtain access to another carrier's terminal trackage without the owner's consent. 49 U.S.C. § 11102. However, an attempt to avoid complying with the procedural and evidentiary requirements of Section 11102, Applicants merely requested that the Board assign Conrail's contractual trackage rights to CSX. Because the relief that Applicants actually desire is an award of terminal trackage rights over Gateway's facilities in East St. Louis, Illinois, CSX is required to file a terminal trackage rights application and satisfy the procedural and evidentiary requirements of Section 11102 of the Interstate Commerce Termination Act.

Section 11102 provides in pertinent part:

The Board may require terminal facilities, including main-line tracks for a reasonable distance outside of a terminal, owned by a rail carrier providing transportation subject to the jurisdiction of the Board . . . to be used by another rail carrier if the Board finds that use to be practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business.

49 U.S.C. § 11102(a). It is well-settled authority that a railroad that desires access over another railroad's facilities must file a terminal trackage rights application under Section 11102—even in the context of a merger or line acquisition proceeding. *See CSX Corp. -- Control -- Chessie and*

Seaboard C.L.I., Finance Docket No. 28905 (Sub-No. 1), 363 I.C.C. 584 (1980); *Union Pacific Corp., et al – Control – Missouri Pacific Corp., et al*, Finance Docket No. 30000, 366 I.C.C. 462 (1982).; *Rio Grande Indus. et al -- Purchase and Related Trackage Rights -- Soo Line Railroad Company Line Between Kansas City and Chicago, IL*, Finance Docket No. 31505, Decision No. 6 (ICC Served November 15, 1989); *Rio Grande Indus., Inc. et al -- Purchase and Trackage Rights -- Chicago, Missouri & Western Railway Company Line between St. Louis, MO and Chicago, IL*, Finance Docket No. 31522, 5 I.C.C.2d 952 (1989) and *Union Pacific Corp., et al. – Control and Merger – Southern Pacific Rail Corp., et al.*, Finance Docket No. 32760, Decision No. 63 (STB Served Dec. 4, 1996) (Hereinafter “UP/SP”).

Section 11102 ensures that an owner of rail facilities will not be deprived of the use of its property without adequate due process of law, adequate compensation, and an opportunity to resolve operational difficulties. The procedure set out in Section 11102 requires the applicant to demonstrate that the proposed usage is practicable and in the public interest. Section 11102 also prohibits an award of terminal trackage rights if the usage would substantially impair the current users' ability to handle their own business over the trackage or if the relief is not operationally feasible. Moreover, Section 11102 provides a forum for the owner to pursue appropriate conditions and compensation for the use of its facilities in the event that the parties are unable to agree on those issues.

It is undisputed that Applicants did not file a terminal trackage rights application under Section 11102. Applicants also failed to provide any evidence to show that an award of the terminal trackage rights would be practicable and in the public interest. In fact, the only evidence in the record shows that the introduction of any new traffic, and particularly CSX unit coal trains, would not be practicable and would impair the current users' ability to handle their

own traffic on those segments. As explained in Gateway's Comments, the extensive market coverage of CSX's system, when added to the market coverage of the portion of Conrail's system that CSX will assume, significantly changes the potential use of the trackage segments at issue. (See GWWR-3, at 6). For example, because Conrail serves a limited number of coal mines, it currently moves very little coal to the Cahokia Marine Terminal for transloading to barge. However, if CSX acquires the portion of Conrail that it proposes to acquire, the new system will have access to far more coal mines and the potential for CSX coal trains across the trackage segments increases dramatically. (See GWWR-3, at 7).

In the few sentences that Applicants devoted to their request for assignment of trackage rights in their Application and Rebuttal Comments, Applicants have attempted to rely solely on 49 U.S.C. § 11321(a) as authority for the assignment of terminal trackage rights. Section 11321 provides that a person participating in an approved merger is "exempt from antitrust laws and from all other law . . . as necessary to let that person carry out the transaction." 49 U.S.C. § 11321(a). Applicants' sole reliance on Section 1132 (a) is misplaced, however, because if the tracks in question qualify as "terminal tracks" (such as the tracks governed by the Conrail/Gateway trackage rights agreements) then Section 11321 cannot be used to override the contractual provisions found in the trackage rights agreements in the absence of a terminal trackage rights application under Section 11102.

Under the rules of statutory construction, the Board must interpret Sections 11102 and 11321 to be consistent whenever possible. *Local 478 Trucking and Allied Industries Pension Fund v. Jayne*, 778 F. Supp. 1289 (D.N.J. 1991). In other words, the Board must regard each statute as effective wherever possible, absent clearly expressed congressional intent to the contrary. *Muller v. Lujan*, 928 F.2d 207 (6th Cir. 1991); *U.S. v. Norquay*, 905 F.2d 1157 (8th

Cir. 1990). As the Board found in *UP/SP*, Sections 11102 and 11321 may be harmoniously applied in the context of a merger. See *UP/SP*, Decision No. 44 at 168-69. In addition, if Congress did not intend for Section 11102 to apply in the context of a merger or acquisition proceeding, it could have expressed that intent in the language of the statute.³ Congress did not, however, express such an intent. Accordingly, Section 11321 cannot be read to exempt Applicants from the evidentiary and procedural requirements of Section 11102—just as Section 11321 cannot be read to exempt applicants from any other provision of the Interstate Commerce Termination Act, such as the labor protection provisions under Section 11347.

The Board should not allow Applicants to avoid compliance with the evidentiary and procedural requirements of Section 11102 by simply reciting a prayer for relief under Section 11321. In order to comply with the Interstate Commerce Termination Act and protect the due process interests of Gateway, the Board should require, at a minimum, that Applicants file a Section 11102 terminal trackage rights application for access over Gateway's trackage segments in East St. Louis, Illinois.

III. Applicants Have Failed To Address, Much Less Satisfy, The Requirements For An Assignment Of Trackage Rights Under Section 11321

Notwithstanding the fact that Applicants should have filed a terminal trackage rights application, Applicants instead rely on Section 11321 to obtain assignment of Conrail's trackage rights without Gateway's consent. However, even assuming Section 11321 could be used in the absence of a terminal trackage rights application, Applicants have failed to satisfy, or even

³ It should be noted that Congress recently rewrote the Interstate Commerce Act and had the full opportunity to change the terminal trackage rights statute, but chose not to modify, repeal, or otherwise substantively change former Section 11102. See ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, enacted December 29, 1995, effective January 1, 1996, section 11102.

address, the statutory requirements of that Section so as to allow an assignment of the trackage rights without Gateway's consent.

Section 11321 provides that a rail carrier participating in a control transaction is "exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that rail carrier . . . carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction." 49 U.S.C. § 11321(a) (emphasis supplied). The Supreme Court has held that Section 11321 "does not exempt carriers from all law, but rather [only] from [a] law necessary to carry out an approved transaction." *Norfolk & Western Ry. Co. v. American Train Dispatchers' Ass'n*, 111 S. Ct. 1156, 1166 (1991) (emphasis supplied). In the UP/SP merger proceeding, Commissioner Owen made the following observation regarding an attempted use of the Section 11321 exemption provision: "Among those pledges [of the applicants to rail labor] is that the applicants will use the immunity provision of 49 U.S.C. 11341(a), now 49 U.S.C. 11321(a), only to seek those changes in collective bargaining agreements that are actually "necessary"—and I read "necessary" to mean "required"—to implement the transaction" *Union Pacific Corp., et al. – Control and Merger – Southern Pacific Rail Corp., et al.*, Finance Docket No. 32760, Decision No. 44, slip op. At 251 (STB Served Aug. 12, 1996). Under these authorities, the statutory exemption under Section 11321 applies only when overriding a law or contract is "necessary" or "required" to carry out a transaction approved by the Board.

The determination of whether an exemption is necessary to carry out a transaction is within the exclusive jurisdiction of the Board. See *Norfolk & Western, supra*; *Harris v. Union Pacific*, 952 F. Supp. 598 (N.D. ILL. 1997); *Railway Labor Executives' Ass'n v. Southern Pacific Transp. Co.*, 7 F.3d 902 (9th Cir. 1993); *Polich v. Burlington Northern, Inc.*, 942 F.2d

1467 (9th Cir. 1990). However, a determination by the Board that a railroad is exempted from certain laws or contracts, without a finding that the exemption is necessary in order to carry out the transaction, has no legal force. See *Railway Labor Executives v. ICC*, 883 F.2d 1079, 1082 (D.C. Cir. 1989).

In order for the Board to make a finding of necessity in this case, Applicants must demonstrate that the Board's refusal to abrogate the non-assignment provision contained in the Conrail/Gateway trackage rights agreements "is an impediment to the approved transaction." *CSX-Corp.-Control Chessie Sys., Inc., and Seaboard Coast Line Indus., Inc.*, 8 I.C.C.2d 715, 721 (1992). In addition, Applicants must demonstrate that the exemption will provide a transportation benefit, such as enhanced efficiency, greater safety or some other gain. *Railway Labor Executives' Assoc. v. United States*, 987 F.2d 806, 815 (1993); see also, *American Train Dispatchers Assoc. v. ICC*, 26 F.3d 1157 (D.C. Cir. 1994). Applicants have failed to address, much less satisfy, these standards. In their Application and Rebuttal Comments, Applicants have provided no evidence to demonstrate CSX's need to operate on these trackage rights segments or that the assignment of the trackage rights is necessary for CSX to own and operate Conrail's assets. Instead, Applicants have offered only the conclusory statement that "[u]se of those [trackage] rights] . . . by CSX [] is essential to the realization of the benefits that this transaction offers." App. Vol. I at 94. There is simply no evidence or argument whatsoever in the Application or Applicant's Rebuttal Comments to support this statement. In addition, it is without question that the forced assignment of the Gateway trackage rights to CSX will add nothing to the alleged efficiency, greater safety or any other purported gain of the proposed transaction that could not be achieved in a less intrusive manner. In short, Applicants have failed to show, and cannot show, that the abrogation of the trackage rights agreements and assignment

of Conrail's trackage rights over Gateway to CSX is "necessary" to carry out the proposed transaction.

On the contrary, the evidence shows that assignment of Conrail's trackage rights over Gateway is not at all necessary for Applicants to consummate the proposed transaction. Access to the Cahokia Marine Terminal can be provided to CSX after its acquisition of Conrail's property without granting CSX the right to conduct its own operations over the trackage segments at issue. The evidence shows that Gateway can simply provide whatever terminal or interchange switching CSX may require in East St. Louis, Illinois—all without impairing the ability of Gateway, SPSCIL and other tenants to use their own terminal services. (See GWWR-3, at 15). In fact, because CSX currently connects with GWER and GWWR in East St. Louis, Illinois, Gateway already conducts terminal switching services for CSX in that area. (See GWWR-3, at 15). Finally, as noted earlier, a Section 11321 exemption is not necessary in this case because a terminal trackage rights remedy is available under Section 11102.

Although the abrogation of Gateway's contractual rights and the assignment of Conrail's trackage rights over Gateway may be "convenient" to Applicants, this action certainly is not "necessary" to complete the proposed transaction. Accordingly, Applicants have failed to satisfy the procedural and evidentiary standards of Section 11321.

IV. If The Board Allows Applicants To Avoid The Non-Assignment Provisions Of The Trackage Rights Agreements, The Parties Should Be Required To Negotiate Privately All Of The Terms Of The Trackage Rights

Nonetheless, the Board does unlawfully grant Applicants the authority to abrogate the non-assignment provisions of the trackage rights agreements, the Board also should abrogate the remaining provisions of the agreements and allow the parties to negotiate privately all of the terms of the trackage rights. Certainly if it is "necessary" to abrogate the non-assignment

provisions of the Gateway agreement in order to carry out the transaction, then, given the evidence that CSX's operation over Gateway would be significantly different than Conrail's operation, it is likewise "necessary" to allow Gateway to change other provisions of those agreements. The terms of the trackage rights agreements between Conrail and Gateway were the result of voluntary, arm's-length negotiations between the two parties. Due to the differences in characteristics between CSX and Conrail, allowing CSX to merely substitute itself as a party to the trackage rights agreements in the place of Conrail, without the appropriate changes to the remaining terms and conditions of the agreements, would severely disturb the balance of the benefits and burdens of the agreements. See Section I, *supra*. Accordingly, if the Board allows the requested assignment (which it should not), the Board should permit Gateway and CSX to attempt to negotiate privately all of the terms and conditions of the trackage rights agreements. Such a result would be consistent with the Board's preference that trackage rights should be negotiated privately by the parties to the agreement. *Burlington Northern Inc., et al., - Control - Santa Fe Pacific Corp.*, Finance Docket No. 32549, slip op. At 88 (ICC served Aug. 23, 1995).

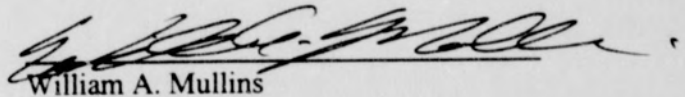
In the event that the parties cannot agree to mutually acceptable contractual provisions, the Board should provide that the parties may submit the issues to the Board for a fair and equitable resolution. This condition would ensure that the parties negotiate honestly and in good faith all of the terms and conditions of the trackage rights. In addition, such a condition would be consistent with the Board's long standing precedent. See, *UP/SP*, Finance Docket No. 32760, Decision 44, slip op. at 169 (STB served Aug. 12, 1996) and Decision 63, slip op. at 9 (STB served Dec. 4, 1996).

CONCLUSION

Because Applicants have wholly ignored the contractual, procedural and evidentiary requirements for an assignment of Conrail's trackage rights over Gateway's facilities in East St. Louis, Illinois, the Board should deny Applicants' request for relief.

Respectfully Submitted, this 23rd day of February, 1998.

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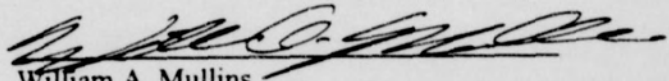


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Attorneys for The Gateway Western
Railway and The Gateway Eastern Railway

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "Comments of The Gateway Western Railway and The Gateway Eastern Railway" (GWWR-3) was served this 21st day of October, 1997, by hand delivery to Applicants' representatives and to Judge Leventhal, and by first class mail to all parties of record in this proceeding.

A handwritten signature in dark ink, appearing to read "William A. Mullins", written over a horizontal line.

William A. Mullins
Attorney for The Gateway Western Railway
and The Gateway Eastern Railway

STB

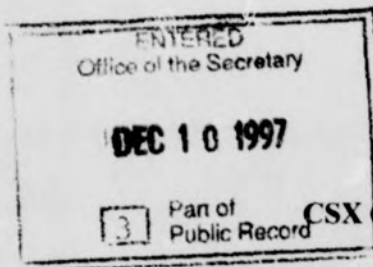
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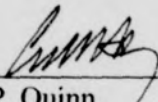
BEFORE THE

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**

CERTIFICATE OF SERVICE

In accordance with Decision No. 57, I hereby certify that a copy of all pleadings (other than discovery) filed so far in this proceeding by Reading Blue Mountain & Northern Railroad Company ("RBMN") have been served on all Parties of Record that were added to the service list pursuant to Decision No. 57.



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Dated: December 9, 1997

Attorneys for Reading Blue Mountain & Northern
Railroad Company

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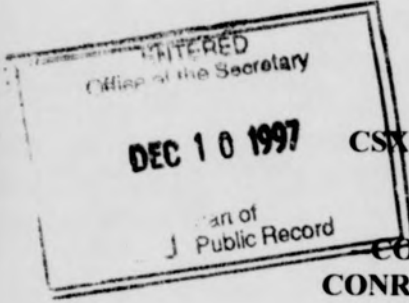
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BEFORE THE

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**

D

CERTIFICATE OF SERVICE

In accordance with Decision No. 57, I hereby certify that a copy of all pleadings (other than discovery) filed so far in this proceeding by Buffalo & Pittsburgh Railroad, Inc. ("BPRR") have been served on all Parties of Record that were added to the service list pursuant to Decision No. 57.

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Dated: December 9, 1997

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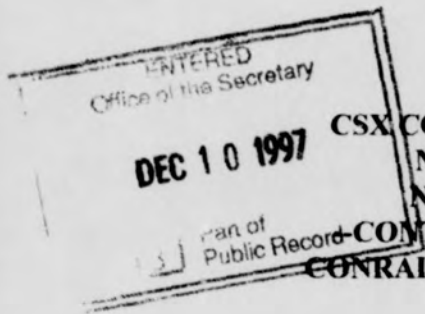
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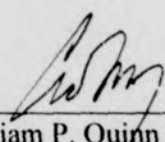
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**CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION**

D

CERTIFICATE OF SERVICE

In accordance with Decision No. 57, I hereby certify that a copy of all pleadings (other than discovery) filed so far in this proceeding by Bethlehem Steel Corporation and its subsidiary railroads ("BSCX") have been served on all Parties of Record that were added to the service list pursuant to Decision No. 57.



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Dated: December 9, 1997

Attorneys for Bethlehem Steel Corporation
and its subsidiary railroads

STB

FD-33388

ID-184703

12-10-97

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184703



BEFORE THE

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**

D

CERTIFICATE OF SERVICE

In accordance with Decision No. 57, I hereby certify that a copy of all pleadings (other than discovery) filed so far in this proceeding by Allegheny & Eastern Railroad, Inc. ("ALY") have been served on all Parties of Record that were added to the service list pursuant to Decision No. 57.

William P. Quinn
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Dated: December 9, 1997

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STB

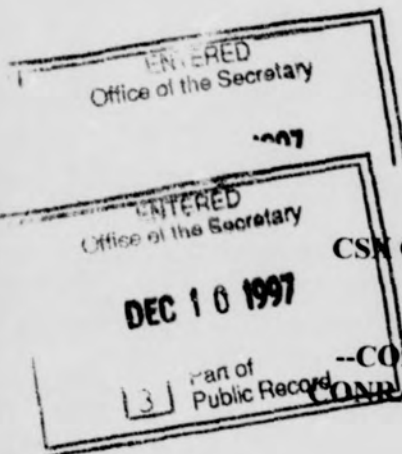
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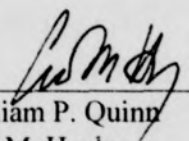


CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

D

CERTIFICATE OF SERVICE

In accordance with Decision No. 57, I hereby certify that a copy of all pleadings (other than discovery) filed so far in this proceeding by Rochester & Southern Railroad, Inc. ("RSR") have been served on all Parties of Record that were added to the service list pursuant to Decision No. 57.


William P. Quinn
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Dated: December 9, 1997

Attorneys for Rochester & Southern Railroad, Inc.

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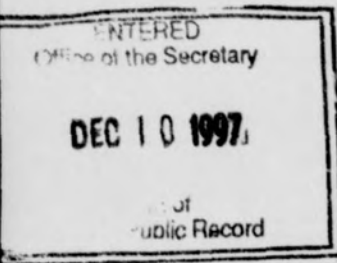
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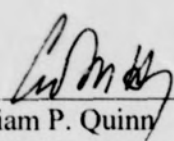
STB FINANCE DOCKET NO. 33388

**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**

D

CERTIFICATE OF SERVICE

In accordance with Decision No. 57, I hereby certify that a copy of all pleadings (other than discovery) filed so far in this proceeding by Pittsburg & Shawmut Railroad, Inc. ("PSRR") have been served on all Parties of Record that were added to the service list pursuant to Decision No. 57.



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Dated: December 9, 1997

Attorneys for Pittsburg & Shawmut Railroad, Inc.

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GOLLATZ, GRIFFIN & EWING, P.C.
ATTORNEYS AT LAW

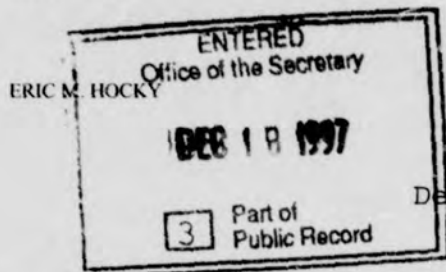
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December 9, 1997

FEDEX

Hon. Vernon A. Williams, Secretary
Surface Transportation Board
Mercury Building, #711
1925 K Street, N.W.
Washington, DC 20423-0001

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

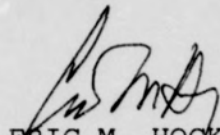
Dear Secretary Williams:

In accordance with Decision No. 57, enclosed are a certificate of service on behalf of each of the parties shown on the attached list, with respect to service of prior pleadings on the Parties of Record that were added to the service list pursuant to Decision No. 57. An original and ten (10) copies of each certificate are enclosed as required by Decision No. 57, along with a diskette containing the certificates in a format (WordPerfect 6.1) that can be converted into WordPerfect 7.0.

Hon. Vernon A. Williams, Secretary
December 9, 1997
Page 2

Kindly time stamp the enclosed extra copy of this letter to indicate receipt and return it to me in the self-addressed envelope provided for your convenience.

Respectfully,



ERIC M. HOOKY
Attorneys for the Parties of Record
shown on the attached list

Enclosures

cc: Administrative Law Judge Jacob Leventhal
Dennis G. Lyons, Esq.
Richard A. Allen, Esq.
Paul A. Cunningham, Esq.
All Parties of Record added pursuant to December No. 57

SCHEDULE A

Bethlehem Steel Corporation and its subsidiary
railroads ("BSCX")

Buffalo & Pittsburgh Railroad, Inc. ("BPRR")

Allegheny & Eastern Railroad, Inc. ("ALY")

Rochester & Southern Railroad, Inc. ("RSR")

Pittsburg & Shawmut Railroad, Inc. ("PSRR")

The New York, Susquehanna and Western Railway
Corporation ("NYSW")

Reading Blue Mountain & Northern Railroad Company
("RBMN")

STB

FD-33388

ID-184700

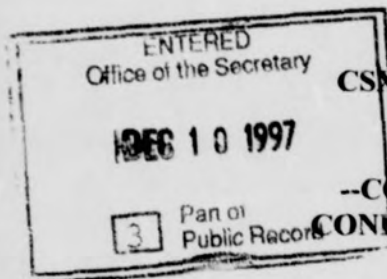
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BEFORE THE
STB FINANCE DOCKET NO. 33388

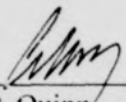


**CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION**

D

CERTIFICATE OF SERVICE

In accordance with Decision No. 57, I hereby certify that a copy of all pleadings (other than discovery) filed so far in this proceeding by The New York, Susquehanna and Western Railway Corporation ("NYSW") have been served on all Parties of Record that were added to the service list pursuant to Decision No. 57.



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Dated: December 9, 1997

Attorneys for The New York, Susquehanna
and Western Railway Corporation

184700

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Public Record



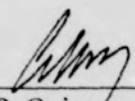
BEFORE THE

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**

CERTIFICATE OF SERVICE

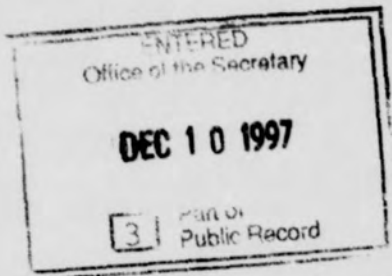
In accordance with Decision No. 57, I hereby certify that a copy of all pleadings (other than discovery) filed so far in this proceeding by The New York, Susquehanna and Western Railway Corporation ("NYSW") have been served on all Parties of Record that were added to the service list pursuant to Decision No. 57.



William P. Quinn
Eric M. Hocky
GOLLATZ, GRIFFIN & EWING, P.C.
213 West Miner Street
P.O. Box 796
West Chester, PA 19381-0796
(610) 692-9116

Dated: December 9, 1997

Attorneys for The New York, Susquehanna
and Western Railway Corporation



BEFORE THE

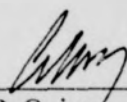
STB FINANCE DOCKET NO. 33388



**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**

CERTIFICATE OF SERVICE

In accordance with Decision No. 57, I hereby certify that a copy of all pleadings (other than discovery) filed so far in this proceeding by The New York, Susquehanna and Western Railway Corporation ("NYSW") have been served on all Parties of Record that were added to the service list pursuant to Decision No. 57.



William P. Quinn
Eric M. Hocky
GOLLATZ, GRIFFIN & EWING, P.C.
213 West Miner Street
P.O. Box 796
West Chester, PA 19381-0796
(610) 692-9116

Dated: December 9, 1997

Attorneys for The New York, Susquehanna
and Western Railway Corporation

STB

FD-33388

ID-184681

12-9-97

D



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

November 19, 1997

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

Re: STB Finance Docket No. 33388

Dear Secretary Williams:

The Ohio Steel Industry Advisory Council received a request from Norfolk Southern, et al directing the Council to provide on behalf of certain members, interrogatories and documents. Twenty-five copies of the Council's responses are enclosed along with a 3.5 inch diskette containing the Council's pleadings in Microsoft Word format.

At the same time, the Steel Council hereby advises affected parties that it will henceforth treat responses to Norfolk Southern, et al as "comments, protests or requests for conditions."

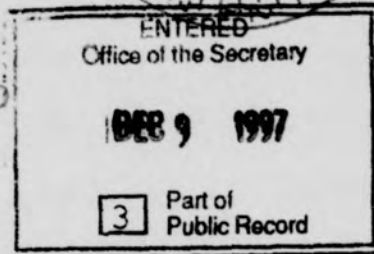
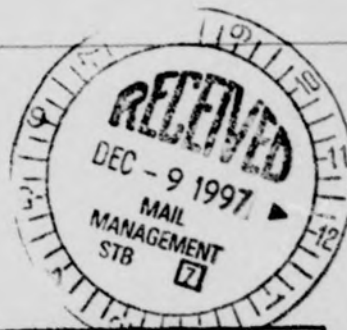
Please date-stamp the enclosed extra copy of this cover letter and return it in the enclosed self-addressed envelope.

Sincerely,

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

Charles Hesse Associates
7777 Bainbridge Road (new address)
Chagrin Falls, OH 44023-2124

Enclosures



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388



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

RESPONSE BY THE OHIO STEEL INDUSTRY ADVISORY COUNCIL TO
REQUEST OF NORFOLK SOUTHERN FOR INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS.

November 19, 1997

The Ohio Steel Industry Advisory Council, on behalf of its member companies WCI Steel, Inc., Republic Engineered Steels, Inc., and The Timken Company, responds to Norfolk Southern's request (NS-52) for Interrogatories and Documents accordingly:

INTERROGATORIES:

1. Indicate what other rail carrier(s) besides Conrail currently offers service between Ashtabula, Ohio and Warren, Ohio.

Response: No duplicate service is presently being provided between Ashtabula and Warren, Ohio.

2. Indicate in detail the reason(s) why trackage rights to CSXT from Norfolk Southern for services between Ashtabula, Ohio and Warren, Ohio without the turn at Latimer, Ohio will deny "competitive access" to WCI Steel, Inc. in Warren, Ohio from Ashtabula, Ohio.

Response: WCI Steel's reasons have been provided in detail through the Ohio Rail Development Commission and the Ohio Steel Industry Advisory Council.

WCI Steel reserves the right to supplement its response to this interrogatory if and when additional information becomes available.

3. Identify all documents such as studies, reports and analysis related to your response to Interrogatory 2.

Response: Information has been provided through the Ohio Rail Development Commission and the Ohio Steel Industry Advisory Council.

WCI reserves the right to supplement its response to this interrogatory if and when additional information becomes available.

4. For Timken Company at Canton, Ohio and Republic Engineered Steels, Inc. at Massillon, Ohio for the years 1992-1996 by year, state the amount of traffic (both in number of rail cars and by cost of rail transportation) handled by (a) Conrail; and (b) Wheeling & Lake Erie Railway.

Response: Both The Timken Company and Republic Engineered Steels, Inc. contend this information is privileged to the business relationship of each company and its respective carriers, Conrail and the Wheeling & Lake Erie Railway.

Both The Timken Company and Republic Engineered Steels, Inc., reserve the right to supplement their response to the interrogatory if and when additional information becomes available.

5. State whether Timken and/or Republic Engineered Steels currently have transportation contracts with (a) Conrail; (b) Wheeling & Lake Erie. State whether such contracts make Conrail or Wheeling & Lake Erie the exclusive rail carrier for Timken Company and/or Republic Engineered Steels and when such contracts expire.

Response: Both The Timken Company and Republic Engineered Steels, Inc. contend this information is privileged to the business relationship of each company and its respective carriers, Conrail and the Wheeling & Lake Erie Railway.

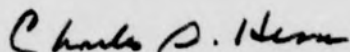
Both The Timken Company and Republic Engineered Steels, Inc., reserve the right to supplement their response to the interrogatory if and when additional information becomes available.

DOCUMENT REQUESTS

1. Provide a copy of each document identified in response to Interrogatory Number 3.

Response: Additional comment to INTERROGATORY QUESTIONS 1-5 was submitted to the U.S. Surface Transportation Board by the Ohio Steel Industry Advisory Council and the Ohio Rail Development Commission, copies attached.

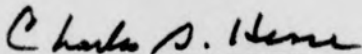
Respectfully Submitted,



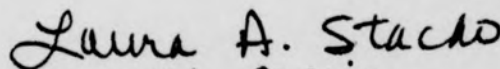
Charles S. Hesse (for the Ohio Steel Industry Advisory Council)
President
Charles Hesse Associates
7777 Bainbridge Road
Chagrin Falls, OH 44023

I also, hereby, certify that on November 19, 1997, I caused to be served this response to:

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



By Charles S. Hesse


NOTARY PUBLIC

STB

FD-33388

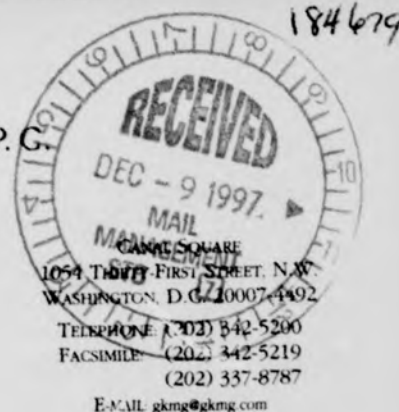
ID-184679

12-9-97

D

GALLAND, KHARASCH & GARFINKLE, P.C.
ATTORNEYS AT LAW

EDWARD D. GREENBERG
E-MAIL: egreenbe@gkmg.com

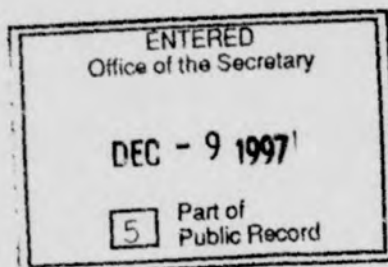


ROBERT N. KHARASCH
OF COUNSEL
GEORGE F. GALLAND (1910-1985)
WRITER'S DIRECT DIAL NUMBER

December 9, 1997

VIA COURIER

Vernon A. Williams, Secretary
Office of the Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, DC 20423-0001



(202) 342-5277

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--Transfer of Railroad Line by Norfolk Southern Railway Company to CSX Transportation, Inc. (Finance Docket No. 33388)

Dear Secretary Williams:

Enclosed please find an original and ten (10) copies of Providence and Worcester Railroad Company's Response to Comments filed in the Intervention Petition of United States Representatives Honorable Jerrold Nadler, *et al.* in the above-referenced docket.

Also enclosed is an additional copy of the filing to be date-stamped when filed and returned to us.

Should you have any questions concerning this, please do not hesitate to contact us.

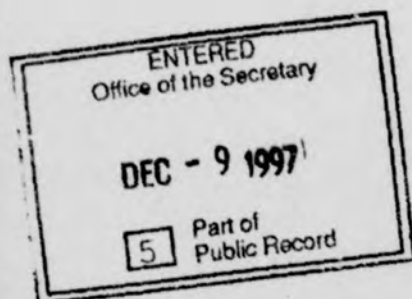
Very truly yours,

Edward D. Greenberg

Enclosures

XIN JI YUAN-GKMG LAW OFFICE
AFFILIATED FIRM
SUITE A-1603, VANTONE NEW WORLD PLAZA
NO. 2, FU CHENG MEN WAI AVENUE
BEIJING 100037 PEOPLE'S REPUBLIC OF CHINA
TEL: 011-86-10-6858-8501 FAX: 011-86-10-6858-8505
E-MAIL: xjylaw@pku.edu.cn

**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--Transfer of Railroad Line by Norfolk
Southern Railway Company to CSX Transportation, Inc.**

**RESPONSE OF PROVIDENCE AND WORCESTER RAILROAD COMPANY
TO COMMENTS OF INTERVENORS**

In accordance with the governing procedural order in this proceeding, the Providence and Worcester Railroad Company ("P&W") submits the following in response to Comments filed in the Intervention Petition of United States Representatives Honorable Jerrold Nadler *et al.* (the "Intervenors") on or about October 21, 1997.

As the Board is aware, by the letter of its president, Orville R. Harrold, dated August 28, 1997, P&W expressed full support for the Application submitted by CSX Corporation and CSX Transportation, Inc. ("CSX") and Norfolk Southern Corporation and Norfolk Southern Railway Company ("NS") to acquire control of and conduct operations on the rail properties of Consolidated Rail Corporation ("Conrail"). P&W took this step as it believed then, as it does now, that the transaction would eliminate many of the inefficiencies inherent in the interchange of traffic between Conrail and CSX or NS.

Subsequently, in a letter from Mr. Harrold dated October 17, 1997, P&W reiterated its full support for the Application. A copy of this letter (without the supporting exhibits, all of which were previously filed) is attached as Exhibit A. At the same time, P&W advised the Surface Transportation Board ("Board") that the company was exercising its right to acquire the so-called New Haven Station, presently owned and operated by Conrail. Shortly thereafter, on November 12, 1997, P&W filed an action in the United States District Court for the District of Columbia as successor to the United States Special Court seeking to enforce its right to acquire New Haven Station.

P&W is a 20-mile regional railroad operating in Massachusetts, Rhode Island, Connecticut and New York. Its operations in Connecticut extend along the entire eastern portion of the state and along the Northeast Corridor from the Massachusetts/Rhode Island border to New Haven, Connecticut. P&W possesses overhead trackage rights solely for the purpose of movement of construction aggregate on the lines extending from New Haven to Fresh Pond Junction on Long Island, New York, over properties owned by the Connecticut Department of Transportation ("CDOT"), the New York Metropolitan Transportation Authority, Amtrak and Conrail, including Conrail's so-called Market Running track from Pelham Bay through Oak Point yard and the New York Connecting Railroad line to its connection with the Long Island Railroad (New York and Atlantic Railroad) at Fresh Pond Junction ("P&W Overhead Rights Area"). P&W also has overhead rights on the CDOT line to reach the Waterbury Branch at Devon, Connecticut and Danbury Branch at South Norwalk, Connecticut.

On August 6, 1997 P&W entered into a Revenue and Service Agreement with CSX Transportation, Inc. and CSX Intermodal, Inc. That agreement provides a long-term revenue factor for commodities that are transported by CSXT in joint line service between its anticipated interchange with P&W at New Haven and the New York and Atlantic Railroad at Fresh Pond Junction. Under the Agreement CSX would provide the service between New Haven and Fresh Pond Junction.

P&W is submitting its comments on the Intervenor's proposal to clarify certain facts that are mentioned in the proposal, and to express P&W's concerns about the introduction of another rail carrier on that portion of P&W Overhead Rights Area which are the subject of Intervenor's request and its willingness to serve as a designated carrier on said P&W Overhead Rights Area in the event the Board were to grant the Intervenor's request. As P&W understands the Intervenor's petition, they propose that the so-called Shared Asset Area be expanded to include a cross harbor float service across New York harbor, the Bay Ridge line from Bay Ridge, Brooklyn, New York to Fresh Pond Junction in Queens, New York, the New York Connecting Railroad from Fresh Pond Junction to Oak Point Yard in the South Bronx and the connecting tracks between Oak Point Yard and Harlem River Yard, including Harlem River Yard in the South Bronx and to the New York Terminal Produce Market (Hunts Point Market).

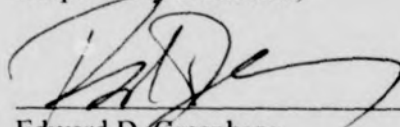
Intervenor's petition attempts to ensure competitive rail service in New York and Southern New England. P&W wants to clarify an apparent misunderstanding of Intervenor concerning the nature and extent of P&W's rights between New Haven and Fresh Pond. As mentioned above, P&W's rights on the P&W Overhead Rights Area are limited solely for the overhead movement of construction aggregates between P&W's system and the Long Island Railroad (New York and Atlantic Railroad) (and for all purposes to reach the Danbury and Waterbury Branches). P&W believes Intervenor presumed P&W had unlimited trackage rights for all purposes between New Haven and Fresh Pond and therefore presumed there would be direct competitive access via this line to New York City and Southern New England. This is not the case.

P&W is confident that its agreement with CSX will enable P&W to offer a competitive link between New York and New England. The Intervenor, however, request that NS, CSX, the Long Island freight service operator and any other responsible operator having a connection with the lines referenced

in Intervenor's Petition have equal access to these facilities, including a portion of P&W's Overhead Rights Area.

The P&W Overhead Rights Area is heavily used by Amtrak and Metro North, for intercity and commuter passenger operations, as well as by Conrail and P&W. Today, P&W is restricted to narrow operating windows by both the passenger operations and Conrail's operations. Indeed, Amtrak's operations over the Northeast Corridor are expected to more than double with the introduction of high speed service in 1999 to 2000. Obviously, P&W's crews are fully qualified to operate on the P&W Overhead Rights Area. The introduction of a third operator on the P&W Overhead Rights Area would raise significant concerns regarding the availability of adequate operating windows. In the event the Board were to entertain the Intervenor's petition regarding the P&W Overhead Rights Area, including between Hunts Point and New Have, Connecticut, P&W respectfully requests that it serve as such additional designated carrier and that another operator not be required. While P&W does not advocate Intervenor's request, P&W is willing and able to provide the service sought by Intervenor's if the Board agrees with Intervenor's request.

Respectfully submitted,



Edward D. Greenberg
Galland, Kharasch & Garfinkle, P.C.
1054 -31st Street, N.W.
Washington, DC 20007
(202) 342-5200

Heidi J. Eddins, Esq.
General Counsel
Providence and Worcester Railroad Company
75 Hammond Street
Worcester, MA 01610
508-755-4000

Dated: December 9, 1997



FOUNDED 1844

October 17, 1997

Vernon Williams
 Secretary - Office of the Secretary
 Surface Transportation Board
 1925 K Street, N.W., Room 711
 Washington, D.C. 20423

RE: **Finance Docket No. 33388**
CSX/Norfolk Southern Acquisition and Control of Conrail ("Application")

Dear Secretary Williams:

This letter is to reiterate Providence and Worcester Railroad Company's ("P&W") full support for the above referenced Application as expressed in my letter dated August 28, 1997. P&W draws your attention to our understanding that the Application if approved does not obviate pre-existing agreements and judicial orders relating to Conrail. For example, the Order of the Special Court created by the Regional Rail Reorganization Act of 1973 dated April 13, 1982, Approving and Directing the Consummation of Expedited Supplemental Transactions in the Matter of Expedited Supplemental Transactions Pursuant to Section 305(f) of the Regional Rail Reorganization Act of 1973 provides in Section 21 a right to P&W to acquire, *inter alia* the terminal properties known as New Haven Station defined in Exhibit D in the Order, "if Conrail elects to withdraw from or abandon or discontinue freight service obligations" thereon. A copy of the Order is enclosed as Exhibit 1. Certain aspects of the Order were discussed in a letter dated March 31, 1982 requested by Conrail from Robert W. Blanchette, then FRA Administrator. In his letter, Mr. Blanchette confirms that the Order would be construed and applied by the Special Court. This letter is attached as Exhibit 2. P&W has initiated steps to effect the implementation of the Order by notifying Conrail (Exhibit 3) and requesting the determination required by the Order from the Federal Railroad Administration (Exhibit 4). Conrail has recently responded by declining to enter into the requested negotiations over reasonable price and reasonable terms and conditions.



V. Williams
Secretary - Office of the Secretary
Surface Transportation Board
October 17, 1997

The Special Court, established pursuant to Section 209 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. § 719) was abolished pursuant to Pub. L. 104-317, Title VI, Section 605(a), 110 Stat. 3858 (Codified at 45 U.S.C. § 719 (b)(2)). After January 18, 1997, all jurisdiction and other functions of the Special Court were assumed by the United States District Court for the District of Columbia. P&W intends to seek enforcement of the provisions of the Order of the Special Court.

Your attention is also drawn to the August 22, 1997 filing of Connecticut Southern Railroad (CSO) describing anticipated inconsistent or responsive applications. CSO stated its intention to file a responsive application seeking 75 miles of local trackage rights between New Haven and Fresh Pond Junction, NY. CSO defines local trackage rights to include providing service to customers located on the territory involved. Obviously, more information regarding CSO's application will be available upon the filing of same. As described, however, CSO's requests would appear to include rights in New Haven Station and therefore would be violative of the Order since the Order plainly provides that P&W will acquire New Haven Station in the event Conrail elects to withdraw from or abandon or discontinue freight service obligations.

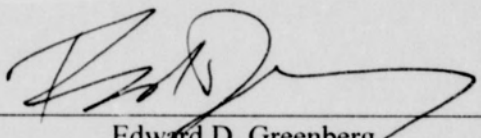
Very truly yours,

Orville R. Harrold
President

cc: Administrator Jolene Molitoris, FRA

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 1997, a copy of the foregoing Response was served by first-class, U.S. mail, postage prepaid upon all parties of record.



Edward D. Greenberg

STB

FD-33388

ID-184678

12-8-97

D

184678

MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1882

WRITER'S DIRECT DIAL:
(202) 778-0630



December 8, 1997

VIA HAND DELIVERY

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

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

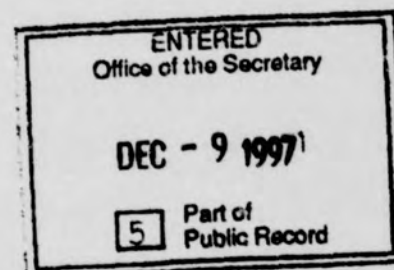
Dear Secretary Williams:

Pursuant to Decision No. 57 in the above-referenced proceeding, enclosed please find an original and ten (10) copies of the Certificate of Service of the Burlington Northern and Santa Fe Railway Company.

I would appreciate it if you would date-stamp the enclosed extra copy of the Certificate of Service and return it to the messenger for our files. If you have any questions, please contact me at (202) 778-0630. Thank you.

Sincerely,

Adrian L. Steel Jr.



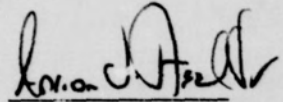
CHICAGO BERLIN BRUSSELS HOUSTON LONDON LOS ANGELES NEW YORK WASHINGTON

INDEPENDENT MEXICO CITY CORRESPONDENT: JAUREGUI, NAVARRETE, NADER Y ROJAS

INDEPENDENT PARIS CORRESPONDENT: LAMBERT ARMENIADES

CERTIFICATE OF SERVICE

I hereby certify that a copy of all filings in Finance Docket No. 33388 submitted by the Burlington Northern and Santa Fe Railway Company prior to the service date of Board Decision No. 57 have been served this 8th day of December, 1997, by first-class mail, postage prepaid on all parties added to the Service List in Board Decision No. 57.

A handwritten signature in black ink, appearing to read "Adrian L. Steci, Jr.", written in a cursive style.

Adrian L. Steci, Jr.

MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1882

WRITER'S DIRECT DIAL:
(202) 778-0630

MAIN TELEPHONE
202-463-2000
MAIN FAX
202-861-0473

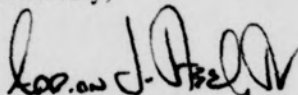
December 8, 1997

To: All Parties Added To The Service List Pursuant to Decision No. 57

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

Pursuant to Decision No. 57 in the above-referenced proceeding, enclosed please find copies of all filings made by The Burlington Northern and Santa Fe Railway Company in this proceeding prior to the service date of that decision.

Sincerely,



Adrian L. Steel Jr.

Enclosures

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CHICAGO BERLIN BRUSSELS HOUSTON LONDON LOS ANGELES NEW YORK WASHINGTON
INDEPENDENT MEXICO CITY CORRESPONDENT: JAUREGUI, NAVARRETE, NADER Y ROJAS
INDEPENDENT PARIS CORRESPONDENT: LAMBERT ARMENIADES

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 33388



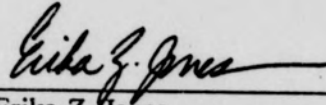
CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

**NOTICE OF APPEARANCE OF THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY**

Please enter the appearances in this proceeding of the below-named attorneys on behalf of The Burlington Northern and Santa Fe Railway Company. The Burlington Northern and Santa Fe Railway Company intends to participate in this proceeding as a party of record.

Accordingly, please place the named attorneys, at the addresses provided, on the service list to receive all pleadings and decisions in this proceeding.

Respectfully submitted,



Erika Z. Jones
Adrian L. Steel, Jr.
Roy T. Englert, Jr.
Kathryn A. Kusske
Mayer, Brown & Platt
2000 Pennsylvania Ave., NW
Washington, DC 20006
(202) 463-2000

Jeffrey R. Moreland
Richard E. Weicher
The Burlington Northern and
Santa Fe Railway Company
1700 East Golf Road
Schaumburg, IL 60173
(708) 995-6000

and

Janice G. Barber
Michael E. Roper
The Burlington Northern and
Santa Fe Railway Company
3800 Continental Plaza
777 Main Street
Ft. Worth, Texas 76102-5384
(817) 333-7954

Attorneys for The Burlington Northern and Santa Fe Railway Company

April 30, 1997

CERTIFICATE OF SERVICE

I hereby certify that copies of the Notice of Appearance of The Burlington Northern and Santa Fe Railway Company (BNSF-1) have been served this 30th day of April, 1997, by first-class mail, postage prepaid on All Counsel of Record in Finance Docket No. 33388.

Eula Z Jones

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388



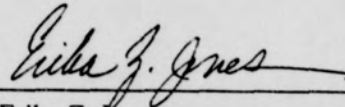
CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

**NOTICE OF INTENT TO PARTICIPATE OF
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

Please enter the appearances in this proceeding of the below-named attorneys on behalf of The Burlington Northern and Santa Fe Railway Company. The Burlington Northern and Santa Fe Railway Company intends to participate in this proceeding as a party of record.

Accordingly, please place the named attorneys, at the addresses provided, on the service list to receive all pleadings and decisions in this proceeding.

Respectfully submitted,



Erika Z. Jones
Adrian L. Steel, Jr.
Roy T. Englert, Jr.
Kathryn A. Kusske
Mayer, Brown & Platt
2000 Pennsylvania Ave., NW
Washington, DC 20006
(202) 463-2000

Jeffrey R. Moreland
Richard E. Weicher
Sidney L. Strickland, Jr.
The Burlington Northern and
Santa Fe Railway Company
1700 East Golf Road
Schaumburg, IL 60173
(847) 995-6887

and

Janice G. Barber
Michael E. Roper
The Burlington Northern and
Santa Fe Railway Company
3017 Lou Menk Drive
Fort Worth, Texas 76131-2830
(817) 352-2352

Attorneys for The Burlington Northern and Santa Fe Railway Company

July 10, 1997

CERTIFICATE OF SERVICE

I hereby certify that copies of the Notice of Intent to Participate of The Burlington Northern and Santa Fe Railway Company (BNSF-2) have been served this 10th day of July, 1997, by first-class mail, postage prepaid on the Honorable Jacob Leventhal and on all Counsel of Record in Finance Docket No. 33388.

Kelley E. O'Brien ^{MB}
Kelley E. O'Brien

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

DESCRIPTION OF RESPONSIVE OR
INCONSISTENT APPLICATION

Jeffrey R. Moreland
Richard E. Weicher
Sidney L. Strickland, Jr.
The Burlington Northern and
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Attorneys for The Burlington Northern and Santa Fe Railway Company

August 22, 1997

BNSF-3

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

DESCRIPTION OF RESPONSIVE OR
INCONSISTENT APPLICATION

On July 10, 1997, The Burlington Northern and Santa Fe Railway Company ("BNSF") filed its Notice of Intent to Participate in this proceeding as a party of record. Pursuant to the Board's Decision No. 12 herein, all parties intending to file a responsive or inconsistent application are required to state their intention to do so and to furnish a general statement of what such application is expected to include by August 22, 1997. In accordance with the Board's Decision, the following is BNSF's statement of its intent and general statement.

Although BNSF has not yet determined what, if any, additional comments it intends to make with respect to the proposed Conrail control transaction, BNSF has determined that it will actively participate in this proceeding as necessary to ensure the

maintenance of effective competition in those territories affecting BNSF and its customers. In this regard, several parties to this proceeding have indicated in their preliminary and discovery filings that they are opposed to the proposed control transaction and that they may seek conditions or make proposals with respect to the divestiture or sale of or access to Applicants' lines. Should such conditions or proposals be made, and depending on the nature of the requested relief, BNSF intends to participate as its interests may appear. Such participation may include, inter alia, (i) an appropriate responsive application pertaining to any proposed divestiture or sale of or other access to Applicants' lines in the Gulf Coast and Midwestern Regions; and (ii) such responsive applications or requests for other conditions as may be necessary to permit BNSF to compete effectively by assuring BNSF (a) access to CSX, Norfolk Southern or other terminal facilities or operations affected by the proposed Conrail transaction (e.g., trackage rights over trackage within the Chicago area), and (b) effective routing alternatives through major gateways.

Respectfully submitted,

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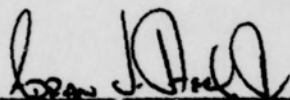
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Attorneys for The Burlington Northern and Santa Fe Railway Company

August 22, 1997

CERTIFICATE OF SERVICE

I hereby certify that copies of the Description of Responsive or Inconsistent Application of The Burlington Northern and Santa Fe Railway Company (BNSF-3) have been served this 22nd day of August, 1997, by first-class mail, postage prepaid on the Honorable Jacob Leventhal and on all Counsel of Record in Finance Docket No. 33388.



STB

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NEW YORK
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November 24, 1997

VIA HAND DELIVERY

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



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

Dear Secretary Williams:

Enclosed are the original and 25 copies of CSX's
and Norfolk Southern's Appeal From Decision of Presiding
Administrative Law Judge Denying Discovery of Relevant
Information for filing in the above-referenced
proceeding. Also enclosed is a 3.5" diskette containing
the document in WordPerfect format.

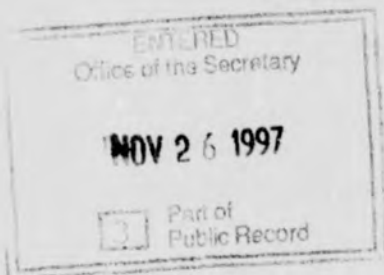
Please date stamp and return the enclosed copy
via our messenger.

Very truly yours

Drew A. Harker

Drew A. Harker

Counsel for CSX Corporation
and CSX Transportation, Inc.



Enclosures

cc: Restricted Service List (w/Enclosure)

CSX/NS-171

EXPEDITED CONSIDERATION REQUESTED



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 33388

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

**CSX'S AND NORFOLK SOUTHERN'S APPEAL FROM DECISION
OF PRESIDING ADMINISTRATIVE LAW JUDGE
DENYING DISCOVERY OF RELEVANT INFORMATION**

During discovery, CSX¹ and NS² have sought limited information from certain parties regarding the extent to which the parties are seeking relief in this proceeding from alleged harm that predated, and was not caused by, the proposed transaction. The Board has made it clear in prior merger cases that it will not impose conditions to ameliorate or remedy a preexisting problem. Despite this well-established precedential grounding, ALJ Leventhal

¹ CSX refers to CSX Corporation and CSX Transportation, Inc. ("CSXT").

² Norfolk Southern or NS refers to Norfolk Southern Corporation and Norfolk Southern Railway Company.

sustained objections to these discovery requests as seeking information not relevant to the proceeding.

In addition, in one instance it appears that two parties made an eleventh hour agreement to file a joint responsive application to acquire majority ownership in one of the rail carrier assets that is to be transferred to the Primary Applicants under the proposed transaction. CSX and NS sought discovery on details of the parties' agreement to file the responsive application. ALJ Leventhal also sustained an objection to this discovery on the basis that it sought information not relevant to the proceeding.

Both of these decisions are clearly erroneous and result in manifest injustice to CSX and NS because they deny to CSX and NS relevant information necessary to prepare their rebuttal filing. Accordingly, CSX and NS respectfully request that the Board issue an order overruling these decisions and requiring production of the information sought.

I. BACKGROUND

A. Summary of October 21, 1997 Filings by Parties To Whom Discovery Was Directed

1. Illinois Central

On October 21, 1997, Illinois Central Railroad Company ("ICR") filed a Responsive Application seeking, in part, a Board order compelling CSX to sell approximately two miles of CSX track from Leewood to Aulon in Memphis, Tennessee.³ ICR Responsive Application (IC-5) at 7. According to ICR, divestiture of the Leewood to Aulon Line will

³ Norfolk Southern does not join in the appeal insofar as it relates to the ALJ's decision on ICR.

"mitigate specific adverse impacts on existing competition and the adequacy of transportation service that will result from CSXT's acquisition of certain Conrail lines" if the Primary Application is approved by the Board. Id. at 8. At the same time, ICR contends that its purchase of the Leewood-Aulon line "will remove the inefficient and anti-competitive stranglehold that CSXT now has on IC's operations . . ." Id. at 8. (emphasis added). ICR also complains that since December 1996 CSXT "has consistently caused significant interference with and delay to IC's through train movements on the Leewood-Aulon Line." Id. at 10.

2. Wisconsin Central

Wisconsin Central, Ltd. ("WCL") has submitted a Responsive Application requesting, in part, a Board order compelling the sale to WCL of the Altenheim Subdivision of the Baltimore & Ohio Chicago Terminal Railroad ("B&OCT"), a terminal carrier 100% owned by CSXT.⁴ WCL alleges that CSX has operated the B&OCT not as an independent terminal carrier, but in furtherance of CSX's own business, to the detriment of WCL. WCL witness William R. Schauer asserts that WCL's disputes with CSX and B&OCT go back over ten years. Schauer Verified Statement at 7-8. According to WCL, the remedy requested will redress this situation.

3. Elgin, Joliet and Eastern Railway Company, Transtar Inc., and I&M Rail Link, LLC

On October 21, 1997, Transtar, Inc., the Elgin, Joliet and Eastern Railway ("EJE") and the I&M Rail Link, LLC ("IMRL") filed a Responsive Application with the Board for

⁴ Neither the WCL nor the ICR Responsive Application would commit either to actually purchase if the ultimate prices set by the Board were not acceptable to them.

acquisition of the 51 percent stock ownership held by Conrail in the Indiana Harbor Belt Railroad Company ("IHB"). Notably, on August 22, 1997, EJE filed its Description of Responsive Application which did not indicate anything about filing an application in conjunction with IMRL. Neither did EJE's Verified Statement of No Significant Environmental Impact submitted to the Board on September 30, 1997.

B. Discovery Sought From Parties Making October 21 Filings

1. Illinois Central

On November 6, 1997, CSX and NE served their First Set of Interrogatories and Requests for Production of Documents to Illinois Central Railroad Company ("IRC"). See Exhibit 1.⁵ This discovery includes certain interrogatories and document requests to determine to what extent ICR's request for relief is related to the transaction proposed in the Primary Application, or addresses matters that predate the proposed transaction. Accordingly, CSX directed the following interrogatories to ICR:

1. At any time prior to June 1997, did ICR or, to its knowledge, any prior owner or operator of ICR's line offer, or otherwise propose or seek to acquire ownership of, or trackage or other operating rights over CSX's line of railroad extending from milepost 387.9 at Leewood to milepost 390.0 at Aulon in Memphis, Tennessee? For purposes of responding to this interrogatory the time limitation set forth in Instruction 3 does not apply.
2. If the answer to Interrogatory No. 1 is anything other than an unqualified "no", describe in detail each such proposal or other request, specifying: (a) the length and location of the lines involved; (b) the nature of the ownership interest or

⁵ All parties on the Restricted Service List, including counsel for ICR, WCL, EJE and IMRL, already have all of the exhibits attached to this appeal. Accordingly, copies of this appeal served on the Restricted Service List do not contain the exhibits.

operating rights proposed or sought; (c) the financial terms upon which such ownership or operating rights were proposed or sought; (d) all other terms, including terms governing railroad operations, that were offered, proposed, sought or discussed; and (e) why the ownership or operating rights in question were not acquired pursuant to that offer, proposal or request.

Document Request No. 2 sought production of "all documents discussing or relating to any offer, proposal or request identified in response to Interrogatory 2."

2. Wisconsin Central

On November 6, 1997, CSX served its First Set of Interrogatories and Requests for Production of Documents to Wisconsin Central Limited ("WCL"). See Exhibit 2. In light of WCL's claim that it has had disputes with CSX and B&OCT for the last ten years, this first discovery request contains one interrogatory and one document request seeking to determine the relationship between WCL's claim for relief and the proposed transaction. Interrogatory No. 12 requested information about WCL's previous plans to acquire the Altenheim Subdivision:

12. (a) State whether since 1987 WCL has expressed any interest, made any inquiries, submitted any proposals, or made any offers regarding WCL's acquisition of some or all of the Altenheim Subdivision.

(b) State whether such interest, inquiry, proposal or offer was in writing or oral, the individual (and his/her employer and job title) to whom it was made and the individual (and his/her employer and job title) who it was made by.

(c) Identify all documents whether created before or after January 1, 1995 which support, or in any way relate to the response to, or the subject matter of, Interrogatory 12, subsections (a) and (b).

Document Request No. 11 sought production of "all documents, identified or which should be identified, in response to Interrogatory 12(c)."

3. EJE and IMRL

On November 5, 1997, CSX and NS served their First Set of Interrogatories and Requests for Production of Documents to EJE and their First Set of Interrogatories and Requests for Production of Documents to IMRL. See Exhibits 3 and 4. Because, to Primary Applicants' knowledge IMRL had not filed a notice of intent to participate in the proceeding and had not appeared previously in the proceeding until filing the joint Responsive Application, CSX and NS propounded interrogatories designed to determine when EJE and IMRL began discussions regarding the submission of the Responsive Application and when the agreement was reached between the two to submit the joint application. Interrogatory No. 1 to EJE provided as follows:

1. (a) State when discussion and/or negotiations between EJE and I&M Rail Link ("IMRL") commenced regarding the submission of a joint application to the Board for acquisition of the 51% stock ownership of Conrail in the Indiana Harbor Belt Company ("IHB").

(b) State when an agreement was reached with IMRL to submit a joint application to the Board for acquisition of the 51% stock ownership of Conrail and the IHB.

(c) Identify the individual(s) primarily responsible for the discussions, negotiations, and agreements referred to in subsections (a) and (b) above.

(d) Identify all documents that in any way relate to the discussions, negotiations, and agreements referred to in subsections (a) and (b) above.

Interrogatory No. 1 directed to IMRL was a mirror image of this request.

C. Objections Made To The Discovery Sought

ICR, WCL, EJE and IMRL are all represented by the same counsel. These parties objected to each of the above interrogatories⁶ and document requests on the ground that "the information sought is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence." See Exhibits 5, 6, 7, and 8. In addition, WCL objected on the ground that the discovery requests sought information for periods prior to January 1, 1995 and sought information already within CSX's possession, custody, or control.

D. CSX's and NS' Motion To Compel And The ALJ's Decision

On November 17, 1997, CSX and NS filed a motion to compel seeking an order from the ALJ requiring production of information responsive to these discovery requests. See Exhibit 9. As to ICR,⁷ CSX argued that the information sought in Interrogatory Nos. 1 and 2 and Document Request No. 2 was relevant to evaluate ICR's claim that the requested condition -- purchase of the Leewood to Aulon line -- is related to the allocation to CSX of certain Conrail lines in the proposed transaction. With respect to WCL, CSX and NS argued that the requested information would help establish whether the condition requested -- divestiture of the Altenheim subdivision -- was related to the transaction. With respect to EJE, CSX and NS argued that these interrogatories were designed to determine how well thought out and well conceived were EJE's and IMRL's plans to acquire and operate the IHB.

⁶ EJE and IMRL did not object to Interrogatory Nos. 1(c) or (d) directed to them.

⁷ Norfolk Southern did not join in this part of the motion to compel.

Oral argument was held on CSX and NS's motion to compel on November 20. At the argument, ALJ Leventhal denied the motion to compel as it related to production of information responsive to all of these requests, finding that the information sought was not relevant. See Discovery Conference Transcript, November 20, 1997 at 135 (denying the motion to compel with respect to EJE), at 155 (denying the motion to compel with respect to IMRL), at 198 (denying the motion with respect to WCL), and at 211 (denying the motion with respect to ICR). The only rationale provided by the ALJ for his ruling came with respect to ICR, in response to a question by counsel. The ALJ explained, "I don't know that that leads to anything that's relevant. There are many reasons they may want to purchase a line. Maybe they want to make an investment, its a very profitable piece of track." Id. at 211.

These rulings by the ALJ were "a clear error of judgment" and will result in "manifest injustice" to CSX and NS. 49 C.F.R. 1115.1(c). Accordingly, they should be reversed.

II. ARGUMENT

A. The Scope of Discovery in this Proceeding is Broad

ALJ Leventhal denied CSX and NS's motion to compel on the issues in this appeal solely on the grounds of relevance. See supra at 7-8. The Board's Rules of Practice governing the scope of discovery, however, are quite broad. The Board's rule defining when discovery is available provides that:

- (1) parties may obtain discovery . . . regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding

(2) It is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

49 C.F.R. § 1114.21(a) (1996). The Board's rule is similar to Rule 26(b)(1) of the Federal Rules of Civil Procedure.⁸ The federal rule "does allow broad scope to discovery and this has been well recognized by the courts." 8 Charles Alan Wright & Richard L. Marcus, Federal Practice and Procedure § 2007 (1994). Moreover, the federal rule applies to all forms of discovery, including interrogatories. *Id.* This is, therefore, the broad standard against which the interrogatories in question in this appeal must be evaluated.

B. Conditions That Seek To Remedy Pre-Existing Problems Will Be Denied By The Board And Information On The Causal Connection Between The Requested Condition And The Proposed Transaction Is Relevant To The Board's Review of the Condition

ICR and WCL have both filed Responsive Applications with the Board in this proceeding, seeking as conditions both line divestitures and other relief. See *supra* at 2-3. The Board has repeatedly recognized that it has broad authority to grant conditions as part of its approval of a railroad consolidation.⁹ The Board, however, has developed certain well

⁸ The Federal Rules of Civil Procedure provide that:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . . The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Fed. R. Civ. P. 26(b)(1).

⁹ See Union Pacific--Control & Merger--Southern Pacific, Slip Op. at 144 (S.T.B. 1996) ("UP/SP") ("Section 11344(c) gives us broad authority to impose conditions governing railroad

established criteria to govern the imposition of conditions "[b]ecause conditions generally tend to reduce the benefits of a consolidation." UP/SP, slip op. at 144. One of these criteria is that "[t]o be granted, a condition must first address an effect of the transaction." BN/SF, slip op. at 56. The Board has repeatedly explained that it "will not impose conditions 'to ameliorate longstanding problems which were not created by the merger,' nor will we impose conditions that 'are in no way related either directly or indirectly to the involved merger.'" UP/SP, slip op. at 145 (citations omitted); see also BN/SF, slip op. at 56 (citations omitted); BN/Frisco, 360 I.C.C. at 952 (citations omitted). The I.C.C. found that "requiring a merged carrier to protect carriers against circumstances which were not caused by the merged carrier does not appear fair." BN/Frisco, 360 I.C.C. at 952.

In applying its conditioning power, the Board has repeatedly cited this principle that conditions will not be imposed to remedy problems that existed before the merger. For example, in the BN/SF proceeding, ICR sought conditions designed to prevent BNSF from re-routing traffic away from ICR. ICR conceded that BNSF's ability to re-route traffic away from ICR, if it existed at all, arose from a prior merger. The I.C.C., therefore, denied ICR's requested conditions, stating that "[i]f the problem complained of by IC actually exists, it is a pre-existing problem that will not be exacerbated by BN/Santa Fe common control." BN/SF, slip op. at 94.

Similarly, in BN/SF, the I.C.C. refused two conditions requested by another shortline carrier, the Grainbelt Corporation ("GNBC"). First, the I.C.C. declined to remove a

consolidations."); see also Burlington Northern, Inc.--Control & Merger--Santa Fe Pacific Corp., Slip Op. at 55 (I.C.C. 1995) ("BN/SF"); Burlington Northern, Inc.--Control & Merger--St. L., 360 I.C.C. 788, 950 (I.C.C. 1980) ("BN/Frisco").

blocking provision, finding that it "stems from a pre-existing agreement . . . we do not impose conditions merely to rectify preexisting problems." Id. Moreover, in denying GNBC's request for trackage rights at Altus, the I.C.C. stated that:

These other trackage rights would undoubtedly make GNBC's operations more efficient and allow GNBC access to an expanded traffic base, but they are not necessary to ameliorate any harm caused by BN/Santa Fe common control. GNBC today cannot interchange with FMRC at Altus and it similarly cannot serve local industries at Altus. Common control of BN and Santa Fe, however, will have no impact at all as respects Altus.

BN/SF, slip op. at 95. These decisions were affirmed on appeal this year by the U.S. Court of Appeals for the District of Columbia. Grainbelt Corp. v. Surface Transp. Bd., 109 F.3d 794, 797 (D.C. Cir. 1997).

This approach was also taken by the Board in the UP/SP decision. For example, the Board denied the request of the Yolo Shortline Railroad Company because "the conditions sought by Yolo will not rectify any merger-related competitive harms." UP/SP, slip op. at 183. The Board emphasized that pre-merger Yolo was in the same position it would be in after the transaction. Id. Moreover, this rationale for denying conditions has not been limited to the responsive applications of railroads.¹⁰

As the Board has stated in discussing its conditioning power, "[t]here must be a nexus between the merger and the alleged harm for which the proposed condition would act as a remedy." UP/SP, slip op. at 178; BN/SF, slip op. at 93. It is appropriate, therefore, for the Primary Applicants to inquire about conditions as they existed prior to the transaction.

¹⁰ See e.g., UP/SP, slip op. at 191 (denying United States Gypsum Company's request for a condition "because the merger will have no appreciable impact"); BN/SF, slip op. at 100 (denying American Maize Product Company's request to have its Dimmitt plant included in the SP settlement agreement because there is no "merger-related reduction in competitive options").

One way for the Primary Applicants to establish that a problem, complaint, or concern predated the transaction -- and hence has no nexus to the transaction -- is to show that the party requesting the condition was affected by the "problem" previously to such an extent that it documented its thinking, voiced its concerns, or even attempted to obtain the requested relief commercially. The discovery at issue in this appeal was narrowly crafted to help CSX and NS probe into this issue. The information requested would help the Board understand the nexus -- or lack of nexus -- between the transaction and harms alleged by the party requesting the conditions. It must, therefore, be relevant.

1. Illinois Central

ICR's Responsive Application suggests that ICR's complaints existed before the transaction. See supra at 2-3. CSX, therefore, sought information to determine if ICR has attempted to remedy the situation that it alleges to exist in its Responsive Application prior to the transaction. See supra at 4-5. If ICR has, in fact, considered or attempted before to acquire ownership of or other operating rights¹¹ over the line addressed in its Responsive Application, as CSX believes that it has, this would be clear evidence that the complained of harm predates the transaction. The fact that the problems alleged by ICR pre-existed the transaction was exactly the basis the I.C.C. relied on in denying the conditions requested by ICR in the BN/SF proceeding. See supra at 10. This is, therefore, precisely the sort of information that the Board uses to determine if a condition should be granted. It cannot be true that these inquiries about prior attempts to purchase the line do not fall within the broad scope of 49 C.F.R. S 1114.21(a). ALJ Leventhal's denial of the motion to compel with

¹¹ ICR already has trackage rights over the line that it wishes to purchase.

respect to Interrogatories Nos. 1 and 2 and Document Request No. 2, therefore is clearly erroneous and will result in manifest injustice to CSX because it limits CSX's ability to prepare a full and complete rebuttal filing. Accordingly, it should be reversed.

2. Wisconsin Central

WCL bases its Responsive Application to acquire the Altenheim Subdivision on testimony which suggests that the problems it alleges predate the transaction by as much as ten years. See supra at 3. CSX, therefore, asked WCL about WCL's prior interest in acquiring the Altenheim Subdivision in an effort to determine if the alleged problems are merger-related. As discussed with respect to ICR, this information is clearly relevant or reasonably calculated to lead to the discovery of admissible information about the relationship between the proposed transaction and the condition requested by WCL. Again, ALJ Leventhal's decision sustaining WCL's objection to Interrogatory No. 12 and Document Request No. 11 is clearly erroneous, will result in manifest injustice and should be reversed.

C. The History of Parties' Negotiations are Relevant to Evaluate a Responsive Application

EJE and IMRL filed a joint responsive application on October 21, 1997, to acquire majority ownership of the IHB. See supra at 4. This was IMRL's first appearance in the case. CSX and NS, therefore, served discovery on EJE and the IMRL which asked about the time period involved in the negotiations between the co-applicants in an effort to determine how much advance planning went into formulation of the Responsive Application. The Responsive Application appears on its face to contain little or no information reflecting the Responsive Applicants' plans for IHB. To the extent that EJE and IMRL only agreed at

the last minute to submit their Responsive Application, this is relevant to the Board's consideration of the merits of their Application.

These requests are similar to questions asked repeatedly of CSX and NS witnesses during discovery without objection. See, e.g., Deposition of William M. Hart at 14-15 (questions asked and answered about the timing of Mr. Hart's involvement in negotiations with Conrail).¹² Such basic information permits the putting into proper context information on the substance of the negotiations and may also permit the refreshing of witness recollection during a deposition. Accordingly, the ALJ's ruling, denying the motion to compel with respect to Interrogatory No. 1 to EJE was clearly erroneous and should be overturned.

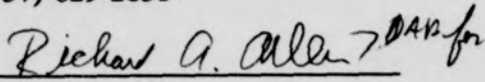
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The Primary Applicants' rebuttal filing is due December 15, 1997. The timely furnishing of the information requested is important to preparation of the filing. Accordingly, CSX and NS respectfully requests that the Board expeditiously consider their appeal and issue a ruling as soon as possible.

¹² William M. Hart was asked "Is it your testimony that you were involved for some period of time prior to [October 16, 1996] in any negotiations or studies concerning a possible merger with Conrail?... Let's start with negotiations. How long a period of time did that involved?... Did there come a time when those negotiations terminated?" All of these questions were asked and answered without objection. See Hart deposition at 14-15. These pages of the Hart deposition, which were originally classified as Highly Confidential, have been declassified to Public. See Exhibit 10.

Respectfully submitted,

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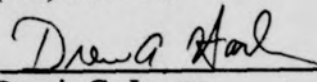

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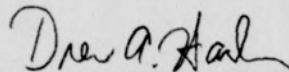
CERTIFICATE OF SERVICE

I, Drew A. Harker, certify that on November 24, 1997 I have caused to be served a true and correct copy of the foregoing CSX-171, CSX's and Norfolk Southern's Appeal From Decision of Presiding Administrative Law Judge Denying Discovery of Relevant Information to:

Thomas Healey
Oppenheimer Wolff & Donnelly
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180 North Stetson Avenue
Chicago, IL 60601

PHONE: 312-616-1800
FAX: 312-616-5800

and on all parties on the Restricted Service List in Finance Docket No. 33388, in all cases by facsimile transmission.



Drew A. Harker

CSX/NS-138

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

CSX AND NORFOLK SOUTHERN'S
FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS
TO ILLINOIS CENTRAL RAILROAD COMPANY

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, and the
Discovery Guidelines entered in this proceeding, see Decisions Nos.
10 and 20, CSX and NS¹ direct the following interrogatories and
document requests to Illinois Central Railroad Company ("ICR")
("Responding Party").

Responses should be served as soon as possible, and in no
event later than 15 days from the date of service hereof. However,
if ICR objects entirely to an Interrogatory or Document Request and
does not intend to provide any substantive answer or document
production in response thereto absent an order compelling such
answer or production, ICR shall serve such objections upon CSX and

¹ "CSX" refers collectively to CSX Corporation and CSX
Transportation, Inc.; "NS" refers collectively to Norfolk Southern
Corporation and Norfolk Southern Railway Company.

NS' counsel within five (5) days of service hereof in accordance with ¶ 16 of the Discovery Guidelines.

DEFINITIONS

1. "Applicant" or "Applicants" means CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation, Norfolk Southern Railway Company, Conrail Inc. and Consolidated Rail Corporation.
2. "Board" means the Surface Transportation Board.
3. "Document" means any writings or other compilations of information, whether handwritten, typewritten, printed, recorded, or produced or reproduced by any other process, including but not limited to intra- or inter-company communications, business records, agreements, contracts, correspondence, memoranda, studies, projections, summaries or records of conversations, reports, photographs, maps, tape recordings, all stored electronic data that may be retrievable or machine-readable, produced in reasonably useable form, including any descriptions, indices, or other interpretative materials necessary or useful to access the stored information, statistical or financial statements, graphs, charts or other data compilations, diagrams, agendas, minutes or records or summaries of conferences, statements of policy, lists of persons attending meetings or conferences, opinions or reports or summaries of negotiations or investigations, opinions or reports of consultants, and press releases. Furthermore, the term "document"

includes both original versions and copies that differ in any respect from original versions and both documents in the possession, custody, or control of ICR and documents in the possession, custody, or control of consultants or others that have assisted ICR in connection with any issue raised in these discovery requests.

4. "Identify," when used in relation to an individual, corporation, partnership or other entity, means to state the name, address and telephone number thereof. "Identify," when used in relation to a document, means to

- (a) state the nature of the document (e.g., letter, memorandum, etc.);
- (b) state the author, each addressee, each recipient, date, number of pages, and title of the document; and
- (c) provide a brief description of the contents of the document.

5. "Produce" means to make legible, complete, and exact copies of responsive documents, which are to be sent via overnight courier or hand-delivered to Drew Harker of Arnold & Porter at the address set forth below.

6. "Person" means any natural person, any business entity (whether partnership, association, cooperative, limited liability company, proprietorship, corporation, or other), and any governmental entity, department, administration, agency, bureau or political subdivision thereof.

7. "Proceeding" means the STB proceeding in Finance Docket No. 33388 and sub-dockets thereof.

8. "Proposed Transaction" means the transaction set forth in the Railroad Control Application filed by the Applicants with the Surface Transportation Board in Finance Docket No. 33388 in June 1997.

9. "Responsive Application" means the Responsive Application of Illinois Central Railroad Company dated October 21, 1997.

INSTRUCTIONS

1. If ICR cannot answer any part of any interrogatory in full, after exercising due diligence to secure the information to do so, ICR should so state, and answer to the extent possible, specifying ICR's inability to answer the remainder and stating whatever information or knowledge ICR has of each unanswered part.

2. Where interrogatories seek identification or information as to the existence or content of any document or study, producing, or furnishing a copy of the document or study will be accepted as an adequate response to the interrogatory.

3. Unless specified otherwise in a particular interrogatory or document request, these discovery requests seek information and documents dating from January 1, 1995 and extending through the date on which the responses are made. These Discovery Requests are continuing in nature and ICR is under a duty to supplement or correct any responses that are incomplete or incorrect in accordance with 49 C.F.R. § 1114.29.

4. References to the plural shall include the singular and vice-versa. Terms such as "and," "or," and "including" shall be construed in an inclusive manner, in the disjunctive or conjunctive as necessary, in order to bring into the scope of each interrogatory or document request all information which might otherwise be construed as outside the scope of the request.

INTERROGATORIES

1. At any time prior to June 1997, did ICR or, to its knowledge, any prior owner or operator of ICR's line, offer, or otherwise propose or seek to acquire ownership of, or trackage or other operating rights over CSX's line of railroad extending from milepost 387.9 at Leewood to milepost 390.0 at Aulon in Memphis, Tennessee? For purposes of responding to this interrogatory, the time limitation set forth in Instruction 3 does not apply.

2. If the answer to Interrogatory No. 1 is anything other than an unqualified "no", describe in detail each such other proposal or other request, specifying: (a) the length and location of the lines involved; (b) the nature of the ownership interest or operating rights proposed or sought; (c) the financial terms upon which such ownership or operating rights were proposed or sought; (d) all other terms, including terms governing railroad operations, that were offered, proposed, sought or discussed; and (e) why the ownership or operating rights in question were not acquired pursuant to that offer, proposal or request.

3 Describe in detail all terms that would govern the trackage rights that ICR proposes to grant back to CSX over the Leewood-Aulon Line in the event the STB were to order that line to be sold to ICR, including but not limited to a definition of "substantially similar" as that term is used on page 7 of the Responsive Application.

4. Identify all "existing rights to service local shippers and industries located on the Leewood-Aulon Line" referred to on page 7 of the Responsive Application.

5. Identify all instances since 1995 in which ICR has invoked its right under the 1995 Agreement with the City of Memphis (IC-5, page 9, fn. 6) allowing ICR to use the River Front Line in emergencies, including but not limited to:

- (a) the circumstances relating to the invocation of the right to use the River Line,
- (b) the disposition of use of such agreement; and
- (c) the date of such use.

6. Identify each instance of "significant interference" of ICR trains caused by CSX dispatching from December 1996 until the present, including but not limited to:

- (a) the date of such "interference,"
- (b) its cause,
- (c) the total time ICR trains were delayed by it,
- (d) any communication with CSX concerning it; and
- (e) the CSX response.

7. Identify all communications with CSX concerning proposals for improvements to the interlocking on the Leewood-Aulon Line, including but not limited to communications concerning cost sharing for such improvements.

8. Identify all "efficient joint line routes with IC via IC's Illinois gateways" that ICR alleges "would likely" be

foreclosed if "[t]he transaction described in the Application filed by the Primary Applicants, [is] approved without conditions" as stated on page 1 of ICR's Evidence in Support of Conditions and Responsive Applications (IC-6).

9. Describe in detail the basis for ICR's assertions that "[f]ollowing each of the major rail consolidations over the past 20 years, i.e., BN/Frisco, UP/MP, CSX, UP-CNW and now UP-SP, IC soon after experienced a wave of pricing or other actions by the consolidated carrier to foreclose shipper access to IC's services on a competitive basis with the carrier's single line routes" as stated on page 7 of the Verified Statement of Donald H. Skelton (IC-6).

10. Identify all alleged "fundamental competitive and capacity issues" that "IC's proposal to acquire the Leewood-Aulon Line and grant back trackage rights to CSXT (and an existing CSXT tenant) is necessary to address," as stated on page 2 of the Verified Statement of John D. McPherson (IC-6).

DOCUMENT REQUESTS

1. Produce all documents identified in response to, or relied upon in responding to, the foregoing interrogatories.

2. Produce all documents discussing or relating to any offer, proposal or request identified in response to Interrogatory 2. For purposes of this request, the time limitation set forth in Instruction 3 does not apply.

3. Produce all documents showing any (1) projections of ICR traffic in the event the STB does not approve the Application in this Proceeding; (2) projections of any traffic that ICR expects to lose if the STB were to approve the Application without the conditions requested by ICR; and/or (3) projections of traffic gains for ICR if the STB were to approve the Application, with the conditions requested by ICR.

4. Produce all documents discussing or analyzing how ICR will be affected if the STB approves the Application, with or without conditions.

5. Produce all documents describing, discussing or setting forth the terms under which ICR proposes to grant trackage rights back to CSX over the Leewood-Aulon in the event the STB were to order that line to be sold to ICR.

6. Produce all documents describing, discussing or setting forth the terms of the agreement contemplated by ICR preserving ICR and CSX's "existing rights to service local shippers

and industries located on the Leewood-Aulon Line" referred to on page 7 of the Responsive Application.

7. Produce all documents discussing or relating to the "specific adverse impacts" referred to on page 8 of the Responsive Application.

8. Produce (a) a copy of the 1995 Agreement with the City of Memphis (referenced Responsive Application at page 9, fn. 6) allowing ICR to use the River Front Line in emergencies, and (b) all documents relating to circumstances in which ICR could invoke any rights thereunder, the circumstances relating to any actual or considered invocation of such rights the disposition of the request for use under such agreement, or the date of such actual or considered use.

9. Produce all documents related to any instance of "significant interference" with ICR trains or operations in the Memphis area alleged to be caused by CSX dispatching from December 1996 until the present, including any correspondence with CSX relating thereto.

10. Produce all documents discussing or relating to any communications with CSX concerning any plans, proposals or actions taken since December 1996 with respect to the dispatching of ICR trains in the Memphis area.

11. Produce all documents discussing or relating to improvements or proposed improvements to the interlocking on the

Leewood-Aulon Line, including but not limited to documents concerning cost sharing for such improvements.

12. Produce all documents underlying ICR's assertion on page 14 of the Responsive Application that its acquisition of the Leewood-Aulon line would result in reductions in lost equipment utilization, fuel expenses, car hire expenses, crew expenses, crew fatigue and delayed shipments and increases in on-time performance and operating efficiency.

13. Produce records for each month of years 1995 and 1996 of ICR's equipment utilization, fuel expenses, car hire expenses, crew expenses, crew fatigue and delayed shipments and on-time performance and operating efficiency for any ICR district that includes the Leewood-Aulon line.

14. Produce all documents describing, discussing or relating to ICR's proposed plans for implementing "centralized dispatching" of the Leewood-Aulon Line, referred to on page 15 of the Responsive Application, including but not limited to proposed dispatching technology, location of "centralized dispatching," plans for assuring safe integration of "centralized dispatching" and plans for assuring that there will be no disruption of service during integration into ICR dispatching.

15. Produce a copy of:

- (a) the 1907 Agreement referred to on page 7 of the Verified Statement of John D. McPherson (IC-6),

- (b) any agreements that the 1907 Agreement superseded (including but not limited to 1905 Agreement),
- (c) any amendments to the 1907 Agreement; and
- (d) all documents (other than routine billing documents) relating to such agreements.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of November, 1997, the foregoing First Set of Interrogatories and Requests for Production of Documents to Illinois Central Railroad Company was served by facsimile on the persons listed on the Restricted Service List and counsel for Illinois Central Railroad Company.

Sean K. Hornbeck

Sean K. Hornbeck

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

**CSX'S
FIRST SET OF INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS TO
WISCONSIN CENTRAL LTD.**

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, and the Discovery Guidelines entered in this proceeding on June 27, 1997, as amended, *see* Decisions Nos. 10 and 20, CSX¹, direct the following interrogatories and document requests to Wisconsin Central Ltd. ("Responding Party" or "WCL").

Responses should be served as soon as possible, and in no event later than 15 days from the date of service hereof. However, if WCL objects entirely to an Interrogatory or Document Request and does not intend to provide any substantive answer or document production in response thereto absent an order compelling such answer or production, WCL shall serve such objection upon counsel within five (5) business days of service hereof in accordance with ¶ 16 of the Discovery Guidelines.

¹ "CSX" refers collectively to CSX Corporation and CSX Transportation, Inc.

DEFINITIONS

1. "Applicant" or "Applicants" means CSX Corporation, CSX Transportation, inc., Norfolk Southern Corporation, Norfolk Southern Railway Company, Conrail, Inc., and Consolidated Rail Corporation.
2. "Board" or "STB" means the Surface Transportation Board.
3. "Document" means any writings or other compilations of information, whether handwritten, typewritten, printed, recorded, or produced or reproduced by any other process, including but not limited to intra- or inter-company communications, business records, agreements, contracts, correspondence, memoranda, studies, projections, summaries or records of conversations, reports, photographs, maps, tape recordings, all stored electronic data that may be retrievable or machine-readable, produced in reasonably usable form, including any descriptions, indices, or other interpretative materials necessary or useful to access the stored information, statistical or financial statements, graphs, charts or other data compilations, diagrams, agendas, minutes or records or summaries of conferences, statements of policy, lists of persons attending meetings or conferences, opinions or reports or summaries of negotiations or investigations, opinions or reports of consultants, and press releases. Furthermore, the term "document" includes both original versions and copies that differ in any respect from original versions, and both documents in the possession, custody, or control of Responding Party and documents in the possession, custody, or control of consultants or others that have assisted Responding Party in connection with any issue raised in these discovery requests.
4. "Identify," when used in relation to an individual, corporation, partnership or other entity, means to state the name, address and telephone number thereof. "Identify," when used in relation to a document, means to

- (a) state the nature of the document (*e.g.*, letter, memorandum, etc.);
- (b) state the author, each addressee, each recipient, date, number of pages, and title of the document; and
- (c) provide a brief description of the contents of the document.

5. "Produce" means to make legible, complete, and exact copies of responsive documents, which are to be sent via overnight courier or hand-delivered to Drew A. Harker of Arnold & Porter at the address set forth below.

6. "Person" means any natural person, any business entity (whether partnership, association, limited liability company, cooperative, proprietorship, corporation or other), and any governmental entity, department, administration, agency, bureau or political subdivision thereof.

7. "Proceeding" means the STB proceeding in Finance Docket No. 33388 and sub-dockets thereof.

INSTRUCTIONS

1. If Responding Party cannot answer any part of any interrogatory in full, after exercising due diligence to secure the information to do so, Responding Party should so state an answer to the extent possible, specifying Responding Party's inability to answer the remainder and stating whatever information or knowledge Responding Party has of each unanswered part.

2. Where interrogatories request identification or seek information as to the existence or content of any document or study, producing, or furnishing a copy of the document or study will be accepted as an adequate response to the interrogatory.

3. Unless specified otherwise in a particular interrogatory or document request, these discovery requests seek information and documents dating from January 1, 1995, and extending through the date on which the responses are made. These Discovery Requests are continuing in nature and Responding Party is under a duty to supplement or correct any responses that are incomplete or incorrect in accordance with 49 C.F.R. § 1114.29.

4. References to the plural shall include the singular and vice versa. Terms such as "and," "or," and "including" shall be construed in an inclusive manner, in the disjunctive or conjunctive as necessary, in order to bring into the scope of each interrogatory or document request all information which might otherwise be construed as outside the scope of the request.

INTERROGATORIES

1. State whether any complaint was made to, or entered with, the Baltimore & Ohio Chicago Terminal Railroad Company ("BOCT"), CSX, the Board, or any public authority regarding the following matters; and, if any such complaint was made or entered, state whether such complaint was in writing or oral, to whom it was made, identifying the individual and the organization or public authority in question, and if the complaint was in written form, identify the writing, and if made orally, give a description of the complaint:

(a). The matters referred to in the statement on page 3 of the Comments of WCL that CSX "has deliberately chosen to drive away intermediate switching business in order to improve CSX internal operations, increased switch charges above market rates and used the threat of BOCT intermediate switch charges as leverage to obtain blocking services from connecting western carriers.";

(b). The matter or matters referred to in the statement on page 9 of the Verified Statement of J. Reilly McCarren that, "CSX devotes little attention to maintenance on the [BOCT]" in the Altenheim Subdivision.

(c). The matter or matters referred to in the statement on page 9 of the Verified Statement of J. Reilly McCarren that the 48th Avenue Yard "is not well maintained."

(d). The matter or matters referred to in the statement on page 11 of the Verified Statement of J. Reilly McCarren that, "CSX has been unresponsive to WCL attempts to have the Altenheim Subdivision upgraded and to improve the dispatching of the line."

(e). The matter or matters referred to in the statement on page 2 of the Verified Statement of John F. Scott ("V.S. of Scott") that WCL employees "sit with their trains at the entrance to the Indiana Harbor Belt Railroad ("IHB") and [BOCT] for hours at a time without being able to access these lines..."

(f). The matter or matters referred to in the statement on page 2 of the V.S. of Scott that, "Most often, [WCL] trains are not being moved in a timely fashion due to the preoccupation of the larger railroads with their own interests and the fact that our trains are given a very low priority by those in control of the traffic flows in and through Chicago."

(g). The matter or matters referred to in the statement on page 3 of the V.S. of Scott that, "There have been dozens of times when a WCL eastbound train would pull up to the entrance of the Altenheim Subdivision at Madison St. in Forest Park only to sit for an our or more trying in vain just to contact the CSX dispatcher by phone and radio."

(h). The matter or matters referred to in the statement on page 3 of the V.S. of Scott that "there have been times when CSX will run a westbound unit

train for delivery to WCL moving to Madison St. or Central Ave. and simply not notify us about it and then forget to tell the next dispatcher coming on duty about it."

(i). The Thursday morning, October 16, 1997 "occurrence" referred to on pages 3-5 of the V.S. of Scott.

2. Identify all documents, whether created before or after January 1, 1995, that support or in any way relate to, the responses provided for Interrogatory 1, sub-sections (a) - (i), above.

3. Identify all documents, whether created before or after January 1, 1995, that support or in any way relate to the "litigation" over "switching disputes at Chicago between WCL and CSX" referred to in the statements on pages 7-8 of the Verified Statement of William R. Schauer.

4. For each of the carriers listed in items (i) -(x) below:

(a). State whether WCL has direct interchange(s) with the carrier at Chicago;

(b). State the location of such direct interchange(s);

(c). State the number of cars forwarded to the carrier at such direct interchange(s) in each of the years 1995 and 1996 and for such period in 1997 as you have records for (identifying it);

(d). State the number of cars received from the carrier at such direct interchange(s) in each of the years 1995 and 1996 and for such period in 1997 as you have records for (identifying it);

(e). State whether WCL uses trackage rights or other rights on other carriers to reach the point of such direct interchange(s);

(f). If the response to Interrogatory 1(e) is "yes", describe the nature of the trackage (or other) rights used (i.e. overhead, local service, haulage, etc.)

(g). State whether WCL uses the services of any intermediate carrier at Chicago to deliver cars to any of the carriers identified in items (i) through (x) below;

(h). If the response to Interrogatory 1(g) is "yes", state which intermediate carrier(s) and state the number of cars interchanged using each such intermediate carrier in each of the years 1995 and 1996 and for such period in 1997 as you have record for (identifying it). For the purposes of this Interrogatory, consider B&OCT as an intermediate carrier regardless of your contention that it is not.

Provide responses to Interrogatories 4 (a) - (h) for the following carriers:

- (i). Canadian Pacific -- Soo
- (ii). Elgin, Joliet and Eastern Railway
- (iii). Norfolk Southern
- (iv). I & M Rail Link
- (v). CSX
- (vi). Conrail
- (vii). Illinois Central Railroad
- (viii). Union Pacific Railroad
- (ix). Burlington Northern and Sante Fe Railway
- (x). Canadian National Railway -- GTW

5. Where the services of an intermediate switching carrier are required in order for one line-haul carrier to deliver traffic to another at Chicago, and there are two alternative intermediate switching carriers available, state whether you contend that the receiving line-haul carrier has the legal right to select the intermediate switching carrier.

6. With regard to the agreement between NS and WCL referred to on page 2 of the Comments of WCL:

- (a). State what rights are not certain under the agreement;
- (b). State why the copy of the agreement attached as Exhibit A to the Comments of WCL is unsigned.
- (c). Identify all documents that in any way relate to the subject matter of Interrogatory 6, sub-sections (a) and (b).

7. The Responsive Application of WCL states on pages 7-8 that, "WCL intends to invest in the [48th Avenue] yard, upgrading its condition and placing it in expanded service"

- (a). State the dollar amount that WCL intends to invest in the 48th Avenue Yard;
- (b). State WCL's proposed schedule for making such investments;
- (c). State whether WCL's Board of Directors has approved such investment; and
- (d). Identify all documents that in any way relate to the subject matter of Interrogatory 7, sub-sections (a), (b) and (c).

8. State whether WCL can and/or does deliver traffic to the Belt Railway of Chicago ("BRC"):

- (a). for intermediate switching;
- (b). for intermediate handling;
- (c). otherwise for subsequent delivery to another carrier(s).
- (d). if the answer to item (c) is affirmative, identify the carriers.
- (e). Identify all documents that support or in any way relate to the Responses to Interrogatory 8, sub-sections (a), (b), (c) and (d).

9. (a). State whether today WCL is able to deliver traffic originating on WCL and terminating on CSX to the BRC.

(b). If not, state each and every reason why WCL is not able to deliver such traffic to the BRC.

(c). State what circumstances would have to change in order for WCL to deliver such traffic to the BRC.

(d). Identify all documents which support or in any way relate to the Responses to Interrogatory 9, sub-sections (a) - (c).

10. (a). State whether in the last ten (10) years WCL has been able to deliver traffic originating on WCL and terminating on CSX to the BRC.

(b). If not, state each and every reason why WCL has not been able to deliver such traffic to the BRC.

(c). State what circumstances would have had to be different for WCL to deliver such traffic to the BRC.

(d). Identify all documents that support or in any way relate to the Responses to Interrogatory 10, sub-sections (a) - (c).

11. (a). State whether after the approval of the primary application (assuming approval of Primary Application but not of WCL's Responsive Application) WCL will be able to deliver traffic originating on WCL and terminating on CSX to the BRC.

(b). If not, state each and every reason why WCL will not be able to deliver such traffic to the BRC.

(c). State what circumstances will have to be different in order for WCL to deliver such traffic to the BRC.

(d). Identify all documents that support or in any way relate to the Responses to Interrogatory 11, sub-sections (a) - (c).

12. (a). State whether since 1987 WCL has expressed any interest, made any inquiries, submitted any proposals, or made any offers regarding WCL's acquisition of some or all of the Altenheim Subdivision.

(b). State whether such interest, inquiry, proposal or offer was in writing or oral, the individual (and his/her employer and job title) to whom it was made and the individual (and his/her employer and job title) who it was made by.

(c). Identify all documents, whether created before or after January 1, 1995, which support, or in any way relate to the response to, or the subject matter of, Interrogatory 12, sub-sections (a) and (b).

13. Identify any WCL Board of Directors' ("Board") resolution since 1987 that authorized capital expenditures to:

(a). acquire the Altenheim Subdivision;

- (b). seek Board authority to acquire the Altenheim Subdivision;
- (c). improve the physical condition of the Altenheim Subdivision; or
- (d). invest in the physical connection(s) with other rail lines.

14. Identify all documents that support or in any way relate to the statement on page 7 of the Responsive Application of WCL that, "WCL's plan is to purchase a portion of the Altenheim Subdivision and to invest in the track, upgrading it to at least FRA Class 3 standards...", including all analysis, studies and cost projections.

15. Identify all documents that support or in any way relate to the statement on page 14 of the Comments of WCL that, "It would be our intention to eliminate the impediments and operate double stack intermodal trains via the Altenheim Subdivision...", including all analysis, studies and cost projections.

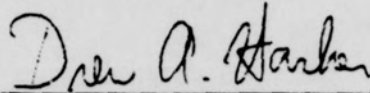
REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce all documents identified, or which should be identified, in response to Interrogatory No. 1, sub-sections (a) - (i).
2. Produce all documents identified, or which should be identified, in response to Interrogatory No. 2.
3. Produce all documents identified, or which should be identified, in response to Interrogatory No. 3.
4. Produce a signed copy of the agreement between NS & WCL referred to on page 2 of the Comments of WCL and attached unsigned as Exhibit H to the Comments of WCL.

5. Produce all documents identified, or which should be identified, in response to Interrogatory 6 (c).
6. Produce all documents, identified or which should be identified, in response to Interrogatory 7 (d).
7. Produce all documents, identified or which should be identified, in response to Interrogatory 8 (e).
8. Produce all documents, identified or which should be identified, in response to Interrogatory 9 (d).
9. Produce all documents, identified or which should be identified, in response to Interrogatory 10 (d).
10. Produce all documents, identified or which should be identified, in response to Interrogatory 11 (d).
11. Produce all documents, identified or which should be identified, in response to Interrogatory 12 (c).
12. Produce a copy of all Board of Directors resolutions identified, or which should be identified in response to Interrogatory (13), sub-sections (a) - (d).
13. Produce all documents identified or which should be identified in response to Interrogatory (14).

14. Produce all documents identified or which should be identified in response to Interrogatory (15).

Respectfully submitted,



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Counsel for CSX Corporation
and CSX Transportation, Inc.

November 6, 1997

CERTIFICATE OF SERVICE

I, Drew A. Harker, certify that on November 6, 1997, I have caused to be served a true and correct copy of the foregoing CSX-89, CSX Corporation's First Set of Interrogatories and Requests for Production of Documents to Wisconsin Central Ltd., to

Thomas J. Litwiler
Oppenheimer Wolff & Donnelly
Two Prudential Plaza, 45th Floor
180 North Stetson Avenue
Chicago, IL 60601

PHONE: 312-616-1800
FAX: 312-

counsel for Wisconsin Central Ltd. and on all parties on the Restricted Service list in Finance Docket No. 33388, in all cases by facsimile transmission.

Drew A. Harker

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

CSX'S AND NORFOLK SOUTHERN'S
FIRST SET OF INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS TO
ELGIN, JOLIET AND EASTERN RAILWAY AND TRANSTAR, INC.

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, and the Discovery Guidelines entered in this proceeding on June 27, 1997, *see* Decisions Nos. 10 and 20, CSX and NS¹, direct the following interrogatories and document requests to Elgin, Joliet and Eastern Railway and Transtar, Inc. ("Responding Parties" or, collectively, "EJE").

Responses should be served as soon as possible, and in no event later than 15 days from the date of service hereof. However, if EJE objects entirely to an Interrogatory or Document Request and does not intend to provide any substantive answer or document production in response thereto absent an order compelling such answer or production, EJE shall serve such objection upon Applicants' counsel within five (5) business days of service hereof in accordance with ¶ 16 of the Discovery Guidelines.

¹ "CSX" refers collectively to CSX Corporation and CSX Transportation, Inc.; "NS" refers collectively to Norfolk Southern Corporation and Norfolk Southern Railway Company.

DEFINITIONS

1. "Applicant" or "Applicants" means CSX Corporation, CSX Transportation, inc., Norfolk Southern Corporation, Norfolk Southern Railway Company, Conrail Inc., and Consolidated Rail Corporation.
2. "Board" means the Surface Transportation Board.
3. "Document" means any writings or other compilations of information, whether handwritten, typewritten, printed, recorded, or produced or reproduced by any other process, including but not limited to intra- or inter-company communications, business records, agreements, contracts, correspondence, memoranda, studies, projections, summaries or records of conversations, reports, photographs, maps, tape recordings, all stored electronic data that may be retrievable or machine-readable, produced in reasonably usable form, including any descriptions, indices, or other interpretative materials necessary or useful to access the stored information, statistical or financial statements, graphs, charts or other data compilations, diagrams, agendas, minutes or records or summaries of conferences, statements of policy, lists of persons attending meetings or conferences, opinions or reports or summaries of negotiations or investigations, opinions or reports of consultants, and press releases. Furthermore, the term "document" includes both original versions and copies that differ in any respect from original versions, and both documents in the possession, custody, or control of Responding Party and documents in the possession, custody, or control of consultants or others that have assisted Responding Party in connection with any issue raised in these discovery requests.
4. "Identify," when used in relation to an individual, corporation, partnership or other entity, means to state the name, address and telephone number thereof. "Identify," when used in relation to a document, means to

- (a) state the nature of the document (*e.g.*, letter, memorandum, etc.);
- (b) state the author, each addressee, each recipient, date, number of pages, and title of the document; and
- (c) provide a brief description of the contents of the document.

5. "Produce" means to make legible, complete, and exact copies of responsive documents, which are to be sent via overnight courier or hand-delivered to Drew A. Harker of Arnold & Porter and Richard A. Allen of Zuckert, Scoutt & Rasenberger at the address set forth below.

6. "Person" means any natural person, any business entity (whether partnership, association, limited liability company, cooperative, proprietorship, corporation or other), and any governmental entity, department, administration, agency, bureau or political subdivision thereof.

7. "Proceeding" means the STB proceeding in Finance Docket No. 33388 and sub-dockets thereof.

INSTRUCTIONS

1. If Responding Parties cannot answer any part of any interrogatory in full, after exercising due diligence to secure the information to do so, Responding Parties should so state and answer to the extent possible, specifying Responding Parties' inability to answer the remainder and stating whatever information or knowledge Responding Parties have of each unanswered part.

2. Where interrogatories request identification or seek information as to the existence or content of any document or study, producing, or furnishing a

copy of the document or study will be accepted as an adequate response to the interrogatory.

3. Unless specified otherwise in a particular interrogatory or document request, these discovery requests seek information and documents dating from January 1, 1995, and extending through the date on which the responses are made. These Discovery Requests are continuing in nature and Responding Party is under a duty to supplement or correct any responses that are incomplete or incorrect in accordance with 49 C.F.R. § 1114.29.

4. References to the plural shall include the singular and vice versa. Terms such as "and," "or," and "including" shall be construed in an inclusive manner, in the disjunctive or conjunctive as necessary, in order to bring into the scope of each interrogatory or document request all information which might otherwise be construed as outside the scope of the request.

INTERROGATORIES

1. (a). State when discussions and/or negotiations between EJE and I & M Rail Link ("IMRL") commenced regarding the submission of a joint application to the Board for acquisition of the 51% stock ownership of Conrail in the Indiana Harbor Belt Railroad Company ("IHB").

(b). State when an agreement was reached with IMRL to submit a joint application to the Board for acquisition of the 51% stock ownership of Conrail in the IHB.

(c). Identify the individual(s) primarily responsible for the discussions, negotiations, and agreements referred to in sub-sections (a) and (b) above.

(d). Identify all documents that in any way relate to the discussions, negotiations and agreements referred to in sub-sections (a) and (b) above.

2. Identify all documents that in any way relate to:

(a) The agreement referred to on page 15 of the Responsive Application ("The Responsive Applicants anticipate a stock voting agreement between themselves concerning the voting of their respective proposed ownership of IHB stock ..."); including any drafts, outlines, or texts of such agreement or any element thereof;

(b) The manner in which EJE and IMRL anticipate carrying out the exercise of joint control over the IHB.

(c) The plans of EJE and IMRL for the operations of the IHB after their acquisition of control over it.

3. With respect to the statement on page 9 of the Responsive Application (EJE-10) that "Each of the carriers has sufficient resources available to purchase their proportionate share of stock" in IHB, what was the approximate purchase price for the totality of the 51% of the stock of IHB that was assumed in connection with making this statement?

4. (a) Identify the "certain shippers" referred to in the first paragraph on page 10 of the Responsive Application (EJE-10) who would, under the transaction proposed in the Primary Application be "losing their existing alternative routings of IHB or EJE origination/termination and being reduced to working exclusively with the IHB."

(b) Explain why these "certain shippers" would lose those alternative routings and be "reduced to working exclusively with the IHB."

5. With respect to the statement on page 11 of the Application that "Along with current minority shareholder Soo, EJE and IMRL will undertake to improve IHB's financial performance":

(a) Identify all discussions, correspondence and negotiations which EJE and/or IMRL have had with Soo concerning or in any way relating to the proposed acquisition of stock in IHB by EJE or by EJE and IMRL; and

(b) Identify any documents recordings or otherwise relating to such discussions or negotiations.

6. With reference to the statement on page 6 of the Verified Statement of James H. Danzl as follows:

Subsequent to the transaction proposed by Applicants, CSXT and NS will not be neutral as to which carrier serves these plants. Indeed, it will be in their vested interests to secure all of this traffic for the IHB. Because CSXT and NS will each own a portion of the IHB, they will be motivated to eliminate the EJ&E as an option for these movements.

(a) Is it not, and has it not been, in the vested interest of Conrail to secure as much of the traffic as possible for IHB rather than EJ&E with respect to any traffic over which Conrail has influence and to seek to eliminate the EJ&E as an option for movements where either it or IHB would be an option?

(b) If not, please explain why not.

7. With respect to the concerns about neutrality of switching expressed in the Verified Statement of William H. Brodsky (particularly at pages 3-7), and

the concern, at page 7, about the possibility that "CSX will play a dominant role" in the management of IHB and other terminal carriers in Chicago, explain why would CSX not want to have an efficient interchange with IMRL, given that the CSX lines and the IMRL lines are entirely end-to-end?

8. (a) State whether EJE's Board of Directors has authorized EJE to make any investment in the facilities of IHB in the event the transactions contemplated by your Responsive Application are authorized by the STB and are consummated.

(b) Describe such investments, including the projects involved, the estimated amounts in dollars, the timing of such investments and projects, and the proposed sources of funding, including whether commitments for such funding have been obtained.

(c) Identify all documents relating to the investments, authorizations, fundings and commitments referred to in subsections (a) and (b) of this Interrogatory No. 8.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce all documents identified, or which should be identified, in response to Interrogatory No. 1, sub-sections (a), (b) and (d)

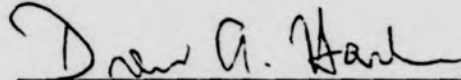
2. Produce all documents identified, or which should have been identified, in response to Interrogatory No. 2, sub-sections (a) - (b).

3. Produce all documents relating to the computation of the assumed purchase price referred to in Interrogatory No. 3.

4. Produce all documents identified, or which should have been identified, in response to Interrogatory No. 5, subsections (a)-(b).

5. Produce all documents which identified, or which should have been identified, in response to subsection (c) of Interrogatory No. 8.

Respectfully submitted,



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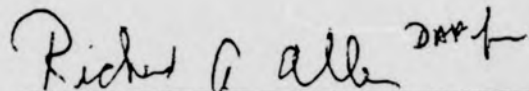
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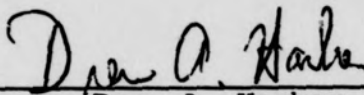
CERTIFICATE OF SERVICE

I, Drew A. Harker, certify that on November 5, 1997, I caused to be served a true and correct copy of the foregoing CSX/NS-125, CSX Corporation and NS's First Set of Interrogatories and Requests for Production of Documents to Elgin, Joliet and Eastern Railway and Transfer, Inc., to

Thomas J. Healey
Oppenheimer Wolff & Donnelly
Two Prudential Plaza, 45th Floor
180 North Stetson Avenue
Chicago, IL 60601

PHONE: 312-616-1800
FAX: 312-616-5800

counsel for Elgin Joliet and Eastern Railway and Transtar, Inc. by facsimile transmission, and that on November 6, 1997 I caused such document to be served on such counsel and on all parties on the Restricted Service List in Finance Docket No. 33388, by first class surface mail, postage prepaid.



Drew A. Harker

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

CSX'S AND NORFOLK SOUTHERN'S
FIRST SET OF INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS TO
I & M RAIL LINK, LLC

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4. "Identify," when used in relation to an individual, corporation, partnership or other entity, means to state the name, address and telephone number thereof. "Identify," when used in relation to a document, means to

- (a) state the nature of the document (*e.g.*, letter, memorandum, etc.);
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(b) If not, please explain why not.

7. With respect to the concerns about neutrality of switching expressed in the Verified Statement of William H. Brodsky (particularly at pages 3-7), and the concern, at page 7, about the possibility that "CSX will play a dominant role" in the management of IHB and other terminal carriers in Chicago, explain why

8. (a) State whether IMRL has performed or received any analysis, study, review or any other examination of the environmental impacts of its