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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

COMMENTS AND REQUEST FOR CONDITIONS

submitted on behalf of

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE
U.S. CLAY PRODUCERS TRAFFIC ASSOCIATION, INC.
and
THE FERTILIZER INSTITUTE



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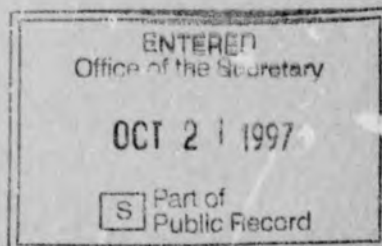
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October 21, 1997

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October 21, 1997

Via Hand Delivery

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

Re: STB Finance Docket No. 33388, CSX Corporation, et al, Norfolk
Southern Corporation, et al. -- Control And Operating
Leases/Agreements --Conrail Inc., et al.

Dear Secretary Williams:

Please find enclosed for filing in the above-referenced proceeding and original and twenty-five (25) copies of the Comments of The National Industrial Transportation League, which has been designated as NITL-7. A copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 7.0 format.

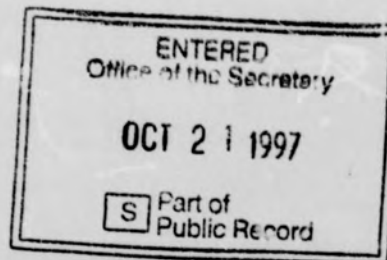
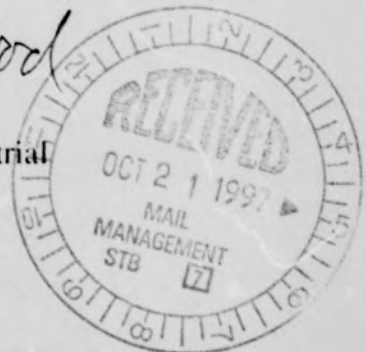
Respectfully submitted,

Frederic L. Wood

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ENCLOSURES
0124-532

cc: All Parties of Record



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No 32760

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

COMMENTS AND REQUEST FOR CONDITIONS

submitted on behalf of

**THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE
U.S. CLAY PRODUCERS TRAFFIC ASSOCIATION, INC.
and
THE FERTILIZER INSTITUTE**

The National Industrial Transportation League ("League"), the U.S. Clay Producers Traffic Association, Inc. and The Fertilizer Institute (hereinafter collectively referred to as "NITL/CPTA/TFI") hereby submits their Comments and Request for Conditions in this proceeding, in which the Board is considering the application of CSX Corporation and CSX Transportation, Inc. (collectively "CSX"); Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS"); and Conrail, Inc. and Consolidated Rail Corporation (collectively, "Conrail")¹ to authorize acquisition of control of Conrail by CSX and Norfolk Southern Corporation, and for the division between them of the use and operation of Conrail's assets. The Applicants are also seeking authorization for

¹ In these Comments, CSX, NS, and Conrail collectively are termed the "Applicants."

operating agreements, the construction of new connections, certain abandonments, trackage rights, and other related matters.

I. INTRODUCTION AND SUMMARY

This transaction represents one more step in the comprehensive restructuring of the railroad industry in the United States that has taken place since the passage of the Staggers Act. In 1980, when the Staggers Act was passed, there were over forty Class I rail carriers. Today, there are only eight. If this transaction is approved, the number of Class I rail carriers in the nation will decline to only seven, and of these, only four "mega-carriers" will produce over ninety percent of the output of Class I rail services in the country.

As the rail marketplace becomes increasingly concentrated, and as the potential effects of individual rail consolidation transactions become more and more widespread while the transactions themselves become ever more massive, the responsibility of the Board grows exponentially to insure that no adverse effects result from the proposed transaction.

Recent experience has taught that adverse effects of a proposed rail consolidation transaction may take two forms: adverse effects upon competition among rail carriers, and adverse effects upon the adequacy of transportation services to the public.

With respect to the first -- the potential adverse effects upon competition -- this transaction presents new situations for the Board to consider. Unlike previous transactions in which no increases in rail-to-rail competition were proposed, this transaction clearly is intended to bring increased rail-to-rail competition to certain geographic areas of the country. NITL/CPTA/TFI applaud these aspects of the transaction. Indeed, these parties believe, as an overall policy matter, that the blessings of rail-to-rail competition should be spread as widely as possible.

But beyond these pro-competitive aspects of this particular transaction, NITL/CPTA/TFI believe that the acquisition by NS and CSX of Conrail also brings with it increases in rail market power in certain markets. Moreover, this transaction clearly imposes an enormous financial burden upon NS and CSX, a burden that captive shippers should not be asked to shoulder. Thus, these parties believe that the Board should consider ways to mitigate potential dangers that may in the future flow from these facts, and in these Comments NITL/CPTA/TFI propose conditions toward this end. These conditions should constitute a "safety net" for shippers, in the event that the carriers' financial hopes do not come to pass and captive shippers are asked to shoulder the financial burden. Specifically, NITL/CPTA/TFI believe that shippers should have expedited and objective standards for adjudicating rate disputes that might arise in the future as a result of the transaction. In addition, they believe that the Board needs to insure that various aspects of its regulatory authority -- namely, the determination of revenue adequacy and of the statutory jurisdictional threshold -- are not affected by the huge acquisition premium that accompanies this transaction.

With respect to the second potential adverse effect of rail consolidation transactions -- namely, their effect upon the adequacy of transportation to the public -- bitter lessons are being learned. Despite glowing promises both in the application and in direct statements to the Board at oral argument that the merger of the Union Pacific and the Southern Pacific would usher in a new age of efficient rail service, and that there would be no repetition of the service failures that accompanied the earlier merger of the UP and the Chicago and North Western Transportation Company, the implementation of the merger of the UP and SP has been utterly disastrous. For the past several months, there has been a meltdown of rail service on the merged UP. Not only have tens of thousands of rail shippers suffered millions of dollars of direct losses, but the UP's service failures threaten to harm the economic life of the nation as a whole.

What has happened in the West simply cannot be allowed to happen in the East.

Indeed, from an operational point of view, this proposed transaction is even more complex than the merger of the UP and SP, because here the assets of a single operating entity -- Conrail -- are being split among NS and CSX. Rail operations in the so-called "Shared Asset Areas" will require a very high degree of coordination, a difficult task given the various split operational responsibilities that are described in the application.

Thus, NITL/CPTA/TFI believe that the Board must take very strong action to insure that the proposed transaction is implemented in a sound and measured manner. There are two facets to this requirement.

First of all, the Board must condition the transaction to permit implementation only upon certification by the Applicants and approval by the Board that necessary prerequisites, as set forth in more detail in these Comments, are in place before full implementation can proceed. Secondly, the Board must require continuing oversight of the transaction, including specific information to be required from the Applicants during the oversight period.

Finally, the Board should act to insure that conditions that were imposed in the UP/SP merger that are relevant here should be ordered in this proceeding, and that specific instances of competitive harm, or of harm to the adequacy of transportation services to the public, should be mitigated.

The Board's statutory authority to fulfill its responsibility and to cure these potential adverse effects is broad -- clearly broad enough to encompass the conditions sought by NITL/CPTA/TFI. Accordingly, and as set forth in more detail in these Comments and Proposed Conditions, these parties believe that the proposed transaction should be approved only if the following conditions are imposed:

- I. Implementation conditions - The Board should permit full implementation of the transaction only upon fulfillment of the following conditions:
 - A. Shared Asset Area Operations -- The submission by the Applicants jointly of a plan for operations within the Shared Asset Areas ("SAA"), including equipment allocations and assignment of dispatching functions, with a period for comment by shippers, followed by approval of the SAA operational plans by the Board.
 - B. Labor agreement conditions
 - 1) The Board should, by specific order issued as soon as possible after the voting conference, authorize the Applicants to immediately initiate formal negotiations with all labor unions regarding implementing labor agreements.
 - 2) NS and CSX should be required to certify that all implementing labor agreements necessary to operate both the Shared Asset Areas and the acquired Conrail lines are in place.
 - C. Management Information Systems -- The Board should require NS and CSX to certify that management information systems necessary to manage operations on the former Conrail system, within the Shared Asset Areas, and interchanges between the merged NS/Conrail and CSX/Conrail systems, including necessary car tracking capabilities, are in place.
 - D. Specification of Contract Movement Responsibilities -- Submission by NS and CSX jointly of a plan as to how revenues, costs and responsibilities for rail transportation contracts for movements to, from or within the current Conrail system are to be handled. For this purpose, NS and CSX should be able, by specific order of the Board, to obtain information as to CR contracts, and the costs, revenues and operations associated with them, as soon as possible and no later than immediately after the Board's voting conference. Shippers should be given an opportunity for comment, followed by approval of the plan by the Board.
- II. Continuing oversight conditions
 - A. The Board should require continuing oversight of the implementation and effect of the transaction for a five-year period.
 - B. As part of this continuing oversight, the Board should require quarterly reports from the NS and CSX and should provide an opportunity for comment by shippers.

- C. The Board should require specific quarterly and yearly information from NS and CSX, as set forth in more detail in this submission.
- D. The Board should develop objective, measurable standards to determine if the transaction is resulting in benefits to the shipping public.

III. Post-Implementation Rate Conditions

- A. The Board should approve the transaction only with a condition that would simplify the determination of market dominance for shippers served by the parties to the transaction, by stating that, for a period of five years after the transactions, if an NS or CSX shipper is served by only one railroad, qualitative market dominance will be presumed for that shipper if the rates to that shipper are increased by an amount greater than that set forth in paragraph (B) below.
- B. The Board should approve the transaction only with a condition that would place on the carriers, for a period of five years after approval of the transaction, the burden of proving the lawfulness of any rate increase for market dominant shippers that exceeds the RCAF-U.
- C. The Board should provide that the acquisition premium not affect the determination of revenue adequacy for these carriers, or the determination of the jurisdictional threshold for rate reasonableness cases.

IV. Other conditions

- A. Transload, new facility and build-out conditions should be ordered as in the UP / SP merger.
- B. All reciprocal switching points that would provide transportation options for shippers after the transaction is approved should continue to be kept open for reciprocal switching.
- C. Reduction of reciprocal switching charges should be ordered to a maximum level of \$130 per car, which is the level the carriers adopted in the UP/SP merger.
- D. The Board should require the carriers to propose, by no later than 30 days after the decision, a plan for each "single line to joint line" shipper for the protection of that shipper's current single line rates and service (including establishment of efficient means of interchange), for a period of at least five years after implementation of the transaction. Shippers dissatisfied with the proposal should be

permitted to request the Board to adjudicate any dispute on an expedited basis.

II. IDENTIFICATION AND INTEREST

The National Industrial Transportation League is a voluntary organization of shippers and groups and associations of shippers conducting industrial and/or commercial enterprises in all States of the Union and internationally. It was formed in 1907. Its members include industrial and commercial enterprises both large and small, as well as commercial, trade and transportation organizations representing shippers. Many members of the League are substantial users of rail transportation that will be affected by the proposed transaction. The League is the only nationwide organization representing shippers of all sizes and commodities, using all modes of transportation, to move their goods in interstate, intrastate, and international commerce.

The U.S. Clay Producers Traffic Association, Inc. is a non-profit association of producers of clay engaged in shipping clay principally by rail from various origins to numerous industries throughout the United States, Canada, Mexico and the world. Members of the Association include companies that represent in excess of 90% of the industry in terms of total clay shipments. Members of the U.S. Clay Producers Traffic Association presently utilize a fleet of approximately 6,300 tank cars and 2,100 hopper cars to move more than nine million tons of clay annually via rail. They rely heavily on NS, CSX and Conrail for transportation.

The Fertilizer Institute is the national association of the fertilizer industry, many of whom ship bulk materials in large volumes on the nation's railroads. As such, its members are vitally interested in this proceeding.

III. THE ACT REQUIRES THE BOARD TO IDENTIFY POTENTIALLY HARMFUL EFFECTS OF A TRANSACTION AND GIVES THE AGENCY BROAD POWER TO MITIGATE THOSE EFFECTS

A. THE STATUTORY STANDARD

Under Section 11324 of the Act, a consolidation or merger of two carriers, the purchase of one carrier by another, or the acquisition of control of one rail carrier by another, may be carried out only with the approval and authorization of the Surface Transportation Board. 49 U.S.C. § 11324(a). The Act, in 49 U.S.C. §11324(b), requires the Board to consider, in a proceeding involving the merger of two or more Class I railroads, at least the following:

- (A) the effect of the proposed transaction on the adequacy of transportation to the public.
- (B) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction.
- (C) the total fixed charges that result from the proposed transaction.
- (D) the interest of carrier employees affected by the proposed transaction.
- (E) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system.

See also, *Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al.*, STB Finance Docket No. 32760, served August 12, 1996 ("*UP/SP Control*"). It should be noted that the ICC Termination Act included the last phrase to paragraph (E) above -- adverse effects on competition "in the national rail system" -- to clarify that the Board must consider the effects of a transaction upon the rail system in the nation generally.

The statute directs the Board to "approve and authorize a transaction . . . when it finds the transaction consistent with the public interest." 49 U.S.C. §11344(c). The same section also provides that the Board "may impose conditions governing the transaction." *Id.*

In addition to these explicit statutory considerations, the Board is also required by *McLean Trucking Co. v. United States*, 321 U.S. 67 (1944) and the *Northern Lines Merger Cases*, 396 U.S. 491, 510-513 (1970), to weigh the policy of the antitrust laws disfavoring diminution in competition resulting from a proposed merger against the national transportation policy favoring improvements in efficiency from an integrated national transportation system. The agency has noted that, while it does not sit as an antitrust court, the antitrust laws give "understandable content to the broad statutory concept of the public interest." *Union Pacific Corporation, et al. -- Control -- Missouri Pacific Corporation*, 366 I.C.C. 462, 485 (1982) ("*UP/MP Control*"), quoting *FMC v. Aktiebolaget Svenska Amerika Linien*, 390 U.S. 338, 244 (1968). Even if a particular transaction would not violate the antitrust laws, the Board has the discretion to disapprove it. *Burlington Northern Inc. and Burlington Northern Railroad Co. -- Control and Merger -- Santa Fe Pacific Corp. and the Atchison, Topeka and Santa Fe Railway Company*, served August 23, 1995, slip op. at 53 ("*BN/SF Control*").

B. THE AGENCY'S POLICY STATEMENT

As currently codified at 49 C.F.R. § 1180.1(c), the Board's policy statement on major rail mergers states that the agency performs a balancing test, weighing the potential benefits to the applicants and the public against the potential harm to the public. The agency's policy statement emphasizes that the merged carrier must assume "full responsibility for carrying out the controlled carrier's common carrier obligation to provide adequate service upon reasonable demand." 49 C.F.R. §1180.1(a). Moreover, in developing its policy statement, the ICC emphasized that it was "concerned about *any* significant 'lessening' or 'reduction' in competition caused by a consolidation." *Railroad Consolidation Procedures*, 363 I.C.C. at 786-87 [emphasis added].

In its decision in *UP/SP Control*, the agency noted that, in determining whether a proposed transaction is consistent with the public interest, "we must examine its effect on the adequacy of transportation to the public." *UP/SP Control*, slip op. at 99. The agency also noted that "[i]n assessing the probable impacts and determining whether to impose conditions . . . our concern is the preservation of essential services. . . . An essential service, for this purpose, is a service for which there is sufficient public need, but for which adequate alternative transportation is not available." *Id.*, slip op. at 101. Thus, if implementation of a proposed transaction may, if not otherwise conditioned, result in the *impairment* of essential rail services, the agency has a duty and an obligation to condition the transaction to mitigate or eliminate the likelihood of such a result.

The agency has also consistently emphasized the need to protect the public from any harmful effects on competition resulting from a proposed rail merger. In its decision in *UP/MP Control*, the agency noted that:

[o]ur analysis of the potential harm from a proposed consolidation focuses on two impacts highlighted by the statutes and policies discussed above: any reduction in either intra- or intermodal competition which would likely result from the consolidation; and any harm to essential services provided by competing carriers . . .

366 I.C.C. at 486. In *Santa Fe Southern Pacific Corporation-Control-Southern Pacific Transportation Company*, 2 I.C.C.2d 709, 726 (1986) ("*SF/SP Control*"), the agency emphasized that "the effect of a transaction on competition is a critical factor in our consideration of the public interest. . . ." See also, *BN/SF Control*, slip op. at 55.

C. THE BOARD'S POWER TO CONDITION A PROPOSED TRANSACTION IS BROAD

The Board's power to attach conditions to its approval of a major rail merger is, under the statute, unqualified, and the agency itself has frequently characterized

its authority as "broad." 49 U.S.C. § 11344(c): *BN/SF Control*, slip op. at 55; *UP/MP Control*, 366 I.C.C. at 562; *UP/SP Control*, slip op. at 144. The agency has observed that conditions generally will be imposed where certain criteria are met. See, e.g., *Union Pacific Corp. et al. — Control — Chicago and North Western*, Finance Docket No. 32133, served March 7, 1995, slip op. at 56 ("*UP/CNW Control*"). The agency has determined that if a transaction threatens harm to the public interest, conditions *should* be imposed if they are operationally feasible, they ameliorate or eliminate the harm threatened by the transaction, and they are of greater benefit to the public than they are detrimental to the transaction. *UP/MP Control*, 366 I.C.C. at 564.

IV. UNLIKE PAST MERGERS, THIS TRANSACTION PROMISES TO RESULT IN INCREASED COMPETITION IN CERTAIN AREAS OF THE COUNTRY, AND THESE PARTIES APPLAUD THESE PRO-COMPETITIVE FEATURES OF THE TRANSACTION

This application, unlike past transactions, will create new rail-to-rail competition in certain areas of the country. Specifically, CSX and NS have agreed that certain areas formerly served solely by Conrail will be served by both of them, including the three so-called "Shared Asset Areas" of South Jersey/Philadelphia, North Jersey, and Detroit. In addition, there will be two-carrier service to the coal fields served by the former Monongahela Railroad and the Ashtabula dock facility. Shippers in each of these areas (collectively termed in these comments "newly-competitive areas") will have access to two-carrier service for the first time since Conrail was formed.

NITL/CPTA/TFI warmly applaud these steps. Recently, the League's Board of Directors approved new Rail Transportation Policies to guide the League's approach to many public policy issues. These new policies are attached as Attachment A to these Comments. The League's new policies state that

Rail competition, choice, and capacity are essential if the U.S. is to have affordable, effective rail service which advances the long-term competitiveness of U.S. business in a global economy. U.S. government policy toward railroads should maximize rail-to-rail competition and rely on the free market to protect consumers of rail transportation, encourage service improvements, and stimulate innovation.

With respect to rail mergers, the League's new policies state specifically that the organization will participate in rail merger proceedings in order to seek to "protect and expand rail-to-rail competition. . . ."

The creation of Shared Asset Areas in important economic regions of the nation and the creation of other areas in which rail-to-rail competition is intended to flourish are positive steps in the direction of greater rail-to-rail competition and choice for shippers. The creation of greater rail competition will help to provide reasonable rail rates for some shippers in these newly-competitive areas. Indeed, NITL/CPTA/TFI believe that, as an overall policy matter, rail-to-rail competition should be provided to as many shippers as possible. But just as importantly, the creation of two-carrier access will also tend to lead to more assured service levels to shippers even in the normal course of events, and will provide shippers in these areas with backup rail service options if, in the future, either NS or CSX should experience serious capacity restrictions.

Indeed, it should be noted that a number of the conditions suggested in these Comments are intended to insure that operations in the Shared Asset Areas are implemented as smoothly as possible. Failure to successfully implement operations in the Shared Asset Areas and the other newly-competitive areas would, in the view of these parties, very seriously compromise the positive features of this proposed transaction. It is therefore essential that the Board insure that operations in all of the newly-competitive areas be implemented soundly and smoothly, by phasing in the approval as certain milestones are met by the Applicants.

V. THE DISASTROUS IMPLEMENTATION OF THE UP/SP MERGER MANDATES THAT THE BOARD ADDRESS IMPLEMENTATION AND SERVICE ISSUES UP FRONT, AND CAN NOT LET IMPLEMENTATION OF THIS TRANSACTION BE LEFT TO THE UNFETTERED DISCRETION OF THE APPLICANTS

in its decision in *UP/SP Control*, the Board ruled that, as a result of its approval of the merger of the Union Pacific and Southern Pacific, "UP/SP customers will benefit from tremendous service improvements brought about by reductions in route mileage, extended single-line service, enhanced equipment supply, better service reliability, and new operating efficiencies." The Board's decision even attached a special 7-page Appendix that detailed the expected public benefits of the merger. *Id.* at Appendix D to decision in *UP/SP Control*. That Appendix, for example, predicted that:

- Chemicals and plastics shippers on the Gulf Coast and elsewhere would gain "greatly improved operations to eastern routes in the Houston-Memphis-St. Louis-Chicago corridor, shorter routes to the Pacific Northwest, faster turn times on costly-shipper-owned equipment, and additional SIT yard opportunities. Gulf Coast shippers will save a day in transit time to and from both the Memphis/St. Louis/Chicago gateways and the West Coast." *Id.* at 264-265.
- Coal shippers would benefit from the merger by the creation of "new single-line routing opportunities and operating efficiencies, [which] will benefit producers and consumers of both the Utah and Colorado coals that SP originates and the PRB coals that UP originates." *Id.* at 265.
- Intermodal shippers would experience "third morning services" in the Midwest - California markets, and "faster and more frequent Los Angeles-Dallas and Los Angeles-Memphis service . . ." *Id.* at 262.
- Paper producers would have "shorter, faster routes to Northern California and better service to the South Central region." *Id.* at 263.

Shippers, the Board summarized, "will be assured of quality service by UP/SP." *Id.*, slip op. at 108.

Almost halfway into the three-year merger implementation period, the promises of the carriers upon which the Board made its decision have turned to

dust. Where UP once promised faster service, now it states that "[t]he systemwide average velocity of cars on the railroad [has] slowed significantly" Finance Docket No. 32760 (Sub No. 21), Applicants' Third Quarter 1997 Progress Report, p. 9 ("UP 3Q97 Progress Report"); where UP once promised operating efficiencies, now it states that "[m]ajor classification yards . . . remain so severely congested that many inbound trains cannot be processed and must be stored in sidings, causing mainline congestion that restricts movement of other trains.", *id.*; where UP promised shorter routes by picking the least-distance combination of UP and SP lines between two points, now it says that it must "us[e] other carriers to handle UP/SP business . . . [and] temporarily reduce the amount of transportation service it offers " *id.* at 12-13. Press reports detail what "can only be described as a comedy of errors." See, The Wall Street Journal, October 13, 1997, p. B-1.

In response to this disastrous situation, the Board has issued a notice instituting a proceeding to investigate rail service problems in the western United States, which it notes involve the UP and SP. STB Ex Parte No. 573, *Rail Service in the Western United States*, served October 2, 1997. In fact, the situation has gotten so serious that on October 21, 1997, the League, the Society of the Plastics Industry, Inc., and the Chemical Manufacturers' Association filed a petition with the Board under Section 11123 and other sections of the Act for an emergency service order to ameliorate this western rail crisis. That petition sets forth in explicit detail the widespread and serious failures in rail service that have occurred as a result of the implementation of the UP/SP merger.

Indeed, the service debacle involving the combination of the UP and SP is only a repetition, on a much larger scale, of the service problems that afflicted shippers when the UP attempted to merge with the CNW. Thus, two out of the last

three major rail consolidation transactions approved by the agency² have resulted in substantial service failures during the implementation period.

The Board cannot permit this to happen again. The Board must address implementation and service issues up front, and cannot let the implementation of this transaction be left to the unfettered discretion of the Applicants. Specifically, and as detailed in Section VIII below, the Board should impose conditions that require the Applicants to certify to the Board that certain key actions necessary for successful implementation of the transaction -- particularly those involving labor implementing agreements and operations in the Shared Asset Areas -- have been taken. The shipping public should be given an opportunity to comment, and the Board, after reviewing the plans and the certifications, should affirmatively adjudge that the transaction can be implemented as certified.

VI. THESE PARTIES ARE CONCERNED ABOUT THE LARGE ACQUISITION PREMIUM IN THE PROPOSED TRANSACTION AND ITS POSSIBLE FUTURE EFFECTS

NS and CSX have agreed to pay \$9.985 billion to purchase Conrail.³ According to the Application, Conrail shareholders' equity (net worth) as of December 31, 1995 was \$3.169 billion.⁴ Thus, by this measure, NS and CSX have paid a premium over shareholders' equity of \$6.726 billion.

There is another measure of the acquisition premium paid by CSX and NS, which more approximates the debt that the carriers have assumed. Specifically,

² League members have also experienced difficulties on BNSF, though it is impossible to tell, given the UP's service debacle, how much such problems are due to spillover of the UP's difficulties, and how much, if any, could be due to other factors. From the shippers' point of view, however, the "jury is still out" on the extent of promised service improvements resulting from the third major rail consolidation transaction recently approved by the agency.

³ The carriers purchased 86.475 million shares of Conrail stock at \$110 or \$115 per share. There is also the additional cost of unexercised stock options. See Whitehurst Dep. Tr. at 24-25.

⁴ Vol. 1, Exh No. 16, Appendix C, p. 3 and Appendix G, p. 10.

both carriers have engaged the accounting firm of Price Waterhouse to prepare a final valuation of Conrail's assets for entry into their accounts at the time of closing. Wolf Dep. Tr. at 23-24. The final valuation has not yet been completed. However, both CSX and NS used a preliminary valuation for Conrail assets from Price Waterhouse of \$16.243 billion. Wolf Dep. Tr. at 24-26.⁵ This far exceeds the net book value of Conrail's assets as reported to the SEC for 1995 of \$6.693 billion. Thus, under the preliminary valuation of Conrail assets determined by Price Waterhouse, the market value of Conrail exceeds the net book value by an estimated \$9.550 billion dollars (\$16.243 billion less \$6.693 billion)

In order to account for the value of the assets being purchased at "market value" as determined by Price Waterhouse, the carriers are deducting \$6.693 billion of net book value from the market value. Whitehurst Dep. Ex. 1, p.1. The resulting figure (\$9.550 billion) has been divided by the 58%/42% shares allocated to the two railroads, with the NS allocation thus being \$5.539 billion, and the CSX allocation \$4.059 billion, after certain necessary adjustments. *Id.* at 27-28; Whitehurst Dep. Ex. 1, p. 1. Moreover, since the actual purchase price of \$9.985 billion exceeds the Price Waterhouse valuation less the deduction for net book value, NS and CSX will allocate \$550 million and \$449 million, respectively, to "goodwill," which is simply an accounting convention used to account for purchase prices in excess of the actual market value of assets acquired. Wolf Dep. Tr. at 29; Whitehurst Dep. Ex. 1. The cost of "goodwill" will be amortized over 40 years as an annual charge to expenses, with the annual cost at \$12.0 million for CSX and a similar amount for NS. Whitehurst Dep. Ex. 1.

In order to finance its share of the Conrail acquisition, CSX has issued \$4.277 billion of new debt. Application, Exhibit 16, Vol. 1, p. 133. Whitehurst Dep. Ex. 1, p. 2. Even with debt repayments, CSX will incur \$290 million in

⁵ The complete text of the Price Waterhouse valuation may be found at CSX 26 HC 000198-210

additional interest costs during the first year after consummation, declining slowly to \$228 million following the third year. Application, Exhibit 17, Vol. 1, pp. 147, 150. Similarly, NS has issued \$5.928 billion in new debt in order to finance its share of the transaction. Application, Exhibit 16, Vol. 1, p. 171. Allowing for expected debt repayments, NS will incur additional interest expense of \$393 million in the first year after consummation, with that expense declining slowly to \$306 million following the third year. Application, Exhibit 17, Vol. 1, pp. 178, 181.

Compounding the financial burden that results from this acquisition is the downward pressure on certain rates that the Applicants expect to occur as a result of the injection of new rail-to-rail competition in certain geographic areas. NS has included in its calculation of the statement of benefits from the proposed acquisition a downward adjustment of its normal year revenues of \$82 million, which is stated to be the result of new rail competition as a result of the transaction. Application Vol. 1 at 594, Ingram V.S.; App. 2B at 66, Williams V.S. In addition, NS witness Seale has admitted that more current estimates of the amount of such downward pressure on rates are double the figure in the Application, "in the range of \$160 million." Seale Dep. Tr. at 68.

Unlike NS, CSX has apparently not included in any of its financial projections any estimate of revenue loss from new rail-to-rail competition introduced into the Conrail service area. However, CSX witnesses have admitted that there will be pressure to reduce rates in the newly-competitive geographic areas. CSX witness Anderson, for example, indicated the following in his deposition:

Q. Do you believe that there is likely to be rate compression, if you will accept the use of that term, post-transaction?

A. I believe in different markets there will be different competitive dynamics than we had before the transaction. My experience is that

competitive dynamics influence prices and, therefore, it would be unlikely that all prices would remain exactly the same after as before.

Q. So, in a gross sense, would you agree with me that more competition tends to put pressure to lower prices?

A. Yes, I would agree.

Q. And you believe that there's going to be more competition post-transaction in the Northeastern United States?

A. I do.

Anderson Dep. Tr. at 50-51. Given the fact that rate compression is thus likely to occur in CSX's service area, it is logical to believe that the amount of rate compression to be experienced by CSX will be comparable to the amount of rate compression to which NS has admitted.

As a result of these and other factors, NS and CSX expect to suffer net losses as a result of the acquisition in the first two years following the transaction, and expect to increase net income by only \$86 million in a "Normal Year" following the transaction.⁶

How will the massive cost to NS and CSX of this acquisition be paid? According to the Application and other statements of the carriers, the answer lies in efficiency gains and growth. For example, NS estimates that quantifiable public benefits from operations efficiencies and cost savings to NS will be approximately \$254 million annually. Goode V.S., p. 13. The NS Summary of Benefits indicates that recurring operating benefits to the carrier would be \$573.6 million; the CSX Summary of Benefits indicates that such benefits would total \$289.9 million. See also Kalt V.S. at 39-55; Corsi V.S. at 8-14.

According to the carriers, the potential revenue gains from the proposed transaction are equally dramatic. NS witness Goode, for example, indicates that the acquisition by NS of Conrail's lines will result in specific revenue gains of

⁶ Application Vol. 1, Exhibit No. 16, Appendix D, pp. 7-10 and Appendix H, pp. 1-4.

\$560.3 million. As summarized in the Verified Statement of NS witness Ingram, diversions of existing highway traffic to either NS intermodal or NS carload service are projected to be \$269.0 million, of which approximately ninety percent results from diversion from all-truck to intermodal service. Ingram V.S., p. 5. NS gains in net revenues from both rail and motor diversions total \$129 million in the third year. *Id.* at 6. "[D]iversion of freight from highway to the new Norfolk Southern," claims Mr. Ingram, "will eliminate a significant volume of truck miles per year from the highway system in the eastern half of the United States." *Id.* at 12.

CSX witnesses are equally optimistic about the potential revenue growth that is projected to result from this transaction. CSX's claims are summarized best, perhaps, in a letter sent by CSX Executive Vice President John Q. Anderson to the railroads' customers dated May 8, 1997:

[O]ur plans are to grow our business aggressively and to attack a market that is 86% dominated by business moving on the highway. Improved service and efficiency available from an enhanced CSX rail system should allow us to put together price and service packages that make inroads into this market and help us meet our growth objectives. . . . In short, we do not see raising prices as the path to funding this acquisition, we see efficiency and new business growth.

Snow Dep. Tr., Ex. 4.

These parties commend NS and CSX for their ambitious goals, and indeed strongly desires that their hopes will be justified. After all, the claimed benefits of the proposed transaction to shippers will only occur if the traffic diversions from trucks and the efficiency gains that are projected by the carriers are in fact achieved.

But what if they are not? Efficiencies and cost reductions do not ineluctably flow from a merger transaction: indeed, recent experience indicates that the claimed efficiencies and traffic gains of a merger may not occur.

Experience from the recent UP/SP merger is a dramatic case in point. In its decision approving the merger, the Board credited the estimates of the Applicants that there would be substantial transportation efficiencies and traffic gains. See, e.g., *UP/SP Control*, Appendix D generally, and especially pp. 260-262. But recent press reports indicate that intermodal shippers are deserting UP service in droves, since UP cannot provide the service that it promised. Indeed, UP's service recovery plan envisions an intentional diversion of locomotives from intermodal traffic to other traffic, thus slowing some intermodal service, and the intentional shedding of a portion of its volume of traffic, including grain, intermodal, and export coal traffic. UP 3Q97 Progress Report, pp. 9-12. Indeed, UP's abject failure to deliver on its merger promises will itself have a deleterious effect on the likelihood of traffic diversions that could flow from this transaction: potential intermodal shippers are likely to be even more cautious in committing traffic to a corporate combination that will have had no "track record."⁷ Traffic diversions are likely to be harder and slower to come by. The Board should carefully examine the projections of the Applicants regarding traffic diversions in light of actual experience of recent western mergers (UP/SP, UP/CNW, and BN/SF).

The same is true of projected merger efficiencies. Again, the recent UP/SP experience is instructive. While the Board in approving the transaction in *UP/SP Control* believed the projections of the Applicants that significant cost savings to the carriers would accrue,⁸ the reality has been far different from the projections.

⁷ The Applicants' difficulty in convincing intermodal shippers to commit long-term business is likely to be even further compounded by UP's recent announcement that it will be canceling intermodal trains from Chicago and St. Louis to Texas. UP announcement, October 17, 1997.

⁸ In its decision in *UP/SP Control*, the STB restated the Applicants' projected annual efficiencies and cost savings to total \$534.3 million, including \$261.2 million in labor savings. Though UP carefully refrained in its August 20, 1997 Reply to Comments in Finance Docket No. 32760 from revealing the total cost of new labor that it is adding to correct its service deficiencies, the cost of adding the new personnel and locomotives described in that filing (see

For example, UP has announced the hiring of over 500 new train service employees and 285 new locomotive engineers and is acquiring several hundred new locomotives in order to rectify its service problems. Finance Docket No. 32760 (Sub-No. 21), Applicants' Reply To Comments, August 20, 1997, pp. 98-99. These acquisitions are not short-term but entail additional expenses to the merged UP for the foreseeable future. Thus, over one year after approval of the merger of the Union Pacific and Southern Pacific, when the merged UP was projected to show reductions in its cost structure as a result of the transaction, the merged carrier has instead been required to make significant added expenditures to manage the merged system. While the projections of the NS and CSX are hopefully more realistic, recent experience has thus taught that there is nothing predestined about cost savings in a rail consolidation transaction, and that there is a wide band of error in projecting future costs. Thus, as in the case of the projections of traffic diversions, the Board should take a hard look at the cost savings projected by the carriers, to determine if they are realistic in light of current experience.

If the cost of the Conrail acquisition to NS and CSX were less, the fact that projections of traffic diversions or cost savings might not be achieved might be relatively lesser cause for concern. But given the huge cost of the Conrail acquisition in this case, there is relatively little margin for error. If traffic diversion projections are achieved, and if they are achieved within the three-year time projected, and if cost efficiencies are put in place within the time expected, then the projected benefits may accrue to certain members of the shipping public, and the carriers themselves will be able to handle the massive financial burden of this transaction. But there is no certainty that NS and CSX will in fact be successful: at the very least, there is a significant risk that they will not.

pp. 98-99) alone will make a very significant dent in the annual cost savings projected by the Board in its decision approving the transaction.

But if the Applicants' projections are not achieved, the expenses of the transaction -- the massive debt that will overhang the carriers -- will not go away. And who should shoulder that risk? There will be another source of cash needed to fund the carriers' financial obligations -- from shippers who have no feasible options except to ship via rail by these carriers. It is NITL/CPTA/TFI's firm view that it would be utterly unfair to burden captive shippers with rate increases to pay for the cost of this transaction in the event that the carriers' projections do not come to pass. It is also these parties' view that the Board should act now to put in place mechanisms to protect captive shippers from this risk, mechanisms that are discussed in Section VIII to these Comments.

The carriers may claim that the cost of this transaction could not be borne by captive shippers even if the carriers' projections do not come to pass because competition for rail services is pervasive. This is the position, for example, advanced by CSX witness Snow in this proceeding:

I don't see the financial obligations we're undertaking as having a direct relationship to the prices that we charge for our services . . . there is a disconnect between the price you pay for an asset . . . and what the market will allow you to charge for your services . . . competition [for our services] is ubiquitous and plays in everything we do.

Snow Dep. Tr. at 232-233. Yet Mr. Snow admitted that it was not inconceivable for the Board to make a finding of market dominance in a particular case. In fact, the Board has recognized in its policy statement and in past rail consolidation transactions and other proceedings that there are a variety of shippers who have few rail options. 49 C.F.R. § 1180.1(c); *see also*, *BN/SF Control*, slip op. at 59, 63-64; *SF/SP Control*, 2 I.C.C.2d at 726, and *see generally* 727-827. In *UP/SP Control*, the Board recognized that the likelihood of any efficiency gains being passed on to rail customers depends upon whether competition actually exists in the marketplace. *UP/SP Control*, slip op. at 99.

Indeed, the recent experience of the Union Pacific gives a graphic, real-life example of just how captive many rail shippers are. For the past three months, traffic on the UP has come close to gridlock, with cars lost, transit times far above normal, trains suffering major delays, and crews "dying on the law" as they cannot complete their runs within their required schedules. See generally, UP 3Q97 Progress Report, pp. 9-12; The Wall Street Journal, October 2, 1997, p. A-1; The Wall Street Journal, October 13, 1997, p. B-1. If competition for rail services were indeed ubiquitous and shippers' options numerous, these problems would have been mere blips on the Board's and shippers' radar screens, since shippers would simply have shifted their transportation to other carriers or modes, or shifted production to other plants. But this has not happened. Over three months into the service crisis, when shippers are making every effort to find alternative means of transportation, traffic continues to be tendered to UP in massive amounts because it cannot go elsewhere. Indeed, a key element to UP's so-called "Service Recovery Plan" is to make a massive effort to shed traffic to which the carrier would otherwise be entitled and which would, but for the UP's effort, be transported on the UP. The intensity of UP's effort is itself a clear indication of just how tied to a particular railroad most shippers are. UP 3Q97 Progress Report, p. 13.

Unless the Board acts in this proceeding to provide a "safety net," the financial risk of this transaction will in fact rest on the shoulders of captive shippers. Moreover, this risk is heightened by the fact that, under the Board's current rules, the acquisition premium in this transaction will distort the limited regulatory protections now available to captive shippers.

This will happen in two ways: one dealing with the Board's procedures for determining revenue adequacy, and the other involving the computation of the statutory jurisdictional threshold for determining maximum reasonable rates.

Specifically, in Ex Parte No. 483, *Railroad Revenue Adequacy - 1988 Determination*, 6 I.C.C.2d 933, 940-42, *aff'd sub nom. Association of American*

Railroads v. ICC, 978 F.2d 737 (D.C. Cir. 1992), the ICC adopted the use of acquisition costs for purposes of determining the investment base in revenue adequacy determinations. But the agency stated that it would "not accept the sale price of rail assets as a substitute for old book values in every case." 6 I.C.C.2d at 941. But the use of acquisition costs in this case, where those costs represent such a huge increment over book values, will vastly inflate the investment base, and will have the perverse effect of reducing the reported return on investment of both NS and CSX which will be used by the Board in making its revenue adequacy determinations. In addition, as further explained below, the inflated amounts of the acquisition cost will also increase the depreciation expense to the carriers, thus reducing the carriers' reported net income in any year. Thus, both the numerator (net income) and the denominator (net investment) used in the revenue adequacy determinations will be adversely affected. The result of the Board's procedure will be to reduce the ostensible returns on investment of both the NS and CSX when the Board determines the "revenue adequacy" status of both carriers, as it is required to do under the statute. 49 U.S.C. § 10704(a)(2) and (3). Yet, both carriers are claiming that, as a result of this transaction, they will emerge stronger and more effective than before.

The effect of the acquisition premium on the Board's revenue adequacy determinations will be particularly perverse in the case of NS, which is one of the very few "revenue adequate" carriers under the Board's current rules. Ex Parte 552 (Sub-No. 1), *Railroad Revenue Adequacy - 1996 Determination*, served August 28, 1997. Under the Board's policies in Ex Parte No. 347 (Sub-No. 1), *Coal Rate Guidelines - Nationwide*, 1 I.C.C.2d 520 (1985) ("*Coal Rate Guidelines*"), revenue adequate carriers are under a constraint on their ability to increase rates. Specifically, in its *Coal Rate Guidelines* decision, the agency indicated that:

Our revenue adequacy standard represents a reasonable level of profitability for a healthy carrier. . . . Carriers do not need greater revenues than this standard permits, and we believe that, in a regulated setting, they are not entitled to any higher revenues. Therefore, the logical first constraint on a carrier's pricing is that its rates not be designed to earn greater revenues than needed to achieve and maintain this "revenue adequacy" level. In other words, captive shippers should not be required to continue to pay differentially higher rates than other shippers when some or all of that differential is no longer necessary to ensure a financially sound carrier capable of meeting its current and future service needs.

Id. at 535-536. Thus, if the huge acquisition premium in this case is used in the calculation of revenue adequacy, and the NS as a result moves from being a revenue adequate to a revenue inadequate carrier, shippers will have lost a regulatory protection that would have existed but for this consolidation transaction, which NS enthusiastically sought.

A similar problem exists with respect to the jurisdictional threshold set forth in 49 U.S.C. § 10707(d)(1)(A), which states that the Board cannot make a finding of market dominance necessary to establish its jurisdiction if the rate at issue in a complaint results in a revenue to variable cost ratio less than 180%. Specifically, the \$16.243 billion amount estimated by Price Waterhouse to be the fair value purchase price of Conrail that is in excess of the Conrail base-year fixed assets reported to the SEC of \$6.693 billion (*i.e.*, \$9.55 billion) will result in a step up in the basis of the assets for accounting purposes, including accounting for depreciation. Wolf Dep. Tr., at 33-34. All of this excess amount in fact will flow back into all of the accounts for road property and equipment that appear in the railroads' annual reports to the Board. See Wolf Dep. Tr. at 24-25 and 36, and Exhibit 1. This will, for example, have the effect of increasing the carriers' depreciation expense, which will have the effect of reducing the carriers' reported net income. More importantly, the variable portion of each of the expenses that are inflated by the acquisition premium in the case is in turn used in the Board's

Uniform Rail Costing System ("URCS") to calculate whether a rate is above or below the jurisdictional threshold. 49 U.S.C. § 10707(d)(1)(B). Because of the statutory 180% figure, every dollar of increased cost results in an ability to raise rates an additional amount of \$1.80 without Board review.

The massive acquisition premium will, therefore, under the Board's current policies, permit very significant rate increases for rates now in excess of maximum reasonable rates, to escape regulatory oversight. The jurisdictional threshold is particularly important in the case of many bulk movements because, as recognized by CSX witness Sansom, the calculation of the stand alone cost constraint ("SAC") under the agency's procedures in *Coal Rate Guidelines* is below the jurisdictional threshold. See, Sansom Dep. Tr. at 117-120. Indeed, in a number of recent decisions, SAC was below the jurisdictional threshold. STB Docket No. 41185, *Arizona Public Service Company and PacifiCorp v. The Atchison, Topeka and Santa Fe Railway Company*, served July 29, 1997, slip op. at 19; SSTB Docket No. 41191, *West Texas Utilities Company v. Burlington Northern Railroad Company*, served May 3, 1996, slip op. at 33. Thus, for a number of shippers, the 180 percent jurisdictional threshold is, for all practical purposes, the maximum reasonable rate level, and it becomes the statutory rate floor as well as the regulatory rate ceiling. An increase in the jurisdictional threshold, therefore, will have the effect of raising the Board's maximum reasonable rate determinations.

The Board should be well aware that courts and other regulatory agencies have frequently determined that it is unlawful to include acquisition write-ups in any portion of an investment base used for regulatory purposes. See, e.g., *Farmers Union Central Exchange v. FERC*, 584 F.2d 408, 420 (D.C. Cir. 1978) *cert. denied sub nom. Williams Pipeline Co. v. FERC*, 439 U.S. 995 (1978) (order under Interstate Commerce Act); *Williams Pipeline Company*, 21 FERC ¶61,260, ¶61,636 (1982); *Farmers Union Central Exchange v. FERC*, 734 F.2d 1486, 1527

(D.C. Cir. 1984), *cert. denied sub nom. Williams Pipeline Co. v. Farmers Union Central Exchange*, 469 U.S. 1034 (1984).

VII. THE PROPOSED TRANSACTION IS STILL LIKELY TO RESULT IN A DIMINUTION OF COMPETITION IN CERTAIN AREAS

Although, as noted in Section IV above, this proposed transaction results in an increase in competition in certain areas, a result that NITL/CPTA/TFI applaud, that increase in competition is not as complete as a "first glance" look might indicate. More to the point, the pro-competitive effects of the transaction in some areas are accompanied by the diminution of competition in other areas.

A. SPECIFIC ANTICOMPETITIVE EFFECTS

First of all, the Board must recognize that, although rail-to-rail competition is being brought for the first time in many years to the Shared Asset Areas and to the other areas in which there will be two-carrier service, this does not mean that all rail shippers in the newly-competitive areas will have the benefits of rail-to-rail competition. Under the Board's recent decision in STB Docket No. 41242, *Central Power and Light Company v. Southern Pacific Transportation Company*, served December 31, 1996 ("*Bottleneck Decision*"), the Board has ruled that where a single carrier serves either the origin or the destination, then that carrier has the right to exclude a carrier over an otherwise-competitive portion of the route from participating in the traffic at all.⁹ This decision has the perverse effect of substantially reducing the amount of rail-to-rail competition that would otherwise exist in the newly-competitive areas. Specifically, where traffic moves to or from one of the newly-competitive areas to a destination or an origin served exclusively by NS or CSX, under the Board's *Bottleneck Decision*, NS or CSX would have the

⁹ The Board's decision in the *Bottleneck Decision* is under appeal in *MidAmerican Energy Company v. STB* No. 97-1081 and consolidated cases, before the United States Court of Appeals for the Eighth Circuit. The League is one of the petitioners in that case.

exclusive right to that traffic, and could, as a matter of law, exclude the other from competing for the traffic at all. Indeed, the carriers themselves have recognized that the Board's *Bottleneck* doctrine will limit the competition that is available. See, Anderson Dep. Exhibit 1 (price compression can be managed at points where competition exists at one end of a haul but does not exist at the other). Thus, the only shippers within the newly-competitive areas who will actually have rail-to-rail competition available to them are those shippers who transport their goods to or from a competitively served origin or destination (*i.e.*, both NS and CSX service at origin or destination), to or from another origin or destination within one of the other newly-competitive areas; or to or from one of the newly-competitive areas to a "neutral" interchange carrier (*i.e.*, neither NS or CSX).

Moreover, this transaction is likely to result in the diminution of competition, in at least three cases.

1) Loss of competition resulting from the reduction in neutral, competitive rail routings -- Perhaps the most serious loss of competition resulting from this (and previous) consolidations will occur because of the reduction in the loss of competitive, neutral rail routings. For example, where a shipper's plant is served by one railroad, but there are two or more unaffiliated railroads physically able to transport the shippers' goods from an interchange to the destination, shippers in fact receive the benefit of competition between the neutral destination rail carriers. But when the origin monopoly carrier merges with one of the destination carriers, the shipper loses the benefits of the competition from the neutral interchange carriers.

In this case, this phenomenon will occur on a massive scale. In the past, traffic captive to Conrail at origin or destination could at least be interchanged with either NS or CSX as it moved to or from Conrail's service area. NS and CSX would be in a position to, and in fact did, compete for this traffic. But now, NS and CSX will be purchasing parts of the Conrail system, and traffic that would

have had the benefit of competition between them on at least part of the move will become captive to one of the carriers over the entire movement.

These parties are well aware that the Board apparently does not believe that there is any reduction in competition here. The Board believes that this situation is governed by the so-called "one-lump" theory, which says that where a rail carrier controls any portion of a movement, then the whole "lump" of monopoly profits is taken by that carrier, and the merger of the monopoly carrier with one of the competing destination carriers makes the shippers no worse off. Therefore, there is no reduction in competition. See, *e.g.* *BN/SF Control*, slip op. at 72-78.

This "one-lump" theory was promulgated by the agency without a shred of evidence in the UP/MP merger decision in 1982, see *UP/MP Control*, at 537-540, and the original decision has been enshrined as "precedent" ever since. But the agency's continued reliance on this principle is perhaps the ultimate triumph of theory over fact. But the agency has never performed empirical studies to determine whether this theory conforms to reality, even in the face of evidence that the theory might not be true. For example, under the one-lump theory, the only beneficiaries of the UP/CNW entrance into the Powder River Basin should have been those very few coal shippers served by two competing railroads at destination. But the agency well knows that the benefits of this new rail-to-rail competition were felt widely in coal transportation markets throughout the western United States. Yet, in subsequent rail consolidation decisions, the agency developed ever-more-convoluted explanations as to why the theory could be true, or why facts presented that appeared to contradict the theory did not in fact do so. See, *e.g.*, *BN/SF Control*, slip op. at 77-78.¹⁰

¹⁰ The League understands that certain parties in this proceeding will be testing facts that relate to the correctness of the one-lump theory. The League believes that this evidence should be very carefully examined in light of the importance of this matter to a wide variety of transportation issues.

2) Loss of competition resulting from the elimination of multiple-plant leverage -- Where shippers who are served by a single rail carrier at one location have a plant producing the same or similar products at another location on the lines of another carrier, such shippers may, in some instances, have a certain amount of leverage for use in negotiating with each carrier, at least where the two plants are not running near or at capacity. In that case, at least for rates on marginal production, the shipper could attempt to bid one carrier against the other for the carriage of the marginal production. The agency, in fact, refers to this form of competition as geographic competition. While this form of competition was never a perfect substitute for truly effective rail-to-rail competition, it did provide some "give" in the system under the limited conditions where it could be used. But the merger of these carriers reduces this form of competition. Plants that used to be on Conrail on the one hand and either CSX or NS on the other may now become totally CSX or NS origins or destinations. What little competition there is will be eliminated.

3) Loss of competition resulting from the greater geographic spread of CSX and NS -- A third loss of competition from this transaction will come as a result of the greater geographic spread of NS and CSX. In the past, to the extent that one carrier served one shipper-producer in the market manufacturing the same or similar product as that of another shipper-producer, the one carrier had an interest in seeing that its own shippers were not disadvantaged vis-a-vis shippers on other rail carriers with whom they competed, at least to the extent that there was excess manufacturing capacity and at least to the extent of the marginal production. Again, this form of competition, a form of geographic competition in some cases product competition, was not perfect, but again, it did provide some "give," some negotiating leverage that the shipper might use. But here again, this form of competition is diminished. More and more producers of a product are on the lines

of a single carrier. That carrier has no incentive to compete against itself, and the shipper has fewer transportation options.

B. THE LARGER COMPETITIVE PICTURE

The agency, in focusing upon the competitive effects of just the transaction before it, has, these parties believe, blinded itself to the larger and much more important issue: the substantial reduction in rail-to-rail competition that has taken place over the last decade and a half as the number of rail carriers in the nation has shrunk to a mere handful. The agency has thus been in a position, in issuing its decisions, to artificially trivialize the anti-competitive effects of each transaction, while the sum total of all of its rail consolidation decisions since 1980 have resulted in a rail marketplace that is materially less competitive than it has ever been, or ever should be. Like the man who dies from a thousand cuts, rail shippers are now suffering from the total effect of the agency's rail consolidation policy rigidly applied over many years.

The Board cannot continue as it has done. The Board needs to focus on the more subtle anti-competitive effects of its rail consolidation decisions. It needs to focus not just on the proceeding before it, but the likely effect of its decisions in rail transportation policy and the rail marketplace as a whole, over the long term. This is the true import of Congress' new mandate in the ICC Termination Act that the agency must consider the "adverse effect on competition" of a transaction on "the national rail system": the agency must take a larger, longer-term, more complex, and much more dynamic view of its decisions on competition in the rail transportation marketplace. The time to start is now. The place to start is here.

VIII. THE BOARD SHOULD IMPOSE CONDITIONS THAT WOULD AMELIORATE ANY HARMFUL EFFECTS OF THE PROPOSED TRANSACTION IN THE FUTURE

In light of all of the above, NITL/CPTA/TFI believe that the Board should impose conditions that would ameliorate any harmful effects of the proposed transaction in the future. These conditions are in four categories: implementation conditions, continuing oversight conditions, post-implementation rate conditions, and other conditions. Each of these is discussed in turn immediately below.

IMPLEMENTATION CONDITIONS

The Board should permit full implementation of the transaction only upon the following conditions:

- A) Shared Asset Area Operations -- The submission by the Applicants jointly of a plan for operations within the Shared Asset Areas ("SAA"), including equipment allocations and assignment of dispatching functions, with a period for comment by shippers, followed by approval of the SAA operations plans by the Board.**
- B) Labor agreement conditions**
 - 1) The Board should, by specific order issued as soon as possible after the voting conference, authorize the Applicants to initiate formal negotiations with all labor unions regarding implementing labor agreements immediately.**
 - 2) Certification by the NS and CSX that all implementing labor agreements necessary to operate both the Shared Asset Areas and the acquired Conrail lines are in place.**
- C) Management Information Systems - The Board should require NS and CSX to certify that management information systems necessary to manage operations on the former Conrail system, within the Shared Asset Areas, and interchanges between the merged NS/Conrail and CSX/Conrail systems, including necessary car tracking capabilities.**
- D) Specification of Contract Movement Responsibilities -- Submission by NS and CSX jointly of a plan as to how revenues, costs and responsibilities for rail transportation contracts for**

movements to, from or within the current Conrail system are to be handled. For this purpose, NS and CSX should be able, by specific order of the Board, to obtain information as to CR contracts, and the costs, revenues and operations associated with them, as soon as possible and no later than immediately after the Board's voting conference. Shippers should be given an opportunity for comment, followed by approval of the plan by the Board.

As discussed in Section V of these Comments, NITL/CPTA/TFI believe that in this transaction, the Board must pay attention to implementation issues and cannot leave implementation of this transaction to the total discretion of the Applicants, as it has done in past transactions. Implementation of the proposed transaction will probably be the most difficult of any rail consolidation transaction that has ever come before the agency, involving as it does (1) the breakup of an existing rail system; (2) the integration of those parts into the operations of two separate carriers, each with their own organization, procedures, and culture; (3) the establishment of a brand new rail operator for certain parts of the service area of the former carriers that have been newly-identified for this transaction; and, (4) the absolute necessity for the seamless operation within shared areas of all three entities, each again with their own organization, procedures and culture.

The League has identified four key areas of implementation that should be closely overseen by the Board: Shared Asset Area operations; implementation of labor agreements; information systems; and specification of contract movement responsibilities.

A. SHARED ASSET AREA OPERATIONS

Operations within the Shared Asset Areas are critical to the pro-competitive features to this transaction, and indeed are critical to the success of the transaction as a whole. The establishment of Shared Asset Areas is quite a novel feature of this particular transaction, and, though there are general precedents that may be consulted for "templates," nothing quite like these areas has ever been attempted to

be established at a single moment in time in such large and complex commercial centers. At the same time, train operations into, out of, and within the Shared Asset Areas are likely to be extremely complex, involving as they will the necessity for seamless operational interfaces between three rail carriers, in substantial geographic areas in which only one carrier had operated before.

Yet, from the evidence submitted to date in this proceeding, it is evident that the carriers have not yet developed detailed "day one" operating plans for the Shared Asset Areas. See, Orrison Dep. Tr. at 516; Snow Dep. Tr. at 190-192; Mohan Dep. Tr. at 289. The League believes that this process should be completed before this transaction should be permitted to be implemented.

Indeed, NITL/CPTA/TFI know well that the carriers themselves are very aware of the necessity for detailed operating plans to be in place before the planned "split date" and the necessity on that date for separate but highly-coordinated operations. But the detailed, "day one" operational plans for the Shared Asset Areas will not, according to testimony from the carriers, be completed until at least the end of this year (Orrison Dep. Tr. at 516; Snow Dep. Tr. at 190-191), or well after the time that the shipping community can review them in time for the submittal of comments in this proceeding. In addition, it is not at all clear that the carriers intend to submit these plans to the Board for its review, or if they do, whether the submission would be in time to accommodate shipper input and Board review within the procedural schedule established by the agency.

In Decision No. 44 in this proceeding, served October 15, 1997, the Board granted the motion of the Port Authority of New York and New Jersey to order the Applicants to provide more detailed operating plans for the North Jersey Shared Asset Area. In that order, the Board noted that the Applicants submitted with their Application "fairly general discussions of the operational arrangements" that the Applicants intended to establish in the North Jersey Shared Asset Area. Accordingly, the Board ordered the Applicants to provide, in accordance with a

special procedural schedule, more detailed operating plans for the North Jersey Shared Asset area. The Board noted that it was required to consider "the effect of the proposed transaction on the adequacy of transportation to the public" and indicated that the concerns raised by the Port Authority were "not insubstantial." Therefore, the Board ordered the Applicants to "demonstrate, in advance, that, if the CSX/NS/CR control transaction is approved and thereafter consummated, the North Jersey Shared Asset Area operating arrangements that the Applicants have in mind will be feasible and will not unduly impact commuter and other rail operations in this densely populated, highly congested area."

These parties applaud the general thrust of the Board's decision in Decision No. 44 but believes that there are some flaws. First of all, the decision only affects the North Jersey Shared Asset Area and not the other newly-competitive areas. The considerations that led the Board to enter Decision No. 44 affects all of the Shared Asset Areas, and not just the North Jersey area. Secondly, Decision No. 44 ignores the fact that the carriers have indicated, on the record, that their operational planning for the Shared Asset Areas will not be completed until near the end of the year. But instead of accommodating the carriers' planning, the Board created artificial deadlines for submittal of the North Jersey operational plan, in which the plan must be submitted by October 29, in order to accommodate the Board's own schedule in this proceeding. The carriers should have been given more flexibility in the time for submitting the plans for all of the Shared Asset Areas, to be sure that the plans are as complete and final as possible. NITL/CPTA/TFI believe that the sanctity of the current procedural schedule is less important than the necessity for insuring that preparation for the "split date" is sound.

Accordingly, these parties believe that as a condition of this transaction, the Board should require the carriers to submit to it detailed operational plans for all of the Shared Asset Areas, with a period for review by shippers, followed by approval of the plan by the Board. The plan should set forth planned operational "metrics"

by which the Board can monitor the success of operations within the Shared Asset Areas when they commence. This condition need not delay the planned "split date" in any way. The carriers will be free to submit the plan to the Board even before the Board enters its decision, with a request to the Board to allow comments by shippers; if the Board feels that the time for its own review of the plan is adequate, the agency can make its approval of this plan a part of the written decision in this case. But, as noted above, speed is not as important here as the necessity of "getting it right." The condition requested by NITL/CPTA/TFI cannot insure that there will not be difficulties, but it can help to minimize these difficulties by subjecting the planned operations within all of the Shared Asset Areas to searching review by all parties who may be affected.

B. LABOR AGREEMENT CONDITIONS

Recent experience indicates that the implementation of labor agreements is one of the most critical tasks for the successful implementation of a rail consolidation proceeding. A prominent part of the Union Pacific's attempted explanation for its operational debacle is that it did not have all implementing labor agreements in place at the time that the merger was legally consummated. See UP 3Q97 Progress Report, p. 10 ("Were it not for the time-consuming New York Dock negotiation process that delayed actual merger implementation, the service crisis would never have arisen"). But the UP's meltdown in itself is a dramatic example of how the internal logic and pressures of a consolidation work to undermine sound real-world implementation. After all, the Board's decision in *UP/SP Control* did not require, but only authorized the carriers to complete the transaction. Instead of insuring that necessary labor agreements were in place before the merger was implemented, the carriers completed the merger in order to permit the dominant partner, the UP, to achieve the financial savings associated with the merger. UP then attempted to figure out how to deal with the labor problems.

The process is backward. Implementing labor agreements are an absolute necessity for insuring that any major rail consolidation transaction is to proceed smoothly, but it is especially true of this transaction, in view of the complexities of the planned operations after the "split date." Accordingly, NITL/CPTA/TFI believe that all implementing labor agreements should be in place before implementation of the transaction, not only those necessary for the operation of the Shared Asset Areas, but also those necessary to implement operations in other Conrail properties to be acquired by NS and CSX, as well as properties that are already owned by NS and CSX that must be integrated into operations in all of the areas to be acquired from Conrail. Therefore, these parties believe that the Board should condition this transaction upon written, unqualified certification by the Applicants that all such labor agreements are in place, with affirmation by the Board of that certification as acceptable.

This process should be arranged to minimize delay. For example, if the Applicants require an affirmative order from the Board to authorize negotiations with the involved labor organizations, then this order should be issued immediately conditioned upon approval of the transaction by the Board or, at the least, after a Board voting conference approving the transaction, without waiting for the four months now scheduled for the Board to issue a written decision. If necessary, the parties should be required to participate in negotiations at the earliest possible date in order to implement the transaction in an effective and timely manner.

C. MANAGEMENT INFORMATION SYSTEMS

Another key component of successful implementation of a major rail consolidation is coordination of the management information systems ("MIS") of the involved carriers. Again, the implementation of UP/SP is a dramatic example of what not to do: merge operations without merging the MIS capabilities, and in particular car tracking. See, e.g., Petition of the Society of the Plastics Industry,

The National Industrial Transportation League and the Chemical Manufacturers Association for an Emergency Service Order, October 21, 1997, pp. 13-14; The Wall Street Journal, October 13, p. B-1. In this case, the Board should require the carriers to certify that MIS systems necessary for management of the merged NS/Conrail and CSX/Conrail, and in particular car-tracking capabilities, are in place.

D. SPECIFICATION OF CONTRACT MOVEMENT RESPONSIBILITIES

In their Application, the Applicants have set forth an extraordinarily complex sub-agreement that is intended to outline how the costs, revenues, and operational responsibilities are to be shared for shippers with contracts for movements to, from or within the current Conrail system are to be handled. Application Vol. 8B, pp. 25-29. However, despite the agreement's complexity, there are very large uncertainties that still surround this issue. The fact of the matter is that shippers with current Conrail contracts, and particularly those with movements to or from the Shared Asset Areas, do not know which carrier or carriers will handle their traffic, or what choice they will have over the selection of that carrier post-transaction.¹¹ For example, if a single contract covers movements some of which will be transported into or out of the Shared Asset Areas into NS

¹¹ In this regard, these parties would note that the carriers, in their Application to the Board, are apparently attempting to get the Board to unlawfully nullify certain terms of rail transportation contracts entered into between Conrail and the shipping community. Specifically, in paragraph 1(c) of the Prayer For Relief, Application Vol. 1, p. 102-103, the Applicants request the Board to authorize and declare that CSX and NS may operate under Conrail transportation contracts, "notwithstanding any provisions purporting to limit or prohibit [Conrail's] assignment of its rights to use, operate and perform and enjoy such assets to another person or persons." Under this clause, a shipper may have the option of terminating a rail transportation contract if the contract contains a clause forbidding assignment in certain circumstances. If a shipper's facility is within a Shared Asset Area, for example, that shipper may be able, under the terms of that non-assignment clause, to obtain the benefits of competition between NS and CR immediately, by objecting to the assignment from Conrail to another carrier. NS and CSX are apparently attempting to have the Board unlawfully nullify that clause, and thus permit CSX and NS to choose between themselves unilaterally which carrier should perform under the contract, thus stripping the shipper of his contract rights. The Board should not approve this request.

territory; others of which will be transported into or out of the Shared Asset Areas into CSX territory; others of which will be transported from the Shared Asset Areas to non-NS and CSX locations, how will this traffic be divided? Even if a movement travels from a Shared Asset Area to CSX territory, what if the CSX line to get there is circuitous and the most efficient route (and the one desired by the shipper) is over NS out of the Shared Asset Area, with interchange to CSX near the other end? Who chooses? Does the shipper, who entered into the contract with Conrail in the first place, have any rights in the matter?

This uncertainty has the potential for enormous confusion. The ground rules need to be resolved very early, and a contract-by-contract analysis has to proceed under these ground rules before the "split date." Otherwise, operations could be adversely affected.¹²

These parties understand that, to some extent, the carriers have been handicapped, since they have not to date been able to actually view the Conrail contracts. Thus, NS and CSX should be able, by specific order of the Board, to obtain information as to CR contracts and the costs, revenues and operations associated with them, soon after the Board's voting conference if it determines to approve the transaction. NS and CSX should be required to submit to the Board a plan for allocating the costs, revenues and operations. Shippers should be given an opportunity for comment, followed by approval of the plan by the Board.

¹² There are operational issues here as well. For example, NS and CSX have agreed upon a certain split of Conrail assets, including its locomotives and car fleet, that appears to approximate the 58%/42% split of Conrail between NS and CSX respectively. Application, Vol. 8B, pp. 38-41. But it is not clear whether the agreed-to means of dividing assets will effectively account for the circumstance that would accrue if one carrier, particularly as a result of competitive bidding within the newly-competitive areas, garners more than the respective percentage of business. Spot shortages of equipment could result.

CONTINUING OVERSIGHT CONDITIONS

- A. The Board should require continuing oversight of the implementation and effect of the transaction for a five year period.
- B. As part of this continuing oversight, the Board should require quarterly reports from the NS and CSX, and should provide an opportunity for comment by shippers.
- C. The Board should require specific quarterly and yearly information from NS and CSX.
- D. The Board should develop objective standards to determine if the transaction is resulting in benefits to the shipping public.

In *UP/SP Control*, the Board implemented an oversight proceeding to monitor the results of the transaction. *UP/SP Control*, slip op. at 107. Since the issuance of the Board's decision in that proceeding in August 1996, the UP and the BNSF have submitted five quarterly reports to the Board, and the Board has provided for comments to be submitted by interested parties. Not only has the oversight process has explored competitive conditions after the merger, but it has also had the benefit of providing a forum for information on and analysis of the UP's serious service deficiencies. Indeed, in Comments submitted by the League on August 20, 1997 in the oversight proceeding, the League presented the results of a survey of its members that clearly indicated the depth of the UP's service problems.

These parties believe that a similar oversight process would be useful here. As in *UP/SP Control*, the carriers should be required to submit quarterly and yearly reports, and the Board should provide for an appropriate comment period for shippers and other interested parties.¹³ These parties note that CSX witness Snow

¹³ in *UP/SP Control*, the agency established a five-year oversight period. These parties believe that a similar oversight period would be appropriate here. Of course, certain aspects of this oversight process such as initial implementation (which the carriers estimate will take up to

does not object to an oversight process if the Board believes that oversight is appropriate. Snow Dep. Tr. at 36-37.

Some changes, however, in the oversight process implemented in *UP/SP Control* would be desirable. NITL/CPTA/TFI strongly believe that the oversight of the UP has been seriously handicapped by a lack of credible and objective information. The carriers' quarterly reports are more notable for what they fail to reveal than for what they show. Even by July 1, 1997, when UP was already in the throes of its service crisis, UP's quarterly report contained no specific, objective, measurable data to indicate the depth and nature of the problem. Information on operational and other data was tightly controlled by the carrier. Even the carrier's October 1 report lacked key measurements. It was not until the League on October 8, 1997 asked the Board to order the carrier to supply objective data, that the carrier responded positively. Thereafter, the Board ordered the carrier to supply certain key information. See, STB Ex Parte No. 573, *Rail Service in the Western United States*, decision served October 16, 1997.

In this case, the Board should order the carrier to supply specified information regarding operations and benefits, as part of the conditions of the transaction. This information should include:

- 1) Progress reports on key aspects of the transaction, such as division and integration of Conrail locomotive and freight car fleet, customer billing, and capital investment.
- 2) Statistics on operations, such as number of employees in key categories, numbers of locomotives available, etc.
- 3) Key service statistics against a baseline (*e.g.*, number of turns per month for key equipment groups, train starts, etc. See order in Ex Parte No. 573, *Rail Service in the Western United States*, served October 16, 1997, pp. 1-2, and associated letters from NITL and counsel for Union Pacific Railroad Company).

three years) might be concluded early if the carriers can show that implementation is conducted smoothly.

- 4) Status and progress reports on implementation of operations in the Shared Asset Areas.
- 5) Reports on experience in truck market penetration.
- 6) Rate trends, by key commodity groups, against a baseline.
- 7) Financial performance indicators.

Of course, input from the involved carriers as to specific reporting measures that will give customers an accurate view of the implementation process would be welcome.

The Board should also develop objective standards to determine if the transaction is resulting in benefits to the shipping public.

POST-IMPLEMENTATION RATE CONDITIONS

- A. **The Board should approve the transaction only with a condition that would simplify the determination of market dominance for shippers served by the parties to the transaction, by stating that, for a period of five years after the transactions, if an NS or CSX shipper is served by only one railroad, qualitative market dominance will be presumed for that shipper if the rates to that shipper are increased by an amount greater than that set forth in paragraph (B) below.**
- B. **The Board should approve the transaction only with a condition that would place on the carriers, for a period of five years after approval of the transaction, the burden of proving the lawfulness of any rate increase for market dominant shippers that exceeds the RCAF-U.**
- C. **The Board should provide that the acquisition premium should not affect the determination of revenue adequacy for these carriers, or the determination of the jurisdictional threshold.**

The acquisition by NS and CSX of Conrail is the most expensive rail consolidation transaction in history. As noted in Section VI of these Comments, it involves a massive cost in excess of the value of Conrail's book assets. Indeed, the cost of the acquisition is also far in excess of Conrail's market value just prior to

the proposed acquisition. Prior to CSX's October 1996 offer to purchase Conrail, the latter's stock was trading in the range of \$70 per share. The \$110-\$115 per share final purchase price is over 60% higher than the market value of the company just prior to the transaction. There is no question that the bidding war between NS and CSX vastly inflated the price of the stock, a war that was influenced by the "strategic" nature of Conrail, particularly to NS. Since Conrail was the "last item on the shelf," its value to NS bore relatively little relationship to Conrail's ability to generate profits, particularly if CSX was to be the buyer. Once CSX attempted to purchase the entire property, NS could not permit itself to be placed at such a corporate disadvantage; it became a strategic matter to NS to defeat the CSX bid. Therefore, NS clearly believed that it was necessary to offer virtually *any* amount of money to prevent CSX from acquiring the property; and having offered the amount that NS chose, neither party could offer less, even after CSX and NS had agreed to split the property.

The financial burden of the transaction to NS and CSX is complicated by the fact that, in order to obtain support for its attempt to thwart CSX's bid, NS was required to offer to extend competitive rail service to key areas that had not seen such service for a number of years. After CSX and NS agreed to split the Conrail property, the offer to extend competitive rail service could not be withdrawn, nor should it have been. Moreover, there were strategic considerations as well: it would have been impossible for one carrier to permit the other to gain exclusive access to such important commercial areas, a fact that provided confirmation (if any was needed) to the decision to extend certain rail-to-rail competition to selected areas. But by increasing rail-to-rail competition in certain areas, a downward pressure will be placed on certain rates in these areas, a situation that will further exacerbate the financial burdens on the two carriers. At the same time, there is no guarantee that the cost savings projected by NS and CSX will come to pass; or that the hoped-for traffic gains can be achieved at a sufficiently profitable

level. Indeed, the recent UP/SP experience highlights and heightens the uncertainties.

All of this means that there is a clear risk that the financial burden of the proposed transaction will force NS and CSX to take new looks to maximize revenues from their present and soon-to-be-acquired properties, and to do so wherever they can.

But while financial pressures increase and competition forces rates down in some areas, as discussed in Section VII in other areas there is an increase in market power. As a result of the loss of a neutral Conrail in relation to NS and CSX and the wider geographic coverage of NS and CSX, the proposed acquisition appears to enable CSX and NS to acquire new market power in some areas that could result in: the reduction of competitive routings currently available to shippers; the reduction in an individual shipper's potential to use product and geographic competition to offset the carriers' market power; and the loss of competitive leverage that some shippers have to play one facility off against another and to "bundle" competitive and non-competitive facilities. Moreover, as the rail industry becomes more and more concentrated as a whole, there are fewer and fewer rail options, even west of the Mississippi.

A "safety net" for shippers is clearly required. The financial burden of this transaction is a risk that NS and CSX -- and their stockholders -- voluntarily assumed: it is not assumed by, nor should it be borne by, shippers. This "safety net" should operate only in the event that NS and CSX fail to generate the savings or additional revenue that they expect, and attempt to exercise their market power over captive shippers. Accordingly, NITL/CPTA/TFI believes that the Board should approve the transaction only with a condition that would place on the carriers, for a period of five years after approval of the transaction, the burden of proving the lawfulness of any rate increase for market-dominant shippers that exceeds the RCAF-U. Moreover, if an NS or CSX shipper is served by only one

railroad, qualitative market dominance will be presumed for that shipper if the rates to that shipper are increased by an amount greater than the RCAF-U.

These conditions are time-limited, to capture the period of the greatest risk to shippers for the financial effects that would flow from the transaction. The carriers believe that their debt will be paid down to acceptable levels within three years of approval of the transaction, and these proposed conditions simply provide for a two-year "buffer." The conditions would be coincident with the oversight period. They do not prevent the carriers from responding to market conditions or place any inflexible cap on rate adjustments: they effectively modify the burden of proof in the statute to place that burden on the carrier that would seek a rate increase. Indeed, by presuming that a rate increase is unreasonable only if it exceeds the RCAF-U, the condition proposed by NITL/CPTA/TFI would permit NS and CSX to capture all of the cost efficiencies that would flow from the merger, a condition that a competitive market would not permit, since competition relatively quickly forces efficiencies to flow through to the consumer.

If NS and CSX are correct -- as they insist that they are -- that Conrail has already maximized its income; if they are correct -- as they insist that they are -- that there is pervasive competition for their services now and they will not acquire any market power as a result of this transaction; and if they are correct -- as they insist that they are -- that growth and efficiency will pay for this transaction, then the safety-net condition proposed by NITL/CPTA/TFI will never be implemented, since the carriers will be unable to raise any rates above the triggering RCAF-U threshold. But if any of these assumptions do not prove to be correct, and the risks feared by NITL/CPTA/TFI do come to pass, then this "safety net" condition will provide some protection for the shippers most at risk.

There is precedent for this "safety-net" condition: it is comparable in structure to both the "revenue adequacy" constraint and the "phasing" constraint in the Board's current "Constrained Market Pricing" rules set forth in the agency's

Coal Rate Guidelines decision, though it is more objective and simpler to apply than either of those tests.

Under the "phasing" constraint, a rate increase will be found unreasonable to the extent that it exceeds a particular level. In its *Coal Rate Guidelines* decision, the Board stated:

[W]e continue to believe that in some instances otherwise justified rate increases could cause significant economic dislocations which must be mitigated for the greater public good. In those situations, *phasing may be an appropriate means of balancing the public need for a sound, healthy rail system with the public need for smooth, orderly economic transitions. . . . [T]he degree of phasing should be tailored to the equities of the situation at hand.*

Coal Rate Guidelines, 1 I.C.C.2d at 546. The agency in its *Coal Rate Guidelines* decision did not adopt a generally-applicable phasing limit but rather indicated that it would consider the factors involved in a particular situation in adopting a particular phasing constraint. In the situation presented here, NITL/CPTA/TFI believes that the RCAF-U provides an appropriate phasing limit for all rate increases that would flow from the implementation of this rail consolidation transaction. It would "balance the public need for a sound, healthy rail system with the public need for a smooth, orderly economic transition," at the same time providing protection for captive shippers.

The proposed "safety net" condition is also structurally akin to the "revenue adequacy" constraint set forth in *Coal Rate Guidelines*. Under that constraint, a carrier cannot "be designed to earn greater revenues than needed to achieve and maintain" a "revenue adequate" level. In the agency's *Coal Rate Guidelines* decision, a carrier deemed to be revenue adequate could still adjust its rates and need not "freeze" its rates at the levels used to reach revenue adequacy, but the carrier had to be able to show, for example, that there was a change in circumstances that justified the proposed rate level. *Coal Rate Guidelines*, 1

I.C.C.2d at 536. In other words, under the agency's decision, it is the carrier's burden, rather than the shipper's, to show that the proposed rate is appropriate. So it is with NITL/CPTA/TFI's proposed "safety-net" constraint: a rate increase in excess of the RCAF-U would not be absolutely forbidden, but the carrier would bear the burden of showing that the proposed increase was reasonable.

Moreover, part of this "safety net" should involve a simplification of the qualitative market dominance determination for the purposes of implementation of the condition. A review of recent Board decisions clearly indicates that the determination of market dominance has evolved into an enormously complex, discovery-intensive,¹⁴ time-consuming, and expensive task, particularly with respect to product and geographic competition,¹⁵ and far beyond the intention to provide for a "practical determination without administrative delay" originally contemplated when the requirement was introduced in the statute. See H.R. Rep. No. 94-781, 94th Cong. 2d Sess. 148 (1976). Unlike users of other forms of transportation, such as air cargo and trucking, rail shippers do not have a choice in their rail service providers. As noted in Section VII of these Comments, the recent service "meltdown" of the UP/SP provides a real-world example, far removed from positions advanced in litigation, of just how tied to rail service many rail shippers are.

¹⁴ In recent maximum rate litigation before the Board, the number of separate questions in the form of document requests and interrogatories to shippers on the issues of market dominance frequently total over one hundred. See, e.g., STB Docket No. *Sierra Pacific Power Company, et al. v. Union Pacific Railroad Company*, Defendant's First, Second and Third Set of Discovery Requests.

¹⁵ See, e.g., *Arizona Public Service Company, et al v. The Atchison, Topeka and Santa Fe Railway Company*, served July 21, 1997, slip op. at 6-9 (detailed analysis of cost of construction of haul-road; cost to provide trucking services; cost of substitute power including analysis of variable cost of electric generation operation at various electric generating plants in several western states; limitations of hydro power; analysis of inflation-adjusted changes in the relationship of rates to cost; etc.)

If the feared harmful effects of this proposed transaction come about, it is not enough to say that existing regulatory protections are adequate, and therefore nothing should be done to protect shippers. The League's "safety-net" conditions are proposed because there is a substantial risk that harmful effects will flow from this transaction. Therefore it is appropriate, indeed necessary, for the Board to impose conditions to mitigate these harmful effects, should they occur.

Finally, as set forth in detail in Section VI of these Comments, the large acquisition premium in this transaction will substantially distort the determination of revenue adequacy as well as the calculation of variable costs for the purpose of determining the jurisdictional threshold. Accordingly, the Board should, as a condition to this transaction, provide that the acquisition premium not affect either the determination of revenue adequacy for NS and CSX or the determination of variable costs for the purpose of determining whether a challenged rate is above or below the jurisdictional threshold. This can be done by removing the write-up in Conrail's assets to be included in the determination of the investment base and in the cost of depreciation for the calculation of revenue adequacy, and by removing the amount of the acquisition premium from the amounts that would otherwise be included in the carriers' accounting categories that would be used in the calculation of variable cost.

OTHER CONDITIONS

- A. Transload, new facility and build-out conditions should be ordered as in the UP / SP merger.**
- B. All reciprocal switching points that would provide transportation options for shippers after the transaction is approved should continue to be kept open for reciprocal switching.**
- C. Reduction of reciprocal switching charges should be ordered to a maximum level of \$130 per car, as the carriers adopted in the UP/SP merger.**

- D. The Board should require the carriers to propose, by no later than 30 days after the decision, a plan for each "single line to joint line" shipper for the protection of that shipper's current single line rates and service (including establishment of efficient means of interchange), for a period of at least five years after implementation of the transaction. Shippers dissatisfied with the proposal should be permitted to request the Board to adjudicate any dispute on an expedited basis.**

There are several other conditions that the Board should impose in this proceeding.

First of all, though the number of "two-to-one" and similar points in this proceeding is relatively small, the Board should order the same build-out, transload and new facility conditions as it ordered in *UP/SP Control* for similar points in this proceeding. Shippers should not, where competition is being directly restrained as a result of the transaction, have any less protection in this case as shippers received from the Board in that case.

Second, and of much more widespread applicability, is the issue of reciprocal switching. Reciprocal switching permits rail-to-rail competition in places in which it would not otherwise exist, and it constitutes one of the few ways in which rail-to-rail competition can be brought to bear in this increasingly concentrated rail marketplace. In *UP/SP Control*, even the Applicants understood the importance of reciprocal switching to the protection of the public interests as agreed to keep open for reciprocal switching those points at which it existed prior to the merger, and to reduce the charge for reciprocal switching to \$130 in many cases, and in all case to a maximum level of \$150. See, e.g., Finance Docket No. 32760, Applicants' Rebuttal, Volume I- Narrative, April 29, 1996, p. 19.

The Board should provide for no less here. Specifically, the Board should impose, as a condition, a requirement that the Applicants keep open for reciprocal switching all points that would provide transportation options and competition for shippers after the transaction is approved, and that a reduction in reciprocal

switching charges should be ordered to a maximum level of \$130 per car, as the carriers adopted. Shippers in the East should have the same protections and options with respect to reciprocal switching as shippers west of the Mississippi. The preservation of reciprocal switching would be consistent with the creation of Shared Asset Areas and the other newly-competitive points, and indeed would insure that the benefits of competition at those points would actually accrue to shippers. As noted at page of these Comments, the carriers correctly believe that, as a result of the Board's *Bottleneck Decision* and other factors, that competition can be reduced or eliminated whenever a shipper *within* a newly-competitive point is transporting goods to or from a single-served NS or CSX destination or origin. The preservation of reciprocal switching points will reduce the number of movements in which competition seems to be present (for example, where a movement is from or to a Shared Asset Area), but really is not (where NS or CSX solely serve a destination or origin). It should be emphasized that these parties are not here asking for an extension of the benefits of reciprocal switching to points that do not now enjoy that status, but merely the preservation of reciprocal switching at the same rates that exist west of the Mississippi.

Finally, the Board needs to provide protection for a class of shippers that are unique to this transaction, namely, shippers who will go from single line Conrail service to joint-line NS and CSX service, because of the split of the Conrail properties between NS and CSX, and may thereby be seriously disadvantaged as a result of this transaction, not only with respect to rates, but also with respect to service. There are a number of ways of deal with this situation: trackage rights, extension of reciprocal switching limits, run-through power and crews, contract guarantees, etc. Some of these remedies, and others not listed, may be appropriate to particular situations. The important point here is that shippers should be protected from the adverse effects of this transaction where they become single-line to joint-line shippers.

These parties believe that this protection can be afforded without placing both shippers and the Applicants into a "one-size fits all" straight jacket. The Board's decision in this case should first of all establish the principal that "single line to joint line shippers" have a right to be protected from the adverse rate and service effects of this transaction. The Board's decision should also provide that, within 30 days of the effective date of the transaction, the carriers should be required to submit to each such "single line to joint-line" shipper a written plan for protecting the shippers rate and service, for a period of five years after the effective date of the transaction. The shipper should be given the right to accept or reject the proposal, and if rejected, should be given the explicit right to request the Board to adjudicate the dispute, with the Board committing to resolve the dispute on an expedited basis. The Board could order specific relief if it finds that the carriers' proposal is not likely to provide the shipper with the same rate and service that the shipper enjoyed prior to the transaction.

This proposal would give shippers and the Applicants maximum flexibility to design innovative solutions that fit the facts of the particular situation, but at the same time provide shippers with a "backstop" in the event that the plan proposed by the carriers does not in fact provide relief from his change from a single line to joint line shipper.

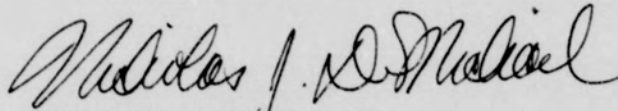
IX. THE BOARD SHOULD CAREFULLY CONSIDER THE EVIDENCE ON SPECIFIC ANTI-COMPETITIVE EFFECTS SUBMITTED BY INDIVIDUAL SHIPPERS

The League notes that, in the course of this proceeding, there will be a number of other shipper groups and associations, and a number of individual shippers, that will be submitting comments and requests for conditions to the Board. The requests that NITL/CPTA/TFI here presents are not intended to be exclusive, and NITL/CPTA/TFI urges the Board to carefully consider this other evidence.

X. CONCLUSION

The League respectfully requests that the Board consider these Comments and impose as conditions to this transaction the matters stated herein.

Respectfully submitted,



Nicholas J. DiMichael
Frederic L. Wood
DONELAN, CLEARY, WOOD & MASER,
P.C.

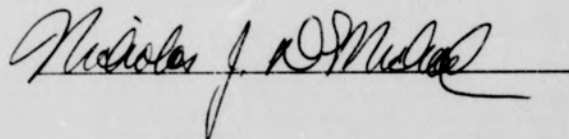
1100 New York Avenue, N.W.
Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

*Attorneys for The National Industrial
Transportation League*

October 21, 1997

Certificate of Service

I hereby certify that I have, on this 21st day of October 1997, served a copy of the foregoing Comments and Request for Conditions on all parties of record, in accordance with the Rules of Practice.



ATTACHMENT A

The National Industrial Transportation League

Rail Transportation Policies

Since the League last published its *Handbook* in 1992, official policies of the League have not been publicly recorded. During this time, however, much has happened with regard to transportation policy, and the League has taken many policy initiatives. The following proposal regarding the primary rail policies of the League is intended to update the previous policies and recent League actions. The draft is intended to facilitate discussion.

Rail Policies Contained in 1992 League Handbook

B-18. Railroad Mergers. The League supports the attachment of reasonable conditions to ICC approval of rail merger applications that would retain and/or enhance competition through: (1) direct physical access by competitive carriers to industrial facilities affected by a merger or mutually accepted reciprocal switching charges; (2) grants of trackage rights; and, (3) required maintenance of, or opening of, economically viable interchange points.

Proposed Rail Policies

Rail competition, choice, and capacity are essential if the U.S. is to have affordable, effective rail service which advances the long-term competitiveness of U.S. business in the global economy.

U.S. government policy toward railroads should maximize rail-to-rail competition and rely on the free market to protect consumers of rail transportation, encourage service improvements, and stimulate innovation.

1. Mergers.

A. Antitrust Laws. Rail mergers should be treated like mergers of other corporations and be governed solely by antitrust laws.

B. League Participation. The League will participate in rail merger proceedings seeking to protect and expand rail-to-rail competition and oppose the creation or enhancement of monopoly power of any railroad. When merger conditions are required to preserve or enhance competition, the League will be governed by the following principles: (1) preference should be given to divestiture of rail assets since ownership determines control over investment, safety, service, and operating efficiencies; (2) if divestiture is not used, then conditions must be imposed that result in: unrestricted trackage or haulage rights with compensation levels equal to the cost incurred by the owning railroad; unrestricted access to storage and sidings with compensation levels equal to the cost incurred by the owning railroad; and the ability to develop transload facilities

without restriction; (3) gateways and routing freedoms must be preserved for economically viable interchange points.

B-19. Competitive Railroad Access.

The League supports competitive rail access that would retain or enhance competition.

G-1. The Shippers' Right to Designate Routes. The League supports the principle of the shippers' right to route any category of freight and believes carriers may not restrict such right of shippers' choice of any route over which traffic may move which is provided in the published tariffs.

2. Rail-to-rail Competition.

A. Rail-to-rail competition.

Shippers must have a choice between competing rail carriers from origin to destination.

B. Access. Railroads must have the ability to access origin, destination, storage, and bulk haulage facilities.

C. Terminal access. Terminal access must be expanded to allow competing railroads to serve facilities.

D. Routing. Shippers must have the right to purchase rail transportation between major interchange points at which the carrier holds out service and over routes the carrier serves.

E. Alternatives. Development of alternative means of transportation (*i.e.*, coal slurry pipelines, new rail line development, expanded marine, new technologies, etc.) should be encouraged.

3. Remedies. Where railroads have market power, shippers must have simple, effective, efficient, and time-certain remedies that involve a minimum of government interference. Specifically,

A. Market Dominance Test. The test for market dominance and market failure should be simple and objective.

B. Relief. Where railroads have market dominance, remedies should be simple, effective, efficient, and time-certain.

B-10. Rail Equipment and Service.

The railroads should provide sufficient serviceable cars and motive power to meet the current and future demands of the shipping public.

When railroads agree to shippers furnishing owned or leased equipment, railroads will compensate shippers for the cost of ownership of equipment unless otherwise provided through contractual agreement.

B-11. Economic Incentives for Railroad Owned Cars. The League supports flexible per diem rates adequate to encourage and justify rail car ownership. To achieve this objective, the League will support railroad compensation for cars based on the cost of ownership and improved tax provisions.

C-6. Demurrage. Demurrage should only be assessed to maintain maximum utilization of equipment and/or to recover ownership costs.

4. Equipment.

A. Rail Equipment and Service. The railroads should provide sufficient serviceable cars and motive power to meet the current and future demands of the shipping public.

When railroads agree to shippers furnishing owned or leased equipment, railroads will compensate shippers for the cost of ownership of equipment unless otherwise provided through contractual agreement.

B. Economic Incentives for Railroad Owned Cars. The League supports flexible per diem rates adequate to encourage and justify rail car ownership. To achieve this objective, the League will support railroad compensation for cars based on the cost of ownership and improved tax provisions.

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DEPOSITION TRANSCRIPTS

1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION

10 HIGHLY CONFIDENTIAL

11 Washington, D.C.

12 Wednesday, September 3, 1997

13 Deposition of WILLIAM W. WHITEHURST,
14 JR., a witness herein, called for examination by
15 counsel for the Parties in the above-entitled
16 matter, pursuant to agreement, the witness being
17 duly sworn by JAN A. WILLIAMS, a Notary Public in
18 and for the District of Columbia, taken at the
19 offices of Arnold & Porter, 555 Twelfth Street,
20 N.W., Washington, D.C., 20004-1202, at
21 10:00 a.m., Wednesday, September 3, 1997, and the
22 proceedings being taken down by Stenotype by
23 JAN A. WILLIAMS, RPR, and transcribed under her
24 direction.

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1 1. Let me ask you first, the first column there
2 refers to the number of Conrail shares acquired
3 by CSX and Norfolk Southern; is that correct?

4 A. Yes, the column entitled shares
5 acquired in thousands.

6 Q. The next is the price paid for each
7 group of those shares; is that correct?

8 A. Yes.

9 Q. So that this item reflects that, in
10 order to acquire 86,475,000 Conrail shares, the
11 joint applicants paid a total of 9,856,000,000?

12 A. That is correct.

13 Q. The next item refers to cost of
14 unexercised stock options I guess totaling 39
15 million. Could you explain what that item is,
16 please?

17 A. If I recall correctly, that was part of
18 the options of Conrail -- that were on Conrail's
19 books that were acquired.

20 Q. I'm sorry, I didn't hear you?

21 A. Part of the options that were on
22 Conrail's books that were acquired and became
23 part of the total purchase price.

24 Q. The next line item refers to Conrail
25 base year net book value, 3,169,000,000. Could

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1 you tell us what the source of that value is?

2 A. It should be the -- let's see. If you
3 were to look in Exhibit WWW-4, page 1 of 2,
4 column 3, Conrail base value, the line entitled
5 total shareholders' equity, you will find the
6 amount of 3,169,000,000 which is the
7 shareholders' equity or stated differently would
8 be the total assets less liabilities.

9 Q. For Conrail as reported in its 1995
10 10-K subject to the adjustments that you made on
11 Exhibit 4?

12 A. Yes.

13 Q. Referring now back to Deposition
14 Exhibit 1, the next line item, total adjustment
15 to reflect cost of the purchasers, that's simply
16 the difference between the joint purchase price
17 and the shareholders' equity; is that right?

18 A. That's right. It would be -- in the
19 case of the total joint cost column, it would be
20 the number arrived at if you take 9,895 and
21 subtract 3,169, arriving at 6,726.

22 Q. And the next column in that same line
23 item would show what CSX's 42 percent share of
24 that adjustment would be; is that correct?

25 A. Yes. If you multiply 6,726 by 42

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1 million, for a total of 100 million.

2 Q. What would be included in the \$50
3 million for transaction costs?

4 A. Such things as legal fees.

5 Q. Pardon?

6 A. Such things as legal fees, you know,
7 lawyers always want to get their piece of those
8 things.

9 Q. Debt issuance costs would be the costs
10 of the debt that CSX issued in order to complete
11 the joint acquisition?

12 A. It would be the cost of issuing the
13 debt, not the cost of the debt. The investment
14 firms want their piece too.

15 Q. Let me continue into the next section,
16 and I may come back to these previous sections,
17 but I'm trying to make sure I have a clear
18 understanding of how this purchase accounting
19 adjustment was derived. The next section,
20 section 3, says summary Of Purchase Accounting
21 Adjustment. The first line item is
22 properties-net. Is that the same category that
23 we referred to earlier when we were discussing
24 the pro forma balance sheets or the base year
25 balance sheets, the physical assets included in

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1 the property?

2 A. Yes, property and equipment.

3 Q. What is the line item reference A
4 intended to refer to?

5 A. Well, it was intended to help people
6 reading this thing. Apparently it wasn't doing a
7 very good job. If you will turn back to page 1
8 of 3 which is also identified as CSX 19 CO
9 000120, you will find under Roman numeral II, the
10 third column over is entitled Pro Forma Line Item
11 Reference.

12 And, if you will notice, next to the
13 first entry, there's a capital A. And that is --
14 was intended, when you were looking at the
15 summary on page 2 of 3, to help you find what
16 item or items were being brought forward to that
17 line.

18 Q. Just so I understand this, item A on
19 the summary on page 121, the reference there is
20 to refer you back to the line on section 2 on the
21 previous page, direct you back to that?

22 A. Generally, yes. It was intended as an
23 assist in cross-referencing.

24 Q. Now, the note to this item says
25 adjustment of property and equipment to fair

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3 Finance Docket No. 33388
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8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION

10 HIGHLY CONFIDENTIAL

11 Washington, D.C.

12 Thursday, September 11, 1997

13 Deposition of HENRY C. WOLF, a witness
14 herein, called for examination by counsel for the
15 Parties in the above-entitled matter, pursuant to
16 agreement, the witness being duly sworn by
17 FERNITA R. FINKLEY, a Notary Public in and for
18 the District of Columbia, taken at the offices of
19 Zuckert, Scoutt & Rasenberger, L.L.P., 888
20 Seventeenth Street, N.W., Washington, D.C.,
21 20006-2939, at 9:55 a.m., Thursday, September 11,
22 1997, and the proceedings being taken down by
23 Stenotype by FERNITA R. FINKLEY, RPR, CRR, and
24 transcribed under her direction.

25

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1 accounting firm of Price Waterhouse to prepare a
2 fair value estimate of Conrail's assets?

3 A. I think that both Norfolk Southern and
4 CSX have engaged the firm of Price Waterhouse to
5 prepare a valuation, yes.

6 Q. What would the purpose of that
7 valuation be?

8 A. The valuation will be needed in order
9 to ultimately perform the purchase accounting
10 that will have to be performed.

11 Q. So Price Waterhouse has not completed
12 doing that valuation?

13 A. To the best of my knowledge, they have
14 not.

15 Q. Am I correct in looking at column --
16 the column headed Conrail Assets December '96
17 Estimate at the bottom, the grand total line
18 seems to indicate a valuation for those assets of
19 14,993,000,000?

20 A. That's the number that's on that
21 estimate, yes.

22 Q. Do you know what the numbers on the
23 left-hand side of this sheet represent?

24 MR. PLUMP: The very far left, that
25 row, that column of numbers on the far left?

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1 MR. WOOD: Yes.

2 THE WITNESS: I believe that those are
3 the old ICC account numbers for ICC accounting
4 purposes.

5 BY MR. WOOD:

6 Q. The line for account six, bridges
7 trestles and culverts under Conrail Assets
8 December '96 Estimate shows 2,320,000,000; is
9 that correct?

10 A. That's correct.

11 Q. The next column shows a June '97 -- has
12 a heading June '97 valuation Adjustment to
13 Specific Groups; is that correct?

14 A. Yes.

15 Q. And for that line it shows an
16 adjustment of 300 million. Do you know what the
17 source of that adjustment is?

18 A. I don't.

19 MR. PLUMP: Actually it says 300,000.

20 THE WITNESS: 300,000. Actually that
21 would be 300 million, wouldn't it.

22 MR. WOOD: For purposes of
23 clarification, I thought that the final three
24 zeros have been dropped off all these numbers.

25 MR. PLUMP: I stand corrected. I'm

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1 sorry.

2 THE WITNESS: 300 million.

3 BY MR. WOOD:

4 Q. I lost my train. Did you say you did
5 not know the source of that adjustment?

6 A. I don't.

7 Q. Two columns over from that there's a
8 heading June '97 Valuation Adjustment Overall.
9 For that line item for account six it shows
10 157,500,000 adjustment. Do you know the source
11 of that?

12 A. No, sir.

13 Q. Next column shows a June '97 Estimate
14 as the heading for that, and at the bottom the
15 grand total is 16,243,000,000; is that correct?

16 A. Yes.

17 Q. So as a result of these adjustments
18 between December 1996 as reflected in the column
19 we discussed before where the total was
20 14,993,000,000, it's been increased by a total of
21 1,250,000,000; is that correct?

22 A. That's correct.

23 Q. Now in that same column under June '97
24 Estimate, under the 16,243,000,000 there's a
25 number 6,693,000,000. If I understand it

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1 certain.

2 Q. What's your understanding would be
3 included in the balance sheet category of other
4 long-term assets?

5 A. Well, I expect that assets in pension
6 plans and other funded plans might be included in
7 that.

8 Q. In the -- looking again back at page
9 102 further down in that group of items under
10 Allocation, there's an identification of other
11 assets-goodwill 550 million. What does that
12 refer to?

13 MR. PLUMP: The work paper.

14 THE WITNESS: Other assets-goodwill.
15 That -- in purchase accounting I expect that --
16 the valuations that are presented on 103 would
17 produce a goodwill number that would have to be
18 booked in performing purchase accounting, and
19 that's reflected in 550 million on this schedule.

20 BY MR. WOOD:

21 Q. Does that refer to the difference
22 between the valuation of the assets and the price
23 actually paid?

24 A. I'm not sure.

25 Q. Is there anything on this worksheet

1 (Discussion off the record.)

2 BY MR. WOOD:

3 Q. Page 103 again carrying the column
4 down, the next items refers to CR '95 depr. I
5 assume that refers to depreciation?

6 A. I assume that.

7 Q. And would that refer to Conrail's
8 reported depreciation for 1995?

9 A. I expect that it would.

10 Q. And then the Excess, the next item is
11 220,010,000 refers -- says Excess. That's the
12 additional depreciation that would have to be
13 reflected on the income statement as a result of
14 the purchase accounting adjustment?

15 A. If our assumption is correct, the
16 purchase accounting would result in a step-up in
17 the basis of the assets for accounting purposes
18 and therefore also for depreciation purposes, and
19 the excess accounting here I expect is a
20 calculation of the estimated excess.

21 Q. So if the -- if the final valuation
22 estimate produced by Price Waterhouse results in
23 a different valuation for Conrail's assets,
24 there'll be a corresponding adjustment in the
25 depreciation expense, annual depreciation

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1 expense?

2 A. I think that's correct.

3 Q. If the valuation is higher, the
4 depreciation expense will be higher?

5 A. That's correct.

6 Q. By the same token, if it's lower --

7 A. If it's lower, the depreciation expense
8 will be lower.

9 Q. But if the valuation is lower when it's
10 finally completed, would that mean that there
11 would be an increase in the amount that would
12 have to be booked as goodwill?

13 A. I think that's correct.

14 Q. Is the goodwill expense -- is the
15 goodwill item on the balance sheet also subject
16 to amortization?

17 A. Yes, it is.

18 Q. What's the rate or amortization of
19 goodwill?

20 A. Generally goodwill is amortized over 40
21 years.

22 Q. Do you have any knowledge as to when
23 Price Waterhouse was first engaged to conduct the
24 valuation study?

25 A. Not specifically, no.

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1 are, as you indicated earlier, recorded on the
2 accounts that are established by the uniform
3 system of accounts for rail carriers.

4 Does that imply or seem to suggest that
5 Conrail has no other assets that are being
6 acquired as a result of this transaction other
7 than rail assets that are reflected in these
8 accounts?

9 A. I don't know the answer to that

10 Q. Well, if the -- just to see if we can
11 clear up that point, the \$5,539,000,000 fair
12 value adjustment of property and equipment is the
13 only adjustment that's made in net profit on the
14 balance sheet under the purchase accounting
15 adjustment; is that correct?

16 A. I don't know the answer to that, but as
17 I look at the next line item in that allocation,
18 it says other assets-investment in affiliates,
19 and I think that gives some recognition to some
20 other assets other than property and equipment.

21 Q. What would be included in the other
22 assets first line item as investment in affil?
23 I'm not sure --

24 A. I think that stands for investment in
25 affiliates, and I assume that Conrail has some

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1 BEFORE THE
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3 Finance Docket No. 33388
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6 NORFOLK SOUTHERN RAILWAY COMPANY
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8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION

10 HIGHLY CONFIDENTIAL

11 Washington, D.C.

12 Tuesday, August 26, 1997

13 Deposition of DONALD W. SEALE, a
14 witness herein, called for examination by counsel
15 for the parties in the above-entitled matter,
16 pursuant to agreement, the witness being duly
17 sworn by JAN A. WILLIAMS, a Notary Public in and
18 for the District of Columbia, taken at the
19 offices of Zuckert, Scoutt & Rasenberger, L.L.P.,
20 Suite 700, 888 Seventeenth Street, N.W.,
21 Washington, D.C., 20006-3939, at 10:00 a.m.,
22 Tuesday, August 26, 1997, and the proceedings
23 being taken down by Stenotype by JAN A. WILLIAMS,
24 RPR, and transcribed under her direction.

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1 from the 82 million that Mr. Williams has?

2 A. It's different in that it's expressed
3 in current inflated dollars. I think
4 Mr. Williams' was expressed in 1995 constant
5 dollars. And also the number has -- there's been
6 some competitive diversions added to the actual
7 rate compression number and an aggregate number
8 generated from those two.

9 Q. In relation to the 82 million that
10 Mr. Williams has, what is the current estimate as
11 a result of the subsequent studies that you
12 described?

13 A. I can't recall the number specifically,
14 but I think it's in the range of \$160 million
15 compared to the \$82 million that Mr. Williams'
16 study generated.

17 Q. Did you request Mr. Williams to perform
18 that analysis of the rate compression, the
19 subsequent analysis that produced the \$160
20 million figure?

21 A. No.

22 Q. Do you know who did from Norfolk
23 Southern?

24 A. No, I do not.

25 Q. Do you know if Mr. Williams or anyone

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8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION
10 HIGHLY CONFIDENTIAL
11 Washington, D.C.
12 Monday, September 8, 1997
13 Deposition of JOHN Q. ANDERSON, a
14 witness herein, called for examination by counsel
15 for the Parties in the above-entitled matter,
16 pursuant to agreement, the witness being duly
17 sworn by JAN A. WILLIAMS, a Notary Public in and
18 for the District of Columbia, taken at the
19 offices of Arnold & Porter, 555 Twelfth Street,
20 N.W., Washington, D.C., 20004-1202, at
21 10:05 a.m., Monday, September 8, 1997, and the
22 proceedings being taken down by Stenotype by
23 JAN A. WILLIAMS, RPR, and transcribed under her
24 direction.
25

1 question. Are you aware of instances in which
2 CSX's pricing or service offerings are influenced
3 by the choice of some other shipper that competes
4 with the shipper you're trying to serve at the
5 moment, where that other shipper is served by two
6 railroads? Do you understand the question?

7 A. Yes. I'm not aware of a situation
8 where that has been explicitly addressed, at
9 least as I have been informed or been in
10 discussions internally.

11 Q. And I believe your testimony, this is
12 switching the subject somewhat, I believe your
13 testimony to Mr. Wood was that you are not aware
14 of any specific studies that CSX has done about
15 what's been referred to elsewhere as rate
16 compression or rate reductions or pressure to
17 reduce rates post-transaction; is that correct?

18 A. My previous testimony was correct.

19 Q. And I don't want to beat a dead horse,
20 but I will just ask one more question. Do you
21 believe that there is likely to be rate
22 compression, if you will accept the use of that
23 term, post-transaction?

24 A. I believe in different markets there
25 will be different competitive dynamics than we

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1 had before the transaction. My experience is
2 that competitive dynamics influence prices and,
3 therefore, it would be unlikely that all prices
4 would remain exactly the same after as before.

5 Q. So, in a gross sense, would you agree
6 with me that more competition tends to put
7 pressure to lower prices?

8 A. Yes, I would agree.

9 Q. And you believe there's going to be
10 more competition post-transaction in the
11 Northeastern United States?

12 A. I do.

13 Q. Regarding movements of phosphate from
14 Florida, is it your understanding that that
15 phosphate is used only as fertilizer or does it
16 have other uses in chemical manufacturing?

17 A. It has other uses also. I'm not
18 familiar with the details but I know it goes
19 into other products.

20 Q. Do you recall any specific projection
21 CSX has about new flows of phosphate from Florida
22 to Northeastern points post-transaction?

23 A. No.

24 Q. Did you have any involvement in the
25 selection of or designation of which chemical

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Rep es

ing the 39% decline
ck accidents between
995 as truck mileage

Donohue maintained
of accidents result
standard roads and
Clinton administra-
spending plan,
Donohue for key com-
highways fell nearly \$7
t of the \$15.6 billion
to maintain those

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f Texans for Safe
d the Senate panel
w Congress to in-
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Bronaugh said.

trucks

Joemann, a former
lobbyist now rep-
the transportation
nd J Traffic Safety
d the facts are that
s authorized in 16
proved to be safer
er types of trucks.

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hetic, and down
facts, triple trailer
e safest, most effi-
e of the most regu-
es on the road,"
n said.

Donohue said the ATA's
embraces adminis-
tratory and legisla-
including the fol-

driver licensing
testing procedures,
g of information to
rivers that change
nd reduction of
paperwork.

g liability limits for
products.

owners' Associa-
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Truckers, railroads closing gap

JOURNAL OF COMMERCE STAFF

WASHINGTON — Thomas J. Donohue, president of the American Trucking Association, Thursday renewed his call for a negotiated settlement with railroads over truck size and weight issues that the two parties have been discussing for months.

He said the ATA is not seeking changes in vehicle sizes and weights, and has narrowed the discussion with railroads to less than 10 areas where some longer trailers could operate over a wider network.

The ATA and the Association of American Railroads have discussed possible changes to truck sizes and weights for six months.

"We think we still might get this (a negotiated solution) done," Mr. Donohue said. "If we don't get a deal with the railroads, I won't worry about it. The senators and congressmen will take care of it (size and weight issues) themselves."

He criticized lobbyists who counsel against making a deal, saying, "If they go out and attack the fundamental safety and integrity of this industry, that's a mistake. It's time for executives to take control of this process."

Alluding to the absence of a president at the Association of American Railroads, he said, "They have to hire someone they will listen to. It's time to hurry up and hire an adult to run that association."

His comments came after railroads appeared to break off talks last week.

Continued from Page 1B

APL

impact on our respective services, brand and organization identities, operations, customer relations or presence in the marketplace," said Lua Cheng Eng, NOL's deputy chairman and chief executive, and Tim Rhetts, APL chief executive.

CSX: Conrail deal will bolster profit

BY RIP WATSON
JOURNAL OF COMMERCE STAFF

CSX Corp. expects that buying 42% of Conrail Inc. in a joint purchase with Norfolk Southern Corp. will boost operating profit by \$240 million annually after a three-year phase-in period.

CSX announced those projections as it released first-quarter earnings of \$151 million, or 70 cents a share, up 3%.

Results included a \$16 million after-tax charge for the Conrail purchase to date and also reflected a 20% improvement in railroad operating income and a 21% drop in profitability at Sea-Land Service caused by continuing rate pressure.

John Snow, CSX chief executive, predicted Sea-Land would top last year's operating results. As for what the results mean for Sea-Land's future, Mr. Snow said, "We are interested in shareholder value. We don't think the full value of Sea-Land is reflected yet. It will be much more valuable one or two years from now. If someone feels one of our units is more valuable to them, then we are open to review that."

More than two-thirds of CSX's anticipated profit improvement (\$165 million) from buying Conrail assets would come from expense reduction, with the remaining \$75 million from new business with a profit margin of more than 30%.

Three-fourths of the new business CSX envisions would come from carload freight.

Added capital spending exceeds more than \$400 million, including \$220 million to upgrade CSX's existing line east from Chicago to northern Ohio to accommodate a planned doubling of traffic.

Asked about the effects of competition on pricing and profit margins, John Anderson, executive vice president, said, "I don't see this as a cataclysmic event at all."

be, merging with in making their decisions. APL denied that shipper concern over the merger prompted issuance of the statement.

"In all the discussions we had about this relative, that issue did not come up," said John Pachtner, an APL spokesman.

Mr. Anderson said, "We have done a good job of boosting revenue generation potential that we have got, as evidenced by our market share gains. We will spread that approach to the new territory. We are the Eastern market share leader and growth leader. In most commodities, this was done by maintaining or increasing rates. We expect newfound competition will result in price compression."

"But we are confident we can manage this and overcome negative bottom-line impact. We don't intend to be drawn into the zero-sum game of swapping traffic."

That could be done, he said, through cost reductions, volume growth, "sound pricing" and existence of points where competition exists at one end of a haul but does not exist at the other.

Mr. Anderson noted that rates for Pennsylvania coal that both CSX and NS could ship would be affected by differing routes and quality characteristics that would not replicate tough price competition in the Powder River Basin of Wyoming. Coal rates there declined 35% in 10 years.

Mr. Anderson listed new revenue opportunities, including reaching non-rail-served bulk customers through transloading, new steel markets, taking business from trucks, and boosting chemical revenue and other higher-valued commodities such as newsprint.

Bulk markets, such as corn shipments to poultry feeders, will benefit from linking Conrail grain elevators with CSX lines, he said.

CSX declined to comment on Canadian protests of the joint purchase plan, saying negotiations were ongoing.

Sea-Land revenue declined 1% to \$950 million, despite a 10% increase in loads that reached every trade lane. Operating profit was \$41 million, down from \$52 million in the year earlier period. Pacific volume rose 2%, while Atlantic was up 14% and the Americas rose 33%.

Revenue per load fell 8%, with the sharpest drop in the Atlantic trades.

On Sea-Land, Mr. Snow said, "We are encouraged that the environment or price pressure is abating. We also are encouraged with rationalization in the industry."

In other units, CSX Transportation boosted revenue 4%.

CSX Intermodal boosted operating income from \$2 million

1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION
10 HIGHLY CONFIDENTIAL

11 Washington, D.C.
12 Wednesday, August 27, 1997

13 Deposition of ROBERT L. SANSOM, a
14 witness herein, called for examination by counsel
15 for the Parties in the above-entitled matter,
16 pursuant to agreement, the witness being duly
17 sworn by JAN A. WILLIAMS, a Notary Public in and
18 for the District of Columbia, taken at the
19 offices of Arnold & Porter, 555 Twelfth Street,
20 N.W., Washington, D.C., 20004-1202, at
21 10:05 a.m., Wednesday, August 27, 1997, and the
22 proceedings being taken down by Stenotype by
23 JAN A. WILLIAMS, RPR, and transcribed under her
24 direction.

25

1 have it, and you're familiar with the fact that
2 it said it didn't, are you not? .

3 A. Yes.

4 Q. Assume that it said that it did and the
5 shipper didn't have a proportional rate agreement
6 but the STB is asserting regulatory jurisdiction
7 over the bottleneck portion. Are you with me?

8 A. Yes.

9 Q. Under those circumstances would a
10 shipper with elastic demand be able to extract at
11 least some of the benefits of origin competition?

12 A. You're going to have to read that
13 back.

14 THE REPORTER: "Question: Okay. And,
15 if we just change one assumption in the
16 hypothetical now which is that let's assume the
17 STB had asserted regulatory jurisdiction instead
18 of asserting that it didn't have it, and you're
19 familiar with the fact that it said it didn't,
20 are you not?"

21 (Discussion off the record.)

22 BY MR. McBRIDE:

23 Q. I'm now going to ask you to assume that
24 there is regulatory jurisdiction over the
25 bottleneck portion serving the destination, okay?

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1 A. Where we have inelastic demand.

2 Q. Yes.

3 A. No, we have elastic demand.

4 Q. I'm sorry, elastic demand. We're going
5 to get to inelastic demand in a minute.

6 Regulatory jurisdiction, multiple origins serving
7 the same interchange from different carriers.

8 Should the shipper be able to extract some of the
9 benefits of origin competition?

10 A. Yes.

11 Q. Now, answer the same question if it's
12 inelastic demand?

13 A. No.

14 Q. And why not?

15 A. Because I think the -- subject to
16 regulatory constraints, the delivering carrier
17 would acquire those savings.

18 Q. Okay. If the regulatory constraints
19 are the same in both circumstances, whether the
20 demand is elastic or inelastic, would your
21 answers have still been the same?

22 A. If the regulatory circumstances were
23 the same and the elastic and --

24 Q. Regulatory constraint.

25 MS. TAYLOR: Do you know what he means

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1 by that, Dr. Sansom?

2 THE WITNESS: No.

3 BY MR. McBRIDE:

4 Q. I thought you earlier testified or you
5 threw in a phrase subject to regulatory limits.
6 Do you remember saying that?

7 A. Yes.

8 Q. That's what I'm referring to. I don't
9 mean to use a different word if you want to use
10 limits. Do you understand what the regulatory
11 limits are when the STB asserts jurisdiction?

12 A. Yes.

13 Q. What do you understand them to be?

14 A. Well, I think it would be the market
15 dominance test, which we're assuming exclusive
16 market dominance here?

17 Q. Yes.

18 A. And then the 1.8 times regulatory
19 constraint on the rates, 180 percent of variable
20 costs.

21 Q. 180 percent of variable costs.

22 A. Right.

23 Q. Which is your shorthand assumption for
24 what happens when you do a stand-alone cost
25 analysis; is that correct?

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1 A. Yes.

2 Q. Because you understand that in most
3 circumstances, in the SAC cases, the shipper has
4 been able to get a rate prescribed at the 180
5 percent level?

6 A. Yes.

7 Q. Let's assume that same regulatory limit
8 in each case, elastic or inelastic demand.

9 A. Well, in the inelastic demand case, the
10 shipper, the delivering carrier, would price up
11 to the regulatory constraint, would be subject to
12 the regulatory constraint.

13 Q. Yes.

14 A. And then the elastic case we've already
15 covered, the shipper would get some of the
16 benefit of the upstream competition.

17 Q. If the bottleneck portion were fixed at
18 100 percent of variable costs, would the shipper
19 in each case be able to get the benefits of
20 origin competition?

21 A. By definition.

22 Q. So is it the fact that, if the rate is
23 fixed from interchange to destination, that
24 allows the shipper to derive the benefit of the
25 origin competition?

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1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION

10 HIGHLY CONFIDENTIAL

11 Washington, D.C.

12 Friday, September 12, 1997

13 Continued deposition of JOHN W.

14 ORRISON, a witness herein, called for examination
15 by counsel for the Parties in the above-entitled
16 matter, pursuant to agreement, the witness being
17 previously duly sworn by JAN A. WILLIAMS, a
18 Notary Public in and for the District of
19 Columbia, taken at the offices of Arnold &
20 Porter, 555 Twelfth Street, N.W., Washington,
21 D.C., 20004-1202, at 9:10 a.m., Friday,
22 September 12, 1997, and the proceedings being
23 taken down by Stenotype by JAN A. WILLIAMS, RPR,
24 and transcribed under her direction.

25

1 expanding a specific port, would be talks that --
2 you know, speaking on behalf of CSX, that we
3 would want to be involved in so that we could
4 build our strategic plans to what the plans are
5 of the port.

6 Q. Mr. Orrison, do you have any idea as to
7 when you would be able to produce a definitive
8 operating plan of operations within the North
9 Jersey shared asset area?

10 A. Our timelines are to have detailed
11 operating plans for day one operations that's
12 separate from year three which was submitted to
13 the STB because we're gearing up for day one
14 operations in the fourth quarter of this year.

15 Q. Would it be your intention to
16 supplement the record in this proceeding with
17 that plan?

18 A. We're not required to my knowledge to
19 do that. I defer to counsel.

20 Q. No, I believe you're right. The
21 question, however, is are you thinking about
22 doing it even though you're not required to? It
23 seems to me quite frankly that there's a gaping
24 whole with respect to the operations within the
25 shared asset areas, particularly North Jersey.

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1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION

10 HIGHLY CONFIDENTIAL

11 Washington, D.C.

12 Thursday, September 18, 1997

13 Deposition of JOHN W. SNOW, a witness
14 herein, called for examination by counsel for the
15 Parties in the above-entitled matter, pursuant to
16 agreement, the witness being duly sworn by MARY
17 GRACE CASTLEBERRY, a Notary Public in and for the
18 District of Columbia, taken at the offices of
19 Arnold & Porter, 555 Twelfth Street, N.W.,
20 Washington, D.C., 20004-1202, at 10:00 a.m.,
21 Thursday, September 18, 1997, and the proceedings
22 being taken down by Stenotype by MARY GRACE
23 CASTLEBERRY, RPR, and transcribed under her
24 direction.

25

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1 the business, win the game. And it's across the
2 whole range of service characteristics that
3 shippers work for, including logistics, adjusting
4 time, inventory controls, overall logistics
5 costs, not just price but overall logistics costs
6 becoming more and more a basis on which we
7 compete. So it's an endless range really that
8 constitute the competitive makeup of the struggle
9 between NS and CSX.

10 Q. Just one more question for CMA. Are
11 you aware that in the Union Pacific-Southern
12 Pacific merger transaction, the Surface
13 Transportation Board established an oversight
14 period following that merger to monitor the
15 implementation of the merger?

16 A. I'm aware of that, yes.

17 Q. Would you be open to the possibility of
18 having an oversight proceeding in this case to
19 ensure the steps you plan to make sure that there
20 is a smooth implementation would in fact work?
21 Or not to make sure but just to have a public
22 forum for presenting those issues.

23 A. As I said earlier, we're bending every
24 effort to make sure that does occur. We won't
25 start up -- we won't go to day one until we're

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1 convinced that we'll be able to implement
2 effectively and avoid problems with the startup.
3 If the Commission determines that there is some
4 value in some kind of oversight, oversight can
5 take lots of different forms. I don't want to
6 commit myself to the specifics of something but
7 if the Commission determines that it's useful
8 from their point of view to have some oversight,
9 I'm not going to -- far be it for me to say they
10 shouldn't do it.

11 Q. Well, I appreciate your answers and I
12 will now put on my Pennsylvania hat and have just
13 a couple of questions. You mentioned industrial
14 development as one of the ways in which NS and
15 CSX compete. Without asking you to recapitulate
16 CSX's entire industrial development program, can
17 you just outline the forms of assistance that CSX
18 can provide in assisting in the location of
19 facilities?

20 A. Well, sure. We sometimes acquire
21 property in our name that will eventually be the
22 site of the new plant or new facility. We
23 sometimes point prospects to sites along our
24 railroad that we think would be appropriate to
25 suit their needs. We sometimes enter into

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1 MR. LYONS: Again, I don't believe that
2 the record supports that in terms of what the
3 April 8 agreement shows but the agreement will
4 show what it shows.

5 MR. DONOVAN: It shall.

6 BY MR. DONOVAN:

7 Q. Do you know enough about the facts to
8 comment on that question?

9 A. My recollection is that there was a
10 breakout of the assets that gave us a good part
11 of the various things that we ended up with, the
12 yards, and they took the ones they took. My
13 recollection is it's much earlier than the end of
14 May. Sometime in April was my understanding.

15 Q. That's fine. Thank you for your
16 understanding and thank you, Counsel, for
17 pointing that out. Mr. Snow, I had occasion, as
18 did everybody else except poor Mr. Wood who is
19 yet to get to him, to talk to Mr. Orrison at some
20 length. And as I said to you earlier,
21 Mr. Orrison was an extremely knowledgeable and
22 very personable fellow. And he indicated to me,
23 and I ask you for your confirmation of this, that
24 there was in place at this time no operating plan
25 for the shared asset area but that transition

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1 teams were working on it.

2 A. That would be my understanding, yes.

3 Q. He also indicated to me that there was
4 a time line and that the CSX time line indicated
5 that that operating plan for the shared asset
6 areas would be completed sometime in the fourth
7 quarter of this year. Is that consistent with
8 your understanding?

9 A. That's consistent with my
10 understanding.

11 Q. Mr. Snow, I'm a very direct sort of
12 examiner. I'm not going to run around and ask
13 questions here. I want to ask you one basic
14 question and that question is, we at the Port
15 Authority, while wanting you desperately to
16 succeed, are very concerned and our concern has
17 several bases. One, and forgive me for
18 testifying but I'm simply explaining to the
19 witness the basis for the question.

20 One, that we're taking an area which
21 Conrail had spent 20 years rationalizing and
22 eliminating facilities and now we're splitting it
23 up among two carriers plus a shared asset
24 operator. We're concerned that the commercial
25 arrangement that might make great commercial

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1 sense for CSX and Norfolk Southern was arrived at
2 without substantial operational input, so much so
3 that we still don't have a real operating plan.
4 Do you understand the basis of our concern? I
5 know you've been to the Port of New York and New
6 Jersey. You've seen how congested it is. Do you
7 understand our concern?

8 A. I think I do. And I think we will be
9 able to address it here with meetings with the
10 Port Authority and your clients and yourself in
11 the not too distant future. I can tell you that
12 that matter is being given intense attention
13 within CSX and I understand we have a joint team
14 with NS so it's being given intense attention
15 jointly. We have one of our ablest young and
16 most promising rail executives heading that
17 effort for us, someone -- you spoke well of
18 Mr. Orrison and I have a high regard for him.
19 This young man is of a comparable capacity.

20 And I could say to you that I don't
21 think there is any issue receiving more attention
22 today than that one. And I would say that we are
23 making a great deal of progress in putting
24 together an operating plan.

25 I spent virtually all of last Friday

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

HIGHLY CONFIDENTIAL

Washington, D.C.

Wednesday, September 17, 1997

Continued deposition of D. MICHAEL

MOHAN, a witness herein, called for examination
by counsel for the Parties in the above-entitled
matter, pursuant to agreement, the witness being
previously duly sworn, taken at the offices of
Zuckert, Scoutt & Rasenberger, L.L.P., Suite 700,
888 Seventeenth Street, N.W., Washington, D.C.,
20006-3939, at 9:05 a.m., Wednesday, September
17, 1997, and the proceedings being taken down by
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transcribed under her direction.

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1 in this process; is that correct?

2 A. Yes, that's right.

3 Q. And he's your CSX counterpart so to
4 speak in the operating plan development business?

5 A. That's fair.

6 Q. Mr. Orrison indicated to me that, while
7 there was no detailed operating plan available
8 for the shared asset area, one was being worked
9 on by his transition team and he expected a
10 detailed plan to be in place sometime in the
11 fourth quarter of this year. Accepting that, you
12 can check the transcript, but accepting that, is
13 that true with respect to the Norfolk Southern
14 transition team as well?

15 A. I can't provide you any information on
16 the deadline date, but I can tell you that there
17 is an operating plan transition team in place on
18 the NS working on a detailed operational plan for
19 all of the SAAs now.

20 Q. Okay. And I asked Mr. Orrison whether
21 there was a timeline schedule available, and he
22 indicated that there was. I asked his counsel
23 whether that was a responsive document, and she
24 took it under consideration.

25 Are you aware if there is a timeline

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



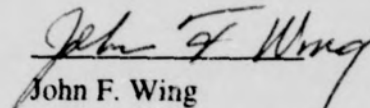
Finance Docket No. 33388

POSITION OF THE CITIZENS ADVISORY COMMITTEE

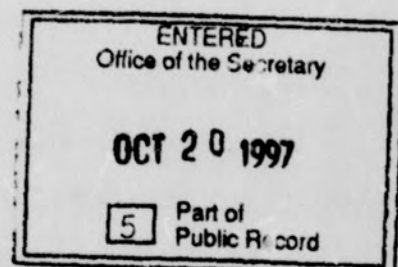
On behalf of the Citizens Advisory Committee to the Transportation Steering Committee, the metropolitan planning organization of the Baltimore region, I am pleased to submit the attached position in support of the Surface Transportation Board Finance Docket No. 33388. While we support the proposal, we have specific concerns and recommendations which are stated in our position.

Dated: October 15, 1997

Respectfully submitted,

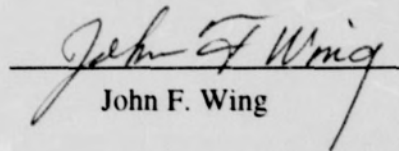

John F. Wing

Chairman, Citizens Advisory Committee
601 North Howard Street
Baltimore, MD 21201
(301) 767-1162



CERTIFICATE OF SERVICE

I hereby certify that on October 15, 1997, I caused to be served a copy of the foregoing Citizens Advisory Committee Position on the Conrail Acquisition upon Administrative Law Judge Jacob Leventhal and upon each of the Parties of Record named on the Service List for STB FD 33388 0, Records 317, 10/02/97, by depositing said copy in the U.S. Mail, first class postage prepaid.


John F. Wing



POSITION ON THE CONRAIL ACQUISITION
BY THE CITIZENS ADVISORY COMMITTEE
OF THE METROPOLITAN PLANNING ORGANIZATION
FOR THE BALTIMORE REGION

The Citizens Advisory Committee (CAC) is a body established by the Transportation Steering Committee (the Metropolitan Planning Organization for the Baltimore region) and is one element of citizen involvement required by the Intermodal Surface Transportation Efficiency Act of 1991. The CAC brings an independent public viewpoint on transportation issues to officials in the Baltimore region (which includes the Maryland counties of Anne Arundel, Baltimore, Carroll, Harford, and Howard and the cities of Baltimore and Annapolis.) The CAC takes public stands on major issues that impact transportation in the region. The application jointly filed with the Surface Transportation Board (the Board) by Norfolk Southern Railroad and CSX Transportation (NS and CSX respectively, sometimes also called the Applicants herein) for approval of their plan to acquire the routes and facilities owned by Conrail is such an issue.

Our impression of the plan is that it is much more favorable to the Baltimore region and Maryland than was the earlier proposal of CSX and Conrail to simply merge their two systems because the Applicants propose two great systems in competition throughout most of the Eastern United States. Specifically in our region we strongly support the plan's preservation of competition on the eastern side of the Port of Baltimore. CSX would continue to maintain a mainline westward from Washington and Baltimore and to operate major repair facilities at Cumberland, Maryland, which is also important. Norfolk Southern plans to offer high-cube double-stack services from Baltimore to the midwest and CSX, not to be outdone, now expresses a lively interest in eliminating obstructions so as to inaugurate its own high-cube service both north-south and east-west through and from Baltimore. We believe that the Applicants intend, even as they compete, to win a larger share of the freight presently carried by truck. This would be a development long overdue, with benefits to the nation's economy and environment as well as relieving the traffic congestion on our highway system, both interstate and local.

While these benefits are important, we have misgiving and reservations with parts of the Applicants' plan. NS and CSX propose to share facilities in key locations, such as northern New Jersey (the approaches to the Port of New York), Philadelphia and southern New Jersey, Detroit, Indianapolis, and the Monongahela coalfields. Baltimore is conspicuous by its absence from this list, the more so because two great competing ports, New York and Philadelphia, are on it. While CSX and NS each would have access to parts of the east side of Baltimore Harbor (where NS is reportedly considering new auto and intermodal terminals), the west side of the Port would remain CSX territory. A similarly unfavorable situation looms for coal producers in western Maryland, who would be heavily dependent on CSX as they see their Monogahela competitors enjoying the benefits of competitive service. While we favor any shift of freight from our crowded highways to rail, we are concerned that this will further congest the tracks used by Amtrak trains, particularly those using Amtrak's Northeast Corridor and the Maryland Rail Commuter Service (MARC).

We believe that the Board's remedial powers are sufficiently broad that it can take action to make the Applicants' plan more equitable and competitive in Maryland. We understand that CSX, in material submitted to the Board, has acknowledged that shared facilities will afford dual service to numerous shippers who have not enjoyed it since Conrail was created. Our first choice for Baltimore would be a requirement that NS and CSX share facilities and track throughout the Port of Baltimore. This would give our harbor the same advantage which New York and Philadelphia expect. An alternative would be to grant a regional railroad, the Maryland Midland (MM), and Norfolk Southern (over MM) a route from the railhub of Hagerstown, Maryland directly to Baltimore. We recognize that this would require CSX to grant to MM either track or trackage rights both near Hagerstown and near Baltimore, where MM could presumably send its shipments to the east side of the Port via either CSX or NS. The effect of expanding Maryland Midland would be to restore a key part of the Western Maryland Railway which, prior to its merger into CSX and subsequent virtual abandonment, offered Baltimore a second mainline to the West. We understand that Maryland Midland has itself developed a proposal along these lines. The Board, in considering Maryland Midland's access to Baltimore, will need to know whether MM is willing and able to make whatever improvements in its infrastructure, such as retracking and signaling, would be required to move more trains faster but still safely.

Since Norfolk Southern does not approach the coal mines of western Maryland, and would not under the Applicants' plan, it is not apparent that it could prevent the inequity created by Applicants' plan for the Monongahela. We would point out, however, that the Wheeling and Lake Erie Railroad (W&LE) now runs trains from the West into Hagerstown, and we understand that W&LE, operating in this area with trackage rights over CSX, is not permitted to handle local freight. We urge the Board to require CSX to grant W&LE access to locations along CSX which serve western Maryland coal producers for transporting such coal. We do not argue that W&LE should be substituted for CSX service but rather that the two railroads should be allowed to compete for Maryland coal in the same way in which CSX and NS plan to compete in western Pennsylvania. An expanded role for W&LE to transport coal to Hagerstown would dovetail with a right of Maryland Midland to run trains from Hagerstown to Baltimore; we have no reason to believe MM would not welcome coal traffic, as did the Western Maryland Railway in its time.

We also urge the Board to consider favorably the request of the Delaware and Hudson Railway (D&H) that it be permitted to serve the Port of Baltimore. The advantage for Baltimore of single-line, comparatively direct service to and from Canada is obvious. We also recommend that the Board consider seriously the claim of D&H that the plans of the Applicants will, if approved, seriously injure D&H and possibly put it out of business. Perhaps the hardest question D&H should be asked is how the Northeast Corridor, already crowded, could accommodate more D&H traffic between the Port and Perryville, Maryland.

We are concerned with the plans of CSX and Norfolk Southern, respectively, to maintain and even increase freight traffic on the Brunswick Line and on Amtrak from Baltimore to Perryville and beyond. Even the present levels of Amtrak and MARC service (the latter the subject of recent intensive negotiations between the railroads and the State of Maryland) represent a publicly supported rail-passenger alternative to passenger transportation which would otherwise depend entirely on highways and airplanes. Increasing levels of highway congestion and air pollution will make such an alternative increasingly urgent. The State of Maryland and CSX each have their own interests at stake in the MARC operation: CSX will insist that the State bear part of the cost of infrastructure improvements which expansion of MARC will require; Maryland, on the other hand, could justifiably insist on trackage rights for MARC, at least comparable, for instance, to the status Amtrak enjoys on freight railroads outside the Northeast Corridor. There is force in

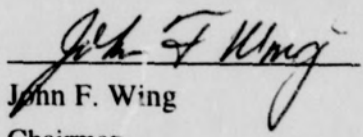
the arguments of each side, but we think that these issues can be more appropriately resolved by negotiation between the State on behalf of MARC and those railroads. What we do ask is that the Board ensure that MARC's position be no worse than it was prior to the Conrail acquisition. CSX, and arguably Norfolk Southern, have already committed themselves to this proposition, and the Board should hold them to their word.

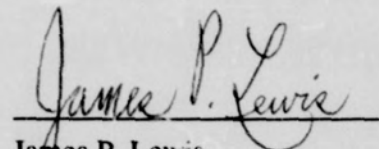
* * * *

To summarize, the Citizens Advisory Committee respectfully urges the Surface Transportation Board:

1. To require that Norfolk Southern and CSX provide for shared facilities throughout the Port of Baltimore, as they have proposed at other Eastern ports.
2. To require that Maryland Midland and Norfolk Southern be granted trackage or trackage rights between Hagerstown and the Port of Baltimore. (While this would be both logical and beneficial in itself, it becomes even more necessary if the Board does not require CSX and NS to share facilities in Baltimore.)
3. To afford coal producers of western Maryland competitive rail service, including alternate routes east to Baltimore over CSX and Wheeling and Lake Erie / Maryland Midland.
4. To grant the Delaware & Hudson Railway access to the Port of Baltimore as part of the relief it may need to survive under the plan advanced by the Applicants (at least if it is shown that the Northeast Corridor, as it now exists or may be approved, can handle the additional traffic this would bring.)
5. To ensure that MARC and Amtrak service can continue at not less than their levels prior to the Conrail acquisition.

We hope that, if the Board decides to approve generally the proposed application, it will see fit to modify it in the ways we have urged. What Maryland's citizens and businesses need is not favors but rather the conditions under which they may fairly compete. If the Applicants must concede that their plans have created new and beneficial rail competition in other parts of the country, then they should be required to do as well by the Baltimore region.


John F. Wing
Chairman
Citizens Advisory Committee


James P. Lewis
Leader
Conrail Acquisition Task Force

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*NOT ADMITTED IN D.C.

October 10, 1997

BY HAND

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

Re: STB Finance Docket No. 33388, CSX Corp. and CSX Transp., Inc.,
Norfolk Southern Corp. and Norfolk Southern Ry. Co. -- Control and
Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corp.

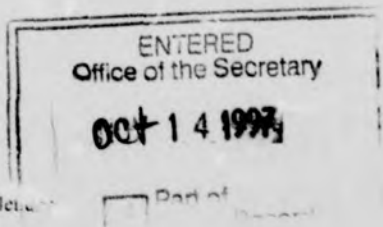
Dear Secretary Williams:

Decision No. 43, dated October 7, 1997 ("Decision"), in the above-referenced proceeding, requires that filings made with the Surface Transportation Board (the "Board") prior to the service date of the Decision, be served on certain newly added Parties of Record ("New Parties"). Accordingly, enclosed for filing in this proceeding are the original and 10 copies of the Certificate of Service showing that the following filings by Louisville & Indiana Railroad Company have, as of today's date, been served on the New Parties: (i) Request to be a Party of Record, filed August 7, 1997, (ii) Description of Anticipated Responsive Application and Petition for Clarification and Waiver, filed August 22, 1997, and (iii) Verified Statement of No Significant Impact, filed October 1, 1997.

Please acknowledge receipt of this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Very truly yours,

Rose-Michele Weinryb
Rose-Michele Weinryb



Enclosures

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CERTIFICATE OF SERVICE

I hereby certify that on October 10, 1997, a copy of Louisville & Indiana Railroad Company's (i) request to become a Party of Record, (ii) Description of Anticipated Responsive Application and Petition for Clarification and Waiver, and (iii) Verified Statement of No Significant Impact were served by first-class mail, postage pre-paid, on the following Parties of Record, added to the service list in Decision No. 43, issued by the Surface Transportation Board on October 7, 1997:

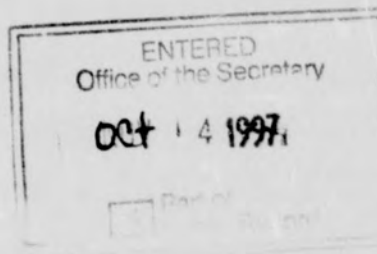
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UTU GO-851, General Chairperson
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Somerset Railroad Corporation
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Samuel J. Nasca
Legislative Director
State of New York Legislative Board
United Transportation Union
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Albany, NY 12205

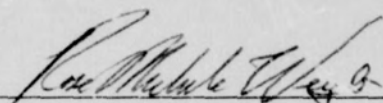


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BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Finance Docket No. 33388

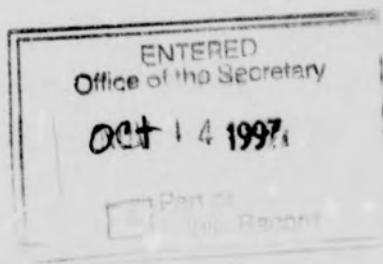
*CSX Corporation and CSX Transportation, Inc.
Norfolk Southern Corporation And Norfolk Railway Company
—Control And Operating Leases/Agreements—
Conrail Inc. And Consolidated Rail Corporation*

**CERTIFICATE OF SERVICE OF
CARGILL, INCORPORATED**

In accordance with Decision No. 43, served October 7, 1997, in the above-captioned matter, Cargill, Incorporated hereby certifies that it has served on each party of record as listed in Decision No. 43 copies of all filings it has submitted so far in this proceeding by first-class mail, postage prepaid, this 10th day of October 1997.

Respectfully submitted,

John K. Maser III
Karyn A. Booth
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W., Suite 750
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(202) 371-9500



*Attorneys for
Cargill, Incorporated*

October 10, 1997

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STE Finance Docket No. 33388

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



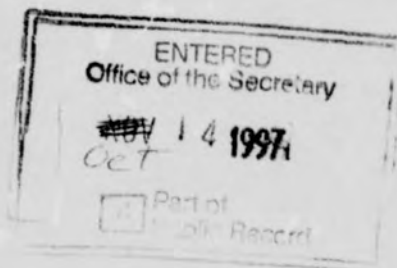
CERTIFICATE OF SERVICE OF
INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.

In accordance with Decision No. 43, served October 7, 1997, in the above-captioned matter, Institute of Scrap Recycling Industries, Inc. hereby certifies that it has served on each party of record as listed in Decision No. 43 copies of all filings it has submitted so far in this proceeding by first-class mail, postage prepaid, this 10th day of October, 1997.

Respectfully submitted,

Karyn A Booth

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Attorneys for
Institute of Scrap Recycling Industries, Inc.

October 10, 1997

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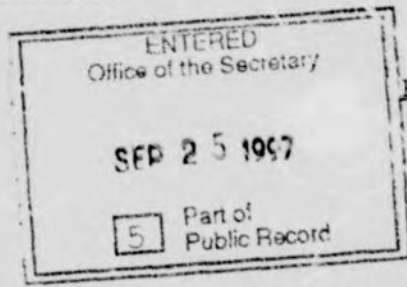
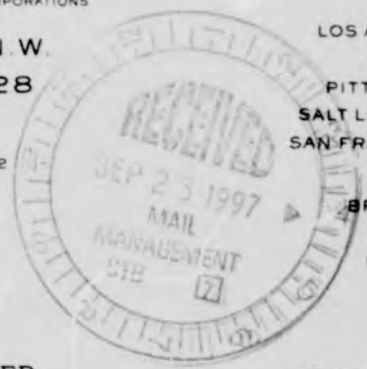
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EXPEDITED HANDLING REQUESTED

September 23, 1997

VIA HAND DELIVERY

FD 33388

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

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

Dear Secretary Williams:

Enclosed are the original and 25 copies of the "Appeal of Atlantic City Electric Company, American Electric Power, Delmarva Power & Light Company, Indianapolis Power & Light Company, and The Ohio Valley Coal Company from the September 19, 1997 Order of the Presiding Judge Restricting Discovery, and Motion for Expedited Consideration" (ACE, et al.-14) and the "Reply of Atlantic City Electric Company, American Electric Power, Delmarva Power & Light Company, Indianapolis Power & Light Company, and The Ohio Valley Coal Company to Appeal of Applicants (CSX/NS-81)" (ACE, et al.-15) for filing in the above-referenced proceeding. Also enclosed is a 3.5" diskette containing the documentation in WordPerfect format.

FEE RECEIVED

FILED

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SURFACE
TRANSPORTATION BOARD

SURFACE
TRANSPORTATION BOARD

Mr. Vernon A. Williams
September 23, 1997
Page 2

Copies of the enclosed pleadings (ACE, et al.-14 and -15) have been served on all parties on the Restricted Service List. Please inform the undersigned if the Board requires, pursuant to Decision No. 21, service on all parties of record.

Please date stamp and return the enclosed three additional copies of each pleading via our messenger.

Very truly yours,

Michael F. McBride

Michael F. McBride
Brian D. O'Neill
Bruce W. Neely
Linda K. Breggin
Brenda Durham
Joseph H. Fagan

Attorneys for Atlantic City
Electric Company, American
Electric Power, Delmarva
Power & Light Company,
Indianapolis Power & Light
Company, and The Ohio Valley
Coal Company

Enclosures

cc (w/Enclosures): All parties on the Restricted Service List

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ACE, et al.-14

Expedited Consideration Requested

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
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

APPEAL OF ATLANTIC CITY ELECTRIC COMPANY, AMERICAN ELECTRIC
POWER, DELMARVA POWER & LIGHT COMPANY, INDIANAPOLIS
POWER & LIGHT COMPANY, AND THE OHIO VALLEY COAL COMPANY
FROM THE SEPTEMBER 19, 1997 ORDER OF THE PRESIDING JUDGE
RESTRICTING DISCOVERY, AND MOTION FOR EXPEDITED CONSIDERATION

Michael F. McBride
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Attorneys for Atlantic City
Electric Company, American
Electric Power, Delmarva Power
& Light Company, Indianapolis
Power & Light Company, and
The Ohio Valley Coal Company

September 23, 1997

Expedited Consideration Requested

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
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--CONTROL AND OPERATING LEASES/AGREEMENTS--
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APPEAL OF ATLANTIC CITY ELECTRIC COMPANY, AMERICAN ELECTRIC
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POWER & LIGHT COMPANY, AND THE OHIO VALLEY COAL COMPANY
FROM THE SEPTEMBER 19, 1997 ORDER OF THE PRESIDING JUDGE
RESTRICTING DISCOVERY, AND MOTION FOR EXPEDITED CONSIDERATION

INTRODUCTION AND SUMMARY

Pursuant to Section 1115.1(c) of the Rules of Practice
of the Surface Transportation Board ("Board") and Decision No. 6
in this proceeding, Atlantic City Electric Company, American
Electric Power, Delmarva Power & Light Company, Indianapolis
Power & Light Company and The Ohio Valley Coal Company (jointly
"Movants" or "ACE, et al.") hereby respectfully appeal, and seek

expedited consideration of their appeal, from the Presiding Judge's order, issued on the record on September 19, 1997 (Tr. 45-47), denying Movants' motion to compel Applicants to produce "revenue masking factors" for certain of the years requested by Movants in one Interrogatory and one Document Request, served September 4, 1997 (ACE, et al.-11). (Judge Leventhal ordered the revenue masking factors Movants requested produced for other years during the period 1978-97 that Movants requested. Applicants appealed that ruling on Monday, September 22, 1997 (CSX/NS-81). Some of the pages from the transcript of the September 17 and 19, 1997 Discovery Guidelines are attached thereto.)

After Applicants objected on September 11, 1997 to providing the revenue masking factors for any of the years requested, Movants moved to compel on September 12, and Judge Leventhal heard the dispute in Discovery Conferences conducted on September 17 and 19, 1997. His ruling was effective September 19, but he stayed his ruling at Applicants' request and over Movants' objection until 5 p.m. on Monday, September 22. The Board issued a further stay on September 22 in Decision No. 39.

Judge Leventhal ruled that Applicants would be obliged to produce the revenue masking factors for the same years that he earlier required Applicants to provide information and documents responsive to ACE, et al. -2, -3, and -4. See Decision Nos. 11 and 17. For all Applicants, that includes 1995-97. For Conrail, it also includes 1988-92. For NS, it also includes 1980-84. For CSX, it also includes 1978-82.

ARGUMENT

There is no dispute that the information sought is responsive to Movants' September 4 discovery requests. Moreover, in Decision No. 11, Judge Leventhal did not find that Movants' discovery requests for the years for which he did not order production were not relevant or would not lead to admissible evidence. Instead, he ruled that the burden of producing the information requested then by ACE, et al. outweighed the probative value of the information sought. Decision No. 11 at 2.

In Decision No. 17, the Board affirmed the Presiding Judge's findings, and suggested that information requested by Movants that Judge Leventhal did not order produced was of "marginal relevance." (id. at 2; see also id. at 3). Thus, apparently the Board has determined that information for CSX

(between 1978-92), NS (between 1980-84), and Conrail (between 1988-92) is relevant or may lead to relevant evidence, as is data for all Applicants for 1995-97. With respect to the instant discovery request, Applicants argued that information about other years is irrelevant, and Judge Leventhal apparently agreed, determining that he should not order production of information for years other than those he previously ordered information and documents produced. Respectfully, this ruling is erroneous.

Movants' experts have now determined that the limitations on the data Judge Leventhal previously ordered produced required them to seek to "fill in" the missing years with other data to provide a statistically reliable and useful study of Applicants' ratemaking practices for the Board's review. The gaps in the years listed, and the inconsistency in years from Applicant to Applicant, complicate if not frustrate an intelligent comparison of the data produced by each Applicant.

Movants' solution to the problem was the use of the "Waybill Samples." Of course, the Board makes the Waybill Samples available for evidentiary presentations before the Board, and Movants' consultants have now obtained them from the Board for use in this proceeding. However, as the Board knows,

Applicants are permitted to "mask" the revenues on the Waybill Samples to protect commercially sensitive information from public disclosure. There is no confidentiality issue here, however, because as the Board observed in denying Applicants' appeal of another of Judge Leventhal's rulings, the Protective Order in place here will protect their commercially sensitive information. Decision Nos. 32 and 34.

But Movants seek to use the Waybill Samples to show Applicants' actual ratemaking practices. Thus, the ability of others to use the Waybill Samples without the revenue masking factors in other proceedings before the Board is irrelevant, since such studies have used the Samples for aggregate data or other purposes that may not have required the actual revenues, or in which the Board's Staff did the study and knew the masking factors, as apparently it has done, for example, in Ex Parte No. 399.

Here, though, Movants' experts wish to test the reasons, over a statistically reliable universe of data, for Applicants' actual ratemaking practices, in order to determine whether CSX's and NS's acquisition and control of Conrail will affect Movants' rates, or the rates of those who ship Movants'

coal (Centerior, in the case of The Ohio Valley Coal Company). The Board correctly understood the issue in Decision No. 17 (at 2-3) characterizing it as going beyond the "one lump theory" disputes in past merger proceedings to an issue of whether the acquisition premium paid by CSX and NS for Conrail would or could result in rate increases to shippers such as Movants. Where the Board was incorrect, however, in Decision No. 17, we respectfully submit, was in its conclusion -- which is contrary to Movants' experts' affidavits submitted to the Board -- that they are "challenging a basic principle of economics." Decision No. 17 at 3. To the contrary, Drs. Kahn and Dunbar carefully explained in their July 22 Supplementary Affidavit that they do not challenge that theory, but merely wish to review the evidence to determine if the Board's theories apply here or not. (The ICC/STB has indicated previously that it is willing to consider evidence to rebut its theories, and we presume the same is still true. Union Pacific, et al., 4 I.C.C.2d 409, 476 (1988), quoted with approval in Burlington Northern Inc., et al., Finance Dkt. No. 32549, Decision No. 38 (Aug. 16, 1995), aff'd sub nom. Western Resources, Inc. v. STB, 109 F.2d 782, 787-88 D.C. Cir. 1997)). Moreover, there is no burden to producing the masking factors,

and thus the Board's rationale in Decision No. 17 for denying the information sought there (i.e., the burden of "broad discovery", id. at 3), does not apply here.

Since Judge Leventhal did not rule in Decision No. 11 that the years other than those for which he ordered data produced were irrelevant here, but rather that the burden of production of data in those years was simply too great, it follows that his ruling in Decision No. 11 does not control here. Furthermore, Applicants' counsel conceded (off the record) before Judge Leventhal on September 17 that it was no burden to produce the revenue masking factors, unlike the situation with Movants' July 3 discovery requests.

Thus, in order to present an intelligible study of Applicants' ratemaking practices using the Waybill Samples, it is most especially the revenue masking factors for the years Applicants were not previously required to produce data that are the most important to Movants. To be sure, the revenue masking factors for the years in which production previously was ordered are also important, since there are discrepancies on the tapes that the revenue masking factors may help explain, and the rates Applicants charge are apparently reported with credits or rebates

applied, thus skewing the rates themselves. The factors will help clarify what is otherwise unclear or erroneous. The more important part of the effort that Movants seek to present to the Board, however, is to "fill in" the missing years, given the limitations of Decision No. 11.

Simply stated, Movants wish to produce "time lines" for the years 1978-97 of Applicants' ratemaking practices for a sufficient number of "origin-destination" pairs to result in a statistically reliable study. The limitations previously imposed, limiting the discovery to "destinations served by Conrail," to Movants' destinations (and others who joined in those requests after July 16, i.e., Indianapolis Power & Light Company, New York State Electric & Gas Company, and Niagara Mohawk Power Corporation), and to a few years for each Applicant (and different years at that, except for the 1995-96 plus part of 1997), have precluded preparation of such continuous time lines.

Movants thus sought to "fill in" for the missing years through use of unmasked Waybill Sample data. Clearly, if years 1978-82 are relevant as to CSX, as well as 1995-97, it is inconceivable that the intervening years (1983-94) are not relevant to a study of CSX's ratemaking practices. The same

point can be made for the other Applicants. For example, if Conrail's ratemaking practices are relevant in 1988-92 and 1995-97, how can 1993-94 be irrelevant to such a study? It is not logical to conclude that the intervening years are irrelevant.

Movants commenced discovery as early or earlier than any other parties, on July 3, 1997 (ACE, et al.-2, -3, and -4; see Decision No. 17). They have diligently sought discovery, despite the obstacles that Applicants have erected, which Judge Leventhal described in Decision No. 26 and which the Board noted in Decision Nos. 32 and 34. Surely, the Board wishes to hear evidence on the biggest issue in the proceeding for many shippers -- will the largest acquisition premium ever paid for a railroad likely result in rate increases to the shippers? Since the Board agrees that is an issue in this proceeding (see Decision No. 4 at 3), just as surely the Board should want intelligible evidence. But how can Movants' experts intelligently analyze the data and draw a conclusion about Applicants' ratemaking practices if they cannot know Applicants' actual rates for timelines over enough years, to perform a statistically reliable analysis?

It will not do to say "just do a year-to-year comparison -- then you don't need the actual rates." First,

Movants' experts will not have all of the years of data. Second, railroads are permitted to use different masking factors every year, and thus year-to-year comparisons are not necessarily probative unless the masking factors are unchanged. Third, Movants' experts may not just be making year-to-year comparisons, but also comparing data for the effects of such things as acquisitions, additional source competition, reduced coal options due to Clean Air Act changes, responses to cost increases or decreases, and general evidence of market power, or the lack thereof, that the data may reveal, so as to infer or deduce what the Applicants' ratemaking practices are likely to be if CSX and NS are permitted to acquire and control Conrail.

Fourth, the Board should convey its desire to hear all possibly relevant evidence, and manifest injustice occurs by definition when it does not. Unless the Board is prepared to rule that information concerning Applicants' ratemaking practices is irrelevant for those portions of the 20-year period Movants requested (1978-97) but were denied that information, it must find that the revenue masking factors for those years are also relevant or may lead to relevant information, since by definition the masking factors distort the most probative evidence

concerning Applicants' ratemaking practices -- their actual rates and revenues for the traffic displayed on the Waybill Samples.

Conclusion

Movants' appeal (and expedited consideration thereof) should be granted, and they should be permitted to obtain all, and not some, of the revenue masking factors applied to revenues on the "Waybill Samples" furnished to the Board by Applicants for the years 1978-97.

Respectfully submitted,

Michael F. McBride

Michael F. McBride
Brian D. O'Neill
Bruce W. Neely
Linda K. Breggin
Brenda Durham
Joseph H. Fagan
LeBoeuf, Lamb, Greene
& MacRae, L.L.P.
1875 Connecticut Avenue, N.W.
Suite 1200
Washington, D.C. 20009-5728
Phone: (202) 986-8000
Fax: (202) 986-8102

Attorneys for Atlantic City
Electric Company, American
Electric Power, Delmarva Power
& Light Company, Indianapolis
Power & Light Company, and
The Ohio Valley Coal Company

September 23, 1997

STB

FD-33388

ID-182064

9-19-97

D



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1499



September 15, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
Attention: STB Finance Docket No. 33388
1925 K Street, N.W.
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

Enclosed are an original and ten (10) copies of the Certificate of Service of the Tennessee Valley Authority (TVA-3) for filing in the above-referenced proceeding. Please note that a copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 7.0 format.

Respectfully submitted,

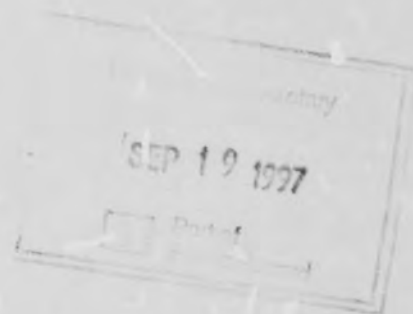
William L. Osteen
Associate General Counsel

Enclosures

cc (Enclosure):

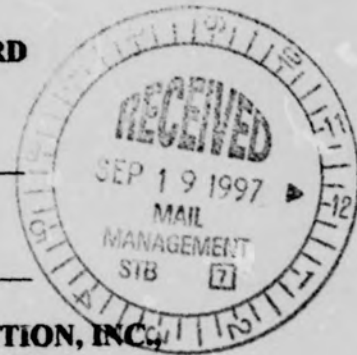
The Honorable Jacob Leventhal
Administrative Law Judge
Federal Energy Regulatory Commission
Office of Hearings, Suite 11F
888 First Street, N.E.
Washington, D.C. 20426

Mr. Robert J. Cooper, General Chairperson
United Transportation Union
General Committee of Adjustment, GO-348
1238 Cass Road
Maumee, Ohio 43537



**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 CONSOILIDATED RAIL CORPORATION**

**CERTIFICATE OF SERVICE
OF THE TENNESSEE VALLEY AUTHORITY**

Pursuant to Decision No. 27 of the Surface Transportation Board, I hereby certify that on September 15, 1997, Robert J. Cooper, General Chairperson, United Transportation Union, was served by first-class U.S. mail, postage prepaid, with the following filing of the Tennessee Valley Authority submitted thus far in this proceeding:

Notice of Intent to Participate (TVA-1)

Dated: September 15, 1997

A handwritten signature in dark ink, appearing to read "William L. Osteen".

William L. Osteen
Associate General Counsel

Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902
Telephone No. (423) 632-7304
Facsimile No. (423) 632-2422

Attorney for Tennessee Valley Authority

August 5, 1997

VIA FACSIMILE AND OVERNIGHT MESSENGER

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
Attention: STB Finance Docket No. 33388
1925 K Street, N.W.
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are an original and 25 copies of the Notice of Intent to Participate of the Tennessee Valley Authority. Also enclosed is a 3.5 inch diskette containing the text of the filing in WordPerfect 7.0 format.

Respectfully submitted,

WLO

Edward S. Christenbury

CLY:GFH
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**

NOTICE OF INTENT TO PARTICIPATE

Tennessee Valley Authority ("TVA") hereby notifies the Board that it intends to participate in the above-referenced proceeding. Service may be made on the undersigned counsel. TVA adopts the abbreviation "TVA" for identifying its pleadings.

Respectfully submitted,

Edward S. Christenbury
General Counsel



William L. Osteen
Associate General Counsel

Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902-1499
Telephone No. (423) 632-7304
Facsimile No. (423) 632-2422

Attorneys for Tennessee Valley Authority

**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**

CERTIFICATE OF SERVICE

I hereby certify that I have served this 5th day of August, 1997, a copy of the foregoing
"Notice of Intent to Participate" by first-class mail, postage prepaid, or by more expeditious
means, upon each of the following parties of record:

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

Richard A. Allen, Esq.
Zuckert, Scoutt & Rasenberger, L.L.P.
Suite 600
888 Seventeenth Street, N.W.
Washington, D.C. 20006-3939

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

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

Dennis G. Lyons, Esq.
Arnold & Porter
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206

Ww

William L. Osteen

STB

FD-33388

ID-182065

9-19-97

D

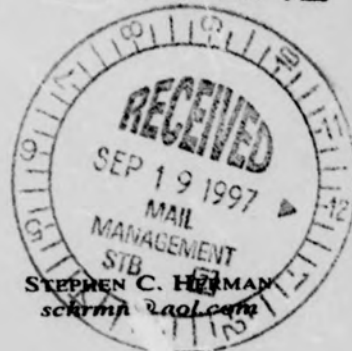
182065

LAW OFFICES
McFARLAND & HERMAN
20 NORTH WACKER DRIVE-SUITE 1330
CHICAGO, ILLINOIS 60606-2902
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mchermn@aol.com

THOMAS F. McFARLAND, JR.
tmcfarld@aol.com

September 16, 1997

ORIGINAL



Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

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

Dear Mr. Williams:

This is to certify that a copy of Kokomo Grain Co., Inc.'s filings KGC-1 and KGC-2 in the above referenced proceeding have this day been served on Robert J. Cooper, United Transportation Union, at the corrected address in accordance with the Board's Decision No. 27 dated September 8, 1997. Ten copies accompany the original of this communication

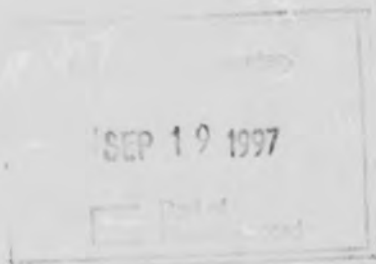
Very truly yours,

Tom McFarland

Thomas F. McFarland, Jr.
Attorney for Kokomo Grain Co., Inc.

TMcf:kl:enc:d:wp7.0 631 ltrstb3

[Handwritten signature]
SEP 19 1997
[Stamp]



STB

FD-33388

ID-182055

9-18-97

D

1-8 2053

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N.W.

WASHINGTON, D. C. 20036

D

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III

September 18, 1997

202 347-7170

BY HAND DELIVERY

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



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

Dear Secretary Williams:

Pursuant to Decision No. 27 in the above-referenced proceeding, enclosed please find an original and ten (10) copies of the Certificate of Service of the State of New York, by and through its Department of Transportation ("NYS").

We have included an extra copy of the Certificate of Service. Kindly indicate receipt by time-stamping this copy and returning it with our messenger.

Sincerely,

Kelvin J. Dowd
An Attorney for the State of
New York by and through its
Department of Transportation

SEP 19 1997

Enclosures

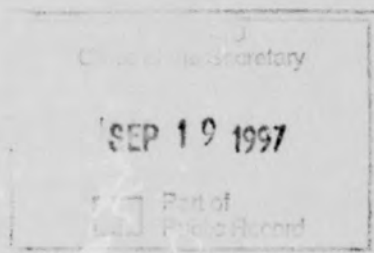
cc: Mr. Robert J. Cooper (by Federal Express)

182055

CERTIFICATE OF SERVICE

Pursuant to Decision No. 27 in 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, I hereby certify that on this 18th day of September, 1997, I caused copies of all filings submitted thus far in this proceeding by the State of New York, by and through its Department of Transportation ("NYS"), to be served by Federal Express delivery upon Robert J. Cooper, General Chairperson, United Transportation Union, General Committee of Adjustment, GO-348, 1238 Cass Road, Maumee, Ohio, 43537.


Kelvin J. Bowd



STB

FD-33388

ID-182054

9-18-97

D

782054

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSEN, ERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III

SEP 19 1997

202 347-7170

September 18, 1997

BY HAND DELIVERY

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

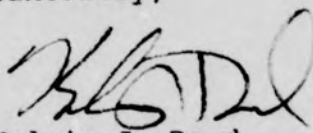
Re: Finance Docket No. 33388
CSX Corporation and CSX Transportation Inc.,
Norfolk Southern Corporation and Norfolk
Southern Railway Company -- Control and Operating
Leases/Agreements -- Conrail Inc.
and Consolidated Rail Corporation

Dear Secretary Williams:

Pursuant to Decision No. 27 in the above-referenced proceeding, enclosed please find an original and ten (10) copies of the Certificate of Service of GPU Generation, Inc. ("GPU").

We have included an extra copy of the Certificate of Service. Kindly indicate receipt by time-stamping this copy and returning it with our messenger.

Sincerely,



Kelvin J. Dowd
An Attorney for GPU
Generation, Inc.

Enclosures

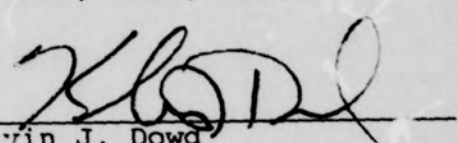
cc: Mr. Robert J. Cooper (by Federal Express)

18054
SEP 19 1997

CERTIFICATE OF SERVICE

Pursuant to Decision No. 27 in 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, I hereby certify that on this 18th day of September, 1997, I caused copies of all filings submitted thus far in this proceeding by GPU Generation, Inc. ("GPU") to be served by Federal Express delivery upon Robert J. Cooper, General Chairperson, United Transportation Union, General Committee of Adjustment, GO-348, 1238 Cass Road, Maumee, Ohio, 43537.




Kelvin J. Dowd

SEP 19 1997

STB

FD-33388

ID-182053

9-18-97

D

782053

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

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WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLFSAR III

D

September 18, 1997

202 347-7170

BY HAND DELIVERY

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



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

Dear Secretary Williams:

Pursuant to Decision No. 27 in the above-referenced proceeding, enclosed please find an original and ten (10) copies of the Certificate of Service of the Cities of East Chicago, Indiana; Hammond, Indiana; Gary, Indiana; and Whiting, Indiana (collectively "The Four City Consortium") ("FCC").

We have included an extra copy of the Certificate of Service. Kindly indicate receipt by time-stamping this copy and returning it with our messenger.

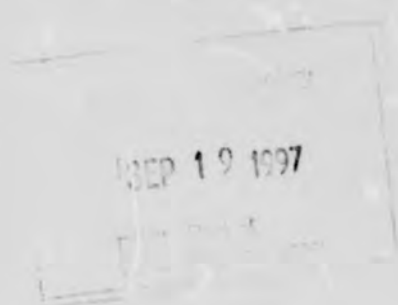
Sincerely,

C. Michael Loftus

C. Michael Loftus
An Attorney for the Cities of
East Chicago, Indiana;
Hammond, Indiana; Gary, Indiana;
Whiting, Indiana, collectively
The Four City Consortium

Enclosures

cc: Mr. Robert J. Cooper (by Federal Express)



182053

CERTIFICATE OF SERVICE

Pursuant to Decision No. 27 in 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, I hereby certify that on this 18th day of September, 1997, I caused copies of all filings submitted thus far in this proceeding by the Cities of East Chicago, Indiana; Hammond, Indiana; Gary, Indiana; and Whiting, Indiana (collectively "The Four City Consortium") ("FCC") to be served by Federal Express delivery upon Robert J. Cooper, General Chairperson, United Transportation Union, General Committee of Adjustment, GO-348, 1238 Cass Road, Maumee, Ohio, 43537.



C. Michael Loftus
C. Michael Loftus

SEP 19 1997

STB

FD-33388

ID-182047

9-18-97

D

172047

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N.W.

WASHINGTON, D. C. 20036

D

WILLIAM L. SLOVER
G. MICHAEL LOFTUS
DONALL G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III

202 347-7170

September 18, 1991

BY HAND DELIVERY

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



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

Dear Secretary Williams:

Pursuant to Decision No. 27 in the above-referenced proceeding, enclosed please find an original and ten (10) copies of the Certificate of Service of Amvest Corporation and the Vaughan Railroad Company ("AMVT/VGN").

We have included an extra copy of the Certificate of Service. Kindly indicate receipt by time-stamping this copy and returning it with our messenger.

Sincerely,

Donald G. Avery

Donald G. Avery
An Attorney for Amvest Corporation
and the Vaughan Railroad Company

Enclosures

cc: Mr. Robert J. Cooper (by Federal Express)

182047

CERTIFICATE OF SERVICE

Pursuant to Decision No. 27 in 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, I hereby certify that on this 18th day of September, 1997, I caused copies of all filings submitted thus far in this proceeding by Amvest Corporation and the Vaughan Railroad Company ("AMVT/VGN") to be served by Federal Express delivery upon Robert J. Cooper, General Chairperson, United Transportation Union, General Committee of Adjustment, GO-348, 1238 Cass Road, Maumee, Ohio, 43537.



Donald G. Avery
Donald G. Avery



STB

FD-33388

ID-182049

9-18-97

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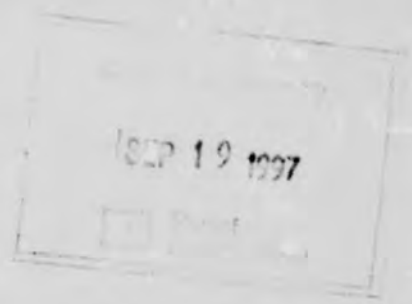
SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N.W.

WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
ELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III



202 347-7170

September 18, 1997



D

BY HAND DELIVERY

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

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

Dear Secretary Williams:

Pursuant to Decision No. 27 in the above-referenced proceeding, enclosed is an original plus ten (10) copies of the Certificate of Service of Centerior Energy Corporation ("CEC").

We have included an extra copy of the Certificate of Service. Kindly indicate receipt by time-stamping this copy and returning it with our messenger.

Sincerely,

C. Michael Loftus

C. Michael Loftus
An Attorney for Centerior
Energy Corporation

~~182099~~
~~SEP 19 1997~~
~~SEP 19 1997~~
~~SEP 19 1997~~

Enclosures

cc: Mr. Robert J. Cooper (by Federal Express)

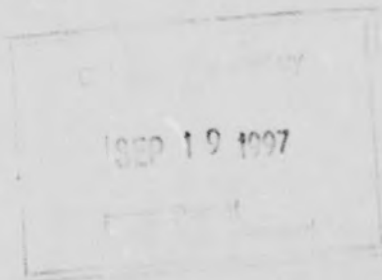
182047

CERTIFICATE OF SERVICE

Pursuant to Decision No. 27 in 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, I hereby certify that on this 18th day of September, 1997, I caused copies of all filings submitted thus far in this proceeding by Centerior Energy Corporation ("CEC") to be served by Federal Express delivery upon Robert J. Cooper, General Chairperson, United Transportation Union, General Committee of Adjustment, GO-348, 1238 Cass Road, Maumee, Ohio, 43537.



C. Michael Loftus
C. Michael Loftus



STB

FD-33388

ID-182050

9-18-97

D

182050

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KJLESAR III

202 347-7170

September 18, 1997

BY HAND DELIVERY

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



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

Dear Secretary Williams:

Pursuant to Decision No. 27 in the above-referenced proceeding, enclosed please find an original and ten (10) copies of the Certificate of Service of the Potomac Electric Power Company ("PEPC").

We have included an extra copy of the Certificate of Service. Kindly indicate receipt by time-stamping this copy and returning it with our messenger.

Sincerely,

A handwritten signature in cursive script that reads "C. Michael Loftus".

C. Michael Loftus
An Attorney for Potomac Electric
Power Company

Enclosures

cc: Mr. Robert J. Cooper (by Federal Express)

SEP 19 1997

152050

CERTIFICATE OF SERVICE

Pursuant to Decision No. 21 in 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, I hereby certify that on this 18th day of September, 1997, I caused copies of all filings submitted thus far in this proceeding by the Potomac Electric Power Company ("PEPC") to be served by Federal Express delivery upon Robert J. Cooper, General Chairperson, United Transportation Union, General Committee of Adjustment, GO-348, 1238 Cass Road, Maumee, Ohio, 43537.



C. Michael Loftus
C. Michael Loftus

SEP 19 1997

STB

FD-33388

ID-182045

9-18-97

D

182045

SLOVER & LOFTUS

ATTORNEYS AT LAW

1234 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
ELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR

202 347-7170

September 18, 1997

BY HAND DELIVERY

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



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

Dear Secretary Williams:

Pursuant to Decision No. 27 in the above-referenced proceeding, enclosed please find an original and ten (10) copies of the Certificate of Service of Consumers Energy Company ("CE").

We have included an extra copy of the Certificate of Service. Kindly indicate receipt by time-stamping this copy and returning it with our messenger.

Sincerely,

Kelvin J. Dowd
An Attorney for Consumers
Energy Company

Enclosures


cc: Mr. Robert J. Cooper (by Federal Express)

182045

CERTIFICATE OF SERVICE

Pursuant to Decision No. 27 in 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, I hereby certify that on this 18th day of September, 1997, I caused copies of all filings submitted thus far in this proceeding by Consumers Energy Company ("CE") to be served by Federal Express delivery upon Robert J. Cooper, General Chairperson, United Transportation Union, General Committee of Adjustment, GO-348, 1238 Cass Road, Maumee, Ohio, 43537.




Kelvin J. Dowd

STB

FD-33388

ID-182048

9-18-97

D

18248

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N.W.

WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III

202 347-7170

September 18, 1997

BY HAND DELIVERY

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



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

Dear Secretary Williams:

Pursuant to Decision No. 27 in the above-referenced proceeding, enclosed please find an original and ten (10) copies of the Certificate of Service of the East Jersey Railroad Company ("EJRR").

We have included an extra copy of the Certificate of Service. Kindly indicate receipt by time-stamping this copy and returning it with our messenger.

Sincerely,

A handwritten signature in dark ink that reads 'Donald G. Avery'.

Donald G. Avery
An Attorney for the East Jersey
Railroad Company

SEP 19 1997

Enclosures

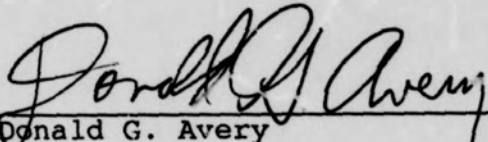
cc: Mr. Robert J. Cooper (by Federal Express)

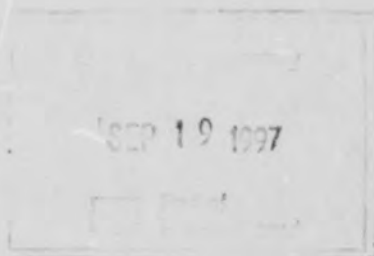
182048

CERTIFICATE OF SERVICE

Pursuant to Decision No. 27 in 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, I hereby certify that on this 18th day of September, 1997, I caused copies of all filings submitted thus far in this proceeding by the East Jersey Railroad Company ("EJRR") to be served by Federal Express delivery upon Robert J. Cooper, General Chairperson, United Transportation Union, General Committee of Adjustment, GO-348, 1238 Cass Road, Maumee, Ohio, 43537.




Donald G. Avery



STB

FD-33388

ID-182046

9-18-97

D

182046

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III

D

202 347-7170

September 18, 1997

BY HAND DELIVERY

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



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

Dear Secretary Williams:

Pursuant to Decision No. 27 in the above-referenced proceeding, enclosed enclosed please find an original and ten (10) copies of the Certificate of Service of the National Railroad Passenger Corporation (AMTRAK) ("NRPC").

We have included an extra copy of the Certificate of Service. Kindly indicate receipt by time-stamping this copy and returning it with our messenger.

Sincerely,

Donald G. Avery

Donald G. Avery
An Attorney for the National
Railroad Passenger Corporation

Enclosures

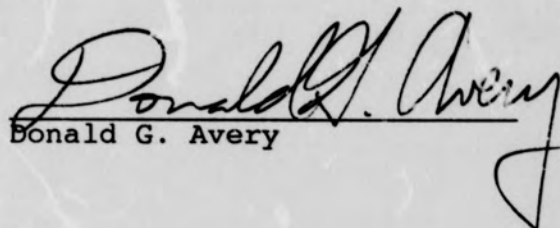
cc: Mr. Robert J. Cooper (by Federal Express)

182046

CERTIFICATE OF SERVICE

Pursuant to Decision No. 27 in 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, I hereby certify that on this 18th day of September, 1997, I caused copies of all filings submitted thus far in this proceeding by the National Railroad Passenger Corporation (AMTRAK) ("NRPC") to be served by Federal Express delivery upon Robert J. Cooper, General Chairperson, United Transportation Union, General Committee of Adjustment, GO-348, 1238 Cass Road, Maumee, Ohio, 43537.




Donald G. Avery



STB

FD-33388

ID-182051

9-18-97

D

182051

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N.W.

WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III

202 347-7170

September 18, 1997

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
ATTN: STB Finance Docket 33386
1925 K Street, N.W.
Washington, D.C. 20423-0001



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

Dear Secretary Williams:

Pursuant to Decision No. 27 in the above-referenced proceeding, enclosed please find an original and ten (10) copies of the Certificate of Service of the Detroit Edison Company ("DE").

We have included an extra copy of the Certificate of Service. Kindly indicate receipt by time-stamping this copy and returning it with our messenger.

Sincerely,

C. Michael Loftus

C. Michael Loftus
An Attorney for the Detroit Edison
Company

Enclosures

cc: Mr. Robert J. Cooper (by Federal Express)

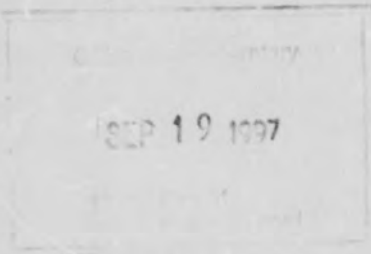
182051

CERTIFICATE OF SERVICE

Pursuant to Decision No. 27 in 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, I hereby certify that on this 18th day of September, I caused copies of all filings submitted thus far in this proceeding by the Detroit Edison Company ("DE") to be served by Federal Express delivery upon Robert J. Cooper, General Chairperson, United Transportation Union, General Committee of Adjustment, GO-348, 1238 Cass Road, Maumee, Ohio, 43537.



C. Michael Loftus
C. Michael Loftus



STB

FD-33388

ID-182016

9-17-97

D

ORIGINAL

LAW OFFICES
GORDON P. MACDOUGALL
1025 CONNECTICUT AVE. N. W.
WASHINGTON, D. C. 20036

TELEPHONE
AREA CODE 202
323-9738

September 17, 1997

Vernon A. Williams
Secretary
Surface Transp. Board
Washington DC 20423

Re: V.D. No. 33388 - 182014
CSX & NS-Control-ConRail

Dear Mr. Williams:

This is to certify, in accordance with Decision No. 27 in the entitled proceeding, that on September 8, 1997 I served a copy of the following materials upon Robert J. Cooper, by first class mail postage prepaid:

Notices of Intent to Participate, by Joseph C. Szabo, Village of Riverdale, Charles D. Bolam, John D. Fitzgerald, and Frank R. Pickell.

Comments of Joseph C. Szabo in Sub-Nos. 2 thru 7.

The above constitute all of the filings to date by the above parties of record.

Very truly yours,

Gordon P. MacDougal

SUB 2 - 182010
SUB 3 - 182011
SUB 4 - 182012
SUB 5 - 182013
SUB 6 - 182014
SUB 7 - 182015



STB

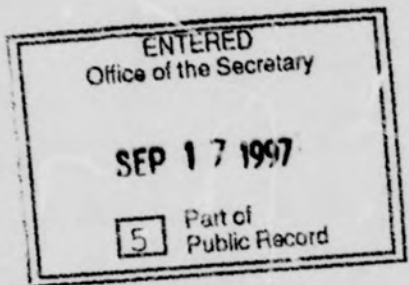
FD-33388

ID-182005

9-16-97

D

182005



GRA-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

D

GRA'S CERTIFICATE OF SERVICE OF PRIOR FILINGS

GRA, Incorporated ("GRA") hereby certifies that it has served (1) GRA-1, GRA's Notice of Intent to Participate, and (2) GRA-2, GRA's Certificate of Service of Prior Filings, and (3) GRA-3, this Certificate of Service of Prior Filings on Robert J. Cooper, General Chairperson of the United Transportation Union General Committee of Adjustment, GO-348.

Respectfully submitted,

John J. Crocki, Executive Vice President
GRA, Incorporated
One Jenkintown Station
115 West Avenue
Jenkintown, PA 19046

Dated: September 11, 1997

STB

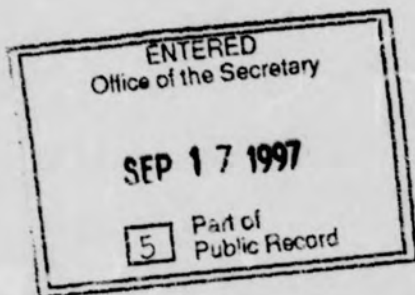
FD-33388

ID-182004

9-16-97

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182004



PA-5



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

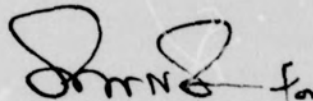
CERTIFICATE OF SERVICE OF PRIOR FILINGS OF
COMMONWEALTH OF PENNSYLVANIA,
GOVERNOR THOMAS J. RIDGE AND
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

The Commonwealth of Pennsylvania, Governor Thomas J. Ridge and the Pennsylvania Department of Transportation hereby certify that they have served the following on Robert J. Cooper, General Chairperson of the United Transportation Union General Committee of Adjustment, GO-348:

- PA-1 Notice of Intent to Participate of Commonwealth of Pennsylvania, Governor Thomas J. Ridge and Pennsylvania Department of Transportation
- PA-2 Comments of Commonwealth of Pennsylvania, Governor Thomas J. Ridge and Pennsylvania Department of Transportation on Proposed Scope of Environmental Impact Statement
- PA-3 Description of Anticipated Responsive Application

- PA-4 Certificate of Service of Prior Filings of Commonwealth of Pennsylvania, Governor Thomas J. Ridge and Pennsylvania Department of Transportation
- PA-5 Certificate of Service of Prior Filings of Commonwealth of Pennsylvania, Governor Thomas J. Ridge and Pennsylvania Department of Transportation (to Robert J. Cooper)

Respectfully submitted,



Pavi A. Tufano, General Counsel
Commonwealth of Pennsylvania
Room 225, Main Capitol Building
Harrisburg, PA 17120
(717) 787-2551

John L. Oberdorfer
Patton Boggs, L.L.P.
2550 M Street, N.W.
Washington, DC 20037
(202) 457-6424

Counsel for Commonwealth of
Pennsylvania, Governor Thomas J. Ridge,
and Pennsylvania Department of
Transportation

Dated: September 10, 1997

STB

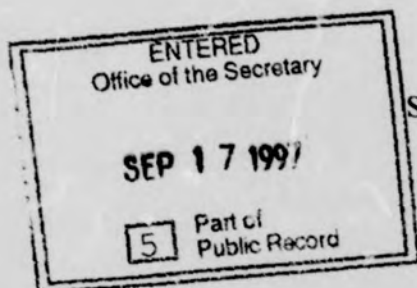
FD-33388

ID-182006

9-16-97

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182006



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

CERTIFICATE OF SERVICE OF PRIOR FILINGS OF
CHEMICAL MANUFACTURERS ASSOCIATION

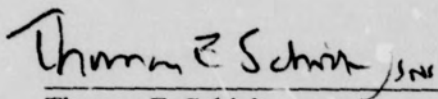
Chemical Manufacturers Association ("CMA") hereby certifies that it has served the
following on Robert J. Cooper, General Chairperson of the United Transportation Union General
Committee of Adjustment, GO-348:

- CMA-1 Comments of the Chemical Manufacturers Association
- CMA-2 CMA's First Interrogatories to CSX Parties
- CMA-3 CMA's First Interrogatories to NS Parties
- CMA-4 CMA's First Interrogatories to Conrail Parties
- CMA-5¹ Notice of Intent to Participate of the Chemical
Manufacturers Association

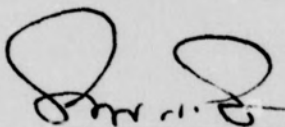
¹ This filing was originally designated as CMA-2 when filed with the Board. An original
and 25 copies of the filing with the corrected designation CMA-5 are enclosed herewith.

- CMA-6 Certificate of Service of Prior Filings of Chemical
Manufacturers Association
- CMA-7 Certificate of Service of Prior Filings of Chemical
Manufacturers Association (to Robert J. Cooper)

Respectrully submitted,



Thomas E. Schick
Assistant General Counsel
Chemical Manufacturers Association
1300 Wilson Boulevard
Arlington, VA 22209
(703) 741-5172



Scott N. Stone
Patton Boggs, L.L.P.
2550 M Street, N.W.
Washington, DC 20037
(202) 457-6335

Dated: September 10, 1997

STB

FD-33388

ID-181990

9-16-97

D

181770
SCHIFF HARDIN & WAITE

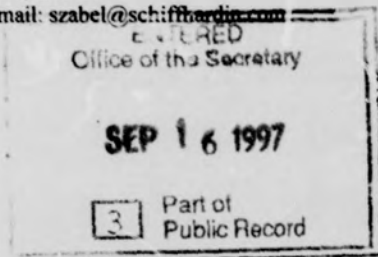
A Partnership Including Professional Corporations

7200 Sears Tower, Chicago, Illinois 60606-6473
Telephone (312) 876-1000 Facsimile (312) 258-5600

Chicago
Washington
New York
Peoria
Merrillville

Sheldon A. Zabel
(312) 258-5540

Email: szabel@schiffhardin.com



September 12, 1997



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

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

Dear Secretary Williams:

Enclosed are an original and ten (10) copies of the Certificate of Service of Northern Indiana Public Service Company for filing in the above-referenced proceeding.

Sincerely,

Sheldon A. Zabel

SAZ/njt

Enclosure

cc: All Parties of Record

Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388

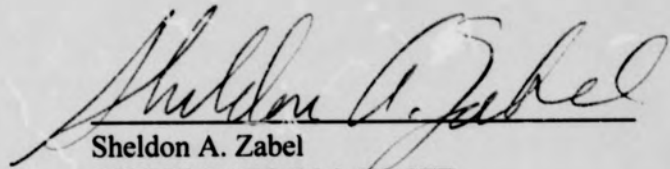
CSX Corporation and CSX Transportation, Inc.,
Norfolk Southern Corporation and
Norfolk Southern Railway Company
-- Control and Operating Leases/Agreements --
Conrail Inc. and Consolidated Rail Corporation

Certificate of Service of Northern Indiana Public Service Company

Pursuant to Decision No. 27 of the Surface Transportation Board, I hereby certify that Robert J. Cooper, General Chairperson, United States Transportation Union, General Committee of Adjustment, GO-348, 1238 Cass Road, Maumee, OH 43537 was served by first-class U.S. mail, postage prepaid, with the following filings of Northern Indiana Public Service Company previously submitted thus far in this proceeding:

Notice of Intent to Participate

Dated: September 12, 1997



Sheldon A. Zabel
SCHIFF HARDIN & WAITE
7200 Sears Tower
Chicago, Illinois 60606
Telephone: (312) 258-5540

Counsel for
Northern Indiana Public Service Company

Sheldon A. Zabel
(312) 258-5540
Email: szabel@schiffhardin.com

September 12, 1997

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20123

**Re: NOTICE OF INTENT TO PARTICIPATE: Finance Docket No. 33388,
CSX Corporation and CSX Transportation, Inc., et al.**

Dear Secretary Williams:

Pursuant to the Notice dated July 23, 1997 in the above-referenced proceeding, on behalf of Northern Indiana Public Service Company, I hereby file this, its Notice of Intent to Participate, in the above-referenced proceeding. Please add my name, as follows, to the service list, as counsel in this proceeding for Northern Indiana Public Service Company:

Sheldon A. Zabel
Schiff Hardin & Waite
7200 Sears Tower
Chicago, Illinois 60606
(312) 258-5540

Attached hereto is a Certificate of Service showing service as required by the July 23, 1997 Notice and, as also required, enclosed herewith are 25 copies of this Notice of Intent to Participate and Certificate of Service. I also have enclosed one additional copy and a stamped address envelope and would appreciate your marking that copy to indicate the filing and return it to me in the envelope.

Very truly yours,

Sheldon A. Zabel

SAZ/mjt
Enclosure
cc: Kevin Strnatka

STB

FD-33388

ID-181989

9-16-97

D

181989



RECEIVED
Office of the Secretary

SEP 16 1997

☒ Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

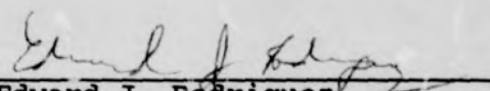
HOUSATONIC RAILROAD'S CERTIFICATE OF SERVICE
HRRC-5

September 12, 1997

I hereby certify that on the 12th day of September, 1997, a copy of all filings submitted to date in this proceeding by Housatonic Railroad Company, Inc. was served by U.S. mail upon:

Robert J. Cooper, General Chairperson
United Transportation Union
General Committee of Adjustment, GO-348
1238 Cass Road
Maumee, OH 43537

This certificate of service is filed in accordance with the provisions of Decision No. 27 released by the Surface Transportation Board on September 8, 1997.


Edward J. Rodriguez
Attorney for Housatonic Railroad
Company, Inc.

STB

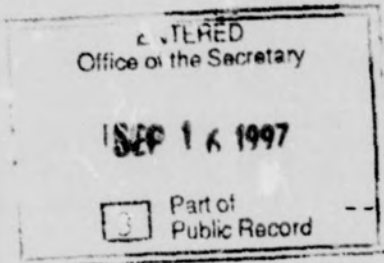
FD-33388

ID-181993

9-16-97

D

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423



STB Finance Docket No. 33388

CSX CORPORATION, et al.,

-- CONTROL AND OPERATING LEASES/AGREEMENTS --

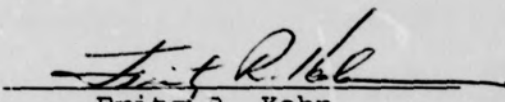
CONRAIL, INC., et al.

D

CERTIFICATE OF SERVICE

A copy of the Notice of Intent of Martin Marietta Materials, Inc., MMM-1, was this day served by me by mailing a copy thereof, with first-class postage prepaid, to Mr. Robert J. Cooper.

Dated at Washington, DC, this 11th day of September 1997.


Fritz R. Kahn
Fritz R. Kahn, P.C.
Suite 750 West
1100 New York Avenue, NW
Washington, DC 20005-3934
Tel.: (202) 371-8037

STB

FD-33388

ID-181970

9-15-97

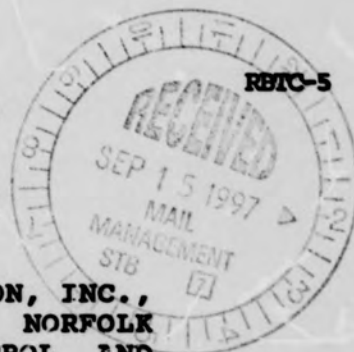
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1997b ORIGINAL

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



RBTC-5

CERTIFICATE OF SERVICE

Pursuant to Decision No. 27 of The Surface Transportation Board, I hereby certify that on September 12, 1997, Robert J. Cooper, a Party of Record listed in Decision No. 27 was served (to the extent not previously served), by first-class U.S. mail, postage prepaid, with the following filings of The Rail-Bridge Terminals (New Jersey) Corporation submitted thus far in this proceeding:

Notice of Intent to Participate (RBTC-1) (dated July 21, 1997);

Notice of Inconsistent or Responsive Application (RBTC-2) (dated August 13, 1997); and



Certificate of Service (RBTC-3) (dated August 27, 1997).

DATED: September 12, 1997

Respectfully submitted,

By: 

TERRY J. CONIGLIO

STEPHEN M. UTHOFF

CONIGLIO & UTHOFF

A Professional Law Corporation

Attorneys for The Rail-Bridge

Terminals (New Jersey) Corporation

110 West Ocean Boulevard, Suite C

Long Beach, California 90802-4615

Telephone: (562) 491-4644

CERTIFICATE OF TRANSMITTAL AND SERVICE

I hereby certify that I have this day served the foregoing document upon:

Secretary Vernon A. Williams
Office of the Secretary
Surface Transportation Board
Case Control Branch
Attn: STB Finance Docket No. 33388
1925 "K" St., N.W.
Washington, D.C. 20423-0001

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

Robert J. Cooper, General Chairperson
United Transportation Union
General Committee of Adjustment, GO-348
1238 Cass Road
Maumee, OH 43537

by mailing, first class, postage prepaid a copy to each such person.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated at this 12th day of September, 1997 at Long Beach, California.

By: 

LISA M. ELIAKEDIS

KBTC-1
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

NOTICE OF INTENT TO PARTICIPATE

Please take notice that The Rail-Bridge Terminals (New Jersey) Corporation hereby intends to participate in STB Finance Docket No. 33388, including, but not limited the application of CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company under 49 U.S.C. §11323-25 seeking the Service Transportation Board's authorization for, among other things, the acquisition and control of Conrail, Inc. and Consolidated Rail Corporation.

The Rail-Bridge Terminals (New Jersey) Corporation may be contacted through their counsel, Stephen M. Uthoff, Coniglio & Uthoff, a Professional Law Corporation, 110 West Ocean Boulevard, Suite C, Long Beach, California 90802-4615, (562) 491-4644.

DATED: July 21, 1997

Respectfully submitted,

By: 

TERRY J. CONIGLIO
STEPHEN M. UTHOFF
CONIGLIO & UTHOFF

A Professional Law Corporation
Attorneys for The Rail-Bridge
Terminals (New Jersey) Corporation
110 West Ocean Boulevard, Suite C
Long Beach, California 90802-4615
Telephone: (562) 491-4644

DECLARATION RE: REPRESENTATION

I, Stephen M. Uthoff declare:

1. That I am an attorney at law duly licensed to practice before all of the Courts of the State of California and the Surface Transportation Board.

2. Terry J. Coniglio, Stephen M. Uthoff and the firm of Coniglio & Uthoff, a Professional Law Corporation have been retained to represent The Rail-Bridge Terminals (New Jersey) Corporation in the above-captioned matter.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 21st day of July, 1997 at Long Beach, California.

By: 

STEPHEN M. UTHOFF, Declarant

CERTIFICATE OF TRANSMITTAL AND SERVICE

I hereby certify that I have this day served the foregoing document upon: Administrative Law Judge, Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, D.C. 20426; Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, D.C. 20004-1202; Richard A. Allen, Esq., Zuckert, Scoutt & Rasenberger, L.L.P., Suite 600, 888 Seventeenth Street, N.W., Washington, D.C. 20006-3939 and Paul A. Cunningham, Esq., Harkins, Cunningham, 1300 Nineteenth Street, N.W. Suite 600, Washington, D.C. 20036 by mailing, first class, postage prepaid a copy to each such person.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated at this 21st day of July, 1997 at Long Beach, California.

By: 

LISA M. ELIAKEDIS

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

RBTC-2

NOTICE OF INCONSISTENT OR RESPONSIVE APPLICATION

In accordance with Decision 6 of the above referenced matter served by The Surface Transportation Board ("STB") on May 30, 1997 The Rail-Bridge Terminals (New Jersey) Corporation ("RBTC") hereby submits its notice and description of the comments, protests, requests for conditions and other opposition evidence or in the alternative of inconsistent and responsive applications which it intends to file in the above-captioned matter.

RBTC currently operates the E-Rail intermodal facility located in Elizabeth, New Jersey. E-Rail is located in what has been designated the North Jersey Shared Assets Area ("SAA"). Although geographically part of the SAA, E-Rail has been allocated solely to NS. Other intermodal terminals found in the SAA geographical boundary have been allocated on an "equal access" basis to both CSX and NS.

The application is ambiguous as to the effect of this allocation of facilities on RBTC or its customer's ability to move its intermodal cargo pursuant to its current agreements with

Conrail, and it offers no explanation as to why other intermodal yards found in the SAA have been given equal access to CSX/NS, which is a distinct competitive advantage over the E-Rail facility operated by RBTC. Also, the application needs further clarification as to the intended operations of the E-Rail facility, (post approval), which apparently will be serviced by trackage that is part of the SAA but will function as a dedicated NS facility.

At present, RBTC contemplates only filing, comments, evidence and requests for conditions. However, it reserves its right to file responsive or inconsistent applications to address the subjects aforementioned.

DATED: August 13, 1997

Respectfully submitted,

By: 

TERRY J. CONIGLIO
STEPHEN M. UTHOFF
CONIGLIO & UTHOFF
A Professional Law Corporation
Attorneys for The Rail-Bridge
Terminals (New Jersey) Corporation
110 West Ocean Boulevard, Suite C
Long Beach, California 90802-4615
Telephone: (562) 491-4644

CERTIFICATE OF TRANSMITTAL AND SERVICE

I hereby certify that I have this day served the foregoing document upon:

Secretary Vernon A. Williams
Office of the Secretary
Case Control Branch
Attn: STB Finance Docket No. 33388
1925 "K" St., N.W.
Washington, D.C. 20423-0001

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

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

Richard A. Allen, Esq.
Zuckert, Scutt & Rasenberger, L.L.P.
888 Seventeenth St., N.W.
Suite 600
Washington, D.C. 20006-3939

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

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

Samuel M. Sipe, Jr.
Timothy M. Walsh
Steptoe & Johnson, L.L.P.
1300 Connecticut Ave.
Washington, D.C. 20036-1795

G. Paul Moates
Vincent F. Prada
Sidley & Austin
1722 "I" St., N.W.
Washington, D.C. 20006

Larry Willis, Esq.
Transportation Trades Department
ALF-CIO
400 N. Capitol St., N.W.
Suite 861
Washington, D.C. 20001

by mailing, first class, postage prepaid a copy to each such person.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated at this 13th day of August, 1997 at Long Beach, California.

By: 

LISA M. ELIAKEDIS

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

RBTC-3

CERTIFICATE OF SERVICE

Pursuant to Decision No. 21 of The Surface Transportation Board, I hereby certify that on August 27, 1997, all Parties of Record listed in Decision No. 21 were served (to the extent not previously served), by first-class U.S. mail, postage prepaid, with the following filings of The Rail-Bridge Terminals (New Jersey) Corporation submitted thus far in this proceeding:

Notice of Intent to Participate (RBTC-1) (dated July 21, 1997)

Notice of Inconsistent or Responsive Application (RBTC-2)
(dated August 13, 1997)

DATED: August 27, 1997

Respectfully submitted,

By: 

TERRY J. CONIGLIO
STEPHEN M. UTHOFF
CONIGLIO & UTHOFF
A Professional Law Corporation
Attorneys for The Rail-Bridge
Terminals (New Jersey) Corporation
110 West Ocean Boulevard, Suite C
Long Beach, California 90802-4615
Telephone: (562) 491-4644

CERTIFICATE OF TRANSMITTAL AND SERVICE

I hereby certify that I have this day served the foregoing document upon:

Secretary Vernon A. Williams
Office of the Secretary
Surface Transportation Board
Case Control Branch
Attn: STB Finance Docket No. 33388
1925 "K" St., N.W.
Washington, D.C. 20423-0001

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

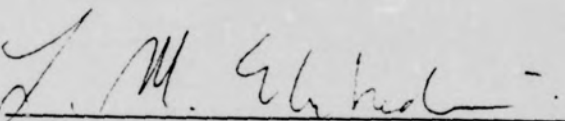
For all Parties of Record - see attached service list

by mailing, first class, postage prepaid a copy to each such person.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated at this 27th day of August, 1997 at Long Beach, California.

By:



LISA M. ELIAKEDIS

STB

FD-33388

ID-181968

9-15-97

D

12/18/88

347 Madison Avenue
New York, NY 10017-3739
212 340-3000

Donald N. Nelson
President



Metro-North Railroad

D



September 12, 1997

Honorable Vernon A. Williams
Secretary
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 Street, NW
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:

Pursuant to Decision No. 27 in the above-referenced proceeding, enclosed please find the original and ten copies of the Certificate of Service of indicating that Metro-North Commuter Railroad Company has served copies of all filings in the proceeding upon Mr. Robert J. Cooper at his correct address in Maumee, Ohio.

Please contact the undersigned if you have any questions regarding this transmittal.

Respectfully submitted,

Walter E. Zullig, Jr.
Special Counsel
(212) 340-2027

Enclosure

[62414/WEZ]/41



ENTERED
Office of the Secretary

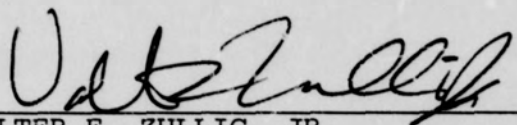
SEP 15 1997

☒ Part of
Public Record

"ORIGINAL" . . .

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September, 1997, a copy of all filings in Finance Docket No. 33338 submitted by Metro-North Commuter Railroad Company in this proceeding have been served on Mr. Robert J. Cooper at his correct address in Maumee, Ohio, by First Class U.S. mail, postage prepaid.


WALTER E. ZULLIG, JR.



STB

FD-33388

ID-181969

9-15-97

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289 969

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



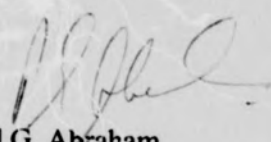
Finance Docket 33388
CSX Corporation and CSX Transportation, Inc.
Norfolk and Southern Corporation, et al

D

CERTIFICATE OF SERVICE

Indiana Port Commission, through its below signed Registered Representative, herewith certifies that it has complied this date with the service requirements in Decision No. 27 of September 8, 1997, by having mailed, first class mail, postage paid, to Robert J. Cooper a copy of each prior filing which was not previously served upon such Party Record.

Bethesda, Maryland
September 12, 1997


David G. Abraham
Registered Representative for
Indiana Port Commission
7315 Wisconsin Avenue, Suite 400W
Bethesda, Maryland 20814



STB

FD-33388

ID-181948

9-12-97

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181948



BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Finance Docket No. 33388

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

D

CERTIFICATE OF SERVICE OF
CARGILL, INCORPORATED

In accordance with Decision No. 27, served September 8, 1997, in the above-captioned matter, Cargill, Incorporated hereby certifies that it has served on Mr. Robert J. Cooper copies of all filings it has submitted so far in this proceeding by first-class mail, postage prepaid, this 12th day of September, 1997.

Respectfully submitted,

John K. Maser III
Karyn A. Booth
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

*Attorneys for
Cargill, Incorporated*

September 12, 1997

STB

FD-33388

ID-181947

9-12-97

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181947

ENTERED
Office of the Secretary

SEP 15 1997

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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Finance Docket No. 33388

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

CERTIFICATE OF SERVICE OF
ANKER ENERGY CORPORATION, ET AL.

In accordance with Decision No. 27, served September 8, 1997, in the above-captioned matter, Anker Energy Corporation, *et al.* hereby certify that they have served on Mr. Robert J. Cooper copies of all filings they have submitted so far in this proceeding by first-class mail, postage prepaid, this 12th day of September, 1997.

Respectfully submitted,

Nicholas J. DiMichael
Karyn A. Booth
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

Attorneys for
Anker Energy Corporation, *et al.*

September 12, 1997

STB

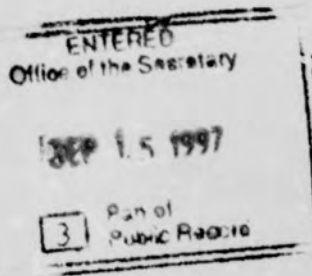
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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

CERTIFICATE OF SERVICE OF
AK STEEL CORPORATION



In accordance with Decision No. 27, served September 8, 1997, in the above-captioned matter, AK Steel Corporation hereby certifies that it has served on Mr. Robert J. Cooper copies of all filings it has submitted so far in this proceeding by first-class mail, postage prepaid, this 12th day of September, 1997.

Respectfully submitted,

Frederic L. Wood
Karyn A. Booth
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

*Attorneys for
AK Steel Corporation*

September 12, 1997

STB

FD-33388

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Office of the Secretary
SEP 15 1997
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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388



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

**CERTIFICATE OF SERVICE OF
THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE**

In accordance with Decision No. 27, served September 8, 1997, in the above-captioned matter, The National Industrial Transportation League hereby certifies that it has served on Mr. Robert J. Cooper copies of all filings it has submitted so far in this proceeding by first-class mail, postage prepaid, this 12th day of September, 1997.

Respectfully submitted,

Frederic L. Wood
Karyn A. Booth
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

*Attorneys for
The National Industrial Transportation League*

September 12, 1997

STB

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

**CERTIFICATE OF SERVICE OF
NIAGARA MOHAWK POWER CORPORATION**

In accordance with Decision No. 27, served September 8, 1997, in the above-captioned matter, Niagara Mohawk Power Corporation hereby certifies that it has served on Mr. Robert J. Cooper copies of all filings it has submitted so far in this proceeding by first-class mail, postage prepaid, this 12th day of September, 1997.

Respectfully submitted,

John K. Maser III
Karyn A. Booth
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

*Attorneys for
Niagara Mohawk Power Corporation*

September 12, 1997

STB

FD-33388

ID-181945

9-12-97

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Office of the Secretary

SEP 15 1997

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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

ACME-3



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

CERTIFICATE OF SERVICE OF
ACME STEEL COMPANY

In accordance with Decision No. 27, served September 8, 1997, in the above-captioned matter, Acme Steel Company hereby certifies that it has served on Mr. Robert J. Cooper copies of all filings it has submitted so far in this proceeding by first-class mail, postage prepaid, this 12th day of September, 1997.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "John K. Maser III".

John K. Maser III
Karyn A. Booth
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

Attorneys for
Acme Steel Company

September 12, 1997

STB

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ID-181951

9-12-97

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ENTERED
Office of the Secretary

SEP 15 1997

13
Index of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

CSX Corporation and CSX Transportation, Inc.
Norfolk Southern Corporation And Norfolk Railway Company
—Control And Operating Lease, Agreements—
Conrail Inc. And Consolidated Rail Corporation

CERTIFICATE OF SERVICE OF
JOSEPH SMITH & SONS, INC.

In accordance with Decision No. 27, served September 8, 1997, in the above-captioned matter, Joseph Smith & Sons, Inc. hereby certifies that it has served on Mr. Robert J. Cooper copies of all filings it has submitted so far in this proceeding by first-class mail, postage prepaid, this 12th day of September, 1997.

Respectfully submitted,

Karyn A. Booth

John K. Maser III
Karyn A. Booth
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

Attorneys for
Joseph Smith & Sons, Inc.

September 12, 1997



D

STB

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9-12-97

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ENTERED
Office of the Secretary

SEP 15 1997

3 Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Finance Docket No. 33388

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

**CERTIFICATE OF SERVICE OF
INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.**

In accordance with Decision No. 27, served September 8, 1997, in the above-captioned matter, Institute of Scrap Recycling Industries, Inc. hereby certifies that it has served on Mr. Robert J. Cooper copies of all filings it has submitted so far in this proceeding by first-class mail, postage prepaid, this 12th day of September, 1997.

Respectfully submitted,

John K. Maser III
Karyn A. Booth
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

*Attorneys for
Institute of Scrap Recycling Industries Inc.*

September 12, 1997

STB

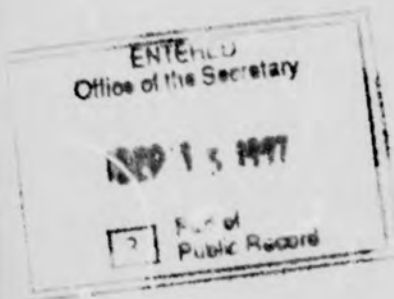
FD-33388

ID-181949

9-12-97

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181545



BEFORE THE
SURFACE TRANSPORTATION BOARD



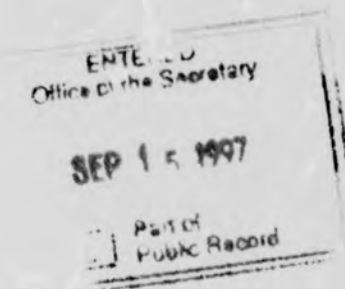
STB Finance Docket No. 33388

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

D

CERTIFICATE OF SERVICE OF
ERIE-NIAGARA RAIL STEERING COMMITTEE

In accordance with Decision No. 27, served September 8, 1997, in the above-captioned matter, Erie-Niagara Rail Steering Committee hereby certifies that it has served on Mr. Robert J. Cooper copies of all filings it has submitted so far in this proceeding by first-class mail, postage prepaid, this 12th day of September, 1997.



Respectfully submitted,

Karyn A. Booth

John K. Maser III

Karyn A. Booth

Donelan, Cleary, Wood & Maser, P.C.

1100 New York Avenue, N.W., Suite 750

Washington, D.C. 20005-3934

(202) 371-9500

Attorneys for

Erie-Niagara Rail Steering Committee

September 12, 1997

STB

FD-33388

ID-181954

9-12-97

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181854

BEFORE THE
Surface Transportation Board

WASHINGTON, D.C. 20423

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

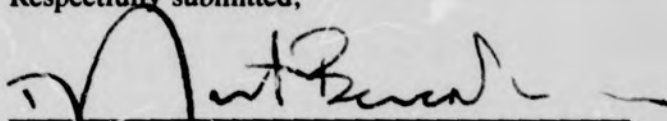
CERTIFICATE OF SERVICE

I hereby certify that pursuant to STB Decision No. 27, copies of all filings submitted to date in STB Finance Docket No. 33388 on behalf of: The Society of the Plastics Industry, Inc., Eighty-Four Mining Company and ARCO Chemical Company, have been served on this 12th day of September, 1997, by first-class mail, postage prepaid, upon:

PARTY OF RECORD

Robert J. Cooper, General Chairperson
United Transportation Union
General Committee of Adjustment, GO-348
1238 Cass Road
Maumee, OH 43537

Respectfully submitted,

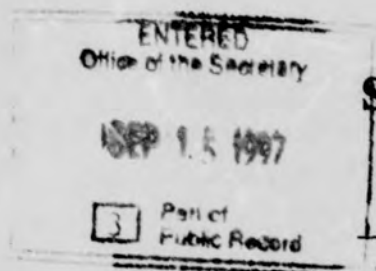


Martin W. Bencovici
Keller and Heckman LLP
1001 G Street, NW, Suite 500 West
Washington, DC 20001
(202) 434-4144

Attorney for The Society of the Plastics Industry,
Inc., Eighty-Four Mining Company and ARCO
Chemical Company

September 12, 1997

SPI-4; EFM-4; ARCO-3



D

STB

FD-33388

ID-181747

9-5-97

D

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

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

NEW YORK
WASHINGTON
ALBANY
BOSTON
DENVER
HARRISBURG
HARTFORD
JACKSONVILLE

1875 CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20009-5728

(202) 986-8000

TELEX: 440274 FACSIMILE: (202) 986-8102

WRITER'S DIRECT DIAL:

(202) 986-8050

E-Mail Address: mfmcbri@lbgm.com

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

September 1, 1997

VIA HAND DELIVERY

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



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

Dear Secretary Williams:

Enclosed are the original and 25 copies each of a "Notice of Intent to Participate" and a "Motion for Leave to Late File Notice of Intent to Participate" on behalf of Ohio Mining and Reclamation Association, and an "Amended Notice of Intent to Participate" on behalf of The Ohio Valley Coal Company for filing in the above-referenced proceeding. Also enclosed are two 3.5" diskettes containing each document in WordPerfect format.

Please date stamp and return the enclosed three additional copies via our messenger.



Enclosures

cc (w/encls): All Parties of Record

Very truly yours,

Michael F. McBride

Michael F. McBride

Attorney for The Ohio Valley Coal Company
and Ohio Mining and Reclamation Association

BEFORE THE
SURFACE TRANSPORTATION BOARD

Ohio Valley - 3

FINANCE DOCKET NO. 33388

181747



**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**

AMENDED NOTICE OF INTENT TO PARTICIPATE

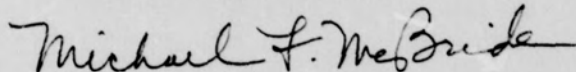
The Ohio Valley Coal Company filed a Notice of Intent to Participate in this proceeding on June 12, 1997. See AEP, et al.-1. Its affiliated company, The American Coal Sales Company, has only recently become interested in this proceeding, because it will succeed The Ohio Valley Coal Company as a contracting party with one of The Ohio Valley Coal Company's customers, Centenor Energy Corporation. Accordingly, this is an amendment to The Ohio Valley Coal Company's Notice of Intent to Participate to include The American Coal Sales Company as an affiliated party to The Ohio Valley Coal Company. The service list does not need to be amended to reflect this Amended Notice, because the representatives of both The Ohio Valley Coal Company and The American Coal Sales Company are the same.

Service may be made on the undersigned counsel. We also request that service

be made on the following:

Mr. Robert F. Murray
President and Chief Executive Officer
The Ohio Valley Coal Company
29525 Chagrin Boulevard, Suite 111
Pepper Pike, OH 44122
Telephone: 216-765-1240
Facsimile: 216-765-2654

Respectfully submitted,



Michael F. McBride
Bruce W. Neely
Linda K. Breggin
Brenda Durham
Joseph H. Fagan
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
1875 Connecticut Avenue, N.W., Suite 1200
Washington, DC 20009-5728
(202) 986-8050 (Telephone)
(202) 986-8102 (Facsimile)

Attorneys for The Ohio Valley Coal Company

September 4, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

CERTIFICATE OF SERVICE



I hereby certify that I have served this 5th day of September, 1997, a copy of the foregoing "Notice of Intent to Participate" and "Amended Notice of Intent to Participate" by first-class mail, postage prepaid, or by more expeditious means, upon each of the following parties of record:

VIA HAND DELIVERY
Office of the Secretary
Case Control Unit ATTN: STB Finance Dkt. 33388
Surface Transportation Board
Mercury Building
1925 K Street, N.W.
Washington, DC 20423-0001

VIA HAND DELIVERY
Mr. Vernon Williams, Secretary
Surface Transportation Board
Mercury Building, 7th Floor
1925 K Street, N.W.
Washington, DC 20423-0001

VIA HAND DELIVERY
Dennis G. Lyons, Esq.
Arnold & Porter
555 Twelfth Street, N.W.
Washington, DC 20004-1202

VIA HAND DELIVERY
David M. Konschnik, Director
Office of Proceedings
Surface Transportation Board
Mercury Building
1925 K Street, N.W.
Washington, DC 20423

John J. Grocki, Esq.
GRA, Inc.
One Jenkintown Station
115 West Avenue
Jenkintown, PA 19046

William G. Mahoney, Esq.
Richard S. Edelman, Esq.
Highsaw, Mahoney & Clarke, P.A.
1050 Seventeenth Street, N.W., Suite 210
Washington, DC 20036

Donald F. Griffin, Esq.
Assistant General Counsel
Brotherhood of Maintenance of Ways
Employees
400 N. Capitol Street, N.W., Suite 852
Washington, DC 20001-1511

VIA HAND DELIVERY
Paul A. Cunningham, Esq.
Gerald P. Norton, Esq.
Harkins Cunningham
1300 Nineteenth Street, N.W.
Suite 600
Washington, DC 20036

Scott N. Stone, Esq.
Patton, Boggs, L.L.P.
2550 M Street, N.W., 7th Floor
Washington, DC 20037-1346

Mr. Charles M. Rosenberger
CSX Transportation, Inc.
500 Water Street
Speed Code J-120
Jacksonville, FL 32202

William C. Sippel, Esq.
Oppenheimer Wolff & Donnelly
Two Prudential Plaza
180 North Stetson Avenue, 45th Floor
Chicago, IL 60601-5710

Martin W. Bercovici, Esq.
Terrence D. Jones, Esq.
Keller and Heckman, L.L.P.
1001 G Street, N.W.
Suite 500 West
Washington, DC 20001

William A. Bon, Esq.
General Counsel
Brotherhood of Maintenance of Way
Employees
26555 Evergreen Road, Suite 200
Southfield, MI 48076

Mr. Ronald L. Young
Managing Director - Transportation
American Electric Power Service Corporation
Fuel Supply Department
One Memorial Drive
P.O. Box 700
Lancaster, OH 43130-0700

Mr. James L. Parks
Manager, Fuel Supply
Delmarva Power & Light Company
P.O. Box 6066
Newark, DE 19714-6066

VIA HAND DELIVERY

John V. Edwards, Esq.
Scott M. Zimmermann, Esq.
Richard A. Allen, Esq.
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
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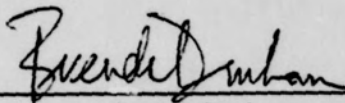
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