

STB

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joinder with EJE in seeking to acquire the 51% block of stock in IHB and of the proposed operations of IHB as a carrier jointly controlled by EJE and IHB.

(b) Identify all documents that embody any such analysis, study, review or other examination or which relate to any such analysis, study, review or other examination.

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

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

(c) Identify all documents relating to the investments, authorizations, fundings and commitments referred to in subsections (a) and (b) of this Interrogatory No. 9.

#### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. Produce all documents identified, or which should have been identified, in response to Interrogatory No. 1, subsections (a), (b) and (d).

2. Produce all documents identified, or which should be identified, in response to Interrogatory No. 2, subsections (a) - (b).

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

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

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

6. Produce all documents identified, or which should have been identified, in response to subsection (c) of Interrogatory No. 9.

Respectfully submitted,

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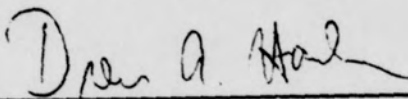
CERTIFICATE OF SERVICE

I, Drew A. Harker, certify that on November 5, 1997, I caused to be served a true and correct copy of the foregoing CSX/NS-126, CSX Corporation and NS's First Set of Interrogatories and Requests for Production of Documents to I & M Rail Link, LLC, to

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

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

counsel for I & M Rail Link, LLC by facsimile transmission, and that on November 6, 1997 I caused such document to be served on such counsel and on all parties on the Restricted Service List in Finance Docket No. 33388, by first class surface mail, postage prepaid.

  
\_\_\_\_\_  
Drew A. Harker



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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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

---

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

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ATTORNEYS FOR ILLINOIS CENTRAL  
RAILROAD COMPANY

Dated: November 13, 1997

IC-7

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

---

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

Illinois Central Railroad Company ("IC") hereby provides its Initial Objections to the First Set of Interrogatories and Requests for Production of Documents (CSX/NS-138) of CSX Corporation and CSX Transportation, Inc. (collectively, "CSXT") and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS"). CSXT, NS, Consolidated Rail Corporation and Conrail, Inc. are collectively referred to herein as "Applicants."

**GENERAL OBJECTIONS**

Except as noted below, the following objections apply to each discovery request propounded by CSXT and NS, whether reiterated now or in the future in response to each request or otherwise:<sup>1</sup>

1. IC objects to production of, and will not produce, documents or information subject to the attorney-client

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<sup>1</sup> Thus, any response to a request, whether or not objected to herein, will be subject to the General Objections, so that, for example, any documents subject to the attorney-client privilege or the work produce doctrine will not be produced.

privilege, the work product doctrine and/or the joint or common interest privilege. Further, consistent with the practices of CSXT and NS in this proceeding, IC objects to the production of, and will not produce, a privilege log or other document from which CSXT and NS could determine the identity of the documents withheld under this objection. Such information, according to CSXT and NS, is "unnecessary," and "unreasonably burdensome to provide."

2. IC objects to the production of, and will not produce, documents prepared in connection with, or information relating to, possible settlement of this or any other matter.

3. IC objects to the production of, and will not produce, public documents or information that is readily available, including but not limited to documents on public file at the Surface Transportation Board ("STB"), the Securities and Exchange Commission, or any other government agency or court, or that have appeared in newspapers or other public media.

4. IC objects to the production of, and will not produce, draft verified statements and documents related thereto. CSXT and NS have previously refused production of these materials in discovery.

5. IC objects to the production of, and will not produce, information or documents that are readily obtainable from Applicants' own files.

6. IC objects to the production of, and will not produce, documents containing confidential or sensitive commercial information, including information subject to



disclosure restrictions imposed in other proceedings or by contractual obligation to third parties, and that is of insufficient materiality to warrant production here even under a protective order.

7. IC objects to CSKT and NS' Directions, as found on the first page of their First Set of Interrogatories and Requests for Production of Documents, to the extent that they require IC to provide within five business days all objections for discovery requests on which no substantive answer or document will be provided. Consistent with paragraph 16 of Decision No. 10 of this proceeding, and the Applicants' own practices in responding to discovery, IC is providing within five business days all objections for discovery requests on which the IC has then decided that it will provide no substantive answer or document response.

8. IC objects to Instructions 1-4 to the extent they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

9. IC objects to Definitions 3-8 as unduly burdensome.

10. IC objects to Definition No. 4 to the extent it would require IC to identify documents being produced in response to an interrogatory or document request. Such detailed information is unduly burdensome to provide and, in any event, the documents speak for themselves.

11. IC objects to the requests to the extent they seek documents or information in a form not maintained by IC in the

regular course of business or not readily available in the form requested, on the ground that such documents or information could only be developed, if at all, through unduly burdensome and oppressive special studies, which are not ordinarily required and which IC objects to performing.

12. IC objects to the requests as overly broad and unduly burdensome to the extent they seek information or documents for periods prior to January 1, 1995.

13. IC objects to the requests insofar as they seek "all documents relating to" the matters specified, as overly broad and unduly burdensome.

#### OBJECTIONS TO INTERROGATORIES

##### Interrogatory No. 1:

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

##### RESPONSE:

IC objects to Interrogatory No. 1 on the ground that it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

##### Interrogatory No. 2:

If the answer to Interrogatory No. 1 is anything other than an unqualified "no", describe in detail each such other proposal or other request, specifying: (a) the length and location of the lines involved; (b) the nature of the ownership interest or operating rights proposed or sought; (c) the financial terms upon which such ownership or operating rights were proposed or sought; (d) all other terms, including terms governing railroad operations, that were offered, proposed, sought or discussed; and

(e) why the ownership or operating rights in questions were not acquired pursuant to that offer, proposal or request.

**RESPONSE:**

IC objects to Interrogatory No. 2 on the grounds stated in response to Interrogatory No. 1.

**Interrogatory No. 5(a) and (c):**

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

(a) the circumstances relating to the invocation of the right to use the River Line,

...

(c) the date of such use.

**RESPONSE:**

IC objects to Interrogatory Nos. 5(a) and (c) on the ground that they seek information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 5(b):**

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

...

(b) the disposition of use of such agreement . . . .

**RESPONSE:**

IC objects to Interrogatory No. 5(b) on the ground that the Interrogatory is vague and ambiguous, in that the phrase "the disposition of use of such agreement" has no meaning discernible



to IC. IC would be willing to reconsider this objection if CSXT and NS would clarify the intent of this phrase.

Interrogatory No. 6:

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

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

RESPONSE:

IC objects to Interrogatory Nos. 6(a)-(e) to the extent they would require IC to undertake a burdensome and oppressive special study. On numerous occasions, IC has made CSXT personnel aware of the issues related to these delays. IC further objects to this Interrogatory on the ground that CSXT is already in possession of this information. Discovery is not designed to provide Applicants with information contained within their own knowledge and files.

Interrogatory No. 7:

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

RESPONSE:

IC objects to Interrogatory No. 7 to the extent it would require IC to undertake a burdensome and oppressive special study. Further, IC objects to this Interrogatory on the ground

that it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. IC further objects to this Interrogatory on the ground that CSXT is already in possession of this information. Discovery is not designed to provide Applicants with information contained within their own knowledge and files.

#### OBJECTIONS TO DOCUMENT REQUESTS

##### Request No. 2:

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

##### RESPONSE:

IC objects to Request No. 2 on the grounds stated in the referenced Interrogatory.

##### Request No. 9:

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

##### Response:

IC objects to Request No. 9 on the ground that it would require IC to undertake a burdensome and oppressive special study. IC further objects to this Request to the extent that it seeks documents within the possession of CSXT's own files.

##### Request No. 10:

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

**Response:**

IC objects to Request No. 10 to the extent that CSXT is already in possession of these documents. Discovery is not designed to provide Applicants with documents contained within their own files.

**Request No. 11:**

Produce all documents discussing or relating to improvements or proposed improvements to the interlocking on the Leewood-Aulon Line, including but not limited to documents concerning cost sharing for such improvements.

**RESPONSE:**

IC objects to Request No. 11 to the extent it would require IC to undertake a burdensome and oppressive special study. Further, IC objects to this Request on the ground that it seeks documents which are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. IC further objects to this Request on the ground that CSXT is already in possession of these documents. Discovery is not designed to provide Applicants with documents contained within their own files.

**Request No. 12:**

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

**RESPONSE:**

IC objects to Request No. 9 on the ground that it would require IC to undertake a burdensome and oppressive special study.

**Request No. 13:**

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

**RESPONSE:**

IC objects to Document Request No. 13 on the grounds that it is overly broad, would require IC to undertake a burdensome and oppressive special study and seeks documents which are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**Request Nos. 15(b) and (c):**

Produce a copy of:

. . . .

(b) any agreements that the 1907 Agreement superseded (including but not limited to 1905 Agreement),

(c) any amendments to the 1907 Agreement . . . .

**RESPONSE:**

IC objects to Document Request Nos. 15(b) and (c) on the ground that they are unduly burdensome, in that the documents requested are currently in Applicants' possession. However, in the spirit of compromise, if Applicants will state in writing that they do not have a copy of the documents in question, IC

will provide a copy of the requested documents to Applicants for the expense of copying said documents.

Request No. 15(d):

Produce a copy of:

. . .

(d) all documents (other than routine billing documents) relating to such agreements.

RESPONSE:

See objection to Document Request Nos. 15(b) and (c). Further, IC objects to Document Request No. 15(d) on the ground that the phrase "relating to" is vague, undefined, ambiguous, and capable of more than one interpretation.

Respectfully submitted,

By: Tom Healy

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Myles L. Tobin

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**ATTORNEYS FOR ILLINOIS CENTRAL  
RAILROAD COMPANY**

Dated: November 13, 1997



CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 1997, a copy of the foregoing Initial Objections of Illinois Central Railroad Company to CSX and Norfolk Southern's First Set of Interrogatories and Requests for Production of Documents (IC-7) was served by facsimile and first class mail, postage prepaid, upon:

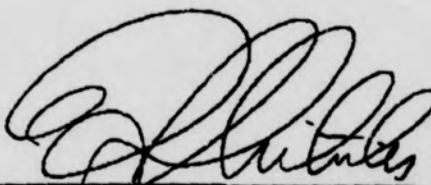
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Suite 600  
Washington, DC 20036

and by first class mail, postage prepaid, upon all parties appearing on the Restricted Service List.

  
\_\_\_\_\_  
Thomas J. Litwiler



CSX/FP

cc: CSX

WC-11

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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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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

---

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

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(312) 616-1800

ATTORNEYS FOR  
WISCONSIN CENTRAL LTD.

Dated: November 13, 1997



WC-11

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

---

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

Wisconsin Central Ltd. ("WCL") hereby provides its Initial Objections to the First Set of Interrogatories and Requests for Production of Documents (CSX-89) of CSX Corporation and CSX Transportation, Inc. (collectively, "CSXT"). CSXT, Norfolk Southern Corporation, Norfolk Southern Railway Company, Consolidated Rail Corporation and Conrail, Inc. are collectively referred to herein as "Applicants."

GENERAL OBJECTIONS

Except as noted below, the following objections apply to each discovery request propounded by CSXT, whether reiterated now or in the future in response to each request or otherwise:<sup>1</sup>

1. WCL objects to production of, and will not produce, documents or information subject to the attorney-client privilege, the work product doctrine and/or the joint or common

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<sup>1</sup> Thus, any response to a request, whether or not objected to herein, will be subject to the General Objections, so that, for example, any documents subject to attorney-client privilege or the work product doctrine will not be produced.

interest privilege. Further, consistent with the practices of CSXT in this proceeding, WCL objects to the production of, and will not produce, a privilege log or other document from which CSXT could determine the identity of the documents withheld under this objection. Such information, according to CSXT, is "unnecessary," and "unreasonably burdensome to provide."

2. WCL objects to the production of, and will not produce, documents prepared in connection with, or information relating to, possible settlement of this or any other matter.

3. WCL objects to the production of, and will not produce, public documents or information that is readily available, including but not limited to documents on public file at the Surface Transportation Board, the Securities and Exchange Commission, or any other government agency or court, or that have appeared in newspapers or other public media.

4. WCL objects to the production of, and will not produce, draft verified statements and documents related thereto. CSXT has previously refused production of these materials in discovery.

5. WCL objects to the production of, and will not produce, information or documents that are readily obtainable from Applicants' own files.

6. WCL objects to the production of, and will not produce, documents containing confidential or sensitive commercial information, including information subject to disclosure restrictions imposed in other proceedings or by contractual obligation to third parties, and that is of

insufficient materiality to warrant production here even under a protective order.

7. WCL objects to CSXT's directions, as found on the first page of their First Set of Interrogatories and Requests for Production of Documents, to the extent that they require WCL to provide within five business days all objections for discovery requests on which no substantive answer or document will be provided. Consistent with paragraph 16 of Decision No. 10 of this proceeding, and the Applicants' own practices in responding to discovery, WCL is providing within five business days all objections for discovery requests on which WCL has then decided that it will provide no substantive answer or document response.

8. WCL objects to Instructions 1-4 to the extent they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

9. WCL objects to Definition Nos. 3-6 as unduly burdensome.

10. WCL objects to CSXT's Definition No. 4 to the extent it would require WCL to identify documents being produced in response to an interrogatory or document request. Such detailed information is unduly burdensome to provide and, in any event, the documents speak for themselves.

11. WCL objects to the requests to the extent they seek documents or information in a form not maintained by WCL in the regular course of business or not readily available in the form requested, on the ground that such documents or information could only be developed, if at all, through unduly burdensome and

oppressive special studies, which are not ordinarily required and which WCL objects to performing.

12. WCL objects to the requests as overly broad and unduly burdensome to the extent they seek information or documents for periods prior to January 1, 1995.

13. WCL objects to the requests insofar as they seek "all documents relating to" the matters specified, as overly broad and unduly burdensome.

#### OBJECTIONS TO INTERROGATORIES

##### Interrogatory No. 3:

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

##### RESPONSE:

WCL objects to CSXT's Interrogatory No. 3 on the ground that it is unduly burdensome, in that both CSXT and The Baltimore & Ohio Chicago Terminal Railroad Company ("B&OCT") are parties to both litigation and arbitration with WCL relating to the switching dispute, and CSXT is in possession of relevant documents from those proceedings. WCL further objects to CSXT's Interrogatory No. 3 on the ground that the phrase "support or in any way relate" is vague, overly broad, undefined and capable of more than one interpretation. Further, WCL objects to this Interrogatory on the ground that it seeks documents protected from discovery by the attorney/client privilege and/or the work product doctrine. Finally, WCL objects to CSXT's Interrogatory No. 3 on the ground that responding to it would require a



burdensome special study, which WCL is not required to do in this proceeding.

Interrogatory Nos. 4(c), (d) and (h):

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

. . . .

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

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

. . . .

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

RESPONSE:

WCL objects to CSXT's Interrogatory Nos. 4(c), (d) and (h) on the ground that they are unduly burdensome, in that the information sought could be generated, if at all, only through an unduly burdensome special study. WCL further objects to these Interrogatories on the ground that the information sought is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 5:

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

**RESPONSE:**

WCL objects to CSXT's Interrogatory No. 5 on the ground that it impermissibly seeks a legal conclusion. Interrogatories are designed to accord a party a right to discover facts, not legal conclusions. See, e.g., Federal Rule of Civil Procedure 33.

**Interrogatory No. 6(a):**

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

(a). State what rights are not certain under the agreement;

**RESPONSE:**

WCL objects to CSXT's Interrogatory No. 6(a) on the grounds that it is vague and ambiguous. WCL is uncertain what CSXT is referring to with this Interrogatory, and therefore is unable to answer it. WCL would be willing to consider providing a substantive response to this Interrogatory if CSXT will adequately define what rights it is referring to, and why they believe that WCL has indicated uncertainty with regard to those rights.

**Interrogatory No. 7:**

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

(a). State the dollar amount that WCL intends to invest in the 48th Avenue Yard;

(b). State WCL's proposed schedule for making such investments;

(c). State whether WCL's Board of Directors has approved such investment; and

(d). Identify all documents that in any way relate to the subject matter of Interrogatory 7, sub-sections (a), (b) and (c).

**RESPONSE:**

WCL objects to CSXT's Interrogatory Nos. 7(a)-(d) on the ground that they seek information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. WCL further objects to these Interrogatories on the ground that they call for a burdensome special study.

**Interrogatory No. 8(b):**

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

. . .

(b). for intermediate handling;

**RESPONSE:**

WCL objects to CSXT's Interrogatory No. 8(b) on the ground that the phrase "intermediate handling" is vague, undefined, and capable of more than one interpretation. WCL would be willing to consider providing a substantive response to this Interrogatory if CSXT will adequately define the term "intermediate handling."

**Interrogatory No. 12:**

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

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

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

**RESPONSE:**

WCL objects to CSXT's Interrogatory Nos. 12(a)-(c) on the ground that the information they seek is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. The relief requested in WCL's Responsive Application (WC-9) is premised on harms arising as a result of the transaction proposed by Applicants in their Primary Application. Prior efforts to gain greater control over the section of track at issue are irrelevant to the issues presented by WCL; namely, whether harm will result from the transaction and whether the relief requested by WCL will ameliorate that harm. Further, WCL objects to Interrogatory No. 12(a) on the ground that it seeks information concerning any time period outside of the time period imposed by Applicants on their own discovery responses; namely, subsequent to January 1, 1995. As Applicants have objected to the production of information and documents relevant to time periods earlier than that stated, they should not be allowed to seek information regarding earlier time periods from WCL, nor should they be allowed to unilaterally waive the date restriction they imposed on their own discovery responses. Finally, WCL objects to this Interrogatory as seeking the production of information within the possession, custody or control of CSXT.

**Interrogatory No. 13:**

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



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

**RESPONSE:**

WCL objects to CSXT's Interrogatory Nos. 13(a)-(d) on the ground that the information they seek is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**OBJECTIONS TO REQUESTS  
FOR PRODUCTION OF DOCUMENTS**

**Request No. 3:**

Produce all documents identified, or which should be identified, in response to Interrogatory No. 3.

**RESPONSE:**

WCL objects to CSXT's Request to Produce No. 3 on the grounds stated in objection to Interrogatory No. 3.

**Request No. 6:**

Produce all documents identified, or which should have been identified, in response to Interrogatory No. 7(d).

**RESPONSE:**

WCL objects to CSXT's Request to Produce No. 6 on the grounds stated in objection to Interrogatory No. 7.

**Request No. 11:**

Produce all documents identified, or which should have been identified, in response to Interrogatory No. 12(c).

**RESPONSE:**

WCL objects to CSXT's Request to Produce No. 11 on the grounds stated in objection to Interrogatory No. 12.

**Request No. 12:**

Produce a copy of all Board of Directors resolutions identified, or which should be identified in response to Interrogatory (13), sub-sections (a) - (d).

**RESPONSE:**

WCL objects to CSXT's Request to Produce No. 12 on the ground stated in objection to Interrogatory Nos. 13(a) - (d).

Respectfully submitted,

By: Tom Healey

Janet Gilbert

General Counsel

Wisconsin Central Ltd.

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Robert H. Wheeler

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ATTORNEYS FOR

WISCONSIN CENTRAL LTD.

Dated: November 13, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 1997, a copy of the foregoing Initial Objections of Wisconsin Central Ltd. to CSX's First Set of Interrogatories and Requests for Production of Documents (WC-11) was served by facsimile and first class mail, postage prepaid, upon:

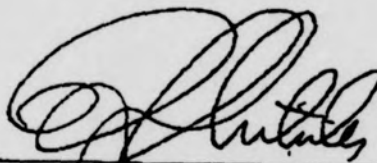
Drew A. Harker, Esq.  
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Washington, DC 20036

and by first class mail, postage prepaid, upon all parties appearing on the Restricted Service List.



Thomas J. Litwiler



EJE-12

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

---

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

Robert N. Gentile  
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180 North Stetson Avenue  
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(312) 616-1800

ATTORNEYS FOR TRANSTAR, INC.  
AND ELGIN, JOLIET AND EASTERN  
RAILWAY COMPANY

Dated: November 12, 1997

EJE-12

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

---

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

Elgin, Joliet and Eastern Railway Company and Transtar, Inc. (collectively, "EJE") hereby provide their Initial Objections to the First Set of Interrogatories and Requests for Production of Documents (CSX/NS-125) of CSX Corporation and CSX Transportation, Inc. (collectively, "CSXT") and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS"). Consolidated Rail Corporation and Conrail, Inc. (collectively, "Conrail"), CSXT and NS are collectively referred to herein as "Applicants."

GENERAL OBJECTIONS

Except as noted below, the following objections apply to each discovery request propounded by CSXT and NS, whether reiterated now or in the future in response to each request or otherwise<sup>1</sup>:

---

<sup>1</sup> Thus, any response to a request, whether or not objected to herein, will be subject to the General Objections, so that, for example, any documents subject to attorney-client privilege or the work product doctrine will not be produced.



1. EJE objects to production of, and will not produce, documents or information subject to the attorney-client privilege, the work product doctrine and/or the joint or common interest privilege. Further, consistent with the practices of CSXT and NS in this proceeding, EJE objects to the production of, and will not produce, a privilege log or other document from which CSXT and NS could determine the identity of the documents withheld under this objection. Such information, according to CSXT and NS, is "unnecessary," and "unreasonably burdensome to provide."

2. EJE objects to the production of, and will not produce, documents prepared in connection with, or information relating to, possible settlement of this or any other matter.

3. EJE objects to the production of, and will not produce, public documents or information that is readily available, including but not limited to documents on public file at the Surface Transportation Board ("STB"), the Securities and Exchange Commission, or any other government agency or court, or that have appeared in newspapers or other public media.

4. EJE objects to the production of, and will not produce, draft verified statements and documents related thereto. CSXT and NS have previously refused production of these materials in discovery.

5. EJE objects to the production of, and will not produce, information or documents that are readily obtainable from Applicants' own files.

6. EJE objects to the production of, and will not produce, documents containing confidential or sensitive commercial information, including information subject to disclosure restrictions imposed in other proceedings or by contractual obligation to third parties, and that is of insufficient materiality to warrant production here even under a protective order.

7. EJE objects to CSXT's and NS' directions, as found on the first page of their First Set of Interrogatories and Requests for Production of Documents, to the extent that they require EJE to provide within five business days all objections for discovery requests on which no substantive answer or document request will be provided. Consistent with paragraph 16 of Decision No. 10 of this proceeding, and the Applicants' own practices in responding to discovery, EJE is providing within five business days all objections for discovery requests on which the EJE has then decided that it will provide no substantive answer or document response.

8. EJE objects to Instructions 1-4 to the extent they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

9. EJE objects to Definition Nos. 3-8 as unduly burdensome.

10. EJE objects to Definition No. 4 to the extent it would require EJE to identify documents being produced in response to an interrogatory or document request. Such detailed



information is unduly burdensome to provide and, in any event, the documents speak for themselves.

11. EJE objects to the requests to the extent they seek documents or information in a form not maintained by EJE in the regular course of business or not readily available in the form requested, on the ground that such documents or information could only be developed, if at all, through unduly burdensome and oppressive special studies, which are not ordinarily required and which EJE objects to performing.

12. EJE objects to the requests as overly broad and unduly burdensome to the extent they seek information or documents for periods prior to January 1, 1995.

13. EJE objects to the requests insofar as they seek "all documents relating to" the matters specified, as overly broad and unduly burdensome.

#### OBJECTIONS TO INTERROGATORIES

##### Interrogatory No. 1(a):

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

##### RESPONSE:

EJE objects to CSXT's and NS' Interrogatory No. 1(a) on the ground that the information sought is neither relevant nor reasonably calculated to lead to the discovery of admissible information.

Interrogatory No. 1(b):

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

RESPONSE:

EJE objects to CSXT's and NS' Interrogatory No. 1(b) on the ground that the information sought is neither relevant nor reasonably calculated to lead to the discovery of admissible information.

Interrogatory No. 3:

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

RESPONSE:

EJE objects to Interrogatory No. 3 on the grounds that the information sought by this Interrogatory is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In Request to Produce No. 19 of IC-3, Applicants were asked to produce "(a)ll documents relating to the value (market value, par value, book value or otherwise) of the IHB stock held by Conrail, and/or the value of Conrail's ownership of a controlling interest in IHB." In response, CSX/NS-89, Applicants indicated that this request was objectionable, and would not be answered, "on the grounds of relevancy."

Further, EJE previously filed discovery requests (EJE-5) seeking information that would be used to set a value for Conrail's 51% stock ownership of IHB. Applicants refused to

produce any information responsive to these requests, arguing that the discovery requests sought "extensive financial and other information about IHB that does not appear to have any relevance to any issue that the Board must determine before it decides whether to approve the Application, and is premature if sought in connection with an issue the Board would address after approving the Application." CSX/NS-91 at 5 (emphasis added).

Subsequently, during EJE's motion to compel responses to these discovery requests, held before Magistrate Leventhal on October 16, 1997, Applicants argued that EJE's discovery requests should not have to be answered because they were "premature."

Interrogatory No. 7:

With respect to the concerns about neutrality of switching expressed in the Verified Statement of William H. Brodsky (particularly at pages 3-7), and the concern, at page 7, about the possibility that "CSX will play a dominant role" in the management of IHB and other terminal carriers in Chicago, explain why would CSX not want to have an efficient interchange with IMRL, given that the CSX lines and the IMRL lines are entirely end-to-end?

RESPONSE:

EJE objects to Interrogatory No. 7 on the grounds that it seeks information not within the possession, custody or control of EJE. Further answering, and without waiver of said objection, EJE believes that a substantive response to this Interrogatory will be provided by IMRL.

Interrogatory No. 8(a):

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

**RESPONSE:**

EJE objects to CSXT's and NS' Interrogatory No. 8(a) on the ground that the information it seeks is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 8(b):**

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

**RESPONSE:**

EJE objects to Interrogatory No. 8(b) to the extent that the Interrogatory seeks a description of the "investments, including the projects involved, the estimated amounts in dollars," and "the timing of such investments and projects" on the grounds that EJE has been denied access to relevant data regarding the IHB physical plant and facilities by Applicants. To the extent Applicants are willing to now provide the information sought in EJE-8, EJE's "Third Set of Requests to Produce Documents," EJE will provide substantive responses to this Interrogatory. EJE further objects to Interrogatory No. 8(b) on the ground that "the proposed sources of funding, including whether commitments for such funding have been obtained" is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 8(c):**

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

**RESPONSE:**

Subject to the General Objections stated above, EJE states as follows:

Not applicable.

**OBJECTIONS TO REQUESTS  
FOR PRODUCTION OF DOCUMENTS**

**Request No. 3:**

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

**RESPONSE:**

EJE objects to this Request to Produce on the grounds stated in the referenced Interrogatory.

**Request No. 5:**

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

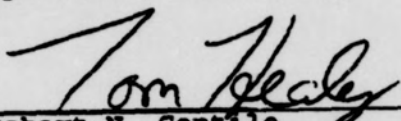
**RESPONSE:**

EJE objects to this Request to Produce on the grounds stated in the referenced Interrogatory.



Respectfully submitted,

By:

  
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Colette Ferris-Shotton  
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(312) 616-1800

**ATTORNEYS FOR TRANSTAR, INC.  
AND ELGIN, JOLIET AND EASTERN  
RAILWAY COMPANY**

Dated: November 12, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of November, 1997, a copy of the foregoing Initial Objections of Transtar, Inc. And Elgin, Joliet and Eastern Railway Company to CSX and Norfolk Southern's First Set of Interrogatories and Requests for Production of Documents (EJE-12) was served by facsimile and first class mail, postage prepaid, upon:

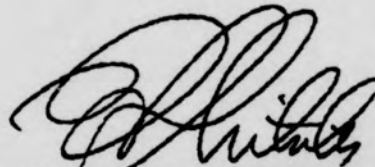
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Suite 600  
Washington, DC 20036

and by first class mail, postage prepaid, upon all parties appearing on the Restricted Service List.



---

Thomas J. Litwiler



IMRL-1

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

---

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

William C. Sippel  
Thomas J. Healey  
Thomas J. Litwiler  
Christopher E.V. Quinn  
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180 North Stetson Avenue  
Chicago, Illinois 60601  
(312) 616-1800

ATTORNEYS FOR I & M RAIL LINK, LLC

Dated: November 12, 1997

IMRL-1

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

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

I & M Rail Link, LLC ("IMRL") hereby provides its Initial Objections to the First Set of Interrogatories and Requests for Production of Documents (CSX/NS-126) of CSX Corporation and CSX Transportation, Inc. (collectively "CSXT") and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS"). Consolidated Rail Corporation and Conrail, Inc. (collectively "Conrail"), CSXT and NS are collectively referred to herein as "Applicants."

GENERAL OBJECTIONS

Except as noted below, the following objections apply to each discovery request propounded by CSXT and NS, whether reiterated now or in the future in response to each request or otherwise:<sup>1</sup>

<sup>1</sup> Thus, any response to a request, whether or not objected to herein, will be subject to the General Objections, so that, for example, any documents subject to attorney-client privilege or the work product doctrine will not be produced.



1. IMRL objects to production of, and will not produce, documents or information subject to the attorney-client privilege, the work product doctrine and/or the joint or common interest privilege. Further, consistent with the practices of CSXT and NS in this proceeding, IMRL objects to the production of, and will not produce, a privilege log or other document from which CSXT and NS could determine the identity of the documents withheld under this objection. Such information, according to CSXT and NS, is "unnecessary," and "unreasonably burdensome to provide."

2. IMRL objects to the production of, and will not produce, documents prepared in connection with, or information relating to, possible settlement of this or any other matter.

3. IMRL objects to the production of, and will not produce, public documents or information that is readily available, including but not limited to documents on public file at the Surface Transportation Board ("STB"), the Securities and Exchange Commission, or any other government agency or court, or that have appeared in newspapers or other public media.

4. IMRL objects to the production of, and will not produce, draft verified statements and documents related thereto. CSXT and NS have previously refused production of these materials in discovery.

5. IMRL objects to the production of, and will not produce, information or documents that are readily obtainable from Applicants' own files.

6. IMRL objects to the production of, and will not produce, documents containing confidential or sensitive commercial information, including information subject to disclosure restrictions imposed in other proceedings or by contractual obligation to third parties, and that is of insufficient materiality to warrant production here even under a protective order.

7. IMRL objects to CSXT's and NS' directions, as found on the first page of their First Set of Interrogatories and Requests for Production of Documents, to the extent that they require IMRL to provide within five business days all objections for discovery requests on which no substantive answer or document request will be provided. Consistent with paragraph 16 of Decision No. 10 of this proceeding, and the Applicants' own practices in responding to discovery, IMRL is providing within five business days all objections for discovery requests on which the IMRL has then decided that it will provide no substantive answer or document response.

8. IMRL objects to Instructions 1-4 to the extent they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

9. IMRL objects to Definition Nos. 3-8 as unduly burdensome.

10. IMRL objects to Definition No. 4 to the extent it would require IMRL to identify documents being produced in response to an interrogatory or document request. Such detailed

information is unduly burdensome to provide and, in any event, the documents speak for themselves.

11. IMRL objects to the requests to the extent they seek documents or information in a form not maintained by IMRL in the regular course of business or not readily available in the form requested, on the ground that such documents or information could only be developed, if at all, through unduly burdensome and oppressive special studies, which are not ordinarily required and which IMRL objects to performing.

12. IMRL objects to the requests as overly broad and unduly burdensome to the extent they seek information or documents for periods prior to January 1, 1995.

13. IMRL objects to the requests insofar as they seek "all documents relating to" the matters specified, as overly broad and unduly burdensome.

#### OBJECTIONS TO INTERROGATORIES

##### Interrogatory No. 1(a):

State when discussions and/or negotiations between and IMRL and Elgin, Joliet and Eastern Railway Company, Transtar, Inc. ("EJE") commenced regarding the submission of a joint application to the Board for acquisition of the 51½ stock ownership of Conrail in the Indiana Harbor Belt Railroad Company ("IHB").

##### RESPONSE:

IMRL objects to Interrogatory No. 1(a) on the ground that the information sought is neither relevant nor reasonably calculated to lead to the discovery of admissible information.

Interrogatory No. 1(b):

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

RESPONSE:

IMRL objects to Interrogatory No. 1(b) on the ground that the information sought is neither relevant nor reasonably calculated to lead to the discovery of admissible information.

Interrogatory No. 3:

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

RESPONSE:

IMRL objects to Interrogatory No. 3 on the grounds that the information sought by this Interrogatory is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In Request to Produce No. 19 of IC-3, Applicants were asked to produce "(a)ll documents relating to the value (market value, par value, book value or otherwise) of the IHB stock held by Conrail, and/or the value of Conrail's ownership of a controlling interest in IHB." In response, CSX/NS-89, Applicants indicated that this request was objectionable, and would not be answered, "on the grounds of relevancy."

Further, EJE previously filed discovery requests (EJE-5) seeking information that would be used to set a value for Conrail's 51% stock ownership of IHB. Applicants refused to produce any information responsive to these requests, arguing

that the discovery requests sought "extensive financial and other information about IHB that does not appear to have any relevance to any issue that the Board must determine before it decides whether to approve the Application, and is premature if sought in connection with an issue the Board would address after approving the Application." CSX/NS-91 at 5 (emphasis added).

Subsequently, during EJE's motion to compel responses to these discovery requests, held before Magistrate Leventhal on October 16, 1997, Applicants argued that EJE's discovery requests should not have to be answered because they were "premature."

Interrogatory No. 4(a):

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

RESPONSE:

IMRL objects to Interrogatory No. 4(a) on the grounds that it seeks information not within the possession, custody or control of IMRL. Further answering, and without waiver of said objection, IMRL believes that a substantive response to this Interrogatory will be provided by EJE.

Interrogatory No. 4(b):

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

RESPONSE:

See response to Interrogatory No. 4(a).



Interrogatory No. 6:

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

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

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

RESPONSE:

IMRL objects to Interrogatory No. 6(a) on the grounds that it seeks information not within the possession, custody or control of IMRL. Further answering, and without waiver of said objection, IMRL believes that a substantive response to this Interrogatory will be provided by EJE.

(b) If not, please explain why not.

RESPONSE:

Not applicable.

Interrogatory No. 9(a):

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

**RESPONSE:**

IMRL objects to Interrogatory No. 9(a) on the ground that the information it seeks is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 9(b):**

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

**RESPONSE:**

IMRL objects to Interrogatory No. 9(b) to the extent that the Interrogatory seeks a description of the "investments, including the projects involved, the estimated amounts in dollars," and "the timing of such investments and projects" on the grounds that IMRL has been denied access to relevant data regarding the IHB physical plant and facilities by Applicants. To the extent Applicants are willing to now provide the information sought in EJE-8, EJE's "Third Set of Requests to Produce Documents," IMRL will provide substantive responses to this Interrogatory. IMRL further objects to Interrogatory No. 9(b) on the ground that "the proposed sources of funding, including whether commitments for such funding have been obtained" is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 9(c):**

Identify all documents relating to the investments, authorizations, fundings and commitments referred to in subsections (a) and (b) of this Interrogatory No. 9.

**RESPONSE:**

Subject to the General Objections stated above, IMRL states as follows:

Not applicable.

**OBJECTIONS TO REQUESTS  
FOR PRODUCTION OF DOCUMENTS**

**Request No. 3:**

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

**RESPONSE:**

IMRL objects to this Request to Produce on the grounds stated in the referenced Interrogatory.

**Request No. 6:**

Produce all documents identified, or which should have been identified, in response to subsection (c) of Interrogatory No. 9.

**RESPONSE:**

IMRL objects to this Request to Produce on the grounds stated in the referenced Interrogatory.

Respectfully submitted,

By: 

William C. Sippel  
Thomas J. Healey  
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**ATTORNEYS FOR I & M RAIL LINK, LLC**

Dated: November 12, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of November, 1997, a copy of the foregoing Initial Objections of I & M Rail Link, LLC to CSX and Norfolk Southern's First Set of Interrogatories and Requests for Production of Documents (IMRL-1) was served by facsimile and first class mail, postage prepaid, upon:

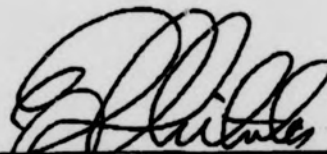
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and by first class mail, postage prepaid, upon all parties appearing on the Restricted Service List.

  
\_\_\_\_\_  
Thomas J. Litwiler





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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 33388

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

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CSX'S AND NORFOLK SOUTHERN'S MOTION  
TO COMPEL DISCOVERY RESPONSES AND  
REQUEST FOR A DISCOVERY CONFERENCE

Over the past few weeks, CSX<sup>1</sup> separately, and in some cases jointly with NS,<sup>2</sup> has served the following discovery:

- ° CSX-44, CSX's First Set of Interrogatories and Requests for Production of Documents to Centerior Energy Corporation;
- ° CSX-46, CSX's First Set of Interrogatories and Requests for Production of Documents to Consumers Energy Company;

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<sup>1</sup> "CSX" refers collectively to CSX Corporation and CSX Transportation, Inc. ("CSXT").

<sup>2</sup> "NS" refers collectively to Norfolk Southern Corporation and Norfolk Southern Railway Company.

- CSX/NS-125, CSX's and Norfolk Southern's First Set of Interrogatories and Requests For Production of Documents To Elgin, Joliet, and Eastern Railway and Transtar, Inc.;
- CSX/NS-126, CSX's and Norfolk Southern's First Set of Interrogatories and Requests For Production of Documents To I&M Rail Link, LLC;
- CSX served CSX-58, CSX's First Set of Interrogatories and Requests For Production of Documents To Redland, Ohio, Inc.;
- CSX-54 CSX's First Set of Interrogatories and Requests For Production of Documents To the International Paper Company;
- CSX-89, CSX's First Set of Interrogatories and Requests for Production of Documents To Wisconsin Central;
- CSX-NS 138, CSX's and Norfolk Southern's First Set of Interrogatories and Requests for Production of Documents To Illinois Central Railroad Company;
- CSX-NS 132, CSX's and Norfolk Southern's First Set of Interrogatories and Requests for Production of Documents To Indiana & Ohio Railway Company;

- ° CSX-NS 133, CSX's and Norfolk Southern's First Set of Interrogatories and Requests for Production of Documents To Indiana Southern Railroad, Inc.; and
- ° CSX 69, CSX's First Set of Interrogatories and Requests for Production of Documents To AK Steel Corporation.

Each of the parties to whom the discovery was directed has filed five day objections to these discovery requests, indicating that they would be filing no affirmative response to certain interrogatories and document requests. Copies of these objections, which includes in most instances the underlying discovery requests, are attached.<sup>3</sup>

These objections are not well taken and CSX and NS<sup>4</sup> request that Your Honor order the objecting parties

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<sup>3</sup> All copies of this motion sent by facsimile do not contain these attachments. For ease of reference for Your Honor, Centerior Energy's objections are at Tab 1; Consumer Energy's objections are at Tab 2; Elgin, Joliet and Eastern Railway and Transtar, Inc.'s objections are at Tab 3; I&M Rail Link's objections are at Tab 4; Redland, Ohio, Inc.'s objections are at Tab 5; International Paper's objections are at Tab 6; Illinois Central Railroad Company's objections are at Tab 7; Indiana and Ohio Railway Company's objections are at Tab 8; Indiana Railroad's objections are at Tab 9, and AK Steel's objections are at Tab 10. Centerior Energy and AK Steel's objections are the only ones that do not include the text of the underlying discovery requests. A copy of these requests are at Tabs 11 and 12.

<sup>4</sup> Except as otherwise noted herein NS joins in this  
[Footnote continued on next page]

to respond to each interrogatory and document request propounded to them to the extent requested herein.

A. Centerior Energy Corporation ("Centerior")

Centerior objects to Interrogatory Nos. 6, 7, and 13, and Document Production Request Nos. 5, 6, and 8 in toto which require production of information on Centerior's coal transportation and coal supply agreements. The basis for Centerior's objections is that the agreements contain "highly sensitive information and in certain instances, include provisions which require Centerior to maintain the agreements themselves in confidence." Centerior Motion at 1. Centerior states that it objects to production of the information unless it is able to obtain the consent of the parties to produce the information, which it is currently seeking. Centerior does not contend that the information sought is irrelevant or production of it would be burdensome.

The Primary Applicants have previously objected to the release of documents that contained highly proprietary information but were ordered by Your Honor and the Board to produce such documents. See Decision Nos. 26 and 32. In affirming Your Honor's decision to

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[Footnote continued from previous page]  
motion to compel to the extent the motion applies to  
discovery requests propounded by NS.

require the Primary Applicants to produce such information, the Board quoted with approval the following language from Decision No. 26, issued by Your Honor:

The [Primary] Applicants do raise a serious claim as to the highly confidential commercial sensitivity of the information they are required to produce. The Protective Order in effect in this proceeding should suffice to allay Applicants' concerns. Violation of the Protective Order would be a serious offense and could lead to significant consequences.

Decision No. 32 at 4.

In addition, Your Honor ordered production of commercial agreements that CSX had with third parties, even in the face of confidentiality requirements in both of the underlying agreements.<sup>5</sup> See Discovery Conference Transcript, September 18, 1997, pp. 6-42. Your Honor permitted CSX to redact the name of the shipper from the agreements but otherwise required production of the complete agreement, including other identifying information.<sup>6</sup> These various decisions provide Your Honor ample authority to order production of the

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<sup>5</sup> In Centerior's case, it appears that in only "certain instances" do the agreements at issue impose confidentiality obligations.

<sup>6</sup> Of course, redactions would not be necessary with regard to the transportation contracts to be produced in response to the discovery requests at issue here, because the shipper is already identified. Redaction is not justified with regard to the coal supply contracts.



agreements that CSX requested from Centerior, whether or not Centerior obtains prior consent from the third party.

B. Consumers Energy Company ("Consumers")

1. Interrogatory Nos. 1, 8, and 9 and Document Request No. 7

Interrogatory Nos. 1, 8, and 9 and Document Request No. 7 request basic information on the operations of, and fuel supply and transportation options for each Consumers plant for the period 1995 through to date. Without offering any specifics, Consumers merely objects that these requests are overbroad, unduly burdensome and seek irrelevant information.

The Comments on the Primary Application that Consumers filed in this proceeding complain of reduced competitive options and being limited to one rail carrier after the transaction. The information requested in Interrogatory No. 1 is plainly relevant to answering these contentions and, indeed, certain of it is set out in the verified statement accompanying Consumer's Comments.

Consumers also objects to Interrogatory No. 1 on the basis that the information requested is publicly

available.<sup>7</sup> This objection is not well taken. Not all of the information requested is available from public sources. For instance, the data requested for 1997 is not available publicly, and information relevant to Interrogatory Nos. 1(i) and (j) is also not publicly available for any of the years requested. Further, one basis for determining the weight of Consumers' comments is the information it used in drafting those Comments.

As to Interrogatory No. 8, to the extent that not all of Consumer's coal is purchased under contract, data concerning Consumers' spot purchases will be important to demonstrating Consumers' full range of options for coal supply and transportation. To the extent that Consumers' demonstrates that there is a burden associated with responding to Interrogatory No. 8, CSX is willing to agree that in Consumers response it can aggregate purchases from a single supplier in a given year, and omit purchases that totalled less than 100,000 tons from a supplier in any year.

As to Interrogatory No. 9 and Document Request No. 7, these seek identification and production of documents soliciting bids for and offers of coal transportation services. This information is clearly

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<sup>7</sup> This objection is, on its face, inconsistent with Consumers' objection that production of the information is overly burdensome.

relevant to determining what coal transportation options are available to Consumers, in light of its contention that it has none. Production of this information is no more burdensome than production of information that CSX was ordered to produce earlier in this proceeding. See Decision No. 11, requiring CSX to produce bids and proposals for periods between 1978 and 1982 and between 1995 to date.

2. Document Request No. 6

Document Request No. 6 requests current coal supply contracts. Consumers objects to this request on the basis of relevance and that it seeks confidential or sensitive commercial information.

These objections are not well taken. However, CSX notes that Consumers did not object to Interrogatory No. 7 which requests a limited amount of information as to each current coal supply contract. Assuming that Consumers is prepared to provide full and complete responses to Interrogatory No. 7, CSX is prepared to withdraw Document Request No. 6. In the event that Consumers' response to No. 7 is not full and complete, CSX asks Your Honor to order production in response to No. 6.

C. Transtar, Inc. and Elgin, Joliet and  
Eastern Railway ("EJE")

1. Interrogatory Nos. 1(a) and (b)

On October 21, 1997, EJE and I&M Rail Link ("IMRL") filed a Responsive Application with the Board for acquisition of the 51 percent stock ownership held by Conrail in the Indiana Harbor Belt Railroad Company ("IHB"). Notably, on August 22, 1997, EJE filed its Description of Responsive Application which did not indicate anything about filing an application in conjunction with IMRL. That EJE did not identify IMRL in its August 22 filing suggests that the Responsive Applicants' plan to jointly acquire Conrail's interest in the IHB has come together only at the last minute.

Interrogatory No. 1, consisting of four subparts (a) through (d), requests information about the nature of the discussions and agreement between EJE and IMRL to acquire Conrail's interest in the IHB. EJE objects on the basis of relevance to subparts (a) and (b) of Interrogatory No. 1, which relate to when negotiations between EJE and IMRL regarding the submission of the Responsive Application began and concluded. EJE does not object to subparts (c) or (d), nor Document Request No. 1 which requests information on the participants in the discussions and documents related to the negotiations. Nor does EJE object on the basis of

burden. CSX and NS are entitled to inquire about the nature of the negotiations between the two Responsive Applicants in order to determine how well conceived and well thought out Responsive Applicants' plans to acquire and operate the IHB are.

2. Interrogatory No. 3 and  
Document Request No. 3

Interrogatory No. 3 sought to determine what purchase price was assumed when Responsive Applicants claimed in their Application that they had sufficient resources to purchase the IHB. IHB objects to Interrogatory No. 3 on the ground of relevancy.

CSX and NS have a right to inquire into the realism of Responsive Applicants' proposal to acquire the IHB. Responsive Applicants have merely offered a conclusory statement with regard to their financial ability to acquire a 51 percent ownership interest in the IHB. CSX and NS are entitled to inquire into the bases for this statement.<sup>8</sup>

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<sup>8</sup> EJE attempts to support its relevance objection by mischaracterizing objections taken by the Primary Applicants to discovery seeking detailed information on IHB operations filed by Illinois Central and EJE against the Primary Applicants. This attempt is unavailing. The principal bases for Primary Applicants' earlier objections were that the requests were overbroad, premature, and were directed at the wrong party. See e.g., CSX/NS-89. Both Your Honor and the Board agreed that discovery seeking detailed information on the IHB should have been directed against IHB and not the Primary Applicants. See, Discovery Hearing Transcript,  
[Footnote continued on next page]



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3. Interrogatory No. 7

Interrogatory No. 7 requests information on the basis for Responsive Applicants' concerns about the neutrality of switching services and CSX's "dominant role" in the affairs of IHB and other terminal carriers in Chicago given that CSX's lines and the existing lines of IMRL are entirely end to end. EJE objects to Interrogatory No. 7 on the ground that the Interrogatory seeks "information not within the possession, custody or control of EJE." EJE Objection at 6. EJE further states that IMRL, which was asked a similar interrogatory, will furnish a substantive response, although EJE does not explain what "information" IMRL has that EJE does not have such that IMRL is in a position to respond to the interrogatory and EJE is not. In any event, this is not an appropriate objection to discovery. To the extent that EJE does not have information sufficient to provide an answer to this interrogatory, it should so state.

4. Interrogatory No. 8 and  
Document Request No. 5

Interrogatory No. 8 and Document Request No. 5 seek information on the extent to which EJE's Board of

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[Footnote continued from previous page]  
October 16, 1997 at pp. 57-59 and Decision No. 53  
(Because information sought related solely to IHB,  
discovery should have been directed to IHB).

Directors has authorized EJE to make investments in the facilities of IHB in the event that the transactions contemplated by the Responsive Applicants are approved by the Board and are consummated. EJE objects to these requests on grounds of relevance and that EJE has been denied by the Primary Applicants access to relevant data through discovery.

The extent to which the EJE Board of Directors has authorized expenditure of funds to maintain or enhance IHB's physical plant is clearly relevant to a determination whether approval of the Responsive Application is in the public interest. Whether EJE was denied by the Primary Applicants access to relevant data that had been requested in EJE-8 is clearly irrelevant to the extent to which the EJE Board of Directors has authorized funds to maintain or enhance IHB's physical plant. The previous failure of EJE to direct discovery to the proper party cannot be a basis to deny CSX and NS the discovery that they seek here.

D. I&M Rail Link, LLC ("IMRL")

1. Interrogatory No. 1

Interrogatory No. 1 requested from IMRL the same information requested by Interrogatory No. 1 directed to EJE. IMRL gave the same objection as EJE. CSX's and NS' argument as to EJE Interrogatory No. 1, see pages 8-9 above, also applies to IMRL's objection.

2. Interrogatory No. 3 and  
Document Request No. 3

Interrogatory No. 3 and Document Request No. 3 requested from IMRL the same information requested by Interrogatory No. 3 and Document Request No. 3 directed to EJE. IMRL made the same objection as EJE. CSX's and NS' argument as to Interrogatory No. 3 and Document Request No. 3, see page 10 above, also applies to IMRL's objection.

3. Interrogatory Nos. 4 and 6

Interrogatory No. 4 sought identification of the shippers who the Responsive Applicants allege in their Responsive Application would lose access to EJE and would be limited to working exclusively with the IHB in the event the Primary Application is approved. Interrogatory No. 6 addresses a statement in a verified statement offered by the Responsive Applicants that CSX and NS will be motivated to direct traffic to IHB and away from EJE, by seeking IMRL's views on Conrail's motivation to attract traffic from EJE prior to the transaction. IMRL objects to both of these interrogatories on the ground that they seek "information not within the possession, custody or control of IMRL." IMRL also states that EJE will respond substantively to a similar interrogatory propounded to EJE.

IMRL's objection is not well taken. To the extent that IMRL does not have information sufficient to answer the interrogatory, it should so state.

4. Interrogatory No. 9 and  
Document Request No. 6

Interrogatory No. 9 and Request No. 6 requested from IMRL the same information requested by Interrogatory No. 8 and Document Request No. 5 directed to EJE. IMRL gave the same objection as EJE. CSX and NS' argument as to EJE Interrogatory No. 8 and Document Request No. 5 also applies to IMRL's objection.

E. Redland, Ohio ("Redland")

1. Interrogatories Nos. 1(h) and 1(i)  
and Document Request Nos. 1 and 2

Interrogatories 1(h) and 1(i)<sup>9</sup> request information about the transportation rate for movements of Redland's products that are currently single-line but will become joint-line if the transaction is approved and inquire what percentage of Redland's total sales these movements comprise. Document Request Nos. 1 and 2 request information on problems with Conrail's single

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<sup>9</sup> Redland also objected to Interrogatory Nos. 1(b), 1(c), 1(d), 1(e), 1(f), 1(g), and 1(j) on the basis of burden. CSX does not believe that this objection is well taken. Nevertheless, in view of Redland granting consent to Conrail to release the data to CSX's outside counsel, CSX does not move herein to compel responses to these interrogatories.



line movements and Redland's rail transportation contracts.

Redland claims that the information requested in Interrogatory Nos. 1(h) and 1(i) and Document Request No. 1 is irrelevant. Notably, Redland does not object on this basis to production of the information requested in other subparts of Interrogatory No. 1, which pertain to the very same movements. Moreover, in its filing opposing the transaction, Redland complains about the loss of single-line Conrail service, stating that if the transaction were approved "Redland will be losing the one rail carrier that offered it the best rates and most reliable service." Redland-2 at 8. Conrail's existing service to Redland, particularly its importance to Redland's overall business and any rail service problems that Redland previously experienced, is clearly relevant to assessing Redland's opposition to the transaction.

Redland objects to these interrogatories, as well as to several others, however, principally on the basis that these requests require production of confidential and highly sensitive proprietary information. CSX and NS have addressed similar arguments above in connection with Centerior's objections. See supra pp. 4-5. Redland's claim about the nondiscoverability of this information is equally meritless.

Moreover, Redland, in its objections, specifically authorizes the disclosure by Conrail of similar kinds of information pertaining to these same movements pursuant to the Protective Order. To the extent that Redland could authorize Conrail to release information requested by Interrogatory Nos. 1(b), 1(c), 1(d), 1(e), 1(f), 1(g), and 1(j), there is no basis to its claim of confidentiality with respect to Interrogatory Nos. 1(h) and 1(i).

2. Interrogatory No. 6

Interrogatory No. 6 requests information about Redland's use of joint-line rail movements since January 1, 1995. Redland does not claim that this request is burdensome or irrelevant, but objects because this information is available to CSX and Conrail. While Conrail and CSX would by necessity have information relating to moves in which they participated, Redland does not say why it is more burdensome or difficult for Redland to produce this information than for CSX or Conrail. It is Redland's basis for making the assertions it made that is at issue here. Thus, it is the information in Redland's possession, not CSX and Conrail's, that it is relevant. Moreover, the Primary Applicants have been required to produce information despite the fact that the requesting party already had the information in question. See e.g. Decision No. 11.

Moreover, Redland objects to Interrogatory No. 6 only as it relates to CSX and Conrail. It is, therefore, CSX's understanding of Redland's objection that Redland does not object to producing the information requested in this interrogatory as it relates to any other carrier.

Redland specifically objects to Interrogatories 6(e)(ii) and 6(e)(iii) as irrelevant, requesting sensitive and proprietary information, and requiring disclosure of information that is protected pursuant to contract. These interrogatories request information about the volume and price of Redland's joint-line movements since January 1, 1995. One of the bases for Redland's opposition to the transaction is that its transportation costs will rise if it is forced to utilize joint-line movements. It is certainly relevant to assessing this contention to determine if Redland already utilizes joint-line service, and, if so, at what cost. As discussed above, this information is more than adequately protected from public disclosure by the Protective Order, and should be produced, consistent with prior rulings on similar issues.

3. Interrogatory No. 7 and  
Document Request No. 3

Interrogatory No. 7 and Document Request No. 3 seek identification and production of documents relating

to any studies or consideration by Redland since January 1, 1995 as to using joint-line movements to ship its products to customers identified in Interrogatory No. 6. Redland objects to Interrogatory No. 7 and Document Request No. 3 on the same basis as it objects to Interrogatory No. 6 which is that this information is available to CSX and Conrail. This is Redland's only objection to these requests, and it makes no sense. It is unlikely that CSX or Conrail would have studies or analyses performed by Redland in their possession. These documents, if they exist, would have been generated by Redland and Redland should be required to produce these documents.

4. Interrogatory Nos. 8, 10, 12, and 13  
and Document Requests Nos. 4, 5, and 6

Interrogatory Nos. 8, 10, 12, and 13 and Document Requests Nos. 4, 5, and 6 all relate to information about Redland's use of joint-line rail service and the feasibility of such usage both currently and in the event the transaction is approved. Redland objects that this information is irrelevant, but as discussed above, one of Redland's principal objections to the transaction is that its current single-line Conrail service will be disrupted and Redland will have less efficient rail transportation. The extent to which joint-line service is and will be available to Redland and the

characteristics of that service are certainly relevant to assessing the effect on Redland of the transaction. Moreover, Redland's objections to these interrogatories as requesting proprietary and sensitive material must be rejected for the reasons outlined above.

Another basis for Redland's objection to Interrogatories Nos. 10 and 12 is that they call for speculation. Interrogatory No. 10 does not ask for any speculation; rather, it requests information about persons that "Redland has planned, considered, or studied offering to sell" products that would have moved in joint-line service. This is a request about Redland's past actions, not speculation into the future. It has either undertaken such planning, consideration or study or it has not.

Interrogatory No. 12 does ask for information about Redland's traffic if the transaction is approved, but CSX does not expect Redland to engage in a "burdensome and extensive study" as Redland contends. Redland's comments opposing the transaction allege that Redland will lose efficient rail transportation if the transaction is approved. It is obvious, therefore, that Redland has already considered the effects of the transaction on its movements. This interrogatory simply asks about gains in single-line service that would result from the transaction. This information is very



likely to lead to information about the public benefits of the transaction, which is certainly relevant to the Board's consideration of the Primary Application and Redland's opposition and request for conditions thereto.

5. Interrogatory No. 15 and  
Document Request No. 8

Interrogatory No. 15 and Document Request No. 8 request information about communications between Redland and any other person about the transaction. Redland does not contend that these requests are burdensome or irrelevant, but objects only on the basis that this information is readily obtainable by CSX. It is incomprehensible how CSX could have information about communications between Redland and any party other than CSX. Even with respect to communications that may have included CSX, it is an entirely proper and well accepted practice in discovery for a party to seek information from the other party on the substance of communications between the two, and the Primary Applicants were ordered previously to produce such information.

F. International Paper Company ("IP")<sup>10</sup>

IP objects to Interrogatories Nos. 6, 7, 8, 9, 10, 11, 12, and 13 and Document Request Nos. 3, 4, 5,

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<sup>10</sup> IP's Objections were served on CSX by mail. This practice directly violates paragraph 14 of the discovery guidelines in this case and has prejudiced CSX in preparing this motion.

and 6. These requests all inquire about IP's use of joint-line rail service and the feasibility of such usage both currently and in the event that the transaction is approved. IP objects to these requests as irrelevant because they seek information about traversed lines other than those identified by IP in its Comments. The effects of the transaction, however, cannot possibly be limited to only the specific line identified by IP in its Comments. IP's Comments allege that as a result of the transaction, IP will lose its current single-line Conrail service, resulting in "greatly increased costs." IP-4 at 2. The extent to which joint-line service is and will be available to IP and the characteristics of that service are certainly relevant to assessing the effect of the transaction on IP.

IP also objects to Interrogatories Nos. 6, 7, and 13 and Document Requests Nos. 3 and 6 as seeking confidential or sensitive commercial information. These arguments have been addressed in connection with Centerior's objections. See supra pp. 4-5. As discussed above, this information is more than adequately protected from public disclosure by the Protective Order, and should be produced, consistent with prior rulings on similar issues.

IP further objects to Interrogatories Nos. 6 and 13 to the extent that the information is also available to CSX. CSX has addressed this argument above in connection with Redland's objections to Interrogatories Nos. 6 and 15. See supra pp. 16-17 and p. 20. IP should be required to provide this information with respect to CSX as well as all other carriers.

Lastly, IP objects to Interrogatory No. 12 as unduly vague in that it does not define the term "potential movements of products." IP ships and receives certain products by rail in the course of its business. IP complains in its Comments that it will be losing Conrail single-line service as a result of the transaction. This interrogatory asks about new single-line routes that may be available as a result of the transaction. IP is familiar with its customers, potential customers, suppliers, and potential suppliers as well as where they are located. This interrogatory does not call for any speculation.

G. Wisconsin Central Ltd., ("WCL")

1. Interrogatory No. 3 and Document Request No. 3

On pages 7 and 8 of his Verified Statement, William R. Schauer discusses "switching disputes at Chicago" which resulted in "litigation" with CSX. Interrogatory No. 3 merely seeks to learn more about the "litigation" to which Mr. Schauer is referring. CSX

would like to confirm that Mr. Schauer is referring to Baltimore and Ohio Chicago Terminal Railroad v. Wisconsin Central, Ltd., No. 93 C-3519, in the U.S. District Court for the Northern District of Illinois and related arbitration proceedings, as well as a proceeding now pending before the Board. If this is not the "litigation" to which Mr. Schauer is making reference, CSX would like WCL to identify what litigation that is. As Mr. Schauer attempts to support his comments about CSX with references to this "litigation", this interrogatory is certainly relevant. CSX may be in possession of relevant documents, but without WCL at least identifying the litigation in question, it is impossible for CSX to make that determination. CSX requests that WCL be ordered to confirm that Mr. Schauer was referring to the dispute in the above cited case(s), and if not, to identify the litigation to which he was making reference.

2. Interrogatories Nos. 4(c), 4(d), and 4(h)

Interrogatory No. 4 requests information about WCL's use of direct interchanges with other carriers in the Chicago area and WCL's use of intermediate carriers at Chicago. WCL's Comments and Responsive Application are premised on the contention that WCL currently experiences problems interchanging in the Chicago area and that these problems would be exacerbated as a result

of the transaction. WCL's Responsive Application, therefore, requests to purchase a portion of the B&OCT Altenheim Subdivision. WCL asserts that this acquisition would relieve these alleged interchange problems. Now WCL claims that information about WCL's use of interchanges and intermediate carriers is irrelevant. Identifying the extent of WCL's use of intermediate carriers as an alternative to direct interchanges, however, is completely relevant to examining WCL's complaints about interchanging in the Chicago area. To the extent that WCL maintains in the normal course records about the services it utilizes, which most railroads do, this information is responsive to the requests and no special study is requested. Moreover, these interrogatories are limited to the periods for which WCL has records.

3. Interrogatory No. 5

WCL objects to Interrogatory No. 5 on the ground that it seeks a legal conclusion. Interrogatory No. 5 is a contention interrogatory which is a completely appropriate form of discovery in this proceeding. The only possible objection to a contention interrogatory is that it is premature, but in this proceeding, WCL has already presented its case-in-chief by submitting its Responsive Application and Comments. A contention



interrogatory at this stage in the proceeding, therefore, is appropriate and should be answered.

4. Interrogatory No. 6(a)

WCL objects to Interrogatory No. 6(a) as vague and ambiguous. Interrogatory No. 6(a) asks about the agreement between NS and WCL referred to on page 2 of WCL's comments. Paragraph 1 of the agreement which is Exhibit A of WCL's comments states "Subject to its legal capacity to do so, Norfolk will grant WC an option to purchase the leased Panhandle line . . . " Paragraph 2 the same documents states that ". . . Norfolk shall transfer to WCL, to the extent Norfolk will have the capability to do so after the Control Case, such rights as . . . " A reasonable reading of these conditions suggests that the parties have discussed or are aware of reasons, contingencies, ambiguities, limitations or other matters or possible matters that alone or taken together may make it impossible for Norfolk to accomplish the action addressed in that portion of the contract. These differences are the information WCL should identify to the extent possible in response to this interrogatory.

5. Interrogatory No. 7 and Document Request No. 6

WCL's Responsive Application states at pages 7 and 8 that WCL "intends to invest" in a yard at 48th Avenue. WCL represents that, as a result of this

investment, the Chicago Terminal District will receive the benefits of relieved congestion and improved efficiency. Interrogatory No. 7 requests information about WCL's plans for this investment. As WCL put the investment at issue, it cannot be that this information is irrelevant. Moreover, since WCL contends that it has already made plans for this investment, providing CSX with this information cannot require a burdensome special study.

6. Interrogatory No. 8(b)

WCL objects to the phrase "intermediate handling" as vague. Intermediate handling is intended to encompass any physical movement of freight cars by any carrier (including WCL) after the cars are yarded at a facility until the cars are interchanged to the receiving carrier where WCL takes the position that such physical movement does not constitute intermediate switching.

7. Interrogatory No. 12 and Document Request No. 11

Interrogatory No. 12 and Document Request No. 11 request information about WCL's previous plans to acquire the Altenheim Subdivision. WCL has submitted a Responsive Application requesting the Board's permission to purchase the subdivision, but now objects to CSX's inquiry into WCL's prior interest in such a purchase as irrelevant. WCL concedes on page 7 of its Responsive

Application that it "already experiences difficulty in operating over the Altenheim Subdivision". It is proper, therefore, for CSX to inquire if these difficulties have caused WCL to consider purchasing the Altenheim Subdivision prior to the announcement of the transaction contemplated by the Primary Application and to require WCL to produce all documents related to that interest.

WCL also objects to this interrogatory and document request as seeking information prior to January 1, 1995, but this information is also highly relevant. William R. Schauer's verified statement asserts on pages 7 and 8 that WCL's problems working with CSX have existed over the last ten years. Thus, the interrogatory seeks information since 1987. Earlier, Your Honor required CSX to produce information going back to 1978, see Decision No. 11, and so there is no basis to deny CSX's request for this information, particularly when WCL put it at issue.

Lastly, WCL claims that this interrogatory requests information which is in the possession of CSX. As noted, Your Honor has ordered the Primary Applicants on a number of occasions to produce information despite the fact the requesting party already had the information in question. See e.g. Decision No. 11, requiring production of bids, proposals, and other

documents already in the possession of requestor. Moreover, it is unclear how CSX could have the information requested in this interrogatory. CSX may possess some limited information about WCL's prior plans to acquire the Altenheim Subdivision, but certainly has no internal WCL documents. WCL should be ordered to respond to these requests.

8. Interrogatory No. 13 and Document Request No. 12

Interrogatory No. 13 asks about WCL's Board of Directors' resolutions to make capital expenditures relating to the Altenheim Subdivision or connections with other rail lines. WCL's position appears to be that it can come to the Board and request authority to acquire this subdivision, but information on whether WCL's Board of Directors has approved this acquisition and investments related thereto is irrelevant. The extent to which the WCL Board of Directors has not acted to authorize such acquisition and investments is relevant to determine whether WCL will follow through on the statements in the Responsive Application and whether granting the relief that WCL seeks is in the public interest.

H. Illinois Central Railroad Company<sup>11</sup>

1. Interrogatory No. 1

ICR objects to Interrogatory No. 1 on the basis that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. ICR also objects to this request because it seeks information for periods prior to January 1, 1995. See General Objection 12. Neither of these objections can withstand scrutiny.

The relevance of the information sought in this interrogatory is apparent from a review of ICR's responsive application. ICR is seeking Board approval to purchase approximately two miles of CSX track from Leewood to Aulon in Memphis, Tennessee. ICR Responsive Application at 7. According to ICR, the purpose of this condition "is to mitigate specific adverse impacts on existing competition and the adequacy of transportation service that will result from CSXT's acquisition of certain Conrail lines" in the proposed transaction pending before the Board in this finance docket number ("Proposed Transaction"). Id. at 8.

The information sought in Interrogatory No. 1 is relevant to evaluate ICR's claim that the requested condition -- purchase of the Leewood to Aulon line -- is

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<sup>11</sup> NS does not join in this subsection of the motion to compel.



related to the allocation to CSX of certain Conrail lines in the Proposed Transaction. The Application initiating the Proposed Transaction was filed in June 1997. The answer to this interrogatory will establish for the record whether ICR ever sought to purchase the Leewood to Aulon line prior to the initiation of the Proposed Transaction. To the extent ICR did so, it is evidence that ICR's requested condition is unrelated to the Proposed Transaction and should not be approved by the STB.

ICR's objection to providing pre-1995 information responsive to this interrogatory on the ground that it is overly broad and unduly burdensome is also meritless. This interrogatory is narrowly tailored to discover one fact -- whether ICR sought to purchase the Leewood-Aulon line before the Proposed Transaction was initiated. Any such purchase request made prior to 1995 is just as relevant as a 1995 or 1996 request.

2. Interrogatory No. 2 and  
Document Request No. 2

ICR objects to Interrogatory No. 2 and Document Request No. 2 on the same basis that it objects to Interrogatory No. 1. For the reasons set forth in the discussion of Interrogatory No. 1 above, ICR's objections to this Interrogatory are also baseless.

Accordingly, CSX incorporates herein the arguments made in response to Interrogatory No. 1.

3. Interrogatory Nos. 5(a) and 5(c)

ICR objects to these requests on the basis that they seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. This objection cannot be sustained.

In its responsive application, ICR asserts that its purchase of the Leewood-Aulon Line and assumption of dispatching duties on that line "will remove the inefficient and anti-competitive stranglehold that CSXT now has on IC's operations in the Memphis area. . . ." Responsive Application at 8. ICR alleges that CSX has caused "significant interference with and delays to IC's through train movements on the Leewood-Aulon Line." Id. at 10. ICR also asserts that the only alternative route to the Leewood- Aulon line through Memphis, the IC's Riverfront Line, "prohibits freight operations on the line except in emergencies." Id. at 9, fn. 6 (emphasis added).

This interrogatory seeks information relevant to ICR's assertion that the CSX has significantly interfered with ICR's movements on the Leewood-Aulon Line. It does so by seeking to discover whether ICR has ever attempted to move its Memphis freight traffic over

the alternate route by invoking the emergency exception that would allow ICR to move freight traffic over its Riverfront Line. This interrogatory also seeks information necessary to test ICR's claim that it can use the Riverfront Line only "in emergencies," by requiring ICR to provide specific factual information regarding its use of that line.

4. Interrogatory No. 5(b)

ICR objects to Interrogatory No. 5(b) on the basis that it is vague and ambiguous. ICR states that it would be willing to reconsider this objection if CSX would clarify the meaning of the phrase "the disposition of the use of such agreement".

As describe above in the discussion of Interrogatory Nos. 5(a) and 5(c), CSX is seeking to discover whether ICR ever invoked what it claims to be an emergency exception to its 1995 Agreement with the City of Memphis so that it could move freight traffic over the Riverfront Line rather than the Leewood-Aulon Line. In the event ICR did attempt to invoke that exception, Interrogatory No. 5(b) seeks to discover whether that invocation was successful or unsuccessful, i.e. did the City of Memphis allow ICR to move freight over the Riverfront Line or not, and what was the reason given for the City's decision. The relevance of this

request is set forth in the above discussion of Interrogatory Nos. 5(a) and 5(c).

5. Interrogatory No. 6

ICR objects to Interrogatory No. 6 on the basis that it would require ICR to undertake a burdensome and oppressive special study. ICR further objects to this request on the ground that CSX is already in possession of this information. These objections are entirely without merit.

A fundamental basis for ICR's request that the STB approve its purchase of CSX's Leewood to Aulon line is its claim that "CSXT has consistently caused significant interference with and delays to IC's through train movements on the Leewood-Aulon Line" since December 1996. Responsive Application at 10. CSX is entitled to explore the basis for ICR's assertion. It is neither unduly burdensome nor oppressive to require ICR to provide information within its possession regarding any alleged interference with ICR movements over the Leewood-Aulon Line over the last year, especially when that alleged interference is the principal basis upon which ICR seeks relief from the Board.

Further, the fact that some information responsive to this request may be in the files of CSX does not relieve ICR from providing discovery regarding

the full basis for this fundamental assertion in its responsive application. CSX is entitled to know what ICR itself has characterized as "significant interference" and the details of each such incident, as well as to obtain documents from ICR's file reflecting or discussing such matter. See Document Request 9.

6. Interrogatory No. 7

ICR objects to Interrogatory No. 7 on the basis to the extent that it would require ICR to undertake a burdensome and oppressive special study. ICR further objects on the basis that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. ICR further objects to this request on the ground that CSX is already in possession of this information.

In its responsive application, ICR asserts that its purchase of the Leewood-Aulon Line and assumption of dispatching duties on that line will remedy alleged delays on the Leewood-Aulon Line, including delays at interlockers/gateways. Responsive Application at 8-11; Evidence in Support of Conditions and Responsive Application at 7, 9-10. Interrogatory No. 7 seeks information relevant to ICR's assertion that CSX has significantly interfered with ICR's movements on the Leewood-Aulon Line and that the sole remedy is the purchase and control of the line. It does so by seeking



to discover whether ICR has ever suggested any improvements to the interlockers in an attempt to remedy the alleged delays and, to the extent that accommodations may have been discussed, the extent to which ICR was willing to support those accommodations.

7. Document Request No. 9

ICR objects to this request on the grounds that it would require ICR to undertake a burdensome and oppressive special study. ICR also objects to this request on the ground that CSX is already in possession of this information.

As explained above, fundamental basis for ICR's request that the Board require divestiture to it of CSX's Leewood-Aulon line is that "CSXT has consistently caused significant interference with and delays to IC's through train movements on the Leewood-Aulon Line" since December 1996. Responsive Application at 10. CSX is entitled to documents that relate to ICR's assertion.

Moreover, the fact that some -- but surely not all -- of the documents responsive to this request may be in CSX's files does not relieve ICR from producing its own internal documents relating to this fundamental assertion in its responsive application.

8. Document Request No. 10

ICR objects to this request on the basis that CSX is already in possession of this information. As

described above, a fundamental basis for ICR's request that the STB approve its purchase of CSX's Leewood to Aulon line is that CSX has significantly interfered with and delayed ICR's through train movements on the Leewood-Aulon Line since December 1996. Responsive Application at 10. ICR alleges that dispatching is a major source of such delays. Specifically, ICR asserts that "[r]epeated calls to CSXT dispatchers in Jacksonville are unaddressed and often even unanswered. Unlike the former Leewood operator, . . . the Jacksonville dispatchers are distant and relatively unconcerned with the Memphis 'outpost.' The result has been severe disruptions to IC's operations in Memphis, . . . " Id. at 11.

CSX is entitled to documents that relate to this assertion in ICR's responsive application, and ICR itself does not question the relevance of such documents. ICR merely objects to this request because it claims that CSX is in possession of these documents. This claim is plainly wrong, since ICR may well have internal memos discussing whether or not to contact CSX, or summarizing conversations with CSX relating to dispatching that did not involve sending a letter to CSX. In any event, the fact that some documents responsive to this request might be in the files of CSX does not relieve ICR from producing documents relating

to this basic factual premise of its responsive application.

9. Document Request No. 11

ICR objects to this request on the ground it would require ICR to undertake a burdensome and oppressive special study. ICR also objects on the ground that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. ICR further objects to this request on the ground that CSX is already in possession of this information.

For the reasons set forth in the discussion of Interrogatory No. 7 above, ICR's objections to this Document Requests are baseless. CSX incorporates herein the arguments made in response to Interrogatory No. 7.

10. Document Request No. 12

ICR objects to Document Request No. 12 on the ground that it would require ICR to undertake a burdensome and oppressive special study. This objection is clearly without merit. This document request does not ask ICR to create any new documents. It simply seeks the production of any existing documents that underlie an assertion made in ICR's responsive application about benefits that would result if the STB approved ICR's purchase of the Leewood- Aulon Line. If

ICR has no documents to support that assertion, CSX and NS are entitled to know that as well.

11. Document Request No. 13

ICR objects to this request on the basis that it is overly broad, would require ICR to undertake a burdensome and oppressive special study and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. These objections are baseless.

First, this document request seeks relevant information that, at a minimum, is reasonably calculated to lead to the discovery of admissible evidence. As described above in relation to Request No. 12, ICR has asserted that its purchase of the Leewood-Aulon line will result in "reductions in lost equipment utilization, fuel expenses, car hire payments, crew expenses, crew fatigue and delayed shipments and increases in on-time performance and operating efficiency." Responsive Application at 14. Request No. 13 seeks ICR's records for those expenses in 1995 and 1996 so any alleged savings in those expenses that would result from ICR's purchase of the Leewood-Aulon Line can be evaluated and compared with ICR's actual expenses prior to such purchase. These records would provide evidence relating the validity of ICR's assertion and, therefore, are relevant.

ICR's objection that this request is overly broad and unduly burdensome is similarly flawed. The request is narrowly defined so that it only seeks records relating to the expenses in the vicinity of the Leewood-Aulon line. Specifically, it seeks records only for ICR districts that include the Leewood-Aulon line.

12. Document Request No. 15

ICR objects to Document Request Nos. 15(b) and (c) on the basis that it has already produced the agreements in question. While ICR appears to have produced the 1907 Agreement and amendments to the 1907 Agreement, ICR does not appear to have produced any agreements that were superseded by the 1907 Agreement as requested in 15(b). CSX requests a copy of this 1905 Agreement. In addition, the map attached to the 1907 agreement (produced at IC-02-C-00045) is illegible. CSX requests a more legible copy.

ICR objects to Request 15(d) on the basis that the phrase "relating to" is vague, undefined and ambiguous. CSX is willing to clarify this request as follows: Request 15(d) seeks a copy of documents that interpret the meaning of any provisions in the 1905, 1907 or other agreements responsive to Requests 15(a) through 15(c).



I. Indiana & Ohio Railway Company ("IORY")

1. Document Request No. 10

IORY objects to Document Request No. 10 on the grounds that it is overbroad, unduly burdensome, and seeks information that is not relevant to any issue raised by IORY in these proceedings. IORY further objects on the grounds that the document request seeks confidential and sensitive commercial information, including information subject to disclosure restrictions imposed by contractual obligations with third parties. None of these objections are valid.

This request seeks the production of documents that are relevant to the assertions made by IORY in its responsive application. IORY seeks to have the Board condition its approval of the Proposed Transaction on granting IORY trackage rights over eight specified line segments in Ohio and Indiana. See IORY Responsive Application at 2-4. IORY seeks these trackage rights allegedly to "remedy two problems that will be caused by the control of CRC by CSXT and NSR." Verified Statement of Michael Burkart at 3. It specifically alleges that it seeks relief because of "operating problems and delays on two of its routes which are expected to become significantly worse if the control of CRC is approved." Id.

Document Request No. 10 seeks documents that will allow CSX and NS to evaluate whether and to what extent IORY itself is the cause of the operating problems and delays that it is complaining about. IORY purchased the former Detroit, Toledo & Ironton Railroad ("DTI") from Canadian National ("CN") in February 1997. Id. To the extent any delays experienced by IORY relate to its efforts to integrate the former DTI/CN lines into its system, it is clearly relevant.

Moreover, to the extent there was any adjustment in the purchase price IORY paid for those lines between the time CN first agreed to sell the lines to IORY and the consummation of that transaction, and that adjustment was due in whole or in part to a reassessment of the condition of the lines and/or the traffic they could handle (including issues relating to IORY's ability to handle time-sensitive traffic on the lines), it is clearly relevant. CSX and NS are entitled to discovery that would permit them to show that IORY paid a lower price to CN because it knew it was buying lines that have the very service problems IORY is now relying on as support for the relief sought in its responsive application.

Further, Document Request 10 is not overbroad or unduly burdensome. It seeks a well defined category of documents created over a limited period of time.

Finally, IORY's objection that Document Request 10 seeks confidential and sensitive commercial information is completely without merit. The Protective Order entered in this proceeding will adequately protect commercially sensitive information from disclosure.

2. Document Request No. 14

IORY objects to Document Request No. 14 on the grounds that it is overbroad, unduly burdensome, and seeks information that is not relevant to any issue raised by IORY in these proceedings. IORY further objects on the grounds that the document request seeks confidential and sensitive commercial information, including information subject to disclosure restrictions imposed by contractual obligations with third parties. None of these objections are valid.

Document Request 14 also seeks the production of documents that are relevant for evaluating the assertions made by IORY in its responsive application. IORY alleges that if the Proposed Transaction is approved, it "will undoubtedly experience significant additional delays, jeopardizing its ability to retain its time-sensitive traffic." Responsive Application at 5. This request seeks the production of documents establishing service commitments for traffic handled by IORY, which would allow CSX and NS to evaluate IORY's claim that delays will harm its ability to handle

time-sensitive traffic. Without such specific information regarding commitments that define what IORY's "time-sensitive" traffic is and what time tolerances are permitted, CSX and NS will not have a meaningful opportunity to evaluate and contest IORY's claim.

Further, Document Request 14 is not overbroad or unduly burdensome. It seeks a well defined, narrowly tailored category of documents.

Finally, IORY's objection that document request 14 seeks confidential and sensitive commercial information is completely without merit. Again the Protective Order entered in this proceeding will adequately protect commercially sensitive information from disclosure.

3. Document Request No. 15

IORY objects to Document Request No. 15 on the grounds that it is overbroad, unduly burdensome, and seeks information that is not relevant to any issue raised by IORY in these proceedings. IORY further objects on the grounds that the document request seeks confidential and sensitive commercial information, including information subject to disclosure restrictions imposed by contractual obligations with third parties. None of these objections are valid.

Document Request No. 15 requests IORY to produce relevant documents. As noted above, IORY only recently purchased its lines from CN. All of the commercial terms of the purchase - including any agreements by CN to route traffic over IORY, commitments regarding the handling of "time-sensitive traffic" and the other continuing commitments from CN to IORY or vice versa -- are relevant to evaluating and responding to IORY's claims, in particular its allegations that it will suffer commercially unacceptable delays and that it will lose "time sensitive traffic" as a result of the Proposed Transaction.

Further, Document Request No. 15 is not overbroad or unduly burdensome. It seeks a well defined, narrowly tailored category of documents.

Finally, the Protective Order entered in this proceeding will adequately protect commercially sensitive information from disclosure.

4. Document Request No. 16

IORY objects to Document Request No. 16 on the grounds that it is overbroad, unduly burdensome, and seeks information that is not relevant to any issue raised by IORY in these proceedings. IORY further objects on the grounds that the document request seeks confidential and sensitive commercial information,



including information subject to disclosure restrictions imposed by contractual obligations with third parties.

IORY's relevance objection with respect to Document Request No. 16 is also without merit. Like the other document requests objected to by IORY, this request seeks the production of documents that are relevant to the assertions made by IORY in its responsive application. IORY contends that its trains have been delayed while operating over the Consolidated Rail Corporation ("CRC") lines between Springfield and Cincinnati, OH pursuant to trackage rights. See Verified Statement of Michael Burkart at 4. IORY also contends that those trackage rights operations will be subject to additional delays post-Transaction. Id. at 4-5. CSX and NS are entitled to discovery establishing the actual terms of IORY's existing trackage rights with CRC, including any terms relating to delays, as well as the terms of ancillary agreements for interchange, switching or haulage. Such agreements may also shed light on whether IORY would in fact have the ability to use the trackage rights it has requested in the manner and for the purposes it describes in the responsive application and its Operating Plan.

Further, Document Request No. 16 is not overbroad or unduly burdensome. It seeks a well defined, narrowly tailored category of documents.

Finally, the Protective Order entered in this proceeding will adequately protect commercially sensitive information from disclosure.

J. Indiana Southern Railroad, Inc. ("ISRR")

1. Document Request No. 9

ISRR objects to this document request on the grounds that it is overbroad, unduly burdensome, and seeks information that is not relevant to any issue raised by ISRR in these proceedings. ISRR further objects on the grounds that it seeks confidential and sensitive commercial information, including information subject to disclosure restrictions imposed by contractual obligations with third parties.

ISRR's relevance objection is without merit. ISRR seeks to have the Board condition its approval of the Proposed Transaction on granting ISRR trackage rights over six specified line segments in Indiana. See ISRR Responsive Application at 2-3. In attempting to justify the imposition of these conditions, ISRR alleges that "[b]ecause the shortlines in the Indianapolis area do not directly connect and CRC's switching charge is excessive, these carriers have foregone many opportunities to market rail services between their respective lines . . . ." Id. at 5.

Document Request No. 9 seeks documents that will allow CSX and NS to evaluate ISRR's claim relating to

CRC's switching charge. CSX and NS are entitled to the production of documents that relate to the assertions made by ISRR in its responsive application.

Further, Document Request No. 9 is not overbroad or unduly burdensome. It seeks a well defined category of documents.

Finally, ISRR's objection that document request 9 seeks confidential and sensitive commercial information is completely without merit. The Protective Order in this proceeding will adequately protect commercially sensitive information from disclosure.

2. Document Request No. 10

ISRR objects to this document request on the grounds that it is overbroad, unduly burdensome, and seeks information that is not relevant to any issue raised by ISRR in these proceedings. ISRR further objects on the grounds that it seeks confidential and sensitive commercial information, including information subject to disclosure restrictions imposed by contractual obligations with third parties.

ISRR's relevance objection is baseless. Document Request No. 10 seeks the production of documents that are relevant to evaluating assertions made by ISRR in its responsive application. ISRR contends that its current operations in the Indianapolis area will be affected by the Proposed Transaction. ISRR also seeks

rights to operate over Consolidated Rail Corporation ("CRC") lines in Indianapolis and from Indianapolis to three other Indiana cities. See Responsive Application at 2-3. CSX and NS are entitled to discovery establishing the actual terms of any existing trackage rights ISRR has on CRC lines, as well as the terms of ancillary agreements for interchange, switching or haulage. Such agreements may also shed light on whether ISRR would in fact have the ability to use the trackage rights it has requested in the manner and for the purposes it describes in the responsive application and its Operating Plan.

Further, Document Request No. 10 is not overbroad or unduly burdensome. It seeks a well defined, narrowly tailored category of documents.

Finally, the Protective Order entered in this proceeding will adequately protect commercially sensitive information from disclosure.

K. AK Steel Corporation ("AK")

CSX objects to the five-day objections raised by AK in response to the Interrogatories and Requests for Production of Documents directed to AK in CSX-69. Frederic L. Wood of Donelan, Cleary, Wood & Maser objected on behalf of AK on the ground that "[a]ll of the discovery requests on CSX-69 appear to relate to a request for a switching fee cap of \$130," whereas, in

Mr. Wood's view, AK raised no such request in its comments filed in this proceeding. However, CSX-69 contains no mention of a \$130 switching fee cap. Mr. Wood may have confused CSX-69 with CSX-80, which is CSX's First Set of Interrogatories and Requests for Production of Documents to the NITL; the NITL is also represented by Mr. Wood.

In any event, CSX has attempted to resolve the matter by leaving voicemail messages with Mr. Wood on Friday, November 14, and Monday, November 17, but has as yet received no response. In those messages, CSX explained that CSX-69 sought only general information regarding AK's position with respect to switching costs. CSX further offered to withdraw the discovery requests contained in CSX-69 in return for a written stipulation from AK that (1) AK has not and will not ask for a particular switching fee cap, and (2) that AK does not currently take a position on the "reasonableness" of any fee. Because Mr. Wood has failed to respond, however, CSX now seeks an order compelling AK's compliance with CSX-69 as propounded.

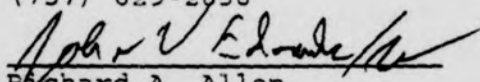
For the foregoing reasons, CSX and NS request that Your Honor order these parties to provide responses to each of the interrogatories and document requests discussed above to the extent requested herein. These



issues will be raised at the discovery conference to be held on Thursday, November 20, 1997.

Respectfully submitted,

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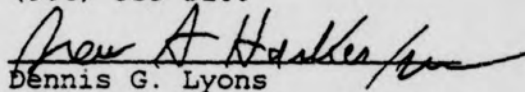
  
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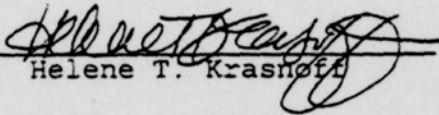
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November 17, 1997

CERTIFICATE OF SERVICE

I, Helene T. Krasnoff, certify that on November 17, 1997, I caused to be served a true and correct copy of the foregoing CSX/NS-163, CSX and Norfolk Southern's Motion to Compel Discovery, on all parties on the Restricted Service list in Finance Docket No. 33388, in all cases by facsimile transmission.

  
\_\_\_\_\_  
Helene T. Krasnoff

ANDREWS OFFICE PRODUCTS CAPITOL HEIGHTS, MD (K)

## Page 13

- (1) suit against the firm.  
 (2) Q. And do you understand that you're  
 (3) testifying under oath and your obligation is to  
 (4) the truth; and, if you don't understand my  
 (5) questions, you're free to inquire what I'm  
 (6) driving at?  
 (7) A. I understand.  
 (8) Q. All right, sir. Now, I've reviewed  
 (9) your verified statement. I just want to quickly  
 (10) review your educational qualifications. What is  
 (11) your degree from Villanova?  
 (12) A. Social studies.  
 (13) Q. Do you have any graduate education?  
 (14) A. Yes.  
 (15) Q. What were your courses?  
 (16) A. In business. I completed, oh, about  
 (17) half of an M.B.A. program.  
 (18) Q. And what were your responsibilities  
 (19) with Booz, Allen, were they just as listed on  
 (20) page 1 here, transportation only, or were there  
 (21) other matters in which you were involved?  
 (22) A. Other matters.  
 (23) Q. What were those sorts of matters?  
 (24) A. I would say general business issues in  
 (25) the context of general management studies for a

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- (1) variety of industries, but primarily  
 (2) transportation.  
 (3) Q. I see. And when did you assume the  
 (4) title of vice president for corporate development  
 (5) of CSX Transportation?  
 (6) A. The summer of '95 - spring of '95.  
 (7) Q. What were you doing before that time?  
 (8) A. I was vice president of service design.  
 (9) Q. What are your responsibilities as vice  
 (10) president of corporate development?  
 (11) A. The job is primarily to look at  
 (12) long-term strategic issues. And what's occupied  
 (13) my time for - most of the time for the last few  
 (14) years has been merger and acquisition activities.  
 (15) Q. I see. Now, CSX and Conrail announced  
 (16) their merger agreement on October 16 of '96, if I  
 (17) recall correctly. Is it your testimony that you  
 (18) were involved for some period of time prior to  
 (19) that in any negotiations or studies concerning a  
 (20) possible merger with Conrail?  
 (21) A. Yes.  
 (22) Q. How long a period of time were you  
 (23) involved in that?  
 (24) MR. SIPE: Negotiations or studies or  
 (25) both? Are you asking him about one or the other?

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- (1) BY MR. McBRIDE.  
 (2) Q. Let's start with negotiations. How  
 (3) long a period of time did that involve?  
 (4) A. Actually probably in the spring of '84.  
 (5) Q. Spring of '84. All right. And what  
 (6) were your responsibilities at that time?  
 (7) A. A member of the study team to examine  
 (8) the government's activities relative to the  
 (9) privatization of Conrail.  
 (10) Q. Did there come a time when those  
 (11) negotiations terminated?  
 (12) A. Yes, when the government made a  
 (13) decision to sell Conrail on the open market.  
 (14) Q. And when did those negotiations again  
 (15) resume?  
 (16) A. Negotiations rather than studies?  
 (17) Q. Yes.  
 (18) A. Oh, spring and summer of '95.  
 (19) Q. And how long a period of time were you  
 (20) involved in studies concerning a possible merger  
 (21) or acquisition of Conrail?  
 (22) A. Probably around all the same times that  
 (23) I've just previously mentioned.  
 (24) Q. Now, your job title prior to vice  
 (25) president of corporate development was what

## Page 16

- (1) again?  
 (2) A. Vice president of service design.  
 (3) Q. And what were your responsibilities in  
 (4) that capacity?  
 (5) A. To develop - to create a capability of  
 (6) the railroad to work toward the running of a  
 (7) scheduled railroad. So I was responsible for  
 (8) schedules and classification, equipment planning,  
 (9) equipment distribution, product development, if  
 (10) you will.  
 (11) Q. How many years were you doing that sort  
 (12) of thing?  
 (13) A. Three or four.  
 (14) Q. In that period of time and perhaps  
 (15) prior to it as well, did you acquire a  
 (16) substantial familiarity with the CSX system?  
 (17) A. Yes.  
 (18) Q. And do you feel you have some  
 (19) substantial familiarity with the Conrail system  
 (20) at this point as a result of the negotiations and  
 (21) studies with which you were involved?  
 (22) A. Some familiarity.  
 (23) Q. It's my understanding that, at some  
 (24) period of time, you were given the responsibility  
 (25) to negotiate or lead a negotiating team for CSX

## Page 17

- (1) with Mr. McClellan of Norfolk Southern; is that  
 (2) correct?  
 (3) A. Yes.  
 (4) Q. When were you given that assignment?  
 (5) A. The first time in the summer of '95.  
 (6) Q. You were negotiating with Norfolk  
 (7) Southern in the summer of '95?  
 (8) A. Yes, sir.  
 (9) Q. And what were you negotiating about?  
 (10) A. Conrail.  
 (11) Q. And there were no public announcements  
 (12) of any acquisition or merger concerning Conrail  
 (13) at that time as I recall; am I correct on that?  
 (14) A. I'm not certain what the definition of  
 (15) a public announcement is in this case. It was  
 (16) not widely publicized.  
 (17) Q. And what were you negotiating  
 (18) specifically with Norfolk Southern to achieve?  
 (19) A. An acquisition of Conrail and to share  
 (20) the assets and lines of the company between  
 (21) Norfolk and CSX.  
 (22) Q. And is it fair to assume that those  
 (23) negotiations were not successful at that time?  
 (24) A. Not successful.  
 (25) Q. What was the reason they were not

## Page 18

- (1) successful, if you can recall?  
 (2) A. We couldn't agree.  
 (3) Q. Was there a prime stumbling block that  
 (4) you both wanted a particular line or access to a  
 (5) particular metropolitan area that got in the way,  
 (6) or was it some other consideration?  
 (7) A. It was a complex negotiation but  
 (8) primarily line allocation.  
 (9) Q. Now, ultimately, if we can step forward  
 (10) to the present time and the proposed transaction,  
 (11) CSX and Norfolk Southern as I understand it have  
 (12) agreed that CSX would take the old New York  
 (13) Central route, if you will, and Norfolk Southern  
 (14) will take the old Pennsylvania Railroad route; is  
 (15) that your understanding?  
 (16) A. That's one shorthand way to describe  
 (17) it.  
 (18) Q. And I gather that that was not  
 (19) something that you and Norfolk Southern were  
 (20) agreeable on during this first round of  
 (21) negotiations in '95, or had it gotten at least  
 (22) that far?  
 (23) MR. SIPE: I don't understand the  
 (24) question.  
 (25) BY MR. McBRIDE:

STB

FD-33388

ID-184207

11-25-97

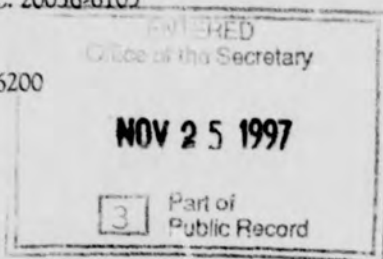
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**BY HAND DELIVERY**

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

November 25, 1997



D

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Washington, D.C.

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

Dear Secretary Williams:

Enclosed you will find an original and 25 copies of the Errata to Volume I of the Comments and Requests for Conditions of Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission (VRE-8), containing Highly Confidential information and filed under seal, and an original and 25 copies of the Errata for the redacted version of Volume I.

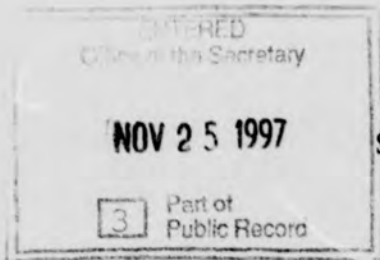
Please stamp the extra copy of each of the foregoing items and return them to our messenger.

Respectfully submitted,

*Paul M. Laurenza*

Paul M. Laurenza

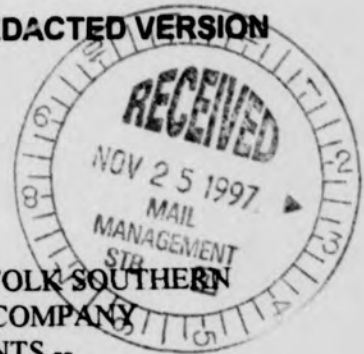
Enclosures



BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

REDACTED VERSION



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

~~Finance Docket No. 33388 (Sub-No. 37)~~

**ERRATA TO THE COMMENTS AND REQUESTS FOR CONDITIONS  
OF NORTHERN VIRGINIA TRANSPORTATION COMMISSION AND  
POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION**

The Northern Virginia Transportation Commission and Potomac and Rappahannock  
Transportation Commission hereby submit the following errata to their Comments and Requests  
for Conditions filed in this proceeding on October 21, 1997:

Comments, p. 12, note 3, line 2 - Add "16 -19 and 28 - 31" after "pages"

Comments, p. 13, line 3 - Change "Ft. Lauderdale" to "West Palm Beach"

Comments, p. 17, line 20 - Change "43" to "44"

Comments, p. 18, line 2 - Change "61" to "60"

Comments, p. 18, note 5, lines 1, 2 - Add "passenger" after "(not 22)" and "(not 35)"

Comments, p. 19, line 15 - Add "1" after "Exhibit:"

Comments, p. 21, line 2 - Add "2" after "Exhibit"

Comments, p. 29, last line - Change " " to " "

Comments, p. 30, line 4 - Change "63" to "68" and "50" to "58"

Comments, p. 30, line 5 - Change "at 7" to "Table 1"

Comments, p. 30, line 7 - Change " " to " "

Comments, p. 37, between lines 10 and 11 - Insert the following:

**"8. Term Of CSX Agreement**

Under Section 4.1 of the current CSX Agreement as extended, the agreement terminates on June 30, 1999. The parties have an obligation to meet during the term of the agreement to discuss its extension and possible modification. The Commissions want this provision to be changed so that the current CSX Agreement will run through June 30, 2008. Attachment 3 at 27."

Comments, p. 41, line 14 - Change "90" to (90)

**MacIsaac/Taube VS:**

MacIsaac/Taube VS, p. 10, line 3 - Change "Ft. Lauderdale" to "West Palm Beach"

MacIsaac/Taube VS, p. 12, note 4 - Change "1977" to "1997"

**Banks VS:**

Banks VS, p. 1, line 18 - Change "line" to "lines"

Banks VS, p. 3, line 13 - Change "81.1" to "80.5"

Banks VS, p. 4A - Change "4A" to "7B"

Banks VS, p. 4B - Change "4B" to "7C"

Banks VS, p. 5, line 4 - Change "between" to ". Between"

Banks VS, p. 5, line 4 - Insert comma after "CP Virginia" and delete "(D.C. - Virginia line)"

Banks VS, p. 7, line 3 - After the period insert "I prepared two stringline figures to graphically illustrate how the concentration of CSX freight trains increases within VRE commuter train hours[.]"

Banks VS, p. 7, line 4 - Change "number" to "percent"

Banks VS, p. 7, line 5 - Change "nearly half again, to 63 percent" to "more than half again, to more than 68 percent"

Banks VS, p. 7, line 11 - Delete sentence "I prepared .....hours[.]"

Banks VS, p. 7A, "Post Acquisition Trains" - Change "12" to "13" and "63%" to "68%"; Under "Increase" - Change "100%" to "117%" (See attached revised page 7A)

Banks VS, p. 7B - Substitute revised page "7B" for original page "4A" (See attached revised page 7B)

Banks VS, p. 7C - Substitute "7C" for original page "4B" (See attached revised page 7C)

Banks VS, p. 9, line 1 - Change "this percentage" to "the percentage of scheduled NS freight trains running during the VRE rush hour period"

Banks VS, p. 9, line 3 - Change "3.5" to "4"

Banks VS, p. 9, last line - Add "more than" after "Virginia"

Banks VS, p. 9, last line - Change "18" to "19"

Banks VS, p. 9B, "Post-Acquisition Trains" - Change "18" to "19" and "67%" to "70%"; under "Increase" - Change "200%" to "217% as per revised table" (See attached revised page 9B)

Banks VS, p. 12, line 8 - Change "CSX" to "CSX/Conrail"

Banks VS, p. 12, line 11 - Change "CSX" to "CSX/Conrail"

Banks VS, p. 12, line 12 - Change "CSX" to "CSX/Conrail"

Banks VS, p. 12, line 14 - Change "CSX" to "CSX/Conrail"

Banks VS, p. 12, line 18 - Change "maintain VRE commuter train" to "maintain even the current VRE commuter train"

Banks VS, p. 13, line 12 - Change "will enable" to "would have enabled"

Banks VS, p. 13, line 14 - Change "may be encountered" to "may have been encountered given the previous number of freight trains"

Banks VS, p. 13, line 15 - Change "freight trucks" to "freight trains (trucks)"

Banks VS, p. 13, line 16 - Change "truck traffic" to "freight train (truck)"

Banks VS, p. 14, line 4 - Change "will increase" to "will substantially increase"

Banks VS, p. 14, line 5 - Change "81.1" to "80.5"

Banks VS, p. 14, line 8 - Change "81.1" to "80.5"

Banks VS, p. 15, line 2 - After "trains" insert "but in any case no more than 50 percent"

Banks VS, p. 15, line 3 - Change "CSX" to "CSX/Conrail"

Banks VS, p. 15, line 4 - Delete "by 4.8 percent"

Banks VS, p. 15, line 5 - Change "13.3" to "13.7" and change "56.5" to "61.2"

Banks VS, p. 15, line 6 - Delete "by 4.8 percent" and change "14.5" to "15.3"

Banks VS, p. 15, line 7 - Change "49.5" to "57.7"

Banks VS, p. 15, line 8 - Change "This delay prediction is" to "These delay predictions are"

Banks VS, p. 15A - Table 5 should also source Table 1 (See attached revised page 15A)

Banks VS, p. 15B - Table 6 should also source Tables 2 and 3 (See attached revised page 15B)

Banks VS, p. 16, line 9 - Insert comma after "of"

Banks VS, p. 16, line 13 - Change "station" to "Station"

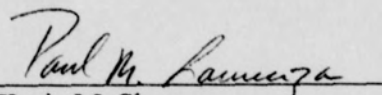
Banks VS, p. 17, line 14 - Delete "both"

Banks VS, Attachment B, page 1 of 21 "Present CSX Through Trains" (See attached revised page 1 of 21)



Attachment B, page 1 of 21, "Proposed CSX Through Trains" (See attached revised page 1 of 21)

Attachment B, page 2 of 21, "Post-Acquisition NS Through Trains" (See attached revised page 2 of 21)



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Counsel for Northern Virginia  
Transportation Commission and  
Potomac and Rappahannock  
Transportation Commission

Dated: November 21, 1997

REVISED TABLE 1  
CSX TRAINS BETWEEN  
ALEXANDRIA and FREDERICKSBURG

	<u>1995 Base Trains</u>	<u>Post-Acquisition Trains</u>	<u>Increase (Percent)</u>
Daily CSX Freight Trains	16.3	23.4	44%
Scheduled CSX Freight Trains	14	19	36%
Freight Trains Scheduled During Rush Hour Periods	6	13	117%
Percent Scheduled During Rush Hour Periods	43%	68%	

Source: Application Volume 3A, Attachment 13-5; Highly Confidential Depository Train Schedules; RLBA estimates.

Figure A.

## Present CSX Freight Trains

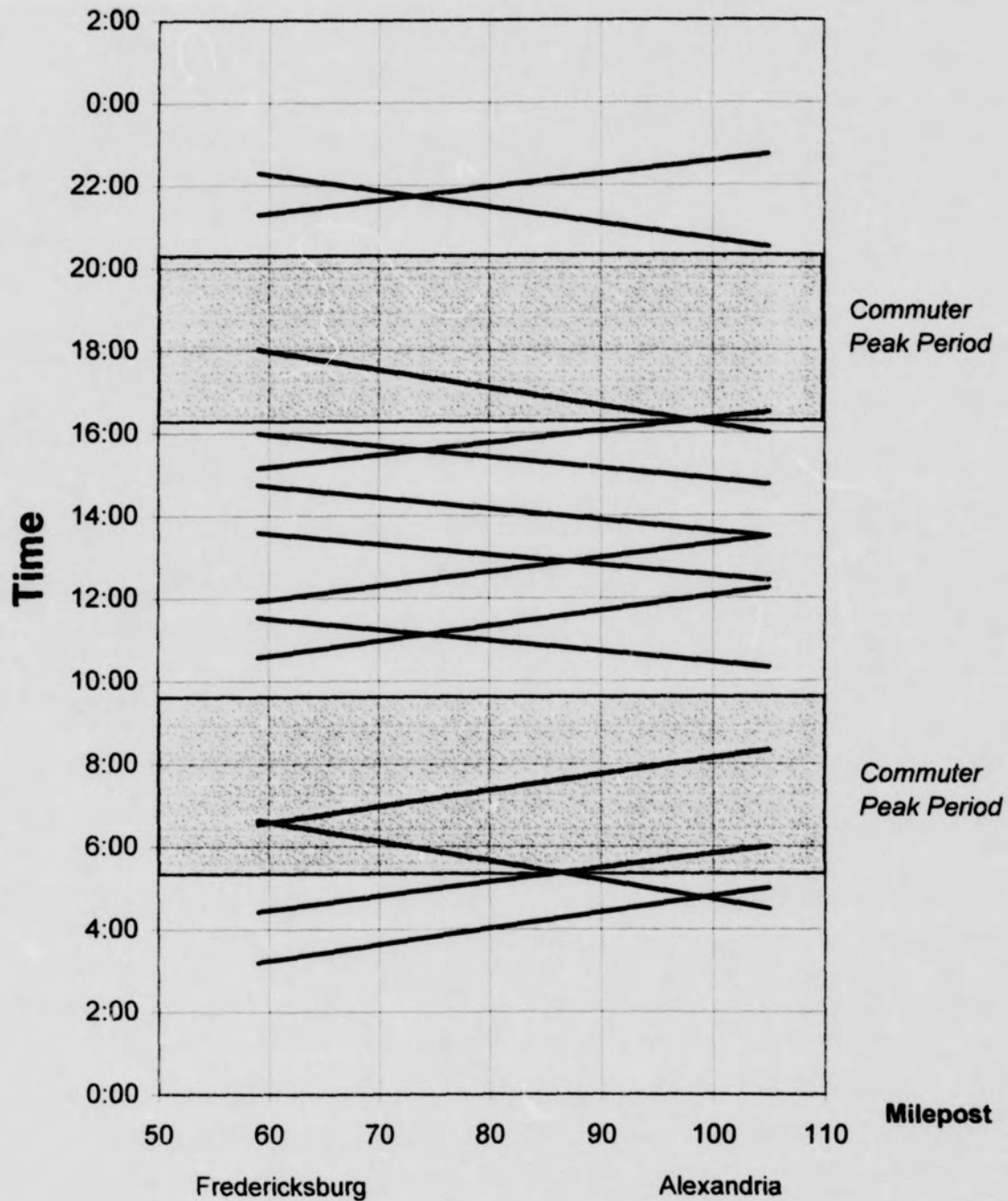
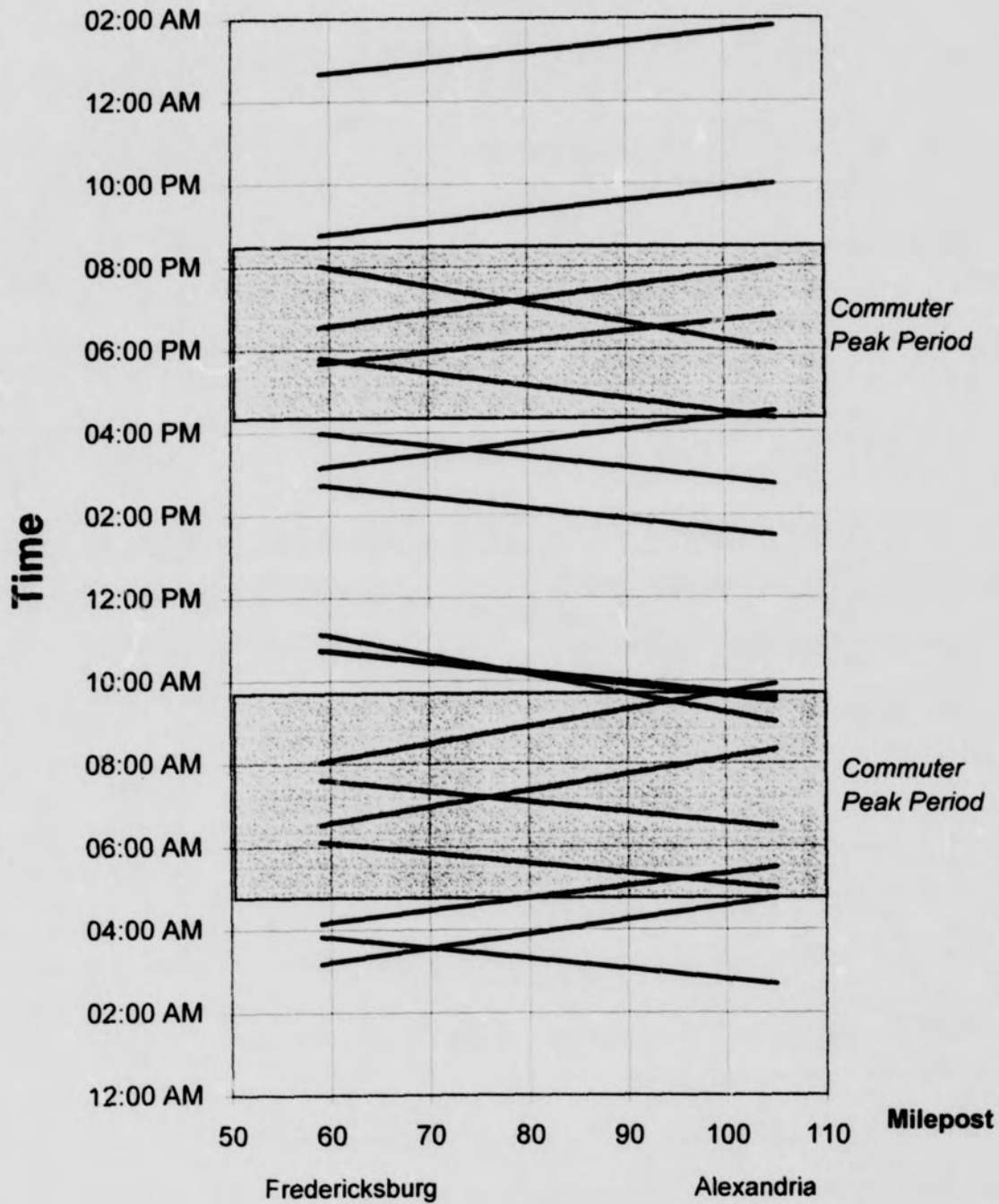


Figure B

## Post-Merger CSX Freight Trains *Revised*



REVISED TABLE 3  
CSX AND NS TRAINS BETWEEN  
CP VIRGINIA and ALEXANDRIA

	1995 Base <u>Trains</u>	Post-Acquisition <u>Trains</u>	Increase <u>(Percent)</u>
Daily CSX and NS Freight Trains	17.9	28.6	60%
Scheduled CSX and NS Freight Trains	16	27	69%
Freight Trains Scheduled During Rush Hour Periods	6	19	217%
Percent Scheduled During Rush Hour Periods	38%	70%	

Source: Application Volume 3A, Attachment 13-6; Highly Confidential Depository Freight Schedules; RLBA estimates.



Revised Table 5  
Projected Post-Acquisition Delays to VRE Trains as a Result of Increased Freight Traffic During Peak Periods  
Fredericksburg Line

CSX/Conrail line between CP Virginia and Fredericksburg					
Delay Type	Base Period		Post-Acquisition		
	Freights During Peak Periods	Actual VRE Delays Exceeding 5 Minutes	Freights During Peak Periods	Rate of Increased Delay (percent)	Projected VRE Delays Exceeding 5 Minutes
Mechanical	6	21	13	117%	46
Track	6	36	13	50%	54
Signal	6	135	13	50%	203
Freight	6	75	13	117%	163
Passenger	6	61	13	0%	61
Dispatcher	6	12	13	50%	18
Rules Test	6	1	13	0%	1
Congestion	6	2	13	117%	4
Total		343			550
VRE Trains Operated		4018			4018
Percent delayed		8.5%			13.7%

Data is from April 1996 through September 1997 excluding July and August 1997, which had unusual derailment and signal delays.

Source: VRE delay reports; Table 1; RLBA estimates.

Revised Table 6  
Projected Post-Acquisition Delays to VRE Trains as a Result of Increased Freight Traffic During Peak Periods  
Manassas Line

Delay Type	CSX/Conrail line between CP Virginia and Alexandria					NS line between Alexandria and Manassas/Broad Run					TOTAL BOTH RAILROADS CP Virginia and Manassas	
	Base Period		Post-Acquisition			Base Period		Post-Acquisition			Base	Post-Acq.
	Freights	Actual	Freights	Rate of	Projected	Freights	Actual	Freights	Rate of	Projected	Actual	Projected
	During Peak Periods	VRE Delays Exceeding 5 Minutes	During Peak Periods	Increased Delay (percent)	VRE Delays Exceeding 5 Minutes	During Peak Periods	VRE Delays Exceeding 5 Minutes	During Peak Periods	Increased Delay (percent)	VRE Delays Exceeding 5 Minutes	VRE Delays Exceeding 5 Minutes	VRE Delays Exceeding 5 Minutes
Mechanical	6	4	19	217%	13	2	0	6	200%	0	4	13
Track	6	20	19	50%	30	2	107	6	50%	131	127	191
Signal	6	53	19	50%	80	2	56	6	50%	84	109	164
Freight	6	31	19	217%	98	2	20	6	200%	60	51	158
Passenger	6	55	19	0%	55	2	33	6	0%	33	88	88
Dispatcher	6	10	19	50%	15	2	5	6	50%	8	15	23
Rules Test	6	5	19	0%	5	2	44	6	0%	44	49	49
Congestion	6	4	19	217%	13	2	5	6	200%	15	9	28
Total		182			309		270			405	452	714
VRE Trains Operated		4672			4672		4672			4672	4672	4672
Percent delayed		3.9%			6.6%		5.8%			8.7%	9.7%	15.3%

Data is from April 1996 through September 1997 excluding July and August 1997 which had unusual derailment and signal delays.

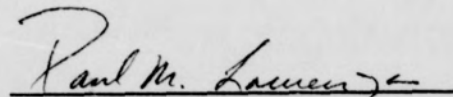
Source: VRE delay reports; Tables 2 and 3; RLBA estimates.

REVISED  
CSX PRESENT AND POST-ACQUISITION  
FREIGHT TRAIN SCHEDULES

REVISED  
NS PRESENT AND POST-ACQUISITION  
FREIGHT TRAIN SCHEDULES

**CERTIFICATE OF SERVICE**

I certify that I have served a conformed copy of the foregoing **Errata to the Comments and Requests for Conditions of Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission** in Finance Docket No. 33388, by first class mail properly addressed, postage pre-paid, or by more expeditious manner of delivery upon Administrative Law Judge Jacob Leventhal and All Parties of Record on the Service List.

  
Paul M. Laurenza

Dated: November 25, 1997



STB

FD-33388

ID-184205

11-25-97

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**LAROE, WINN, MOERMAN & DONOVAN**

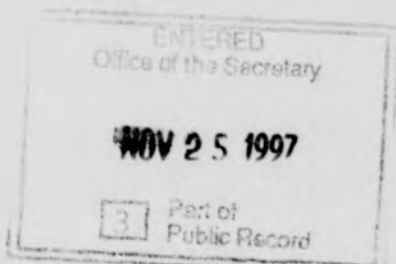
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November 25, 1997

D

Vernon A. Williams, Secretary  
Office of the Secretary  
Case Control Branch  
ATTN: STB Finance Docket No. 33388  
Surface Transportation Board  
1925 K Street, NW  
Washington, DC 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:

In the transmittal letter accompanying NYNJ-18, filed November 24, 1997, I erroneously indicated that the Port Authority of New York and New Jersey was filing confidential and highly confidential versions, as well as a public version, of NYNJ-18. In fact, the Port Authority filed only a public version of that document. I regret the error.

Very truly yours,

Paul M. Donovan

cc: Restricted Service List

LA ROE, WINN, MOERMAN & DONOVAN

ATTORNEYS AT LAW

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November 24, 1997

Vernon A. Williams, Secretary  
Office of the Secretary  
Case Control Branch  
ATTN: STB Finance Docket No. 33388  
Surface Transportation Board  
1925 K Street, NW  
Washington, DC 20423-0001

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

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of the highly confidential version, an original and twenty-five copies of the confidential version, and an original and twenty-five (25) copies of Comments on Behalf of the Port Authority of New York and New Jersey With RESpect to Applicants' North Jersey Shared Asset Operating Plan (NYNJ-18) for filing in the above-captioned proceeding. An additional copy of each is enclosed for file stamp and return with our messenger. Please note that copies of these filings are also enclosed on 3.5-inch diskette in WordPerfect 5.1 format.

Very truly yours,

Paul M. Donovan

STB

FD-33388

ID-184170

11-24-97

D

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November 24, 1997

**BY HAND DELIVERY**

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



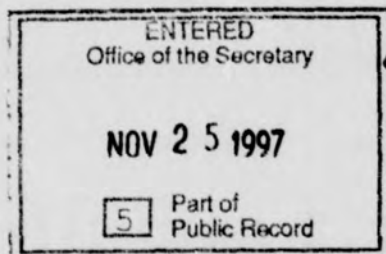
**Re: Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation -- Transfer of Railroad Line by Norfolk Southern Railway Company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

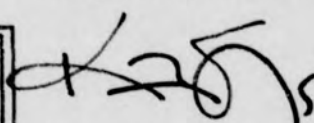
Dear Secretary Williams:

Enclosed you will find the original and 25 copies of the Comments of New Jersey Department of Transportation and New Jersey Transit Corporation on North Jersey Shared Assets Area Operating Plan (NJT - 12), together with a 3.5-inch diskette containing the filing in WordPerfect 5.1.

Please stamp the extra copy of the foregoing and return it to our messenger.

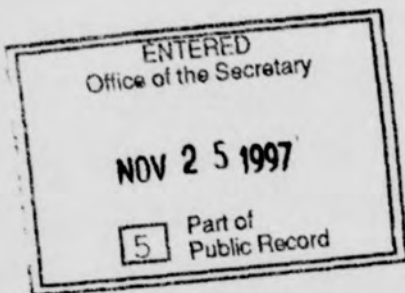
Respectfully submitted,



  
Kevin M. Sheys

Enclosures

184170



NJT-12

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388



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

~~Finance Docket No. 33388 (Sub-No. 38)~~

NEW JERSEY TRANSIT CORPORATION  
-- OPERATING RIGHTS --  
LINES OF CONSOLIDATED RAIL CORPORATION

COMMENTS OF NEW JERSEY DEPARTMENT OF TRANSPORTATION  
AND NEW JERSEY TRANSIT CORPORATION ON  
NORTH JERSEY SHARED ASSETS AREA OPERATING PLAN

Robert Shire  
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Counsel for New Jersey Department of Transportation  
and New Jersey Transit Corporation

Dated: November 24, 1997



BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

Finance Docket No. 33388

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

~~Finance Docket No. 23300 (Sub No. 38)~~

NEW JERSEY TRANSIT CORPORATION  
-- OPERATING RIGHTS --  
LINES OF CONSOLIDATED RAIL CORPORATION

---

COMMENTS OF NEW JERSEY DEPARTMENT OF TRANSPORTATION  
AND NEW JERSEY TRANSIT CORPORATION ON  
NORTH JERSEY SHARED ASSETS AREA OPERATING PLAN

I. COMMENTS

A. Introduction

Pursuant to Decision No. 44, served on October 15, 1997, New Jersey Department of Transportation ("NJDOT") and New Jersey Transit Corporation ("NJTC") hereby submit their Comments on the North Jersey Shared Assets Area Operating Plan ("NJSAA Operating Plan").<sup>1</sup>

---

<sup>1</sup> For convenience, NJDOT and NJTC are sometimes collectively referred to herein as NJT. References herein to NJTC also include NJTC's rail operating subsidiary, New Jersey Transit Rail Operations, Inc., which is sometimes separately referred to as "NJTRO."

On October 21, 1997, NJT filed its Comments and Request for Conditions regarding the proposed control of Consolidated Rail Corporation ("Conrail") by CSX Corporation and CSX Transportation, Inc. ("CSXT") (collectively "CSX") and Norfolk Southern Corporation and Norfolk Southern Railway Company ("NSR") (collectively "NS"); the division of Conrail's assets between CSX and NS; and the proposed joint operations of CSXT and NSR.<sup>2</sup>

In Decision No. 44, the Board ordered Applicants to submit an operating plan or plans covering their operations in the North Jersey Shared Assets Area (the "NJSAA"). The Board noted its statutory obligations to consider "the effect of the proposed transaction on the adequacy of transportation to the public," citing 49 U.S.C. § 11324(b)(1), and stated that "[a]rrangements such as those affecting the North Jersey Shared Assets Area can have a significant impact on the adequacy of transportation." Decision No. 44 at 4. The Board ordered the applicants to submit an operating plan or plans to demonstrate that the "North Jersey Shared Assets Area operating arrangements that Applicants have in mind will be feasible and will not unduly impact commuter and other rail operations in this densely populated, highly congested area." *Id.* In the NJT Comments, NJT indicated that to the extent its concerns about the effects of the proposed transactions related to the NJSAA, it anticipated filing additional comments addressing its concerns and providing additional support for its conditions. NJT Comments at 4.

On October 29, 1997, the Applicants filed the NJSAA Operating Plan and the supporting Joint Verified Statement of John W. Orrison and D. Michael Mohan ("Orrison/Mohan JVS").

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<sup>2</sup> Comments and Requests for Conditions of New Jersey Department of Transportation and New Jersey Transit Corporation (NJT-8) (referred to herein as the "NJT Comments").

**B. Withdrawal Of Condition Regarding Additional Capital Expenditures On NK-Aldene Segment**

In the NJT Comments, NJT explained the critical importance of the segment of rail line between NK and CP Aldene. This 5.5-mile segment, which is in the NJSAA, will be controlled by the Conrail Shared Assets Operator (the "CSAO") and will be used by NS and CSX for through-freight traffic as well as for the CSAO freight operations. Railroad Control Application ("App."), Vol. 3B at 303; NJT Comments at 13. NJT requested that the Board require the Applicants to make certain capital improvements and indicated its intention to ask the Board for additional capital-improvement conditions after NJT had an opportunity to review the NJSAA Operating Plan. NJT Comments at 14-16. Based upon its review of the information made available by or obtained from the Applicants, NJT has determined that it will no longer seek imposition of a Board condition requiring any capital improvements in connection with the NK-Aldene segment.

**C. Adequacy Of Dispatching and Maintenance Resources In The NJSAA**

In the NJT Comments, NJT explained that after review of the NJSAA Operating Plan, it might seek additional conditions regarding the adequacy of dispatching and maintenance personnel in the NJSAA. NJT Comments at 17. Having reviewed the NJSAA Operating Plan, NJT has determined that it will not seek any such conditions.

**D. The NJSAA Operating Plan Lends Further Support To NJT's Requested Coordination Condition**

The significant levels of commuter and freight rail operations in the densely populated, highly congested NJSAA require that the Board put in place an effective mechanism for coordination and communication among NJT, the CSAO, NS and CSX. NJT Comments at 9-10. The NJSAA Operating Plan and the accompanying Joint Verified Statement of John W. Orrison

and D. Michael Mohan contain information strongly supporting the coordination condition sought by NJT.

Messrs. Orrison and Mohan acknowledge that the NJSAA Operating Plan is the product of "ongoing analysis of CSX and NS transition teams" and is an "evolving instrument that is intended to guide CSX and NS operating personnel in anticipating traffic flows and in developing the train schedules and road and yard crew assignments that will most safely and efficiently handle" anticipated traffic. Orrison/Mohan JVS at 2, 3. They indicate that CSX and NS plan to maintain, for the most part, existing Conrail yard assignments and operations, as well as to continue Conrail dispatching of the area, . . ." (Orrison/Mohan JVS at 5) (emphasis added).

The NJSAA Operating Plan makes the same points. The NJSAA Operating Plan is an "evolving instrument that is intended to guide CSX and NS operating personnel" and "must be flexible enough to adapt to changing market conditions . . ." NJSAA Operating Plan at 20. The NJSAA Operating Plan clearly acknowledges that from an operating standpoint, there will be three freight railroads in the NJSAA, not counting third parties such as NJTRO. CSAO operations in the NJSAA include "providing local switching, train break-up, classification and assembly services for CSX and NS, equipment servicing (including minor repairs), and routine track, communications and signal maintenance for [shared assets areas] facilities." NJSAA Operating Plan at 27. The fact that the CSAO will be operating for the commercial benefit of only CSX and NS -- a point which Applicants take great pains to explain -- has nothing whatever to do with the fact that there will be at least three operating freight railroads in the NJSAA, plus NJTRO. CSAO will operate trains and perform numerous other operating functions, and CSX and NS will be operating their "own" trains in the NJSAA. Id.

The coordination condition sought by NJT will ensure that implementation of the evolving NJSAA Operating Plan and the operation of multiple freight railroads in the NJSAA will not have an adverse impact on the safety or reliability of NJT's commuter rail operations in and around the NJSAA.

**E. The NJSAA Operating Plan Further Shows The Need For NJT's Requested Condition Regarding ATC/PTS**

NJT is seeking a condition requiring NS, CSX and the CSAO to install Automatic Train Control/Positive Train Stop ("ATC/PTS") on-board apparatus on a sufficient number of locomotives so that each train of any of the aforementioned three entities operating on or over NJT-owned properties will be equipped with ATC/PTS. The Board should require that the Applicants install the ATC/PTS apparatus at their sole cost and expense on the time schedule NJT has set. NJT Comments at 10-12.

Messrs. Orrison and Mohan state that CSX and NS have been in negotiations with NJT regarding the use of train control equipment and "have agreed to install technology compatible with NJT's prospective train control equipment on all necessary CSAO locomotives that will operate over NJT-owned lines." Orrison/Mohan JVS at 10-11. However, Applicants' discussion of ATC/PTS in the NJSAA Operating Plan is conditional. The Operating Plan states that "CSX and NS are aware of NJT's interest in installation of train control equipment. NS and CSX favor ATC/PTS if it provides safe operation, is proven technology, and is cost-effective and beneficial, and will operate with equipment that is compatible with the requirements of the owner of the track." NJSAA Operating Plan at 125; see also Mohan/Orrison Nov. 19 Deposition Tr. at 115-20 (reiterating need to meet these criteria) (Exhibit A hereto). In determining whether train control equipment is "cost-effective", CSX and NS state they "will use both engineering and financial



analyses to determine system efficiency relative to investment requirements" and acknowledge there are "no responsive documents" relating to this methodology. CSX and NS Response to New Jersey Transit's Third Set of Interrogatories and Document Requests (CSX/NS-166) ("Response") at 13, 15 (Exhibit B hereto).

The ATC/PTS condition sought by NJT will ensure that implementation of the NJSAA Operating Plan and the operation of multiple freight railroads in the NJSAA will not have an adverse impact on the safety or reliability of NJT's commuter rail operations in and around the NJSAA.

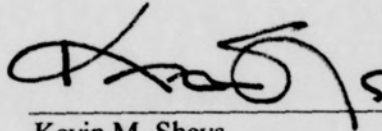
**F. The NJSAA Operating Plan Further Shows The Need For NJT's Requested NORAC Condition**

NJT is seeking a condition requiring Applicants to adopt the Northeast Operating Rules Advisory Committee ("NORAC") Operating Rules and has explained the need for rules uniformity in (among other places) the NJSAA. NJT Comments at 12-13. As previously noted, there will be three separate operating freight railroads in the NJSAA, plus third parties such as CP Rail System. CSX and NS will delegate to the CSAO authority to provide and supervise switching and dispatching services within the NJSAA. Orrison/Mohan JVS at 5. NS and CSX plan to "retain" NORAC Operating Rules within the NJSAA. Orrison/Mohan JVS at 6. Although it is unclear from the NJSAA Operating Plan how long Applicants will retain the NORAC Rules, NJSAA Operating Plan at 135, Messrs. Mohan and Orrison both testified unequivocally that Applicants would retain NORAC for three years. Mohan/Orrison Nov. 19 Deposition Tr. at 111-14. (Exhibit A hereto). Since, however, the NJSAA Operating Plan does not so state, the Board should impose the condition sought to eliminate any possible doubt on the issue.



WHEREFORE, NJT respectfully submits its comments on the North Jersey Shared Assets  
Area Operating Plan.

Respectfully submitted,

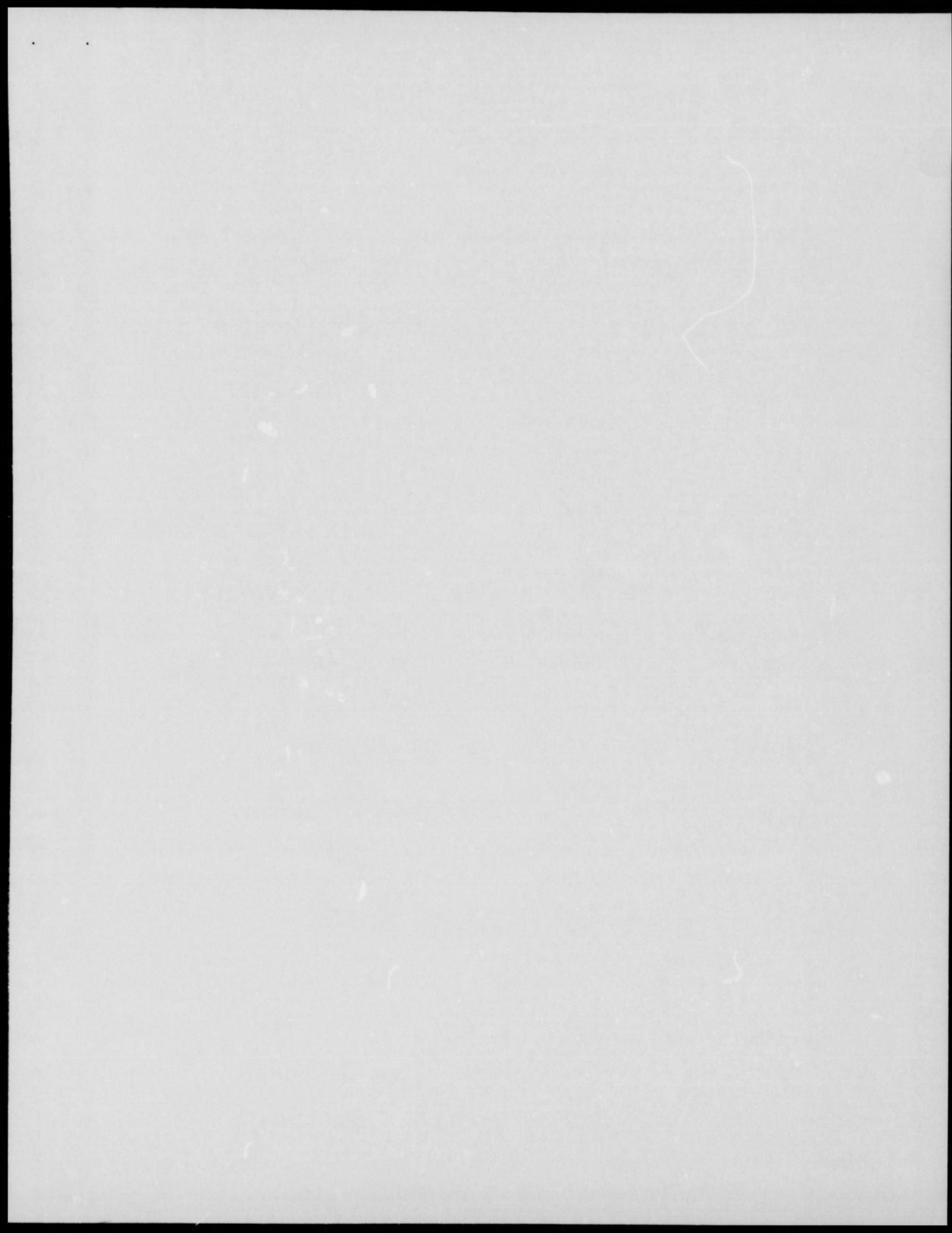


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Counsel for New Jersey Department of Transportation  
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Dated: November 24, 1997



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                              Washington, D.C.  
11                              Wednesday, November 19, 1997  
12               Deposition of D. MICHAEL MOHAN and JOHN  
13       W. ORRISON, witnesses herein, called for  
14       examination by counsel for the Parties in the  
15       above-entitled matter, pursuant to agreement, the  
16       witnesses being duly sworn by JAN A. WILLIAMS, a  
17       Notary Public in and for the District of  
18       Columbia, taken at the offices of Steptoe &  
19       Johnson, L.L.P., 1330 Connecticut Avenue,  
20       Washington, D.C., 20036-1795, at 9:10 a.m.,  
21       Wednesday, November 19, 1997, and the proceedings  
22       being taken down by Stenotype by JAN A. WILLIAMS,  
23       RPR, and transcribed under her direction.  
24  
25

## 1 AFTERNOON SESSION

2 (1:25 p.m.)

3 Whereupon,

4 D. MICHAEL MOHAN and JOHN W. ORRISON,  
5 the witnesses on the stand at the time of recess,  
6 having been previously duly sworn, were further  
7 examined and testified as follows:

8 EXAMINATION BY COUNSEL FOR NEW JERSEY

9 TRANSIT AUTHORITY and NEW JERSEY

10 DEPARTMENT OF TRANSPORTATION

11 BY MR. LAURENZA:

12 Q. Mr. Mohan and Mr. Orrison, I'm Paul  
13 Laurenza representing the New Jersey Transit  
14 Authority and the State of New Jersey Department  
15 of Transportation.

16 I wanted to start out by asking you  
17 both some questions about the operating rules  
18 your respective carriers intend to follow in the  
19 North Jersey shared asset area. My understanding  
20 from the supplemental operating plan is that both  
21 the carriers intend to use the NORAC rules on day  
22 one. You've also provided or your counsel have  
23 provided some discovery responses in the last few  
24 days, two of which I believe also address this  
25 question. So let me ask you to --

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1 MS. CLAYTON: Are you marking this as  
2 an exhibit?

3 MR. LAURENZA: I was not planning on  
4 marking it as an exhibit.

5 BY MR. LAURENZA:

6 Q. Mr. Mohan, have you seen these  
7 discovery responses previously?

8 A. (Mr. Mohan) I have.

9 Q. You have?

10 A. (Mr. Mohan) I have.

11 Q. And how about you Mr. Orrison?

12 A. (Mr. Orrison) Yes, I received them  
13 yesterday.

14 Q. Let me direct your attention  
15 specifically to pages 5 and 6 and more  
16 specifically interrogatory 1 B and its response  
17 and 2 B and its response and just ask you to take  
18 a moment to look at those.

19 Paraphrasing those responses,  
20 Mr. Mohan, 1 B, let me quote the important aspect  
21 of that, CSX and NS have no plans to change those  
22 rules except possibly to supplement them with any  
23 additional safety policies that the safety  
24 implementation program deems necessary, end of  
25 quote.

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1           And, on 2 B, the response is NORAC  
2 rules are in place now on Conrail lines which are  
3 to be become part of the NJSAA and will continue  
4 to be utilized on these lines after day one. Let  
5 me ask you first, Mr. Mohan, is NS committing to  
6 use the NORAC rules through the end of day three  
7 in the North Jersey shared asset area?

8           MR. PLUMP: Do you mean year three or  
9 day three?

10          BY MR. LAURENZA:

11          Q. I was using day three following your  
12 methodology of day one. But through the end of  
13 the three-year operating period that's covered by  
14 the plan?

15          A. (By Mr. Mohan) Yes.

16          Q. Mr. Orrison, let me ask you the same  
17 question, is CSX committing to use the NORAC  
18 rules throughout that entire three-year period?

19          A. (Mr. Orrison) Yes.

20          Q. Again, referring to the response in 1  
21 B, the reference to the part of the sentence I  
22 quoted, it says except possibly to supplement  
23 them with any additional safety policies that the  
24 safety implementation program deems necessary.

25          Mr. Mohan, at this time do you have any

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1 conception as to what those additional safety  
2 policies might be?

3 A. (Mr. Mohan) No. In accordance with the  
4 board order, that safety implementation plan is  
5 in preparation and we do not know what the board  
6 may specify as a result of that submission.

7 Q. Mr. Orrison, would you agree with that  
8 response?

9 A. (Mr. Orrison) I agree.

10 Q. Mr. Mohan, do the carriers with respect  
11 to the North Jersey shared asset area plan to  
12 follow uniform rules, in other words, for both  
13 carriers in that area?

14 A. (Mr. Mohan) Yes, to the best of my  
15 knowledge, each will be governed by NORAC  
16 operating rules.

17 Q. Is it possible that a situation would  
18 develop where NS, for example, would seek to  
19 adopt supplemental operating rules that would  
20 differ from CSX?

21 A. (Mr. Mohan) I can't conceive what they  
22 would be.

23 Q. Let me ask the question a slightly  
24 different way. Will the respective carriers to  
25 your knowledge retain independence with respect

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1 to the decision to use operating rules or will  
2 the decision be a joint decision?

3 A. (Mr. Mohan) Each is committed to use  
4 the NORAC rules.

5 Q. Let me ask you the same question,  
6 Mr. Orrison. Is it your understanding that,  
7 whether the rules adopted are the NORAC rules or  
8 some other rules, would both carriers be using  
9 the same operating rules in the North Jersey  
10 shared asset area or is it possible that there  
11 would be situations where they would be using  
12 different operating rules?

13 A. (Mr. Orrison) They would use the same  
14 rules which are the NORAC rules.

15 Q. Let me direct your attention to the  
16 response 1 A on page 5. The last sentence on  
17 page 5 states, with respect to dispatching, CSX  
18 and NS intend to employ the existing dispatching  
19 rules and approach, paren, e.g., dispatching  
20 assignments, close paren, into the foreseeable  
21 future.

22 Mr. Mohan, can you give me a clearer  
23 idea as to what foreseeable future means in that  
24 context?

25 A. (Mr. Mohan) There is no change foreseen

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1 on the part of NS or CSX to change the existing  
2 dispatching rules and approach.

3 Q. So it is your current intention to  
4 follow those rules and approach throughout the  
5 three-year period?

6 A. (Mr. Mohan) That's my understanding.

7 Q. Is that also your understanding,  
8 Mr. Orrison?

9 A. (Mr. Orrison) Yes, it is.

10 Q. With respect to interrogatory 3B, the  
11 response indicates that Oak Island was considered  
12 as a potential alternative to the Mount Laurel  
13 Conrail dispatching location. Do you know,  
14 Mr. Mohan, why Oak Island was rejected?

15 A. (Mr. Mohan) My understanding is that,  
16 since the core dispatching functions were located  
17 at Mount Laurel at present, that for NS's part  
18 they felt that it would minimize disruption and  
19 maximize the retention of experienced personnel  
20 and minimize expense if the dispatching function  
21 were retained at Mount Laurel.

22 Q. Is that also consistent with your  
23 understanding, Mr. Orrison?

24 A. (Mr. Orrison) Yes, it is.

25 Q. I'll ask you to turn to the operating

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1 plan and first look at the sentence that starts  
2 at the very end of page 10 and continues on to  
3 page 11, which states that CSX and NS have also  
4 been in negotiations with the New Jersey Transit  
5 Corporation concerning the use of train control  
6 equipment and have agreed to install technology  
7 compatible with NJT's prospective train control  
8 equipment on all necessary CSAO locomotives that  
9 will operate over NJT owned lines, end of quote.

10 And then I would ask you to look at  
11 page 125, at the very last sentence on that page,  
12 which reads, NS and CSX favor ATC/PTS if it  
13 provides safe operation, is proven technology,  
14 and is cost-effective and beneficial, and will  
15 operate with equipment that is compatible with  
16 the requirements of the owner of the track.

17 Mr. Orrison, would you reconcile for me  
18 those two statements I just quoted?

19 A. (Mr. Orrison) My understanding in  
20 reconciling it is that one step on page 11 we  
21 have a discussion about the usage of train  
22 control equipment and then we agree, CSX and NS  
23 agree to have the technology compatible with the  
24 prospective train control equipment. So that  
25 both CSX and NS understand that NJT has an

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1 interest in a new type of system and that we are  
2 also agreeing to install the technology.

3 With respect to page 125, I believe  
4 it's an expansion of it. And it says again that  
5 we both favor the ATC/PTS. We would like to have  
6 it tested to show that it proves safe operation.  
7 We would also like to have the system tested to  
8 show that it's a proven technology so you don't  
9 have system failures with it and that it is going  
10 to operate with equipment that has compatibility  
11 with the equipment that operates over the track.

12 Q. What would you intend to do with  
13 respect to establishing whether the equipment  
14 will provide safe operation?

15 A. (Mr. Orrison) Well, there's a number of  
16 tests that are involved in the industry, there  
17 are different tests on different line segments by  
18 consortiums of railroads working with the AAR and  
19 other industry groups to test this technology and  
20 to ensure the qualification of the systems that  
21 it will provide for safe operation.

22 Q. In the context of that statement on  
23 page 125, what does the term beneficial mean?

24 A. (Mr. Orrison) I think it means what it  
25 means.

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1 Q. Well, you have a reference there to a  
2 cost-effectiveness analysis and then you state  
3 also that the system would have to be  
4 beneficial. Is beneficial in that context a  
5 safety related determination?

6 A. (Mr. Orrison) I would refer you to your  
7 interrogatory No. 11 on page 13 of the handout  
8 that you provided us, where we gave you a  
9 response, CSX and NS will both use engineering  
10 and financial analysis to determine system  
11 efficacy relative to investment requirements.

12 Q. And that was a response specifically to  
13 what you will do to determine cost-effectiveness  
14 and that, in fact, is why I'm asking the  
15 question. How does a determination of whether  
16 the system is beneficial differ from a  
17 determination of whether it's cost-effective?

18 A. (Mr. Orrison) Well, I'll give you some  
19 examples of the difference maybe between  
20 beneficial and cost-effective.

21 If you apply a system that doesn't have  
22 a proven level of reliability, is that system  
23 beneficial to the overall operations of the line  
24 segment. If the system has a system failure  
25 while you're operating, is that beneficial to the

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1 movement of time scheduled trains.

2 If a train has to stop and then be  
3 recalibrated in the movement, it could cause  
4 severe delay to the traveling public and also to  
5 the movement of freight trains. So that would be  
6 a test of whether or not it's beneficial to be  
7 applied on the line segment.

8 Q. I asked you a few moments ago about  
9 uniformity in agreement regarding the NORAC  
10 rules. And let me ask the same type of questions  
11 with respect to this train control equipment. Do  
12 you each independently plan -- let me ask you  
13 first, Mr. Orrison, do the two carriers each  
14 independently plan to go through this exercise of  
15 establishing the safe operation, proven  
16 technology, cost-effectiveness, and beneficial  
17 nature of the ATC/PTS?

18 A. (Mr. Orrison) If I understand your  
19 question, I think you are asking if we're going  
20 to do it independently each.

21 Q. Exactly.

22 A. (Mr. Orrison) And my understanding in  
23 what we were trying to convey in this  
24 supplemental filing and also in the answer to  
25 your interrogatories is that we've been using CSX

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1 and NS in the same sentence, that we're both  
2 involved in operating trains over the same line  
3 segments, working with one transit authority,  
4 working with the NJT, and that we would be doing  
5 this as a cooperative effort. That would be a  
6 cooperative effort that would involve CSX, NS,  
7 and NJT.

8 Q. So would I be correct from the answer  
9 you just gave that CSX and NS would not  
10 contemplate a situation developing where one  
11 would be using certain train control equipment on  
12 the North Jersey shared asset area lines and the  
13 other carrier would be using different train  
14 equipment?

15 A. (Mr. Orrison) I would not foresee that  
16 that would happen.

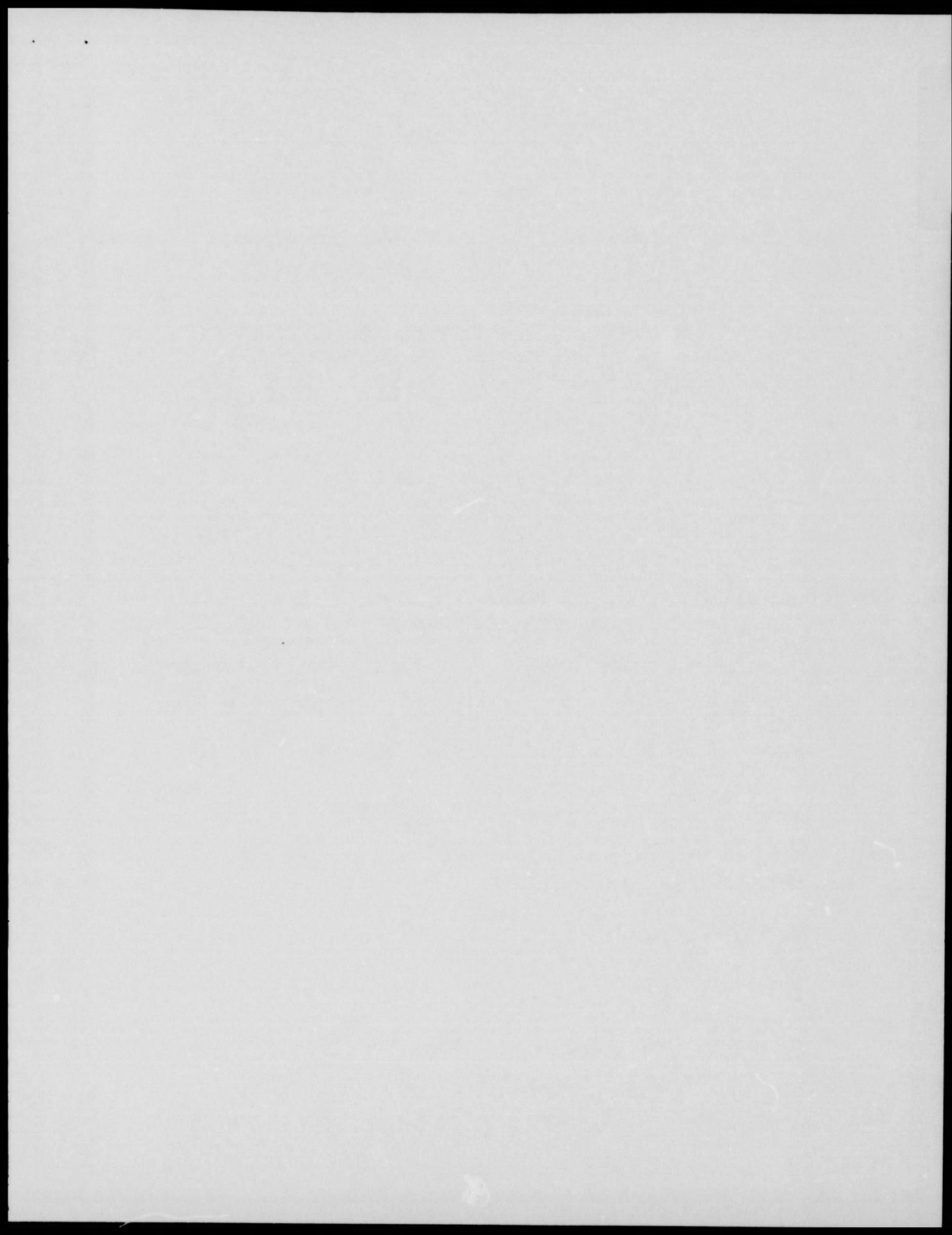
17 Q. All right. Would you agree with that,  
18 Mr. Mohan?

19 A. (By Mr. Mohan) Yes. There's a  
20 commitment to compatibility there that applies to  
21 both railroads.

22 Q. On page 8 of your joint verified  
23 statement, the last sentence of the first  
24 paragraph states, however, a number of the CSX  
25 and NS proposed train schedules anticipate

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CSX/NS-166

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

Finance Docket No. 33388

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

---

CSX AND NS RESPONSE TO  
NEW JERSEY TRANSIT CORPORATION'S  
THIRD SET OF INTERROGATORIES  
AND DOCUMENT REQUESTS

---

CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation, and Norfolk Southern Railway Company<sup>1</sup> hereby respond to the New Jersey Transit Corporation's Third Set of Interrogatories and Document Requests to Applicants (NJT-10), served November 7, 1997.<sup>2</sup>

---

<sup>1</sup> CSX Corporation and CSX Transportation, Inc. are collectively referred to as "CSX", Norfolk Southern Corporation and Norfolk Southern Railway Company as "NS" and Conrail Inc. and Consolidated Rail Corporation as "Conrail". CSX, NS and Conrail are collectively referred to as "Applicants". The New Jersey Transit Corporation is referred to as "NJT" or "requester".

<sup>2</sup> As contemplated by the Board in Decision No. 44, the North Jersey Shared Assets Area Operating Plan was produced by CSX and NS and not by present Conrail. Accordingly, only CSX and NS respond to these interrogatories, which relate to the North Jersey Shared Assets Area Operating Plan.

Interrogatory No. 10:

Please identify any lines in the NJSAA as to which CSX has agreed to provide Canadian Pacific trackage rights or other physical access.

Response:

Without waiving any objections, and subject to the general objections above, CSX and NS respond as follows:

None

Interrogatory No. 11:

Please identify the methodology and criteria NS and CSX will apply to determine whether ATC/PTS is "cost-effective" as that term is used in reference to ATC/PTS at page 125 of the NJSAA Operating plan.

Response:

Without waiving any objections, and subject to the general objections above, CSX and NS respond as follows:

CSX and NS will use both engineering and financial analyses to determine system efficacy relative to investment requirements.

DOCUMENT REQUESTS

Document Request No. 1:

All NS and CSX rules, instructions or orders that will apply within the NJSAA consisting of or relating to the following:

- (a) timetable and special instructions;
- (b) braking methods and procedures;

Document Request No. 3:

All documents relating to CSX's agreement to provide Canadian Pacific trackage rights on or other physical access to lines in the NJSAA.

Response:

CSX objects to this request as vague and unduly burdensome to the extent it seeks "all documents relating to the matter specified." Furthermore, CSX objects to this interrogatory as it calls for the disclosure of privileged materials.

Document Request No. 4:

All documents relating to the methodology and criteria NS and CSX will apply to determine whether ATC/PTS is "cost-effective" as that term is used in reference to ATC/PTS at page 125 of the NJSAA Operating Plan.

Response:

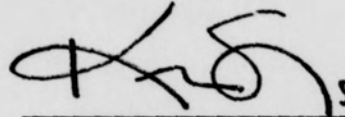
CSX and NS object to this request as vague and unduly burdensome to the extent it seeks "all documents" relating to the matter specified. Without waiving any objection and subject to the general objections above, CSX and NS respond as follows:

To the best of our knowledge there are no responsive documents.



**CERTIFICATE OF SERVICE**

I certify that I have served a conformed copy of the foregoing **Comments of New Jersey Department of Transportation and New Jersey Transit Corporation on North Jersey Shared Assets Area Operating Plan** in Finance Docket No. 33388, by first class mail properly addressed, with postage pre-paid or by more expeditious manner of delivery upon Administrative Law Judge Jacob Leventhal and All Parties of Record on the Service List.

A handwritten signature in black ink, appearing to be 'KMS', written over a horizontal line.

Kevin M. Sheys

Dated: November 24, 1997.

STB

FD-33388

ID-184168

11-24-97

D

184 168

**SLOVER & LOFTUS**

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

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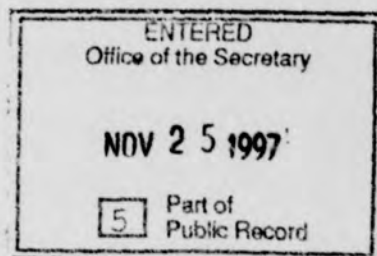


802 347-7170

November 24, 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:

Enclosed for filing in the above-referenced proceeding, please find the original and twenty-five (25) copies of the "Comments of The National Railroad Passenger Corporation" (NRPC-9). In accordance with the Board's prior order, we have enclosed a Wordperfect 5.1 diskette containing this filing.

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

Sincerely,

Donald G. Avery  
An Attorney for  
National Railroad  
Passenger Corporation

DGA:cef  
Enclosures

184168

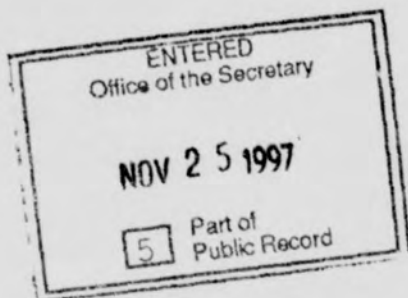
BEFORE THE  
SURFACE TRANSPORTATION BOARD



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

COMMENTS OF THE  
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)  
ON THE CSX/NS SUPPLEMENTAL OPERATING PLAN  
FOR THE NORTH JERSEY SHARED ASSETS AREA



NATIONAL RAILROAD PASSENGER  
CORPORATION

Richard G. Slattery  
60 Massachusetts Avenue, NE  
Washington, DC 20002  
(202) 906-3987

OF COUNSEL:

Slover & Loftus  
1224 Seventeenth St., NW  
Washington, DC 20036

Date: November 24, 1997

Donald G. Avery  
Christopher A. Mills  
Frank J. Pergolizzi  
SLOVER & LOFTUS  
1224 Seventeenth Street, NW  
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(202) 347-7170

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

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

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COMMENTS OF THE  
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)  
ON THE CSX/NS SUPPLEMENTAL OPERATING PLAN  
FOR THE NORTH JERSEY SHARED ASSETS AREA

Pursuant to Decision No. 44, served by the Surface Transportation Board in this proceeding on October 15, 1997, the National Railroad Passenger Corporation ("NRPC" or "Amtrak") hereby submits its Comments on the "CSX/NS Operating Plan for the North Jersey Shared Assets Area," served and filed by the Applicants on October 29, 1997.

In its Comments filed October 21, Amtrak explained that while it would endeavor to reconcile the Applicants' plans for increased freight service on, and shared freight usage of, Amtrak's Northeast Corridor ("NEC" or "Corridor") with the needs of the Corridor's intercity and commuter passenger operations,<sup>1</sup> such reconciliation would not be a simple task. Amtrak pointed

---

<sup>1</sup>Amtrak's October 21 Comments also addressed the impact of the Applicants' proposals on Amtrak's intercity passenger operations outside the Northeast Corridor. Those issues are not implicated in the October 29 Operating Plan for the NJSA, and thus are not discussed in these Comments.

out some of the issues and complexities that would have to be overcome, including the cost and timing of the construction that would be required to achieve the vertical clearance increases proposed by NS, and the difficulties of harmonizing the Applicants' proposed schedules for through freight operations with existing and projected capacity constraints on the NEC during peak passenger periods.

Since October 21, Amtrak has continued to negotiate with the Applicants in an attempt to reach agreement on the terms that will govern their post-transaction use of the NEC. Amtrak is guardedly optimistic that the remaining issues can and will be resolved in due course. At this point, however, final agreement has not been achieved.

\* \* \* \*

In their October 29 filing, the Applicants have unequivocally "acknowledge[d] and accept[ed] all existing rights of passenger and commuter services" (p. 121), and stated their commitment to "abide by the terms of existing agreements between Conrail and Amtrak" (p. 122). They have also acknowledged that their freight operations on the NEC will be governed, as Conrail's are today, by Amtrak's operating rules (*id.*).<sup>2</sup> Notwithstanding these clarifications, however, problems remain with some of the details of the Applicants' proposed NEC operations.

---

<sup>2</sup>As noted in its October 21 comments, Amtrak vigorously disagrees with Applicants' suggestion that the Board can expand Conrail's limited freight easement in the NEC by allowing multiple freight operators to "share" that easement without Amtrak's consent.



The first and most obvious problem with Applicants' NEC plans, as detailed in their October 29 NJSAA Operating Plan, lies in certain of the individual train schedules they have proposed. As Amtrak previously explained, it has for some time restricted most through freight operations on the NEC to the hours of 10:00 pm - 6:00 am, in order to maximize safety and minimize interference with passenger operations. The NEC segment included in the NJSAA is the most heavily-used portion of the NEC, having the greatest concentration of both Amtrak and commuter rail operations, as well as significant freight usage, and it is an area in which freight operations outside the 10:00 pm - 6:00 am period would be especially disruptive. Amtrak therefore has a problem with some of the freight schedules Applicants have proposed, including especially the one CSX has proposed for its train "OJTA" (p. 124), which would have that train pass through the New York City-Trenton commuter region right in the middle of the evening rush hour.<sup>3</sup> These particular trains could not be accommodated on the NEC without significant adjustments to their schedules to avoid or greatly minimize their conflict with passenger service requirements.

Other freight train schedules proposed by the Applicants would also impinge, albeit less dramatically, on the hours of restricted freight service. For example, NS's trains GMMVOI and GMOIMV would operate during daylight hours (*id.*), albeit not

---

<sup>3</sup>The northbound sister train, "TAOJ," would cause similar problems on other segments of the NEC to the south.

during rush hours, and some of the other trains proposed by Applicants would start or end just outside the 10:00 pm - 6:00 am freight window. Subject to its overriding concerns with regard to safety and the avoidance of interference with Amtrak and commuter train operations, Amtrak is continuing its discussions with the Applicants in anticipation of reaching agreement on satisfactory scheduling for such trains.

Respectfully submitted,

NATIONAL RAILROAD PASSENGER  
CORPORATION

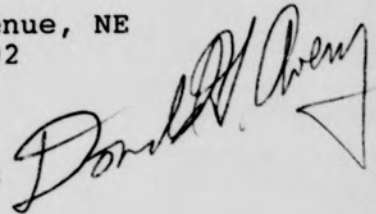
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Date: November 24, 1997

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A handwritten signature in dark ink, appearing to read "Donald G. Avery", is written over the typed name and address of Donald G. Avery. The signature is fluid and cursive, with a large, stylized initial "D".

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served this 24th day of November, 1997, by hand delivery upon:

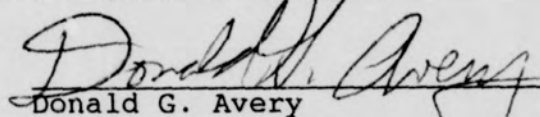
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and by first class mail upon all other parties of record.

  
Donald G. Avery

STB

FD-33388

ID-184167

11-24-97

D

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November 24, 1997

**BY HAND**

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

*Confidential*

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

Dear Secretary Williams:

Enclosed are the original and 25 copies of APL Limited's Response To The CSX/NS Operating Plan For The North Jersey Shared Assets Area and Supporting Statement, APL-8, along with file APL.8 on a 3.5-inch IBM-compatible floppy diskette in WordPerfect 5.1. Also enclosed under seal is confidential Exhibit B.

Please time and date stamp the extra copy of this letter and the accompanying Response. Thank you for your assistance. If you have any questions, please call me.

Sincerely yours,

Louis E. Gitomer  
Attorney for APL Limited

Enclosures

STB

FD-33388

ID-184166

11-24-97

D



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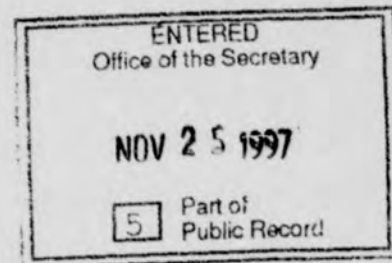
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November 24, 1997

**BY HAND**

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



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

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Sincerely yours,

Louis E. Gitomer  
Attorney for APL Limited

Enclosures

184166  
**ORIGINAL**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

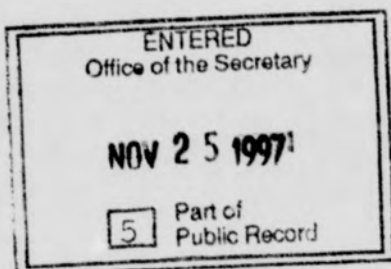
Finance Docket No. 33388

APL-8



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

APL LIMITED'S RESPONSE TO THE CSX/NS OPERATING PLAN FOR THE NORTH  
JERSEY SHARED ASSETS AREA AND SUPPORTING STATEMENT-CSX/NS-119



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Attorneys for:  
APL LIMITED

Dated: November 24, 1997

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 33388

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

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APL LIMITED'S RESPONSE TO THE CSX/NS OPERATING PLAN FOR THE NORTH  
JERSEY SHARED ASSETS AREA AND SUPPORTING STATEMENT-CSX/NS-119

---

APL Limited ("APL") responds to the CSX/NS Operating Plan for the North Jersey Shared Assets Area and Supporting Statement, CSX/NS-119 (referred to as "CSX/NS-119"). APL's operates under lease a portion of the South Kearny Yard ("APINY") owned by Consolidated Rail Corporation ("Conrail") in the North Jersey Shared Asset Area (the "NJSAA"). APL operates APINY to serve the 10 APL trains per day that Conrail originates, terminates or operates through APINY. Because of the location of APINY, APL has over nine years of day-to-day experience with the operation of the NJSAA. Furthermore, APL has great interest in the efficient operation of the NJSAA. Based on its long experience in the NJSAA, it is apparent to APL that Applicants have not demonstrated that they can provide adequate transportation service in the NJSAA.<sup>1</sup>

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<sup>1</sup> The Applicants are CSX Corporation, CSX Transportation, Inc. ("CSXT"), Norfolk Southern Corporation, Norfolk Southern Railway Company ("NS"), Conrail Inc., and Conrail.

On October 15, 1997, the Surface Transportation Board (the "Board") ordered Applicants to "produce more detailed projections of their proposed method of operation" in the NJSAA. Decision No. 44 at 5. The Board ordered preparation of the plan in response to a petition filed by the Port Authority of New York and New Jersey so that the Board could consider "the effect of the proposed transaction on the adequacy of transportation to the public." The Board required Applicants to demonstrate that the NJSAA operating arrangements will be feasible and not unduly impact rail operations in this densely populated, highly congested area.

APL believes that Applicants have taken a step in the right direction, but that they have not fully complied with the Board's requirement nor met APL's needs. There are just too many questions left unanswered and too many details not provided for the Board to feel comfortable that Applicants can effectively operate in the densely populated, highly congested NJSAA. Indeed, Applicants seem to accept a lesser task than that set by the Board by stating that they will demonstrate "that the proposed operations were feasible and would not unduly impact passenger and commuter operations." CSX/NS-119, at 1. Applicants failed to detail their freight operation in CSX/NS-119. Nowhere do Applicants indicate which rail lines they will use to reach certain yards, the routes to and from APINY, specific transit times once operating within the NJSAA, the entity that will furnish the crews for APL's trains, the crew change points, where NS will store cars for APL, whether NS will operate locomotives to pick-up individual trailers that are now trucked literally next door to Conrail and which interterminal moves they will make. Applicants even refuse to admit that there will be three entities (CSXT, NS, and the Conrail Shared Asset Operator (the "CSAO")) operating in the

NJSAA. Another point of concern is the failure of NS to indicate clearly in CSX/NS-119 that NS will not only operate the 35 trains shown in Figure 5 at pages 55-56 of CSX/NS-119, but that if the traffic is there, according to Mr. Mohan, NS proposes to operate all of the 61 trains currently operated by Conrail, as detailed in Figure 3 at pages 48-51 of CSX/NS-119.<sup>2</sup> Other details needed for the Board to consider whether Applicants' plan to operate in the NJSAA is feasible or will lead to a melt down in service similar to that which is currently plaguing the western United States are also missing as detailed in Mr. Baumhefner's Verified Statement.

APL has a special problem concerning operations in the NJSAA. Unlike other shippers, the allocation of APL's traffic between CSXT and NS will not be "determined by the ultimate allocation of traffic by the customer" or "given customer preference for the service". Responses to the Port of New York and New Jersey's Written Deposition Questions to Messrs. Mohan and Orrison in Connection with CSX/NS-119, The NJSAA Operating Plan and Underlying Workpapers, dated November 17, 1997, at pages 6 (Response to 15) and 7 (Response to 17) (the "Written Reply to NY/NJ"). However, APL's contract traffic, which is all of its traffic over Conrail, will not be divided based on APL's preference but according to the provisions of Section 2.2(c) of the Transaction Agreement. Obviously Applicants forgot about this provision when they said: "Contract customers often prefer that details of their service be discussed confidentially in a business forum rather than in a public proceeding." Written Reply to NY/NJ at page 9 (Response to 19).

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<sup>2</sup> About 40 of the Conrail trains operate daily.



APL would prefer to work out the details in a business forum, but Applicants have refused to do so because of Section 2.2(c). For that reason, among others, APL seeks to have the Board declare Section 2.2(c) not in the public interest and strike it from the Transaction Agreement.

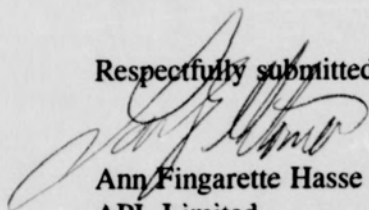
The NJSAA is not an isolated part of Conrail's system. Much like Houston on the Union Pacific Railroad Company, the NJSAA is a very important service area on Conrail, integrally linked to the rest of Conrail's system. Changes and problems in NJSAA affect the rest of Conrail's system, and changes and problems on the rest of Conrail's system affect the NJSAA. As an example, service in the NJSAA is affected by interchanges at Chicago and congestion en route to the NJSAA and the availability of alternate routes. APL is troubled by Applicants' unwillingness to face the reality that the NJSAA is congested now, a reality which APL lives with today, and their apparent blindness to the consequences of adding additional trains to an already congested area.

As Mr. Baumhefner points out: (1) Applicants did not obtain APL's input in preparing CSX/NS-119; (2) NS does not have equal access to serve APL; (3) Applicants have not assured APL that their proposed schedules can actually replace Conrail's schedules to and from the NJSAA; (4) Applicants have ignored the existing congestion in NJSAA; and (5) Applicants have failed to provide binding contractual commitments to APL that specify details and put in place enforceable remedies for service failures. APL is optimistic and believes that these operational problems can be resolved through negotiations between APL and CSXT and APL and NS. However, negotiations will not take place as long as Applicants continue to apply Section 2.2(c) of the Transaction Agreement to the contract between APL and Conrail.



Either the Applicants must modify Section 2.2(c) of the Transaction Agreement or it must be disapproved by the Board.

Respectfully submitted,



Ann Fingarette Hasse  
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Attorneys for:  
APL LIMITED

Dated: November 24, 1997

## **VERIFIED STATEMENT OF PETER K. BAUMHEFNER**

My name is Peter K. Baumhefner, and I am Director of Stacktrain Operations for APL Land Transport Services, Inc., a subsidiary of APL Limited ("APL"). I am accountable for the performance of APL's stacktrains in North America, and previously submitted a verified statement in APL-4 in which my background, experience, and qualifications are set forth.

The purpose of this statement is to respond to CSX/NS-119, the CSX/NS Operating Plan ("SAAOP") for the North Jersey Shared Assets Area ("NJSAA"), insofar as it seeks to address APL's stated concerns in this proceeding. As I shall explain, the SAAOP confirms Applicants'<sup>1</sup> failure to establish, for APL, an adequate timely replacement for the unified operations presently conducted by Conrail in the NJSAA. While the repeated theme of CSX/NS-119 is that on Day 1 Applicants will step into Conrail's shoes with substitute services that replicate Conrail's past performance, the details establish that the theme is not true for APL, and that the services which Applicants propose to substitute for Conrail's do not meet APL's needs and are inadequate.

### **1. The SAAOP Was Constructed Unilaterally Without Recognizing APL's Needs**

I continue to believe that, if Applicants are willing to work with APL, it should be possible to develop services equal to or better than Conrail's existing service. That will not be accomplished by Applicants' unilateral process in which the shipper is excluded and expected to adjust to Applicants' unilateral decisions.

Contrary to the statement in CSX/NS-119 at page 4 that it "incorporates the most recent information on NJSAA customers and operations", APL was not contacted by Applicants as part of the preparation of CSX/NS-119, and the information which APL gave to CSXT on May 6 and June 25, 1997, has not been heeded.

I am aware that at his deposition on November 19, 1997, Mr. John W. Orrison of CSXT stated that our intermodal planners had been "working with APL" to try to meet APL's needs. He mentioned five people at APL (including me) who were involved in that process, and

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<sup>1</sup> Applicants are CSX Corporation, CSX Transportation, Inc. ("CSXT"), Norfolk Southern Corporation, Norfolk Southern Railway Company ("NS"), Conrail Inc., and Consolidated Rail Corporation ("Conrail").

indicated that the last conversation with APL occurred on September 24, 1997. See Exhibit A, Excerpts From Deposition, page 183-184, cited as Tr. at \_\_\_\_.

If there had been a meeting or conversation on September 24<sup>th</sup> between APL and CSXT or CSX Intermodal, Inc. ("CSXI") about CSXT or CSXI providing future service to APL as a replacement for Conrail, I would have at least known about it or participated since I am responsible for APL's stacktrain operations in North America and must sign-off on any replacement service plan. Frankly, when I learned of this supposed contact I did not recall it. I checked my calendar and contacted the other four people that were supposed to have participated. One of the individuals is in regular contact with CSXT operating personnel on a variety of current operational topics, but had not participated in a meeting with CSXT or CSXI concerning the Conrail partition since June 25, 1997. John Burgess of APL had dinner with Ron Sorrow of CSX on September 24th at the National Freight Transportation Association meeting. However, they did not discuss operational matters concerning the NJSAA. None of the other people mentioned by Mr. Orrison had any recollection or notes concerning a meeting with CSXT or CSXI on September 24. Therefore, CSXT could not have considered APL's needs in preparing CSX/NS-119, and, indeed, Applicants have not developed an operating plan that convinces APL that they can provide adequate transportation to APL in the NJSAA, much less meet our unique needs.

It is not enough to say, as do Applicants in seeking to assure APL, that details can be worked out later. That is tantamount to Applicants asking the Surface Transportation Board (the "Board") to approve the proposed transaction first and allow Applicants to later address all problems in the following chaos. Such a process is needlessly harmful to APL and is completely unnecessary in order to accomplish Applicants' goals. The Surface Transportation Board (the "Board") should be wary of such an approach based on the hard lessons being taught by the rail service problems in the western United States.

## **2. The SAAOP Fails To Give NS Parity With CSXT For Access To APL**

The SAAOP is deficient in several important respects. The most disturbing shortcoming is its failure to provide NS the infrastructure to compete on equal footing with CSXT for APL's

traffic. NS does not have the trackage, crews, or locomotives available at South Kearny to successfully serve APL.<sup>2</sup>

While Applicants state that both CSXT and NS will have "access" to APL at APINY, the reality in the details is that -- as it now stands -- CSXT, with exclusive access to South Kearny, has preferred access to APL, while NS has inferior access to APL.<sup>3</sup> There is not a level playing field for NS to serve APL at APINY in this operating plan, and that needs to be corrected.

At present, Conrail's South Kearny yard is the major Conrail intermodal facility in the NJSA, with seven yard engine assignments handling the business of the yard and industrial customers in the vicinity. See CSX/NS-119 at 104. As depicted in CSX/NS-119, Figure 20, APINY is adjacent to the South Kearny. See Figure 20 in CSX/NS-119, page 103. Conrail's road trains originate and terminate at South Kearny, road motive power is turned there, and APL's trains or cars have ready access to the Conrail arrival and departure yard. If APL has single containers to be given to Conrail, an off-street yard tractor can tow the container through the gate between APINY and South Kearny to Conrail next door.

From one to three times a day, and more frequently after a holiday weekend or if derailments or service interruptions result in bunching of cars, APL will need an additional switch from Conrail to pull empties and bring in loads that could not be accepted in the first switch. Sometimes a switch will be needed to bring in more empties to handle a build-up of containers. When this is necessary Conrail responds promptly, sends a locomotive from its yard via track 223 (See Figure 20) to APINY, and does the work. Meanwhile, the APL cars in reserve are held in Conrail's South Kearny yard, and yard operations are conducted around the track space set aside and used for APL.

If NS delivers a train to APL at APINY, the procedure will be more complex. The NS terminals are at Croxton or E-rail, both many miles away from APINY (See Figure 2, CSX/NS-119, page 25). It is obvious from the configuration of the routes that while a through train to or

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<sup>2</sup> South Kearny is the major Conrail intermodal yard in northern New Jersey. Conrail leases a portion of South Kearny to APL for APL's exclusive use (referred to as the "APINY"), but also serves APL from South Kearny.

<sup>3</sup>With such limited access to APINY, NS has not planned to station crews or locomotives at South Kearny.



from APINY via NS is clearly feasible, an NS delivery to APINY from a train en route to Croxton or E-Rail would be more complex than Conrail's direct service today.

The NS schedules proposed as Figure 5 in CSX/NS-119, at pages 55-56, show no direct service to APINY, only service to Croxton or E-Rail. This would mean that, after arrival of the train at Croxton (the closest NS terminal, which is still about five miles from APINY) and after it is switched by yard crews, the APL cars would be taken by a yard engine from Croxton to South Kearny, then through the CSXT yard, to APINY. Applicants have not explained whether NS, CSXT, or the Conrail Shared Asset Operator (the "CSAO") will provide the transfer locomotive, and from which pool. It is obvious to me that after the train has been switched at Croxton, a yard-to-yard move will require the allocation of a locomotive, authority from the NJSAA dispatcher and the yardmasters at Croxton and South Kearny, and a train threading its way through terminal congestion.<sup>4</sup> This will add about three hours to the delivery time of the APL cars by NS to APINY. These details are not covered in the SAAOP.

Mr. D. Michael Mohan's deposition testimony on November 19, 1997 modifies the CSX/NS-119 in major respects. To summarize, at the deposition, NS took the position that it is willing to replicate Conrail's entire schedule to and from the NJSAA, and is willing to replicate Conrail's service to APL (including trains directly serving APINY) if APL elects to use NS as its core rail service provider in the NJSAA (Transcript at pages 172-173).<sup>5</sup> This would solve the transfer problem for through trains operated directly between Chicago and APINY, but does not completely resolve the transfer issue from Croxton for other trains. There is also one very important issue to be addressed.

If APL needs an additional switch from NS to bring in loads or empties from NS that could not be taken into the yard with the first switch, the present plan in the SAAOP requires

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<sup>4</sup>Contrary to the contentions of Applicants' witnesses, my years of experience with Conrail's service in the NJSAA convince me that this area is very congested, and adequate service here requires close communication and flexibility to avoid gridlock.

<sup>5</sup> I note, that as APL has demonstrated in its Response and Request for Conditions, APL-4, contrary to market forces and APL's desire, APL cannot elect whether CSXT or NS will serve it under APL's transportation contract with Conrail. Instead, the railroad which will provide service to APL in the NJSAA will be determined under the provisions of Section 2.2(c) of the Transaction Agreement. Since the premise for Mr. Mohan's defense of CSX/NS-119 is faulty, CSX/NS-119 cannot accurately reflect the service to be provided to APL in the NJSAA.

additional cars to be taken to Croxton and then brought in from Croxton, using the same circuitous procedure just described. Even if the NJSAA operator provides the switching, the cars will still have to be brought from Croxton, because Applicants have not allocated any support trackage at South Kearny to NS.

Mr. Mohan raised the possibility at his deposition that NS might also use support trackage at the CSAO's Oak Island yard, which is approximately two miles from APINY (Tr. at 171). The CSAO would then presumably bring the cars two miles from Oak Island to APINY and return.

Both ideas proposed by NS at deposition, not in CSX/NS-119 as required by the Board, are inadequate substitutes for the present arrangement in which APL's cars are staged for delivery to APINY on tracks in Conrail's adjacent South Kearny yard and are brought into APINY on-call by one of the Conrail yard engines there.

This is a major shortcoming of this Operating Plan. In order to compete effectively with CSXT for APL's traffic, NS must have support trackage at Kearny, as Conrail does today, and as CSXT will have tomorrow under Applicants' plan. The lack of support trackage for NS is an extremely serious matter that goes to the basic qualification of NS to perform any substantial amount of service for APL. If Applicants truly plan to establish equality of opportunity for NS, provision will need to be made for this.

The reality of the situation today is that Conrail does not consider the non-APL portion of its South Kearny yard to be dedicated exclusively to non-APL business. On the contrary, there is a floating allocation of yard space, floating in the sense that it is not tied to a specific track for cars that will be taken to or from APINY to meet APL's needs during the day. The availability of that track space has always been recognized by Conrail as part of the support service required to fulfill the transportation contract with APL. I view it as a floating dedication of space in Conrail's South Kearny yard that follows the APL contract. If CSXT becomes the core service provider for APL, I would expect CSXT to continue to provide that track space. If NS becomes the core provider, I would expect CSXT to make that track space available to NS.

CSX/NS-119 was evidently prepared based upon a hypothetical distribution of traffic between CSXT and NS and the needs of each carrier to support those hypothetical volumes (Tr.



at 198). Under the hypothetical traffic distribution by Applicants' traffic analysts, CSXT handled virtually all of APL's business and NS handled very little. Thus, failure to provide NS with support track at South Kearny attracted no particular notice, and may have been overlooked. NS is just now examining the issue of support trackage that it will need in the NJSAA (Tr. at 198).

There must be support trackage at South Kearny for APINY for the railroad which serves APL under its contract, whether that railroad is CSXT or NS. Essentially, the ability to provide support trackage must be part of the contract. If Applicants fail to agree with this obvious need, APL must ask the Board to require that support track at South Kearny be reserved for whichever of the two Applicants, or perhaps even both, serves APL under its transportation contract with Conrail.

Even with that inequity redressed, NS will still be at some disadvantage in competing with CSXT. As I noted earlier, sending single containers to Conrail means no more than sending a yard tractor through the gate to Conrail next door. Sending a single container to Croxton requires a \$125 dray charge.

### **3. There Is No Assurance That Applicants' Schedules Will Replace Conrail's To And From The NJSAA**

APL's eastbound schedules on Conrail are determined by the arrival times of West Coast-originating trains at the Chicago gateway, by the cut-off times at Chicago for locally originated or Chicago-transferred containers, and by the needs of the marketplace at the East Coast destination. The arrival times of the West Coast trains at Chicago are in turn determined by events on the West Coast, the transfer times for containers arriving at the ports, and cutoff and departure times for domestic traffic.

Westbound, the cutoff and departure times at Kearny are determined by commercial custom and practice at the eastern origination, and the connecting train schedules at Chicago necessary to provide the right arrival and availability time at the West Coast destination.

APL has earlier explained how its continuing efforts to tighten the links in the trans-Pacific and transcontinental transportation chains have resulted in a fast, dependable, consistent service that is an industry leader and is regarded by the marketplace as a premium service. All of

the links, trans-Pacific, western, and eastern, are closely integrated and monitored by APL to produce this consistent result.

The Conrail trains that presently connect Chicago with the NJSA for APL, and the replacements proposed by CSXT are in confidential Exhibit B.

TV 200, TV 202, and TV 204 are the Conrail numbers for Union Pacific Railroad Company ("UP") run-through train services from the west coast which stop at Global 1 to set out Chicago cars, and then continue 2.5 miles to Conrail's Ashland Avenue Yard. The Global 1 setouts are an essential part of the service, for it is here that Chicago traffic is terminated. Global 1- originating traffic for APINY will be either steel-wheel interchanged in a switch movement provided by UP from Global 1 to Ashland Avenue, and added there to the TV service train, or, in some cases, containers for TV 78 will be drayed, or rubber-tire interchanged, to 47th Street. In all cases the traffic will arrive at APINY by rail.

The proposed replacement for TV 78, Q160, would also require a rubber-tire movement at Chicago, this time significantly longer, and also require a much longer dray movement from North Bergen to APINY at destination. Absorbing the cost of two long dray movements versus one short dray movement would render use of this substitute uneconomical, and it is not a viable replacement.

I will explain why I have shown question marks for the departure station at Chicago for the first two trains under the CSXT proposal. There are two problems with the CSXT proposal. The first concerns the run-through UP trains from the West Coast which set out at Global 1, and then terminate at the Conrail yard at Ashland Avenue, where they assume their Conrail train identification, add cars, and continue eastward.

The Applicants' filings and deposition testimony show the first two CSXT replacement trains listed above (Q156 and Q 164) departing from CSXT's "59<sup>th</sup> Street intermodal terminal." *There is no intermodal terminal today at 59th Street.* It is a proposed terminal, yet to be constructed. On Day 1, and until 59th Street is built, the CSXT intermodal trains will originate at Bedford Park. The proposed schedules filed with the Board do not reflect that reality.

Today UP road crews deliver APL trains to Chicago Ashland Avenue, stopping en route to set out at APL's facility at Global 1. In the reverse direction Conrail, again with road crews, delivers the APL trains to Global 1.<sup>6</sup>

As I pointed out in my statement in APL-4 (pages 13-14), there is a major difference between running a through train from UP 2.5 miles past Global 1 to Ashland Avenue, versus running 8 miles further through congested terminal trackage with numerous conflicting movements to reach Bedford Park, adding about two hours to the planned running time of the train. On some days it will be less, and on other days it will be more. The terminal trackage from Bedford Park to Ashland Avenue is one of the busiest intra-terminal main routes between railroads in the Chicago terminal district, involving two terminal trackage ownerships where you can never assume that the path will be clear all the way when you are ready to run.

The importance of this additional running time is especially important here. UP road crews could not be scheduled to take the train to Bedford Park<sup>7</sup> unless they will consistently have enough time remaining on duty within their permitted hours of service to complete the delivery and tie up their power at a UP off-duty point. If they don't they will terminate at Global 1 and another crew will have to be obtained to take the train to Bedford Park. Whether this responsibility will be accepted by UP, and if so, how promptly, we do not know. I have inquired of the operating officers at UP to ascertain how they would handle this and what commitments they have made to Applicants to run the APL trains to the proposed new terminal at 59th Street or to Bedford Park. I was advised the issue had not been studied, that they had not been asked about it, that they had made no commitments to Applicants, and that they weren't aware that they would be expected to do this in the future. From my perspective, CSXT has not demonstrated that its replacement schedules could be realistically used on Day 1 in connection with APL's existing service from the West Coast.

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<sup>6</sup> The relative locations of Global 1, Ashland Avenue, and Bedford Park are shown on Exhibit "C" to my statement filed October 21, 1997, APL-4. The location of the proposed new terminal at 59th Street is approximately 2/3 of the way from the "Ashland Avenue" connection to the "proposed CSXT connection" on the "BOCT" line.

<sup>7</sup> Assuming that UP has operating rights to run through trains to Bedford Park via Global 1.

The second problem concerns transfer movements. Locally originating traffic at Chicago, or containers transferred at Chicago, are primarily loaded on rail cars at Global 1 and then sent to Ashland Avenue, 2.5 miles, in a switch movement prior to the Ashland Avenue departure times. Bedford Park is a much longer round-trip which will require a significant portion of a transfer crew's shift time. There has just been no planning that I am aware of as to how and when these transfers can be economically accomplished in a way that meets APL's needs.

What I view as certain is that existing UP-Conrail schedules cannot be maintained via Bedford Park and it is problematic if they could be maintained from 59th Street. The UP trains arrive from the West Coast on an agreed schedule, and those schedules cannot be unilaterally moved by CSXT without risking breaking the continuity of the service. Note, also, the later arrival times at APINY (6:00 a.m. versus 4:30 a.m.) For CSXT train Q 164. Those pre-dawn hours are critical in unloading containers and preparing for the early-morning rush. The difference between 4:30 a.m. and 6:00 a.m. arrival means a 1 ½ hour later container availability time which, at this time of the day, is a major setback for an intermodal service provider. It is the same as a commuter driving on the Washington Beltway at 7:30 a.m. instead of 6:00 a.m.

The proposed schedule for the replacement for our premier train, TV 200, is shown as arriving 2 hours 31 minutes earlier than TV 200. Mr. Orrison's deposition testimony on November 19<sup>th</sup> states that CSXT has decided that it should leave Chicago later and arrive at APINY earlier than first scheduled (Tr. At 180-182).

The latest CSXT proposal is a train (albeit leaving from the wrong place) from Chicago to APINY running on a schedule five hours and one minute faster than Conrail's dedicated APL train runs today. Considering that Conrail is frequently hard-pressed to keep our trains on time, and often operates via alternate routes (the Penn Route for example) in order to avoid congestion on the River Line, and further considering that the massive capital expenditures planned by CSXT to improve their route could not possibly be in place by Day 1 (unless Day 1 is well after control of Conrail is authorized), I do not consider CSXT's schedule proposed for Day 1 to be credible, or for that matter, for an indefinite period after Day 1.



APL needs to deal today with the realities of today, and the realities are that the 59th Street terminal has not been built, the heavily-congested River Line has not been double-tracked, the massive capital improvements to Conrail's facilities have not been made, and they will not have been made by Applicants' proposed Day 1. CSXT's stated schedule intentions may eventually be achieved. Meanwhile, APL has a business to protect, and I cannot rely on CSXT's replacement schedule which I do not view as credible on Day 1, unless APL's transportation contract with Conrail is modified through negotiations with CSXT to ensure such service with penalties for service failures.<sup>8</sup>

In the reverse direction, where we are dealing with traffic originating at APINY, APL has greater control over the loading of its trains and the timing of their departure, subject, of course, to the constraints of the marketplace. Thus APL uses Conrail's TV 201 as its primary train from APINY to Chicago on Monday through Friday with an 00:25 departure. On Friday we work later and use Conrail TV 203 which provides a one-hour and 35 minute later departure, giving our shippers more time to clean out their shipping docks before the weekend. The present Conrail schedules, together with the replacement schedules proposed by Applicants are set forth in confidential Exhibit B.

It will be noted that Conrail TV 201 is presently scheduled to depart at 25 minutes after midnight. This gives us the evening hours to sort the day's business, develop a load plan for the stackcars, deal with last-minute changes and expedited but late containers, and assemble our trains.

The proposed substitute trains are an example of Applicants unilaterally proposing the schedules that meet their requirements, rather than the schedules that Conrail has provided, and which we need. Instead of a primary departure at 00:25 with a backup at 02:00, Applicants propose a primary departure almost three hours earlier, with a backup 55 minutes before our present primary schedule, and a further backup the next afternoon. These radical changes in departure times would literally destroy our present westbound service plan. It would require rolling back all our terminal processes, altering them by hours to adapt to what Applicants want

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<sup>8</sup> APL prefers to negotiate contract changes. But, Applicants have refused to negotiate because of section 2.2(c) of the Transaction Agreement. Therefore, APL has asked the Board to disapprove section 2.2(c).

to run. The probable consequence is one business day's delay for much of our traffic, changing Chicago arrivals from second to third morning, which would be a deadly consequence to APL in this intensely competitive market.

Today Conrail today brings our westbound trains to Global 1. Neither CSXT nor NS has stated any willingness to do so. CSXT proposes to bring them to the as-yet-not-built terminal at 59th Street. CSXT has not addressed how the trains reach our terminal at Global. Also, as I pointed out above, during the interim period of unknown duration while the 59th Street terminal is being built and readied for service, CSXT will terminate our trains at Bedford Park, with no explanation given as to how the trains will get to us at Global 1, and who will bring them.

There has evidently been a further development in the Applicants' Operating Plan since the filing of CSX/NS-119. It will be noted that no NS schedules are shown in CSX/NS-119 as replacements for APL's eastbound Conrail trains, and only one schedule, of no practical value to APL, is listed by NS westbound. However, in deposition testimony on November 19th Mr. Mohan, on behalf of NS, stated that NS would, if traffic were offered, replicate *any* of the present Conrail schedules, and that all of the Conrail schedules shown in Figure 3 at pages 48-51 of CSX/NS-119 are also potentially NS schedules!

The situation unfolding before APL at this juncture is as follows: (1) that the formal filings before the Board show no eastbound train schedules proposed by NS departing Chicago that replace the run-through trains operated by UP with an en-route stop at APL's Global 1 terminal; (2) the replacement schedules proposed by CSXT leave from a different, not yet constructed terminal (59th Street), and for an indeterminate amount of time would leave from an even more distant terminal (Bedford Park); (3) no agreement has been reached with UP to deliver trains with road crews to CSXT at Bedford Park, as UP does today to Conrail at Ashland Ave; (4) there has been no confirmation of the practicality of CSXT's proposed operation for APL; and (5) now, at this late date, and without any formal amendment to the Applicants' Operating Plans, NS takes the position that it is prepared to replicate Conrail's schedules between Ashland Avenue and APINY via its Southern Tier or Penn routes (This is of course welcome news to APL, as the earlier filings had conveyed no statement that NS would be willing to do so).



Taking the NS representations at face value, it follows that NS would be willing to essentially step into Conrail's shoes and provide equivalent train schedules, via Harrisburg rather than via Selkirk. Since NS would operate from Ashland Avenue, as does Conrail today, this could resolve the major Chicago Terminal issues confronting APL under the operating plans previously presented.

However, it must also be recalled that Applicants have taken the position that they, and only they, under section 2.2(c) will decide how the contracts of shippers such as APL will be assumed. CSXT and NS apparently plan to divide shippers' contracts behind closed doors. All of the good intentions that the operating department of NS may now express about service for APL would become meaningless if in the heat of horse-trading the commercial department of NS decides to barter the APL contract to CSXT in return for contracts of other shippers. This prospect also underscores how wrong it is to allow Applicants to divide APL's contract traffic without any input from or negotiation with APL.

I do not see how Applicants can possibly represent to the Board that they have put in place a smooth transition for Day 1 for APL's traffic.

#### **4. Congestion Factors Ignored By Applicants**

I have earlier expressed concerns over the ability of CSXT to consistently meet any proposed schedules, much less the five hour faster new proposals, given that the trains must funnel all of its Chicago-NJSAA business through the River Line. The River Line will be handling substantially greater volumes than it handles today, and thus on Day 1 this partly single track, presently congested and frequently at capacity line will be overwhelmed with new business.

I appreciate that Mr. Orrison recognized the serious problems and need for major improvements on the River Line. He stated "there are a number of mechanisms that are in discussion between representatives of Conrail and CSX to see if we can have that investment completed prior to day one." Tr. at 165. While I wish Mr. Orrison well in his attempts to achieve improvements on the River Line, the very guarded way in which the discussions were described underscores that they were simply that, *discussions*. But discussions may not come to fruition before Day 1. It is clear to me that there is no assurance from CSXT, that the needed

improvements will be completed prior to Day 1. However, were CSXT willing to negotiate our transportation contract outside the strictures of section 2.2(c), and provide certain assurances along with enforcement provisions and liquidated damages, I would find that more convincing.

Our business cannot live on "paper" schedules, or promises, but must have realistic schedules that work. As I explained in my Statement in APL-4, the River Line is presently so congested with existing Conrail traffic that Conrail decides, day by day, whether to allow our TV 200 train to go via the River Line or divert it to a former Pennsylvania route in order to make its schedule, an option unavailable to CSXT. CSXT must live with the River Line's congestion, as it will have no reasonable alternative. Generations of railroaders have been told by their seniors to "Never try to pour two quarts of liquid into a one-quart jar!" CSXT may be about to try this on the River Line.

Applicants have not acknowledged the extent to which cross-hauling will be increased within the NJSA. Today Conrail engages in a significant amount of cross-hauling of intermodal equipment within the area, and after the Conrail facilities are divided between Applicants the cross-hauls will get longer. NS will be cross-hauling between Croxton and E-Rail. CSXT will be cross-hauling between North Bergen, South Kearny, and Elizabethport. CSAO will meanwhile be shuttling manifest and other traffic back and forth between Ridgefield Heights, Oak Island, Doremus, Port Newark, Express Rail, Bayway, Linden, Carteret, Port Reading, Metuchen, and South Amboy, and to and from the NS and CSXT terminals. This means more congestion within the NJSA, and slower movements for all traffic.

The oft-repeated assurances in CSX/NS-119 that on Day 1 Applicants will slip effortlessly into Conrail's role and provide an equivalent service with hardly a ripple are not credible, given the information which Applicants have put before us, and which repeatedly shows gaps, mis-matches, missing links, and capacity problems.

##### **5. The SAAOP Invites Runaway Congestion And Underscores The Need For Contractual Commitments From Applicants**

The SAAOP is riddled with inadequacies which portend runaway congestion and an indeterminate period of stress for shippers. I have discussed issues which are of special concern to APL, but there are others which affect the SAAOP environment as a whole, and will affect all

movements, including APL's. For example: what Canadian Pacific ("CP") traffic in new CSXT "haulage" trains is about to be added to compete for terminal space, routes, and facilities within the NJSAA? How much business will CP pour into the NJSAA? How does Resources yard (NYS&W) relate to the proposed activities in the NJSAA and who will use it? Have any guidelines been established as to how conflicting movement priorities will be resolved between road trains of NS and CSXT and yard and transfer movements by the CSAO? How can Applicants say on page 8 of CSX/NS-119 that there will not be an increase in trains in the NJSAA and then tell us: (1) on page 36 that CSXT's present major over-the-road intermodal movements from Philadelphia to New York will now be put on trains through the NJSAA to South Kearny; (2) at page 37 describe a new rail connection to NYS&W at Little Ferry which will take trains off the southern tier and put them on the River Line to the NJSAA; (3) at pages 40 and 41 describe a series of improved all-rail traffic flows designed to add volume through the NJSAA; (4) in cryptic references in CSX/NS-119 and on deposition, tell us that CP has been granted commercial access to the NJSAA, but that CP is not going to add new business; and (5) in Mr. Mohan's deposition indicate that NS may also operate Conrail's 65 trains that operate today in the NJSAA?

Applicants are contemplating a transaction more complex than the surgical separation of Siamese twins. They propose to take an integrated operating plant which is itself the product of years of experience, of trial-and-error, of successes and mistakes, cut it into three parts, and hope that not only do all three survive, but that they will simultaneously hop off the operating table and start functioning just as efficiently as had the unified whole. Given the complexities of the partition, the probabilities are very high that the hoped-for result will not be attained on Applicants' time table.

To say this is to acknowledge reality, and is not to imply that Applicants are incapable of eventually making it work. I have sufficient confidence in the managements of both NS and CSXT to believe that *eventually* both companies are capable of making their plans succeed. I also believe that those who depend on the NJSAA operations to make their businesses work are in for a very rough time in the interim.

I am a railroad operating man. I have tremendous day-to-day hands on experience in the operations of the NJSAA. I hope that my concerns are not dismissed as mere details that can be sorted out later, after the transaction is consummated. APL's concern over these details is the product of years of experience, of trial-and-error, and knowledge of the details that hold the fabric of our service together. The overriding impression I am given by Applicants' conduct and filings to date is that they are telling us what will work for them, and inviting us to adapt to it. This is the post-Staggers Act Era, where railroads and their customers build a relationship, not the old days where railroads dictate. We need Applicants to sit down with us, review exactly what we do and what we need, and then work together to establish a program that works for APL and CSXT and for APL and NS.

The reason we need a contract, or contracts, in place with Applicants prior to Day 1, in which the service details are tied down and remedies put in place for service failures, is to replace naked assurances with contract specifics, in which Applicants give their enforceable promises, not just reassurances backed only by good intentions.

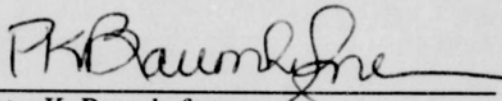
If Applicants truly believe the assurances they are asking the Board accept, they will put their pocketbooks behind them. I again repeat that APL is willing to work with Applicants, but wants to have in place-- before Day 1-- appropriate contractual provisions that define the services to be provided, the schedules to be maintained, and the consequences if Applicants fail to perform as promised. That, and not all the opinions of Applicants experts, will provide the true test of their intentions.



VERIFIED STATEMENT

I, Peter K. Baumhefner, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on November 21, 1997.

  
Peter K. Baumhefner

AH971121LTSaa-0910ai-PKB

# **EXHIBIT A**



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- (1) very much.  
 (2) (Recess.)  
 (3) EXAMINATION BY COUNSEL  
 (4) FOR APL LIMITED  
 (5) BY MR. GITOMER:  
 (6) Q. Mr. Mohan, Mr. Orrison, I'm Lou Gitomer  
 (7) representing APL and I have several questions for  
 (8) you about the North Jersey shared asset area, and  
 (9) I'd like to call it North Jersey just as an  
 (10) abbreviation. And, to keep matters straight, the  
 (11) Conrail shared asset operator I'm just going to  
 (12) call Conrail.  
 (13) Mr. Orrison, have you personally  
 (14) inspected North Jersey?  
 (15) A. (Mr. Orrison) I have inspected the  
 (16) tracks that are within the North Jersey shared  
 (17) asset - I have inspected the railroad tracks  
 (18) that are Conrail owned tracks in that area, not  
 (19) the state of New Jersey.  
 (20) Q. By North Jersey I'm referring to the  
 (21) North Jersey shared asset area which is the  
 (22) jointly owned property to be acquired by CSX and  
 (23) Norfolk Southern. And have you also inspected  
 (24) Kearney Yard?  
 (25) A. (Mr. Orrison) I have looked at Kearney

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- (1) Yard, yes.  
 (2) Q. How about the APL operation there?  
 (3) A. (Mr. Orrison) I have looked at the APL  
 (4) operation, yes.  
 (5) Q. Have you done more than just look at  
 (6) it, could you tell me what you mean by look at  
 (7) it?  
 (8) A. (Mr. Orrison) I have made three  
 (9) high-reil trips by it, stopping, looking at the  
 (10) yard operations, I have talked to the local  
 (11) Conrail trainmaster that's in charge of the  
 (12) operations who is a representative - the  
 (13) railroad representative in charge of ensuring  
 (14) that efficient operations are ensued on behalf of  
 (15) APL.  
 (16) I have had a number of discussions with  
 (17) my representatives at CSX that are handling the  
 (18) design of the intermodal schedules and train  
 (19) operations, them representing their conversations  
 (20) back to me in terms of what type of plans are  
 (21) being put forth that are in our filing to the STB  
 (22) and also in the supplemental to the STB for the  
 (23) proposed operations at the APL section of the  
 (24) Kearney Yard.  
 (25) Q. Thank you. Mr. Mohan, have you

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- (1) inspected the Kearney Yard?  
 (2) A. (By Mr. Mohan) Yes.  
 (3) Q. The APL operations?  
 (4) A. (By Mr. Mohan) Yes.  
 (5) Q. Mr. Orrison, when a train is coming  
 (6) into North Jersey, a CSX train, and it reaches  
 (7) the border, who is going to operate it into North  
 (8) Jersey?  
 (9) A. (Mr. Orrison) It depends on the  
 (10) destination of the train.  
 (11) Q. If it is an intermodal train, say,  
 (12) train Q156?  
 (13) A. (Mr. Orrison) Our intentions are to  
 (14) have a CSX road crew operate the train once it  
 (15) comes to the border of the shared asset area to  
 (16) the facility known as Kearney Yard, that would be  
 (17) for this train 156.  
 (18) Q. And would that be the same for other  
 (19) intermodal trains destined to Kearney Yard?  
 (20) A. (Mr. Orrison) For CSX Intermodal  
 (21) trains, yes.  
 (22) Q. Thank you. Mr. Mohan, when an NS train  
 (23) reaches the North Jersey border and it's an  
 (24) intermodal train, a train DSCGCA(1), would that  
 (25) continue to be operated to Croton by NS or would

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- (1) it be operated by Conrail?  
 (2) A. (Mr. Mohan) By NS road crews.  
 (3) Q. And would that be true for other  
 (4) intermodal trains entering North Jersey?  
 (5) A. (Mr. Mohan) Most, if not all, that I  
 (6) can think of, yes.  
 (7) Q. Would that also be true for intermodal  
 (8) trains leaving North Jersey?  
 (9) A. (By Mr. Mohan) Yes.  
 (10) Q. Mr. Orrison -  
 (11) A. (Mr. Mohan) For CSX Intermodal trains  
 (12) leaving North Jersey, yes.  
 (13) Q. Thank you. Mr. Orrison, can you  
 (14) project on average how many trains would be  
 (15) leaving and entering North Jersey over CSX lines  
 (16) each day?  
 (17) A. (Mr. Orrison) It's in our application,  
 (18) it's in volume 3A.  
 (19) Q. Into the North Jersey -  
 (20) A. (Mr. Orrison) It's in the tables.  
 (21) Q. Does that include the number of trains  
 (22) entering from the South Jersey shared asset area?  
 (23) A. (Mr. Orrison) It's for every line  
 (24) segment and it's outlined by line segment in the  
 (25) tables.

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- (1) Q. And this is in the -  
 (2) A. (Mr. Orrison) Volume 3A.  
 (3) Q. 3A, the traffic density charts?  
 (4) A. (Mr. Orrison) It shows train volumes  
 (5) and it also shows train density by GTMs.  
 (6) Q. Mr. Mohan, is that also true for  
 (7) Norfolk Southern?  
 (8) A. (Mr. Mohan) Yes, it's true for Norfolk  
 (9) Southern, although, if you'll read the exhibit in  
 (10) CSX 3A, you'll see that it's referred to as the  
 (11) shared asset area exhibit, and it's possibly more  
 (12) complete than NS 3B with respect to the train  
 (13) movements in gross ton miles within the NJSA.  
 (14) Q. Okay. Thank you. Have you gentlemen  
 (15) had the opportunity to review APL-4, the response  
 (16) and request for conditions that APL filed in this  
 (17) proceeding? Mr. Orrison?  
 (18) A. (Mr. Orrison) I have not.  
 (19) Q. Mr. Mohan?  
 (20) A. (Mr. Mohan) Nor I.  
 (21) Q. Okay. I don't want to mark this 4 as  
 (22) an exhibit, but there is a reference in here in  
 (23) the verified statement of Mr. Baumhoffer of APL  
 (24) at the bottom of page 6 and top of page 7, I'll  
 (25) pass this to counsel and you can take a look. He

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- (1) indicates that three times a day APL and Conrail  
 (2) confer on APL trains destined to the North Jersey  
 (3) shared asset area.  
 (4) Can you tell me who, if anyone -  
 (5) MS. CLAYTON: Could you just wait a  
 (6) second. You're on the last paragraph on page 6  
 (7) carrying over to page 7?  
 (8) MR. GITOMER: Yes.  
 (9) (Discussion off the record.)  
 (10) MR. GITOMER: Back on the record.  
 (11) BY MR. GITOMER:  
 (12) Q. The question is who will APL have these  
 (13) conferences with on day one or will there be  
 (14) these conferences? Mr. Orrison?  
 (15) A. (Mr. Orrison) CSX has a similar  
 (16) arrangement in handling the movement of  
 (17) intermodal trains and other trains and traffic  
 (18) for not only intermodal but automotive,  
 (19) merchandise train operations that are timed for  
 (20) customer requirements. Those are handled in  
 (21) conversations by - for intermodal trains by our  
 (22) intermodal group to those customers and then  
 (23) related to our network operations people.  
 (24) Some of these conversations are set up  
 (25) where it's a joint conference call so that you

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- (1) have all the key representatives involved and
- (2) that you can quickly handle any type of tactical
- (3) issues that may arise on a day-to-day basis.
- (4) With respect to day one operations, I would
- (5) expect that that mechanism would be in place.
- (6) Q. And that would be done on a daily
- (7) basis?
- (8) A. (Mr. Orrison) It would be done as
- (9) required to ensure that the efficient operations
- (10) of the trains are accounted for in and out of the
- (11) terminal facility.
- (12) Q. Thank you. Mr. Mohan, for Norfolk
- (13) Southern?
- (14) A. (Mr. Mohan) Unable to respond
- (15) personally in that regard, it's been outside the
- (16) scope of my personal responsibilities, APL is a
- (17) large and well regarded customer of NS and I
- (18) would imagine they would work with APL as APL
- (19) requests in that regard.
- (20) Q. Okay. Thank you. Mr. Orrison, there
- (21) are times when the preferred route of APL over
- (22) Conrail which is over Selkirk is congested and
- (23) APL then makes arrangements to reroute its
- (24) traffic. Who will contact APL to let them know
- (25) if there is congestion over Selkirk?

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- (1) A. (Mr. Orrison) You're asking a
- (2) hypothetical question?
- (3) Q. Okay. Make it a hypothetical. Let us
- (4) assume that, after CSX starts operating over
- (5) Selkirk, that there is congestion on the line
- (6) between Selkirk and New York or Selkirk and North
- (7) Jersey.
- (8) A. (Mr. Orrison) From the perspective of
- (9) the development of the operating plan, listed in
- (10) the capital investments in volume 3A, from the
- (11) River Line, extending sidings and also improving
- (12) the speed of the track for the movement of trains
- (13) and the schedules of those trains, the operating
- (14) plan doesn't foresee that we would be having
- (15) congestion.
- (16) However, to try to give you an answer
- (17) on a hypothetical question, if the congestion
- (18) were to occur, the conversations would be
- (19) coordinated between the representatives of
- (20) network operations in our Jacksonville operations
- (21) center with also the representatives of the field
- (22) organization. This would be the Philadelphia
- (23) service lane which would be responsible for the
- (24) actual operations of the track from Selkirk to
- (25) North Jersey.

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- (1) Q. You mentioned when you were speaking
- (2) with Mr. Donovan this morning the substantial
- (3) capital improvements that CSX is making. CSX
- (4) isn't making any of those improvements over the
- (5) river route now, is it?
- (6) A. (Mr. Orrison) CSX has in the
- (7) application volume 3A their expectations to do
- (8) capital investment, to improve the sidings on the
- (9) River Line.
- (10) Q. Will those investments be made by day
- (11) one?
- (12) A. (Mr. Orrison) We are anticipating to
- (13) have those investments made by day one. The
- (14) timing of those are -- well, we're currently
- (15) working with representatives of Conrail to have
- (16) Conrail do the work on their lines prior to our
- (17) actually acquiring the Conrail lines from
- (18) Conrail. And there are a number of mechanisms
- (19) that are in discussion between representatives of
- (20) Conrail and CSX to see if we can have that
- (21) investment completed prior to day one.
- (22) Q. Is CSX assuming the risk assuming there
- (23) is no day one?
- (24) A. (Mr. Orrison) We're assuming a lot of
- (25) risk in this project. As you know, and you can

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- (1) see it in the work effort, CSX has already spent
- (2) almost \$200 million this year prior to a control
- (3) decision by the STB. We have notified the STB
- (4) that we're doing this all at our own risk.
- (5) It's private equity that's being put
- (6) into tracks for construction to improve main
- (7) lines and build connections all over our
- (8) network. And that's all being done at risk
- (9) whether or not the STB approves this application.
- (10) Q. Well, those assets will still be owned
- (11) by CSX?
- (12) A. (Mr. Orrison) We're also working prior
- (13) to day one in terms of acquiring properties and
- (14) building tracks and constructing tracks on
- (15) right-of-ways that are on Conrail properties.
- (16) And that's what I was saying earlier, is that
- (17) we've got a number of mechanisms in place that
- (18) will allow us to pursue the construction of those
- (19) tracks on right-of-ways of Conrail, even though
- (20) CSX is doing this prior to day one.
- (21) Q. In addition to the River Route, there
- (22) are other routes over CSX into the North Jersey
- (23) area from Chicago?
- (24) A. (Mr. Orrison) There is an alternative
- (25) route which would be run over the B&O, that's the

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- (1) Eastern Gateway Service Route. We'll be
- (2) operating over the B&O Railroad all the way to
- (3) Baltimore then northward to Philadelphia and then
- (4) taking the Trenton line into the North Jersey
- (5) shared asset area. That is an alternative route.
- (6) Q. How does that compare time-wise to the
- (7) River Route?
- (8) A. (Mr. Orrison) I don't have the exact
- (9) schedules in front of me. But the Water Level
- (10) route which they're calling the River Route in
- (11) this conversation which uses a River Line from
- (12) Selkirk down to the North Jersey shared asset
- (13) area is a faster route. As you know we're making
- (14) it into a class 5 railroad so that we can move
- (15) intermodal trains 70 miles an hour virtually for
- (16) the entire length of the route from Chicago to
- (17) Selkirk.
- (18) Q. Your schedules indicate that it looks
- (19) like you'll be operating trains from Chicago into
- (20) Kearney in 30 hours or less; is that accurate?
- (21) A. (Mr. Orrison) That's a pretty fair
- (22) description of the schedules, yes.
- (23) Q. Mr. Mohan, from figure 5 it appears
- (24) that NS is going to be operating one train per
- (25) day from the APL facility in North Jersey to

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- (1) Chicago. Is that accurate or are there more NS
- (2) trains?
- (3) A. (Mr. Mohan) I believe the train you're
- (4) referring to is DSCXCG1, and this conversation
- (5) will be somewhat similar to the discussion with
- (6) the Port of New Jersey.
- (7) In our operational planning, we relied
- (8) on a traffic split provided by professional
- (9) traffic analysts that provided a certain amount
- (10) of traffic to work with. The traffic was then
- (11) assembled into our best operating plan to meet
- (12) the requirements of statute which is what you see
- (13) displayed here.
- (14) In the competitive world that will
- (15) ensue, if APL has an interest in additional train
- (16) services and if NS is successful in attracting
- (17) the traffic, certain additional schedules would
- (18) be run. And I would point out to you that
- (19) something substantially similar to TV-200 and I
- (20) believe TV-201 which would be Penn route,
- (21) Chicago, API Kearney schedules would also be run,
- (22) again if that's API's preference.
- (23) Q. Mr. Mohan, earlier today you talked
- (24) about customers allocating traffic in
- (25) Mohan-Orrison Exhibit 3, the response to the Port

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- (1) of New York and New Jersey. That phrase is used  
(2) several times. Is your contention that APL can  
(3) elect which carrier or what percentage of its  
(4) traffic to give to both carriers?  
(5) A. (Mr. Mohan) I have no direct personal  
(6) say in the decision-making. The way that the  
(7) competitive marketplace works is that NS and  
(8) API - APL will negotiate on services to be  
(9) provided. And, if a TV-200/201 type of schedule  
(10) was APL's preference and the traffic were there,  
(11) then I know that NS would try it.  
(12) Q. In the application there is a  
(13) transaction agreement which provides for the  
(14) division of contract traffic between CSX and  
(15) Norfolk Southern. Are you aware of that  
(16) provision in Section 2.2 C of the transaction  
(17) agreement?  
(18) A. (Mr. Mohan) It's been outside the scope  
(19) of my personal responsibilities. I'm aware of it  
(20) as a reader.  
(21) Q. That provision appears to cut out the  
(22) customer's ability to allocate contract traffic  
(23) so that the traffic is allocated by the terms of  
(24) that provision. I'll skip ahead to a question  
(25) that relates to that.

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- (1) MS. CLAYTON: I think I'm going to  
(2) object to your characterization of it. If you're  
(3) asking him to respond, I think he said he wasn't  
(4) familiar with it really.  
(5) MR. GITOMER: I did not ask him to  
(6) respond.  
(7) BY MR. GITOMER:  
(8) Q. Mr. Mohan, between Chicago and Kearney,  
(9) will NS have an efficient route providing high  
(10) quality and consistent service to the customer?  
(11) A. (By Mr. Mohan) Yes.  
(12) Q. Mr. Orrison, is that true of CSX as  
(13) well?  
(14) A. (Mr. Orrison) I will speak on behalf of  
(15) CSX, yes.  
(16) Q. Mr. Orrison, do you think that CSX's  
(17) route will be more efficient than Norfolk  
(18) Southern's route?  
(19) A. (Mr. Orrison) I can speak on behalf of  
(20) our route, that we know that it is an efficient  
(21) route.  
(22) Q. Okay. Mr. Mohan, do you know if  
(23) Norfolk Southern's route will be more efficient  
(24) than CSX's route?  
(25) A. (Mr. Mohan) We believe both NS routes

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- (1) will be efficient. As to their superiority to  
(2) CSX, I don't know.  
(3) Q. Thank you both. Mr. Mohan, will NS  
(4) have access to any support tracks immediately  
(5) outside of the APL facility at Kearney?  
(6) A. (Mr. Mohan) It will certainly have  
(7) access to support trackage in the Oak Island  
(8) area.  
(9) Q. Okay. And how far is that from APL's  
(10) facility?  
(11) A. (Mr. Mohan) I would judge it to be,  
(12) depending upon crow flight or rail miles, perhaps  
(13) two miles by rail, substantially less straight  
(14) line.  
(15) Q. Now, APL has loaded cars that will not  
(16) fit into its facility or it has empty cars that  
(17) it needs to move out. Are you saying that NS  
(18) would then move those cars to Oak Island?  
(19) A. (Mr. Mohan) I'm saying that that's the  
(20) closest clear point of storage. Mr. Orrison may  
(21) know more than I about NS's storage rights as  
(22) agreed with CSX or with the CSAO at the Meadows  
(23) Yard directly opposite the APL facility.  
(24) Q. Are you telling me that NS has no  
(25) arrangements with CSX to use the tracks at the

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- (1) Kearney Yard?  
(2) A. (Mr. Mohan) My understanding may or may  
(3) not be correct. My understanding is that Kearney  
(4) non-APL is to be an exclusively served CSX  
(5) facility. And, with respect to support available  
(6) to the CSAO at Meadows Yard or what would  
(7) commonly be referred to as Meadows Yard support  
(8) tracks, I am unclear that NS has storage rights  
(9) there or the application may indicate to the  
(10) contrary.  
(11) Q. Mr. Mohan, how many options would APL  
(12) have over NS for trains routed between Kearney  
(13) and Chicago?  
(14) A. (Mr. Mohan) Under the plan as filed and  
(15) with the best traffic estimates pursuant to  
(16) developing patterns of service, APL would have  
(17) access to the Croxton-Chicago schedules. As I  
(18) have conveyed to you earlier, if the traffic is  
(19) there and there is a commercial arrangement  
(20) between NS and APL, then certainly something  
(21) equivalent to the TV-200/TV-201 via the Penn  
(22) route would also be available.  
(23) Q. Does NS intend to initially serve APL  
(24) with trains originating in Croxton and then going  
(25) through APL's facility and then on to Chicago?

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- (1) A. (Mr. Mohan) Or the reverse, there could  
(2) be an origination that APL-Kearney pick up at  
(3) Croxton and operate via the Southern Tier.  
(4) Likewise there can be an origination directly at  
(5) Kearney, APL-Kearney, if the traffic was  
(6) available, and head directly out on the Penn  
(7) route.  
(8) Q. Okay. And what about the trains  
(9) heading in the opposite direction from Chicago to  
(10) APL-Kearney, would they go through Croxton first  
(11) or would they go through Kearney first?  
(12) A. (Mr. Mohan) In the plan as filed,  
(13) coming in via the Southern Tier, there would be  
(14) Croxton set-out and then operation by the new  
(15) Marion connection to the Passaic & Harsimus and  
(16) then on to APL-Kearney.  
(17) Q. How long would it take to go from  
(18) Croxton to APL-Kearney?  
(19) A. (Mr. Mohan) That would be variable with  
(20) traffic conditions. A sensible average could be  
(21) perhaps 20 minutes.  
(22) Q. Mr. Orrison, you indicated that CSX has  
(23) looked long and hard at what happened out West.  
(24) Could you enlighten us as to what you've learned  
(25) from Union Pacific's experience?

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- (1) A. (Mr. Orrison) There could be scores of  
(2) conversation here. Let me see if I can give you  
(3) a summary.  
(4) Q. Thank you.  
(5) A. (Mr. Orrison) Our understanding is -  
(6) these are my comments so I'm representing myself  
(7) and my comments - that the Union Pacific  
(8) developed their operating plan, submitted it to  
(9) the STB. At the time of its submission to the  
(10) STB, the Union Pacific then waited for the STB  
(11) approval.  
(12) Post that approval they then began  
(13) their plans on trying to implement their  
(14) operations. So one lesson learned was that, once  
(15) we completed our submission to the STB on June  
(16) 23, we immediately formed a new team which was  
(17) going to work on day one operations.  
(18) It's a full-time team, a number of  
(19) different departments under project management  
(20) systems that are working with transition teams to  
(21) pull together the very, very detailed plans for  
(22) day one operations.  
(23) Knowing that every day ahead of us  
(24) counts in terms of us planning and preparation  
(25) for day one operations, we're looking at it as a



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- (1) way of ensuring that all the T's are crossed, all
- (2) the I's are dotted in terms of the operating
- (3) plan, its effectiveness, and its ability to be
- (4) implemented.
- (5) I could do additional comments in terms
- (6) of the technology systems and the implementation
- (7) of the technology systems, we looked at how the
- (8) UP decided to implement their systems and the
- (9) decisions that they made that led to situations
- (10) that, if they were to do it again, they would
- (11) have chosen a different type of rollout approach
- (12) in terms of switching over their computer
- (13) systems.
- (14) The representatives of our technology
- (15) department are working to ensure that they have
- (16) robust plans that would accommodate the
- (17) implementation of the new technology systems so
- (18) that situations do not arise that would cause
- (19) inefficiency in rail operations. You know, I
- (20) could speak for quite sometime here.
- (21) Q. One point you raised was technology
- (22) integration. And, in fact, that point is raised
- (23) in the supplemental operating plan. What
- (24) technologies do you think must be integrated for
- (25) day one operations?

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- (1) A. (Mr. Orrison) Those are outlined in
- (2) volume 3A.
- (3) Q. That everything in 3A has to be
- (4) integrated for day one operations?
- (5) A. (Mr. Orrison) No. In 3A we outlined --
- (6) and I've done this in my prior deposition, if you
- (7) care to read it. We said that there are some
- (8) mission critical systems that have to be in place
- (9) prior to day one and there are other systems that
- (10) would be timed in after day one to ensure that we
- (11) have a seamless transition with respect to
- (12) computer systems.
- (13) But in summary the movement of cars,
- (14) the instructions on how to move cars, the
- (15) customer requirements, that information being
- (16) available in our computer systems and being able
- (17) to have transactions through our networks to give
- (18) work orders to crews and to train operations on
- (19) day one is a critical step that has to be in
- (20) place.
- (21) Q. Mr. Orrison, have you looked at the
- (22) level of congestion in North Jersey under
- (23) Conrail?
- (24) A. (Mr. Orrison) I don't understand your
- (25) question.

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- (1) Q. Did you study the extent of Conrail's
- (2) existing cross-hauling of trains and cars between
- (3) its different terminals in North Jersey?
- (4) A. (Mr. Orrison) We met with
- (5) representatives of Conrail who currently are
- (6) responsible for all the train operations in the
- (7) North Jersey shared asset area. They conveyed to
- (8) us all their current operations in terms of local
- (9) movements, the handling of traffic to and from
- (10) customers, to and from yards, and to and from
- (11) scheduled trains that Conrail currently
- (12) operates.
- (13) Q. Did that include movements between
- (14) yards?
- (15) A. (Mr. Orrison) That included movement
- (16) between yards and the local operations, yes.
- (17) Q. Mr. Mohan, did you make a similar
- (18) analysis?
- (19) A. (Mr. Mohan) Yes, we looked in some
- (20) detail at the track and physical characteristics
- (21) of all routes in the NJSAA. I would also refer
- (22) you to CSX volume 3A, the exhibit on link
- (23) statistics that I referred to earlier within the
- (24) NJSAA. I think you'll find it quite complete.
- (25) With respect to train movements on any

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- (1) of the links, it's difficult to see whether there
- (2) would be any rail congestion of any great
- (3) concern. With respect to looking at the North
- (4) Jersey area as an area of -- visually, that
- (5) impression could be created. But, with respect
- (6) to the train movements on individual lines, it's
- (7) difficult to see any real congestion points.
- (8) Q. Okay. Thank you. Mr. Orrison, let me
- (9) take a minute and talk about three CSX scheduled
- (10) trains, Q156, Q164, and Q162. In CSX-21 which is
- (11) your schedules, I want to talk about them. With
- (12) regard to CSX-21, I'm going to talk about just
- (13) one of them with regard to a concordance of
- (14) Conrail and CSX schedules which you voluntarily
- (15) provided to APL and also with regard to
- (16) CSX/NS-119 and particularly the arrival times of
- (17) these three trains which seem to have changed
- (18) over time and just ask you to explain why the
- (19) difference in arrival times.
- (20) First Q156 which in CSX-21 was shown to
- (21) arrive at 02:30 at Kearney and then in CSX/NS-119
- (22) was shown to arrive at 23:59 in Kearney?
- (23) A. (Mr. Orrison) You would like me to
- (24) speak to the change in the timing of the
- (25) schedule?

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- (1) Q. Yes. Is the arrival two hours and 31
- (2) minutes caused because of more efficient
- (3) operations by CSX over the route, is it caused
- (4) because the train is leaving Chicago earlier, or
- (5) is there some other reason or combination of
- (6) reasons?
- (7) A. (Mr. Orrison) Well, the Q156 and the
- (8) NJSAA train schedules and classifications which
- (9) are provided to you as part of this supplement,
- (10) Q156 departs Chicago at 18:30. That would be an
- (11) Eastern time number. And arrives at Kearney at
- (12) 23:59.
- (13) The prior CSX-21 showed the schedule of
- (14) the same train Q156 departing at 15:00 Eastern
- (15) time from Chicago, arriving 02:30 at Kearney in
- (16) the North Jersey shared asset area. So you can
- (17) see from these times, Q156 is now departing later
- (18) than originally scheduled and arriving earlier
- (19) than originally scheduled.
- (20) We have found efficiencies in the
- (21) scheduling of this train operation over the
- (22) different line segments between Chicago and
- (23) Kearney that would allow for the train to move on
- (24) a quicker schedule from origin to destination.
- (25) Q. Okay. Now, with regard to train Q162

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- (1) in CSX-21, it was arriving at Little Ferry at
- (2) 04:00. And in CSX/NS-119, it is arriving at
- (3) Little Ferry at 06:00. Could you explain that?
- (4) A. (Mr. Mohan) The train scheduled Q162 in
- (5) CSX-21 chose a departure time from Chicago at
- (6) 23:15 Eastern time in operation to Little Ferry
- (7) at 04:00, arrival at Eastern time in -- excuse
- (8) me, at 04:00 in CSX-21.
- (9) In the current filing that is part of
- (10) the supplement, we have the same departure time,
- (11) 23:15 from Chicago at Bedford Park, not from 59th
- (12) Street but from Bedford Park, and then operating
- (13) to Little Ferry at 06:00.
- (14) As we went through and looked at the
- (15) schedule of the train operations, we found that
- (16) it was important for us to put more time in the
- (17) train between the running times origin to
- (18) destination so that it would sequence correctly
- (19) with the meets and the movements of trains east
- (20) of Chicago on the way to Little Ferry.
- (21) Q. Okay. The last train, Q164, which in
- (22) CSX-21 arrives at Kearney at 08:30 in the
- (23) information you voluntarily provided to us
- (24) arrived at Kearney at 04:30 and now in CSX/NS-119
- (25) arrives at Kearney at 06:00?

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- (1) A. (Mr. Orrison) We now are talking about
- (2) the reconciliation of three schedulings, not
- (3) two. Take one at a time. The original CSX-21
- (4) shows a train that was to depart from Chicago at
- (5) 23:00 Eastern time, that's Chicago's 59th Street,
- (6) arriving at Kearney at 08:30 Eastern time.
- (7) The information that was provided to
- (8) you during the period of my last deposition and a
- (9) request that you had to our counsel, Steptoe &
- (10) Johnson, we were trying to meet your request, we
- (11) showed the train departing from Chicago at 19:00
- (12) Central time from Chicago 59th Street which would
- (13) be 20:00 Eastern time and then arriving at
- (14) Kearney at 04:30 Eastern time.
- (15) The supplemental to 3A that we're
- (16) talking about in today's deposition shows a train
- (17) departing from Chicago at 02:00 Eastern time and
- (18) arriving Kearney at 06:00 Eastern time. The
- (19) adjustments to this is the train has a quicker
- (20) transit time, it has a gate closing in Chicago
- (21) that allows for lake traffic to connect to the
- (22) train.
- (23) And the train does arrive at Kearney
- (24) Yard two and a half hours later than provided to
- (25) you in this supplemental -- I don't know what you

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- (1) want to call this record, this supplemental, but
- (2) earlier than the CSX-21.
- (3) Q. You said two and a half hours, did you
- (4) one and a half hours?
- (5) A. (Mr. Orrison) One and a half hours,
- (6) excuse me, one and a half hours later than what
- (7) we showed you in the supplemental, but there
- (8) again earlier than what we had in CSX-21. The
- (9) adjustments that are here is again the line of
- (10) road running time, holding the train open at
- (11) Chicago 59th for connections, and then to attain
- (12) the proper sequencing as it arrives into Kearney
- (13) in terms of sequencing a train into the APL
- (14) facility for the movement and the lifts of the
- (15) movements to and from trains at APL.
- (16) Q. Okay. Is there sufficient flexibility
- (17) in these schedules as well as your other
- (18) schedules in the event that the customer would be
- (19) looking for different delivery times or different
- (20) pickup times or different start times? I'm not
- (21) talking about compressing the running time.
- (22) A. (Mr. Orrison) I think that the evidence
- (23) that we're talking about, the three different
- (24) schedules here, are all reflective of the
- (25) flexibility that CSX has in the sense that the

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- (1) original schedules were developed through
- (2) conversations with APL and then these schedules
- (3) through a subsequent conversation and then, as
- (4) we've worked on looking at the detail, that
- (5) there's a lot of flexibility that intermodal
- (6) has.
- (7) I've had a recent conversation with our
- (8) lead representative of CSX Intermodal in terms of
- (9) their conversations with APL. They're interested
- (10) in pursuing ongoing conversations with their
- (11) operational managers in terms of the scheduling
- (12) of these trains in and out of their facility.
- (13) Q. Thank you. Have you reached the level
- (14) of detail yet in your planning where you could
- (15) run through the actual movements of trains into
- (16) the APL facility in Kearney?
- (17) A. (Mr. Orrison) We're to a point where
- (18) the development of terminal sequencing
- (19) information, such as the detail and industrial
- (20) engineering of arrival, dwell time, and tracks,
- (21) load, unload, movement requirements, empty
- (22) equipment or repositioning of the equipment for
- (23) loading, is now occurring.
- (24) And that is by our intermodal planners
- (25) working with Conrail representatives that

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- (1) understand the Kearney Yard facility and also
- (2) working with APL to try to meet their
- (3) requirements of their release times of the
- (4) tracks, the unloading times of the trains, and
- (5) the loading times of the trains.
- (6) Q. Do you know who at APL CSX is working
- (7) with?
- (8) A. (Mr. Orrison) I've got several names
- (9) that I can give you. There's a guy named Jim
- (10) Fayham, Don Pennington, Baumhefer, John Burgess,
- (11) and Jim Bradley.
- (12) Q. And when was the last contact with
- (13) these gentlemen?
- (14) A. (Mr. Orrison) The last conversation was
- (15) on September 24.
- (16) Q. Okay. Thank you. Mr. Mohan, is the
- (17) Norfolk Southern planning far enough along to be
- (18) able to describe their move into and out of APL's
- (19) facility in Kearney?
- (20) A. (Mr. Mohan) To the extent that I
- (21) haven't described it accurately to you so far,
- (22) I'll try again. Arriving from the Southern Tier
- (23) side of Croxton, operation via the new Marion
- (24) connection which does not show on the map that is
- (25) provided here for discussion purposes directly to

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- (1) APL-Kearney, set out, terminate, reverse, and
- (2) origination can be made at APL-Kearney. Head out
- (3) through CP back again through Marion connection
- (4) at Croxton, pick up at Croxton, and depart via
- (5) the Southern Tier.
- (6) To the extent NS and APL agree on the
- (7) necessity for a Penn route schedule, make the
- (8) train directly at APL, depart directly via the
- (9) P&H and on to the Lehigh line and east to the
- (10) Penn route -- excuse me, west to the Penn route.
- (11) The reverse movement would be coming off the Penn
- (12) route to the Lehigh line and then down the P&H
- (13) directly to APL at Kearney.
- (14) Q. Mr. Orrison, from our reading of the
- (15) supplement, it appears there are going to be
- (16) three engine assignments covering the APL
- (17) facility; is that correct?
- (18) A. (Mr. Orrison) That's on page 105. And
- (19) I'll refer to you a statement that says three
- (20) CSXO crews will be assigned to handling the APL
- (21) and industrial switching from Kearney.
- (22) Q. Will CSX crews also be available to
- (23) help from the CSX facility next door?
- (24) A. (Mr. Orrison) CSX crews -- CSX will use
- (25) four yard assignments to handle the business at

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- (1) what I call next door, the non-APL portion of
- (2) Kearney Yard.
- (3) Q. Will CSX provide any of those
- (4) assignments to help APL, if it is necessary, if
- (5) APL makes that request of CSX?
- (6) A. (Mr. Orrison) CSX would accommodate
- (7) their requests. We have a statement in here that
- (8) says, to the extent APL requires switching, such
- (9) switching would be provided by CSXO crews,
- (10) knowing that what happens on a tactical
- (11) day-to-day basis, if there were requirements for
- (12) switching with a CSX crew, that accommodation
- (13) would be handled by a CSX crew.
- (14) Q. So you're saying that, if APL needs a
- (15) switch first, they need to talk to Conrail. And
- (16) then, if Conrail assignments are not available,
- (17) they can contact CSX?
- (18) A. (Mr. Orrison) That could be a type of
- (19) how the mechanism would work, yes.
- (20) Q. Is there another way that the mechanism
- (21) could work?
- (22) A. (Mr. Orrison) What I would say is that
- (23) the APL representative on-site that's responsible
- (24) for the APL portion of Kearney Yard would have
- (25) very close cooperation and also communication



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- (1) with the CSAO supervisor that is responsible for
- (2) the through operations. They would outline what
- (3) their switching requirements would be on a
- (4) day-to-day basis and that the supervisor of the
- (5) CSAO would be responsible for accommodating those
- (6) requirements.
- (7) Given a situation where for some reason
- (8) those requirements couldn't be met by CSAO crews,
- (9) the CSAO supervisor would be responsible for
- (10) communicating to both CSX and NS the requirements
- (11) for switching. Given that CSX crews are on site
- (12) and on assignment at the Kearney Yard, the
- (13) supervisors would have to work tactically to
- (14) provide for the switching to APL.
- (15) Q. Thank you. Mr. Mohan, would Norfolk
- (16) Southern crews be available to help with
- (17) switching for APL?
- (18) A. (Mr. Mohan) My understanding is that
- (19) the only prerogative that NS would have in the
- (20) APL facility would be for its own road train
- (21) crews to bring an APL train to rest and yard to
- (22) train as necessary. Likewise NS road crews will
- (23) be able to double a train together as necessary
- (24) to depart. But, insofar as NS yard crews being
- (25) able to perform work for APL, I have no such

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- (1) understanding
- (2) Q. Thank you. Mr. Orrison, do you know if
- (3) there is any plan to combine CSX traffic and APL
- (4) traffic into trains?
- (5) A. (Mr. Orrison) I don't know of any
- (6) plans, no.
- (7) Q. Mr. Orrison, if APL needed additional
- (8) tracks because of a growth in traffic or if
- (9) needed to extend its tracks, do you have an idea
- (10) where they might do it?
- (11) A. (Mr. Orrison) You're asking me to
- (12) speculate on a number of different variables.
- (13) Q. Let me ask you a more direct question.
- (14) Are you familiar with the Monsanto plant that's
- (15) shown on figure 20, the lower left-hand portion
- (16) of the diagram?
- (17) A. (Mr. Orrison) Yeah, you're speaking of
- (18) the plant or the buildings that are displayed
- (19) being served by track No. 813 known as the
- (20) Monsanto track No. 3?
- (21) Q. I think we're talking about tracks 813,
- (22) 814, and 815. Are you familiar with that?
- (23) A. (Mr. Orrison) I am familiar with this
- (24) area, yes.
- (25) Q. Does CSX have the right to use those

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- (1) tracks for storage of non-Monsanto cars?
- (2) A. (Mr. Orrison) CSX will have the right
- (3) to use the tracks in the same fashion that
- (4) Conrail uses them today.
- (5) Q. Are you aware that an agent acting for
- (6) CSX has taken an option on the Monsanto property?
- (7) A. (Mr. Orrison) No, I'm not aware of
- (8) that.
- (9) Q. Do you know if the Monsanto property is
- (10) a potential location for APL to expand?
- (11) A. (Mr. Orrison) No, I'm not aware of
- (12) that.
- (13) Q. If APL wanted to expand to the Monsanto
- (14) property, would CSX be willing to help APL?
- (15) A. (Mr. Orrison) You're asking me to
- (16) speculate on something I don't know.
- (17) Q. Would CSX be willing to help APL expand
- (18) its facilities at all?
- (19) A. (Mr. Orrison) Speaking on behalf of CSX
- (20) Transportation and the development of this
- (21) operating plan, I was required to develop a plan
- (22) to accommodate the known requirements of APL.
- (23) Asking me to speculate on future requirements of
- (24) APL not known to me, I think it's hard for me to
- (25) represent how CSX is going to work to accommodate

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- (1) APL's requirements.
- (2) Just to add this to the record, and I
- (3) feel like I've been doing the best effort
- (4) possible as a representative of CSX in terms of
- (5) the line of questioning that I've received from
- (6) other people at this deposition and the ones
- (7) prior to this, CSX is interested in the growth of
- (8) traffic in the North Jersey shared asset area.
- (9) We're in this as an opportunity to come
- (10) into the New York area and North Jersey area and
- (11) to provide competitive and effective train
- (12) service to and from points for all customers. I
- (13) feel that, as an employee of CSX, I work for a
- (14) company that looks to work with every customer in
- (15) terms of trying to accommodate not only their
- (16) current requirements but also their future
- (17) requirements, whatever those may be.
- (18) We have an industrial engineering
- (19) department, we have other sections of our company
- (20) in marketing that work with these customers to
- (21) help ensure that their expansions, their
- (22) requirements, and their capacity needs are
- (23) accommodated for future growth so that, as they
- (24) grow their traffic, CSX benefits from it because
- (25) we move that traffic to and from points. We are

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- (1) a transportation company, we're in the business
- (2) to try to move traffic for customers.
- (3) Q. So, based on that answer and your
- (4) response to my prior question, whether CSX would
- (5) be willing to help APL if its traffic grew and it
- (6) wanted to expand its facilities, your answer
- (7) would be yes?
- (8) A. (Mr. Orrison) You're asking me to
- (9) speculate on what the requirements are here.
- (10) Q. No, Mr. Orrison. I'm asking you, based
- (11) on what you just said, that sounded like a yes to
- (12) me. And I was just asking if that was what you
- (13) meant?
- (14) A. (Mr. Orrison) Well, I can speak frankly
- (15) to you that I have never seen our company go to,
- (16) you know, the extent of saying no, you know, that
- (17) every accommodation that we work with in trying
- (18) to help people when expansion occurred, that we
- (19) are trying to say yes and provide and meet their
- (20) requirements whatever they may be.
- (21) Q. I'm not saying that APL would be asking
- (22) for specific track from CSX, I'm just saying if
- (23) there's a situation where APL needs to expand its
- (24) track?
- (25) MS. CLAYTON: I'm going to object, that

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- (1) that's asked and answered. He told you that
- (2) generally they are willing to accommodate and
- (3) work with a customer, but he is not in a position
- (4) at this time to make any commitments to you about
- (5) things that he doesn't know, and that's all he's
- (6) saying. He can't make a commitment, but as a
- (7) general rule he's answered the question.
- (8) MR. GITOMER: Counsel, I have not asked
- (9) for a commitment and he has refused to answer the
- (10) question. He has gone back and made a very nice
- (11) speech which I find very comforting.
- (12) BY MR. GITOMER:
- (13) Q. All I'm asking for is a shorthand
- (14) answer, that, if APL has needs in the future,
- (15) that CSX, let me rephrase it, would be most
- (16) likely to help APL meet those needs?
- (17) A. (Mr. Orrison) Most likely, yes.
- (18) Q. Thank you. How many additional
- (19) Canadian Pacific trains will be entering the
- (20) North Jersey area based on the settlement with
- (21) CSX on a daily basis?
- (22) A. (Mr. Orrison) Are you asking me or
- (23) Mr. Mohan?
- (24) Q. I'm asking Mr. Orrison, I'm sorry.
- (25) A. (Mr. Orrison) If you read through our

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- (1) supplemental, we have no projection of additional
- (2) trains that are entering the area based off the
- (3) agreement that we have reached.
- (4) Q. Let me ask you a question from the
- (5) supplemental which has been entered as
- (6) Mohan-Orrison Exhibit 3. On page 12, footnote 1,
- (7) is that footnote accurate?
- (8) A. (Mr. Orrison) Are you in the
- (9) supplemental or are you in something else?
- (10) Q. This was -
- (11) A. (Mr. Orrison) That's not the
- (12) supplemental, is it?
- (13) Q. This was Exhibit 3.
- (14) MR. PLUMP: Are those the answers to
- (15) Port Authority?
- (16) BY MR. GITOMER:
- (17) Q. Yes.
- (18) A. (Mr. Orrison) The CSX/CP agreement
- (19) provides CSX with additional commercial but not
- (20) physical access to the NJSA. I would say that
- (21) the typographical is CSX should read CP, provides
- (22) CP with additional commercial.
- (23) Q. So does that mean that CP will not be
- (24) able to run additional trains into North Jersey
- (25) under the agreement with CSX?

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- (1) A. (Mr. Orrison) I have developed the
- (2) operating plan based off of the knowledge that
- (3) was provided to me prior to June 23. And we've
- (4) also developed a supplemental with the knowledge
- (5) that we have that met the requirements of
- (6) submitting this to the STB on October 29.
- (7) These negotiations between CP and CSX
- (8) are very current ones. It's an agreement that's
- (9) commercial in nature. My understanding of it is
- (10) that, if traffic actually materialized from this
- (11) commercial arrangement, that the traffic would be
- (12) moved on CSX trains, those that are currently in
- (13) our operating plan to and from the North Jersey
- (14) shared asset area.
- (15) Q. Is it your understanding that there
- (16) will be no additional CP trains?
- (17) A. (Mr. Orrison) My understanding of it is
- (18) that it would be CP traffic moving on the current
- (19) CSX planned trains into and out of the North
- (20) Jersey shared asset area.
- (21) Q. Thank you. Mr. Mohan, today, if APL
- (22) has a straight container or two at its Kearney
- (23) facility, they normally just get a yard tractor
- (24) to haul it through the gate to Conrail, it's an
- (25) off-street move. If APL were to have to take

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- (1) such containers to NS, how would they do it?
- (2) A. (Mr. Mohan) Well, with respect to
- (3) drayage arrangements, I don't feel qualified to
- (4) comment. With respect to intrayard transfers by
- (5) rail, I know of no reason that the CSAO couldn't
- (6) make the appropriate transfer to NS Croxton, if
- (7) that was the intent.
- (8) Q. Mr. Mohan, I think you've answered this
- (9) question, but let me ask you and then I'll ask
- (10) Mr. Orrison the same question. Based on our
- (11) reading of Exhibits 4 and 5 in the supplemental
- (12) operating plan, it seems that the schedules were
- (13) drawn up with the expectation that CSX was going
- (14) to be APL's primary carrier. And that's just
- (15) based on our reading, that there are many more
- (16) CSX schedules serving Kearney than there are NS
- (17) schedules. Is that a correct assumption,
- (18) Mr. Mohan?
- (19) A. (Mr. Mohan) Let me answer you directly
- (20) this way, with respect to the application, both
- (21) primary and this supplement, NS relied on the
- (22) split of traffic provided by NS traffic
- (23) consultants. The traffic was relayed to us. We
- (24) then built trains using an operational model.
- (25) You would be correct, if you looked at Exhibits 4

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- (1) and 5, that there appear to be more CSX than NS
- (2) schedules.
- (3) It is difficult, if not impossible, for
- (4) either of us to determine in the real competitive
- (5) most transaction environment how customers will
- (6) allocate their traffic. Similarly, to
- (7) Mr. Orrison's expression and as I have discussed
- (8) with you on TV-200 and TV-201, if there is a
- (9) shipper preference, particularly an APL
- (10) preference for NS services, their services will
- (11) be provided.
- (12) Q. Thank you. Mr. Orrison, is it your
- (13) opinion that it appears that CSX would be the
- (14) primary carrier servicing APL based on the
- (15) schedules in the supplement?
- (16) A. (Mr. Orrison) Well, you have seen in
- (17) the supplement, you've also seen in volume 3A the
- (18) CSX train schedules that we have proposed for the
- (19) movement of traffic to and from Kearney. And
- (20) we've also outlined specific trains and schedules
- (21) for the movement of APL business.
- (22) You can see that our CSX Intermodal
- (23) department, as they provided this information to
- (24) me in developing train schedules for our
- (25) submission to the STB, that the people leading

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- (1) those negotiations from CSX Intermodal have taken
- (2) a very aggressive stance to try to win CSX's fair
- (3) share of the traffic in the movement on CSX
- (4) trains from the APL facility at Kearney.
- (5) Q. You mentioned the CSX Intermodal
- (6) department. Is that CSX Intermodal, Inc., or is
- (7) that a separate department within CSX
- (8) Transportation?
- (9) A. (Mr. Orrison) It's in my record at the
- (10) prior deposition that we've had. You've asked me
- (11) this question before.
- (12) Q. I would like you to answer it based on
- (13) the statement you just made. You said the CSX
- (14) Intermodal department. I'm just trying to see if
- (15) that's within CSX Transportation or whether
- (16) that's CSX Intermodal?
- (17) A. (Mr. Orrison) Asked and answered.
- (18) MS. CLAYTON: You can answer it.
- (19) BY MR. GITOMER:
- (20) Q. Mr. Mohan, if Norfolk Southern were to
- (21) be APL's primary carrier in the North Jersey
- (22) area, are there any impediments to efficient
- (23) service by Norfolk Southern and, if there are,
- (24) how would you go about removing them?
- (25) A. (Mr. Mohan) None that are readily

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- (1) apparent to me.
- (2) Q. The lack of facilities near the APL
- (3) yard would not be an impediment?
- (4) A. (Mr. Mohan) Two aspects to the reply.
- (5) Number 1, we're dealing with my perhaps imperfect
- (6) knowledge on the storage agreement at what used
- (7) to be Meadows Yard. I restate my belief that
- (8) that is to be a CSX facility. That belief may or
- (9) may not be correct.
- (10) With respect to possibilities for the
- (11) construction of additional storage, NS believes
- (12) that, with the traffic projections stated here,
- (13) that the facilities are more than adequate. With
- (14) respect to the future, there is an NS NJSA
- (15) support analysis going on at this time.
- (16) Q. Okay. Gentlemen, thank you both. I
- (17) have one more question and this is just something
- (18) we'd like some help with. In figures 3, 4, and
- (19) 5, at the top of the third column, there is the
- (20) heading Location. And we don't know what that
- (21) means in regard to these proposed schedules.
- (22) Mr. Orrison, could you tell us what it
- (23) means as far as the CSX proposed schedules are
- (24) concerned other than the names of the locations
- (25) below, what do they represent?

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- (1) A. (Mr. Orrison) My understanding is that  
 (2) this was developed as a supplemental to volume 3  
 (3) of 8, this document that we're looking at for  
 (4) figure 4, and that this was a reference of a  
 (5) location within the NJSA in terms of an index.  
 (6) So that, if you want to look through  
 (7) there at locations where the NJSA train  
 (8) schedules pertain to, that you would find, for  
 (9) example, the first one here, Q164 Kearney, and  
 (10) then you would look at origin/destination and you  
 (11) see that the destination is at Kearney, New  
 (12) Jersey.  
 (13) Q. Okay. Thank you. Mr. Mohan?  
 (14) A. (Mr. Mohan) Essentially the same reply  
 (15) with an amplification, by example, figure 5, NS  
 (16) DSCXCG(1), the location column indicates Croxton  
 (17) TV, the arrive/depart column in this case, the  
 (18) appropriate figure would be arrival at Croxton at  
 (19) 11:59. That would be the example of how that is  
 (20) read.  
 (21) Q. One more question, Mr. Mohan. On page  
 (22) 56 in figure 5, there are two trains listed,  
 (23) DSCXCG(1) and the same train, paren, 2. Are  
 (24) those trains related at all or are they  
 (25) completely different trains?

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- (1) A. (Mr. Mohan) Well, they're different  
 (2) schedules with a different mission in the plan as  
 (3) filed. The DSCXCG(1) is essentially a  
 (4) Kearney-API oriented train. The DSCXCG(2) is  
 (5) essentially a Croxton oriented train.  
 (6) Q. So one train wouldn't go from - it  
 (7) wouldn't be the same train with almost a seven  
 (8) and a half hour difference?  
 (9) A. (Mr. Mohan) It's not intended to be the  
 (10) same train, no.  
 (11) MR. GITOMER: I just wanted a  
 (12) clarification of that, thank you. Mr. Orrison,  
 (13) thank you very much, Mr. Mohan, thank you very  
 (14) much.  
 (15) (Recess.)  
 (16) EXAMINATION BY COUNSEL  
 (17) FOR ALLIED RAIL UNIONS  
 (18) BY MR. EDELMAN:  
 (19) Q. Hello again, Mr. Orrison and Mr. Mohan,  
 (20) again I'm Richard Edelman, counsel for the Allied  
 (21) Rail Unions. I have some questions about the  
 (22) supplement to volume 3 of 8 which you have a  
 (23) joint verified statement in. I'd like you  
 (24) gentlemen to both look at page 11. Mr. Laurenza  
 (25) asked you a few questions about that and I'm not

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- (1) going to repeat that, but I have a few of my  
 (2) own.  
 (3) The last paragraph on that page refers  
 (4) to CSX's and NS's ongoing planning process  
 (5) studying the experience of Western rail carriers  
 (6) in recent merger transactions. Can you tell me  
 (7) which recent merger transactions you're referring  
 (8) to? I guess Mr. Orrison first and then  
 (9) Mr. Mohan?  
 (10) A. (Mr. Orrison) I was speaking to the  
 (11) UPC&P, UP/SP and likewise the BN/SF.  
 (12) Q. Mr. Mohan, was that your understanding  
 (13) of that reference too?  
 (14) A. (Mr. Mohan) Both, yes.  
 (15) Q. Well, he mentioned three, UPC&P, UP/SP,  
 (16) and BN/SF.  
 (17) A. (Mr. Mohan) Thank you for calling that  
 (18) to my attention. In NS's case it's UP, UP/SP  
 (19) most specifically, and the BN/SF merger. Also  
 (20) unstated here is, of course, NS' own merger  
 (21) experience with the Norfolk Western and Southern  
 (22) Railroad.  
 (23) Q. Now, Mr. Orrison, in response to  
 (24) Mr. Laurenza, you mentioned that one of the  
 (25) problems that was identified in studying those

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- (1) recent transactions was the fact that, for  
 (2) example, UP did not start working on an  
 (3) implementation plan immediately; is that  
 (4) correct? I don't want to mischaracterize your  
 (5) testimony.  
 (6) A. (Mr. Orrison) That is correct.  
 (7) Q. Were there any other problems that were  
 (8) identified?  
 (9) A. (Mr. Orrison) Well, it would be those  
 (10) items having transition teams tackling all the  
 (11) issues of combining the rail systems as early as  
 (12) possible. As I spoke earlier, there are  
 (13) implementation of IT systems.  
 (14) The one thing that was given to us is  
 (15) also to not underestimate what the requirements  
 (16) of customers are in terms of their movement of  
 (17) traffic by routes over rail lines. Those are  
 (18) some of the factors that were brought to our  
 (19) attention.  
 (20) And I guess the last factor that I  
 (21) wanted to raise is not to underestimate or  
 (22) underuse the experience of the people who  
 (23) currently run the operations, run the yards, run  
 (24) the territories, understand the nuances of those  
 (25) territories to gain that knowledge as you move

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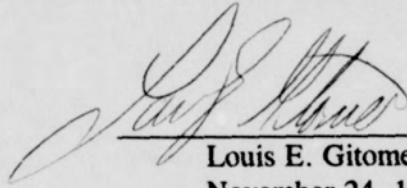
- (1) forward to try to implement your own plans on  
 (2) those territories.  
 (3) Q. Mr. Mohan, do you differ with  
 (4) Mr. Orrison in any way as to NS's observations as  
 (5) to what the problems were with the Western  
 (6) railroad transactions?  
 (7) A. (Mr. Mohan) Well, with respect to NS's  
 (8) view, I think their view has been more  
 (9) concentrated on what they can learn about  
 (10) organization for planning purposes. They have  
 (11) created between 80 and 85 cross-functional teams  
 (12) to try and address every operational and  
 (13) transactional element of implementation.  
 (14) So I don't know that that differs from  
 (15) what Mr. Orrison said, it's just a matter of  
 (16) concentrating on both functions and  
 (17) cross-functionality.  
 (18) Q. Are either of you aware of any aspect  
 (19) of the study of the Western railroads relating to  
 (20) numbers of employees as a problem?  
 (21) A. (Mr. Mohan) I'm not sure that the study  
 (22) as such focused NS on the notion that there needs  
 (23) to be adequate - an adequate number of employees  
 (24) to protect the business, but I know that they  
 (25) have focused on that issue.

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- (1) Q. Mr. Orrison, do you have anything to  
 (2) say in response to that?  
 (3) A. (Mr. Orrison) I can speak for the  
 (4) development of our operating plan and our Exhibit  
 (5) A in volume 3A of 8 that we have forecasted to  
 (6) have adequate employees for the movement of  
 (7) trains over our territories. I have not seen  
 (8) specific studies from the Western carriers that  
 (9) indicated issues on employees and employee  
 (10) availability in terms of, you know, studies on  
 (11) the Western mergers.  
 (12) Q. On page 11 the heading at Roman numeral  
 (13) V says CSX and NS are committed to cautious and  
 (14) safety conscious integration and, of course,  
 (15) there's a discussion following that. Does this  
 (16) discussion apply only to the New Jersey shared  
 (17) asset area integration or does it apply to the  
 (18) total integration of operations for each carrier  
 (19) after the transaction?  
 (20) A. (Mr. Orrison) On behalf of CSX, I would  
 (21) say that the statement is a comprehensive  
 (22) statement, it's one that covers our entire  
 (23) network and all the acquired territories.  
 (24) Q. Mr. Mohan?  
 (25) A. (Mr. Mohan) From a legal and technical

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused APL Limited's Response To The CSX/NS Operating Plan For The North Jersey Shared Assets Area And Supporting Statement-CSX/NS-119 to be served by hand on applicants' representatives in this proceeding and by first class mail, postage pre-paid on all other parties of record in STB Finance Docket No. 33388.

A handwritten signature in dark ink, appearing to read "Louis E. Gitomer", is written over a horizontal line.

Louis E. Gitomer  
November 24, 1997

STB

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ID-184165

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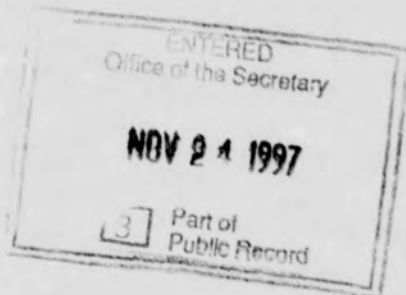


BEFORE THE  
SURFACE TRANSPORTATION BOARD

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 ON BEHALF OF THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY WITH RESPECT TO APPLICANTS' NORTH  
JERSEY SHARED ASSETS AREA OPERATING PLAN



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## VERIFIED STATEMENT OF WILLIAM H. SHEPPARD

### I. INTRODUCTION

My name is William H. Sheppard. I am a consultant employed by Atlantic Rail Services, Incorporated and have been retained by The Port Authority of New York and New Jersey to review the CSX/NS Operating Plan for the North Jersey Shared Assets Area ("NJSAA") that was submitted by CSX Corporation and CSX Transportation, Incorporated ("CSX") and by Norfolk Southern Railway Corporation and Norfolk Southern Railway Company ("NS") to the Surface Transportation Board ("STB") on October 29, 1997.

With respect to my qualifications, I have over 30 years of experience in the railroad industry beginning with the Erie Lackawanna Railway in 1965. During this time span, I authored several publications about Erie Lackawanna operations in the New York area and was invited to assist the United States Railway Association ("USRA") with their development of the *Final System Plan*, which ultimately led to the formation of the Consolidated Rail Corporation ("Conrail"). This USRA assignment provided an opportunity for me to draw upon my previous managerial experience in passenger, general freight and intermodal operations, including several years spent as a train dispatcher and block operator on the New York Division of the Erie Lackawanna Railway with headquarters located in Hoboken, New Jersey.

After Erie Lackawanna was absorbed by Conrail in 1976, I was assigned to the Atlantic Region Operations Center in Newark, New Jersey, and was initially responsible

for supervising and then, consolidating former Penn Central, Erie Lackawanna, Reading, Lehigh Valley and Central Railroad of New Jersey operations in Northern New Jersey, and elsewhere. That task involved working closely with Amtrak and commuter authorities to coordinate joint planning of passenger and freight activities.

Subsequent assignment to Conrail System Headquarters in Philadelphia, Pennsylvania, led to increased responsibility for interline service management, joint facility and contract administration, service design, transportation analysis, customer logistics, performance measurement, operations improvement, network planning, among other areas. This experience included working with NS, CSX and other railroads in developing joint service plans for general merchandise, automotive and intermodal traffic destined to and from Northern New Jersey and other locations. In addition, I was responsible for integrating train schedules, blocking and classification instructions that together, formed Conrail's Operating Plan. This particular area of responsibility involved my active participation in efforts to keep network operations fluid and required specific knowledge of remedies to circumvent congestion of traffic in North Jersey and other locations, systemwide.

Since separating from Conrail last year as Assistant Vice President - Network Planning, I have served as a consultant in the railroad industry.

## II. COMMENTS

The following commentary generally follows the outline of operations found on Pages 16 through 18 of the NJSAA Operating Plan (CSX/NS-119) including various Figures.

## **1.2 Description of North Jersey Shared Access Area.**

CSX/NS-119, Figure 1 does not accurately depict the extent of NJSAA and NS service over lines owned by Amtrak and New Jersey Transit, since dashed lines should be used to indicate where trackage rights are involved. The schematic representation of NJSAA trackage in CSX/NS-119, Figure 2 may mislead one to think trains can make a progressive movement on a route from Croxton Yard to S. Kearny Yard via CP Nave and CP Waldo. Not depicted is a line linking Linden on the Northeast Corridor ("NEC") with the Chemical Coast near Port Reading. Both NYS&W terminals at Little Ferry and Resources appear in CSX/NS-119, Figure 2 as part of the *North New Jersey Terminal Shared Asset Area*, yet these facilities are not subsequently described in **Service and Facilities in NJSAA** (CSX/NS-119, Section 4.0). The illustrated alignment of the NEC with Croxton Yard and the NYS&W - Resources Terminal should be changed to pass just above each of these facilities. The Color Key or legend in CSX/NS-119, Figure 2 should explain the meaning of dashed lines drawn to Howland Hook and Elizabethport Yard.

## **3.2 CSX Proposed Traffic Flows**

Repeated reference is made in this section to improved single-line service, improved traffic flows which, among other things, will allow CSX to provide transit times between North Jersey and Chicago in less than 30 hours. In order to put this achievement in perspective, it should be noted that Conrail currently schedules Train TVLA to operate between North Bergen and Chicago - Englewood in 25' 05". That said, these and other claims of service superiority should be compared in terms of current Conrail dock-to-dock service and

segmented to show various events including cut-off and release times, interchange receipt and delivery times, yard, local and through train schedules, arrival and departure information with time zones, frequency of service by day of week, placement and availability times.

### **3.2.1 CSX Improved Traffic Flows**

In the description of the Northeastern Gateway Service Route, there is reference made to "high quality" service resulting from various improvements to the physical plant. CSX should define what "high quality" means and provide further advice about what level of service reliability NJSAA customers may come to expect after Conrail is acquired.

With respect to the Atlantic Coast Service Route, there is reference made to Virginia Avenue Tunnel clearances in Washington, D.C. Since CSX intends to operate Train Q219 this way with multi-level traffic from Linden, New Jersey, further advice is required on whether the Virginia Avenue Tunnel and other structures will be cleared in time for this service to commence on Day 1.

### **3.2.2 CSX Proposed Intermodal Operation**

This section should be expanded to reference potential traffic growth available in connection with service to facilities at Howland Hook, Staten Island, and with regard to the Canadian Pacific commercial access agreement found referenced on Page 37 of CSX/NS-119.



New CSX Intermodal service (**Section 3.2.2.2**) featured in the Southeastern Seaboard/NJSAA Service Lane between Jacksonville, Florida and Northern New Jersey resembles existing interline service provided by CSX and Conrail via Philadelphia, Pennsylvania. Further investigation reveals, however, that the new CSX single-line southbound service provided by Train Q173 will be 1'30" slower than current joint CSX/Conrail train service scheduled to depart North Jersey at the same time (0300) and will arrive Jacksonville, Florida at 0800 instead of 0630, Day 2.

### **3.3 NS Proposed Traffic Flows**

Service via the Penn Route is expected to reduce transit times and improve the reliability of service currently provided by Conrail. Such claims are meaningless unless there is a valid basis of comparison to measure success (or failure) to meet these objectives.

In addition, adoption of a new blocking strategy designed to reduce intermediate handlings is expected to place a different set of demands on NJSAA facilities at Oak Island and may not translate into a net service gain when all things are considered. For example, Conrail Train P101 is currently scheduled to depart Conway Yard near Pittsburgh, Pennsylvania with traffic blocked for Manville, Bayonne, Bayway, Port Reading and South Amboy. This train is scheduled to arrive Oak Island at 1730 and Bayway, Port Reading and South Amboy blocks are scheduled to connect with Train SESA that evening and are generally available for local delivery by the next morning along the Chemical Coast.

Under the NS operating plan, most of those blocks are eliminated and, as a result, traffic

arriving Oak Island on Train GMELOI from Elkhart, Indiana and Train GMCEOI from Conway Yard will be humped. This handling, when combined with the later arrival of both trains, could cause yard elapsed time to increase, reducing facility throughput. Should congestion result, the lack of blocks made to overhead Oak Island Yard will hinder service recovery efforts, especially since CSX also plans to reduce the blocking of general merchandise traffic at Selkirk for other locations in North Jersey, including Kearny and North Bergen (Croxtan).

Service via the Southern Tier Route is expected to encounter a considerable amount of New Jersey Transit and Metro-North passenger train interference east of Port Jervis, New York. These conflicts are likely to affect the quality of service that NS intends to provide and is expected to delay to ExpressRail and other traffic that NS intends to route this way. Over the short-term, additional delays to traffic are expected to occur in connection with the work to upgrade the Southern Tier.

Service via the Piedmont Route puts some traffic back on the Northeast Corridor that could otherwise route via the Hagerstown Gateway and thereby avoid any Amtrak NEC time and clearance restrictions. In addition, the proposed schedules for Trains GMLIOI and GMOILI require these trains to operate on the NEC between Newark, New Jersey and Landover, Maryland outside the 2200 - 0600 time "window" currently allowed by Amtrak. Even if this range of time is expanded somewhat, there is always a risk that some traffic will be delayed when freight trains run late and no longer fit within the approved

Amtrak NEC "window" of operation. This risk could be minimized or eliminated altogether if other routes were utilized to access the NJSAA.

### **3.3.2 NS Proposed Intermodal Operations**

Schedules showing details of proposed NS service to and from ExpressRail are not evident in the NJSAA plan and existing Conrail "Export Express" service currently provided by Train TV12 from Chicago and Pittsburgh to Port Newark (ExpressRail) has not been replicated exactly. The same is true for westbound service provided by Conrail Train TV11 between Port Newark (ExpressRail) and Pittsburgh.

In addition to expected delays due to passenger train interference and work to upgrade the Southern Tier Route, connecting ExpressRail double stack traffic routed via the National Docks Branch to Croxton will be restricted to shipments measuring only 19' 1" in height above top of rail ("HATR"). This contrasts with 20' 2" HATR clearances available on the route via Pittsburgh, Pennsylvania.

NS access to the Howland Hook intermodal facility on Staten Island is not mentioned in the plan even though access is possible via the NJSAA. Since CSX and NS intend to keep freight cars in their account while in the NJSAA, additional demands will be placed on NJSAA facilities to segregate and store this equipment, as required.

Proposed new Piedmont Route service resembles current NS/Conrail joint intermodal train service via the Hagerstown Gateway. Further investigation reveals, however, that the new

NS single-line southbound train service will be 5' 55" slower than existing joint NS/Conrail train service that departs North Jersey after Midnight, arriving Atlanta, Georgia at 1425 instead of 1030, Day 2.

Triple Crown Service proposed to operate via the Northeast Corridor ("NEC") may be subject to delay if trains are held to comply with Amtrak NEC time "windows".

#### **4.0 Service and Facilities in NJSAA**

Although CSX and NS endeavor to initially replicate existing Conrail operations in North Jersey as closely as possible, close examination of proposed CSX and NS operating plans reveal a number of changes to existing operations that, when combined, are expected to tax the capacity of NJSAA facilities to handle CSX and NS traffic in a reliable, consistent manner, as follows:

1. Interchange of traffic between CSX and NS, including some traffic that currently moves overhead Oak Island on through trains between Selkirk and Allentown, for example.
2. Switching of traffic received from South Jersey and Philadelphia, Pennsylvania.
3. Increased switching of inbound North Jersey general merchandise and automotive traffic that was previously classified by yards at Selkirk, Conway and other locations for movement in block to Bayonne, Bayway, South Kearny, North Bergen, South Amboy, Manville, Doremus Avenue (Ford), Port Newark and Port Jersey.
4. Increased humping of outbound traffic for Allentown, Conway, Selkirk and other locations that was formerly blocked to bypass the Oak Island hump at various North Jersey locations including Bayonne, Bayway, Croxton, Greenville, Jersey City, Manville, Metuchen, North Bergen, Port Newark, Port Reading, Ridgefield Heights, South Amboy, South Kearny and Waverly (Newark, NJ).

5. Rerouting CSX time-sensitive auto parts traffic with the following origin - destination pairs for connections via Oak Island Yard:  

Buffalo, NY. to Baltimore, MD.	Parma, OH. to Wilmington, DE.
Parma, OH. to Baltimore, MD.	Saginaw, MI. to Baltimore, MD.
6. Bringing blocks of time-sensitive auto parts traffic to Oak Island on various trains for consolidation and subsequent movement in local service to Linden and Metuchen (versus using Train TOMT to overhead Oak Island with this traffic).
7. A 36% increase in the total number of classifications made in North Jersey terminals including Ridgefield Heights, North Bergen, Croxton, Kearny, Oak Island, Doremus Avenue, Bayonne, Port Newark, Elizabethport, Portside, Dockside (ExpressRail), E-Rail, Port Reading, Browns, Manville, Bayway, Linden, Metuchen and Greenville.
8. Five (5) times the number of blocks with traffic originating and terminating at locations outside of Northern New Jersey that are intended to pass (relay) between trains at Oak Island.
9. Twice the number of regularly scheduled through freight trains with an intermediate stop to set-off or pick-up traffic at Oak Island or Doremus Avenue.
10. Four trains that reverse direction in the terminal enroute to final destination (Q219, AUBVOI(2), AUBVRH, AURHBV).
11. Increased numbers of intermodal trains transiting Oak Island Yard en route to and from E-Rail terminal, including 2 trains that stop to set-off and pick-up API-Kearny traffic.
12. Transfer runs to reposition loaded and empty traffic moving among NS, CSX and NJSAA facilities.
13. Segregating CSX and NS empty freight car fleets for prospective loading and storage.
14. An increase of about 50% in the number of through freight trains that are scheduled to operate per week in the NJSAA, including Croxton, Little Ferry and North Bergen.
15. Light engine (hostling) movements to reposition CSX and NS motive power among terminals in North Jersey for fueling and servicing.



16. New traffic patterns along the Chemical Coast and the NEC which will reduce the availability of certain tracks alongside Oak Island Yard to hold trains and to store traffic for terminals nearby.

#### 4.1 Through Train Service

CSX/NS-119, Figure 3 summarizes "current" Conrail schedules serving the NJSAA. After checking this information with working papers that included Conrail freight schedules and scheduled block departures effective August 23, 1997, the following discrepancies were noted:

- The schedule for Train ALCA (Allentown - Camden via Oak Island) was missing.
- Train BUSE has been replaced by Trains BUOI and OISE.
- The frequency and days that TV-201 departs Kearny should be changed to 4 days per week, Tuesday through Friday.

Also, there is no information provided to indicate whether Conrail trains listed in

CSX/NS-119, Figure 3 actually operate on the days indicated and how often these trains operate in extra sections.

CSX/NS-119, Figure 4 summarizes proposed CSX train schedules *intended* to serve the NJSAA. After cross-checking this information with CSX train schedules contained in the working papers, the following discrepancies were noted:

- CSX schedules do not indicate where crews will change, what days of the week trains will operate if their frequency of operation is less than daily, or what time zone applies. Time scheduled for some trains to perform work at Oak Island and other locations seems inadequate and should be reviewed along with other NS and CSAO schedules.
- The block order of Q219 does not change enroute even though the train must reverse direction in the vicinity of Oak Island Yard. Movement of auto traffic in multi-level equipment is subject to completion of clearance work along the Atlantic Coast Service Route by Day 1. Because the number of CSX trains arriving and departing Linden is unbalanced, provisions must be made to reposition power to Linden on a regular basis,

possibly resulting in additional movements on the NEC and within the NJSAA (Note: NS has the opposite imbalance at Metuchen)

- Blocking instructions for Train CASE reveal that CSX will bring traffic from Camden, New Jersey and Philadelphia, Pennsylvania (Frankford Junction) directly to Oak Island for classification. Currently, Conrail does not route traffic this way and this change is another example of the expanded role that Oak Island is expected to play after Day 1. The use of Train CASE to transfer traffic from Oak Island to Ridgefield Heights seems like a CSAO chore and complicates blocking instructions to the point that road crews will have to hold onto Indianapolis (Big Four) traffic while working at Ridgefield Heights. In addition, information is incomplete with regard to connecting block of traffic moving from Savannah, GA. to Selkirk, NY.
  - Train OIRM has 32 minutes in the schedule to work at Manville, New Jersey, but the blocking instructions do not indicate what work is to be performed at that location. The Morrisville block should be changed to read "Woodbourne" because NS acquires Morrisville, Day 1.
  - Train OISE departs Oak Island 46 minutes ahead of Train CASE. Both trains are scheduled to carry an Indianapolis (Big Four) block to Selkirk for connections.
  - The departure time of Train OJTA from Oak Island does not match schedule information shown in CSX/NS-119, Figure 23 for the NEC. In any event, this train is scheduled to operate outside the Amtrak NEC time "window".
  - Frankford Junction traffic should move on the head-end of SECA-A from Oak Island to facilitate the set-off at Frankford Junction.
  - SECA-B has a number of blocks that are set-off at Oak Island for connections to trains unknown, as follows:
    - Parma, OH. to Penn Mary, MD.
    - Parma, OH. to Wilmington, DE.
    - Saginaw, MI. to Bay View, MD.
    - Saginaw, MI. to Penn Mary, MD.Metuchen auto parts traffic from Selkirk is scheduled to move in block on two trains (SECA-B and SETA) five hours apart to Oak Island.
- SETA to Oak Island a few hours earlier.
- The schedule of TAOJ does not match schedule shown in CSX/NS-119, Figure 23 for the NEC and the purpose of time in the schedule at Oak Island is unexplained.
  - Both Q132 and Q162 are scheduled to arrive Little Ferry at the same time (0600). The

0815 arrival time of Q162 at Port Newark is 3' 15" later than Conrail Train TV24P is scheduled to arrive today. This later arrival subsequently requires crossing Corbin Street in Port Newark/Elizabeth with ExpressRail traffic at particularly busy time of the day, disrupting port operations. In addition, the later arrival of Q162 does not permit early grounding of containers which, in turn, permits same-day transfer to vessels -- an important advantage for a terminal like ExpressRail.

- Conrail currently is scheduled to operate TV207 and TV209 from Port Newark with ExpressRail traffic. Since CSX plans to operate only one train (Q163) from Port Newark with ExpressRail traffic and has scheduled a pick-up of additional traffic at Little Ferry, there should be another train scheduled to operate in cases when Q163 is oversubscribed. In addition, separate blocks of ExpressRail traffic for Montreal and Toronto do not appear in the schedule of Q163 from Port Newark, further complicating CSX/D&H interline service via Selkirk.
- Footnote on TOMT schedule in working papers indicates that this train will not operate unless or until service demands require through train operation. As a result, Linden and Metuchen auto parts traffic that formerly moved from Selkirk in direct train service to Linden and Metuchen will now connect via Oak Island for movement beyond in local service. The same is true for general merchandise traffic moving in block from Selkirk, NY, to Metuchen, NJ.
- Blocking instructions for Train RMOI reveal that CSX will bring traffic originating at Philadelphia, PA. (Greenwich), Woodbourne, PA. and Manville, NJ. into Oak Island for classification, placing further demands on that facility. Use of RMOI to transfer traffic between Manville and Oak Island seems like a CSAO chore.
- Blocking instructions call for Train SETA to stop at Little Ferry (NYS&W) and pick-up a block of traffic originating at Ridgefield Heights and destined to Oak Island. Current Conrail blocking instructions call for Ridgefield Heights to block traffic for Linden, thereby bypassing the Oak Island hump. There should be time shown in the schedule to set-off traffic at Oak Island per plan.
- Train SASE is not listed in CSX/NS-119, Figure 4 but appears operating in CSX/NS-119, Figure 25 (North Jersey Coast Line) and in the working papers. The frequency on which this will operate is unknown but is assumed to match Conrail Train CCAL (Tuesday - Saturday).

CSX/NS-119, Figure 5 summarizes proposed NS train schedules *intended* to serve the NJSAA. After cross-checking this information with NS train schedules contained in the

working papers and those appearing in various book supplements to Volume 3B of 8 submitted to the STB, the following discrepancies were noted:

- Both Trains AUBVOI(1) and AUBVOI(2) are scheduled to work Linden at the same time. Since the train symbols are similar, this could cause confusion in communicating instructions.
- AUBVOI(2) schedule times for Linden and Metuchen do not match schedule shown in CSX/NS-119, Figure 23 for the NEC. Lack of return schedule from Metuchen will require repositioning of motive power because operations are imbalanced.
- GMLIOI is scheduled to operate outside of the Amtrak NEC time "window".
- GMMVOI is scheduled to operate outside of the Amtrak NEC time "window".
- The schedule of IMHBER does not reflect time to set-off API-Kearny traffic at Oak Island.
- Both GMALOI and CSX Train SASE are scheduled to arrive Oak Island off the Chemical Coast at the same time (1700).
- There is no schedule for Train GMOIMV, yet this train is listed in CSX/NS-119, Figure 23 for the NEC.
- GMOILI is scheduled to operate outside of the Amtrak NEC time "window" and the departure time from Oak Island (2000) does not correspond with schedule information in CSX/NS-119, Figure 23 for the NEC.

Triple Crown Train TCPSAT appears listed in CSX/NS-119, Figure 23 operating via the NEC and in CSX/NS-119, Figure 25 operating via the North Jersey Coast Line of NJT.

In order to determine patterns of NJSAA activity created by these new train schedules, schematic maps of proposed NS and CSX train schedules were created and appear attached to this report along with a map of the territory between Oak Island and Elizabethport. When compared to current Conrail activity along the Chemical Coast near the point from which ExpressRail is served, this information indicates that a considerable

increase in activity is expected to occur in the future, as noted below:

PRESENT		PROPOSED	
Train	Carrier	Train	Carrier
SESA	Conrail	GMALOI	NS
TV12	Conrail	GMOIAL	NS
TV11	Conrail	TCPSAT	NS (TC)
RR261	Conrail (TC)	TCATPS	NS (TC)
RR262	Conrail (TC)	TCPSFW	NS (TC)
		TCFWPS	NS (TC)
		SEJB	CSX
		SASE	CSX #
		IMATER(2)	NS
		IMERAT(2)	NS
		IMATER(1)	NS
		IMERAT(1)	NS
		IMHBER	NS
		IMERHB	NS
		NJTML-5	NS (CSAO?) #
		NJTML-5	NS (CSAO?) #

#### NOTES

"TC" or Triple Crown Trains terminate at Portside.

# Train schedule from working papers.

Other yard and locomotive repositioning movements are not included above.

Since yard jobs utilize some of the same trackage to deliver inbound and assemble outbound ExpressRail traffic for pick-up, and are expected to use this trackage to shuttle equipment between E-Rail and storage tracks at Elizabethport Yard, the increased demand upon Chemical Coast line capacity noted above could well result in delay and degradation of ExpressRail service, particularly when trains do not operate according to plan and fall out of sequence with other trains operating through this area. This situation could well result from the collateral effects of congestion experienced at other areas of the terminal,



notably Oak Island Yard and vicinity. In this regard, it should be noted that new patterns of NJSAA train activity will be formed by trains routed through Oak Island Yard and vicinity en route to and from the NEC. These changes in traffic patterns, when combined with other changes in the way trains will access Oak Island Yard, are expected to adversely impact other yard functions and precipitate delays to other traffic in the NJSAA.

As a consequence of reviewing train schedule and blocking information, a number of situations appeared where information was lacking on how certain traffic would move directly from one point to another. Unless these "service gaps" are resolved, traffic could wind up stranded at Oak Island and other locations, causing congestion and delay. Listed below are several origin - destination pairs of traffic that are affected by this problem:

- Oak Island to Bayway
- Oak Island to Port Reading
- Oak Island to South Amboy
- Oak Island to Manville
- Oak Island to Croxton
- Croxton to Oak Island
- Port Newark (ExpressRail) to Croxton and beyond
- Croxton and beyond to Port Newark (ExpressRail).
- Port Newark (ExpressRail) to Pittsburgh
- Pittsburgh to Port Newark (ExpressRail)
- Oak Island to Kearny/API
- Kearny/API to Oak Island
- Oak Island to Morrisville
- Parma, OH. to Penn Mary, MD.
- Parma, OH. to Wilmington, DE.
- Saginaw, MI. to Bay View, MD.
- Saginaw, MI. to Penn Mary, MD.
- Savannah, GA. to Selkirk, NY.

Alternate arrangements must also be defined to handle dimensional or "high and wide" shipments that currently move on Conrail Trains KAOI-D and OIIH-D to and from Oak Island.

#### **4.2 Major Facilities**

Although the NJSAA ends at the south end of North Bergen Yard, CSAO crews will work outside of these limits to access facilities at Ridgefield Heights, which are located adjacent to the NYS&W Little Ferry facility. Although Little Ferry is integral to NJSAA operations and is referenced by no less than 16 CSX train schedules in CSX/NS-119, Figure 4, this facility and the nearby NYS&W Resources facility are excluded from the list of yards and facilities that together comprise CSX/NS-119, Figure 6 (Terminal Operations in North Jersey). Both of these NYS&W facilities, however, appear on the map of the North New Jersey Terminal Shared Access Area (CSX/NS-119, Figure 2). Given the importance of these NYS&W facilities to the NJSAA, a full description of their present and proposed operations should be included as part of the NJSAA plan as was done for the NS facility at Croxton and the CSX facility at North Bergen.

With respect to the rest of the facilities described under this section of the NJSAA plan, no maps were found for facilities at Dockside (ExpressRail), E-Rail and Ridgefield Heights. In addition, some of the maps supplied are not current or comprehensive enough to include adjoining support trackage and facilities. Moreover, the map of Portside does not reflect recent track changes that link this facility with Dockside

(ExpressRail). Descriptions of existing yard jobs should be updated as well.

Since the NJSAA plan recognizes that Oak Island Yard is the focal point of Conrail's operations in North Jersey, a comprehensive operating plan should be prepared for this facility for Day 1. This plan should include, but not be limited to, the following information:

1. CSAO yard job descriptions, including on-duty time and frequency of operation.
2. Connections for all switch traffic and for relay blocks of traffic.
3. Locomotive assignments, duty cycles, servicing and repositioning requirements.
4. Volume of traffic by block and train.
5. Classification and blocking instructions, including any equipment restrictions.
6. Local, yard, and through train schedules that specify the frequency of operation by day of week and any train size, make-up or blocking restrictions.
7. Chronological list of all train activity, including overhead movements on adjoining trackage and other activity at Port Newark and Doremus Avenue (Garden Yard).
8. Car inspection and repair requirements.
9. Contingency plans in case of derailments, traffic congestion, trackwork, off-schedule trains, crew and locomotive shortages, adverse weather conditions, and other unplanned events.
10. Blocks of traffic that CSX and NS will make at other locations to support NJSAA operations at Oak Island and at other locations.
11. Arrangements to interchange traffic between CSX and NS, including volume of traffic.
12. CSX and NS car storage and supply requirements.
13. Special arrangements to handle dimensional or "high and wide" traffic.
14. Comparison of Oak Island Yard capacity and demand by day of week to identify capacity constraints and unsatisfied demand within the terminal.
15. Estimates of manpower requirements and supply available on Day 1, and thereafter.
16. Review of existing safety procedures and crew qualifications with respect to new patterns of activity within the NJSAA.

Similar information should also be developed for the other facilities that appear under this section of the NJSAA plan well prior to Day 1 to enhance planning and to address other inconsistencies noted during the course of this review.

## **5.0 Capital Investments**

The capital investments listed in this section should be geared to efficiently accommodate changing traffic patterns within the NJSAA and should address the loss of line capacity expected when the State of New Jersey acquires a portion of the River Line through Hoboken, New Jersey. Such projects should provide for additional operating flexibility within the NJSAA and accommodate increased demand for services as suggested below:

1. Improved access to facilities at Elizabethport, E-Rail, Portside and Dockside (ExpressRail) via the Port Reading Secondary Track, including all necessary signal, clearance improvements, and track changes to improve the utility and capacity of this route and the connecting Chemical Coast route to efficiently handle more traffic. Further development of this option offers the potential to reduce the amount of traffic proposed to pass by ExpressRail, through Oak Island Yard and over joint passenger and freight territory on the Lehigh Line.
2. Alternate access to the NEC via Browns Yard and Monmouth Junction (MIDWAY) with all necessary signal and clearance improvements on NJSAA and NJT property. This route alternative aligns Browns Yard with proposed north - south traffic flows and reduces the amount of time and distance that trains must travel on the NEC to access Portside and Oak Island Yard, for example.
3. Additional yard support trackage to adequately support ExpressRail and other facilities, including Croxton. When sizing these facilities, consideration should be given to projected growth, changing traffic patterns, car supply and storage requirements, among other factors.

## **6.0 Passenger and Commuter Service**

CSX/NS-119, Figure 23 provides information concerning proposed freight train activity on the NEC. Examination of this document reveals a number of trains are scheduled to operate outside the current Amtrak time "window" between 2200 and 0600. Since Amtrak may not agree to expand this "window" to accommodate the proposed schedules,

the NJSAA plan should provide an alternative operating plan to consider at this time.

CSX/NS-119, Figure 25 provides information concerning proposed freight activity on the North Jersey Coast Line of NJT. Examination of this document reveals that TCPSAT is listed to operate this way and also along the parallel NEC route as per CSX/NS-119, Figure 23.

No passenger train schedules are furnished in the NJSAA plan with respect to proposed NS operations over NJT lines extending from Croxton Yard. There is also a lack of information concerning capacity improvements planned at Croxton to support through freight operations and the shift of local freight operations from North Bergen.

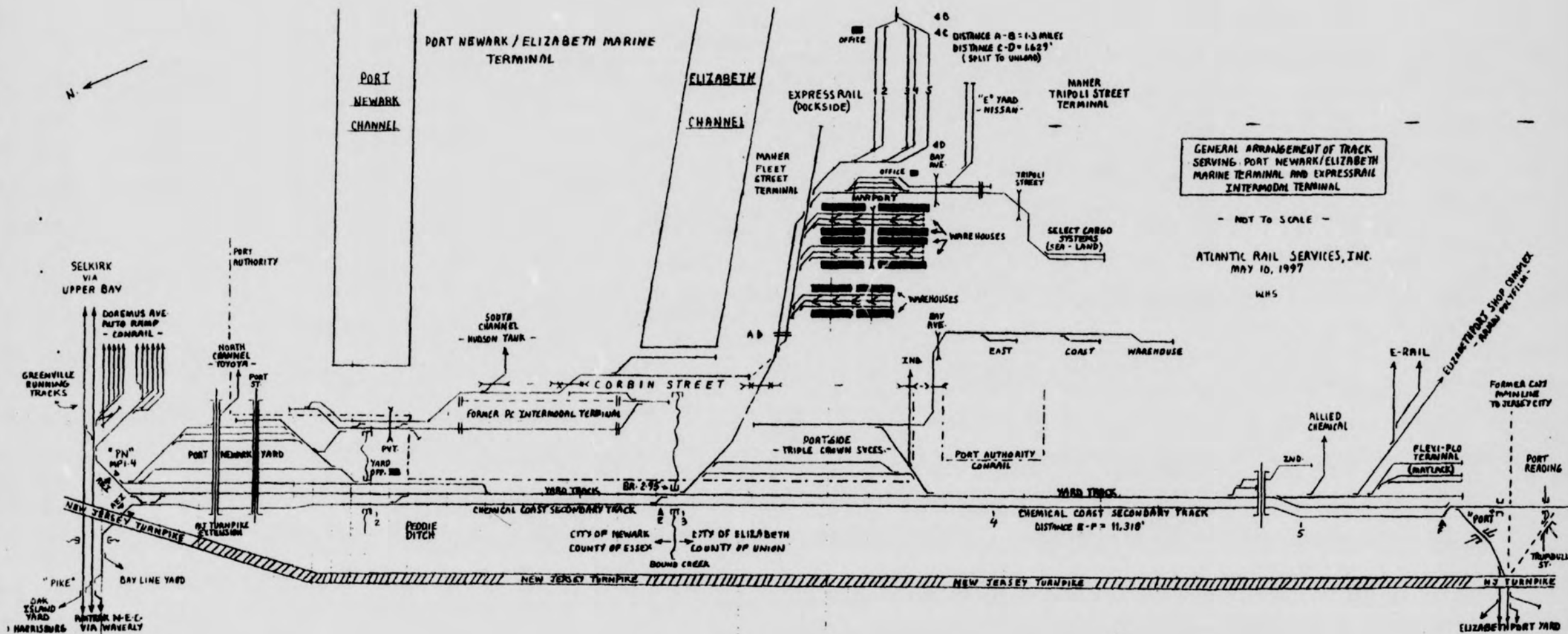
## **8.2 Train Dispatching**

The proposed NJSAA train dispatching territory requires further review and will no doubt require much coordination of activities where control changes to CSX and NS employees in charge of train movements at Port Reading Junction, North Bergen, Croxton and other locations.

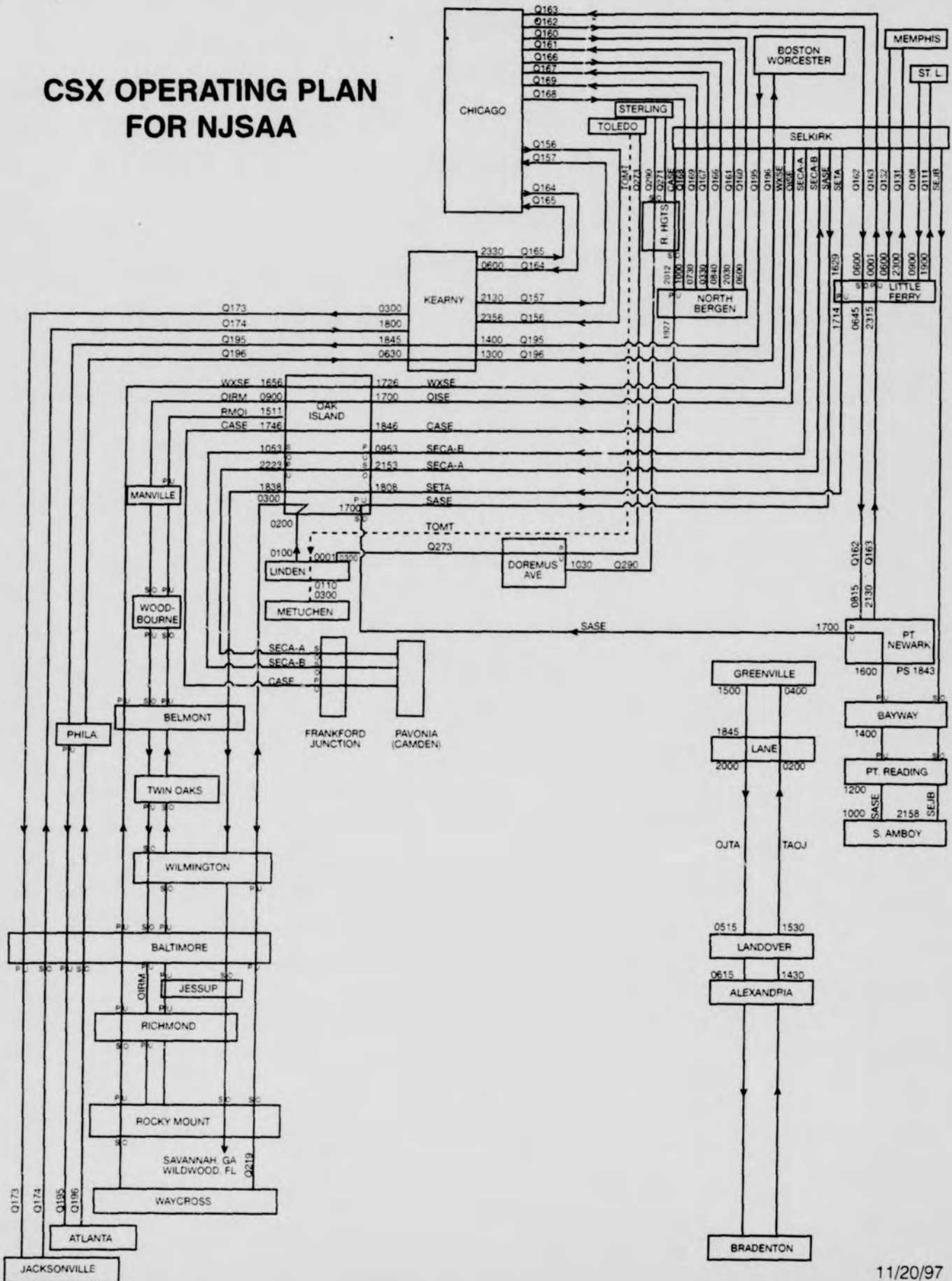
## **III. CONCLUSION**

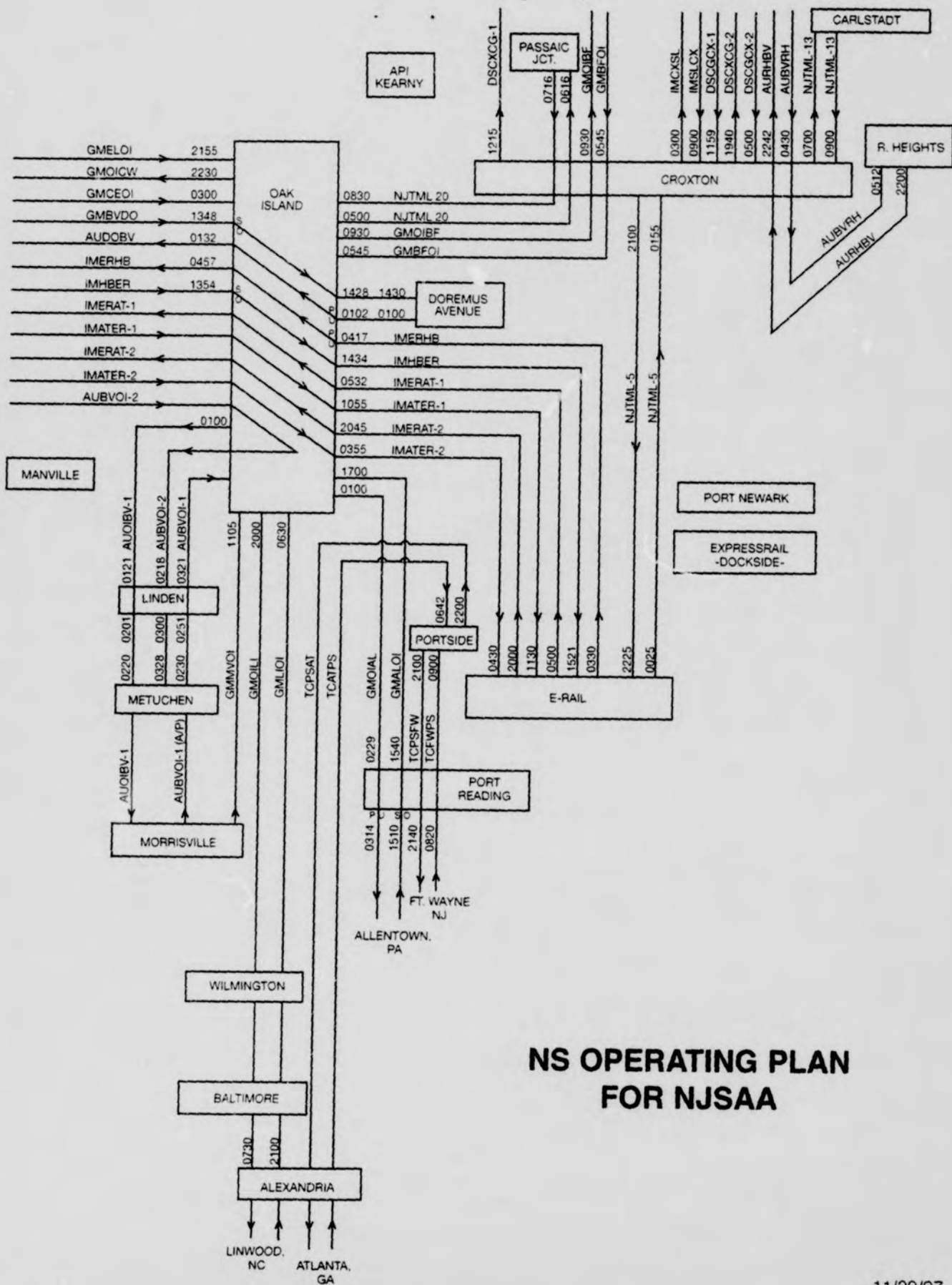
Although time does not permit for a more comprehensive and thorough review of the NJSAA plan, based upon my understanding of the information it contains, I have concluded that this plan is deficient in several respects for the reasons expressed above. In addition, should this plan be implemented as currently proposed, I have no doubt that the result would be operational paralysis in a matter of weeks.





# CSX OPERATING PLAN FOR NJSAA

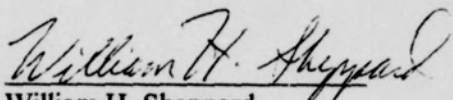




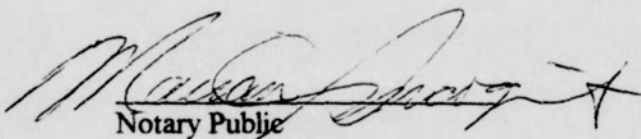
## NS OPERATING PLAN FOR NJSAA

## VERIFICATION

William H. Sheppard, being duly sworn, deposes and says that he is a consultant employed by Atlantic Rail Services, Incorporated, that he is qualified to submit this Verified Statement, that he has read the foregoing statement, knows the contents thereof, and that the same is true and correct to the best of his knowledge and belief.

  
William H. Sheppard

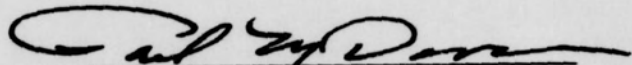
Subscribed and sworn to me by William H. Sheppard  
this 21st day of November, 1997.

  
Notary Public

MARIAN INCOGNITO  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Oct. 26, 1998

CERTIFICATE OF SERVICE

I, Paul M. Donovan, certify that on November 24, 1997, I caused to be served by hand on Applicants' counsel four copies of NYNJ-18. I also caused NYNJ-18 to be served by first class mail on all other parties on the Service list.

  
Paul M. Donovan