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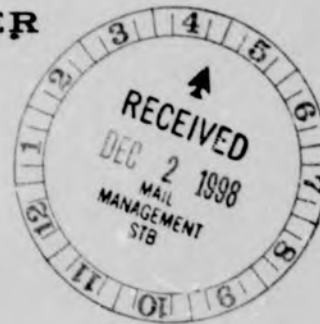
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December 2, 1998



NEW YORK
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VIA HAND DELIVERY

ENTERED
Office of the Secretary

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

DEC - 3 1998

Part of
Public Record

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

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of CSX-168, "Petition of CSX Corporation and CSX Transportation, Inc. for Order Declaring Certain 'Requirements' Provisions of Certain Contracts of Their Intermodal Affiliate Which Would Have an Anti-Competitive Effect After the 'Split Date' Null and Void," for filing in the above-referenced docket. Also enclosed are 26 copies of a Highly Confidential Exhibits Volume. The Petition contains an executed certificate of service; the Highly Confidential Exhibits Volume will be served on those parties that have executed the undertaking under the Protective Order.

This filing is accompanied by a check in the amount of \$1,400 in payment of the filing fee, assuming that Item 158(ii) of 49 C.F.R. § 1002.2(f) applies, notwithstanding the fact that the Petition is being filed in an open Docket. If so fee is required, we would appreciate return of the check.

Please note that a 3.5-inch diskette containing a WordPerfect 5.1 formatted copy of this filing is also enclosed.

FEE RECEIVED

DEC - 2 1998

**SURFACE
TRANSPORTATION BOARD**

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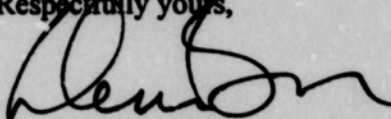
**SURFACE
TRANSPORTATION BOARD**

ARNOLD & PORTER

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

Thank you for your assistance in this matter. Please contact me if you have any questions.

Respectfully yours,

A handwritten signature in dark ink, appearing to read "Dennis G. Lyons", written over the closing "yours,".

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

cc: All Parties to the Service List

EXPEDITED TREATMENT REQUESTED

ENTERED
Office of the Secretary

DEC - 3 1998

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388



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

PETITION OF CSX CORPORATION AND
CSX TRANSPORTATION, INC. FOR ORDER DECLARING
CERTAIN "REQUIREMENTS" PROVISIONS OF
CERTAIN CONTRACTS OF THEIR INTERMODAL AFFILIATE
WHICH WOULD HAVE AN ANTI-COMPETITIVE EFFECT
AFTER THE "SPLIT DATE" NULL AND VOID

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DEC - 2 1998

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FILED

DEC - 2 1998

SURFACE
TRANSPORTATION BOARD

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December 2, 1998

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REQUEST FOR EXPEDITED TREATMENT

- Exhibit A Letter dated May 28, 1998, from Thomas Finkbiner, then Vice President-Intermodal of NS, to Lester M. Passa of CSX Intermodal, Inc.
- Exhibit B Letter dated October 26, 1998, from Henry C. Wolf, Vice Chairman and Chief Financial Officer of NS, to Paul R. Goodwin, Executive Vice President and Chief Financial Officer of CSX Corporation

Highly Confidential Exhibit Volume [separately presented]

**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**

**PETITION OF CSX CORPORATION AND
CSX TRANSPORTATION, INC. FOR ORDER DECLARING
CERTAIN "REQUIREMENTS" PROVISIONS OF
CERTAIN CONTRACTS OF THEIR INTERMODAL AFFILIATE
WHICH WOULD HAVE AN ANTI-COMPETITIVE EFFECT
AFTER THE "SPLIT DATE" NULL AND VOID**

INTRODUCTION AND SUMMARY

Petitioners, CSX Corporation and CSX Transportation, Inc.,¹ respectfully petition the Board for an order declaring that the mandatory volume and trainset requirements of two contracts entered into by the intermodal subsidiary of CSXC with Norfolk Southern Railway Company (with its affiliates, "NS") and with Consolidated Rail Corporation (with its affiliates, "Conrail") are null, void and unenforceable by NS or Conrail from and after the "Closing Date" or the "Split Date" of the Conrail Transaction.

¹ Collectively, "CSX." Individual references, where made, will be to "CSXC" and "CSXT." Other abbreviations will be as used in Decision No. 89, served July 23, 1998.

These two contracts were entered into in the early 1990s with the view of fostering competition with Conrail for intermodal movements between New York and Chicago, Conrail's largest intermodal city pair routing. One of the contracts provided for an alternative routing to Conrail's service "all the way" between the New York metropolitan area and Chicago through a route involving a smaller carrier's movement between the Greater New York area and Buffalo and a movement on NS between Buffalo and Chicago. The other contract provided for Conrail to short-haul itself by providing a route between Buffalo and Chicago with a smaller carrier providing service between Buffalo and the Greater New York area.

These contracts, whose existence was not disclosed in the Application, will have profound anti-competitive effects if they are to remain in effect after the Split Date. The two contracts collectively imposed extensive requirements on CSX's intermodal arm, requiring it to give the great bulk of its customers' movements between the Greater New York area and Chicago to NS or Conrail for the Chicago/Buffalo leg of the movement. These requirements were backed by severe provisions for liquidated damages in each of the contracts. The two contracts on their face, after the Split Date, require CSX's intermodal arm to ship most of its customers' New York/Chicago intermodal movements on NS or under a 50-50 pooling arrangement with NS. CSX assumed that NS would not attempt to enforce its contract, or to insist that Conrail enforce its contract, after the Split Date, but NS has taken the position that both of the contracts, with their requirement and liquidated damages provisions, will and must continue after the Split Date. NS's

insistence will cause an obstruction to the new, more vigorous competition between CSX and NS, head to head, between Chicago and New York. That was one of the crown jewels of new competition brought into being by the Application in this Docket.

CSX is filing this Petition to obtain an order from the Board that NS be prevented from enforcing the volume and train-set commitments in its contract, and from insisting that Conrail enforce its contract's commitments, after the Split Date. For the Board to permit NS to insist on the performance of the contracts after the Split Date would be to permit the enforcement of an anti-competitive arrangement of which the Board was never advised in the Application in this case. It would also sanction a pooling agreement in violation of 49 U.S.C. § 11322, since while pro-competitive when Conrail was an independent carrier, the contracts will become anti-competitive pooling agreements between competitors upon the Split Date.

The Board's jurisdiction is invoked under 49 U.S.C. § 11327, and under the Board's retention of jurisdiction made in Ordering Paragraph No. 1, Decision No. 89, served July 23, 1998, at 173-74.

BACKGROUND

CSX Intermodal Develops An Alternative to Conrail. -- In the early 1990s, an intermodal subsidiary of CSXC, CSX Intermodal, Inc. ("CSX Intermodal"), entered into a series of contracts with non-CSX railroads in connection with its business of selling

intermodal services to customers.² CSX Intermodal "buys" transportation services from common carriers and packages and administers a through intermodal service for their customers, including reselling the transportation service. While the services of CSXT are, of course, employed where available and in the customers' best interests, CSX Intermodal buys transportation from many unaffiliated rail carriers and carriers in other modes.

The Greater New York/Chicago market is an enormous market for intermodal service and, of course, since the creation of Conrail, the only rail carrier providing single-line service between those two cities has been, and was in the early 1990's, Conrail. That state of affairs will come to an end on the Split Date. CSX Intermodal was interested in having some sort of alternative to Conrail to provide that service, although it recognized that the alternative could not provide single-line service. The purpose was to afford the shippers for whom CSX Intermodal was buying rail transportation with an alternative to the Conrail moves between the Greater New York area and Chicago. In order to do this, CSX Intermodal developed two alternative routings to a "Conrail all the way" move from New York to Chicago. Both routings involved the use of the services of the New York, Susquehanna and Western Railroad ("NYS") from Little Ferry, NJ, in the Greater New York area, to Buffalo. The remainder of the alternative routings developed by CSX

² CSX Intermodal was named "CSX/Sea-Land Intermodal, Inc." prior to a name change in 1991.

Intermodal west of Buffalo involved, alternatively, (1) a short-haul movement by Conrail between Buffalo and Chicago³ or (2) a movement over NS between Buffalo and Chicago.

While Conrail was independent, it actively solicited intermodal traffic between New York and Chicago – its premiere route, which it served through several excellent routings on a single-line basis. With NS and CSX stepping into Conrail's shoes, and CSX generally providing intermodal service through arrangements made by CSX Intermodal,⁴ the huge block of intermodal business written directly by Conrail would instead be, in the ordinary course, written on CSXT, by CSX Intermodal, or by NS.

The Two Critical Contracts. – The implementation on the Split Date of full competition for intermodal shipments between New York and Chicago by shippers not bound to Conrail rail transportation contracts is impeded by two contracts.⁵ The first of these two contracts was between CSX Intermodal and Conrail, entered into in 1990 and expiring on December 31, 2004 (the "Conrail Contract"). This contract provides for movements between Buffalo and Chicago. While CSX Intermodal has the status of a shipper under the contract, CSX Intermodal, of course, is acting as a "reseller" of transportation services furnished by railroads and others; it resells to the intermodal

³ A "short haul" since, of course, Conrail provided single-line intermodal service between northern New Jersey and Chicago.

⁴ NS does not, and Conrail did not (unlike CSX), have a separate intermodal company marketing and selling intermodal services, including rail transportation.

⁵ Copies of these contracts are in the Highly Confidential Exhibit Volume.

shipping public at large. Under the contract, it has given Conrail a commitment of at least 90 percent of its International moves⁶ between Bedford Park (in the Chicago area) and Buffalo, as well as between Bedford Park on the one hand and Worcester, MA and Little Ferry (for local handling by NYS) on the other hand.⁷ Liquidated damages are provided for failure to tender the minimum volumes, at the rate of \$140 per loaded unit of shortfall, not to exceed \$2 million a year or \$16 million over the term of the agreement.

A second contract, involving NS, entered into by CSX Intermodal on April 15, 1994, runs for five years from the date of commencement of operations under the contract, which was in August 1994. Thus, that contract (the "NS Contract") runs until August 1999. The contract provides for movements between the Chicago area (Bedford Park, IL) and Little Ferry, NJ.⁸ CSX Intermodal agrees to tender for shipment a minimum of five train set shipments in each direction each week, and to tender for shipment not less than 95 percent of "CSX Intermodal controlled" international and domestic container and trailer traffic available to be loaded or moved by rail to and from all points within 30 miles of Little Ferry, NJ, other than traffic which is otherwise

⁶ International moves are those having their ultimate origin or destination abroad (or in Hawaii or Alaska), as does much of the intermodal traffic between New York and Chicago.

⁷ The contract also covers service between Chicago on the one hand and Morrisville, PA and Baltimore, MD on the other, but no minimum requirements are set for those moves.

⁸ Service between Little Ferry, NJ, a CSX Intermodal facility, and Buffalo, to complete the route between the Greater New York area and Buffalo, was to be provided by the NYS, as discussed above.

contractually committed (thereby excluding traffic committed to the Conrail Contract just mentioned). Liquidated damages, amounting to 75 percent of the difference between the revenues which would have been paid if the minimum units had been moved and the charges actually paid, were provided for in the NS Contract.

CSX has requested, and NS has refused in writing, to release CSX Intermodal from its commitments under the NS Contract from and after the Split Date. See the letter dated May 28, 1998, from Thomas Finkbiner, then Vice President-Intermodal of NS, Exhibit A hereto. The refusal in the letter relates specifically to the NS Contract, but presumably the same attitude would be displayed with respect to the Conrail Contract and, in fact, NS has taken that position in discussions which have followed the receipt of the letter from Mr. Finkbiner. Indeed, NS has demanded that CSX Intermodal pay Conrail liquidated damages in the amount of \$3.8 million for CSX's alleged failures to make sufficient use of Conrail's services under the Conrail Contract, seeking its 58% equity in those damages, despite the fact that to the extent that CSX Intermodal did not use Conrail's services between Buffalo and Chicago, it used NS's services under the NS Contract. See the letter of Henry C. Wolf, Vice Chairman and Chief Financial Officer of NS, dated October 26, 1998, Exhibit B hereto. Presumably NS will instruct its directors on the board of Conrail not to approve the cancellation of the Conrail Contract on the Split Date, approval by the NS directors being required for Conrail to take such an action

under the Transaction Agreement. See Transaction Agreement, Schedule 2, Para. 1(k), CSX/NS-25, Vol. 8B, at 104-05, and Section 4.2(a), *id.* at 48.

THE APPLICATION

The Application, filed jointly by CSX and NS in this Docket on June 23, 1997, presented as one of the substantial public benefits of the Transaction the introduction of competitive single-line service by two major Class I rail carriers, where such competition had not existed since the creation of Conrail.

In addressing "Rail to Rail Competition," the Application promised the following:

Currently, CSX and NS compete vigorously throughout the Southeast and Midwest. Conrail, on the other hand, faces only limited rail competition in some parts of its service territory. The transaction will eliminate this anomaly, allowing CSX and NS to expand the scope of their competitive efforts into important new commercial areas. These include the Shared Assets Areas of South Jersey/Philadelphia, North Jersey and Detroit, as well as the coal fields served by the former Monongahela Railroad, and Conrail's Ashtabula, Ohio dock facility. Numerous shippers in these areas will have access to dual rail service for the first time since Conrail's creation. Rail competition for general merchandise and intermodal traffic moving between New York and Chicago and New York and St. Louis will be intense, as will rail competition for finished automobiles moving out of Detroit and auto parts coming into Detroit. According to one estimate, over \$700 million in rail business will gain two-carrier competition. (CSX/NS-18, Vol. 1, at 17-18)

The Chief Executive Officers of the two Applicants made similar statements:

John Snow, CEO of CSX, presumably assuming that arrangements made to provide

cooperative alternatives to Conrail's monopoly would be dissolved by the Transaction, had the following to say:

Although Conrail itself has been a tremendous success story and has always faced strong truck competition, the absence of competition from another strong railroad in certain key areas – particularly the Greater New York/New Jersey Port area – has deprived the public of the benefits that flow from vigorous rail-to-rail competition. This transaction will give customers who ship to and from the Northeast the benefits of competition between two strong rail systems.

CSX and NS, through various operating agreements, will both have the ability to serve the New York/New Jersey Port areas and various terminal facilities in the region. The dissolution of Conrail's rail monopoly in the New York/New Jersey Port region and the allocation of Conrail's routes to CSX and NS promotes the public interest, and creates the competition that Congress and the URSA envisioned in the 1970's. (See *Hoppe V.S.*, Vol. 1). The overwhelming public support for the introduction of long-awaited rail competition to that region is evidenced by the some 1,850 letters that shippers, including many from the New York/New Jersey area, have sent in support of the proposed transaction. (*Id.* at 314-15)

David R. Goode, CEO of NS, had the following to say:

This transaction is by far the most pro-competitive railroad restructuring in history. It will create two new Northeast/Southeast rail systems that will do their utmost to best each other in the marketplace every day. This will bring about a blossoming of rail competition, the likes of which the Northeast has not experienced in decades. (*Id.* at 323)

Focusing on the Port of New York and New Jersey facilities and intermodal terminals and other shippers located in Northern New Jersey, Mr. Goode said:

The shippers in the largest of the Shared Assets Areas – northern New Jersey – as well as shippers in southern New Jersey, parts of

Philadelphia and Detroit, will be gaining direct competitive service from two large Class I railroads for the first time in more than two decades. (*Id.* at 330-31)

Progressing to discussion of the "competitive benefits," Mr. Goode said:

What most sets this transaction apart from all previous railroad consolidations is, of course, the extraordinary amount of new railroad competition that it will bring to the areas served by the carriers involved. That added competition is apparent from a cursory examination of the maps, and is described in greater detail in the statements of Jim McClellan and economist Barry Harris. As Jim McClellan explains, the transaction proposed here offers an historic opportunity to accomplish what the Congress, the Department of Transportation, the U.S. Railroad Association and others tried very hard to achieve but could not accomplish in the 1970's after the collapse of the Penn Central and other northeastern railroads: providing rail systems in the Northeast that are both strong and competing. Also, the new competition will be between two railroads each of which will fully control virtually all of its entire system without extensive reliance on trackage rights to provide two-carrier competition.

The amount of rail traffic that will benefit from the added competition will be enormous. . . . (*Id.* at 332-33)

Jim McClellan himself discussed the ways in which "balance" (*Id.* at 511) in routes was worked out in negotiations between NS and CSX in the Spring of 1997:

With these goals in mind, the design of the new NS and CSX systems started with assignment of Conrail's principal routes to be operated by each of them:

East-west routes. There are two high capacity, high speed routes out of the Northeast toward the Midwest, and Conrail owns them both. No deal acceptable to both CSX and NS could leave both routes with one carrier.

One of those principal CR routes (the PRR Line) runs parallel with CSX's Baltimore and Ohio line east of Cleveland. To avoid

creation of a multitude of "2 to 1" competitive outcomes, operation of the PRR Line was assigned to NS, and operation of the other principal CR route (the NYC Line) went to CSX. Operation of CR's lower capacity Southern Tier Route, a former EL line, was assigned to NS to balance the two new systems. Thus, both NS and CSX end up with two major Northeast-Midwest routes. (*Id.* at 512-13)

No indication was given that notwithstanding these balanced routes, NS would take the position that CSX Intermodal had in fact made huge volume commitments to route shipments over the NS lines or to route shipments in a way that would be subject to allocation of their transportation revenues on a 50-50 basis between CSX and NS (under the Conrail Contract) on the most important East-West route of all, New York to Chicago.

These representations, and the evidence submitted by the Applicants, led the Board to find as follows:

Before this transaction, Conrail faced no Class I rail competitor through much of its service area. This meant that Conrail was a "bottleneck" carrier for most through shipments moving to or from this area. Now, CSC and NS will directly compete with each other in important markets where Conrail did not compete with other major railroads before. These markets are the Northern New Jersey portion of the New York metropolitan area, Southern New Jersey/Philadelphia, Detroit, the area served by the Monongahela Railroad, and the Ashtabula Harbor. The total amount of rail traffic that will gain head-to-head two railroad competition has been estimated by applicants at \$700 million per year. (Decision No. 89, served July 23, 1998, at 50)

Of the places where this new competition was being introduced, the most important city pair from a volume and revenue standard by far was New York/Chicago –

respectively, one of the largest ports in, and the greatest population center of, the United States, and, the other, the largest metropolitan area in, and the manufacturing and distribution center of, the Midwestern United States and the greatest rail hub of the nation.

While the Transaction itself was clearly pro-competitive, the Application made it plain that some of the means whereby that competition was to be introduced involved "cooperative structures" between CSX and NS – structures of a sort that would be suspect, from an antitrust point of view or otherwise, with respect to their effect on competition, if not engaged in as part of an overall plan to provide new competition and if not sanctioned by the Board with the immunizing effects provided for in 49 U.S.C.

§ 11321. As the Application put it:

The proposed transaction provides the basis for competition between CSX and NS throughout their systems as expanded by the Division of Conrail. However, certain of the means that have been chosen to provide and facilitate this competition involve the creation, and in some cases the maintenance, of cooperative structures. One such structure is transitory – the joint control of the present Conrail system in its current configuration from the date on which CSX and NS jointly assume control of Conrail through the date of the Division. Another, which is not transitory, involves CRC's continuing role in the Shared Assets Areas. In these Areas, CRC will perform services for both CSX and NS. (CSX/NS-18, Vol. 1, at 98)

In addition, there were other structures which in and of themselves might be said to have a limiting effect on competition which were clearly spelled out to the Board in the Application. These included the continuing joint control by CSX and NS of the

Continuing Conrail, which would continue as a "rail carrier" post-Split (*Id.* at 90); the procedures for division of the existing transportation contracts, including the "50-50" pooling of certain of those contracts (*Id.* at 98; CSX/NS-25, Vol. 8B, at 25-29); and certain aspects of the flows of funds within the continuing financial structure of Conrail and its new LLC subsidiaries, PRR and NYC (CSX/NS-18, Vol. 1, at 93). These were all carefully described in the Application, and the pertinent governing documents, of great length, were included in the three parts of Volume 8 of the Application.

What was not described in the Application was the existence of contracts under which an intermodal affiliate of CSX, one of the parties to the Application, pledged that it would give substantially all of the intermodal traffic which it controlled, moving between Chicago and New York or Chicago and Buffalo, either to (a) NS itself or (b) Conrail (which, after the Split, would mean, given the provisions of Section 2.2(c), a 50-50 pooling between CSX and NS). These arrangements were quite different from ordinary rail transportation contracts (although they had the form of rail transportation contracts) in their effect on commerce and competition after the Split Date, if they were deemed applicable after that Date. The contracts, with their percentage volume requirements, would become the subject of a metamorphosis. Previously, they had been directed at volumes which consisted only of the movements which CSX Intermodal – which had no affiliate lines in the Greater New York area – was able to sell in competition with Conrail's excellent single-line service. The effect of the contracts in that regime was pro-

competitive, since they provided a competitive discipline on Conrail's rates and service, although not a very constraining one since they involved joint line service where Conrail provided single-line service and they involved a secondary routing west to Buffalo on the Southern Tier, hardly a fully effective rival of the Water Level route of Conrail.

After the Split Date, those contracts would no longer simply cover those relatively few movements between New York and Chicago that CSX Intermodal was able to attract but would become a commitment by CSX Intermodal to ship substantially all of the intermodal service between Chicago and New York that it was able to broker for its rail affiliate, CSXT, in head-to-head single-line competition with NS. But CSX Intermodal's CSXT affiliate would get either none of the transportation revenue (NS Contract) or only 50 percent of the Chicago-Buffalo division (Conrail Contract). A small pro-competitive contract would thus change into a large anti-competitive contract. Enforcing these contracts would not be a matter of holding Conrail's shippers to their commitments, either for the full term of their contracts (as proposed by the Applicants) or for a transition period (as ordered by the Board). In effect, enforcing the contracts would be to make them into a commitment by CSX Intermodal, the CSX company which was charged with the responsibility for soliciting, organizing, and selling intermodal services, to employ not its own affiliate's excellent Water Level route and modernized B&O Line from the Greater New York area to its own new intermodal terminal in Chicago, but to give substantially all of that New York/Chicago traffic either (a) to NS for movement

between Buffalo and Chicago or (b) to a "pooling," 50 percent to CSX and 50 percent to NS. These requirements would be enforced by severe liquidated damages which would go to the 50-50 "pool" (Conrail Contract) or directly, 100 percent, to NS (NS Contract). Thus, competition between CSX and NS on this major route would be suppressed and thwarted for at least as long as the contracts were in effect.⁹

Not a word was said about these contracts in the Application. CSX's failure to see that they were revealed was based on its understanding that it would be unnecessary to refer to them since obviously they would not be enforced or deemed to be applicable after the Split Date. CSX believed that this was NS's understanding as well, because the joint Application clearly contemplated separate and competitive intermodal operations. The two existing contracts were part of a set of arrangements which the parties had entered into in order to provide some degree of competition to "all Conrail" moves between New York and Chicago. Once there were two competing railroads, each with a major intermodal single-line route between New York and Chicago (as well as alternative single-line routes between those city pairs), as far as CSX could perceive, it was

⁹ Under its terms, the NS Contract is to remain in effect until August 1999. Presumably, as a Conrail rail transportation contract having (as it does) an anti-assignment clause, the Conrail Contract may be terminated by CSX Intermodal 180 days after the Split Date. If we assume, as may be a fair approximation, that the Split Date will be March 1, 1999, this will mean that both arrangements will remain in effect for five to six months after the Split Date and will adversely affect CSX-NS competition for uncommitted shipper intermodal movements for that important "start-up" period of time. For a discussion of the dispute as to whether the NS Contract has been terminated for cause, see note 12.

unthinkable that the contracts would continue. Whether CSX was wrong as to its belief that NS's understanding about the contracts was the same as its own – or whether NS later changed its views as to whether the contracts would survive the Split Date – CSX does not know. In any event, the existence of the contracts was not called to the Board's attention.

ARGUMENT

The NS Contract and the Conrail Contract will have the effect of dampening and virtually suppressing, at least for a period of about six months from the currently expected Split Date, intermodal competition between CSX and NS on movements between the Greater New York area on the one hand and Chicago on the other hand. Unlike the other Conrail rail transportation contracts, these are not contracts by conventional unrelated "shippers" or third-party intermodal service providers but are contracts by a subsidiary of a party to the Application engaged in soliciting and packaging intermodal traffic from shippers. The only "contract rights" that would be involved in declaring the commitments in the contracts null and void from the Split Date would be those of NS and the Continuing Conrail (jointly owned by NS and CSX). These are the parties who have promised head-to-head competition between themselves on Conrail's old rail monopoly routes and, indeed pertinent to this Petition, on its greatest rail monopoly route – New York/Chicago. This is not a case of a shipper who has negotiated satisfactory rates or satisfactory service facilities and made a commitment; if

taken out of the context in which it was made and applied to these changed circumstances, it is a pledge by the intermodal subsidiary of one of the Applicants to use what is now its competitor, either on the basis of 100 percent of the rail transportation revenue or 50 percent of the net revenue, for almost the entirety of that Applicant's movements in an enormous market. After Day One, there is no valid reason for continuation of these commitments under the dead hand of contracts made for another purpose in other times. There is every reason for the Board to rule that these contracts, which undercut the basic representations made to the Board, must terminate.

On Day One, CSX Intermodal will move from having a relatively small piece of the intermodal market between Chicago and Greater New York -- historically dominated by Conrail -- into the position of having, presumptively, at least half of that market. CSX Intermodal movements involving movements between Greater New York and Chicago via Buffalo in the year 1998 (annualized) are estimated by CSX Intermodal to be about 52,000 units.¹⁰ The anticipated CSX Intermodal business between Greater New York/Chicago in the first post-Split year is 425,000 units (assuming no constraint from the two contracts at issue). Presumably, NS anticipates getting at least as much business on its Greater New York/Chicago intermodal service post-Split. Thus, the insistence by NS on the continuation of these arrangements, commenced on the premise that they would cover only a toe hold in the market, into a regime under which they will

¹⁰ A "unit" in intermodal parlance is a trailer or a container.

presumptively account for 50 percent or more in a head-to-head market, is an effort to make contracts which were designed to provide some relief from a monopoly situation govern what would approximate 50 percent of the total intermodal movements between New York and Chicago. The "universe" covered by the contracts in practice would be increased more than eightfold. The contracts would be metamorphosed from small pro-competitive arrangements into a gigantic pooling arrangement whereby almost all of the CSX traffic would be given to NS absolutely or shared with it under the Conrail Contract on a 50-50 pooling basis.

If the Applicants had described these contracts in the Application and said that they were to continue in accordance with their terms after the Split Date, they would have been the object of attack by every shipper with an interest in the New York/Chicago intermodal market as negating and dashing the promises of vigorous competition between CSX and NS in this major intermodal market. No coherent or persuasive defense of the contracts could have been made. If these contracts were entered into today, for application after the Split Date, they would be viewed as a division of a market by two competitors, without any conceivable pro-competitive justification, and would raise the most serious of antitrust concerns, as well as issues under the "pooling" statute, 49 U.S.C. § 11322. The NS Contract and the Conrail Contract would not have survived the Split Date under either of these scenarios, and the failure to describe them in the Application

should not give them a life that they would not have had if they had been exposed to the sunshine of the Application process.

The contracts were not pooling arrangements when they were entered into because CSX did not offer viable rail transportation services of its own between Chicago and New York or between Chicago and Buffalo. Pooling under 49 U.S.C. § 11322 exists where "carriers which otherwise would be competitors take a common position toward the public and divide the benefits and costs equally or by special agreement, rather than according to individual performance." Union Pac. R.R. Co. & Missouri Pac. R.R. Co. — Trackage Rights Over Lines of Chicago & N. W. Transportation Co. Between Fremont, NE/Council Bluffs, IA, & Chicago, IL, 7 I.C.C.2d 177, 1990 WL 300558 at *6 (1990) (citing Soo Line R.R. Co. — Joint Use of Lines — Chesapeake & Ohio Ry Co. (not printed), served Sept. 20, 1986) (citing Switching Charges at Philadelphia, PA, 339 I.C.C. 697, 708 (1971)). To be considered a pooling agreement, two elements must exist: "First, the arrangement must be between competitors." *Id.* (what the Board needs for jurisdiction under Section 11322 is "an actual competitive relationship between the involved carriers") (citing American Rail Box Car Co. — Pooling, 347 I.C.C. 862, 877 (1974)). Second, "the arrangement must involve some restraint or potential restraint on competition." *Id.* Decisions of the courts make a similar analysis. See Chicago & North Western Ry. Co. v. Peoria & Pekin Union Railway Co., 201 F. Supp. 241, aff'd, 319 F.2d 117 (7th Cir. 1963), cert. denied, 375 U.S. 969 (1964) (existence of competition between

carriers and surrender in whole or in material part of the right to compete by one of them constitutes pooling).

The contracts will become pooling arrangements as soon as the Split Date, when CSX acquires the Conrail line from northern New Jersey through Buffalo into eastern Ohio, where it will link with the newly double-tracked B&O line to Chicago to give CSX first-class intermodal capacity between New York and Chicago. As soon as that happens, the contracts, if they continue in effect, will be arrangements between direct competitors and will involve the surrender of a massive portion of CSX's ability to compete in the market in question. Yet, the Application did not call this to the attention of the Board. No one exposed these contracts and described the consequences of their continuation to the Board, and the Board should not tolerate the dog in the manger attitude of NS in insisting that these bizarre consequences flow from a transaction which the Board approved, in large part, on the grounds that it introduced vigorous rail carrier single-line competition in substantial intermodal markets long dominated by Conrail's exclusive single-line rail service.

THE BOARD SHOULD GRANT RELIEF

The appropriate relief is an order directing the Applicants NS and Conrail to cease and desist from enforcing any of the volume and train set requirements of the NS Contract and the Conrail Contract effective upon the Split Date, with the option in NS and Conrail, respectively, to cancel the carrier's rate and service commitments on that

date if they so wish. Only in that fashion can the anti-competitive effects of the two contracts be avoided.

While the two contracts may terminate about six months following the Split Date in any event, that period of imbalanced competition, or any period after the Split Date, is too long. It would put competition in this vital market off on the wrong foot to start, and competition might never recover from it. None of the reasons which prompted the Board to allow six months of allocation of the Conrail rail transportation contracts with shippers having anti-assignment clauses is present here.

While alternative ways to deal with the situation theoretically may be available, the seriousness of the issue counsels against the Board's directing CSX and its affiliates to rely on them. CSX could reorganize the method in which it sells intermodal services so as to have CSXT market and supply them directly, generally or in the pertinent market, not as a subcontractor, but that would involve organizational and marketing disruption and costs without any organizational or operational gains. And while CSX believes that such a step, disruptive as it might be, would reduce the commitments under the two contracts to zero, NS might take a different view, claim that the whole CSX family of companies was bound, and commence arbitration, or insist that Conrail commence arbitration, in a private forum where the Board's voice and that of the public

interest might not be heard.¹¹ In any event, one competitor should not be left in a position where it can cause another competitor's marketing efforts to undergo a disruptive reorganization as the alternative to giving the competitor a huge share of its business or pay it the whole, or 50 percent, of extensive liquidated damages.

Other means of terminating the two contracts may be present — there is a dispute as to the quality of NS's service, as the Finkbiner letter reflects, and termination is a remedy there if the appropriate proof of bad service is forthcoming and persuades an arbitrator.¹² The contract has an arbitration clause; termination is controversial, as the

¹¹ Both the NS Contract and the Conrail Contract have mandatory arbitration clauses as to such disputes.

¹² On or about September 29, 1998, CSX Intermodal commenced an arbitration against NS under the NS Contract seeking damages based on persistent service failures on the part of NS. (AAA Case No. 13-199-00902-908) Later, CSX invoked the termination clause of the NS Contract on the same basis. In its response in that arbitration, NS denies that CSX Intermodal is entitled to terminate the contract or to receive any damages and has counterclaimed against CSX Intermodal for actual and liquidated damages on various theories in an amount "in excess of \$1 million." It is not clear when the arbitration will be concluded, and it may well remain unresolved until after the Split Date. Arbitrators have not yet been chosen (after over 50 days), and no quick resolution of the matter appears to be in sight. While success in the arbitration for CSX Intermodal would give it a portion of the relief it requests herein, the narrow issue in the arbitration relates to the NS service deficiencies, and it seems inappropriate to have a question involving the public policy on competition between New York and Chicago for intermodal traffic turn on the quality of NS's service to CSX Intermodal in a historical period; the public policy issue is one which the Board should resolve, as we develop in the text. The arbitrators will have neither the expertise nor the jurisdiction to pass on questions under Section 11322 or related competition policy issues. In any event, the issues raised by that arbitration do not involve the issues raised by the Conrail Contract, which CSX understands that NS insists is in full force and effect and will remain in full force and effect after the Split Date, presumably until terminated by CSX Intermodal pursuant to

Footnote continued on next page

tone of the Finkbiner letter, as well as its text and NS's response to arbitration, discussed in note 14, all indicate. An issue of this importance to rail transportation policy and competition should not be left to the decision of a private arbitrator passing on a collateral, historic issue with the real ongoing public policy issue side-tracked. Moreover, time is of the essence; the matter must be resolved promptly and before the Split Date in order to permit effective competition, and even if the issue were before the arbitrator, it could not be resolved as promptly as the Board can resolve it. The matter should be decided by the Board on the real issue -- whether the competition promised in the Application is to be delivered promptly.

While the contracts have broad arbitration clauses, the Board should not send the issue of whether the arrangements will become pooling arrangements or are otherwise contrary to transportation policy, or the question of whether they should have been disclosed to the Board, to arbitration. The courts have held that a federal agency may dispense with an arbitration clause in a lawfully filed pooling contract within its jurisdiction, where the issues are simply those of construction of the contract (and hence the extent of the pooling). *A/S Ivarans Rederi v. United States*, 938 F.2d 1365 (D.C. Cir. 1991). The statutory provision that the parties to them operate only "in accordance with their terms" was sufficient to empower the agency to resolve the issue of construction

Footnote continued from previous page
the "six-month termination" provision of the Board's Decision No. 89. See Decision No. 89, Ordering Paragraph No. 10, at 175.

itself. *Id.* at 1367. The present case is an *a fortiori* situation. This is not the case of a lawful pooling agreement made known to and filed with the agency. The issue is whether the contracts are, post-Split, pooling agreements within the meaning of Section 11322 and whether they should have been submitted to the Board with the Application. If they are pooling agreements, which they quite clearly will be once the Split Date arrives, their continued performance would violate the statute and be an unlawful act. Clearly the Board may act despite the arbitration clause and, indeed, is under a duty to act. Otherwise, parties could defeat the jurisdiction of the Board by simply including arbitration clauses in contracts that were pooling agreements or which were arguably so. As the court said in an earlier appeal in the *Ivarans* case, 895 F.2d 1441 (D.C. Cir. 1990):

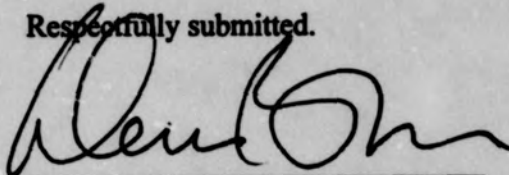
Private regulated parties cannot agree to waive the subject matter jurisdiction of the agency charged with the statutory responsibility to insure that parties implement agreements as approved by and filed with that agency. And just as assuredly, private parties may not agree to confer such powers on an arbitration panel.

895 F.2d at 1445. While the Board and its predecessor have made extensive and productive use of arbitration, arbitration remains a private-sector activity. It affords no exception to the statutory command that pooling arrangements are unlawful unless approved by the Board. And arbitration does not afford a method to avoid bringing to the Board's attention and disposition matters of material importance to it in prosecuting a major rail combination.

CONCLUSION

For the reasons stated, the Board should declare the NS Contract and the Conrail Contract provisions for volume and train set requirements null and void and unenforceable by NS and Conrail as anti-competitive and inconsistent with the representations made to the Board, effective at the Split Date.

Respectfully submitted.



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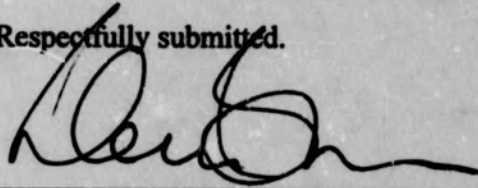
December 2, 1998

REQUEST FOR EXPEDITED TREATMENT

Prompt resolution of the question presented by the foregoing Petition is important to the Applicants' preparation for the "Split Date" and will have a considerable impact on their movements between Greater New York and the Chicago area on the Split Date, which could occur as early as March 1, 1999, and for the remainder of the extensive preparation required for it.

Accordingly, CSX respectfully requests that the Board expedite its consideration of this matter and to assist in that, to require that NS file its reply within twelve (12) days of this filing, as the Board is entitled to provide under 49 C.F.R. § 1104.13(a). NS is fully familiar with the dispute in question, has been furnished with an advance courtesy copy of a draft of the Petition, and is being served "by hand."

Respectfully submitted.


A handwritten signature in black ink, appearing to read "Dennis G. Lyons", written over a horizontal line.

Dennis G. Lyons

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

CERTIFICATE OF SERVICE

I, Dennis G. Lyons, certify that on December 2, 1998, I have caused to be served a true and correct copy of the foregoing CSX-168, "Petition of CSX Corporation and CSX Transportation, Inc. for Order Declaring Certain 'Requirements' Provisions of Certain Contracts of Their Intermodal Affiliate Which Would Have an Anti-competitive Effect After the 'Split Date' Null and Void," to all parties on the Service List in Finance Docket No. 33388, by first-class mail, postage prepaid, or by more expeditious means.



DENNIS G. LYONS

Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-9208
757-629-2735 FAX 757-633-4663

Thomas L. Finkbiner
Vice President
Intermodal

May 28, 1998

Mr. Lester M. Passa
CSX Intermodal, Inc.
301 West Bay Street
Jacksonville, FL 32202

RE: Agreement between NS, NYS&W and CSX Intermodal dated
April 15, 1994

Dear Les:

Thank you for your letter of May 22 and the offer to amend the above Agreement. After reviewing the offer carefully, it appears to me to be not much different from our existing agreement, and as a result, I am not interested in agreeing to it. As you know, the primary problem regarding transit time with the Bedford Park - Little Ferry train is that we do not receive the train on time from CSX Intermodal. When a train is not received on time and has to be run at a different time, meeting the needs of the late-tendered train can be difficult while attempting to meet the needs of other customers on the same line. Nothing in your offer shows that CSX Intermodal would be able to begin to release the train on time, so I see no need to amend our agreement.

I am more than a little curious about the reasons that these trains are now of interest to CSX Intermodal, after almost four years of essentially the same performance by NS and NYS&W. I presume that CSX Intermodal's interest is due to the changing competitive situation in the east created by the CR transaction. In addition, I understand that Conrail has sued CSX Intermodal, alleging CSX Intermodal's failure to meet volume commitments. I assume that if you are able to pull this train from NS/NYS&W and give it to CR, that your position in your CR lawsuit will improve.

As you are concerned with NS's performance under the Agreement, we are concerned with CSX Intermodal's performance as well.

Specifically, see §4A. I believe you are in violation of that provision, and we may soon request an audit to assure compliance with CSX Intermodal's 95% volume commitment for traffic which originates or is destined within 30 miles of Little Ferry, NJ.

Also, my attorneys and those of the NYS&W point out that our contract contains language sustaining the movement of freight for five years effective the date of the movement of the first train. That date was August 15, 1994 so that we have an enforceable contract until August 15, 1999. During our February conversation I did indicate a willingness to relinquish our contract on Control Date. However, that was before you precipitated this regretful sequence of events. Unless we can come to some other agreement we expect to execute the contract until August 15, 1999.

Given that CSX Intermodal appears to wish relief from its obligations under this Agreement, I would like to offer the following counterproposal:

- NS, CSX Intermodal, and NYS&W terminate the Agreement effective at a mutually agreeable date in the near future.
- APL is relieved of its obligations under §2.2(c) of the Transaction Agreement, and CSX agrees that APL may stay at the South Kearny facility during the primary term and any extended term of the lease, without regard to whether there is a transportation contract in effect with CSX or an affiliate.

Acceptance of our proposal would allow CSX to have relatively smooth sailing on the 2.2(c) proposal, because I am assured that APL would withdraw its letter under these conditions. Both CSX and NS could then avoid all damage done by an STB ruling in favor of APL.

Please let me know if this proposal is acceptable to you by no later than June 1. If it is acceptable, then we need to give APL a chance to withdraw before the June 3-4 oral arguments before the STB.

Respectfully,

/s/

Thomas L. Finkbiner.

Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191
757-629-2650
757 664-5122 FAX

Henry C. Wolf
Vice Chairman and
Chief Financial Officer

October 26 1998

VIA FAX - 804-783-1380

Mr. Paul R. Goodwin
Executive Vice President and Chief Financial Officer
CSX Corporation
One James Center
Richmond, Virginia 23219

Dear Paul:

I received your letter of September 25, 1998, advising me that CSX would be submitting the capital budget issue for arbitration. I believe that it is appropriate to bring to your attention several issues involving financial matters which concern Norfolk Southern. These are matters where we think Norfolk Southern has been economically disadvantaged and some adjustment is appropriate.

1. Expenditures for Y2K Compliance. NS and CSX have agreed that each will provide, after Closing, certain services and systems to Conrail which will avoid the need for Conrail to maintain support staffs to perform those functions. NS agreed to provide a variety of G&A systems and CSX agreed to provide operating systems. Because CSX will not be ready to be the operating systems service provider prior to the end of 1999, it has become necessary to make Conrail's operating systems Y2K-compliant. NS expects to be ready to provide the G&A systems before the end of 1999 and such costs will not have to be incurred for the G&A systems provided by NS. The additional costs incurred by Conrail because of CSX's inability to furnish operating systems in a timely manner are estimated to be \$5-6 million and should be the responsibility of CSX.

2. CSXI Receivable. Conrail has an outstanding uncollected receivable due from CSXI relating to a contract volume dispute. CSXI has not made payment even though Les Passa, who had been with Conrail, is now President of CSXI. The amount of the receivable is about \$3.8 million.

Mr. Paul R. Goodwin
October 26, 1998
Page 2

3. Change-in-Control Payments. Several high-level Conrail employees were hired by NS or CSX after May 31, 1998 (the date when half of the change-in-control payments was made) but before August 22 (Control Date). In accordance with Section 6.2(f) of the Transaction Agreement, separation costs associated with employees employed by NS or CSX before the Control Date are to be the sole responsibility of the employing party (NS or CSX, as the case may be). Over the last year, there have been many meetings regarding implementation of the severance and stay bonus provisions of "Attachment A." At these meetings, both NS and CSX agreed that a "true-up" for such separation costs would be necessary. The estimated payments made to people hired by CSX before Control Date totaled \$3.9 million, all of which was paid using Conrail cash. These payments are the sole responsibility of CSX and CSX should reimburse that amount to Conrail.

Will you please look into these matters and let me know when and how CSX proposes to resolve each.

In addition, there are other matters we are looking into which we may want to discuss. For example, Conrail's environmental reserves are underaccrued and, because the areas to be allocated to PRR contain the larger environmental problem sites, PRR may have to spend significantly more on environmental remediation compared to NYC than either of us originally expected. The extent of the differential is not clear but could be on the order of \$28-32 million.

Sincerely,

/s/*Hank*

STB

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GEORGE F. GALLAND (1910-1985)

October 26, 1998

WRITER'S DIRECT DIAL NUMBER
(202) 342-5277

VIA MESSENGER

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

ENTERED
Office of the Secretary
OCT 27 1998
Part of
Public Record

[Handwritten signature]

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

Dear Secretary Williams:

Enclosed please find an original and 25 copies of Providence and Worcester Railroad Company's Petition for Clarification of Decision No. 89 for filing in connection with the above-referenced docket. We have also enclosed a copy of the Petition to be date-stamped and returned to us.

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

Very truly yours,

[Handwritten signature of Edward D. Greenberg]
Edward D. Greenberg

Enclosures

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191862

original

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of the Secretary

OCT 27 1998

Part of
Public Record

Finance Docket No. 33388



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

PETITION OF PROVIDENCE AND WORCESTER RAILROAD COMPANY
FOR CLARIFICATION OF DECISION NO. 89

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202/342-5200 [Telephone]
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Attorneys for
Providence and Worcester Railroad Company

DATE: October 26, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

PETITION OF PROVIDENCE AND WORCESTER RAILROAD COMPANY
FOR CLARIFICATION OF DECISION NO. 89

Pursuant to 49 C.F.R. § 1117.1, Providence and Worcester Railroad Company ("P&W") hereby petitions the Surface Transportation Board (the "Board") to clarify the effect of Decision No. 89 on P&W's rights under an Order of the Special Court, dated April 13, 1982.

In 1982, Congress passed the Northeast Rail Service Act of 1981 ("NERSA") which mandated, inter alia, that the Secretary of Transportation commence an expedited supplemental transaction under the Regional Rail Reorganization Act of 1973 (the "3R Act") to transfer Conrail's rail lines in Connecticut and Rhode Island to one or more railroads in the region. Pursuant to NERSA, the Federal Railroad Administrator, as designee of the Secretary of Transportation, commenced a proceeding to effect the expedited supplemental transactions provided for under NERSA. In December 1981, P&W, Conrail, and the Boston & Main Railroad entered into an agreement in principal regarding the allocation of certain of Conrail's assets in Connecticut and Rhode Island, and participated, along with the Administrator, in drafting a proposed order which was submitted to the Special Court created under the 3R Act to review and approve such transactions.

On April 13, 1982, the Special Court issued its Order Approving and Directing the Consummation of Expedited Supplemental Transactions, approving the proposed allocation of assets of Conrail located in Connecticut and Rhode Island (hereinafter, the "1982 Order"). Pursuant to the 1982 Order of the Special Court, P&W acquired certain of Conrail's rail assets in Connecticut and Rhode Island. In addition, pursuant to paragraph 21 of the 1982 Order, P&W was granted the exclusive right to succeed to Conrail's freight operations and freight service obligations on the Shoreline between Westbrook and New Haven, Connecticut, and Conrail's terminal properties known as the New Haven Station.^{1/}

Paragraph 21 of the 1982 Order of the Special Court provides, in pertinent part:

[I]f Conrail elects to withdraw from or abandon or discontinue freight service obligations on the "Shore Line" between Westbrook, Connecticut (MP 101.2) and New Haven, Connecticut (MP 70.2) or on the terminal properties known as "New Haven Station" (which properties are more precisely defined in Appendix D) and if the Administrator shall find, on application of P&W, that P&W is continuing to operate as a self-sustaining railroad capable of undertaking additional common carrier responsibilities without federal financial assistance, Conrail shall sell said rail properties at a reasonable price and on reasonable terms and conditions to be agreed upon by Conrail and P&W or, in the absence of agreement, in accordance with the procedures of the American Arbitration Association, and P&W shall succeed to Conrail's service obligations upon the following conditions ...

The Special Court retained exclusive jurisdiction over the implementation of the subject supplemental transactions in paragraph 25 of the Order.

On June 23, 1997, CSX and the Norfolk Southern filed an application with the Board, pursuant to 49 U.S.C. §§ 11323-25, seeking to acquire control of Conrail, Inc. and Consolidated Rail Corporation (collectively "Conrail"), and to divide between them the assets of Conrail. The Board commenced STB Finance Docket No. 33388 to consider the proposed transaction. Inasmuch as

^{1/} In 1991, P&W exercised its rights under paragraph 21 of the 1982 Order to acquire Conrail's freight operations and freight service obligations on the Shoreline.

P&W asserts that CSX's acquisition of New Haven Station triggers P&W's rights under the 1982 Order, P&W sought to exercise its rights to succeed to New Haven Station. When Conrail refused to enter into negotiations for the sale of New Haven Station to P&W, P&W sought a declaration of its rights before the Special Court. P&W's action before the Special Court was dismissed without prejudice pending the Board's decision to approve or disapprove the proposed transaction in Finance Docket No. 33388.

On July 23, 1998, the Board served Decision No. 89 in Finance Docket No. 33388 approving the transaction. In Decision No. 89, the Board preempted under 49 U.S.C. § 11321(a) any rights that P&W might otherwise have been found to have under the 1982 Order of the Special Court:

Rather, we will specifically find that applicants' continued ownership and use of New Haven station is an integral and necessary part of the underlying transaction before us, and that any rights that P&W might otherwise have been found to have under the Order, must therefore be preempted under 49 U.S.C. 11321(a). As applicants have explained, a core purpose of that immunity provision is that a successor carrier must be allowed to operate property acquired through a Board-approved transaction.

See Decision at 105-106. In addition, the Board provided in ordering paragraph 10 of Decision No. 89:

10. Except as otherwise provided in this decision, CSXT and NSR may use, operate, perform, and enjoy the Allocated Assets and the assets in Shared Assets Areas consisting of assets other than routes (including, without limitation, the Existing Transportation Contracts), as provided for in the application and pursuant to 49 U.S.C. 11321, to the same extent as CRC itself could, notwithstanding any provision in any law, agreement, order, document, or otherwise, purporting to limit or prohibit CRC's assignment of its rights to use, operate, perform, and enjoy such assets to another person or persons, or purporting to affect those rights in the case of a change in control ...

As respects any CRC Existing Transportation Contract (i.e., any CRC transportation contract in effect as of Day One) that contains an antiassignment or other similar clause: at the end of the 180-day period beginning on Day One, a shipper with such a contract may elect either (a) to continue the contract until the expiration thereof under the same terms with the same carrier that has provided service during the 180-day period, or (b) to exercise whatever

termination rights exist under the contract, provided the shipper gives 30 days' written notice to the serving carrier.

Decision No. 89 at 175.

P&W has commenced a proceeding before the Special Court regarding its rights to New Haven Station under the 1982 Order of the Special Court.^{2/} The effect and scope of the Board's preemption of P&W's rights under the 1982 Order are at issue in that proceeding. In papers filed with the Special Court, Conrail has taken the position that the Board's preemption of P&W's rights under the 1982 Order does not completely extinguish P&W's rights, but rather allows CSX to step into the shoes of Conrail with respect to New Haven Station. Thus, Conrail has suggested that P&W retains its right under paragraph 21 of the 1982 Order of the Special Court, and that CSX would be obligated under paragraph 21 of the 1982 Order to sell New Haven Station to P&W if CSX "elects to withdraw from or abandon or discontinue freight service obligations" at New Haven Station.

CSX, on the other hand, appears to contend that the Board's application of 49 U.S.C. § 11321(a) to the Order of the Special Court completely extinguished P&W's rights under paragraph 21 of the Order of the Special Court. CSX apparently believes that it has acquired New Haven Station free and clear of any of Conrail's obligations under the 1982 Order of the Special Court.

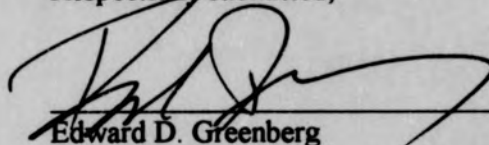
The Board's past practice in preemption determinations to limit the scope and effect of preemption under 49 U.S.C. § 11321(a) to the extent necessary to allow the transaction to proceed clearly supports Conrail's understanding of the effect of the Board's preemption in this matter. The Board's limited override of shipper contracts in this case -- for a period of 180 days -- supports a narrow reading of the Board's preemption of the 1982 Order. Moreover, the specific language of

^{2/} P&W has also filed a petition for review in the Court of Appeals contesting the STB's decision to preempt the Order. Since P&W maintains that Conrail was obligated to sell New Haven Station to P&W before agreeing to sell its assets to CSX and Norfolk Southern.

ordering paragraph 10 similarly appears to indicate that the Board's preemption was not intended to completely extinguish P&W's rights, but rather to allow CSX to step into the shoes of Conrail with the same rights and obligations under the 1982 Order applicable to Conrail before the transaction. The Board's discussion at page 105-106 of Decision No. 89 is more general, however, and could be interpreted as a total extinguishment of P&W's rights under the 1982 Order.

The Board's preemption is an issue of substantial importance to all of the affected parties. Consequently, a clarification of the effect and scope of the Board's preemption determination in Decision No. 89 would be a substantial benefit to all of the concerned parties, as well as any court which may be called upon to address P&W's continuing rights in New Haven Station under the 1982 Order. Since the effect of the Board's preemption appears subject to differing interpretations, P&W requests that the Board clarify the intended scope of the Board's preemption of the 1982 Order in Decision No. 89.

Respectfully submitted,



Edward D. Greenberg

David K. Monroe

GALLAND, KHARASCH & GARFINKLE, P.C.

1054 Thirty-First Street, NW

Washington, DC 20007

202/342-5200 [Telephone]

202/342-5219 [Facsimile]

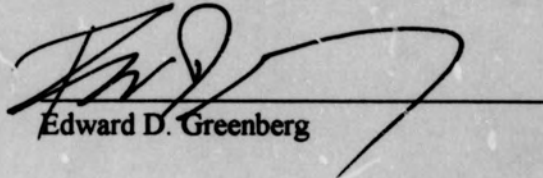
Attorneys for

Providence and Worcester Railroad Company

DATE: October 26, 1998

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of Providence and Worcester Railroad Company's Petition for Clarification of Decision No. 89 was served on all parties of record by depositing same in the United States Mail, first class postage prepaid, this 26th day of October 1998.



Edward D. Greenberg

STB

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8-13-98

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JOHN H. BROADLEY
(202) 639-6010

August 13, 1998

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

0101473001



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

Dear Mr. Williams:

Yesterday we filed on behalf on The Indiana Rail Road Company a Petition for Leave to Intervene in the captioned proceeding and attached a Petition for Reconsideration of the Board's Decision No. 89 served on July 23, 1998. I understand that the Board now requires a filing fee of \$150 for filing an administrative appeal of a Board decision. Enclosed is a check in the amount of \$150 to cover the filing fee for the Petition for Reconsideration in the event intervention is granted.

Yours very truly,

FILED

AUG 13 1998

John Broadley

John Broadley

Enclosure

SURFACE
TRANSPORTATION BOARD

ENTERED
Office of the Secretary

AUG 13 1998

FEE RECEIVED

AUG 13 1998

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Office of the Secretary

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JENNER & BLOCK

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AUG 13 1998

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TRANSPORTATION BOARD

JOHN H. BROADLEY
(212) 639-6010

August 12, 1998

Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, D.C. 20423-0001

RECEIVED
AUG 12 1998
MAIL
MANAGEMENT
STB

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

Dear Mr. Williams:

Enclosed please find for filing in the captioned proceeding an original and 25 copies of the PETITION OF THE INDIANA RAIL ROAD COMPANY FOR LEAVE TO INTERVENE and the PETITION OF THE INDIANA RAIL ROAD COMPANY FOR RECONSIDERATION OF DECISION NO. 89. I have also enclosed an additional copy of both documents which I would appreciate your date stamping and returning with our messenger.

In addition I have also enclosed a diskette containing electronic copies of each document in Word Perfect 6/7/8 format. The file containing the electronic copy of the intervention petition is entitled INRD-1.wpd, and the file containing the electronic copy of the reconsideration petition is entitled INRD-2.wpd.

Also filed herewith is a certificate of service indicating that copies of each of the petitions has been served on all persons on the Board's service list in this proceeding designated as a party of record and on Administrative Judge Leventhal.

Yours very truly,

FREE RECEIVED

John Broadley
John Broadley

Enclosures

AUG 13 1998

TRANSPORTATION BOARD

FEE RECEIVED

INRD-2

AUG 13 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C.

SURFACE
TRANSPORTATION BOARD

ENTERED
Office of the Secretary

AUG 13 1998

Part of
Public Record

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

ENTERED
Office of the Secretary

AUG 13 1998

Part of
Public Record



AUG 13 1998

SURFACE
TRANSPORTATION BOARD

**PETITION OF THE INDIANA RAIL ROAD COMPANY
FOR RECONSIDERATION OF DECISION NO. 89**

The Indiana Rail Road Company ("INRD") hereby petitions the Board pursuant to 49 CFR 1115.3 for reconsideration of part of Decision No. 89 served in this proceeding on July 23, 1998 (the "Decision").¹

In the Decision, the Board conditioned its approval of the transaction² on, inter alia, CSX Transportation, Inc. ("CSXT") granting to Norfolk Southern ("NS") local trackage rights over the Indianapolis Belt Railway ("Indianapolis Belt") to permit NS to serve Stout electric generating plant of Indianapolis Power & Light ("IP&L") via a proposed build-out from

¹ As stated in INRD's petition for leave to intervene in this proceeding, CSX, the indirect 89% owner of the stock of INRD, has not approved and did not request the filing of this petition. INRD understands that CSX does not support this petition or the positions taken therein. INRD is filing this petition through the action of its senior management, which is affiliated with the minority interest in INRD, in order to protect what it believes to be the interests of INRD and its stockholders.

² We will refer to the matters that the applicants have submitted to the Board for approval as the "transaction."

Stout plant to the Indianapolis Belt. The Board further conditioned its approval of the transaction on CSXT granting to NS trackage rights over the Indianapolis Belt to permit NS to serve Stout plant through either an INRD switch from the junction of INRD's line with the Indianapolis Belt, or directly via trackage rights over INRD's line, at the option of IP&L. Insofar as the Board conditioned its approval of the transaction on INRD granting to NS trackage rights over its line between the Indianapolis Belt and Stout plant it committed material error.³

BACKGROUND

The background to this transaction has been set forth in INRD's Petition for Leave to Intervene. We will summarize here only the main points.

1. Midland United Corporation owns 100% of the stock of INRD. CSXT owns 89% of the stock of Midland United. The Board approved CSXT's exercise of control of INRD in November 1996.

2. INRD is the only rail carrier directly serving Stout plant. In this proceeding, IP&L complained to the Board that the transaction would adversely affect rail competition at Stout plant by depriving IP&L of the option of building out to a carrier unrelated to INRD. IP&L sought a substantial number of alternative and cumulative conditions it contended were designed simply to preserve the existing competitive conditions at Stout.

³ Technically, the Board's conditions apply to CSXT, one of the applicants in this proceeding, not to INRD. CSXT, however, controls INRD through its ownership of 89% of the stock in INRD's parent, Midland United Corporation. CSXT, thus, is in a position to cause INRD to grant the trackage rights in question to NS.

3. In the Decision the Board agreed with IP&L that the transaction would adversely affect rail competition at Stout plant by depriving IP&L of the competitive discipline of the build-out option to a carrier unaffiliated with INRD.

4. The Board conditioned its approval of the transaction on:

a. CSXT granting to NS trackage rights over the Indianapolis Belt to permit NS to serve Stout plant over a build-out, should IP&L choose to construct one.

b. CSXT granting to NS trackage rights over the Indianapolis Belt to permit NS to serve Stout plant either (i) via an INRD switch, or (ii) *via trackage rights over INRD's line between the Indianapolis Belt and Stout plant*, at IP&L's election.

The Board's decision to condition approval of the transaction on INRD granting NS trackage rights over INRD's line between the Indianapolis Belt and Stout plant does not remedy an adverse competitive effect of the transaction at Stout plant, is inconsistent with the Board's guidelines and precedents governing the imposition of conditions in consolidation proceedings, and constitutes material error. INRD requests that the Board reconsider its Decision and tailor its conditions in order to preserve the existing level of competition at the Stout plant. To do this, it should eliminate from the conditions it has imposed on the transaction the requirement that INRD grant to NS trackage rights from the Indianapolis Belt to Stout plant.

APPLICABLE LEGAL STANDARD

There is little dispute regarding the legal standard the Board should apply in imposing conditions on the transaction. In Decision No. 29 the Board adopted the standard

outlined by its predecessor, the Interstate Commerce Commission, in Union Pacific -- Control
-- Missouri Pacific; Western Pacific, 366 I.C.C. 462, 562-65 (1982), (Decision No. 29 at 3):

There, the Interstate Commerce Commission (ICC) stated that it would not impose conditions on a railroad consolidation unless it found that the consolidation may produce effects harmful to the public interest (such as a significant reduction of competition in an affected market), that the conditions to be imposed will ameliorate or eliminate the harmful effects, that the conditions will be operationally feasible, and that the conditions will produce public benefits (through reduction or elimination of possible harm) outweighing any reduction to the public benefits produced by the merger.

The Board's legal standard, thus, is that conditions should be imposed when the condition will ameliorate or eliminate harmful effects of the transaction. Where conditions are sought that go beyond remedying harmful effects of the transaction, the Board, like the Commission before it, has rejected them. In the Decision, the Board succinctly stated the law and its position in this regard (Decision at 78):

... A condition must address an effect of the transaction, and will generally not be imposed "to ameliorate longstanding problems which were not created by the merger." [citing Burlington Northern, Inc. -- Control & Merger -- St. L., 360 I.C.C. 788, 952] Finally, a condition should be tailored to remedy adverse effects of a transaction, and *should not be designed simply to put its proponent in a better position than occupied before the consolidation.* [citing UP/CNW, slip op. at 97; Milwaukee -- Reorganization -- Acquisition by GTC, 2 I.C.C. 2d 427, 455 (1985)]

Moreover, the Board has specifically addressed the standard applicable to the scope of the remedy to be applied to correct an adverse effect (Decision at 78, n. 121):

If, for example, the harm to be remedied consists of the loss of a rail option, any conditions should be confined, where possible, to restoring that option rather than creating new ones. See

Soo/Milwaukee II, 2 I.C.C. 2d at 455; UP/MP/WP, 366 I.C.C. at 564. . . .

COMPETITIVE HARM AT STOUT PLANT AND THE BOARD'S REMEDY

In IP&L-3 (October 21, 1997), IP&L explained the harm to rail competition at Stout plant that it perceives the transaction would cause. According to IP&L, that harm exclusively derives from NS's asserted inability, after the transaction, to serve Stout plant through a build-out. IP&L asserted that the transaction deprives it of a meaningful build-out option because, under the applicants' proposal, NS will not have local trackage rights over the Indianapolis Belt and will not be permitted to serve Stout plant directly over a build-out. IP&L crisply summarized what it believes it will lose as a result of the transaction (IP&L-3 at 25-26):

Applicants claim, however, that Stout is technically not a "2 to 1" shipper because CSX does not serve it. E.g., IPL Exhibit 5 (Hart Dep'n Tr. 30-31). IPL's response is that Applicants' claim is nonsense. Obviously, IPL is losing the ability to build out to one of its two carriers today, and the ability to build out to CSX at the Indianapolis Belt rather than Conrail does not create effective competition with Indiana Rail Road, since CSX controls Indiana Rail Road. . . . So IPL needs a carrier other than CSX to provide effective competition at Stout, *to replace Conrail*. (emphasis added)

IP&L clearly defined to the Board the remedy needed for the specific competitive harm it had identified at Stout plant (IP&L-3 at 26):

Thus, the Board must permit IPL to be served by NS directly, *if a build-in or build-out from the Indianapolis Belt is feasible*, since IPL has the right today, or the Board could order Conrail to provide such service to IPL. . . .

The remedy for loss of a meaningful build-out option that is tailored to remedying the loss of that option is, as IP&L suggested, to put NS in the same position vis a vis service to Stout plant after the transaction as Conrail is before the transaction. The Decision expressly preserved IP&L's right to build-out to the Indianapolis Belt and required CSXT to grant NS trackage rights over the Indianapolis Belt to serve IP&L directly over the build-out (if one is built) or through an INRD switch *as Conrail can do today*. Inexplicably, however, the Board also gave IP&L the option of obtaining direct NS access to Stout plant *via trackage rights over INRD*, a right that Conrail does not have today and which is unrelated to any asserted adverse competitive effect of the transaction at Stout plant. IP&L did not identify any adverse competitive effect of the transaction at Stout plant whose amelioration could only be accomplished by granting NS trackage rights into the plant ⁴

This trackage right condition will significantly improve IP&L's competitive situation at Stout plant over that which exists today. Today, as IP&L explained and the Board

⁴ A careful reading of IP&L-3 discloses that IP&L was less than clear in its use of the term "direct access," and in its efforts to relate the "direct access" remedy to asserted adverse competitive impact were highly imprecise. IP&L's use of the term "direct access" in most places suggests that the term does not comprehend NS having trackage rights over INRD's line between the Indianapolis Belt and Stout plant, but the same access via an INRD switch that Conrail has today. See e.g. IP&L-3 p.5 (IPL needs direct access to both the Stout and Perry K plants from a carrier other than CSX/Indiana Rail Road "to maintain its existing competition"); IP&L-3 p. 7 (In the alternative, NS should have fully effective trackage rights that provide direct access to shippers In short, direct access to local shippers would enable NS to compete with CSX on an equal footing, as Conrail does today with Indiana Rail Road at Stout); IP&L-3 p.16 (Similarly, if Indianapolis were a shared assets area, NS could serve the Stout Plant directly via a build-out. . . .); IP&L-3 p.18 (A key factor limiting NS's ability to compete with CSX under the proposed transaction is the lack of fully effective trackage rights over the Indianapolis Belt. . . . NS must be granted fully effective trackage rights that enable it to serve shippers directly, including through build-outs.); IP&L-3 p.19 and p. 23 (. . . Conrail clearly has the right . . . to serve the Stout plant directly through a "build-in" or "build-out".)

found, Stout plant is served directly by INRD, and by other carriers through an INRD switch. As IP&L contended and the Board found, the terms of that switching agreement are disciplined by IP&L's option to build out, an option that, while feasible, involves substantial costs. By requiring INRD to grant trackage rights to NS over its line into Stout plant, the Board's condition simply has eliminated the existing financial hurdle for IP&L to obtain two carrier direct service at Stout plant. This places IP&L in a much improved rail competitive position at Stout plant after the transaction than it was before, and correspondingly, places INRD in a significantly worse competitive position with respect to Stout plant traffic which represents a substantial portion of INRD's revenues.⁵

CONCLUSION

The Board's condition requiring INRD to grant NS trackage rights between the Indianapolis Belt and Stout plant is unrelated to any adverse competitive effect of the transaction at Stout plant either alleged by IP&L or found by the Board. Its effect will be to improve IP&L's rail competitive conditions at Stout plant significantly, not to remedy an adverse competitive effect of the transaction. Accordingly, the condition is not consistent with the standards the Board historically has applied in imposing conditions on consolidations, nor is it consistent with the standard the Board has stated it will apply in this proceeding. The

⁵ The Decision did not indicate the basis on which trackage rights charges over the INRD line should be set. The CSXT - NS trackage rights agreement which provides for system-wide trackage rights charges of \$0.29 per car-mile does not apply to trackage rights over INRD. The Commission's SSW approach to charges for trackage rights granted as a condition in a consolidation proceeding would likely lead to a similarly low rate. Only a market-based trackage rights charge based upon the avoided cost to IP&L of a build-out would be competitively neutral and preserve existing competitive conditions at Stout plant. The Board's decision does not suggest that INRD could set trackage rights charges on that basis.

Board has not explained its departure from precedent or from the standards it has established for this proceeding. The condition requiring INRD to grant trackage rights to NS over its line from the Indianapolis Belt to Stout plant should be eliminated.

Respectfully submitted,

THE INDIANA RAIL ROAD COMPANY

By: John Broadley
One of their attorneys

John Broadley
JENNER & BLOCK
601 13th Street NW
Washington, D.C. 20005
Tel. 202/639-6010

Dated: August 12, 1998

CERTIFICATE OF SERVICE

I certify that on this 12th day of August 1998 I caused copies of the foregoing Petition of The Indiana Rail Road Company for Leave to Intervene and Petition of The Indiana Rail Road Company For Reconsideration to be served on all persons on the Board's service list for this proceeding designated as a party of record and on Administrative Judge Leventhal by depositing copies thereof in the United States mail, postage pre-paid, addressed to such parties or, where represented by counsel, addressed to their counsel.

John Bradley

Dated: August 12, 1998

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187040
ROBERT E. PAUL*
MICHAEL T. LEIBIG*
WENDY L. KAHN*
WILLIAM W. THOMPSON, II*
MICHAEL S. WOLLY*
DANIEL G. ORFELD*

AARON M. NISENSEN*
CARLA MARKIM SIEGEL*
LAUREN F. SINGER*

*DC #MD +VA ONLY

April 9, 1998
BY HAND DELIVERY

Surface Transportation Board
Office of the Secretary
Case Control Branch
1925 K Street NW
Washington, DC 20423-001



Re: Finance Docket No. 31700:DELAWARE & HUDSON RAILWAY
COMPANY; CANADIAN PACIFIC RAILWAY; ST. LAWRENCE AND
HUDSON RAILWAY COMPANY LIMITED

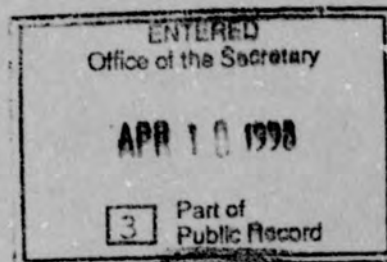
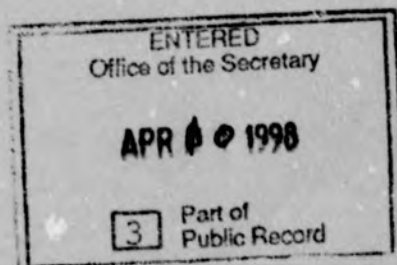
Dear Sir or Madam:

Enclosed for filing is an original and ten copies of a Motion for Leave to File Supplemental Material in Support of Petition to Review Decision of an Arbitrator and Motion to Stay Implementation of Transaction Pending Review in the above-referenced matter. Thank you.

Sincerely,

Michael S. Wolly
Michael S. Wolly

cc: Terence M. Hynes



BEFORE THE SURFACE TRANSPORTATION BOARD



In the Matter of:

INTERSTATE COMMERCE COMMISSION Finance Docket No. 31700

**DELAWARE & HUDSON RAILWAY COMPANY; CANADIAN PACIFIC RAILWAY;
ST. LAWRENCE AND HUDSON RAILWAY COMPANY LIMITED**

**MOTION FOR LEAVE TO FILE SUPPLEMENTAL MATERIALS SUPPORTING
PETITION OF
THE AMERICAN TRAIN DISPATCHERS DEPARTMENT OF THE
INTERNATIONAL BROTHERHOOD OF LOCOMOTIVE ENGINEERS
TO REVIEW DECISION OF AN ARBITRATOR ACTING PURSUANT TO
THE NEW YORK DOCK CONDITIONS
AND
MOTION TO STAY IMPLEMENTATION OF TRANSACTION**

**Michael S. Wolly
ZWERDLING, PAUL, LEIBIG,
KAHN, THOMPSON & WOLLY
1025 Connecticut Avenue, NW
Suite 712
Washington, D.C. 20036
(202) 857-5000**

Attorney for ATDD-BLE

**MOTION FOR LEAVE TO FILE SUPPLEMENTAL MATERIALS SUPPORTING
PETITION OF
THE AMERICAN TRAIN DISPATCHERS DEPARTMENT OF THE
INTERNATIONAL BROTHERHOOD OF LOCOMOTIVE ENGINEERS
TO REVIEW DECISION OF AN ARBITRATOR
ACTING PURSUANT TO THE NEW YORK DOCK CONDITIONS**

On October 22, 1997, the American Train Dispatchers Department of the International Brotherhood of Locomotive Engineers (hereafter "ATDD") filed a petition to review the October 13, 1997 decision of arbitrator Gil Vernon, rendered pursuant to Article I, Section 4 of the New York Dock Conditions. That decision would allow the Delaware & Hudson Railway Company ("D&H") to transfer the train dispatching operation for the D&H from the offices of the Soo Line Railroad Company ("Soo") in Milwaukee, WI, to Montreal, Canada, where it will be done by the St. Lawrence & Hudson Railway Corp. ("StL&H"). If the arbitrator's decision is allowed to stand, train dispatching over D&H tracks in the United States will be transferred out of this country and thereafter controlled from Canada, outside the jurisdiction of U.S. regulatory agencies. ATDD asked the Board to stay the effect of the award until the Board can address the important jurisdictional issues presented by the union's Petition and, when it does so, to set aside the award as outside the authority of the arbitrator.

In its Petition, ATDD pointed out that neither the ICC nor any other agencies of the U.S. government, shippers, or employees had ever been afforded the opportunity to comment on the ramifications of a transfer of dispatching responsibilities over

U.S. trackage to persons working outside the U.S. We pointed out that if this was allowed to occur, (1) train dispatching on these lines would be removed from the regulatory and enforcement authority of U.S. federal regulatory agencies, including the Federal Railroad Administration, and (2) employees performing the dispatching work are not subject to the coverage of U.S. laws regulating their terms and conditions of employment, including the Hours of Service Act and federal drug and alcohol testing requirements and protections.

In opposing ATDD's position, the carriers belittle ATDD's safety concerns and state "[n]or has FRA expressed any concern about the specific coordination at issue here." Reply in Opposition etc. at 16. The carriers further maintain that "[t]he FRA registered no objection to the Carrier's dispatching plans and has given no indication that it would regulate the proposed operations any differently than it has done in the past in connection with CPR's Maine and Vermont operations." Id. at 17.

The supplemental material ATDD seeks leave to file directly contradict the carriers' position. On March 25, 1998, FRA Director of Safety Assurance and Compliance Edward English wrote to Canadian Pacific Railway to express FRA's concerns about the proposed transaction. See Attachment A hereto. His letter states as follows:

It has come to the [FRA's] attention that Canadian Pacific Railway (CP) plans to relocate Rail Traffic Controller (RTC) positions from the United States to Canada. As you are aware, several major differences in operating standards exist between the two countries. We are aware of several existing locations where RTC's in

Canada control limited rail movements for short distances into the U.S. The pending relocations will increase both the mileage and volume of rail traffic that can no longer be considered de minimis. FRA's primary concern is related to the difficulty of enforcing hours of service and alcohol and drug requirements of RTC's stationed in Canada who control the movement of rail traffic in the U.S.

FRA understands that existing Constitutional issues may make it difficult to ensure compliance with the current U.S. alcohol and drug regulations. Also, the hours of service limitations that apply to operating employees performing safety sensitive work in the two countries differ greatly. RTC's stationed in Canada are permitted to remain on duty for time periods that exceed existing current U.S. requirements. FRA's fatigue research indicates that this can have a negative effect on the performance of safety critical functions. These issues must be carefully considered before FRA can support the large scale relocation of RTC positions to Canada.

Admittedly, FRA has no existing laws or regulations directly preventing CP from relocating RTC positions to Canada. However, it is recommended that the relocation of any positions from their present U.S. locations be postponed until the issues regarding compliance with applicable U.S., safety regulations are resolved.

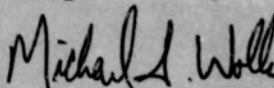
Emphasis added.

Plainly, FRA has serious concerns regarding this transaction. They are the same safety concerns that ATDD recited to arbitrator Vernon and to this Board in its Petition and Motion to Stay. We respectfully request that the Board accept this filing and carefully consider whether this transaction is consistent with the requirements of the law. Even if it is, the transaction should not be allowed to proceed until all of FRA's safety concerns are resolved.

CCNCLUSION

For these reasons, the ATDD requests that it be permitted leave to file in this proceeding the letter that FRA sent to the carrier and that the Board consider the FRA's position in ruling in this matter.

Respectfully submitted,



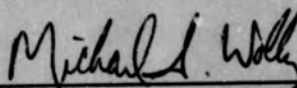
Michael S. Wolly
ZWERDLING, PAUL, LEIBIG,
KAHN, THOMPSON & WOLLY
1025 Connecticut Avenue, NW
Suite 712
Washington, D.C. 20036
(202) 857-5000

Attorney for ATDD-BLE

CERTIFICATE OF SERVICE

This is to certify that a copy of the attached Motion for Leave to File Supplemental Materials was served upon the following counsel by first class mail, postage prepaid, this 9th day of April 1998:

Terence M. Hynes
Sidley & Austin
1722 Eye Street, NW
Washington, DC 20006



Michael S. Wolly



U.S. Department
of Transportation
Federal Railroad
Administration

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

MAR 25 1998

Mr. P. A. Pender
Vice President, Field Operations
Canadian Pacific Railway
Gulf Canada Square, Suite 500
401 9th Avenue, S. W.
Calgary Alberta, Canada T2P 4Z4

Dear Mr. Pender:

It has come to the Federal Railroad Administration's (FRA) attention that Canadian Pacific Railway (CP) plans to relocate Rail Traffic Controller (RTC) positions from the United States (U.S.) to Canada. As you are aware, several major differences in operating standards exist between the two countries. We are aware of several existing locations where RTCs in Canada control limited rail movements for short distances into the U.S. The pending relocations will increase both the mileage and volume of rail traffic to a level that can no longer be considered de minimis. FRA's primary concern is related to the difficulty of enforcing hours of service and alcohol and drug requirements on RTCs stationed in Canada who control the movement of rail traffic in the U.S.

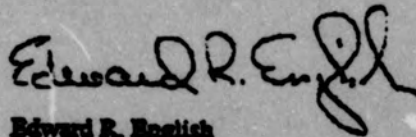
FRA understands that existing Constitutional issues may make it difficult to ensure compliance with the current U.S. alcohol and drug regulations. Also, the hours of service limitations that apply to operating employees performing safety sensitive work in the two countries differ greatly. RTCs stationed in Canada are permitted to remain on duty for time periods that exceed existing current U.S. requirements. FRA's fatigue research indicates that this can have a negative affect on the performance of safety critical functions. These issues must be carefully considered before FRA can support the large scale relocation of RTC positions to Canada.

Admittedly, FRA has no existing laws or regulations directly preventing CP from relocating the RTC positions to Canada. However, it is recommended that the relocation of any positions from their present U.S. locations be postponed until the issues regarding compliance with applicable U.S. safety regulations are resolved.

- ATTACHMENT A -

I appreciate your understanding and look forward to working with you on resolving these safety sensitive concerns. You may contact me directly at (202) 632-3384.

Sincerely,

A handwritten signature in dark ink, appearing to read "Edward R. English". The signature is fluid and cursive, with a large, stylized "E" and "R".

Edward R. English
Director, Office of Safety Assurance
and Compliance

STB

FD

33388

4-9-98

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187043

187043

LAW OFFICES
FRITZ R. KAHN, P.C.
SUITE 750 WEST
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934
(202) 371-8037
FAX (202) 371-0900

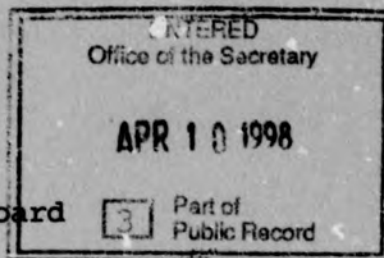
ORIGINAL



April 9, 1998

VIA HAND DELIVERY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, DC 20423



Dear Secretary Williams:

Enclosed for filing in STB Finance Docket No. 33388, CSX Corp., et al.--Control and Operating Leases/Agreements--Conrail, Inc., et al., are the original and 25 copies of the Petition of CONSOL Inc. (CONS-1), the Comments of CONSOL Inc. (CONS-2) and the Statement as to Oral Argument of CONSOL Inc. (CONS-3).

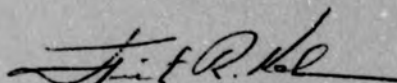
A diskette containing the text of these filings in WordPerfect 5.0 format is enclosed.

Extra copies of the filings and of this letter are enclosed for you to stamp to acknowledge your receipt of them and to return to me in the enclosed self-addressed, stamped envelope.

By copy of this letter, service is being effected upon counsel for each of the parties.

If you have any question concerning these filings or if I otherwise can be of assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

enc.

cc: Counsel for all parties

ORIGINAL

CONS-1

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



STB Finance Docket No. 33388

CSX CORPORATION, et al.,
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL, INC., et al.

PETITION
OF
CONSOL INC.

D. L. Fassio
Vice Pres. & General Counsel
CONSOL Inc.
1800 Washington Road
Pittsburgh, PA 15241
Tel.: (412) 831-4104

Of Counsel:
Donelan, Cleary, Wood
& Maser, P.C.
Suite 750 West
1100 New York Avenue, NW
Washington, DC 20005-3934
Tel.: (202) 371-9500

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

Attorneys for
CONSOL Inc.

Dated: April 9, 1998

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

STB Finance Docket No. 33388

CSX CORPORATION, et al.,
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL, INC., et al.

PETITION
OF
CONSOL INC.

Petitioner, CONSOL Inc., of Pittsburgh, Pennsylvania ("CONSOL"), pursuant to 49 C.F.R. 1117.1, petitions for leave to intervene in the proceeding, file the attached Comments and Verified Statements and participate in the oral argument, and as grounds therefor CONSOL states, as follows:

1. CONSOL is the largest producer of coal at mines served by the former Monongahela Railway Company ("MGA"), acquired by Consolidated Rail Corporation ("Conrail"), pursuant to the decision of the Interstate Commerce Commission in Finance Docket No. 31875, Consolidated Rail Corp.--Merger--Monongahela Railway Co., served October 10, 1991. CONSOL's mines, principally the Bailey, Enlow Fork, Blacksville #2 and Loveridge mines, account for approximately 24 million of the 34 million tons of coal annually originated on the MGA lines.

2. The MCA lines have been identified as ones to be shared by the applicants, CSX Transportation, Inc. ("CSXT"), and Norfolk Southern Rail Company ("NS"). As NS' Operating Plan, p. 229 of vol. 3B of the Application, explained:

NS will be assigned control, and will operate and maintain the former Monongahela Railway, including the Waynesburg Southern, subject to a joint use agreement that will provide CSX equal, perpetual access to all current and future facilities located or accessed from the former Monongahela Railway [underscoring added for emphasis].

So, too the CSXT Operating Plan, p. 255 of vol. 3A of the Application, made clear:

NS will be allocated control, and will operate and maintain the former Monongahela Railway, including the Waynesburg Southern, subject to a joint use agreement which will provide CSX equal, perpetual access to all current and future facilities located or accessed from the former Monongahela Railway [underscoring added for emphasis].

The intent of the applicants was explained in the statement of Mr. David R. Goode, Chairman, President and C.E.O. of NS, at p. 331 of vol. 1 of the Application, "[A]lthough NS will be allocated operation of Conrail's Monongahela coal fields property, CSX will have the right to serve all current and future customers directly." The principal architect for NS of the break up of Conrail, Mr. James W. McClellan, Vice President - Strategic Planning of NS, testified at p. 514 of vol. 1 of the Application, that CSXT was to have a position of equality with NS, notwithstanding that NS was to have operational control of the MGA lines, saying, "Because virtually all Monongahela traffic is coal moving in full trainloads, under NS operation with full CSX access via trackage

rights, both will serve all customers directly, in a position of equality." Similarly, Dr. Barry C. Harris, Principal at Economists Incorporated, testifying on behalf of NS, stated, at p. 21 of vol. 2B of the Application, "After the restructuring, Norfolk Southern will operate, dispatch and maintain the former Monongahela Railway, while CSX will have full commercial and operating rights to serve all current and future facilities."

3. As is spelled out in greater detail in the attached Comments and Verified Statements, CONSOL only recently has learned that the applicants have been unable to negotiate the implementing operating plan called for by their Monongahela Usage Agreement, p. 715 of vol. 8C of the Application, assuring CSXT equal access and commercial rights to the MGA served facilities and that serious and seemingly insurmountable differences between the parties render it unlikely that an early and efficient transition can be effected, were the Board to approve the proposed transaction. The assurance that mine operators, such as CONSOL, and their customers must have that service on the MGA lines will be adequate may require that conditions be imposed.

4. CONSOL heretofore has not participated in this proceeding or proposed the imposition of conditions in the light of the applicants' representations that they would arrive at an implementing operating plan effectively giving CSXT equal access and commercial rights to the MGA served mines; they, of course, have not done so. As a potential protestant, CONSOL was entitled to rely on the applicants' representations. Mt. Hood Stages, Inc.-

-Petition for Modification, 104 M.C.C. 449, 452, 463 (1968), aff'd, Greyhound Lines, Inc. v. United States, 308 F. Supp. 1033 (N.D. Ill. 1970).

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

WHEREFORE, petitioner, CONSOL Inc., asks that it be permitted to intervene in this proceeding, file the attached Comments and Verified Statements and participate in the oral argument.

Respectfully submitted,

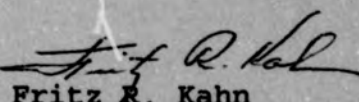
CONSOL INC.

By its attorneys,

D. L. Fassio
Vice Pres. & General Counsel
CONSOL Inc.
1800 Washington Road
Pittsburgh, PA 15241
Tel.: (412) 831-4104

Of Counsel:

Donelan, Cleary, Wood
& Maser, P.C.
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Tel.: (202) 371-9500


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

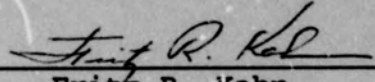
Dated: April 9, 1998

. . .

CERTIFICATE OF SERVICE

Copies of the foregoing Petition this day were served by me by mailing copies thereof, with first-class postage prepaid, to counsel for each of the parties.

Dated at Washington, DC, this 9th day of April 1998.


Fritz R. Kahn

ORIGINAL

CONS-2

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

STB Finance Docket No. 33388

CSX CORPORATION, et al.,
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL, INC., et al.

COMMENTS
OF
CONSOL INC.

D. L. Fassio
Vice Pres. & General Counsel
CONSOL Inc.
1800 Washington Road
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Tel.: (412) 831-4104

Of Counsel:
Donclan, Cleary, Wood
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Suite 750 West
1100 New York Avenue, NW
Washington, DC 20005-3934
Tel.: (202) 371-9500

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

Attorneys for
CONSOL Inc.

Dated: April 9, 1998

STB

FD-33388

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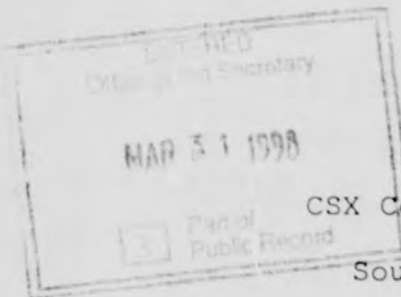
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BEFORE THE
SURFACE TRANSPORTATION BOARD

ARU-34



Finance Docket No. 33388



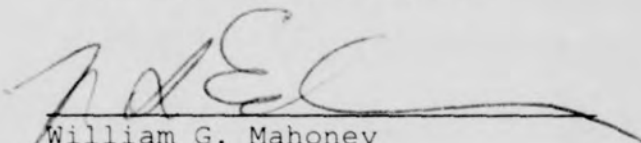
CSX Corporation and CSX Transportation, Inc.,
Norfolk Southern Corp. and Norfolk
Southern Ry. Co.--Control and Operating
Leases/Agreements--Conrail Inc.
and Consolidated Rail Corporation
Transfer of Railroad Line by Norfolk
Southern Railway Company to CSX Transportation, Inc.

**NOTICE OF WITHDRAWAL OF
INTERNATIONAL BROTHERHOOD OF BOILERMAKERS,
IRON SHIP BUILDERS BLACKSMITHS, FORGERS AND HELPERS FROM
PARTICIPATION IN FILINGS OF THE ALLIED RAIL UNIONS**

The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers ("IBB") has recently entered an agreement with the Applicants which resolves many of the IBB's issues and commits the IBB to drop its opposition to STB approval of the transactions at issue in these proceedings. Accordingly, the Allied Rail Unions hereby give notice that IBB is withdrawing from participation in the Allied Rail Unions ("ARU") and in ARU filings in these proceedings.

Respectfully submitted,

Of Counsel:
William A. Bon
General Counsel
Brotherhood of Maintenance of Way
Employees
26555 Evergreen Road
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Southfield, MI 48076
(248) 948-1010


William G. Mahoney
Richard S. Edelman

HIGHSAW, MAHONEY & CLARKE, P.C.
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Donald F. Griffin, Esq.
Brotherhood of Maintenance of Way Employees
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Washington, D.C. 20001-1511
(202) 638-2135

Counsel for Brotherhood of
Maintenance of Way Employees

David Rosen
O'Donnell Schwartz Glanstein & Rosen
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New York, NY 10165
(212) 370-5100

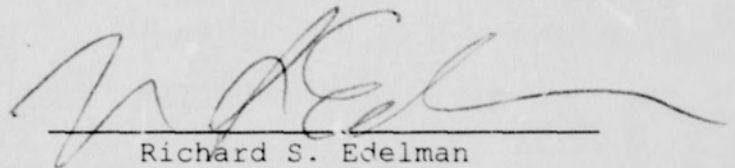
Counsel for Transport Workers Union of America

Dated: March 31, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served one copy of the foregoing Notice Of Withdrawal Of International Brotherhood of BOILERMAKERS, Iron Ship Builders, Blacksmiths, Forgers and Helpers From Participation In Filings Of The Allied Rail Unions, by first class mail, postage prepaid to all parties of record.

Dated at Washington, D.C. this 31st day of March, 1998.



Richard S. Edelman

STB

FD-33388

3-30-98

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ID-186756

**NEW ORLEANS TRAIN CAR LEAKAGE FIRE LITIGATION
PLAINTIFF MANAGEMENT COMMITTEE**

3748 North Causeway Blvd., Suite 301
Metairie, Louisiana 70002
(504) 838-8383



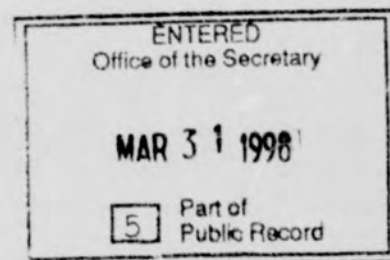
DAVID P. BAINS
JOSEPH M. BRUNO
HARRY F. CANTRELL
FRANK J. D'AMICO, JR.
CALVIN C. FAYARD, JR.
JACK W. HARANG
C. JOSEPH MURRAY
DAVID W. ROBISON
H. EDWARD SHERMAN
THOMAS L. SMITH
VERNON THOMAS
DARLEEN JACOBS
T. ALLEN USRY
WENDELL GAUTHIER

HENRY T. DART
LIAISON COUNSEL

March 24, 1998

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

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



Dear Mr. Williams:

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

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

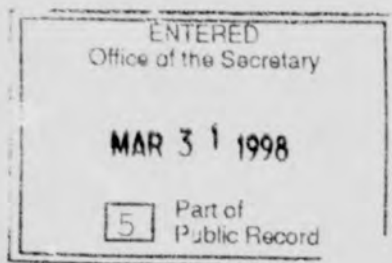
With regards, I am

Yours very truly,
PLAINTIFF MANAGEMENT COMMITTEE

Henry T. Dart
HENRY T. DART, Liaison Counsel

HTD/bjt
encl.

cc: All counsel of record
Plaintiffs Management Committee



DOT - 3

Before the
Surface Transportation Board
Washington, D. C.



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

Finance Docket No. 33388

MOTION TO BECOME PARTY OF RECORD

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

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

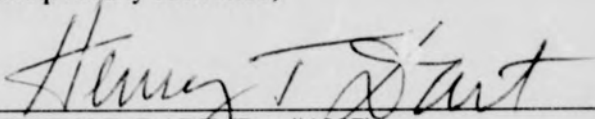
On May 30, 1997 this Board issued a decision that the National Environmental Policy Act, (NEPA), required preparation of an environmental impact statement to assess the likely environmental consequences of the merger, including such issues as safety, air quality and

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

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

Respectfully submitted,

By:


HENRY T. DART (Bar #4557)
Liaison Counsel
3748 N. Causeway Boulevard, Suite 301
Metairie, Louisiana 70002
(504) 838-8383

Plaintiffs Management Counsel:

Mr. David P. Bains, Esq.
Attorney at Law
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Phone: 835-5111
Fax: 835-2650

Mr. Joseph Bruno, Esq.
Bruno & Bruno
Attorney at Law
825 Baronne St.
New Orleans, Louisiana 70113
Phone: 525-1335
Fax: 581-1493

Mr. Harry E. Cantrell, Jr.
2900 Energy Centre
1100 Poydras Street
New Orleans, Louisiana 70163-2900
Phone: 585-7347
Fax: 585-7340

Mr. Frank J. D'Amico, Jr., Esq.
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Fax: 525-9522

Mr. Calvin C. Fayard, Jr., Esq.
Attorney at Law
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Denham Springs, Louisiana 70726
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Fax: 664-6925

Mr. Jack W. Harang, Esq.
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Suite 303
Metairie, Louisiana 70002
Phone: 828-2777
Fax: 828-2078

Mr. C. Joseph Murray, Esq.
Murray Law Firm
3813 N. Causeway Blvd., #200
Metairie, Louisiana 70002
Phone: 838-6100
Fax: 838-9555

Mr. David W. Robinson, Esq.
Attorney at Law
P. O. Box 314
Baton Rouge, Louisiana 70821
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Mr. H. Edward Sherman, Esq.
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Mr. Thomas Smith, Esq.
Attorney at Law
FNBC Building, Suite 1040
210 Baronne Street
New Orleans, Louisiana 70112
Phone: 522-8858
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Mr. Vernon P. Thomas, Esq.
Attorney at Law
1524 North Claiborne Ave.
New Orleans, Louisiana 70116
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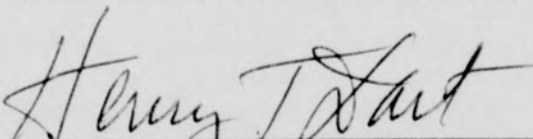
Mr. Wendell H. Gauthier, Esq.
3500 N. Hullen Street
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Phone: 456-8600
Fax: 456-8624

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

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

CERTIFICATE OF SERVICE

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


HENRY T. DART

STB

FD-33388

3-23-98

I

ID-186570

WEINER, BRODSKY, SIDMAN & KIDER
ATTORNEYS AT LAW

PROFESSIONAL CORPORATION

1350 NEW YORK AVENUE, N.W., SUITE 800

WASHINGTON, D.C. 20005-4797

(202) 628-2000

TELECOPIER (202) 628-2011

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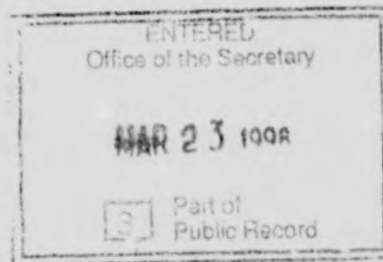


RICHARD J. ANDREANO, JR.
JAMES A. BRODSKY
JENNIFER A. COHN
JO A. DeROCHE
CYNTHIA L. GILMAN
KAREN R. GUSTAVSON*
DON J. HAL'ERN
MICHAEL W. KARDASH*
MITCHEL H. KIDER
SUSAN L. KORYTKOWSKI
SHERRIL L. LEDNER
TODD A. NEWMAN
MARK H. SIDMAN
RUGENIA SILVER
JOHN D. SOCKNAT*
HARVEY E. WEINER
ROSE-MICHELE WEINRYB
JOSEPH F. YENOUSKAS

March 23, 1998

BY HAND

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



*NOT ADMITTED IN D.C.

I

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

Dear Secretary Williams:

On March 19, 1998, an original and 25 copies of New York & Atlantic Railway's Motion for Leave to File Reply and Reply to Brief of Congressional Delegation was filed with the Surface Transportation Board in the above-referenced proceeding. The verification page of this filing was a facsimile. Enclosed with this letter is a verification page containing an original signature.

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

Very truly yours,

Rose-Michele Weinryb
Rose-Michele Weinryb

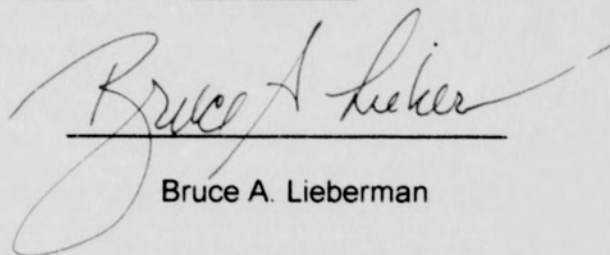
Enclosure



VERIFICATION

I, Bruce A. Lieberman, hereby affirm and state that I have read the foregoing Motion for Leave to File Reply and Reply of New York & Atlantic Railway to Brief of Congressional Delegation, that I am personally familiar with its contents, and that the facts set forth therein are true and correct to the best of my knowledge, information, and belief.

Executed by the undersigned on this 19 day of MARCH, 1998.


Bruce A. Lieberman

STB

FD

33388

2-27-98

I

186056

186056

BEFORE THE
SURFACE TRANSPORTATION BOARD

ARU-33

Finance Docket No. 33388

ENTERED
Office of the Secretary

FEB 27 1998

3 Part of
Public Record

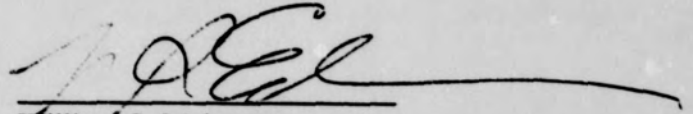
CSX Corporation and CSX Transportation, Inc.,
Norfolk Southern Corp. and Norfolk
Southern Ry. Co.--Control and Operating
Leases/Agreements--Conrail Inc.
and Consolidated Rail Corporation
Transfer of Railroad Line by Norfolk
Southern Railway Company to CSX Transportation, Inc.



**NOTICE OF WITHDRAWAL OF
BROTHERHOOD OF LOCOMOTIVE ENGINEERS FROM
PARTICIPATION IN FILINGS OF THE ALLIED RAIL UNIONS**

The Brotherhood of Locomotive Engineers ("BLE") has recently entered an agreement with the Applicants which resolves many of the BLE's issues and commits the BLE to drop its opposition to STB approval of the transactions at issue in these proceedings. BLE has recently notified the Board of that agreement. Accordingly, the Allied Rail Unions hereby give notice that BLE is withdrawing from participation in the Allied Rail Unions ("ARU") and in ARU filings in these proceedings. In this regard, BLE also withdraws from the brief filed by ARU on February 23, 1998 (ARU-32), except to the extent that it addresses the issue of application of the employee protections imposed in this proceeding to employees of the Delaware & Hudson Ry.

Respectfully submitted,



William G. Mahoney
Richard S. Edelman
HIGHS AW, MAHONEY & CLARKE, P.C.
1050 17th Street, N.W.
Suite 210
Washington, D.C. 20036
(202) 296-8500

Of Counsel:
William A. Bon
General Counsel
Brotherhood of Maintenance of Way Employes
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(248) 948-1010

Donald F. Griffin, Esq.
Brotherhood of Maintenance of Way Employes
10 G Street, Suite 460
Washington, D.C. 20001-1511
(202) 638-2135

Counsel for Brotherhood of
Maintenance of Way Employes

David Rosen
O'Donnell Schwartz Glanstein & Rosen
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New York, NY 10165
(212) 370-5100

Counsel for Transport Workers Union of America

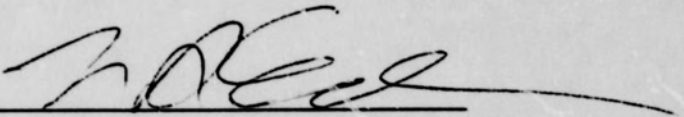
Dated: February 26, 1998

Counsel for Railway Labor Executives'
Association and its affiliated organizations

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served one copy of the foregoing Notice Of Withdrawal Of Brotherhood Of Locomotive Engineers From Participation In Filings Of The Allied Rail Unions, by first class mail, postage prepaid to all parties of record.

Dated at Washington, D.C. this 26th day of February, 1998.

A handwritten signature in dark ink, appearing to read 'R. Edelman', is written over a horizontal line.

Richard S. Edelman

STB

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33388

10-21-97

I

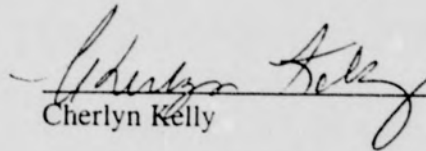
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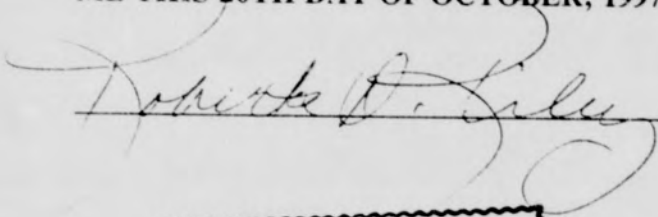
CERTIFICATE OF SERVICE

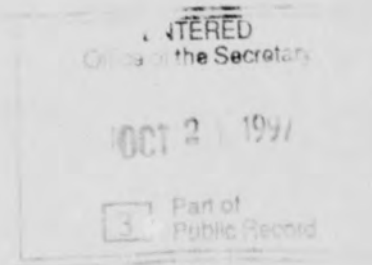
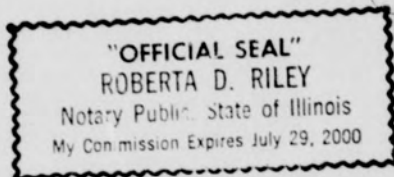
CHERLYN KELLY, being sworn, states that she served the attached Motion of the Illinois International Port District to be Joined as a Party of Record (Port/Chi-1) and the Request for Conditions of the Illinois International Port District (Port/Chi-2) as follows:

1. Upon the persons set forth on the attached Service List by Federal Express overnight delivery by placing same for delivery with the Federal Express Office at 111 West Washington Street, Chicago, Illinois on October 20, 1997, before 5:00 p.m., with delivery charges to be paid by the sender.
2. Upon all other parties of record by causing the same to be mailed by Ikon Document Services to the parties of record, postage prepaid, by United States Mail, prior to midnight on October 20, 1997.


Cherlyn Kelly

**SUBSCRIBED AND SWORN TO BEFORE
ME THIS 20TH DAY OF OCTOBER, 1997.**





182772

**MAILING INSTRUCTIONS FOR ILLINOIS INTERNATIONAL
PORT DISTRICT SERVICE LIST**

A. FEDERAL EXPRESS:

1. Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn: STB Finance Docket No. 33388
1925 K Street, N.W.
Washington, DC 20423-0001

Number of Copies: An original and 25 copies. Each must have certification that the documents filed have been properly served on Judge Leventhal, the applicants' representatives as listed below #s 3,4,5 and all PORs per 10/7/97 service list update, but you don't need to attach the service list for all 25 copies (according to Ann Quinlan, Asst. Secretary); **and**

1 electronic copy of each document (a diskette 3.5 inch IBM compatible floppies formatted for WordPerfect 7.0 or formatted so that they can be converted into Word perfect 7.0) or a compact disc.

2. Administrative Law Judge Jacob Leventhal
Federal Energy Regulatory Commission
888 First Street, N.E., Suite 11F
Washington, DC 20426

Number of Copies: 1 (One).

3. Dennis G. Lyons, Esq.
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20004-1202

Number of Copies: 1 (One).

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



Number of Copies: 1 (One).

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

Number of Copies: 1 (One).

6. U.S. Secretary of Transportation
Office of the Transportation Department
400 7th Street, S.W.
Washington, D.C. 20590

Number of Copies: 1 (One).

7. U.S. Attorney General
U.S. Attorney General's Office
10th & Constitution Avenue, NW
Washington, D.C. 20530

Number of Copies: 1 (One).

B. REGULAR MAIL:

All remaining parties on the service list. Please note, however, that per STB Decision 62 FR 39577, 39588, service is not required on "Members of Congress" and "Governors" unless they are designated as "Parties of Record."

Number of Copies for each: 1 (One).

182772

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket 33388

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



ILLINOIS INTERNATIONAL PORT DISTRICT'S
MOTION FOR LEAVE TO PARTICIPATE AS A PARTY OF RECORD

ILLINOIS INTERNATIONAL PORT DISTRICT
THE PORT OF CHICAGO

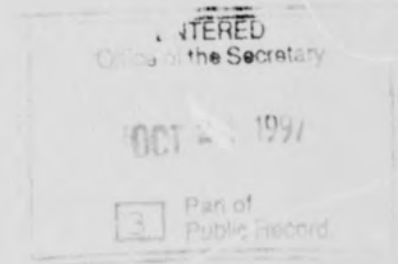
3600 East 95th Street
Chicago, Illinois 60617-5193
Telephone:(773) 646-4400

REPRESENTATIVE FOR SERVICE:

EARL L. NEAL & ASSOCIATES

Earl L. Neal
Richard F. Friedman
Terrance L. Diamond
Kristen Barnes
111 West Washington Street-Suite 1700
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Telephone:(312) 641-7144

Attorneys for Illinois International Port District



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket 33388

**CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY**

-----CONTROL AND OPERATING LEASES/AGREEMENTS-----



**ILLINOIS INTERNATIONAL PORT DISTRICT'S
MOTION FOR LEAVE TO PARTICIPATE AS A PARTY OF RECORD**

NOW COMES the **ILLINOIS INTERNATIONAL PORT DISTRICT** (the "Port of Chicago") by and through its attorneys, **EARL L. NEAL & ASSOCIATES**, and respectfully requests leave to participate as a party of record in the proceedings regarding CSX Corporation's, CSX Transportation, Inc.'s, Norfolk Southern Corporation's and Norfolk Southern Railway Company's application ("Conrail Application"), STB finance Docket No. 33388, for approval of their acquisition of Conrail Inc. and Consolidated Rail Corporation.

In support of its motion, the Port of Chicago states:

1. Applicable Ruling. The Surface Transportation Board's ("STB") Decision No. 12 provides for "[a]ny interested persons," in addition to parties of record, filing "written comments, protests, requests for conditions, and any other opposition evidence and argument, and/or responsive (including inconsistent) applications" with the STB by October 21, 1997 (62 FR 39577, 39588). In reliance on Decision No. 12's permitting filings by non-parties of record, the Port of Chicago has prepared its Request for Conditions, objecting to the application unless certain conditions are imposed. The Request for Conditions is filed simultaneously herewith.

In addition to the filing procedures contained in Decision No. 12, the Port of Chicago is permitted to become a party automatically. Persons providing comments automatically become a party of record. 49 C.F.R. §1180.4(d)(iv) provides as follows with respect to becoming a party of record:

“(iv) *Party.* All persons who file timely written comments shall be a party of record if they so indicate in their comments. In this event, no petition for leave to intervene need be filed.”

Accordingly, party of record status should be conferred upon the Port of Chicago.

2. Purpose to Serve all parties. The Illinois Port Authority's request to become a party of record is intended to assure that all parties receive filings of its written comments on the NS Application and that its comments will be given the STE's full consideration. It also desires to receive future filings by joining the service list.

3. The Interests of the Port of Chicago. The Port of Chicago is the largest inland port in the United States and the 16th largest port in the United States. It operates facilities at Lake Calumet, among others. At Lake Calumet, the Port of Chicago's tenants receive 12,000 rail cars annually. The changes proposed in the current disaggregation application would perpetuate the non-competitive rail situation on the east side of Lake Calumet and would further degrade the frequently poor rail service experienced there. The proposed conditions set forth in the concurrently filed Request for Conditions would remedy the non-competitive situation, improve rail service and would not harm the applicants.

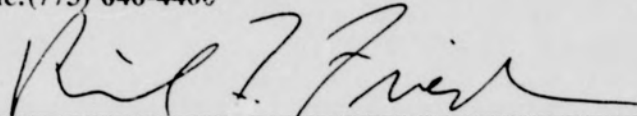
4. No Prejudice. No prejudice to the parties would result from allowing the Port of Chicago to become a party of record. Since the Port of Chicago is concurrently filing its Request for Conditions, and is doing so within the deadline for filing comments as provided in Decision

No. 12, the applicants and parties will receive the Request for Conditions in a timely manner. The applicants will be in a position to respond to the Statement of Conditions and take discovery, if they so desire. The Port of Chicago will respond to any discovery addressed to it. Accordingly, the applicants would not suffer any harm in permitting the Port of Chicago to become a party of record.

WHEREFORE, Illinois Port District respectfully requests permission to intervene in the STB Finance Docket No. 33388.

ILLINOIS INTERNATIONAL PORT DISTRICT
3600 East 95th Street, Chicago, Illinois 60617-5193
Telephone:(773) 646-4400

By: _____



One of its Attorneys

REPRESENTATIVE FOR SERVICE:

EARL L. NEAL & ASSOCIATES

Earl L. Neal
Richard F. Friedman
Terrance L. Diamond
Kristen Barnes
111 West Washington Street
Suite 1700
Chicago, Illinois 60602
Telephone:(312) 641-7144

Attorneys for Illinois International Port District

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket 33388

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

ILLINOIS INTERNATIONAL PORT DISTRICT'S
REQUEST FOR CONDITIONS
TO THE APPROVAL OF APPLICATION

ILLINOIS INTERNATIONAL PORT DISTRICT
THE PORT OF CHICAGO

3600 East 95th Street
Chicago, Illinois 60617-5193
Telephone:(773) 646-4400

REPRESENTATIVE FOR SERVICE:

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Earl L. Neal
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Attorneys for Illinois International Port District

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket 33388

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

**ILLINOIS INTERNATIONAL PORT DISTRICT'S
REQUEST FOR CONDITIONS
TO THE APPROVAL OF APPLICATION**

The ILLINOIS INTERNATIONAL PORT DISTRICT (the "Port of Chicago"), a unit of local government of the State of Illinois, by EARL L. NEAL & ASSOCIATES, its attorneys, requests that the Surface Transportation Board ("STB") impose conditions upon the Norfolk Southern Railway Company ("NS"), as stated herein, if the STB approves the subject application. In support hereof, the Port of Chicago states as follows:

SUMMARY OF REQUEST

The pending proposed operating plan of NS would aggravate an already poor competitive and service situation with respect to rail service into the east side of Calumet Harbor at the Port of Chicago. In contrast to open trackage rights over the NS maintained with respect to customers on the west side of Calumet Harbor, NS maintains, and refuses to relinquish, exclusive trackage rights to customers on the east side of Calumet Harbor. Service to the east side is through the overcapacity Calumet Yard. Shipments are delayed. Capacity is limited and service responsiveness is poor. This has resulted in a loss of business to users of Calumet Harbor, has

prevented the Harbor from competing effectively with other ports and reduced competition from maritime and truck shippers who serve customers at the port.

The proposed operating plan further reduces service by eliminating crews at the Calumet Yard and projects its eventual closing.

To remedy this situation, the Port of Chicago proposes that the STB condition its approval of the current application upon the opening of service to the east side of Calumet Harbor. The NS should provide trackage rights and access to Harbor customers by local switching carriers: The Chicago South Shore and South Bend Railroad and Chicago Rail Link, or CSX.

STATUS OF THE PORT OF CHICAGO AS A PARTY

Concurrently herewith, the Port of Chicago has filed its motion for leave to participate as a party of record. It would appear that such a motion is not necessary, or should be allowed as a matter of course, because the regulations provide for automatic participation of persons filing written comments. 49 C.F.R. §1180.4(d)(iv) provides as follows:

“(iv) *Party.* All persons who file timely written comments shall be a party of record if they so indicate in their comments. In this event, no petition for leave to intervene need be filed.”

Accordingly, the Port of Chicago states its request to become a party of record. In all events, this Request for Conditions is submitted to the STB pursuant to Decision No. 12 in this proceeding, which provides (62 FR 39577, 39588):

“Any interested persons . . . may file written comments, protests, requests for conditions, and any other opposition evidence and argument, and/or responsive (including inconsistent) applications, no later than October 21, 1997.”

CONDITIONS REQUESTED

The Port of Chicago requests that the following operating changes be imposed upon the NS as a condition to the STB's approval of the instant application: The NS should be required to allow operating rights, with associated service to customers, over its trackage at the east side of Calumet Harbor, Lake Calumet, at the Port of Chicago. Operating rights should be accorded to the Chicago South Shore and South Bend Railroad Company and Chicago Rail Link. Alternatively, or in addition to the foregoing, operating rights should be granted to CSX, which has overhead trackage right between Hedgwich and Calumet Yard under the proposed Operating Plan.

THE PORT OF CHICAGO

The Port of Chicago is the largest port on the Great Lakes and the 16th largest port in the United States.* The Port of Chicago is a unit of Illinois government, created by the Illinois General Assembly pursuant to the Illinois International Port District Act, 70 ILCS 1810/1, *et seq.* The Port of Chicago is governed by a nine-member Board of Directors, appointed by the Mayor of Chicago and the Governor of Illinois. The boundaries of the Port District are those of the City of Chicago. It operates deep water port facilities at Iroquois Landing and Calumet Harbor at Lake Calumet. The legislative mandate of the Port of Chicago is operate, expand and enhance the port facilities within the City of Chicago. Lake Calumet comprises 1,500 acres of harbor facilities. Its facilities include Foreign Trade Zone No. 22 and tenant-owned or -operated warehouses, grain

* The facts stated in this Request for Conditions are taken from the attached Verified Statements of Anthony G. Ianello, Executive Director of the Port of Chicago and Thomas A. Collard, Vice-President of the Southern Railroad Company of New Jersey, an independent consultant.

elevators, wharfs, factories, and dry and liquid bulk terminals. It is an intermodal facility in its broadest sense. Goods and materials are interchanged between three modes of transportation: maritime, truck and rail.

RAIL SERVICE TO CALUMET HARBOR

Calumet Harbor is the term for the port facilities that the Port of Chicago operates at Lake Calumet. Because of the layout of the facility and geographical restraints, the east half of the port has distinct and independent rail service from the west half. On the west, trackage into the port is owned by the NS. Pursuant to an Interstate Commerce Commission decision in 1959, *Illinois Central Railroad Company, et al. Construction and Trackage Rights, Lake Calumet Harbor, Cook County, Ill.*, 307 ICC 493 (October 5, 1959), the Chicago South Shore and South Bend Railroad Company, Chicago Rail Link and Indiana Harbor Belt Railroad (as successors to the parties in said proceeding) have operating rights over the NS (as purchaser from the bankruptcy of the Chicago Rock Island Pacific Railroad Company) into the port. In contrast, on the east side of the port, which is the subject for this Request for Conditions, the NS has exclusive rights and does not offer trackage rights to any other carrier. This Request for Conditions seeks to equalize access to rail service between the two sections of the port in order to promote competition and improve rail service.

EXISTING SERVICE OVER THE NS TO THE EAST SIDE OF CALUMET HARBOR

The attached Verified Statement of the Executive Director of the Port of Chicago describes the state of service provided by the NS to the east side of Calumet Harbor. NS provides classification service through the Calumet Yard, a short distance from the Port. Because of congestion, unavailability of crews and lack of competition from other carriers, rail customers

have received consistently poor service from the NS. This includes delayed receipt of rail cars, lack of information concerning when rail cars will be delivered and excess demurrage.

THE IMPACT OF POOR SERVICE AND LACK OF COMPETITION

One of the major effects of the lack of competition on the east side of the Calumet Harbor is the loss of business to rail customers and the loss of competition from bulk maritime carriers. Shippers at Lake Calumet have suffered stagnant business growth and even loss of business. Customers, including those itemized in the accompanying Verified Statement, have suffered reduced rail car deliveries and consequently reduced levels of business. Persons who otherwise would take advantage of services offered by the shippers at the Lake Calumet and the bulk maritime shipping offered there are unable to use the port because of poor rail service. As a consequence of insufficient access to the port and its maritime facilities, shippers are limited to shipment by the NS and other rail carriers. The current situation prevents the Port of Chicago from offering services on the east side of the harbor competitive with those on the west side of the harbor and competitive with those of other ports throughout the country. The Port of Chicago is faced with the strange situation in which customers on the west side of the Port have a choice of carriers, while customers on the east side of the port having identical requirements have access to only one rail carrier. At the same time, as pointed out in the Verified Statement of Thomas A. Collard, attached hereto, competitive ports throughout the country enjoy competitive rail service. The Port of Chicago faces unequal competition from such facilities because of the noncompetitive access over the NS.

THE PROPOSED OPERATING PLAN MEANS FURTHER REDUCTION IN SERVICE

The Operating Plan, Volume 3B, pp. 184-5, indicates that the causes of the current poor service will be further increased. Service from the neighboring Calumet Yard will be reduced by the proposed elimination of ten operating positions, seven locomotives and 65 mechanical department positions. The Operating Plan foresees eventually eliminating the Calumet Yard and converting it into an intermodal facility. The functions of the Calumet Yard will be transferred to the Elkhart Yard, some 70 miles distant. With the personnel reduction and eventual elimination of the Calumet Yard, and the operating distances to the proposed yard, it is difficult reach any conclusion except that service to the east side of Lake Calumet will deteriorate further.

THE LEGAL STANDARDS

Congress and the STB have determined that the criteria for judging an application of this kind is its impact on competition and its ability to enhance transportation alternatives to shippers, including the preservation of effective intermodal competition. Congress has determined that one of the criteria for judging an application that involves the control of Class 1 railroads is whether it will "have an adverse affect on competition among rail carriers. . . ." 49 U.S.C. §11324(a)(5). To implement this policy, the federal regulations provide that consolidations are not favored "that substantially reduce the transport alternatives to shippers." 49 C.F.R. §1180.1(a).

An important factor in this consideration is how the application will affect intermodal competition: "In some markets the commission's focus will be on the preservation of effective intermodal competition. . . ." 49 C.F.R. §1180.1(c)(2)(i).

The STB has authority to impose conditions upon approvals of consolidations, "including those that might be useful in ameliorating potential anti competitive effects of a consolidation."

Such conditions must show, as the Port of Chicago intends to show here, that the conditions are "designed to enable shippers to receive adequate service . . . [and] would not impose unreasonable operating or other problems" for the carrier. 49 C.F.R. §1180.1(d).

DISCUSSION

The facts set forth in this motion, and verified by the accompanying witness statements, demonstrate that the criteria for imposing conditions are met. The lack of competition on the east side of Calumet Harbor has resulted in poor service to customers, which in turn has prevented growth and resulted in loss of business through the port. The proposed Operating Plan demonstrates that service will be further reduced. The proposed method for accommodating the east side of Calumet Harbor is through a distant yard without any assurance that the port's needs can be met. Allowing the application without conditions would doom the east side of the port to further deterioration of service, limiting service to the public, and reducing the ability of maritime carriers to compete.

The conditions that the Port of Chicago proposes meet the criteria established pursuant to federal regulations. Allowing local switching carriers to provide service, in addition to that now provided by the NS, will encourage competition. Competitive carriers will compete for customers by improving service. Shippers will have a choice of carriers. The options available to customers will be maritime movements, as well as by rail carriage, since access to the port's facilities would be increased.

The Port of Chicago will be able to provide a more rational service, with both sides of the port offering customers access to rail carriers of their choice. More importantly, the Port of

Chicago will be able to compete on an equitable basis with other ports which are not limited by the anti-competitive access rights.

Finally, there is no financial or operating detriment to the NS in requiring it to provide equal access. This was the conclusion of witness Thomas A. Collard, whose Verified Statement is attached hereto.

CONCLUSION

For the foregoing reasons, the Port of Chicago requests that the STB impose conditions upon the approval of the current application to promote competition. The Port of Chicago requests that the approval of the application be conditioned upon NS's offering trackage rights and access to customers over its lines into the east side of Calumet Harbor to the Chicago South Shore and South Bend Railroad Company and Chicago Rail Link or, alternatively, CSX.

Respectively submitted,

ILLINOIS INTERNATIONAL PORT DISTRICT
3600 East 95th Street, Chicago, Illinois 60617-5193
Telephone: (773) 646-4400

By: _____

One of its Attorneys

REPRESENTATIVE FOR SERVICE:

EARL L. NEAL & ASSOCIATES
Richard F. Friedman
Terrance L. Diamond
Kristen Barnes
111 West Washington Street-Suite 1700
Chicago, Illinois 60602
Telephone: (312) 641-7144

Attorneys for Illinois International Port District

STATE OF ILLINOIS)
) ss.
COUNTY OF C O O K)

**VERIFIED STATEMENT OF
ANTHONY G. IANELLO TO SUPPORT
THE REQUEST FOR CONDITIONS OF THE
ILLINOIS INTERNATIONAL PORT DISTRICT**

ANTHONY G. IANELLO, being first duly sworn upon oath, states as follows:

I am the Executive Director of the Illinois International Port District (the "Port of Chicago"), a position I have occupied since 1990. I have been employed with the Port of Chicago administratively since 1984. As such, I have knowledge of the matters stated herein. This Verified Statement is given in support of the Port of Chicago's Request for Conditions to the Approval of the Application.

1. **The Port of Chicago.** The Port of Chicago is a governmental unit, created by the Illinois General Assembly in 1955. The Port of Chicago's boundaries are coterminous with those of the City of Chicago. The Port of Chicago is governed by a nine-member Board of Directors, whose members are appointed by the Mayor of Chicago and the Governor of Illinois.

The Port of Chicago operates deep water port facilities at Iroquois Landing on Lake Michigan and at Lake Calumet. The Port of Chicago is the largest port on the Great Lakes and is the 16th largest port in the United States, based upon annual tonnage. The Port of Chicago maintains piers and a 1,500-acre harbor facility (Calumet Harbor) at Lake Calumet. Foreign Trade Zone No. 22 is situated at Lake Calumet. The Port of Chicago leases areas at Lake Calumet to manufacturers, warehouse operators, grain elevators, and dry and liquid bulk terminals. Calumet Harbor is a major transshipment point with immediate access to the interstate highway system and with current rail service provided by the tracks owned and operated by the

at the Calumet Yard and the eventual conversion of the yard into an intermodal terminal. Classification service would then be provided through the yard at Elkhart, Indiana, some 70 miles away from Lake Calumet. Tenants of the Port of Chicago on the east side of Lake Calumet report to me major problems they are having receiving cars through the Calumet Yard. It is reported that the yard is severely overcrowded. This results in delays of one to five days in receiving cars through the yard. I have been advised by our tenants that frequently NS's Calumet Yard personnel report that they have received cars, but that the cars have not been delivered to the tenants for two to five days thereafter. The tenants also report to me that they frequently incurred unnecessary demurrage charges because of NS's slow pick-ups.

5. Differential Rates and Service to the West and East Side of Lake Calumet. On the west side of Lake Calumet, where competition exists, tenants report to me few instances of poor service. I receive no reports of rail service unavailability. The tenants are able to deal with carriers of their choosing. For my terminal tenants, their customers are able to make deliveries through carriers of their choice. Rail service on the west side has been increasing over the years, from 3,800 cars annually in 1989 to 8,000 cars annually in 1996.

The open competition on the west side is in contrast to the closed system on the east. Shippers may deal only with the NS with respect to movement in and out of the east side of Lake Calumet. NS's rates for movement into the Port area \$400.00+ per car. Annual rail movements have been decreasing, from 7,000 in 1992 to 4,000 in 1996. Businesses dependent on rail carriage have been stagnant or have suffered losses of customers because of the monopolistic service on the east side and their being required to receive shipment through the Calumet Yard. The poor service is a frequent subject of meetings of the Transportation Committee of the Calumet

Area Industrial Commission, an organization including Calumet Harbor tenants. All tenants of the Port of Chicago have reported difficulties to me, which difficulties are typical of the east side tenants.

One tenant on the east side of Lake Calumet is a bulk liquid storage terminal and distribution point. It receives fifty percent of its products by rail, all via the NS. The company has reported to me that its current level of rail service is 3-3,500 rail cars annually, down from almost 5,000 in past years. It has suffered a revenue loss of between five and twenty percent. The company's loss is attributable to the company's customers' reluctance to use its facilities because of the non-competitive situation. The poor service experienced in classifying cars in the Calumet Yard has contributed to the loss.

I have received similar reports from another of the east side tenants, Emesco Dockside Development Corporation. This is an operator of a dry bulk storage and steel handling facility. Its business operates most effectively by transferring materials from water to rail. It reports to me that in the period 1995-96, it lost a customer intending to ship one million tons of steel slab because of the prohibitive rail costs. In the current year, it reports that it lost another customer wishing to ship 750,000 tons annually. This loss is also attributed to the expensive and ineffective rail service.

6. Impact of Non-Competitive Rates and Poor Service. The limitation on rail service has a direct impact on the Port of Chicago. I estimate that competitive rail service with improved yard conditions would generate approximately 4,000 additional rail movements on the east side of Lake Calumet. This would result in direct revenue to the Port of Chicago. If

Norfolk Southern (the "NS"). In close proximity are the tracks of other railroads: Conrail, Union Pacific, Indiana Harbor Belt, Grand Trunk Western, and Illinois Central Gulf. Goods move among maritime carriers, rail and truck. Shippers who wish to ship overseas may transfer goods directly to ships at Calumet Harbor or may ship by rail to a coastal port. Similarly, Great Lakes and Mississippi Valley destinations are served from Lake Calumet by rail, ship and truck.

Calumet Harbor is in the Chicago Terminal District and is provided switching services by the Chicago South Shore and South Bend Railroad (the "CSSSB"), Chicago Rail Link ("CRL") and Indiana Harbor Belt (the "IHB").

Principal tenants at Lake Calumet include Reserve Iron and Steel; Medusa Cement, Continental Elevators Corporation, Stolthaven Chicago Terminals, Ceres Terminal, Emesco Corporation, Pinkert Steel, Clean Harbors, Waste Management, Spraylat, Welded Tube and Tootsie Roll.

3. Calumet Harbor's East and West Facilities. With respect to rail service, Calumet Harbor is divided into east and west portions. Each portion has separate rail services, although the tracks on both the east and west portions are owned and operated by the NS. On the west, other rail carriers, including the Chicago Terminal switching lines, have access to customers. On the east, the Port of Chicago has attempted to negotiate a similar agreement with the NS. However, the NS maintains exclusive service and does not permit access over its trackage to other carriers.

4. The Calumet Yard. NS's movement of rail cars into the east side of Lake Calumet is through the Calumet Yard. It is my understanding that the disaggregation proposal now pending before the Surface Transportation Board proposes the gradual reduction in service

customers do not receive adequate rail service to get their goods dockside, they will avoid maritime shipping.

Competitive service on the east side of Lake Calumet would eliminate artificial barriers to expansion of the Port of Chicago's tenants there. Increased rail service would also have a beneficial environmental effect, reducing the need for truck movements on city streets and over-the-road.

In addition, many customers of our tenants have a variety of choices to transshipment points. Reducing the limitations on rail access would allow the Port of Chicago to compete more effectively with east coast and other Great Lakes ports that do not have the same artificial rail constraints. Removal of barriers to competition would put the east side of Lake Calumet on an equal competitive basis. It would also encourage intermodal competition from maritime carriers.


7. Adverse Impact on Intermodal Competition. The east side of Lake Calumet is a major intermodal site. Tenants and users of the Port of Chicago facilities interchange materials among marine bulk carriers, highway carriers and rail carriers. The impact of the proposed operating plan of NS will stifle intermodal interchanges. The reduction of the already limited yard services appears likely to reduce the availability of rail cars into the east side of Lake Calumet. If rail cars are not available and if rail service is not provided in a timely and convenient way, marine-interchanges will be reduced. The remedy for this situation is to open rail service to additional carriers. The fostering of competition by making rail services available from other carriers, will promote the interchange of materials between rail carriers and other transportation modes, particularly marine carriers on the east side of Lake Calumet.

8. **Proposed Service Changes.** The Port of Chicago seeks nothing more from NS for the east side of Lake Calumet than it has on the west side. It also seeks to have its rail access on an equitable basis with other ports. The Port of Chicago proposes that NS be directed to provide it with competitive rail services by allowing rights to local switching carriers to enter the east side of Lake Calumet to serve customers there. This would remedy non-competitive rates and encourage competition that would lead to more consistent and better rail services to the tenant and would foster intermodal competition.

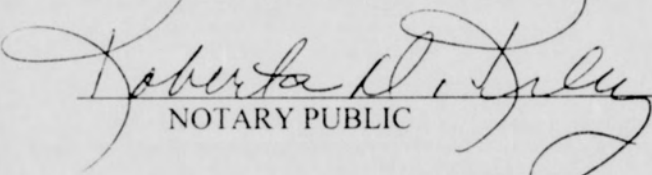
Verification Appears on the Following Page

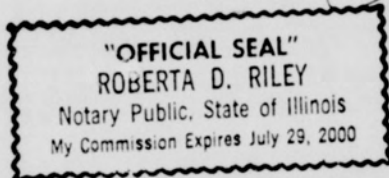
VERIFICATION

I, ANTHONY G. IANELLO, under penalties as provided by state law, state that the facts set out in the foregoing Verified Statement are true, except as to those facts that are stated upon information and belief, which statements I am informed and believe to be true.


ANTHONY G. IANELLO

SUBSCRIBED AND SWORN TO BEFORE
ME THIS 26th DAY OF OCTOBER, 1997.


NOTARY PUBLIC



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11

VERIFIED STATEMENT OF THOMAS A. COLLARD

My name is Thomas A. Collard. I am Vice President of the Southern Railroad Company of New Jersey (SRNJ) and have over 30 years of railroad transportation experience with the Pennsylvania Railroad, Penn Central, Central Railroad of New Jersey, Conrail and the SRNJ. While at Conrail, I held the position of Director, Service Planning and Performance and worked on various service planning projects involving Conrail service in the Chicago Terminal.

I am associated with GRA, Inc. I am familiar with the Illinois International Port District (the "Port of Chicago"). I am familiar with the Chicago Terminal District and have observed the area on many occasions. I have inspected the site, although not in connection with this particular assignment.

I have become familiar with the configuration of the railroad lines serving the Port of Chicago, based on upon my experience, site inspections, study of railroad terminal maps, and interviews with personnel of GRA, Inc. who have recently inspected the site in connection with this assignment. Furthermore, I am familiar with the proposed future operation of the Chicago Terminal Area, particularly as it relates to the Port of Chicago, through the study of Railroad Control Applications, Volumes 1, 3A, and 3B, as well as a review of the application as a whole. I have also considered the facts stated in the accompanying Verified Statement of the Executive Director of the Port of Chicago, Anthony G. Ianello.

Based upon my experience, analysis and review for this assignment, I am of the following opinions:

The Port of Chicago is the largest port on the Great Lakes and among the largest 20 ports in the United States. The Lake Calumet Port Facility is the largest facility at the Port of Chicago.

The facility is owned and operated by the Illinois International Port District, an Illinois governmental entity. The Lake Calumet facility has deep water ports, piers, wharfs, warehouses, grain elevators and dry and liquid bulk terminal facilities.

Although some areas in the Port of Chicago Calumet River and Lake Calumet facilities have competitive rail access via Chicago Rail Link and the Chicago, South Shore & South Bend, those facilities on the east side of Lake Calumet are served exclusively by Norfolk Southern. Service to these facilities is provided by crews assigned to Calumet Yard, the principal Norfolk Southern classification and industrial switching yard in the Chicago Terminal. The proposed operation after Conrail disaggregation contemplates eliminating most classification and train functions performed at Calumet Yard and transferring them to Elkhart, Indiana, over 80 miles to the east.¹ Further, the proposed operating plan contemplates conversion of Calumet Yard to an intermodal facility in the future with "residual" support functions transferred to 97th Street Yard or to Colehour Yard.² Service to those port facilities now served by NS exclusively appear to be among these "residual" functions. This combination of transferring the primary service function to Elkhart and "residual" service to various local yards in Chicago will result in service degradation at these captive facilities. These NS captive facilities will be at a competitive disadvantage vs. facilities in the jointly served area on the opposite side of Lake Calumet and will have reduced service levels. Customers of NS on the east side of Lake Calumet are currently suffering poor service levels through the Calumet Yard. The operating plan does nothing to improve service, based on the Verified Statement of Anthony G. Ianello.

¹Railroad Control Application, Vol. 3B, Page 252.

²*Op. cit.*, Page 253.

To the extent to which geographic competition exists between the Port of Chicago and other ports, these NS captive facilities will be disadvantaged. CSX and NS have recognized the need for competitive access at ports through the establishment of Shared Asset Areas (SAA) in New Jersey and Detroit.³ Arrangements for the consolidated Ports of Philadelphia and Camden make a good comparative illustration. In Philadelphia on the west side of the Delaware River, the port is currently served by Conrail, CSX and CP Rail. The New Jersey side, however, is served exclusively by Conrail. Through the establishment of the South Jersey SAA, port facilities in Camden and Gloucester, New Jersey will gain competitive access to CSX and NS, as will facilities located on the northern portion of the Philadelphia Belt Line in Pennsylvania. Even the tiny Port of Salem, NJ served by a short line, will have access to both CSX and NS through the SSA. A direct parallel can be drawn between the east and west side of the Delaware River and the situation on the east and west sides of East Calumet.

CONDITIONS SOUGHT

In order to address the competitive disadvantage to the Port caused by single line access and potential service degradation, east Lake Calumet port facilities need access by an additional carrier.

One solution would be to grant the Chicago South Shore and South Bend or Chicago Rail Link, or other terminal carrier the right of access to the eastern port facilities via trackage rights. The terminal carrier could then deliver to and from all diverging roads in the Chicago Terminal with the exception of NS which would retain direct access.

³*Ibid.*, Vol. 1, Page 45.

An alternative solution would be to grant direct access to CSX which already will have interim trackage rights over NS in the vicinity of the ports. Either solution would remedy this disadvantage and place the captive facilities on an equal footing with facilities with access to two carriers like the other facilities on Lake Calumet and with other lake and ocean ports.

The solutions proposed above would be in the public interest. They would place service on the east side of Lake Calumet on an equal footing with the service now existing on the west. Allowing access to the east side of Lake Calumet by competing local carriers would also place the Port of Chicago on an equal footing with the eastern ports. The fostering of competition would permit the enhancement of service to the east side of Lake Calumet. It would give shippers and other customers a wider choice of port facilities and would allow shipments at lower cost.

NO DETRIMENTAL IMPACT ON NS

Allowing access to the east side of Lake Calumet by unrestricted trackage rights to switching carriers would have no detrimental impact upon the NS. East Lake Calumet service traffic amounts to a minuscule portion of the revenues of the NS. NS would be permitted to maintain service to its customers on the east side of Lake Calumet.

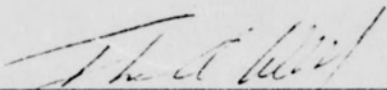
Service and traffic flow upon the NS would not be adversely impacted because the volume of traffic, the current residual traffic, does not constitute a substantial portion of the NS Chicago Terminal operating plan.

VERIFICATION ON NEXT PAGE

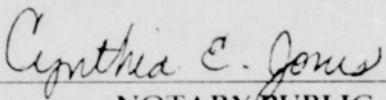
STATE OF PENNSYLVANIA)
)
COUNTY OF MONTGOMERY)

VERIFICATION

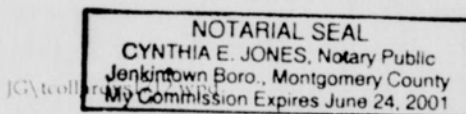
I, Thomas A. Collard, Vice President of the Southern Railroad Company of New Jersey, under penalties as provided by law state and certify that I have read the foregoing Affidavit and the contents thereof are true and correct to the best of my knowledge and belief.



SUBSCRIBED AND SWORN TO BEFORE
ME THIS 15TH DAY OF OCTOBER, 1997.



NOTARY PUBLIC



STB

FD

33388

10-15-97

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182616

HOPKINS & SUTTER

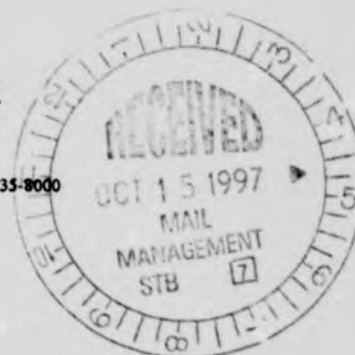
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DETROIT OFFICE 2800 LIVERNOIS SUITE 27J TROY, MI 48063-1220



ALICIA M. SERFATY
(202) 835-8049

October 15, 1997

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

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

Petition to Modify Protective Order: Expedited Consideration Requested

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of the City of Cleveland, Ohio's Petition to Modify Protective Order (CLEV-8) for filing in the above-referenced proceeding. The City of Cleveland is requesting this modification for its preparation of comments and request for conditions to be filed on October 21, 1997, and therefore requests that the Board consider this Petition on an expedited basis.

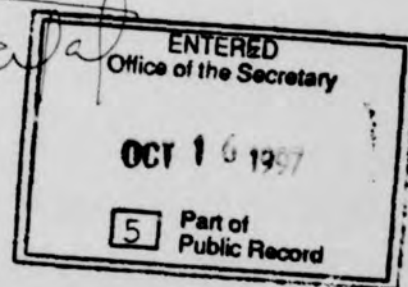
I have enclosed a disk with the text of this filing in Wordperfect 5.1 format, and an additional hardcopy for file stamp and return with our messenger. Please call if you have any questions.

Sincerely,

Alicia M. Serfaty
Alicia M. Serfaty

Enclosures

cc: The Honorable Jacob Leventhal
All parties of record



Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388

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



**The City of Cleveland, Ohio's Petition
to Modify the Protective Order**

The City of Cleveland, Ohio ("City of Cleveland") hereby petitions the Board to modify the Protective Order entered in Decision No. 1 to allow: (1) Sharon Sobol Jordan, Director of Law, City of Cleveland; (2) Richard Horvath, Chief Assistant Director of Law, City of Cleveland; (3) Hunter Morrison, Director, Cleveland City Planning Commission; and (4) Robert N. Brown, Assistant Director, Cleveland City Planning Commission (collectively, "Cleveland Personnel") to review material designated "Highly Confidential."

The City of Cleveland seeks this modification of the Protective Order so that its in-house counsel and planning commission personnel may review the designated highly confidential material. In their respective positions, the Cleveland Personnel have the responsibility to report to the Mayor and other leaders of the City of Cleveland and make recommendations with respect to the matters raised by this proceeding. In addition, the Cleveland Personnel are fully participating in the preparation of the

comments and request for conditions to be filed October 21, 1997. To fulfill these responsibilities the Cleveland Personnel must have access to all the records in this proceeding including those designated highly confidential.

The City of Cleveland is not a commercial party and has no competitive interest in this proceeding. In that respect, the Cleveland personnel are distinguishable from the Port Authority of New York and New Jersey personnel who sought and were denied access to highly confidential documents. Instead, the interests of the Cleveland Personnel are similar to those the United Transportation Union and the Transportation Communications International Union, to whom the highly confidential information, likewise, afforded no commercial value. The Cleveland Personnel should, therefore, be afforded access to the highly confidential documents.

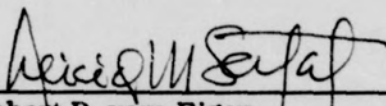
It is respectfully requested that the Board expedite its ruling in this matter. The Cleveland Personnel require access to the highly confidential documents in order to prepare the comments and request for conditions to be filed October 21, 1997.

Counsel for the City of Cleveland has contacted counsel for Applicants to seek their consent to this petition. We are presently awaiting a response and will advise the Board if such consent is granted.

Dated: October 15, 1997

Respectfully submitted,

Sharon Sobol Jordan
Director of Law
Richard F. Horvath
Assistant Director of Law
City of Cleveland
Department of Law - Rm. 106
601 Lakeside Avenue
Cleveland, Ohio 44114
(216) 664-2808


Robert P. vom Eigen
Charles A. Spitulnik
Alicia M. Serfaty
Jamie Palter Rennert
HOPKINS & SUTTER
888 Sixteenth Street, NW
Washington, D.C. 20006
(202) 835-8000

Counsel for the City of Cleveland

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 1997, a copy of the foregoing City of Cleveland, Ohio's Petition to Modify Protective Order (CLEV-8) was served by hand delivery upon the following:

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

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

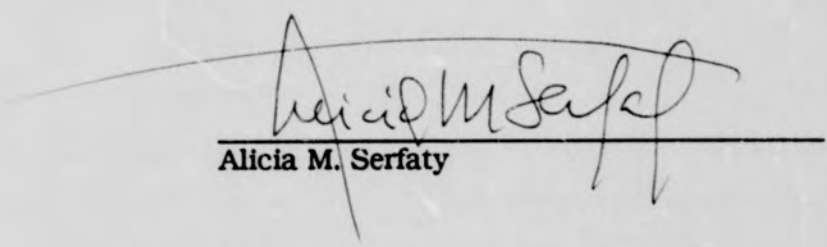
Samuel M. Sipe, Jr.
Steptoe & Johnson L.L.P.
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795

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

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

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

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


Alicia M. Serfaty

STB FD

33388

10-14-97

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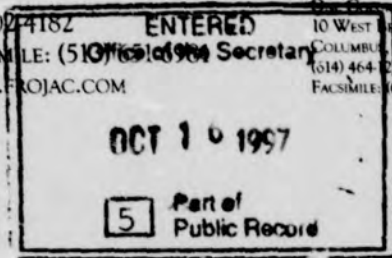
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FROST & JACOBS LLP

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CINCINNATI, OHIO 45202-4182
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SANDRA L. NUNN
(513) 651-6780
snunn@frojac.com



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1100 VINE CENTER TOWER
333 WEST VINE STREET
LEXINGTON, KENTUCKY 40507-1634
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FACSIMILE: (606) 253-2990



October 7, 1997

Honorable Vernon A. Williams
Secretary, Case Control Branch
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.

Filing No. SORT-4

Dear Secretary Williams:

Please remove my name as a party of record in the above proceeding. Our client, Southwest Ohio Regional Transit Authority, has decided not to participate further in this case. Pursuant to Decision No. 21, enclosed is an original and 25 copies of this request and certificate of service, together with a 3.5 inch diskette containing the filing in WordPerfect 5.X for Windows, which can be converted into WordPerfect 7.0.

Thank you for your assistance. Please contact me if you have questions or need additional information.

Sincerely,

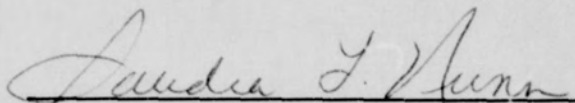
FROST & JACOBS LLP

By Sandra L. Nunn
Sandra L. Nunn

SLN/mrm
Enclosures
cc: Parties of Record

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 1997 I caused a copy of the attached letter to be served by first class U.S. mail upon all parties of record listed in the service list attached to Decision No. 21 in Finance Docket 33388, and upon Administrative Law Judge Jacob Levantahl.

A handwritten signature in cursive script, reading "Sandra L. Nunn", written over a horizontal line.

Sandra L. Nunn
FROST & JACOBS LLP
2500 PNC Center
201 East Fifth Street
Cincinnati, OH 45202
(513) 651-6800

STB / FD

33388

10-14-97

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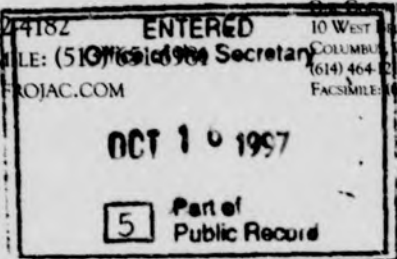
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FROST & JACOBS LLP

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1100 VINE CENTER TOWER
333 WEST VINE STREET
LEXINGTON, KENTUCKY 40507-1634
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October 7, 1997

Honorable Vernon A. Williams
Secretary, Case Control Branch
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.

Filing No. SORT-4

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Thank you for your assistance. Please contact me if you have questions or need additional information.

Sincerely,

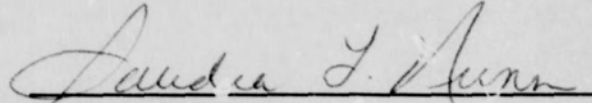
FROST & JACOBS LLP

By Sandra L. Nunn
Sandra L. Nunn

SLN/mrm
Enclosures
cc: Parties of Record

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 1997 I caused a copy of the attached letter to be served by first class U.S. mail upon all parties of record listed in the service list attached to Decision No. 21 in Finance Docket 33388, and upon Administrative Law Judge Jacob Levanthal.

A handwritten signature in cursive script, reading "Sandra L. Nunn", written over a horizontal line.

Sandra L. Nunn
FROST & JACOBS LLP
2500 PNC Center
201 East Fifth Street
Cincinnati, OH 45202
(513) 651-6800



Stephen L. Watson
Regional Vice President - State Relations

700 Harrison Building
143 West Market Street
Indianapolis, IN 46204
(317) 267-3003
FAX (317) 267-3005

August 25, 1997

VIA FAX: 219-391-8223

Mr. Russell G. Taylor
City Planner
City of East Chicago
Planning Department
4525 Indianapolis Blvd.
East Chicago, IN 46312

Dear Mr. Taylor:

Thank you for meeting with Bob Garner, Greg Schenkel and me on Wednesday, August 20, 1997, to discuss our B&O Capacity Improvement Project and our acquisition of Conrail.

East Chicago identified three main areas of interest. They are:

- (1) The prospect of establishing a grade separation at Railroad Avenue to allow Railroad Avenue to be used as a hazardous materials truck route and to access the proposed Chicago Enterprise Center and reduce crossing delays from switching activities.
- (2) CSX and NS willingness to work with East Chicago on the development of a new rail-to-water and water-to-truck intermodal terminal on the U.S. Waterway channels.
- (3) Railroad's willingness to work with East Chicago to develop the lake front area to attract investment and tourists, including an agreement to grant certain "air rights" over the railroad from the Cline Avenue overpass at Inland Street east to the new overpass being constructed into the Showboat Casino.

As you indicated, East Chicago is a member of the Four Cities Consortium along with Gary, Hammond and Whiting. On August 8, 1997, Gary Mayor Scott King forwarded a list of concerns the City of Gary has regarding the acquisition. On August 14, 1997, the Four Cities Consortium filed a Notice of substitution of counsel with the STB and on the following day, filed a First Discovery request.

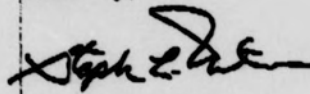
We have received a copy of the First Discovery request and it includes many of the issues raised in our August 20, 1997 meeting and in Mayor King's letter to me of August 8, 1997. Based on these developments, we will defer to our STB attorneys concerning the appropriateness of further discussions regarding this matter.

Russell G. Taylor
August 25, 1997
Page 2

Meanwhile, please be assured that we are continuing to work toward a resolution of as many of these issues as possible.

Thank you for the opportunity to meet with you and we look forward to working with you in the future.

Sincerely,



Stephen L. Watson

cc: Mayor Robert Bercik, Whiting
Mayor Linda Buzine, Hobart
Mayor Duane Dedlow, Jr., Hammond
Mayor Scott King, Gary
Mayor Sammie Maletta, Portage
Mayor Robert Pastrick, East Chicago
Mr. Micheal Cervay, Gary
Mr. Dennis Terry, Hammond
Ms. Gwendolyn Adams, Gary

Verification

State of Indiana)
) ss:
County of Lake)

Kimberly L. Gordon, being duly sworn, deposes and says that she has read the foregoing Verified Statement, knows the contents thereof, and that the same are true as stated except as to those statements made on information and belief, and as to those, that she believes them to be true.

Kimberly L. Gordon

Subscribed and sworn to before me

this 17th day of October, 1997.

W. S. Chubb

Notary Public for Lake County, Indiana.

My commission expires 9-17-99.

HAMMOND

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

Hammond is a member of the Four City Consortium, a group of four municipalities in northwestern Indiana formed for purposes of evaluating the regional impacts of the proposed acquisition of Consolidated Rail Corporation ("Conrail") by

CSX Transportation, Inc. ("CSX") and Norfolk Southern Railway Company ("NS"), and recommending a regional solution to the infrastructure, health and safety problems resulting from the proposed division of Conrail. I am proud of the fact that these four cities have been able to develop a coordinated approach to this rail merger and to recommend a solution that fits the need of all members of the Consortium.

As Mr. Thomas relates in his Verified Statement, Hammond is the western anchor of the Four Cities Consortium. Due to their strategic location on the eastern border of Chicago, these cities (and Hammond in particular) are traversed by a large number of rail lines. Several of these lines, in particular the CSX Chicago Avenue line which passes just north of downtown Hammond as well as through East Chicago's downtown, have a large number of at-grade highway crossings.

Rail operations in Hammond result in significant public safety concerns. They also disrupt the lives of its citizens and commerce due to lengthy queues and delays at blocked railroad crossings. The high volume of vehicular traffic at the crossings of the CSX Chicago Avenue line in particular (as detailed by Mr. Thomas), combined with frequent train movements, has resulted in a particularly hazardous situation. Emergency service, private and commercial vehicles as well as school buses are constantly backed up at these grade crossings. Rail crossing delays are so endemic that many of our residents routinely ignore the crossing protection devices and attempt to cross the tracks in the path of

approaching trains. The crossing delays also contribute to air pollution in an area that has been designated by the Environmental Protection Agency as a non-attainment area under federal air quality standards.

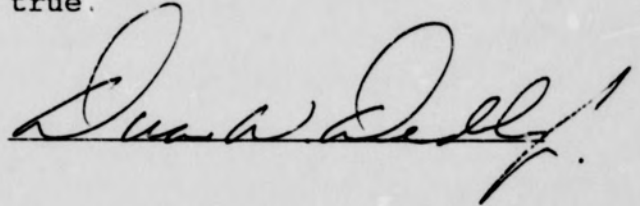
This situation will only be made worse if rail traffic using the CSX Chicago Avenue line increases. To remedy the problem while still preserving the operational benefits desired by CSX and NS, the Four City Consortium has developed an Alternative Routing Plan which will reroute some of the traffic using the most congested lines (in terms of both rail traffic and rail/highway grade crossings) to less congested lines with more rail/highway grade separations.

The details of the Alternative Routing Plan are set forth in Mr. Philip H. Burris's testimony for the Four City Consortium. It is a well-thought-out regional solution to the public health and safety problems that would otherwise result from the proposed realignment of rail operations in northwest Indiana. On behalf of the City of Hammond, I urge the Board to require CSX and NS to adhere to this Plan as a condition to its approval of their acquisition of Conrail.

Verification

State of Indiana)
) ss:
County of Lake)

Duane W. Dedelow, Jr., being duly sworn, deposes and says that he has read the foregoing Verified Statement, knows the contents thereof, and that the same are true as stated except as to those statements made on information and belief, and as to those, that he believes them to be true.



Subscribed and sworn to before me
this 17th day of October, 1997.

Jean M. Beverage-Stark
Notary Public for Lake County, Indiana.

My commission expires 4-25-99.

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

As City Planner for the City of Hammond, I am responsible for the City's planning (including transportation planning), zoning, and historic preservation activities. I work in concert

with the City's Community Development and Economic Development Departments, and residential and business community leaders. I also work with the planners from other Indiana cities in the region, the Northwest Indiana Regional Planning Commission, and the State of Indiana to resolve planning issues of regional concern. I report directly to the Mayor of Hammond, and I supervise a staff of two professionals, summer interns, and clerical support personnel.

The purpose of this verified Statement is to provide the Surface Transportation Board ("STB") with information concerning the railroad lines that traverse the City of Hammond, the infrastructure problems caused by several of these lines, and the potential adverse impacts that are likely to result from the proposed acquisition of Consolidated Rail Corporation ("Conrail") by CSX Transportation, Inc. ("CSX") and Norfolk Southern Railway Company ("NS"). I am submitting this testimony on behalf not only of the City of Hammond, but also the Cities of East Chicago, Gary and Whiting, Indiana. In the interest of presenting the STB with a unified, regional overview of the Conrail transaction from the perspective of several political and planning entities in northwestern Indiana who share common interests, these cities have formed a group known as the "Four City Consortium" which is submitting a single set of Comments in this proceeding. My testimony will focus specifically on the City of Hammond, but Hammond's concerns should be viewed in the context of the Four City region as a whole.

Hammond is a culturally-diverse industrial and residential community occupying an area of 27 square miles in Lake County, Indiana, with a population of 84,000. Hammond is located in Northwest Indiana, and is bounded by the City of Chicago, Illinois on the west, Lake Michigan and the City of Whiting on the north, and the Cities of East Chicago and Gary on the east. After a decades-long period of economic and population decline, the City is in the process of revitalizing itself. Home values are rising, and Hammond now has available within its environs approximately 33,000 jobs -- approximately 10,000 of which have been created since 1990. In addition, the area's new lake-front casinos at the Hammond Marina, Pastrick Marina in East Chicago and Buffington Harbor in Gary, all of which opened in the last two years, have created nearly 5,000 new jobs which draw from all over the Four Cities area.

Hammond's ability to continue to grow is inhibited by several infrastructure problems that we are working hard to overcome. In particular, Hammond is criss-crossed by railroad lines which have a large number of at-grade rail/highway crossings. This is largely as a result of Hammond's strategic location; all of the major rail corridors extending from Chicago eastward to Detroit and the East Coast via Toledo, Fort Wayne, Cleveland and Pittsburgh pass through Hammond. These include main lines of the three major eastern rail carriers, Conrail, CSX and NS, as well as lines of the major Chicago area switching carriers including the Indiana Harbor Belt ("IHB"), the Elgin,

Joliet & Eastern ("EJE"), and the Baltimore & Ohio Chicago Terminal Railway ("BOCT"). The latter carrier is a wholly-owned subsidiary of CSX.

The major east-west rail lines that pass through Hammond, from north to south, include CSX's Lakefront line between Pittsburgh and Chicago via Willow Creek, Gary and Pine Junction, Indiana; Conrail's Lakefront line extending from Elkhart and Porter, Indiana to Chicago; Conrail's "Porter branch" extending from Michigan City and points in Michigan to Chicago via Porter, Tolleston and Ivanhoe, Indiana; CSX's main line between Pittsburgh and Chicago via Willow Creek, the CSX line extending from Pine Junction (Gary) to Calumet Park and Barr Yard, Illinois via the Chicago Avenue corridor;¹ the IHB line extending from Gary to various points in the Chicago area via Tolleston, Ivanhoe and Gibson Yard; and the NS line extending from Fort Wayne to Chicago via Hobart and Osborn, Indiana. In addition, the former Pennsylvania Railroad main line between Pittsburgh and Chicago also passes through Hammond. Parts of this line between Hobart, Tolleston and Clarke Junction are not presently in service. This line between Hobart and Tolleston is presently owned by NS, and between Tolleston and Clarke Junction is presently owned by Conrail. I understand that this line will be acquired by CSX, which plans to restore it to service. In

¹ This line is actually owned by the BOCT, a wholly-owned CSX subsidiary. I will henceforth refer to this line, which connects with the CSX main line from Pittsburgh at Pine Junction, as the "CSX/BOCT line."

addition to these lines, the IHB, Chicago South Shore and South Bend Railroad, and EJE all have lines that traverse Hammond in various directions.

As one can imagine, there are many rail/highway grade crossings in Hammond. The CSX/BOCT line, which is of major concern to the City, passes just north of downtown Hammond parallel to busy Chicago Avenue and has nine grade crossings. This line has no rail/highway grade separations in Hammond.

Several of these highway grade crossings of the CSX/BOCT line involve heavily-traveled arterial streets, with very high daily vehicular counts. These include, in particular, Hohman Avenue (10,500 daily vehicular crossings), Calumet Avenue (17,000 daily vehicular crossings), and Columbia Avenue (15,000 daily vehicular crossings). These are major north-south streets providing access to and through the Hammond Central Business District and access to and from Lake Michigan for residents who live in the southern part of Hammond. Calumet Avenue, which is a major arterial federal-aid highway (U.S. 41), also provides access to the Indiana Toll Road (Interstate 90) and the Tri-State Highway (Interstate 80/94).

The difficulties entailed by the heavy vehicular traffic using these crossings are compounded by the fact that the rail line closely parallels Hammond's main east-west street, Chicago Avenue. Vehicles using Chicago Avenue itself are often delayed by vehicles waiting making right and left turns to cross the tracks.

I understand that, following consummation of the Conrail control transaction, CSX plans to raise the speed limit for trains using the CSX/BOCT line from 25 to 40 miles per hour, and to increase the volume of freight traffic moving over this line from 27.6 trains per day to 33.3 trains per day, or an increase of nearly six trains per day. Further, I understand that the projected post-acquisition trains will be consistently longer than the trains presently moving over this line. This line is already a major cause for concern to the City of Hammond. It is a double-track line, used by frequent, slow-moving freight trains. Although most of the highway grade crossings are protected by gates and automatic flashers, several have flashers only. The vehicular delays at these crossings are severe, and have resulted in an endemic problem of vehicles (and pedestrians) ignoring the crossing protection and crossing the tracks if no train is actually present. This problem will be exacerbated by CSX's proposal to increase both the frequency and speed of train movements using this line.

Hammond residents and workers who cross the CSX/BOCT line regularly have, unfortunately, become used to slow-moving and stopped trains. The City is greatly concerned that ingrained habits will die slowly, and that people who routinely ignore activated grade-crossing protection devices will continue to do so in the future, unaware of the greater hazard presented by faster-moving trains.

The CSX/BOCT line also presents problems in terms of emergency services. The division of Hammond by the CSX/BOCT line (and the other rail lines further south) makes it very difficult for emergency vehicles to respond to calls without having to wait for occupied rail/highway grade crossings to clear. This is particularly true with respect to access to St. Margaret's Hospital from the north. To help cope with this problem, the City of Hammond has a total of seven fire stations. We have only four EMS (ambulance) bases, however. This means that, periodically, the City has to use fire equipment to respond to emergency medical calls. Without this duplication of emergency-response capability, the City would have great difficulty responding adequately to the 8,000-plus EMS calls it receives annually.

Some of these issues and concerns are addressed in the City of Hammond's comprehensive Land Use Plan, which was adopted in 1992 to help it prepare for future development. This document contains a Transportation Thoroughfare Plan, relevant portions of which are appended to my testimony as Exhibit DFT-1. Among the problems identified in this portion of the Plan is the need for the vertical separation of vehicular traffic from rail traffic at several existing railroad grade crossings, including two on the CSX/BOCT line. The discussion of this issue indicates that development of these grade separations:

will become more crucial as traffic volumes increase and additional laneage is provided on major thoroughfares. It may be possible to avoid the expense of a grade separation structure by limiting train movements or

having them occur during non-peak traffic hours.

See Exhibit DFT-1, at the page numbered 71. The City's ability to avoid the necessity of constructing new grade separations will be lost with respect to the CSX/BOCT line through Hammond if CSX's planned rail traffic increases on that line are allowed to proceed.

The primary interest of the City of Hammond in this proceeding involves the potential shifting of rail traffic from the CSX/BOCT line to other east-west rail lines, and in particular the IHB line that parallels the CSX/BOCT line approximately one mile to the south. The IHB line occupies Conrail right-of-way, and it is largely grade-separated across both Hammond and Gary. In Hammond alone, the IHB line has six rail-highway grade separations, and only one at grade crossing. I understand that this line has eight grade separations in Gary, and only three grade crossings in that city. The federal, state and city governments have invested over \$25 million in the last ten years for grade separations on the IHB corridor. It is imperative that the benefits of this investment be maximized for the safety of our citizens and to assist in the improvement of the air quality in a non-attainment area.

The Four City Consortium has developed an Alternative Routing Plan which would reduce the number of train movements over the CSX/BOCT line and over the former Pennsylvania Railroad line between Clarke Junction and Tolleston, by shifting some of the rail traffic that would use these lines under the CSX and NS

operating plans to the parallel IHB line. This plan, which is described in more detail in the Verified Statement of Philip Burris on behalf of the Four City Consortium, would reduce the number of daily train movements over the CSX/BOCT line from 33.3 (the number projected by CSX for the third year after the transaction is consummated) to a more manageable 16.7. It would also eliminate the need to re-instate the line that is presently out of service between Hobart and Clarke Junction -- a project that would create 20 new at-grade crossings.

The Alternative Routing Plan was developed to best fit the needs of all of the members of the Four City Consortium. It will reduce congestion at rail/highway grade crossings by concentrating more traffic on grade-separated lines. On the other hand, the Plan should not interfere with CSX's and NS's ability to maximize the efficiency of their own operations in moving rail traffic between Chicago and eastern points. From my perspective as an urban planner, the Alternative Routing Plan is an excellent example of cooperative regional transportation planning. I commend it to the STB as a plan that will minimize the Conrail transaction's impacts on the northwest Indiana region, while enabling the rail carriers to achieve the efficiencies and alternative routing capabilities they seek.

**CITY OF HAMMOND
COMPREHENSIVE/LAND USE PLAN**

Prepared For:

**The City of Hammond
Indiana**

Prepared By:

**Baxmeyer Associates, Inc.
South Bend, Indiana**

1992

III. TRANSPORTATION/THOROUGHFARE PLAN

The Transportation/Thoroughfare Plan, is designed to support the continuing development anticipated in the Hammond area during the next several years. This will place increasing demands upon the community's transportation system. The Thoroughfare Plan proposes an inter-related system of highways, roads and streets serving the area which will meet the increased transportation demands within the City.

It is the intent of this study to define the best possible vehicular circulation system for the present and long-range needs of the City. Thus, the initial concern is development of a plan which achieves the following general goals:

- Easy and direct access to the major traffic generators within and adjacent to the Hammond planning area;
- Efficient through movements within the community; and,
- Protection of the existing and potential residential areas by discouraging through traffic movements within residential areas.

The streets which comprise this network are classified according to the functions they are to perform within the overall system. They are arranged so as to move vehicular traffic smoothly and efficiently in, out and through the area.

A. The Existing Thoroughfare System

In Hammond, as in most established communities, the street system is one of its most permanent features. Once the street system has become well established, it is difficult and costly to make major alterations in the pattern; consequently, this thoroughfare plan relies heavily on the existing street system. Various state and federal highways which enter the City perform the arterial functions of moving people and goods from one urban center to another. Many of the local streets, because of their location, alignment and surface condition, are used by local residents as collector routes. These roads gather traffic from residential areas and local streets and carry the traffic to nearby urban centers. The remainder of the streets within the City perform local access functions. They carry traffic through and between residential neighborhoods and from residential neighborhoods to collector streets or roads.

B. Thoroughfare Concepts

The following discussion briefly outlines the planning framework about which the Thoroughfare Plan is developed.

A circulation system must be designed to accommodate two basic types of traffic flow - local and through. Due to the variations in existing and anticipated vehicular movements within the confines of these types, roadways of several degrees of efficiency become necessary. These may be categorized as follows:

Local Access Streets are the residential streets, the industrial service drives and the like that serve a particular type of local traffic. Generally, local access streets are low speed, narrow and not used for through circulation. Destinations are located on local streets.

Through Streets are wider and are intended to handle higher traffic demands. In an urban area, it is necessary that these interconnect with each other to allow movement in all directions, either internally or into and out of the area. Through streets take the following forms:

Collector Streets - These are the least important through streets which collect vehicles from local streets and distribute them to either local destinations or to higher type arteries.

Arterials - These streets are the principal traffic carriers in the street network. They connect points of major traffic generations and should be wide enough to handle the particular traffic load they are called to carry. Because of the longer trips involved with major thoroughfares, they should be designed to handle higher speed traffic, have fewer curb cuts and generally be of a higher design standard (gradients, curves, etc.).

Regional Arterials - Regional arterials or freeways are designed for through traffic between urbanized places and (depending on size) for inter-urban circulation. They are constructed to the highest design standards, have separated laneage and profiles, controlled access and permit high speed and efficient long-range circulation.

C. Land Use Relationship

In addition to outlining the types of thoroughfares which together constitute a circulation system, there are also definite planning principles involved in terms of road locations with reference to various land uses. Both the functional and land use relationships are shown schematically on the following page and briefly described below:

- Only local streets should be within residential neighborhoods with through streets forming the boundaries. Street layouts should serve to discourage through movements with both origin and destination outside of the residential neighborhood unit. Single-family development within the neighborhood, however, can be located adjacent to through streets with such provisions as "backlotting" or "sidelotting" or frontage roads. Also, in some cases, single-family development can front on a through street where the thoroughfare is so developed that the fast moving lanes are not

directly adjacent to the curb. Multiple residential uses may be located adjacent to major thoroughfares providing curb cuts are controlled and/or service roads are provided.

- Neighborhood recreation facilities, such as elementary school sites, should be near the center of the neighborhood and thus, not on through streets. Large community or area-wide recreational facilities, however, should be adjacent to or have access to one or more through streets.
- Shopping centers should be located on, but not bisected by, through streets. Commercial frontage generates a large number of turning and parking movements which, if left uncontrolled, can cripple the efficiency of a through route. To prevent this condition from occurring, ingress and egress points for commercial properties should be at specific locations so that the location of turning movements may be reduced. On-street parking in commercial areas is another major cause of congestion and hazardous conditions. The removal of this parking in such an area will not only increase the degree of safety afforded but increase the capacity of through movement.
- Through streets can be within an industrial area, or in some cases, might be better located as a buffer between residences and industry. Special consideration should be given to the design of local streets which are intended to serve industrial uses so that large trucks and sudden peak hour traffic loads may be adequately provided for.

One important step in the Thoroughfare Planning Process is a classification of the existing street and highway system according to a set of functional criteria. For the purposes of this report, a system, as advanced in The National Highway Functional Classification and Needs Study - Manual B, which establishes a hierarchy of functional road systems, was used.

D. Federal Classification System

Since, on a national scale, streets and highways display a wide variety of functional characteristics, the Federal study generally defines three types of systems - those for rural areas, for small urban areas and, the one that relates to Hammond, urbanized areas.

Four functional subsystems are identified under the Urbanized Areas System: Urban Principal Arterials, Urban Minor Arterial Streets, Urban Collector Streets and Urban Local Streets. These subsystems are defined as follows:

Urban Principal Arterials - include the urban portion of the Interstate System, other freeways and expressways and other principal arterials without access control. These routes should serve the projected major centers of activity in a metropolitan areas and should carry a high proportion of the total

projected urban area travel on a minimum of mileage. The concept of service to abutting land should be subordinate to the provision of travel service between trip interchanges. Only facilities within the unlimited access Principal Arterials Subsystem should provide direct access to adjacent land.

Urban Minor Arterial Streets - should interconnect with and augment the Urban Principal Arterial Subsystem and provide service at a somewhat lower level of travel mobility than major arterials. This subsystem also distributes travel to geographic areas smaller than those identified with the higher subsystem.

The Urban Minor Arterial Street Subsystem includes all arterials not classified as principal, provides greater access to land than the principal subsystem and offers a lower level of traffic mobility.

Urban Collector Streets - may penetrate neighborhoods distributing trips from the arterials through the area to their ultimate destination which may be on a local or collector street. Conversely, this subsystem can also be expected to collect traffic from local streets and channel it into the arterial system. Furthermore, this subsystem should provide for both land access service and local traffic movements within residential, commercial and industrial areas.

Urban Local Streets - comprise all streets not included in the higher subsystems. They serve primarily to provide direct access to abutting land and access to the other street subsystems. It offers the lowest level of mobility and should provide for residential traffic only. Through traffic movements should be specifically discouraged.

The following map represents the classification of roads and streets in the City of Hammond. Each route is classified according to the preceding standards.

E. Design Standards for Future Thoroughfares

As previously discussed, the Thoroughfare Plan classifies all existing and proposed highways, roads and streets in the City of Hammond as either regional, arterial, local arterial, local collector or local access thoroughfares. To properly perform their intended functions, these traffic arteries should meet certain design standards governing such factors as alignments, intersection intervals, site distances, gradients, surface types, right-of-way widths, pavement widths and traffic controls. The subdivision control ordinance of the City of Hammond contains detailed specifications for all new or improved thoroughfares in the community. In addition, the Indiana State Highway Department maintains extensive standards for the construction of regional, arterial and local arterial roads.

- The relatively high traffic counts on 129th Street indicate that it functions as a local arterial street in the Robertsdale/North Hammond area.

Clearly, from the traffic volumes shown, there is less traffic movement in an east-west direction across the region than in a general north-south direction. Again, this is in part dictated by geography where movements are originating in the more residential areas to the south moving north to the more industrial areas of northern Lake County.

I. Street Problem Areas

The following map illustrates some of the more notable thoroughfare problem areas in the City of Hammond. The map is not intended to depict every instance of a given problem. Rather, it is designed to call attention to instances that should receive consideration as the City's Thoroughfare Plan is developed.

Problem areas illustrated on the map include:

1. Poor Intersections - It is recognized that the majority of the intersections noted under this symbol were not truly designed as such. Rather, they are an outgrowth of a road system laid out some time ago - a system not prepared for the demands of today's auto-oriented society. Many of the problems at these intersections hinder turning movements and restrict horizontal sight distance, hence creating a hazard to safe traffic movements. Generally, the intersections noted have one or more of the following problems:
 - Roads intersecting together at angles less than ninety degrees (i.e. intersections of Indianapolis and Calumet, Calumet and Sheffield and others)
 - Street intersections directly adjacent to railroad rights-of-way (i.e. intersections of Calumet with Gostlin and others)
 - Intersections with poor sight distance due to abrupt changes in grade; and,
 - Intersections with poor street alignment generally involve those with center line off-sets of 125 feet or less (Conkey and Calumet and others).
2. Areas of Significant Accident Frequency - Table 14 summarizes the accident rate at select intersections for the years 1987 through 1989. Several points should be noted. For purposes of this report, only those intersections where police reports indicate

more than five accidents occurred in each of at least two of the last three years on either street are shown. Accident reports are usually related to the nearest intersection. Hence, rates are indicated for each street of an intersection.

To a large extent, these accident rates reflect the current volumes of traffic and their patterns of movement. It is important to note, however, that accident rates on streets and roads with high traffic volumes can be minimized with adequate traffic controls such as proper signalization, adequate laneage widths, right and left turning lanes at intersections, adequate sight distances, controlled access onto major thoroughfares and on-street parking restrictions where necessary.

3. Other Street Problem Areas - These include needs for grade separations at railroad crossings, improved access to freeways and a reduction in vehicular congestion along certain portions of the existing thoroughfare network:

- Grade Separations - The map indicates a need for the vertical separation of vehicular traffic from rail traffic at several existing railroad crossings. These crossings are designated on the map by a open circle. While not all of them are necessary at the present time, their development will become more crucial as traffic volumes increase and additional laneage is provided on major thoroughfares. It may be possible to avoid the expense of a grade separation structure by limiting train movements or having them occur during non-peak traffic hours. This would require coordination between the City and the train companies.
- Improved Access - All existing access points to the Indiana Toll Road and the Borman Expressway are not of a standard adequate to accommodate the traffic volumes on major thoroughfares which may be expected to be generated at full urban development of the area. Hence, a need has been indicated for the improvement of existing access to these regional arterials. As with the grade separations, not all of these access improvements are necessary at the present time.
- Vehicular Congestion - In the areas indicated on the map, this problem is primarily the result of two factors. One is the laneage width of the existing thoroughfare which is inadequate to handle the columns of traffic generated. The other factor which results in congestion in certain areas is the pattern of existing development which has occurred in a relatively unrestricted fashion. The result has been a multitude of access points to adjacent properties and the creation of hazardous traffic situations due to an excessive number of turning movements.

The Preliminary Thoroughfare Plan is directly related to previously prepared studies of the Master Plan which deal with residential, commercial and industrial development within the planning area. This study is intended to propose a circulation system which will adequately serve the heavy demands of existing and proposed commercial and industrial land use and, at the same time, discourage through traffic in residential areas.

This section is divided into two parts; one which deals with major and secondary thoroughfares and the second which presents a set of local street proposals. Furthermore, this Plan, when adopted by the appropriate governing bodies, will provide a legal guide for the dedication of adequate rights-of-way along proposed thoroughfares and collector streets.

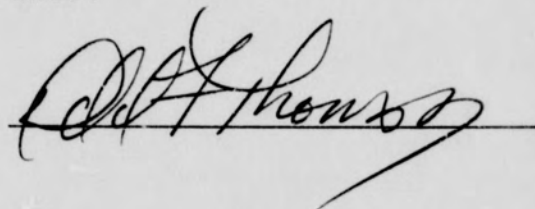
J. Future Thoroughfare Proposals

1. Robertsdale/North Hammond Corridor - As discussed in the Comprehensive/Land Use Plan, the changing land use character of South Robertsdale and the northern section of North Hammond represent a unique opportunity for an urban community. With loss of some industry, the opportunity exists to develop some large tracts of undeveloped land surrounded by a heavily urbanized area. As such, it will be necessary to improve the transportation linkage between Robertsdale and North Hammond. This could be accomplished in one or two ways. First, Calumet Avenue can be improved as a major thoroughfare between 122nd Street and 141st Street. A second proposal would be to develop a new route, essentially a parallel alignment to Calumet Avenue, to serve some of the available areas. This route would most likely take the form of a local collector street rather than a local arterial.
2. Marina Access - With the development of the marina on the shore of Lake Michigan, adjacent to the Hammond Water Filtration Plant, it is anticipated that a high level of traffic movements will be generated to and from this facility. At the present, the railroad crossing on Calumet Avenue north of the Lever Brothers will be inadequate to serve the new marina. Therefore, a grade separation structure should be built to connect the marina to Indianapolis Boulevard.

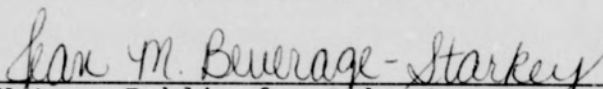
Verification

State of Indiana)
) ss:
County of Lake)

Donald F. Thomas, being duly sworn, deposes and says that he has read the foregoing Verified Statement, knows the contents thereof, and that the same are true as stated except as to those statements made on information and belief, and as to those, that he believes them to be true.

A handwritten signature in cursive script, appearing to read "Donald F. Thomas", is written over a horizontal line.

Subscribed and sworn to before me
this 17th day of October, 1997.


Notary Public for Lake County, Indiana.

My commission expires 4-25-99.

GARY

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

My name is Scott L. King and I serve as the elected Mayor of the City of Gary, Indiana, the largest city in northwest Indiana with 116,000 residents. Prior to my becoming Mayor in 1996, I was a principal in the law firm of King & Meyer, the largest law firm in the City of Gary. Prior to that I held several different attorney positions for the State of Indiana and the federal government, including public defender, deputy prosecutor, and assistant United States Attorney of the Northern District of Indiana.

Having grown up in nearby Chicago, Illinois, having attended law school at Valparaiso University School of Law located in northwestern Indiana, and having spent my entire professional career working in the northwest part of the State, I am well aware of the importance of the area's transportation corridor to the efficient movement of goods and passengers east

and west. Local industries and businesses depend on the maintenance of effective local transportation links to railroad lines, highways, waterways, and airports in order to obtain and to ship raw materials and end products, and to effectively conduct their day-to-day business. The area's vast transportation network provides vital connection points for our citizens to Chicago, Detroit, Indianapolis and the rest of the country.

The City of Gary is extremely interested in CSX Corporation and Norfolk Southern Corporation's plans to acquire Conrail in the present proceeding. Along with Gary, the Cities of East Chicago, Hammond, and Whiting have joined efforts in this proceeding to pursue the common goal of maintaining safe and effective transportation programs in northwest Indiana. Gary is participating jointly with these other communities as the Four Cities Consortium.

The Four Cities have worked together over the past several months to review the Applicants' plan, and to determine how that plan would change existing local rail operations and affect city programs. While each of the Four Cities has an individual interest in maintaining and supporting their own transportation infrastructure programs, I am pleased that we were able to collectively work with one another to develop a unified plan that will minimize the adverse impacts of the proposed acquisition on the Four Cities.

Michael L. Cervay, Director of the Department of Planning and Community Development for the City of Gary, sets forth in detail in his Verified Statement in this proceeding transportation congestion related problems that the City of Gary is experiencing. He also explains why the Alternative Routing Plan submitted by the Four Cities is a critical means of mitigating the serious adverse impacts that the Applicants' proposal would have on the City.

The Applicants have proposed to increase rail traffic volumes over certain Gary lines to unacceptable levels. Rail operations through Gary have reached a critical point under existing traffic patterns and levels. The effective operation of emergency services and school and public transportation programs, the implementation of various city development projects and programs, the achievement of air quality pollution standards, and the maintenance of safe highway/rail grade crossings are already in jeopardy. For the reasons set forth in detail by Mr. Cervay, the impact of rail operations on the City of Gary would become much more severe under the Applicants' plan than at present.

It is clear that without an adjustment to the Applicants' proposal, basic government operations and our citizens' safety and quality of life will suffer considerably. The City of Gary and the Four Cities strongly believe that not only the Applicants, but all local railroad operators must take a closer look at how existing rail traffic and future increases can best be accommodated within the existing rail transportation infra-

structure in northwest Indiana. The Four Cities plan does this. The Applicants' plan unfortunately does not.

The Four Cities' alternative proposal is a well-developed operations plan that would accommodate the Applicants' need to move rail traffic through the Four Cities region, and in particular over Gary line segments, while helping to mitigate vehicular congestion at highway/rail grade crossings and associated adverse impacts on the safety of our citizens, the operation of our emergency services, and air quality. Additionally, implementation of the Four Cities plan would require only minimal system adjustments by the Applicants. The Four Cities requested relief is an effective way to meet the transportation infrastructure needs of the Applicants, the City of Gary, and northwestern Indiana. I urge the Surface Transportation Board to adopt the Consortium's Alternative Routing Plan.

VERIFICATION

State of Indiana)

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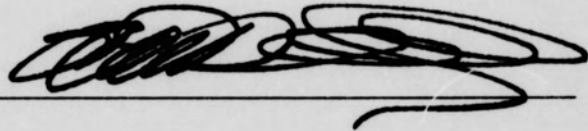
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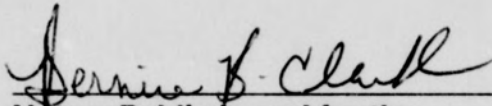
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County of Lake)

Scott L. King, being duly sworn, deposes and says that he has read the foregoing Statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.



Subscribed and sworn to before
me this 16th day of October,
1997:



Notary Public in and for the
State of Indiana

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

**VERIFIED STATEMENT
OF
MICHAEL L. CERVAY**

My name is Michael L. Cervay and I am Director of the Department of Planning and Community Development for the City of Gary, Indiana. I have held this position since January, 1996. Prior to this position, for 13 years I worked for the City of Cleveland, Ohio, where I held several positions, including Assistant Director for the Department of Finance, Capital Budget Manager for the Office of Budget and Management, and Assistant Director for the Department of Economic Development. Prior to that, from 1980 to 1982, I was Director of Community Development for the City of Xenia, Ohio, and from 1974 through 1980 I worked in the Office of City Manager and in the Department of City Planning for the City of Cincinnati, Ohio.

Among other things, my responsibilities for the City of Gary include directing economic development initiatives; coordinating tourism, recreation and cultural activities; managing City

housing programs; and overseeing and planning the City's transportation networks. As City Planner, I wear several different hats; at various times during the day, I am economic developer, tourism promoter, civic and recreational planner, and transportation director. My responsibilities for City transportation programs include consulting with state, county, and local government officials, as well as community and regional officials, and coordinating with them the development of programs that together can help achieve local and regional transportation objectives. As City Planner, I am very familiar with Gary's vast local transportation infrastructure, and with the City's present and future planning goals. I also serve on the Board of Commissioners of the Northwestern Indiana Regional Planning Commission as a citizen appointee, and, as a result, I have become well-acquainted with regional transportation programs and transportation systems.

In response to the announced plans of the acquisition of Conrail by CSX Corporation (CSX) and Norfolk Southern Corporation (NS), (collectively referred to as Applicants) the City of Gary, and our neighboring cities including East Chicago, Hammond, and Whiting came together to review the planned acquisition. Together our cities are referred to as the Four Cities Consortium (or FCC) in this proceeding. The Four Cities individually and collectively have spent the last several months reviewing the Applicants' proposal to determine the plan's impact on our communities, and to discuss the many challenges that are present-

ed by the proposed acquisition. The City of Gary is participating in this proceeding through the Four Cities Consortium, and we are supportive of the FCC's position for the reasons outlined below.

I. Gary's Transportation Infrastructure

Gary is located in a 51 square mile area situated at the crossroads of the Midwest, positioned between the nearby State of Illinois boundary and the City of Chicago to the west, the southern tip of Lake Michigan to the north, and Detroit, Michigan, approximately 325 miles to the east. In part because of its strategic geographic location, Gary possesses a vast transportation network that connects Gary to the rest of the country, and which serves as a central corridor for east-west through traffic.

Along with approximately 500 miles of local streets in Gary, Interstate Highways 80, 90, 94, and 65 as well as various State Highways traverse through the City and connect Gary to cities nationwide. Gary also has a major midwestern airport facility, the Gary/Chicago Airport, which is becoming a major regional airport hub for cargo and passenger business. Burns International Harbor and the Port of Indiana are located in nearby Portage, Indiana, and link Gary to various Lake Michigan ports, the Atlantic Ocean, and the world. In addition to all of this, Gary possesses some of the most complex and well-traveled rail facilities in the Midwest.

Eight freight lines and three passenger and commuter lines connect through Gary, and the region serves as a central gateway point for CSX, Norfolk Southern, and Conrail through rail freight movements, and the South Shore & South Bend Railroad (commuter) and Amtrak (passenger) local and through passenger movements. Gary is plagued by approximately 104 highway/rail crossings, most which are located at grade. On a daily basis, there are a total of approximately 1,600 train movements citywide over highway/rail grade crossings. Some of these trains can travel upwards of 80 miles per hour. The impact of the hundreds of daily train movements in Gary have raised considerable city planning, environmental, public safety, and quality of life concerns.

II. The Applicant's Plan for Rail Operations in Gary

As City Planner, I have had an opportunity to review the Applicants' proposed plans in this proceeding for operations over Gary line segments specifically, and over Four Cities lines generally. The major line segment through Gary (in terms of density and trains per day) is the Conrail lakefront line (Porter to CP 501), which is scheduled to be controlled by NS and over which CSX will have trackage rights. Under the Applicants' plan, the segment will experience a slight decrease from approximately 83 to 77 trains per day, but a slight increase in gross ton movement from 129 to 132 million tons per day. While this line segment spanning over the northern part of Gary will entail a slight decrease in the number (but apparently not the length) of

trains, other Gary line segments will experience significant operational increases, and in one instance, a currently unused Conrail line that extends through the heart of the City will be restored into service.

Among the Applicants' proposed changes for operations over line segments that affect Gary are the following:

<u>Segment Name</u>	<u>Current</u>	<u>Post Merger</u>
Willow Creek to Pine Jct.		
Railroad	CSX	CSX
Density/Million Gross Tons	34.0	70.0
Trains/Day	22.1	38.6
Crossings at Grade	7	
Separated Crossings	7	
Willow Creek to Ivanhoe		
Railroad	CR	CSX
Density/Million Gross Tons	21.0	23.0
Trains/Day	9.6	11.4
Crossings at Grade	23	
Separated Crossings	4	
Pine Jct. to Calumet Park		
Railroad	CSX	CSX
Density/Million Gross Tons	41.0	65.0
Trains/Day	27.6	33.3
Crossings at Grade	21	
Separated Crossings	5	
Wheeler to Tolleston		
Railroad	CR/NS	CSX
Density/Million Gross Tons	0.0	12.0
Trains/Day	0.0	5.0
Crossings at Grade	25	
Separated Crossings	1	

For a variety of reasons, the Applicants' scheduled increases in incremental train movements over Gary line segments is unacceptable. The vast majority of Gary's 104 highway/rail crossings are located at grade. Thousands of vehicles and pedestrians pass over these crossings on a daily basis. Unfortunately, present carrier operations over city rail lines have caused substantial motorist delays at highway/grade crossings, unfavorable air quality impacts, and have put the safety of Gary citizens in jeopardy.¹ The Applicants' proposed operations would intensify these problems. Under the Applicants' plan, an extremely serious but manageable congestion situation would quickly become critical.

Grade crossing studies prepared for the Four Cities reveal that substantial congestion problems are caused by railroad operations. Included with the Four Cities' comments in this proceeding are the results of a traffic congestion study performed by L.E. Peabody & Associates, Inc. The study measured vehicle traffic volumes at specified highway/rail grade crossings over a recent week period. Results of this study show that, over the sampling period, hundreds of hours of vehicle delays are experienced at Four Cities grade crossings. For example, for the CSX's Baltimore & Ohio Chicago Terminal line segment from Pine Junction to Barr Yard that crosses at grade over U.S. 12 north of the Gary/Chicago Airport there were 79,873 reported vehicle

¹ The railroads enjoy the right-of-way over highway/rail grade crossings and possess control over gate openings and closings in instances where there are crossing gates.

crossings resulting in 279 hours of delay over a seven day period. Applicants plan major increases in traffic over this already congested highway/rail grade crossing. Additionally, several hundred vehicles and numerous pedestrians were observed going around closed gates and over line crossings throughout the study period. These illegal crossings are of significant concern to the City and they demonstrate considerable citizen frustration over rail crossing delays and congestion.

In this proceeding, Gary is particularly concerned that the increases in traffic proposed by the Applicants' over certain lines would unfavorably impact the efficient operation of critical government services, including emergency service and school and public transportation programs. Gary has 14 fire stations that respond to over 25,000 fire and emergency medical service calls each year, and City police officers respond to approximately 110,000 calls yearly. The City has 41 public elementary, middle, and high schools and 5 parochial schools with a total enrollment of over 25,000 children. Because of vehicular traffic congestion problems caused, in part, by local rail operations, emergency service and school bus vehicles are constantly backed up. Because of its concern about highway/rail crossing delays, the Gary Public Transportation Corporation, which provides public mass transit for the City, keeps track of average bus delays caused by railroad crossings. This data reveals that Gary public buses are routinely delayed 15 minutes or more at highway/rail grade crossings. The Applicants' proposed operations would

elevate these considerable congestion problems

Over the past several years, numerous industry, recreational, housing, and tourism development projects throughout the City have been impeded, delayed, or set aside as unfeasible because of conflicting rail operations. For example, the Gary/Chicago Airport presently has a 7,000 foot east-to-west runway that will soon need to be expanded to at least 9,000 feet. It cannot do so at present because expansion would interfere with the Elgin, Joliet, and Eastern Railroad's (EJE) line operations near the northwest part of the facility.² While this EJE line matter is outside the scope of the present proceeding, it is important to mention that, as part of this proceeding, the Applicants' proposed reinstatement of the Conrail line between Clark Junction and Hobart (which we seek to avoid) could interfere with the City's long range plans to expand the airport's north-south runway.

Reinstatement of the Conrail line also would directly impede plans to construct vitally needed affordable housing. The City recently received a \$250,000 federal grant from the Department of Housing and Urban Development to develop single family housing at State Route 53, and the unused Conrail line slated for reinstatement forms the northern boundary of the development. I have attached to this statement a letter written by the Broadway Area Community Development Corporation, describing this project

² Preliminary negotiations over the movement of the EJE line near the airport have occurred, and the City expects that the negotiations will ultimately be successful.

in further detail. (See Attachment No. 1). An extensive amount of City time and resources has been spent on the development of this important project. The Applicants' proposal if accepted could significantly impact the construction of this critically needed housing development.

The entire Four Cities area, including Gary, is designated a non-attainment area under federal air quality pollution standards. Vehicle congestion delays caused by local rail operations have elevated the City's already significant pollution problems. The Applicants proposal would intensify Gary and the region's present pollution problems.³

Finally, dozens of highway/rail grade crossing accidents have occurred in Gary over the past several years, and such accidents continue to be a major concern. Last year, the State of Indiana had the nation's fourth highest number of rail-crossing accidents, and the State has recorded over 38 railroad crossing accidents in the City of Gary over the past five years. The City, together with the State and Federal government, is doing all that it can to prevent citizens from illegally traversing traffic crossing gates, but without major investments in facility improvements/grade separations, and/or traffic pattern shifts, it will be difficult to reduce rail-crossing accidents. Again, the Applicants' proposed incremental traffic increases

³ The Four Cities will be commenting on air pollution and other environmental matters in greater detail later on in this proceeding as part of the Surface Transportation Board's environmental review process.

over line segments containing numerous at grade highway/rail crossings would only elevate these safety problems.

Of particular concern to the City are the Applicants' proposed operations between Clarke Junction and Hobart and between Clark Junction and Willow Creek, lines which traverse through the heart of Gary. Unfortunately, the Applicants' Clarke Junction to Hobart operations would entail train movements over the currently unused Tolleston to Hobart line segment, over which there are approximately 20 highway/rail grade crossings. This line has been out-of-service for some time, and the Applicants will need to make significant investments to return the line to service. Applicants project five trains per day over these lines which would entail approximately 100 new train movements over highway/rail grade crossings on segments where there are currently none. Additionally, as noted above, Applicants' project 38.6 trains per day between Pine Junction and Willow Creek -- 16.5 more train movements than there are over the segment today. Both of these developments would produce intolerable congestion problems for the City of Gary.

III. The Four Cities' Alternative Routing Plan

I have reviewed and am familiar with the Alternative Routing Plan being proposed by the FCC in the present proceeding. It is a plan that the Surface Transportation Board should adopt. In contrast to the Applicants' plans, the Four Cities' Alternative Routing Plan would not require reinstatement of the out-of-service Conrail Clark Junction to Hobart line (and would elimi-

nate the need to reinstate 20 highway/rail grade crossing movements over the segment). It also would reduce from 38.6 to 19.3 the Applicants' projected number of trains per day operating between Pine Junction and Willow Creek.

Over the past 20 years, the state, local, and federal governments have invested millions of dollars to construct a grade separated IHB rail line corridor. The IHB's Gary to State Line line segment has 16 highway/rail crossings, 13 of which are grade separated. From a transportation planning perspective, it is a matter of common-sense that, all things being equal, railroads should maximize the use of lines which are located within grade separated corridors. Unfortunately, the Applicants' plan fails to do so; their plan would increase volume on the IHB grade separated corridor only by approximately 10 percent, a level significantly below capacity, while increasing traffic by almost 75 percent over the Pine Junction to Willow Creek line with its more numerous crossings of heavily travelled roads.

It is important to note that as part of their requested relief, the Four Cities is not advocating dramatic reductions in local rail operations or the construction of hundreds of new railroad grade separation projects to eliminate rail congestion problems. Instead, the FCC requests only a relatively simple shift in the Applicants' traffic operation plans. For all of the above reasons, the Four Cities' Alternative Routing Plan should be approved by the Surface Transportation Board as a condition to approval of the Applicants' merger petition.

B. A. C. D. C.

Broadway Area Community Development Corporation

"Taking Charge of the Future"

October 16, 1997

Vernon A. Williams, Secretary
Surface Transportation Board
STB Finance Docket No. 33388
1925 K Street, N. W.
Washington, D. C. 20423-0001

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

Dear Mr. Secretary:

Through this letter, the Broadway Area Community Development Corporation (BACDC) hereby expresses its support for the relief being requested by the Cities of East Chicago, Indiana; Hammond, Indiana; Gary, Indiana; and Whiting, Indiana, (known as the Four Cities Consortium or FCC).

BACDC is a neighborhood-based 503-C3 corporation formed to promote redevelopment and community revitalization within the Midtown area of the City of Gary, Indiana, generally bounded by Ninth Avenue on the north, Virginia Street on the east, Interstate Highway - 80/94 (the Borman Freeway) on the south and Madison Street on the west. As such, BACDC is very familiar with the delays, congestion and safety hazards created by the great proliferation of at-grade highway/railroad crossings in the Four Cities area in general, and our service area in particular. Of specific concern is the portion of the Application which proposes the reinstatement of an out-of service line between Hobart and Clarke Junction which would result an additional twenty (20) highway/rail at-grade crossings within the City of Gary, and in our service area approximately six (6) at-grade crossings.

Furthermore, since 1996 we have been engaged in a planning process with the City of Gary concerning the redevelopment of a ten (10) acre site of vacant land, generally bounded by Nineteenth, Madison, Twenty-first and Washington, into 40 to 50 new single-family homes for low and moderate income families. We have retained an architect to design a site plan and infrastructure improvements, as well as secured a funding commitment from the U. S. Department of Housing and Urban Development (acting through the City of Gary) for \$250,000 of down payment assistance for prospective home buyers. The above referenced inactive rail line forms the northern boundary of this site. Planning has proceeded under the assumption that the line would continue to be inactive. If this

Vernon A. Williams

October 16, 1997

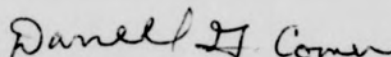
Page 2

proves to be an erroneous assumption, obviously costs will increase to barrier the development from the adverse impacts of the proposed train traffic.

We understand that the Four Cities' Alternative Routing Plan provides a very viable option to what the Applicants' plan. As we understand it, the Alternative Routing Plan eliminates the need to reactivate this rail corridor, prevents the need for additional at-grade highway/rail crossings (and the associated congestion, delays and safety problems), saves the Applicants the capital costs associated with re-tracking and otherwise re-activating this line, as well as minimizes disruption to our site planning process and the resulting adverse impacts on the site from being next to an active rail line. For these reasons we support the Alternative Routing Plan of the FCC.

We encourage the Surface Transportation Board, as a condition to the approval of the proposed Conrail acquisition by CSX and Norfolk Southern, to accept and implement the FCC's Alternative Routing Plan. We appreciate your consideration of this letter of support on behalf of the FCC proposal

Sincerely,



Darrell Comer
Executive Director

DC/bh

File:

VERIFICATION

State of Indiana)

)

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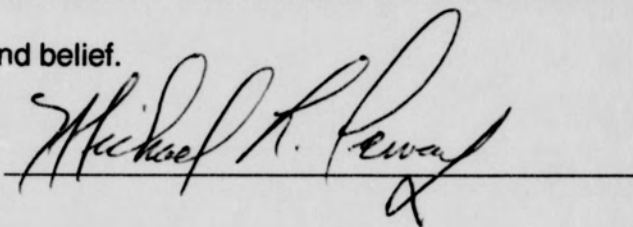
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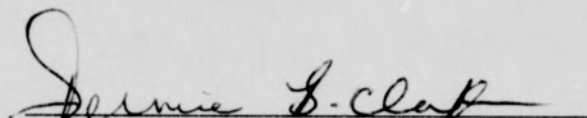
County of Lake)

Michael L. Cervay, being duly sworn, deposes and says that he has read the foregoing Statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.



A handwritten signature in cursive script, appearing to read "Michael L. Cervay", is written over a horizontal line.

Subscribed and sworn to before
me this 16th day of October,
1997:



A handwritten signature in cursive script, appearing to read "Jermie B. Clark", is written over a horizontal line.

Notary Public in and for the
State of Indiana

WHITTING

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

**VERIFIED STATEMENT
OF
ROBERT J. BERCIK**

My name is Robert J. Bercik, and I serve as the elected Mayor for the City of Whiting, Indiana. I was born and raised in Whiting and I have served as Mayor from 1988 to the present.

Among the area-wide organizations to which I belong, I am a member of the Lake Michigan Marina Development Commission. I am also a member of the Lake County Solid Waste Management District. Prior to becoming Mayor, I served as Whiting's Street Commissioner for an eight year period from 1968 to 1974.

Whiting, known as "The Little City on the Lake" is located on the far northwest corner of the State, directly on Lake Michigan's lakeshore, in an area that is commonly referred to the Calumet Region. The City was first incorporated as a town 106 years ago, and there currently are approximately 5,100 Whiting residents. Daniel A. Botich, who serves as Whiting's City Planner, has submitted a Verified Statement in this proceed-

ing provided detailed information on the City of Whiting, our local infrastructure, and some of our planning programs and goals. As Mr. Botich has largely explained, the City of Whiting consists of a blue-collar, working-class population, many of whom are employed by the Amoco Whiting Refinery which employs approximately 1,400 people. Over the past several years, our City has worked hard to update and develop infrastructure and community development programs that will enhance the quality of life for Whiting citizens.

Ever since Whiting and our neighboring communities were first established, the railroads have assumed a prominent presence. In fact, a railroad engineer named Herbert "Pop" Whiting ran his freight train down, more or less, a non-existent siding to avoid a collision with an oncoming passenger train in the 1860's. The location became known as Pop Whiting's siding, and later the townspeople named the community in its shortened form, Whiting. One of Whiting's greatest resources is Whiting Park, an approximately one and one-quarter mile park stretching along Lake Michigan. In recent years, the City has planned to invest a large amount of resources into restoring and improving Lake Park's facilities and landscaping. For as long as Whiting has been incorporated, however, this park has been separated from the rest of the community by the presence of several carriers' railroad tracks, over which numerous freight and passenger trains pass daily, most from cities far away east and west. To enjoy this wonderful city resource, visitors must first reach the park

by negotiating their way over at-grade rail lines at crossings. Once at the park, the noise, vibrations, and pollution from the lakefront railroads' constant movements continue to be a nuisance for park visitors. This is just a small indication of what northwestern Indiana communities face on a daily basis as a result of the presence of constant areawide railroad operations.

CSX and NS have proposed the division of Conrail assets, and have outlined a plan under which they plan to operate. As the Surface Transportation Board is aware, along with Whiting, the Cities of Gary, Indiana, East Chicago, Indiana, and Hammond, Indiana have joined together as the Four Cities Consortium to review the Applicants' proposal, and to submit to the Board their views on this plan. Overall, the Four Cities and the City of Whiting believe that the plan would not improve northwestern Indiana's significant vehicular congestion problems at highway/rail grade crossings, but also would further intensify vehicular delays, and pollution and safety problems.

The Four Cities has submitted an Alternative Routing Plan in this proceeding that makes much sense because it would mitigate congestion problems that would be caused by the Applicants' plan by requiring the Applicants to utilize alternative routing segments through the Four Cities that present less significant vehicular congestion problems. As Mayor of Whiting, I realize that the Alternative Routing Plan would do little to mitigate the City of Whiting's existing congestion problems caused by lakefront railroad corridor line operations. Neverthe-

less, as we go about our daily business, all of us who live in the Calumet Region are adversely affected by the high number of railroad movements that traverse through our communities and over highway grade crossings. In addition, although the traffic levels reflected in the Applicants' plan don't appear to increase over Whiting line segments, we fear that this traffic will grow significantly in the future.

I support the Alternative Routing Plan as a common-sense solution toward improving the quality of life for all northwestern Indiana citizens and I urge the Surface Transportation Board to approve the Four Cities' plan.

Verification

State of Indiana)
) ss:
County of Lake)

Robert J. Bercik, being duly sworn, deposes and says that he has read the foregoing Verified Statement, knows the contents thereof, and that the same are true as stated except as to those statements made on information and belief, and as to those, that he believes them to be true.

Robert J. Bercik

Subscribed and sworn to before me
this 20 day of October, 1997.

Joseph M. Mancora
Notary Public for Lake County, Indiana.

My commission expires 02-17-01.

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

Finance Docket No. 33388

VERIFIED STATEMENT
OF
DANIEL A. BOTICH

My name is Daniel A. Botich, and I serve as City Planner for the City of Whiting, Indiana. I was appointed Whiting City Planner in 1990 and have served in this position since. From 1987 to 1990 I worked as a consultant with the planning and design firm of Trkla, Pettigrew, Allen & Payne of Chicago, Illinois. I have a Bachelor of Arts degree in Urban Studies from Columbia University in New York City.

As City Planner, I am primarily responsible for developing the City's short- and long-term planning goals, including land use, transportation, community facilities, and neighborhood planning, and for the implementation of individual projects and programs that support these goals. Some of the programs and improvement projects that Whiting has been working on in recent years are outlined in this statement. As well as coordinating city projects and programs, a significant amount of my time as City Planner is devoted to coordinating and integrating with

other northwestern Indiana based government and community-based organizations' regional strategies and plans. For example, I represent Whiting on the Northwest Indiana Regional Planning Commission, on the Lake Michigan Marina Development Commission's Technical Advisory Committee, and on the Lake County Historic Preservation Coalition, as well as several other regional planning boards. I also represent Whiting in its participation with the Four City Consortium, which was formed last summer to evaluate and respond to the CSX Corporation (CSX) and the Norfolk Southern Corporation's (NS) proposed plans to acquire Conrail.

The purpose of this statement is to describe for the Board the City of Whiting, to outline some of the City's planning projects and objectives, and to offer my support for the Four Cities Alternative Routing Plan that has been proposed in this proceeding as a means of mitigating the substantial congestion related problems that are being caused by extensive railroad operations throughout northwest Indiana. These problems would be intensified if the Applicants' acquisition proposal were approved by the Surface Transportation Board without the conditions being requested by the Four Cities.

Whiting is a relatively small community located on the shores of Lake Michigan at the northwestern tip of Indiana. The Illinois/Indiana border is a few miles to our west. Whiting is situated to the east of Hammond, to the north of East Chicago, and to the west of Gary. Whiting has a population of approximately 5,100 residents, and is located on approximately 1.73

square miles of land. A large portion of Whiting is dedicated to industrial uses. Approximately two-thirds of the eastern part of Whiting is a zoned industrial area. AMOCO Oil Company (formerly Standard Oil Company) has been our city's largest employer since the refinery was first built in the late 1880s. AMOCO presently employs approximately 1,400 workers from throughout the metropolitan area.

The western part of Whiting consists primarily of single- and two-family residences, and a Main Street-style downtown shopping district along 119th Street. Whiting boasts its beautiful Lake Michigan shoreline recreation area known as Whiting Park as well as the Lake County owned Whihala Beach Park. Whiting Park and the Lake County Whihala Beach Park are separated from the rest of the community by five sets of crossing railroad tracks. Two of these sets are owned by Conrail, two are owned by CSX, and the other is owned by the Elgin, Joliet and Eastern Railroad (EJE). There are currently two at-grade rail crossings that separate Whiting Park and the Lake County Whihala Beach Park from the rest of the city. They are located at 117th Street and White Oak Avenue and 119th Street and Front Street.

While a relatively small community, Whiting has undertaken the planning and development of several important long-term and large-scale community development projects. Among other things, in the past several years, the City has invested in major infrastructure and design improvements to our downtown district on 119th Street. Combined state and local resources have been used

to improve downtown streets, sidewalks, signs, lighting units, and landscaping. Whiting is also preparing to implement the Whiting Park Shoreline Improvement Project, which will make numerous infrastructure and landscaping improvements at Whiting Park, including the development of a boardwalk, pier improvements, and lighting and parking facility improvements. The City also has invested in several improvements to our Whiting Memorial Community House, a community center listed on the National Register of Historic Places. Most recently, the City has begun and is preparing to complete Phase III of a three Phase project to reconstruct and replace the sewer infrastructure in the City of Whiting.

The rail transportation infrastructure present in Whiting consists of active rail freight lines owned by CSX, Conrail, and the EJE. Amtrak also provides through passenger service and the Chicago Southshore and South Bend Railroad provides nearby commuter service to Chicago and other localities. Whiting currently has eight highway/rail grade crossings. Seven of these are at-grade while only one is grade separated.

The City of Whiting participates in this proceeding through its affiliation with the Four Cities Consortium. Besides the City of Whiting, the other Four Cities Consortium participants are the Cities of Gary, East Chicago, and Hammond. Together with my city planner counterparts, we have reviewed the Applicants' plan for the division of Conrail, and have engaged in extensive

consultations concerning how that plan would affect our individual cities and northwest Indiana as a whole.

My review of the proposed division of Conrail indicates that the impact of the Conrail Merger as projected by the Applicants would not have a major impact on present rail operations through the City. The line with the highest amount of traffic levels through Whiting is the Conrail lakefront line which would be acquired by NS. The high existing level of traffic on this line has been a major concern to us as we have pursued improvements to our Whiting Park. This concern extends to Lake County Park officials with regard to their interests in the Whihala Beach Park. The only access to both parks in Whiting is at an at-grade crossing that runs across all five of the lakeshore rail lines. Particularly on weekends, large numbers of people and boaters driving to the parks are delayed at this crossing. According to the Applicants' plan, the NS line segment from Indiana Harbor to South Chicago passing through Whiting would experience a slight decline in trains per day from 57.1 to 51.2, while the average train size would apparently get longer, with daily train density increasing from 81.3 to 99.5 million tons per day, meaning fewer, but longer trains.

A recent survey conducted by the Whiting Police Department reviewed the number of daily vehicle crossings at Whiting's seven at-grade highway/rail crossings. This survey and Indiana Department of Transportation Average Daily Traffic numbers show that two of Whiting's seven highway/rail grade crossings currently

experience the most significant amount of traffic congestion. These crossings both occur along the east side of Schrage Avenue.

<u>Crossing Location</u>	<u>Carrier</u>	<u>Average Daily Traffic</u>
U.S. 12/20 and Schrage Av.	CSX	15,390
129th Street and Schrage Av.	CSX	12,900

The U.S. 12/20 crossing and the 129th Street crossing referenced above are located on the CSX line segment between East Chicago and Whiting. Neither of these line segments has heavy railroad traffic at present, and the Applicants apparently have not announced plans to increase current traffic levels over these Whiting vehicular railroad crossing "hot spots."

Although the Applicants' projections do not indicate increases in rail traffic through the City of Whiting, it is our understanding that these "projections" do not actually reflect growth in traffic that the Applicants' expect to occur, but merely show how existing traffic levels will be routed after the acquisition. For this reason, Whiting remains very concerned about potential rail traffic increases in both number of trains and total tonnage per day.

Despite the plan's apparently negligible direct impact on the City of Whiting proper, we strongly feel that the Applicants' proposal will result in serious regional congestion related problems that can only be solved through the implementation of a region-wide plan. The Verified Statements submitted by the Cities of Gary, East Chicago, and Hammond describe in detail the considerable traffic delays, pollution, and safety problems that

are present in northwest Indiana and that are caused by the hundreds of at-grade highway/rail crossings located in the area. Regrettably, the Applicants' proposed traffic patterns through northwest Indiana would only intensify these problems.

In large part, the Applicants' plan concentrates incremental increases in rail traffic over local lines with a high incidence of highway/rail grade crossings. Meanwhile, little of this traffic is scheduled to move over other lines with a lower incidence of at-grade crossings or that are grade separated. From a transportation planning perspective, the Applicants' plan does not make logical sense.

The Four Cities are submitting to the Board an Alternative Routing Plan in this proceeding. The Alternative Routing Plan would move some of the Applicants' east to west traffic that is scheduled to travel over CSXT's existing BOCT line from Calumet Park to Clarke Junction, south to Conrail's existing Indiana Harbor Belt Railroad line between Calumet Park and Tolleston. This traffic would then travel across Conrail's existing Porter Branch line to Willow Creek and Porter, where it would connect up with individual CSX and NS lines.

The Four Cities Alternative Routing Plan would shift traffic to less congested highway/rail crossing segments than under the Applicants' current proposal. In addition, the Plan would eliminate the need to reinstate to service an out-of-service line from Clarke Junction to Hobart - thus avoiding the addition of 20 rail/highway grade crossings that would occur under the Applica-

nts' proposal. The Alternative Routing Plan also would cause minimal disruption to the Applicants' planned operations and require an insignificant amount of line improvements.

As explained above, the City of Whiting supports the Four Cities Alternative Routing Plan. We strongly feel that the Alternative Routing Plan will benefit not only Whiting citizens, but also the residents of the Cities of Hammond, East Chicago, and Gary who regularly are delayed at hundreds of congested highway/rail grade crossings located throughout northwest Indiana. We urge the Board to adopt the Four Cities' Alternative Routing Plan. We also urge the Board to exercise continuing jurisdiction over CSX and NS after the Conrail acquisition as we understand it has done in the recent Union Pacific-Southern Pacific merger so that we can seek relief from the Board if the traffic levels we experience after the acquisition are in fact greater than projected and have more than just a negligible direct impact so as to adversely affect Whiting or the other cities of the Four City Consortium.

VERIFICATION

State of Indiana)
) ss:
County of Lake)

Daniel A. Botich, being sworn, deposes and says that he has read the foregoing Verified Statement, knows the contents thereof, and that the same are true as stated except as to those statements made on information and belief, and as to those, that he believes them to be true.

Daniel A. Botich

Daniel A. Botich
City Planner

Subscribed as sworn to before me
this 20 day of October, 1997.

James M. Hancock
Notary Public for Lake County, Indiana.
My commission expires 2/17/01.

RICHARD G. LUGAR
INDIANA

306 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510
202-224-4814

COMMITTEES:
AGRICULTURE, NUTRITION, AND FORESTRY
CHAIRMAN
FOREIGN RELATIONS
SELECT COMMITTEE
ON INTELLIGENCE

United States Senate

WASHINGTON, DC 20510-1401

October 21, 1997

The Honorable Linda J. Morgan
Chairman
Surface Transportation Board (STB)
1925 K Street, N.W.
Washington, D.C. 20423-0001

Dear Chairman Morgan:

We are writing to share with you our interest in the pending application filed by CSX Transportation and the Norfolk Southern Railroad relating to the acquisition of Conrail. The Indiana Cities of Gary, Hammond, East Chicago and Whiting (the "Four Cities") have joined together to express their concerns about a number of potential public safety issues relating to the acquisition proposal. The Four Cities Consortium has developed an alternative routing plan for the STB to consider. We hope the STB will carefully review the merits of the Four Cities' proposal.

Located near Chicago and along the southern end of Lake Michigan, Northwest Indiana serves as a vital economic center for manufacturing, trade and transportation of the nation's commerce. Virtually all of the rail traffic moving between Chicago and the east coast travels through Northwest Indiana. A sophisticated intermodal network of highway, rail, air and waterway transportation systems has been developed to move people, goods and materials to their destinations in a safe and efficient manner.

Competitive and efficient rail transportation is critical to the nation's continued economic strength and is a primary goal of the acquisition plan proposed by CSX and Norfolk Southern. At the same time -- as elected officials -- we are interested in balancing economic efficiency with public safety for Indiana motorists, residents and citizens who live and work in Northwest Indiana.

The Four Cities Consortium recently commissioned a review of the proposed acquisition to determine the potential impact the proposed route and track usage could have on public safety and transportation efficiency for the region. We understand the review highlighted a number of areas where train traffic would increase along routes with high numbers of at-grade highway-rail