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CITY OF BEREA — "City of Champions"

Stanley J. Trupo
MAYOR

11 Berea Commons
Berea, Ohio 44017
(216) 826-5800
FAX (216) 826-1446

January 31, 1998



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

Re: STB Finance Docket No. 33388

Dear Secretary Williams:

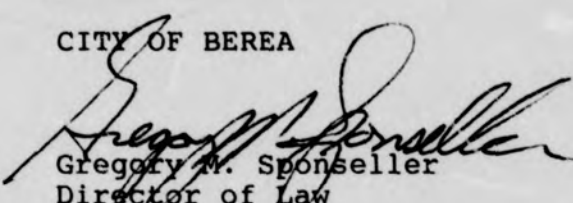
Enclosed for filing please find the original and 26 copies of the "Petition of the Mayor of the City of Berea, Ohio to Intervene (and Request for Conditions and Comments)" being filed with the Surface Transportation Board relative to the above matter.

Pursuant to applicable STB decision, also enclosed please find a 3.5 inch disk of the filing.

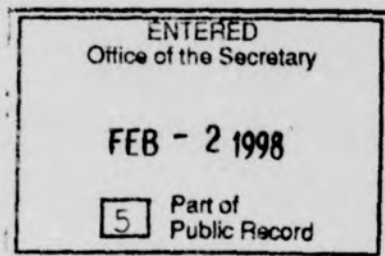
Kindly time stamp the extra copy and return it to the undersigned in the return envelope provided for your convenience. Thank you for your attentions and courtesies in this matter.

Very truly yours,

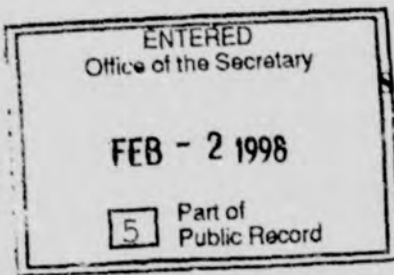
CITY OF BEREA


Gregory M. Sponseller
Director of Law

GMS:jb
Encs.



185459



**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
THE MAYOR OF THE CITY OF BERE, OHIO
TO INTERVENE
(AND REQUEST FOR CONDITIONS AND COMMENTS)**

Stanley Trupo, the Mayor of the City of Berea (hereafter "Petitioner"), hereby respectfully petitions the Surface Transportation Board (hereafter "STB") for leave to intervene and seeks designation as a party of record in these proceedings¹. Petitioner is opposed to the applications of CSX Corporation and Transportation Inc. (CSX) and Norfolk Southern Corporation and Railway Company (NS) in these proceedings, as filed and as constituted as of the date hereof. Moreover, if the STB is to hereafter grant the application of CSX and NS, then Petitioner submits that it should not be granted without certain conditions, as set forth herein.

The City of Berea is uniquely situated and, therefore, uniquely impacted among the Westshore communities due to the convergence of the two rail lines within the City limits of Berea.

Petitioner further respectfully requests that the STB grant the within petition inasmuch as: the applicants' proposed mitigation and remediation of the impact is insufficient as it relates to the citizens of the City of Berea; this Petition is submitted prior to the time that the proceeding is called to hearing; the petition is seeking conditions to the approval of the applicants' application which impact only the residents of the City of Berea; and grant of this petition does not unduly broaden the issues in these proceedings;

¹ as its representative in these proceedings, upon a grant of this petition, the Petitioner would respectfully request that the following person be designated as counsel for said petitioner: Gregory M. Sponseller, Law Director, City of Berea, Ohio, 11 Berea Commons, Berea, Ohio 44017

and there is sufficient time for response to the within petition in advance of the hearing. As grounds in support of the within petition, the petitioner hereby respectfully submits that:

1. He is the elected Mayor of the City of Berea, Ohio and represents the residents and constituency of the City of Berea, Ohio;
2. In June, 1997, CSX, and NS filed a railroad control application with the Surface Transportation Board to acquire control of Conrail Inc. and Consolidated Rail Corporation (Finance Docket No. 33388). As part of the Railroad Control Application, NS and CSX have proposed increasing freight traffic on the Berea-Greenwich and Short-Berea routes from 27.9 trains per day to 101.5 trains per day (Vol. 6B of 8, EIS Draft, page 356, Chart 18-3). NS and CSX have also proposed decreasing the freight traffic along the Cleveland-Vermillion route through Berea from 52.4 trains per day to 28.4 trains per day (Vol. 3B of 8, page 462). The net post acquisition increase in trains per day through Berea, if the merger were to be approved as originally proposed, would be from 80.3 trains per day, to 129.9 trains per day, an increase of 49.6 trains per day, or a 61.8 percent increase.
3. Under the original plan, NS proposed increasing freight traffic along NS's Cleveland-Lakewood-Vermillion route from 16.4 trains per day to 34.1 trains per day, an increase of 17.7 trains per day (Vol. 5C, Nov. 25, 1997 letter of). On November 25, 1997, NS amended its application to reroute the additional 17.7 trains originally proposed for Cleveland-Lakewood-Vermillion, to the Cleveland-Berea-Vermillion route. The additional 17.7 trains per day under the amended proposal would increase Berea's train traffic from 129.9 trains per day to 147.6 trains per day. This represents an 83.8 percent increase in train traffic through Berea above the pre-acquisition baseline of 80.3 trains per day.
4. The Berea-Greenwich route is an northeast-southwest line southwest of Cleveland, Ohio, originates in the southwest corner of Cuyahoga County, traverses the southern half of Lorain County, and approaches Greenwich from the southeast corner of Huron County. The Short-Berea route traverses the southwestern quarter of Cuyahoga County from downtown Cleveland to Berea, Ohio. The Conrail mainline along the Cleveland-Berea-Vermillion route traverses the southwest quarter of Cuyahoga County from downtown Cleveland through Berea, Ohio, and across the northern half of Lorain County to Vermillion. All these routes, with respect to Berea, traverse heavily populated urban/suburban residential neighborhoods.
5. Berea is primarily a densely populated residential area with limited highway access that is frequently blocked by railroad traffic under the current 80.3 train per day baseline. Additionally, Berea's population under the 1990 US census is 19,051 and has remained in the 18,000 to 20,000 range for years. In that same period, the percentage of minority residents is approximately 6.9% black and Hispanic residents. It is significant to the abatement and remediation requests as set forth herein that approximately 86% of the

black residents of the City of Berea reside in the census tracts adjacent to the rail lines. See, Attachment J, Community Reinvestment Area Report, City of Berea, 1994 Planning Resources Incorporated. Over one-third (37%) of the black population of Berea resides in the census tracts lying in the northeast area of Berea which, although geographically small, is densely populated and would be impacted by the proposals set forth in the CSX/NS applications in virtually every manner.

6. The increasing transport of hazardous material and the overall safety of railroad transportation will be increasingly more important as a result of the proposal by CSX and NS to significantly increase the number of trains to be routed through Berea, Ohio.

7. It is the contention of the City of Berea, as Petitioner, that due to the residential nature of the affected city, a comprehensive Environmental Impact Statement (EIS) should address the information contained herein and that an objective analysis address that the existing train traffic already presents considerable hazards to this residential community. Any increase in traffic, especially an increase of the magnitude proposed by the applicants, will have such an adverse effect that substantial mitigating measures must be implemented for the City of Berea.

8. Mitigation will be necessary for environmental, noise, safety, air quality and traffic flow. It is the position of the City of Berea that unless such environmental, noise and air quality and traffic flow concerns of Berea are addressed and grade separations are built at key grade-crossings, including the heavily traveled crossings at Front Street, and at Bagley and Sheldon Roads, that the Conrail merger application must be denied (there are currently four (4) roads having at-grade crossings, to wit: Sheldon Road, Front Street with two crossings, Bagley Road and West Street).

9. Berea, Ohio, is a city in the southwestern corner of Cuyahoga County, less than 14 miles from downtown Cleveland, and adjacent to Cleveland Hopkins International Airport. Berea is mostly residential, with a growing base of light industry to the south of Bagley Road and west of the Berea-Greenwich route. The residential base is experiencing growth, with new homes to the north of the Conrail mainline west of the Rocky River. The community is served by police and fire stations to the east of the tracks. Berea is primarily served by Southwest General Hospital in Middleburg Heights, Ohio, immediately adjacent to the City of Berea to the east.

10. Although an existing overpass at Rocky River Drive relieves some congestion at the Front Street grade crossings, it is of limited use. The industrial area described above is blocked from police, fire, and hospital access at Bagley Road and access through Rocky River Drive is difficult at best (due to the low road clearance at the bridge and to the residential neighborhood) and treacherous at the extreme. The residential area north of Bagley Road are primarily south of Sheldon Road and east of Rocky River Drive. Police and fire department access to these areas is difficult because of congestion at the grade separations at Rocky River Drive and Sheldon Roads, and often access is out of the way. This is especially problematic for emergency access to Southwest General Hospital.

A particularly difficult situation occurs when commercial semi trucks attempt access through the overpass at Rocky River Drive. Approximately twelve times per year, a truck becomes stuck under the overpass, completely blocking access across Berea except through Sheldon Road at the far northeast corner of the city. See Attachment I, Traffic Flow analysis, incorporated herein.

11. Berea already experiences an average of 80.3 trains per day. On Mondays and Tuesdays, that number is closer to 70 trains per day. But on Thursdays, Fridays, Saturdays, and Sundays, the number rises closer to 100 trains per day. The train traffic is a virtual wall to anyone trying to cross from one side of the tracks to the other. The existing number of trains is the saturation point. Berea traffic comes to a virtual standstill to allow the trains to pass now—an increase in traffic to the levels sought by the applicants would wreak havoc without substantial remediation.

12. Any increase in train traffic through Berea will have to be accompanied by the construction of grade separations at the five locations to meet the health, safety and welfare needs of the residents of the City of Berea. This is especially necessary at Front Street, just east of the switch between the Conrail mainline and the Short-Berea route. The two rail lines, between Front Street and the switch, form a triangle with Front Street, in which traffic will often be trapped between two sets of trains. The rail lines crossing Front Street must be separated from the road to facilitate reasonable highway traffic if there is to be an increase in rail traffic through Berea. There are many emergency response situations where minutes can make the difference between life and death. Police and firefighters face such situations every day.

13. Given an increase of freight traffic from 80.3 to 147.6 trains per day, there will be an average of *more than 6 trains per hour* traversing the city every day. It currently takes on average four minutes for a train to pass through a grade crossing. *On average, therefore, 24 minutes out of every hour of every day, on average, will see Berea experience blocked access to emergency services. More than one third of the time, on average, an EMS team will encounter a passing train at a grade crossing and will be forced to double its response time to eight minutes, beyond the time recommended for basic life support, and just within the recommended time for advanced life support. See, Traffic Count Attachment I, incorporated herein by reference.* Additionally, due to the increased rail traffic, the present grade separation at North Rocky River Drive should be refurbished—it is presently in a state of disrepair and damage, with weakening, cracking and spalling concrete.

14. According the Federal Railroad Administration (FRA), approximately 11.353 million tons of hazardous material were shipped through Cuyahoga County in 1995 (Attachment A). Cleveland is a major corridor city for railroad traffic; therefore, it is highly probable that an 83.8% increase in train traffic along the Cleveland-Berea axis will result in a commensurate increase in the shipments of hazardous material along the Cleveland-Berea axis. According to the FRA, 4.243 million tons of hazardous material were shipped by along the Cleveland-Berea axis in 1995. An 83.8 percent increase will

result in the transport of 7.799 million tons of hazardous material traversing Berea. Elimination of the rail siding along and parallel to Butternut lane would alleviate potential for hazards from stationary train cars there.

15. According to the Federal Code of Regulations (49 CFR 172.101), there are more than 3,000 materials classified as hazardous, including arsenic, chloroform, cyanides, formaldehyde, lead, mercury, and propane — a highly flammable liquefied petroleum gas which comprises the bulk of transported hazardous material. Chemical product shipments via rail increased by 27 percent between 1991 and 1995, totaling 1.8 million carloads. In 1995 alone, there were 1,330 incidents involving hazardous materials released from rail cars (Attachment B, pg. 16). Yet chemical rail transport is exempt from federal and community "right-to-know" laws. It should be noted, however, that FRA data on hazardous material transport and accidents are derived from the industry's own reports, and the General Accounting Office finds these reports "inaccurate and incomplete" (Attachment C, pg. 1).

16. Because radioactive material is considerably more dangerous than hazardous material, it is classified and regulated differently. The Department of Energy has confirmed that radioactive waste passes through Cuyahoga County, although the frequency and exact quantities were not obtainable. Furthermore, it has been recently reported that radioactive waste passes along the Conrail tracks through Berea on a regular basis (Attachment D). The frequency and magnitude of radioactive material being transported along the Cleveland-Berea axis should be determined by the Surface Transportation Board as part of the environmental analysis required under federal law. The findings should be used to calculate the level of risk to Berea and other densely populated areas in the event of an accident or derailment.

17. The United States Congress is currently considering H.R. 1270, a bill that legislates the siting of a temporary high-level nuclear waste storage facility near Yucca Mountain in Nevada. High-level waste consists mostly of the spent nuclear fuel rods from commercial nuclear utility reactors. Should this bill become law, Cuyahoga County will become a major transportation route for high-level radioactive waste traveling from the East Coast to Nevada.

18. Approximately 2,733 rail shipments of high-level radioactive waste will traverse Cuyahoga County en route to Nevada, much of which will be transported via the Conrail mainline. Large rail casks weighing about 125 tons would contain high-level radioactive waste, defined as spent nuclear fuel rods contaminated with plutonium and other highly radioactive elements. The average rail cask will carry about 175 pounds of plutonium. To date, no transport cask has had full-scale physical testing (Attachment E, pg. 2).

19. Three years inside the reactor core makes the fuel over a million times more radioactive than unused fuel. Unshielded, irradiated reactor fuel that has been stored for ten years will deliver a lethal dose to anyone within a meter in less than three minutes. A single pound of plutonium could cause cancer in every person alive today if it were

divided and deposited in the lung tissue. It is estimated that a fully prepared state emergency response system capable of responding to an accident involving high-level radioactive waste would cost \$5.6 million annually in 1981 dollars, an expense Ohio has not anticipated. (Attachment E, pg. 1)

20. According to R.W. Godwin, general chair of the Brotherhood of Locomotive Engineers, NS and CSX will lay off hundreds of railroad workers whose jobs are to maintain safe railroad cars and track conditions. These layoffs are system wide. The consequences for the general public could be lethal considering the movement of hazardous material and nuclear waste by rail through the densely populated communities of Cuyahoga County, including Berea. The table below is a summary of anticipated layoffs by NS and CSX resulting from the proposed acquisition of Conrail:

Carmen	Inspect and maintain rail freight cars: 330 positions abolished
Trackmen	Inspect and maintain tracks, switches and crossings: 473 positions abolished
Signalmen	Inspect and maintain wayside signals and crossing protection: 54 positions transferred and 25 abolished
Railroad Police Officers	Protect railroad equipment and signals from vandalism: 46 positions abolished
Locomotive Maintenance	Inspect and maintain locomotives: 5 boilermakers abolished, 53 electricians abolished, 46 laborers abolished, 85 machinists abolished
Supervisors	Oversee maintenance workers: 78 jobs abolished
Train Dispatchers	Insure safe passage of trains: 25 jobs abolished

21. These anticipated layoffs come after almost two decades of declining maintenance and safety personnel on railroads. For example, between 1985 and 1995, Union Pacific doubled the ratio of its car shipments to workers from 85:1 to 170:1. Freight trains at one time were served by five or six people, but are now frequently staffed by one engineer and one conductor. (Attachment B, pg. 17). Railroad employees are expected to work 12-hour shifts, take eight hours off, then return to work. But despite the 12-hour limit, the FRA recently found that Union Pacific routinely violates this limit, keeping workers on the job as long as 17 hours. Furthermore, rail workers can be called back to the job with little more than two hours notice. One NS engineer was quoted in *The Washington Monthly* as saying: "I've been forced to go out when I was so exhausted I hallucinated. I've seen things that weren't there, almost gone past signals I thought were one color when they were another." (Attachment B, pg. 17). At the same time that railroads have significantly reduced staff, the Federal Railroad Administration (FRA) has reduced the number of safety inspectors. Currently, there are 380 inspectors for over one million cars and 300,000 miles of track. (Attachment B, pg. 19).

22. The decrease in safety inspections results from FRA instituting a new cooperative safety program in 1993. Rather than use violations and civil penalties against railroads for noncompliance with safety regulations, "FRA has emphasized cooperative partnerships with other federal agencies, railroad management, labor unions, and the states." (Attachment F, pg. 4).

23. Because railroad safety has improved greatly over the last three decades — due in large part to technological advances — GAO could not determine the effectiveness of FRA's program. However, it should be noted that "FRA has implemented its Safety Assurance and Compliance Program with 33 railroads. This method has improved the safety on many large railroads, *but Norfolk Southern Corporation has refused to participate until FRA substantiates safety problems at the railroad.*" (Attachment F, pg. 5, emphasis added). That a major railroad company would refuse to participate in a safety program instituted by the federal government does not bode well for the residents of Berea who rely upon the federal government as well as the railroad for their very safety.

24. Accidents at railroad crossings are the leading cause of deaths associated with the railroad industry; almost half of all rail-related deaths are caused by collisions of trains and vehicles at public crossings (Attachment C, pg. 1). More than 1,000 people die each year as a result of grade-crossing accidents (Attachment F, pg. 4). Any increase of rail traffic through Berea, particularly an increase of 83.8 percent for a total number of trains approaching 150 per day, require grade separations at the major rail-highway crossings of Front Street and Bagley Road.

25. Since most locomotives in the US are powered by diesel engines, air pollution emitted by trains will consist mostly of Particulate Matter (PM) and precursors to ozone (Nitrogen Oxides or NOx, and Hydrocarbons or HC). Locomotives account for nearly five percent (5 percent) of all air pollution emission in the country.

26. According to the applicants' application, air pollution emission will *increase* in Cuyahoga County by 1,800 tons per year, or 3.6 million pounds, as a result of the increase in freight traffic (Railroad Control Application, Vol. 6B, pg. 364-365). These air pollution emissions include Nitrogen Oxides (NOx), Carbon Monoxide (CO), Volatile Organic Compounds (VOC), Sulfur Dioxide (SO₂), Particulate Matter (PM) and Lead (Pb). CSX rail traffic will increase the above air pollution emissions in Cuyahoga County by almost 1,000 tons per year. NS rail traffic will increase the above air pollution emissions by more than 800 tons per year. Combined, this is an increase of 1,800 tons per year. Of the 1,800 tons of air pollution emissions, the applicants estimate that 1,505.19 tons will consist of NOx. According to figures from the Environmental Protection Agency (EPA), 1,505.19 tons per year of NOx is equivalent to increasing automobile traffic by 86,505 passenger cars (Attachment G, pg. 3). Additionally, NOx combine with Hydrocarbons (HC) in the atmosphere to form secondary PM (which was not estimated in the Railroad Control Application). For every 100 tons of NOx emitted, approximately 4

tons of secondary PM is formed. Thus, there will be an additional increase of secondary PM by 60 tons per year.

27. NOx emissions have significant health and environmental effects. NOx is a major component of smog and acid rain. NOx emissions combine with HC in the atmosphere and, in the presence of sunlight, form ground-level ozone. NOx also contributes to the secondary formation of breathable PM. NOx can react with ammonia, other constituents, and moisture to form certain types of PM, including nitrate fine particles and acidic aerosols.

28. Ozone is a highly reactive pollutant that damages lung tissue, causes congestion, and reduces vital lung capacity, in addition to damaging vegetation. Acid rain damages buildings and crops, and degrades lakes and streams (and it should be noted that Berea, Ohio, is bisected by the Rocky River, a major tributary to Lake Erie and part of the Cleveland MetroPark System). PM causes headaches, eye and nasal irritation, chest pain, and lung inflammation. Environmental impacts of PM include reduced visibility and deterioration of buildings.

29. Healthy adults who exercise moderately can experience a 15 to 20 percent reduction in lung function from exposure to low levels of ozone over several hours. Damage to lung tissue may be caused by repeated exposures to ozone, which can lead to a shortened life span. Ozone aggravates asthma, and 14 Americans die every day from asthma, a rate three times greater than just 20 years ago.

30. Because children breathe more air per pound of body weight than adults, increases in ground-level ozone is even more harmful to them. Children make up 25 percent of the population but comprise 40 percent of the asthma cases. Children also comprise a disproportionate number of asthma attacks, increased use of medication, and more emergency room visits as a result of ozone exposure.

31. PM easily reaches the deepest recesses of the lungs. Scientific studies have linked PM, especially fine particles (alone or in combination with other air pollutants), with premature death, aggravated asthma, and chronic bronchitis. As is the case with ozone, the elderly, children and individuals with preexisting heart or lung disease are especially vulnerable.

32. Cuyahoga County is currently not attaining the National Ambient Air Quality Standards for Sulfur Dioxide (SO₂) or PM₁₀, particles smaller than 10 micrometers in diameter. Therefore, any increase in emissions as a result of increased freight traffic will cause a further delay in attaining the EPA's new Ambient Air Quality Standards for PM_{2.5} (which will not take effect for several years).

Cuyahoga County does meet EPA's current 1-hour 0.12 parts per million (ppm) ozone standard. However, based on the most recently available quality assured data (1993-1995), the county does not meet EPA's recently issued 8-hour 0.08 ppm ozone standard.

An increase in NOx emissions, a precursor to ozone formation, would exacerbate this problem.

33. According to estimates reported to EPA for Cuyahoga County in 1990, 15,263 tons per year of NOx are emitted from stationary sources, and 26,804 tons per year of NOx are emitted from mobile sources, resulting in a total NOx emission estimate of 42,067 tons per year for Cuyahoga County in 1990. Thus, 1,500 tons per year of NOx would be an increase of approximately 3.5 percent.

34. Under the Clean Air Act, areas that do not meet the ozone standards are required to achieve a 3 percent reduction per year (after growth) in VOC and/or NOx emissions. While the implementation plan for EPA's new 8-hour 0.08 ppm ozone standard will not be final until late 1998, it seems very likely that it will include a continuation of the 3 percent per year rate-of-progress measure. A 3.5 percent increase in NOx in the air means that significant additional reductions of NOx from local businesses or vehicles would be needed to offset this increase to meet the ozone standard expeditiously.

35. The applicants state that they have only estimated the increase in air pollution emissions, and not the decrease in emissions resulting from less truck traffic. However, it should be noted that the increase in air pollution emissions from freight traffic is a guaranteed, quantifiable amount; whereas, the decrease in emissions from truck traffic is not known or measurable. In fact, due to increased rail traffic, PM10 emissions from railroads have doubled between 1970 and 1995. Yet this increase in PM10 emissions has not resulted in a concomitant reduction in truck traffic emissions during the same period. Moreover, according to area shippers along the Cleveland-Berea axis, reduced competitive opportunities caused by the Conrail acquisition could actually increase the truck traffic among the Cleveland-area shippers (Attachment I).

36. Noise pollution is considerably more difficult to quantify; however, qualitatively it is no less harmful to a community's well-being than air pollution emissions. According to the Railroad Control Application, noise pollution will increase significantly as a result of the proposal by NS and CSX to increase train traffic through Berea by 83.8 percent. With trains passing through Berea at a rate of six times per hour, or at a duration of 24 minutes out of every hour, residents can expect constant disruptions from horns and engine noise. Constructing grade separations will eliminate horn-blowing and alleviate traffic congestion at key locations in Berea and will remove noise from the ground level. Aesthetic noise barriers are also needed. See, Attachment J incorporated herein.

37. Given the reductions in railroad workers, increasing rail shipments of hazardous materials and nuclear waste, severely limited options for improved grade-crossing safety, increasing emissions and noise pollution, and the potentially divisive and isolating nature of the increased rail traffic through Berea, the City of Berea contends that increasing the number of freight trains from 80.3 to 147.6 is totally unacceptable. The health, safety and welfare of the people of Berea and the surrounding area are at stake.

38. Pursuant to 49 C.F.R. 1113.7, this petition does not unduly broaden the issues and, consistent with the relief accorded in Decision 57 pursuant to an Intervention Petition filed by Members of the U.S. House of Representatives on October 17, 1997 by The Honorable Jerrold Nadler, Member of Congress, 8th Congressional District, New York, and 23 other Members of Congress, the Petitioner hereby respectfully requests that the within petition should be granted.

39. Pursuant to the regulations of the STB, *"...If the petition seeks a broadening of the issues and shows that they would not thereby be unduly broadened, and in respect thereof seeks affirmative relief, the petition should be filed in time to permit service upon and answer by the parties in advance of the hearing."* 49 C.F.R. 1113.7. This Petition is being filed in accordance with rule and before a hearing has been called. No undue burden would result from the granting of this Petition.

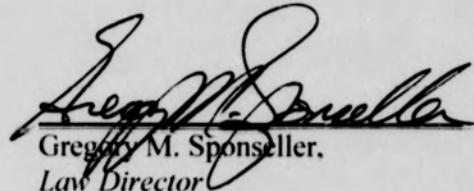
40. The Petitioner hereby seeks conditions and mitigation for Berea through noise abatement, city-specific emergency programs and training, and grade separations, as follows, and consistent with the issues raised herein further requests: i) that a noise barrier be constructed along North Rocky River Drive behind the homes on the north side of the tracks on North Rocky River Drive and the nursing home located in close proximity thereto; ii) that a noise barrier be constructed adjacent to the rails at Abbeyshire Drive; iii) that adequate grade separations be constructed for a) Sheldon Road (over or underpasses), b) Front Street (for both tracks, consistent with the EIS, but not necessarily as an overpass), and c) Bagley Road (where traffic flow is very high); iv) that the rail siding along and parallel to Butternut lane be eliminated; v) that a grade separation be constructed at West Street in Olmsted Falls, (but sought by Petitioner as noise abatement for the residents of Berea living very near to the area); vi) that the applicants prepare a city-specific hazardous material emergency response program and assist in the training of Berea police, fire and emergency personnel; and vii) that the present overpass at North Rocky River Drive be refurbished, and Petitioner further seeks that the environmental study address the impact upon and the concomitant needs of the City of Berea and its residents, including aesthetic remediation and other just relief as this Board deems proper, or alternatively, Petitioner seeks a denial of the railroad control application filed with the STB to acquire control of Conrail Inc. and Consolidated Rail Corporation in Finance Docket No. 33388.

41. A copy of the within Petition is being served upon the parties of Record in these proceedings.

WHEREFORE, the petitioner hereby respectfully requests that: the STB grant this petition and allow the Petitioner to be added to the service Lists as a "Party of Record", that this Petition be construed as comments and a request for conditions, and that the issues raised in this petition be addressed and resolved, including each of the following: i) that an aesthetically-pleasing noise barrier be constructed along North Rocky River Drive behind the homes on the north side of the tracks on North Rocky River Drive and the nursing home located in close proximity thereto; ii) that a noise barrier be constructed

adjacent to the rails at Abbeyshire Drive; iii) that adequate grade separations be constructed for a) Sheldon Road (over or underpasses), b) Front Street (for both tracks, consistent with the EIS, but not necessarily as an overpass), and c) Bagley Road (where traffic flow is very high); iv) that the rail siding along and parallel to Butternut lane be eliminated; v) that a grade separation be constructed at West Street in Olmsted Falls, (but sought by Petitioner as noise abatement for the residents of Berea living very near to the area); vi) that the applicants prepare a city-specific hazardous material emergency response program and assist in the training of Berea police, fire and emergency personnel; and vii) that the present overpass at North Rocky River Drive be refurbished.

Respectfully submitted,



Gregory M. Sponseller,
Law Director

City of Berea

11 Berea Commons

Berea, Ohio 44017

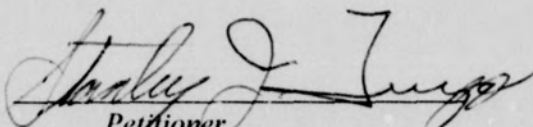
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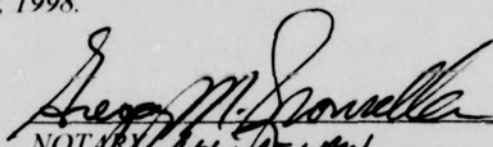
*Counsel for Stanley J. Trupo, Mayor
of the City of Berea*

VERIFICATION

Now comes the Petitioner, Stanley Trupo, after being first duly sworn, who states that the information set forth in the foregoing Petition and the supplements and attachments thereto are true, to his knowledge, information and belief.


Petitioner

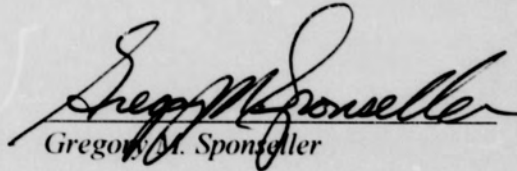
Sworn to and subscribed before me, a notary public in and for the State of Ohio, at Berea, Ohio as of the 31st day of January, 1998.


NOTARY ATTY AT LAW
MY COMMISSION HAS NO
EXPIRATION.

GREGORY M. SPONSELLER Attorney at Law
Notary Public - State of Ohio
My Commission has no expiration date.
Section 147.03 R.C.

CERTIFICATE OF SERVICE

A true copy of the foregoing petition and attachments has been served via ordinary mail this 31st day of January, 1998 upon the Parties of Record, at their respective addresses as set forth in the Decisions of the STB and to Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington D.C. 20426



Gregory M. Sponseller

INDEX OF ATTACHMENTS

Attachment A: Hazardous Material Flows charts from Federal Railroad Administration.

Attachment B: *The Washington Monthly*, "The Case For More Regulation", October 1997

Attachment C: General Accounting Office, *Railroad Safety: DOT Faces Challenges in Improving Grade Crossing Safety, Track Inspection Standards, and Passenger Car Safety*, March 5, 1996.

Attachment D: Letter from FRA Administrator Jolene M. Molitoris to Congressman Dennis J. Kucinich, January 21, 1998.

Attachment E: Nuclear Information and Resource Service, *Questions and Answers: High Level Nuclear Waste Shipments*, April 2, 1997.

Attachment F: General Accounting Office, *Rail Transportation: Federal Railroad Administration's New Approach to Railroad Safety*, July 1997.

Attachment G: Environmental Protection Agency, *Environmental Benefits of Proposed Emission Standards for Locomotives*, February 1997.

Attachment H: Anita R. Brindza, *Statement to the Federal Railroad Administration*, September 21, 1997.

Attachment I Traffic Studies. City of Berea.

Attachment J *Community Reinvestment Area Report*, City of Berea, 1994
Planning Resources Incorporated.

Attachment K Drawings of Berea City Engineer depicting distance between railroad tracks and housing along right of way.

Attachment A

Hazardous Material Flows at the Cuyahoga County Line

Current Railroad	Location of County Line Crossing looking from Cleveland ^{1/}	Former RR	Post CR Acquisition RR	Amtrak Line	Revenue Tons of Hazmat ^{2/} (000)
CR	Northeast	NYC	CSXT	Yes	3667
NS	Northeast	NW	No change	No	477
WE	Southeast	NW	No change	No	36
CR	Southeast	PRR	NS	Yes	2200
NS	West	NW	No change	No	676
CR	West (to Chicago)	NYC	NS	Yes	2778
CR	Southwest (to Col.)	NYC	CSXT	No	1406
CSXT	Southwest	BO	No Change	No	59

^{1/} If a line/location is not shown, there was no hazmat flow in 1995.

^{2/} Source: FRA analysis of the 1995 Carload Waybill Sample

Attachment B

The Case for More Regulation

If you thought ValuJet's deadly cargo was poorly regulated, wait till you hear what the trucks and trains are getting away with

BY NURITH C. AIZENMAN

IN MARCH OF 1996, ALL 1,700 RESIDENTS OF Weyauwega, Wisconsin skipped town for three weeks—involuntarily. The reason for their impromptu spring break: an 81-car train carrying propane and sodium hydroxide derailed and exploded just outside the city center, creating a toxic fire so dangerous the entire community had to be evacuated while authorities struggled to contain it. But the Weyauwegans should consider themselves lucky. In Chicago this past August, 19 people were treated for chemical exposure at area hospitals after the hose on a truck pumping sulfur trioxide into a holding tank broke and released a 50 foot high lethal cloud. And in California several years earlier, 700 people fell ill after a tanker-car full of metam sodium plunged into the Sacramento River, killing all water life within 40 miles and contaminating California's largest reservoir.

These events point to a disturbing trend: serious accidents involving the transport of hazardous materials, or "hazmats," on trucks and trains have become an almost daily occurrence. In 1995 alone, there were 12,712 incidents involving hazardous materials released from trucks and 1,330 from rail cars. But what's really remarkable about these cases is that they were not more disastrous. Considering the recent massive increase in the volume of hazardous materials streaming across our nation's highways and railroads, combined with the industry's cavalier attitude towards safety and the government's cross-your-fingers-and-hope-for-the-best approach to regulation, it's a wonder we haven't witnessed a truly devastating catastrophe. Environmentalists warn it's only a matter of time before we're treated to a tragedy on the scale of the 1984 accident in Bhopal,

India—where 3,500 people were suffocated in their sleep by a 20-ton cloud of methyl isocyanate seeping from a Union Carbide plant.

That's not to say there haven't been lots of close calls. Last December, the Department of Transportation's Federal Railroad Administration (FRA) discovered that despite the fact that military bombs being carried aboard a Union Pacific train had broken through their containers and were protruding onto the floor of a flat car, the company had allowed the train to travel from Oklahoma to California through several major terminals without taking any corrective action. As one FRA official noted in an internal memo: "[Union Pacific] needs a big time wake up call.... The way we see it, if they can't take care of class A explosives, makes you wonder what they are doing with other HM [hazardous materials]."

And there are plenty of other hazardous materials to wonder about. Between 1990 and 1995, hazmat transport by rail increased 27 percent to almost 18 million cars a year, each one carrying a payload that makes the lethal cargo aboard ValuJet flight 592 look like a shipment of fire-retardant blankets. Pick your poison: there are toxic-by-inhalation chemicals like chlorine and hydrogen fluoride, which can roll across miles of countryside in ground-hugging clouds that burn your body tissue, fill your lungs with fluid and cause you to literally drown in your own juices. There are explosives like ammonium nitrate—mix that with a little fuel and it's Oklahoma City time. Then, of course, there are your run-of-the-mill flammables, like liquefied petroleum gas, or propane, which comprises the bulk of the roughly four billion tons of hazardous materials hauled across our highways every year, and which, when released, vaporizes into a volatile

gas that can ignite into a jet flame if so much as a spark comes near. And finally, there's the mother of all hazmats, nuclear waste, which could become a lot more familiar if the government goes ahead with plans to open a temporary nuclear materials repository in Nevada. By as early as 1999, up to 100,000 shipments of highly radioactive spent fuel from reactors across the country could begin the long journey to the storage site by rail and truck—in containers whose crash worthiness has been tested almost exclusively through computer simulations. With all these goodies making their way from sea to shining sea, perhaps it's not surprising that even some chemical company executives are reaching for their gas masks. "It scares the living daylight out of me," confides one former DuPont official.

Dying for a Job

The ugly reality of our industrial advances and booming economy is that we need—or at least want—more and more products made from dangerous substances. Unless we drastically change our consumption habits, one way or another these hazardous materials are going to have to be hauled around the country. But surely our government and industries have taken steps to ensure that the vehicles hauling these toxins are piloted by specially trained experts—crack professionals, alert and ready for the worst, right? Try zombie-like novices, bleary-eyed and poorly prepared.

To start with, hazardous material transporters are dangerously overworked. At the railroads, the rise in hazardous shipments has been accompanied by large scale downsizing. According to a study by an environmental group called The Good Neighbor Project, between 1985 and 1995, Union Pacific, by far the nation's largest hazmat rail carrier, doubled the ratio of its car shipments to workers from 85:1 to 170:1. Freight trains once served by teams of 5 or 6 people are now left in the hands of one engineer and a conductor. This duo is expected to work for up to 12 hours, take 8 hours off (for eating, sleeping, bill paying, etc.), then come back for more. The length of their shifts is bad enough: It's hard to imagine staying focused on your favorite TV show for 12 hours straight, let alone an endless stretch of railroad track—especially as viewed from an overheated, deafeningly loud engine cabin. But to make matters worse, rail workers are generally scheduled without regard to the basic requirements of a normal sleep cycle. Thus an engineer who is happily tucked in bed at 3 a.m. on one morning, is just as likely to find himself at the head of a 70-car train at 3 a.m. on the next—having received no more than two hours advance notice. "I've been forced to go out when I was so exhausted I hallucinated," recalls one

Norfolk Southern engineer, "I've seen things that weren't there, almost gone past signals I thought were one color when they were another."

Maybe that's what happened to the engineer of a Union Pacific train who was killed in July after he sped past a rail stop sign near Rossville, Kansas, and collided with an oncoming train. Hazardous materials aboard his train were burned in the crash, and Rossville's residents had to be evacuated. The collision was one of three fatal Union Pacific accidents since June that finally prompted the Federal Railroad Administration to launch an 80-man inspection of the rail company—the most extensive investigation in the agency's history. After a week of probing, the FRA declared itself shocked, shocked, to discover that everyone from dispatchers, to engineers, to yard workers, were being "worked to the bone." Yet for years rail workers' unions have complained about such problems; last spring the Brotherhood of Locomotive Engineers even tried to shut Union Pacific down with a strike over safety, but they were halted by a court order. Still, according to the FRA's spokesman Jim Gower, the FRA "wasn't really aware of the vastness of the problem."

But this was only the tip of the iceberg. The FRA also found that Union Pacific routinely violates the already onerous 12-hour work limit—often keeping workers on duty for up to 17 hours at a stretch. Topping it all off, the agency determined that the training many workers receive is grossly inadequate and in some cases nonexistent—with some employees ordered to operate sophisticated equipment they've never been taught to use.

Among the things a good training program might emphasize would be the importance of watching for smaller problems that could be the harbinger of bigger ones. But even if they were taught to do so, rail workers might be disinclined to report any trouble they find. Many rail companies reward managers with a cash bonus tied the safety record of the track under the manager's jurisdiction. CSX Transportation, for instance, has awarded a total of \$4.5 million in company stock since 1995 under its "Take Stock in Safety" program. Sounds like a great incentive system, but the result, according to United Transportation Union's legislative director, J.M. Brunkenhoefer, is that many middle managers strongly discourage the rail workers they supervise from reporting accidents—threatening potential whistle blowers with either layoffs or "investigations" into the whistle blower's responsibility.

Of course, the railroads sometimes run into pesky FRA rules requiring that certain types of accidents be reported, for instance those in which a rail worker is injured seriously. No problem—the companies simply send workers to the doctor with a special note, like one

from CSX that asks that "whenever possible, use of equally prudent NON-REPORTABLE treatment is encouraged in order to minimize reporting of less significant minor injuries to the Federal Railroad Administration." Among the "reportable" treatments doctors are urged to avoid: "issuing a prescription, injections, closing a wound with sutures, butterfly, staple or steri-strip, application of immobilizing cast, sling or splint, ... [and] restriction of employee's work activity." To be sure, the letter assures doctors that "appropriate treatment should be based upon your professional medical judgment," but the message from CSX management to the doctor and, more importantly, to its employees couldn't be more blunt: Don't Rock the Boat.

That message was apparently heard loud and clear by the team aboard a CSX train that sideswiped an Amtrak passenger car and caused a derailment near Arlington, Va., this past July. Twice during the train's two-hour journey, crews on passing trains radioed the CSX crew with the warning that one of its flatcars was leaning precariously. Nonetheless, the crew ignored the warning and continued forward because a CSX supervisor had already inspected the car and insisted there was no danger.

Highway to Hell

But intimidated, badly trained and dog-tired as they may be, rail workers are still the envy of truckers. That's because while truckers can only be legally required to drive a mere 10 hours a day, trucking companies routinely—and knowingly—put them on schedules that make a mockery of the law. Consider the timetable of 23-year-old Peter Conway, the driver of a semitrailer loaded with 9,200 gallons of propane headed east on I-287 through New York state in July of 1994. Some time earlier, Conway's truck had been side-lined by a breakdown for 10 hours. Like most truckers, he was being paid by the mile as opposed to the hour, so after his rig was fixed, Conway faced a Hobson's choice: make up the lost time or take a financial hit. He opted to press on. On July 27, Conway's truck drifted off the left shoulder of the highway near White Plains and struck the column of an overpass. The propane leaking from his truck's damaged tank ignited—propelling the container 300 feet through the air onto a nearby house, which was quickly engulfed in flames. Conway was killed, and 23 others were injured. Although Conway had falsified the log book in which he was legally required to enter his work time, federal investigators were able to determine that he had been driving almost continuously for over 35 hours. Their unsurprising conclusion: Conway had dozed off at the wheel.

He's certainly not the first, nor the last, to have done

so. A recent government study found that up to 40 percent of truck crashes were probably caused by fatigue. Another study determined that at least 58 percent of truckers had violated hours-of-service rules. In fact, log books are so routinely doctored that truckers have taken to calling them "comic books."

But even if he's awake, there's no guarantee the driver of that monster hazmat truck roaring up behind you on the highway is even marginally competent—or that his rig is remotely safe. Take the case of Willis Curry, a Washington D.C. trucker who, since 1988, has managed to amass 31 citations for such traffic violations as speeding, carrying overweight loads, disobeying red lights and ignoring railroad cross warnings. Back in January, the Department of Transportation's Federal Highway Administration (FHWA) informed Curry's employer of his record and he was promptly fired. But the FHWA waited until April to alert D.C. authorities that his license should be revoked. Two months later Curry, still the proud bearer of a D.C. license and now a driver for a local dump truck company, collided with the car of a young mother and her one-year-old son.

Police determined that the brakes on Curry's dump had failed. This should not have come as a surprise. Curry's vehicle gave a whole new meaning to the term "dump" truck. It had been cited for 28 mechanical safety violations in two random inspections last year. And during the first inspection the truck's wiring was so defective that when the brake pedal was pushed the windshield wipers started going. On both occasions the truck had been ordered off the road for repairs.

But the story doesn't end there. After Curry's accident, no action was taken to investigate the dump's owner, or to revoke Curry's license. It wasn't until ten days later, when Curry made a routine request for a duplicate license, that a city clerk happened to notice his record and confiscated his license. And Curry quickly managed to win it back, with the proviso that he only drive between 4 a.m. and noon on weekdays. At 2 p.m. the very next week, Curry was once again behind the wheel when the brakes on his dump failed a second time, causing the 30-ton truck to veer out of control and roll over onto a car driven by a teenage honor student. The boy was killed instantly. It is small consolation that Curry's truck wasn't carrying anything more dangerous than sand. Next time we may not be so lucky.

It's hard to say which was the greater menace to society, Curry or his truck. And that's not unusual. On the rare occasions when the Department of Transportation does random roadside inspections, nearly one out of every three rigs they pull over is found to be either unsafe, driven by an unsafe trucker, or both.

Danger Zone

Defective equipment is a problem with which rail workers are also all too familiar. A 1995 surprise inspection of a Union Pacific rail yard in Fort Worth, Texas, found that 37 percent of the rail cars there were faulty—over a third of them with brake problems. And according to Union Pacific itself, 12 percent of the 8,000 plus chemical tank cars it inspected last year turned up "exceptions" like poor positioning of the tops on the cars, or mislabeling of their contents. That wasn't news to rail employees; they say it's not uncommon to work on a train with up to eight "sleeper cars" whose contents, hazardous or otherwise, are unknown to them.

This is no minor inconvenience. Different hazardous materials pose different risks and, in the event of an accident, it's essential for emergency responders to know what they're dealing with. For instance, if an unsuspecting fireman unleashed a fire hose on an accident involving metam sodium, rather than dousing any flames, there's a good chance the water would react with the chemical to form a nasty mustard gas-like compound. Similarly, if an emergency crew allowed a small amount of water to drip over a spill of hydrogen peroxide, the heat generated by the subsequent chemical reaction could cause nearby fuel to erupt into a major inferno.

Just as frightening as the trains themselves are the tracks on which they travel. About 85 percent of rail transport occurs over "dark" areas where there is no automated signaling. Instead, engineers must rely on dispatchers to talk them through their journey. Yet, as the FRA recently "discovered," dispatchers are often unfamiliar with the tracks through which they are expected to guide a train—in many cases they haven't even traveled the route once. So perhaps it's not surprising that a June FRA inspection of Union Pacific found that 80 percent of dispatcher orders contained at least one error.

And even when there are signals along the track, they are not necessarily configured to maximize safety. In a 1993 overhaul of a stretch of railroad whose users include a Maryland commuter service line, the railroad's owner, CSX, did away with a large number of warning signals along the track. Under the new system, yellow "slow down" signals indicating that a red "stop" signal is soon to follow are now placed *before* some train stations even if the "stop" sign they are referring to lies way beyond the station. So engineers driving trains that make station stops must somehow remember to pull out of the station at a slow speed; the intermediate signals that would have reminded them about the abrupt stop signal coming up after the station are no longer there. It's hard to conceive of a more accident-prone system. Yet neither CSX nor the FRA so much as paused to consider

the safety implications before installing it.

Three years after CSX put in the new system, the inevitable occurred. On a snowy night in February of 1996, the engineer of a Maryland commuter train forgot (or didn't notice) the yellow signal before the Kensington, Md., station and pulled out of the station at 60 miles an hour. By the time he saw the stop sign and slammed on the brakes it was too late. Moments later he smashed into the fuel tank of an oncoming Amtrak. Eleven people were killed in the crash and subsequent conflagration. Still, despite instituting some other safety changes, CSX has kept the risky signal system in place.

A Free Ride

But how does the industry get away with it? Where are all those government regulators conservatives are so fond of disparaging? Turns out they're not nearly as meddling as the GOP would have you think. A July study by the General Accounting Office (GAO)—which monitors federal agencies for Congress—found that in just one year, the number of safety inspections conducted by the FRA decreased by 23 percent. And between 1992 and 1995 the percentage of railroads inspected for hazardous materials safety by the FRA fell from 34 percent to 21 percent.

That's hardly surprising considering how depleted the FRA's forces are. "You've got 380 inspectors for over 1 million cars and 300,000 miles of track," notes the United Transportation Union's Brunkenhoefer. Compare that with the Federal Aviation Administration's 3,028 inspectors—132 for hazardous materials alone—and it's tough not to agree with Brunkenhoefer that "the FRA is stretched too thin." Last year, Representative James Oberstar, the ranking minority member of the House Transportation Committee, introduced a bill that would have doubled the number of inspectors. But the Republican leadership didn't even allow a hearing on it.

Oberstar plans to reintroduce his bill this fall. But he's unlikely to get much thanks from the FRA. The agency has long been criticized for failing to stand up to the railroads, but the current climate in Washington has the FRA positively cowed. Discussing the FRA's role with agency officials is an almost eerie experience—the party line they spout couldn't be more anti-regulatory if it had been drafted by Newt Gingrich: The lack of inspectors? "Not an issue," FRA spokesman Jim Gower hastens to assure. "We've streamlined and are able to do more with less." How? "By making use of the inspectors the railroads employ." The GAO is underwhelmed by the FRA's new approach. In its July report, the GAO expressed concern that the FRA leaves almost all oversight of bridge safety in the hands of railroad companies.

But the FRA maintains there's no cause for alarm; it's all part of a new "cooperative" way of doing business that began under the Clinton administration. The idea is to move away from using violations and civil penalties as the primary means of obtaining compliance with the regulations. Instead, the agency relies on "partnerships" with the railroad companies. If you're wondering what that means, take a look at the way the FRA has responded to the results of its—admittedly laudable—massive investigation of Union Pacific. You might expect that the agency's discovery that rail employees are being dangerously overworked would prompt it to change the rules governing their schedule. How retro! "New regulations are not the answer," the FRA's Gower patiently explains. Instead, the FRA will simply ask Union Pacific to mend its ways: "After all, it's in their own interest." Union Pacific officials agree—pointing out that they're hiring an additional 2,600 employees this year. But just how much relief will those new hires be able to provide for the company's exhausted 54,000-strong work force? Officials like Barry Sweedler at the National Transportation Safety Board (NTSB)—the independent agency responsible for investigating accidents and making recommendations to transportation regulators—think the FRA is being naive. "What you have today is an industry that's willing to accept a certain number of collisions every year," observes Sweedler.

To be sure, over the years the FRA has introduced some important technical requirements that have made rail transport safer. For instance, it recently decreed that all train cars must be linked with special couplers to help prevent them from separating during derailments. For added protection, tanks carrying hazmats are required to be fitted with steel head shields, coated in thermal insulation, and equipped with special devices to keep their bottom outlets from being sheared off in the event of an accident. Unfortunately, the railroads don't have to fully comply with all these new regs until 2006.

Even many of the FRA-mandated innovations that are actually in use were required by the FRA only after fatal foot-dragging. That was the case with a backup braking system called a "two-way end-of-train device" that allows an engineer to use a radio signal to apply brakes from the back of his train if his locomotive brakes fail. The FRA did not mandate use of the devices on all trains traveling through mountainous terrain until February of 1996—seven years after the NTSB first recommended them, and only after a runaway train had derailed at the bottom of the steep Cajon Pass in California not once, but twice. Similarly, while the FRA has (after over a decade of urging by the NTSB) finally conceded the considerable potential of using satellite-based

proximity warning systems to alert engineers, and even apply the brakes, when one train is speeding or about to collide with another, the agency is now merely helping the rail companies run pilot projects—rather than insisting that they install it on a timetable.

And there are still plenty of cheap and life-saving innovations out there that the FRA continues to ignore. Take the laser systems that could be used to alert trains when the track over vulnerable areas like bridges has been misaligned. Such misalignments have been the cause of some of the most horrific accidents in recent memory—like the 1993 Alabama derailment in which 47 people perished. Yet though cheap models of this system have been put forward, the FRA has no plans to require them. Heck, they still don't even mandate that engine cabins be equipped with radios!

The Department of Transportation's record on hazmat trucking is just as deplorable. As you may have gathered from the case of dump truck driver Willis Curry, enforcement of the law by the Department's Federal Highway Administration is laughable. A March study by the Department's Inspector General—a sort of in-house independent watchdog—found that in 1995, only 25 percent of trucking companies were reviewed by the Federal Highway Administration (FHWA) to see if they complied with safety rules. What's more, about two-thirds of the nation's interstate carriers have never been rated for safety. Most alarming, the Inspector General determined that 22 percent of trucking companies with high rates of on-the-road violations and accidents had never been rated for safety, and 42 percent had not been rated in the past two years.

What's going on? Part of the problem is that the 529 federal and state inspectors available to the FHWA are simply incapable of covering all 345,000 interstate trucking companies. But the Inspector General also found that FHWA inspectors were spending far too much time on less urgent activities like educational outreach. Furthermore, while the Department of Transportation does maintain a national database of driver and vehicle violations that it uses to identify high-risk targets for inspection, the criteria for determining who is high-risk puts too much weight on factors like how many passengers a vehicle carries, instead of how many times it has been pulled off the road for being unsafe. To make matters worse, violations of state and local traffic laws are often never entered into the database. Why? Because states are not actually required by the FHWA to transmit the information. Of course, states are required to pass on the results of federally-funded safety compliance reviews and random roadside inspections, but they usually fail to do so quickly. Even when they do, the FHWA

takes its own sweet time—often waiting for over a year before entering the data into the system.

When the FHWA bothers to conduct inspections, it tends to favor the velvet-fist-in-the-velvet-glove approach. According to the Inspector General, FHWA inspectors consistently underreport violations, and low-ball fines. For instance, the penalties for 81 carriers surveyed did not include over half of the major violations found during their inspection. But the FHWA had a ready explanation for this dismal performance: 'we're a regulatory agency, not an enforcement agency.'

The trucking companies clearly share that impression. To get a sense of how little they fear the FHWA, you need only consider that in the Inspector General's survey, over a third of the companies deemed unsatisfactory by FHWA inspectors had to be inspected and scolded two more times before they cleaned up their act. Moreover—and this is the clincher—most of these delinquent companies were allowed to keep their trucks on the road even while they continued to fail one inspection after another. To cite just one example, a Missouri hazardous materials carrier continued to operate without interruption despite the fact that it had failed two general inspections—and despite the fact that one out of every two of its trucks had to be pulled out of service when stopped for random inspections along the road. It's enough to drive longtime highway safety advocate Gerald Donaldson to distraction. "Words fail me on the extent of the FHWA's ineptness," he sighs.

Officials at the National Transportation Safety Board are just as infuriated. Apart from imploring the FHWA to enforce existing regulations, the board continues to urge the agency, and the Department of Transportation in general, to come up with better rules: like getting trucking companies to pay employees by the hour, lowering the maximum number of allowable consecutive driving hours, and introducing simple monitoring devices on trucks to ensure that the law is followed. Yet not only has the FHWA turned a deaf ear to these suggestions, the agency is actually contemplating the trucking industry's request to raise the limit on hours.

Among the other possible improvements that could make hazardous materials trucks safer that the Department of Transportation has chosen to ignore: anti-lock brakes, a better internal compartment system to prevent the liquid in tankers from violently sloshing around and causing the truck to roll over; technology to keep the top and bottom ports of tankers from springing a leak when such rollovers do occur; and steel head shields like those used to such great effect on train tank cars. Many of these changes have long been advocated by the NTSB based on its investigation of serious accidents. But, once

again, the Department of Transportation simply buries its head in the sand.

Regulation Redeemed

If your blood pressure is rising at the thought of all this incompetence, just think of how the NTSB's Barry Sweedler must feel after 27 years of observing it. Sweedler gets a slight catch in his voice as he describes the downside of his job: "When we respond to a tragedy where people have lost their lives, and we invest a lot of time trying to figure out what needs to be done to see that it doesn't happen again, and then we make our recommendation, and nothing happens, and then we see the same accident happen over again—and over, and over again. That's what frustrates me the most."

However frustration is not going to save us from the ever-increasing volume of hazardous materials flowing through our communities. It's time to re-think the conventional wisdom that regulation is a bad word. In recent years, conservatives have largely succeeded in convincing us that regulators are our number one enemy, strangling businesses with yards of expensive and impractical red tape. And the conservative cause has actually been helped by many liberals—who are quick to defend whatever regulation exists, without bothering to check how well it's working. Meanwhile, the Department of Transportation has all too readily absorbed the mood in Washington, speaking proudly of its new "partnership" with trucking and rail companies, as if having good relations with those industries were the primary goal. It's not. The government's duty is to protect the public—and it is falling seriously short.

Of course, it's not hard to understand why the regulators have lost sight of their mission: Like most of us, they don't enjoy hearing complaints from the people they work with, and no one howls louder than the industries being regulated. But both the government and the public need to start greeting those protests with a hefty grain of salt. From the dangerous overworking of employees, to the appalling condition of their vehicles, to the lack of inspections and penalties for safety violations, to the failure to install new life-saving technologies, the troubles plaguing the transport of hazardous materials by train and truck provide a dramatic illustration of how the real problem can be not too much government regulation, but far too little. If you think this lesson only applies to trucks and trains, just consider what smarter and tougher regulation could have done for the folks aboard Vahjet flight 592. And by the way, how do you feel about that hamburger in your freezer? ●

Research assistance provided by Samuel Seidel.

Attachment C



Testimony

Before the Subcommittee on Railroads,
Committee on Transportation and Infrastructure,
House of Representatives

Hearing held on
March 5, 1996
Statement Submitted on
April 1, 1996

RAILROAD SAFETY

DOT Faces Challenges in Improving Grade Crossing Safety, Track Inspection Standards, and Passenger Car Safety

Statement for the Record by
Phyllis F. Scheinberg, Associate Director,
Transportation and Telecommunications Issues,
Resources, Community, and Economic
Development Division



Madam Chairman and Members of the Subcommittee:

We appreciate the opportunity to provide this statement for the record on several issues affecting safety on the nation's rail lines. Recent rail accidents at Cajon Pass, California; Silver Spring, Maryland; and Weyauwega, Wisconsin, have heightened concern about the safety of passenger and freight lines in the United States. Since 1987, GAO has issued many reports describing safety problems on the nation's rail lines. This statement is based on recent GAO reviews of safety at highway railroad crossings, the adequacy of track safety inspections and enforcement, and the safety of passenger cars operated by commuter railroads and Amtrak. In summary, we found the following:

- Accidents at railroad crossings are the leading cause of deaths associated with the railroad industry; almost half of all rail-related deaths in the United States are caused by collisions of trains and vehicles at public railroad crossings. In 1994, these collisions killed 501 people and injured 1,764 others. Strategies to improve safety at railroad crossings include targeting funds to high-risk areas through revisions in the Department of Transportation's (DOT) formula for distributing railroad improvement funds to the states; closing more railroad crossings; installing new technologies, such as four-quadrant gates, at the most dangerous crossings; and developing education and enforcement programs that increase the public's awareness of the dangers of railroad crossings. Although DOT has an action plan incorporating these strategies, the plan will be costly to implement and will require DOT to seek congressional approval to implement key proposals.
- The Federal Railroad Administration (FRA) has developed an overall strategy for inspecting and enforcing track safety standards. As we recommended in our 1994 report,¹ to further strengthen the rail safety program, FRA needs to include site-specific data on volumes of passenger and hazardous materials traffic in its inspection plan and improve the reliability of its accident and injury data. Information on the numbers of passengers and amounts of hazardous materials transported is important, since train routes carrying these types of traffic must be adequately maintained to prevent accidents that will injure passengers or expose populated areas to chemical risks. Accurate and complete information on the numbers of accidents and injuries is equally important in identifying high-risk routes. However, FRA's database, derived from the industry's reports to FRA, is inaccurate and incomplete. Without reliable information:

¹ Railroad Safety: Continued Emphasis Needed for an Effective Track Safety Inspection Program, GAO/RCED-94-36 (Apr. 22, 1994).

on passenger and hazardous materials traffic, accidents, and injuries. FRA and its inspectors do not have the means to direct inspectors to the routes that have the highest potential for accidents.

- Although Amtrak and commuter railroads transport over 20 and 330 million passengers, respectively, each year, FRA has established few regulations concerning passenger car safety. FRA does not have minimum safety standards for mechanical components on passenger cars, as it does for freight cars and locomotives. In 1984, FRA informed the Congress that it planned to study the need for standards governing the condition of safety-critical passenger car components. The Congress subsequently directed FRA, in the Swift Rail Development Act of 1994, to complete rulemaking governing passenger car safety by 1999.

Improving Railroad Crossing Safety

On October 25, 1995, Americans were reminded of the dangers that drivers/passengers often face when they travel over railroad crossings in the United States. On that day, in Fox River Grove, Illinois, seven high school students were killed when a commuter train hit a school bus.

The potential for tragedies like the one at Fox River Grove is significant—the United States has over 168,000 public highway-railroad intersections. The types of warning for motorists at these crossings range from no visible devices to active devices, such as lights and gates. About 60 percent of all public crossings in the United States have only passive warning devices—typically, highway signs known as crossbucks. In 1994, this exposure resulted in motor vehicle accidents at crossings that killed 501 people and injured 1,764 others. Many of these deaths should have been avoided, since nearly one-half occurred at crossings where flashing lights and descended gates had warned motorists of the approaching danger.

In August 1995, we issued a comprehensive report on safety at railroad crossings.² We reported that the federal investment in improving railroad crossing safety had noticeably reduced the number of deaths and injuries. Since the Rail-Highway Crossing Program—also known as the section 130 program—was established in 1974, the federal government has distributed about \$5.5 billion (in 1996 constant dollars) to the states for railroad crossing improvements. This two-decade investment, combined with a reduction in the total number of crossings since 1974, has significantly lowered the accident and fatality rates—by 61 percent and 34 percent.

²Railroad Safety: Status of Efforts to Improve Railroad Crossing Safety. (GAO/RCED-95-191, Aug. 3, 1995).

respectively. However, most of this progress occurred during the first decade, and since 1985, the number of deaths has fluctuated between 466 and 682 each year (see app. 1). Since 1977, the federal funding for railroad crossing improvements has also declined in real terms. Consequently, the question for future railroad crossing safety initiatives will be how best to target available resources to the most cost-effective approaches.

Our report discussed several strategies for targeting limited resources to address railroad crossing safety problems. The first strategy is to review DOT's current method of apportioning section 130 funds to the states. Our analysis of the 1995 section 130 apportionments found anomalies among the states in terms of how much funding they received in proportion to three key risk factors: accidents, fatalities, and total crossings. For example, California received 6.9 percent of the section 130 funds in 1995, but it had only 4.8 percent of the nation's railroad crossings, 5.3 percent of the fatalities, and 3.9 percent of the accidents. Senators Lugar and Coats have proposed legislation to change the formula for allocating section 130 funds by linking the amounts of funding directly to the numbers of railroad crossings, fatalities, and accidents. Currently, section 130 funds are apportioned to each state as a 10-percent set-aside of its Surface Transportation Program funds.

The second means of targeting railroad crossing safety resources is to focus the available dollars on the strategies that have proved most effective in preventing accidents. These strategies include closing more crossings, using innovative technologies at dangerous crossings, and emphasizing education and enforcement. Clearly, the most effective way to improve railroad crossing safety is to close more crossings. The Secretary of Transportation has restated FRA's goal of closing 25 percent of the nation's railroad crossings, since many are unnecessary or redundant. For example, in 1994, the American Association of State Highway and Transportation Officials found that the nation had two railroad crossings for every mile of track and that in heavily congested areas, the average approached 10 crossings for every mile. However, local opposition and localities' unwillingness to provide a required 10-percent match in funds have made it difficult for the states to close as many crossings as they would like. When closing is not possible, the next alternative is to install traditional lights and gates. However, lights and gates provide only a warning, not positive protection at a crossing. Hence, new technologies such as four-quadrant gates with vehicle detectors, although costing about \$1 million per crossing, may be justified when

accidents persist at signalled crossings. The Congress has funded research to develop innovative technologies for improving railroad crossing safety.

Although installing lights and gates can help to prevent accidents and fatalities, it will not preclude motorists from disregarding warning signals and driving around descended gates. Many states, particularly those with many railroad crossings, face a dilemma. While 35 percent of the railroad crossings in the United States have active warning devices, 50 percent of all crossing fatalities occurred at these locations. To modify drivers' behavior, DOT and the states are developing education and enforcement strategies. For example, Ohio—a state with an active education and enforcement program—cut the number of accidents at crossings with active warning devices from 377 in 1978 to 93 in 1993—a 75-percent reduction. Ohio has used mock train crashes as educational tools and has aggressively issued tickets to motorists going around descended crossing gates. In addition, DOT has inaugurated a safety campaign entitled "Always Expect a Train," while Operation Lifesaver, Inc., provides support and referral services for state safety programs.³

DOT's educational initiatives are part of a larger plan to improve railroad crossing safety. In June 1994, DOT issued a Grade Crossing Action Plan, and in October 1995, it established a Grade Crossing Safety Task Force. The action plan set a national goal of reducing the number of accidents and fatalities by 50 percent from 1994 to 2004. As we noted in our report, whether DOT attains the plan's goal will depend in large part, on how well it coordinates the efforts of the states and railroads, whose contributions to implementing many of the proposals are critical. DOT does not have the authority to direct the states to implement many of the plan's proposals, regardless of how important they are to achieving DOT's goal. Therefore, DOT must rely on either persuading the states that implementation is in their best interests or providing them with incentives for implementation. In addition, the success of five of the plan's proposals depends on whether DOT can obtain the required congressional approval to use existing funds in ways that are not allowable under current law. The five proposals would

- (1) change the method used to apportion section 130 funds to the states,
- (2) use Surface Transportation Program funds to pay local governments a bonus to close crossings, (3) eliminate the requirement for localities to match a portion of the costs associated with closing crossings,
- (4) establish a \$15 million program to encourage the states to improve rail

³Operation Lifesaver is a private, not-for-profit organization supported by federal and railroad funds and dedicated to improving safety through education and improved law enforcement. Operation Lifesaver programs are currently operated in 49 states.

corridors, and (5) use Surface Transportation Program funds to increase federal funding for Operation Lifesaver.

Finally, the action plan's proposals will cost more money. Secretary Pena has announced a long-term goal of eliminating 2,250 crossings where the National Highway System intersects Principal Rail Lines. Both systems are vital to the nation's interstate commerce, and closing these crossings is generally not feasible. The alternative is to construct a grade separation—an overpass or underpass. This initiative alone could cost between \$4.5 billion and \$11.3 billion—a major infrastructure investment.

DOT established the Grade Crossing Safety Task Force in the aftermath of the Fox River Grove accident, intending to conduct a comprehensive national review of highway-railroad crossing design and construction measures. On March 1, 1996, the task force reported to the Secretary that "improved highway-rail grade crossing safety depends upon better cooperation, communication, and education among responsible parties if accidents and fatalities are to be reduced significantly." The report provided 24 proposals for five problem areas it reviewed: (1) highway traffic signals that are supposed to be triggered by oncoming trains; (2) roadways where insufficient space is allotted for vehicles to stop between a road intersection and nearby railroad tracks; (3) junctions where railroad tracks are elevated above the surface of the roadway, exposing vehicles to the risk of getting hung on the tracks; (4) light rail transit crossings without standards for their design, warning devices, or traffic control measures; and (5) intersections where slowly moving vehicles, such as farm equipment, frequently cross the tracks.

Improving Track Safety

Under the Federal Railroad Safety Act of 1970, as amended, FRA is responsible for regulating all aspects of railroad safety. FRA's safety mission includes 1) establishing federal rail safety rules and standards; 2) inspecting railroads' track, signals, equipment, and operating practices; and 3) enforcing federal safety rules and standards. The railroads are primarily responsible for inspecting their own equipment and facilities to ensure compliance with federal safety regulations while FRA monitors the railroads' actions.

We have issued many reports identifying weaknesses in FRA's railroad safety inspection and enforcement programs. For example, in July 1990, we reported on FRA's progress in meeting the requirements, set forth in the Federal Railroad Safety Authorization Act of 1980, that FRA submit to

the Congress a system safety plan to carry out railroad safety laws.⁴ The act directed FRA to (1) develop an inspection methodology that considered carriers' safety records, the location of population centers, and the volume and type of traffic using the track and (2) give priority to inspections of track and equipment used to transport passengers and hazardous materials. The House report accompanying the 1980 act stated that FRA should target safety inspections to high-risk track—track with a high incidence of accidents and injuries, located in populous urban areas, carrying passengers, or transporting hazardous materials. In our 1990 report, we found that the inspection plan that FRA had developed did not include data on passenger and hazardous materials routes—two important risk factors. In an earlier report, issued in April 1989, we noted problems with another risk factor—accidents and injuries.⁵ We found that the railroads had substantially underreported⁶ and inaccurately reported the number of accidents and injuries and their associated costs. As a result, FRA could not integrate inspection, accident, and injury data in its inspection plan to target high-risk locations.

In our 1994 report on FRA's track safety inspection program, we found that FRA had improved its track inspection program and that its strategy for correcting the weaknesses we had previously identified was sound. However, we pointed out that FRA still faced challenges stemming from these weaknesses. First, it had not obtained and incorporated into its inspection plan site-specific data on two critical risk factors—the volume of passenger and hazardous materials traffic. Second, it had not improved the reliability of another critical risk factor—the rail carriers' reporting of accidents and injuries nationwide. FRA published a notice of proposed rulemaking in August 1994 on methods to improve rail carriers' reporting. In February 1996, FRA reported that it intended to issue a final rule in June 1996.

To overcome these problems, we recommended that FRA focus on improving and gathering reliable data to establish rail safety goals. We specifically recommended that FRA establish a pilot program in one FRA region to gather data on the volume of passenger and hazardous materials traffic and correct the deficiencies in its accident/injury database. We recommended a pilot program in one FRA region, rather than a nationwide program, because FRA had expressed concern that a nationwide program would be too expensive. The House and Senate Appropriations

⁴Railroad Safety: New Approach Needed for Effective FRA Safety Inspection Program (GAO/RCED-90-194, July 31, 1990).

⁵Railroad Safety: FRA Needs to Correct Deficiencies in Reporting Injuries and Accidents (GAO/RCED-89-109, Apr. 5, 1989).

Conference Committee echoed our concerns in its fiscal year 1995 report and directed the agency to report to the Committees by March 1995 on how it intended to implement our recommendations. In its August 1995 response to the Committees, FRA indicated that the pilot program was not necessary, but it was taking actions to correct the deficiencies in the railroad accident/injury database. For example, FRA had allowed the railroads to update the database using magnetic media and audited the reporting procedures of all the large railroads.

We also identified in our 1994 report an emerging traffic safety problem—the industry's excessive labeling of track as exempt from federal safety standards. Since 1982, federal track safety standards have not applied to about 12,000 miles of track designated by the industry as "excepted;" travel on such track is limited to 10 miles per hour, no passenger service is allowed, and no train may carry more than five cars containing hazardous materials. We found in our 1994 report that the number of accidents on excepted track had increased from 22 in 1988 to 65 in 1992—a 195-percent increase. Similarly, the number of track defects cited in FRA inspections increased from 3,229 in 1988 to 6,057 in 1992. However, with few exceptions, FRA cannot compel railroads to correct these defects. According to FRA, the railroads have applied the excepted track provision far more extensively than envisioned. For example, railroads have transported hazardous materials through residential areas on excepted track or intentionally designated track as excepted to avoid having to comply with minimum safety regulations. In November 1992, FRA announced a review of the excepted track provision with the intent of making changes. FRA viewed the regulations as inadequate because its inspectors could not write violations for excepted track and railroads were not required to correct defects on excepted track.

FRA stated that changes to the excepted track provision would occur as part of its rulemaking revising all track safety standards. In February 1996, FRA reported that the task of revising track safety regulations would be taken up by FRA's Railroad Safety Advisory Committee. FRA noted that this committee would begin its work in April 1996 but did not specify a date for completing the final rulemaking. The Congress had originally directed FRA to complete its rulemaking revising track safety standards by September 1994.

Improving Passenger Car Safety

In September 1993, we issued a report examining whether Amtrak had effective procedures for inspecting, repairing, and maintaining its

passenger cars to ensure their safe operation and whether FRA had provided adequate oversight to ensure the safety of passenger cars.⁶ We found that Amtrak had not consistently implemented its inspection and preventive maintenance programs and did not have clear criteria for determining when a passenger car should be removed from service for safety reasons. In addition, we found that Amtrak had disregarded some standards when parts were not available or there was insufficient time for repairs. For example, we observed that cars were routinely released for service without emergency equipment, such as fire extinguishers. As we recommended, Amtrak established a safety standard that identified a minimum threshold below which a passenger car may not be operated, and it implemented procedures to ensure that a car will not be operated unless it meets this safety standard.

In reviewing FRA's oversight of passenger car safety (for both Amtrak and commuter rail), we found that FRA had established few applicable regulations. As a result, its inspectors provided little oversight in this important safety area. For more than 20 years, the National Transportation Safety Board has recommended on numerous occasions that FRA expand its regulations for passenger cars, but FRA has not done so. As far back as 1984, FRA told the Congress that it planned to study the need for standards governing the condition of safety-critical passenger car components.

Between 1990 and 1994, train accidents on passenger rail lines ranged between 127 and 179 accidents each year (see app. 2). In our 1993 report, we maintained that FRA's approach to overseeing passenger car safety was not adequate to ensure the safety of the over 330 million passengers who ride commuter railroads annually. We recommended that the Secretary of Transportation direct the FRA Administrator to study the need for establishing minimum criteria for the condition of safety-critical components on passenger cars. We noted that the Secretary should direct the FRA Administrator to establish any regulations for passenger car components that the study shows to be advisable, taking into account any internal safety standards developed by Amtrak or others that pertain to passenger car components. However, FRA officials told us at the time that the agency could not initiate the study because of limited resources.

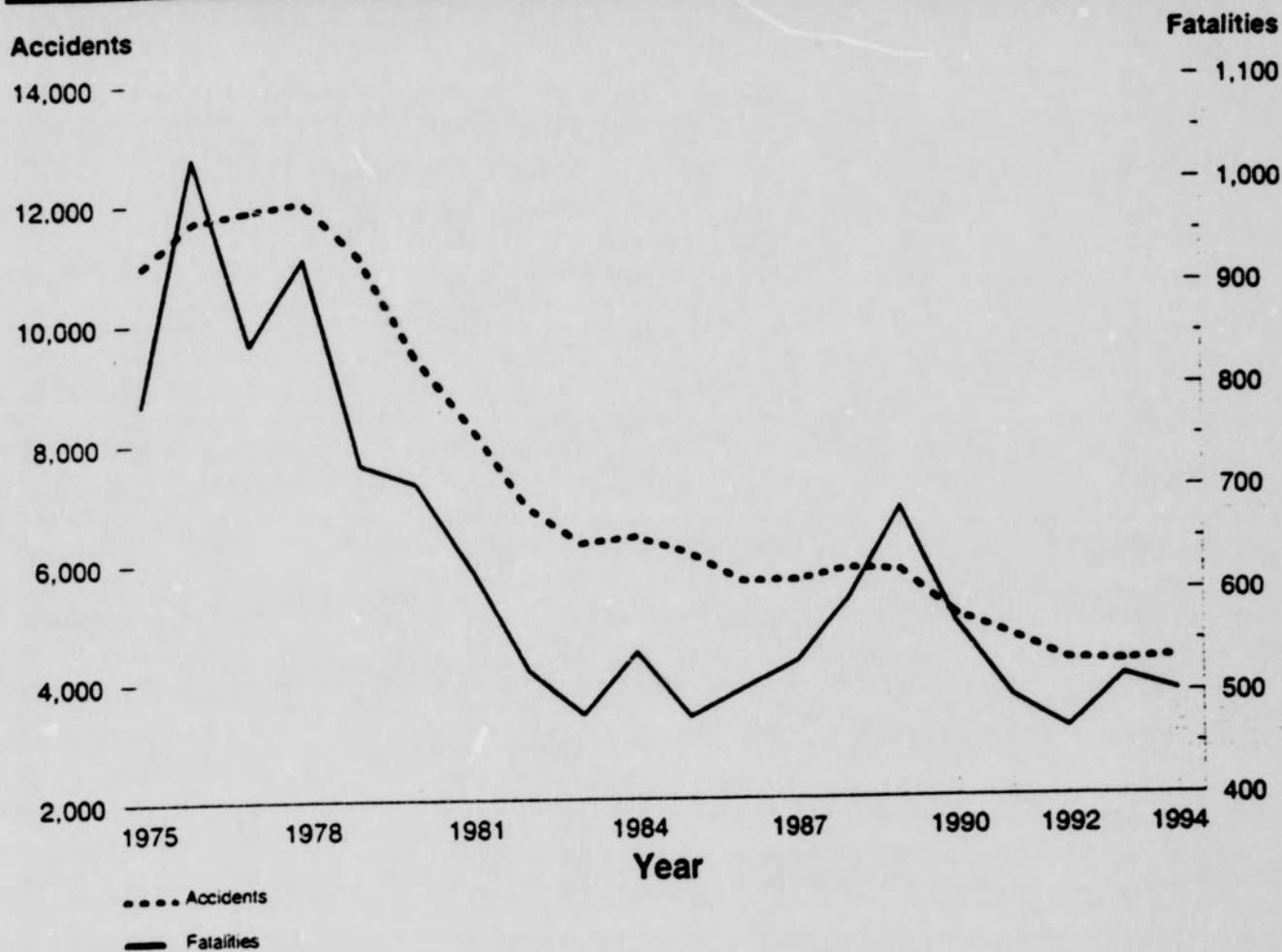
Subsequently, the Swift Rail Development Act of 1994 required FRA to issue initial passenger safety standards within 3 years of the act's

⁶Amtrak Safety: Amtrak Should Implement Minimum Safety Standards for Passenger Cars (GAO/RCED-93-136, Sept. 22, 1993).

enactment and complete standards within 5 years. In 1995, FRA referred the issue to its Passenger Equipment Safety Working Group consisting of representatives from passenger railroads, operating employee organizations, mechanical employee organizations, and rail passengers. The working group held its first meeting in June 1995. An advance notice of proposed rulemaking is expected in early 1996, and final regulations are to be issued in November 1999. Given the recent rail accidents, FRA could consider developing standards for such safety-critical components as emergency windows and doors and safety belts as well as the overall crashworthiness of passenger cars.

In conclusion, safety at highway-railroad crossings, the adequacy of track safety inspections and enforcement, and the safety of passenger cars operated by commuter railroads and Amtrak will remain important issues for Congress, FRA, the states, and the industry to address as the nation continues its efforts to prevent rail-related accidents and fatalities.

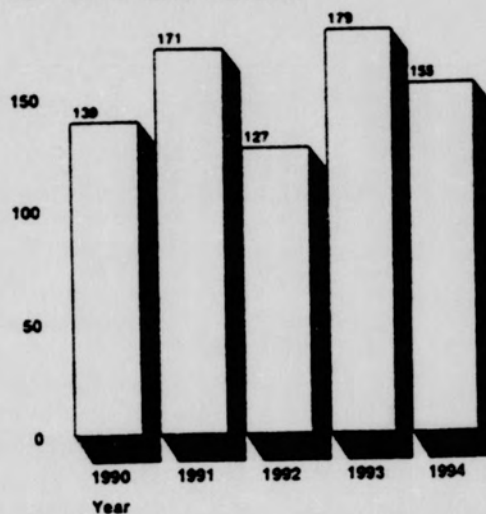
Accidents and Fatalities at Public Railroad Crossings 1975-94



Source: GAO's analysis of data from FRA.

Passenger Rail Accidents 1990-94

200 Total Number of Accidents



Note 1: Analysis includes data from Amtrak, Long Island Rail Road, Metra (Chicago), Metro-North (New York), Metrolink (Los Angeles), New Jersey Transit, Northern Indiana, Port Authority Trans-Hudson (New York), Southeastern Pennsylvania Transportation Authority and Tri-Rail (Florida).

Note 2: Data for Amtrak include statistics from several commuter railroads, including Caltrain (California), Conn DOT, Maryland Area Rail Commuter (excluding those operated by CSX), Massachusetts Bay Transportation Authority, and Virginia Railway Express.

Source: GAO's analysis of data from FRA.

Related GAO Products

Railroad Safety: FRA Needs to Correct Deficiencies in Reporting Injuries and Accidents (GAO/RCED-89-109, Apr. 5, 1989).

Railroad Safety: DOT Should Better Manage Its Hazardous Materials Inspection Program (GAO/RCED-90-43, Nov. 17, 1989).

Railroad Safety: More FRA Oversight Needed to Ensure Rail Safety in Region 2 (GAO/RCED-90-140, Apr. 27, 1990).

Railroad Safety: New Approach Needed for Effective FRA Safety Inspection Program (GAO/RCED-90-194, July 31, 1990).

Financial Management: Internal Control Weaknesses in FRA's Civil Penalty Program (GAO/RCED-91-47, Dec. 26, 1990).

Railroad Safety: Weaknesses Exist in FRA's Enforcement Program (GAO/RCED-91-72, Mar. 22, 1991).

Railroad Safety: Weaknesses in FRA's Safety Program (GAO/T-RCED-91-32, Apr. 11, 1991).

Hazardous Materials: Chemical Spill in the Sacramento River (GAO/T-RCED-91-87, July 31, 1991).

Railroad Competitiveness: Federal Laws and Policies Affect Railroad Competitiveness (GAO/RCED-92-16, Nov. 5, 1991).

Railroad Safety: Accident Trends and FRA Safety Programs (GAO/T-RCED-92-23, Jan. 13, 1992).

Railroad Safety: Engineer Work Shift Length and Schedule Variability (GAO/RCED-92-133, Apr. 20, 1992).

Amtrak Training: Improvements Needed for Employees Who Inspect and Maintain Rail Equipment (GAO/RCED-93-68, Dec. 8, 1992).

Amtrak Safety: Amtrak Should Implement Minimum Safety Standards for Passenger Cars (GAO/RCED-93-196, Sep. 22, 1993).

Railroad Safety: Continued Emphasis Needed for an Effective Track Safety Inspection Program (GAO/RCED-94-56, Apr. 22, 1994).

Amtrak's Northeast Corridor: Information on the Status and Cost of
Needed Improvements (GAO/RCED-95-151BR, Apr. 13, 1995).

Railroad Safety: Status of Efforts to Improve Railroad Crossing Safety
(GAO/RCED-95-191, Aug. 3, 1995).

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Attachment D



U.S. Department
of Transportation
Federal Railroad
Administration

Administrator

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

JAN 21 1998

The Honorable Dennis J. Kucinich
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Kucinich:

Thank you for your letters on behalf of one of your constituents concerning radioactive materials being shipped on Consolidated Rail Corporation (Conrail) trains near his home on Preston Avenue in Cleveland, Ohio. Your office asked us to identify the radioactive material (including radioactivity), the origin and destination of the shipments, the number of times this material was shipped over the Conrail line through Ohio's 10th District, the amount of radioactive materials transported, and the number of railcars utilized during these shipments.

Our investigation disclosed that the material is under the name "radioactive material, low specific activity, n.o.s." Low specific activity means that the material has very low levels of radioactivity. The actual level of radioactivity for these shipments is 1.85 times 10 to the ninth power Becquerels. This level of radioactivity is generally emitted from natural ore materials which are mined from the earth. According to the shipper's material fact sheet, these shipments pose no risk to persons handling or transporting the packagings, or the general public.

These shipments originate in Boyertown, Pennsylvania and are transported by highway to Scranton, Pennsylvania. From Scranton, the shipments are transported by rail to Cisco, Utah and then by highway to the final destination in Blanding, Utah.

About 40,000 pounds of radioactive material is placed in each intermodal box. Anywhere from two to ten intermodal boxes are loaded on individual railcars. From October 1997 until January 16, 1998, 824 shipments (i.e., intermodal boxes) were transported on approximately 200 railcars that passed through Cleveland, Ohio. The shipper informs us that the final shipments are expected to leave Boyertown on January 30.

I appreciate your interest in railroad safety and look forward to working with you on other transportation issues of importance to you and your constituents.

Sincerely,

Jolene M. Molitoris

Jolene M. Molitoris
Administrator

Attachment E

Questions and Answers: High-Level Nuclear Waste Shipments

What is in a high-level nuclear waste cask?

Irradiated fuel from commercial nuclear utility operation of nuclear power reactors. Three years inside the reactor core makes the fuel over a million times more radioactive than unused fuel. The total—the Department of Energy projects 85,000 metric tonnes by the time the existing reactors close—contains 95% of all of the radioactivity of the Nuclear Age. The shipping program and the Bills in Congress that would authorize it, will transfer the liability for this waste from the nuclear utilities to the US taxpayer. It will take thirty years, or more, of continuous shipping to move the fuel from reactor sites to Nevada. The first year and each year after, more irradiated fuel will move than all the shipments of this material to date. Today, only about 35% of the projected 85,000 metric tonnes has been generated.

How dangerous is this stuff?

Unshielded, irradiated reactor fuel that has been stored for 10 years will deliver a lethal dose to anyone within a meter in less than three minutes. Radiation, even lethal levels, cannot be detected by human senses. Splitting uranium atoms releases heat that is used to make electricity, it also increases radioactivity. The broken pieces of uranium atoms are lighter elements called fission products. These include strontium-90, cobalt-60 and cesium-137, all sources of intensely penetrating radiation. Cesium is chemically similar to potassium. If released to the environment, it concentrates in the muscle and gonads in the body, as well as in cow's and mother's milk. Cesium can be concentrated by the food chain. Humans, being at the top of the food chain, may receive an ingested dose of cesium thousands of times higher than the concentration in the immediate environment. The intense gamma radiation of fission products is an immediate danger to those exposed in an accident. A large rail cask holds as much cesium as would be released by 200 Hiroshima bombs. The total shipping program will move almost 2 million times more cesium than was released at Hiroshima. Cesium is just a fraction of the radioactivity in the shipping casks and in the bomb that destroyed Hiroshima August 6, 1945.

What about long term impacts?

Each cask contains radioactive elements like plutonium that will persist if released to the environment for hundreds of thousands of years. An average rail cask will carry about 174 pounds of plutonium. A total of almost 2 million pounds of plutonium will be mobilized on the roads and rails nationally. Plutonium is well-known as a carcinogen. For reference, a single pound of plutonium could cause cancer in every person alive today, if it were divided and deposited in the lung tissue. If instead, all 2 million pounds of plutonium were released to the environment, (lowering the dose), there would be at least 1,500,000 fatal cancers from plutonium 239 alone. There would also be many non-fatal cancers as well as a host of non-cancer effects, genetic effects, sterility and other human suffering. Other species would also be affected. The total plutonium 239 in the shipping campaign is 128 times more than the total released to the environment by below-ground weapons tests, worldwide.

Is there radiation risk, even if there is no accident in my community?

Yes. Federal regulation allows radiation to penetrate the shielding of the transport cask at a rate up to 10 millirems an hour measured 2 meters from the cask. This would be comparable to a chest x-ray for each hour that a worker or a member of the public was close to the cask. Traffic jams or stops for fueling are situations that could lead to repeated or ongoing radiation exposures for individuals living and working along transport routes. Cumulative low-dose radiation exposure impose a measurable impact in a population. Health studies have shown that this type of exposure causes more cancer per unit of dose than acute exposures in the higher dose range. If a person is exposed to 10 millirems, once a year, the Nuclear Regulatory Commission assigns a 1 in 2850 chance of fatal cancer from that lifetime exposure.

What is "Multi-Purpose Canister Base Case?"

A scenario defined by the Department of Energy for projections about the shipping campaign. It assumes the use of the largest containers that are possible at each site (rail preferred over truck). The Multi-Purpose Canister (MPC) would seal huge amounts of waste—the large one holds 21,000 pounds—in a container at the reactor site. This canister is then to be put in a transport overpack for shipping. The large rail MPC holds over 20 times the radioactive waste as the old truck casks. The MPC has not yet been built, tested or licensed. To date, no transport cask has had full-scale physical testing. The Department of Energy has instead relied on computer simulations. The scenario also assumes no new reactors. Current reactor operations are projected to end in 2030.

What about the Bottom Line—the Economic Factors?

Part of routine transport for this dangerous material is local preparedness. Local emergency responders will in nearly all cases be the first to assess an accident scene. The Nuclear Regulatory Commission (NRC) estimated in 1981 (NUREG/CR-2225) that the price tag for a fully prepared state emergency response system would cost \$5.6 million annually (1981 dollars). This does not include infrastructure improvements and maintenance that are likely associated with state efforts to designate alternate routes. Congress is making no direct effort to ensure any level of funding will be available. Other economic impacts include cost of unrecovered health impacts, negative effects on business, tourism, property value and property marketability, and unclear liability for these effects.

NRC also made a 1980 estimate of the costs associated with an accident. Even a small fraction of the radioactivity in a single shipping cask were released in an urban area, the clean up costs would be on the order of \$2 billion dollars. "Clean up" means transferring the radioactivity somewhere else. Though it started as high-level waste, clean-up from contamination would currently be designated "low-level" waste. It is not clear who would pay for the clean-up or disposal from a high-level civilian waste transport accident. In most cases "clean-up" would scar the site or alternately, quite a bit of radioactivity may be left behind as a 'sacrifice zone.'

Factoids:

Total "Base Case" projected rail casks: 9,421; total truck casks: 6,217. 15,638 casks total.

If Congress lifts the cap on how much waste could go to an "interim storage site" and if instead of the "MPC Base-Case" scenario, only trucks are used, there would be over 60,000 shipments nationwide.

An average rail car carries 174 pounds of plutonium. A truck cask carries 38 pounds of plutonium.

The shipment of 85,000 MTU of high-level waste will also move 1,800,000 pounds of plutonium.

The plutonium 239 alone in these shipments could generate over 1,500,000 cancers if released. This amount of plutonium 239 is more than 120 times greater than the total released to date by below-ground nuclear weapons testing, worldwide.

The total of 85,000 metric tonnes that is to be shipped contains nearly 2 million times more cesium than the Hiroshima bomb.

10/17/95

return to Don't Waste America page

Attachment F

July 1997

RAIL TRANSPORTATION

Federal Railroad Administration's New Approach to Railroad Safety



Resources, Community, and
Economic Development Division

B-275984

July 23, 1997

The Honorable James L. Oberstar
Ranking Democratic Member
Committee on Transportation and
Infrastructure

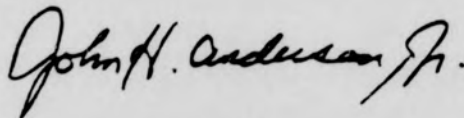
The Honorable Robert E. Wise, Jr.
Ranking Democratic Member
Subcommittee on Railroads
Committee on Transportation and
Infrastructure

The Honorable Bruce F. Vento
House of Representatives

In response to your request, this report provides information on operational and safety trends in the railroad industry, and describes how the Federal Railroad Administration (FRA) has responded to these trends by developing a new partnering approach for improving safety on the nation's rail lines.

As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies of this report to interested congressional committees, the Secretary of Transportation, and the Administrator of FRA. We will also make copies available to others upon request.

If you or your staffs have any questions, I can be reached at (202) 512-2834. Major contributors to this report are listed in appendix V.



John H. Anderson, Jr.
Director, Transportation Issues

Executive Summary

Purpose

In 1980, the Congress passed the Staggers Rail Act, which fostered substantial changes in the railroad industry. By 1995, fewer large freight railroads accounted for most of the industry's revenue and train miles. At the same time, these freight railroads substantially reduced their workforce and track networks. In response, the Congress and railroad labor have raised concerns that these changes in the industry could compromise safety.

The Ranking Democratic Member of the House Committee on Transportation and Infrastructure, the Ranking Democratic Member of that Committee's Subcommittee on Railroads, and Representative Bruce F. Vento asked GAO to describe (1) relationships that existed between operational and safety trends in the railroad industry from 1976 to 1995 and (2) the Federal Railroad Administration's (FRA) approach to improving safety on the nation's rail system. GAO was not able to identify any direct relationships between operational and safety trends because of limitations in the data that were available for the 1976 to 1995 period. Therefore, this report provides information on safety trends for the entire railroad industry and describes how FRA has responded to both operational and safety trends to develop a new partnering approach to improving safety on the nation's rail lines. In addition, chapter 1 provides information on operational trends in the freight industry.

Background

In 1995, the railroad industry consisted of Amtrak (the nation's largest passenger railroad), 14 large freight railroads—collectively known as class I railroads—as well as over 600 regional and smaller railroads. The industry had changed significantly since the Staggers Rail Act made it federal policy that railroads would rely, where possible, on competition and the demand for services, rather than on regulation to establish reasonable rates. Prior to the act, several of the largest freight railroads were earning a negative rate of return on investment and at least three were bankrupt. The deregulation contributed to changes in the composition and operation of the rail industry. From 1976 through 1995, the nation's largest freight railroads cut costs; increased the tonnage each train carried and the distance this tonnage was carried; downsized their workforce; and eliminated, sold, or abandoned thousands of miles of unprofitable or little-used track.

Since 1970, FRA has been responsible for regulating all aspects of passenger and freight railroad safety under the Federal Railroad Safety Act.

of 1970, as amended.¹ In that capacity, FRA prescribes regulations and issues orders that relate to railroad equipment, track, signal systems, operating practices, and those aspects of railroad workplace safety that pertain primarily to the movement of trains. The Occupational Health and Safety Administration (OSHA) regulates those aspects of railroad workplace safety that are typical of any industrial workplace. FRA also enforces the Hazardous Materials Transportation Act as it pertains to the transportation of hazardous materials by rail.

Results in Brief

Railroad safety has improved significantly over the past 20 years. Reported accident and injury rates are down 70 and 74 percent, respectively, from 1976 levels. Railroad industry representatives attribute the reductions to improvements made to the railroads' plant and equipment. However, labor representatives expressed concern that, despite this progress, heavier loads and increased traffic may adversely affect rail safety in the future. Rail safety data indicate that the progress in reducing accidents has slowed in recent years. While preliminary data for 1996 show improvements in key safety statistics, about 1,000 people die each year as a result of grade-crossing accidents and trespassing, 11,000 railroad employees are injured, and thousands of people are evacuated from their homes as a result of the hazardous materials that are released during train accidents.

FRA instituted an important shift in its safety program in 1993 to address safety problems in the rail industry. Rather than using violations and civil penalties as the primary means to obtain compliance with railroad safety regulations, FRA has emphasized cooperative partnerships with other federal agencies, railroad management, labor unions, and the states. The partnering efforts generally focus on the nation's larger railroads and have resulted in FRA inspectors' conducting fewer site-specific inspections of the railroad industry overall. While the preliminary data for 1996 show improvements, it is too early to determine if FRA's new approach will sustain a long-term decline in accidents and fatalities. In addition, FRA has allocated fewer resources to responding to concerns about the level of workplace injuries for railroad employees and railroad bridge safety.

¹In 1994, the Federal Railroad Safety Act of 1970, and other federal railroad safety statutes, were repealed, codified, and reenacted as chapters 201-213 of title 49, United States Code.

Principal Findings

Safety on the Nation's Railroads Has Generally Improved

Safety on the nation's railroads has improved since 1976, although the most rapid decrease in accidents occurred before 1987. FRA and industry officials attribute these improvements to advancements in technology, increased investment focused on a downsized infrastructure, and a more scientific approach toward reducing injuries. However, class I freight railroads, which account for most of the industry's revenue and train-miles, are now using fewer people, locomotives, and cars to haul more tonnage over fewer miles of track. Labor officials believe that these changes in operations could lead to more rail collisions and accidents as a result of greater congestion and fewer qualified employees to perform essential maintenance. While current safety trends are positive, it is uncertain how further advancements in technology or reductions in employment will affect safety in the future.

Nonetheless, further improvements in safety are needed, since more than 1,000 people die each year as a result of fatal collisions between cars and trains or as a result of trespassers on railroad property being struck by trains. Hazardous materials releases resulting from train accidents showed no clear trends between 1978 and 1995. About 261,000 people were evacuated across the United States because of rail-related hazardous materials releases occurring over these years. Concerns remain about evacuations because the volume of chemical traffic increased by over one-third from 1976 to 1995.

FRA's New Safety Strategy Involves Partnerships

Beginning in 1993, FRA reassessed its safety program to leverage the agency's resources and established a cooperative approach that focused on results to improve railroad safety. With rail traffic expected to grow through the remainder of the 1990s and beyond, FRA anticipated the need for new approaches to enhance site-specific inspections. As a result, FRA formalized this shift with the establishment of three new initiatives. First, in 1994, FRA took the lead responsibility for coordinating the Department of Transportation's multiagency plans to reduce fatalities at rail-highway crossings. Second, in 1995, FRA formally established the Safety Assurance and Compliance Program through which the agency works cooperatively with railroad labor and management to identify and solve the root causes of systemic problems facing the railroads. Third, in 1996, FRA established the Railroad Safety Advisory Committee to develop recommendations for

the agency's more complex or contentious rulemakings by seeking consensus among the parties affected by the rulemakings.

It is too early to determine if FRA's collaborative efforts will produce a sustained decline in rail accidents and fatalities. FRA credits its grade-crossing plan with contributing to a 19-percent drop in fatalities in 1996. Whether the plan contributed to the decline is uncertain: Past trends indicate that the total number of railroad fatalities declined by 34 percent from 1976 to 1983 (from 1,630 to 1,073) but then fluctuated within a range of 1,036 and 1,324 deaths between 1983 and 1995. FRA has implemented its Safety Assurance and Compliance Program with 33 railroads. This method has improved the safety on many large railroads, but Norfolk Southern Corporation has refused to participate until FRA substantiates safety problems at the railroad. With regards to the Advisory Committee, the FRA Administrator has referred seven major rulemaking tasks to it. While the committee has developed proposed regulations on track safety and radio communications standards, efforts to develop freight power brake regulations have encountered problems in the negotiations among FRA, railroad labor, and railroad management.

To accommodate the new initiatives, FRA has shifted some of its resources away from site-specific inspections, which have historically served as FRA's primary means of ensuring compliance with safety regulations. The 53,113 inspections conducted in 1995 were 23 percent below the 68,715 inspections conducted in 1994. As a result, a greater number of railroads are not receiving inspections, and inspectors are conducting fewer reviews of the railroads' own inspection efforts.

In addition, there are two important areas of railroad safety that FRA's collaborative approach does not systematically address: workplace safety for railroad employees and the structural integrity of railroad bridges. While a 1978 policy statement by FRA provides guidance on which workplace safety issues FRA and OSHA should cover, the two agencies' inspection presence on railroad property varies greatly. FRA routinely inspects the railroads' track, equipment, and operating practices. In contrast, OSHA inspectors visit railroad property only in response to an employee or union complaint about working conditions or when investigating a workplace accident. In January 1997, FRA revised its injury reporting requirements to capture additional information on workplace injuries, including where an injury occurred, what activity was being performed at the time, and what was the probable cause of the injury. According to FRA, the new information will provide better data for future

rulemakings. Because these requirements only recently became effective, FRA has yet to accumulate sufficient data for analysis. Once sufficient data are collected, the agency will be able to determine the causes of the most frequent and serious injuries and focus efforts on corrective actions.

FRA does not have regulations governing the structural integrity of the 100,700 railroad bridges in the nation. Instead, a 1995 Statement of Agency Policy provides guidelines for railroads to use for the formulation of their own bridge management programs. FRA inspectors do not cite specific defects for bridge conditions, nor do they recommend violations, as they do for track, signal, or equipment problems. Instead, FRA inspectors call conditions to the attention of railroad bridge maintenance and engineering officials. According to FRA, inspectors normally use informal procedures to advise railroad personnel of bridge problems. If a bridge condition presents a hazard of death or personal injury, and the bridge owner does not correct the condition, FRA exercises its emergency authority to restrict or prohibit train operation over the bridge. The railroad industry agrees with FRA's policy that regulations are not needed to address issues related to structural conditions of bridges. Railroad labor officials disagree and note that bridge safety is equally as important as track safety, for which FRA has regulations.

Recommendations

GAO recommends that the Secretary of Transportation direct the FRA Administrator to, in cooperation with the industry, where appropriate, (1) analyze injury data collected under the revised reporting requirements to determine the workplace safety issues that lead to the most numerous or the most serious injuries; (2) in areas where efforts to obtain voluntary corrective action do not address the causes of these injuries, consider developing regulations; and (3) use appropriate mechanisms, including the Safety Assurance and Compliance Program, to ensure that a finding of potential structural problems on a bridge is properly addressed by the bridge owner.

Agency Comments and GAO's Response

GAO provided a draft of this report to the Department of Transportation (DOT) for its review and comment. GAO met with departmental officials, including the FRA Administrator, Deputy Administrator and Associate Administrator for Safety. The officials indicated that they agreed with many portions of the draft report's historical perspective but said that the report did not adequately reflect the more recent accomplishments and potential of the Safety Assurance and Compliance Program. The officials

said that this program represents a fundamentally new approach to working with railroads to ensure regulatory compliance and accelerate safety improvements. The officials explained that although old methods of encouraging regulatory compliance contributed to a substantial reduction in railroad accidents between 1978 and 1986, the agency had determined that further progress would require new approaches.

FRA officials maintained that the Safety Assurance and Compliance Program provides the tools to leverage its limited resources while achieving continued safety improvements. The approach was based on President Clinton's directive to federal regulatory agencies that inspection and enforcement programs be designed to achieve results, not punishment. The officials indicated that the program establishes a framework for FRA to work cooperatively with railroad management and labor to identify and solve key safety issues. The officials indicated that while the program provides new tools to further enhance railroad safety, FRA will continue to make full use of all the enforcement options at its disposal as necessary and has begun to focus on enforcement where it is most likely to reduce accidents, injuries, and hazardous materials releases. FRA officials produced statistics that they maintain demonstrate the program's substantial accomplishments during the 3 years since its initial implementation. Finally, while agreeing with two of GAO's three recommendations, FRA commented on GAO's recommendation that the agency consider developing regulations to address the issues that continue to cause the most numerous or serious workplace injuries. FRA officials said that the agency would limit its consideration of regulations to those areas that are related to train operations.

In response to FRA's comments, GAO included additional information on the accomplishments the agency's new rail safety program has achieved by highlighting safety statistics for 1993 through 1996 and providing detailed information on the successes with the Safety Assurance and Compliance Program. GAO also included FRA's performance goals for improving rail safety that illustrate how rail safety has improved since 1993. However, reaching conclusions on FRA's new safety program by isolating safety improvements over the most recent 3-year period ignores past trends in railroad safety. Over the past 20 years, noteworthy reductions in railroad accidents, fatalities, and injuries were often followed by periods in which railroad safety subsequently worsened. As GAO concluded, it is too early to tell if FRA's efforts will sustain improvements in railroad safety over an extended period of time. Finally, GAO disagrees with FRA's contention that the agency should limit its consideration of regulations to those areas that

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are related to train operations. FRA would have matters related to non train operations under the purview of OSHA. But should FRA's analysis of workplace safety data show a preponderance of non-train-related injuries, the agency should not foreclose the need to consider regulations covering such injuries. Additional agency comments are included in chapter 3. FRA officials had additional technical and clarifying comments that GAO incorporated throughout the report, where appropriate.

Attachment G



Environmental Fact Sheet

Environmental Benefits of Proposed Emission Standards for Locomotives

The Environmental Protection Agency (EPA) is proposing emission standards for oxides of nitrogen (NO_x), hydrocarbons (HC), carbon monoxide (CO), particulate matter (PM) and smoke for newly manufactured and remanufactured locomotives and locomotive engines. The proposed standards will achieve approximately a two-third reduction in NO_x emissions and will reduce HC and PM emissions by half.

Overview of Rulemaking

EPA is proposing emission standards for locomotives that will provide significant emission reductions to help states comply with National Ambient Air Quality Standards (NAAQS) for ozone and PM. The proposed rule is expected to be finalized by the end of 1997 and take effect in 2000. Since locomotive emissions have not been regulated before, it was necessary for EPA to create a comprehensive program, including not only emission standards, but also test procedures and a full compliance program. Three separate sets of emission standards are proposed, with applicability of the standards dependent on the date a locomotive is first manufactured. The first set of standards (Tier 0) are proposed to apply to locomotives and locomotive engines originally manufactured from 1973 through 1999, any time they are remanufactured in calendar year 2000 or later. The second and third sets of standards (Tier I and Tier II) will apply to locomotives and locomotive engines originally manufactured on or after January 1, 2000 (Tier II stan-

dards will take effect on January 1, 2005). These locomotives and locomotive engines will also be required to meet the same standards at each subsequent remanufacture. The Agency is also proposing a rigorous emission testing program to make sure that locomotives comply with these standards for the life of the locomotive: -

Health and Environmental Concerns

Most locomotives in the U.S. are powered by diesel engines. Thus locomotives have significant NOx emissions, as well as HC and PM emissions, all of which have significant health and environmental effects. NOx is a major component of smog and acid rain. NOx emissions combine with HC in the atmosphere to form ground-level ozone, the primary constituent of smog. Ozone is a highly reactive pollutant that damages lung tissue, causes congestion, and reduces vital lung capacity, in addition to damaging vegetation. Acid rain damages buildings and crops, and degrades lakes and streams. NOx also contributes to the formation of secondary PM. PM causes headaches, eye and nasal irritation, chest pain, and lung inflammation. Environmental impacts of PM include reduced visibility and deterioration of buildings.

Locomotive Emission Inventories

Locomotive NOx emissions are estimated to represent about 4.7 percent of NOx emissions from all mobile and stationary sources in the U.S. Locomotive PM and HC emissions are both estimated to represent less than one-quarter of one percent of total national emissions. Thus, the focus of the proposed regulation is on NOx emission reductions. It should be noted that in some urban areas that have very high rail traffic, such as Chicago or El Paso, NOx emissions can represent nearly one-tenth of the total NOx inventory.

Current National Locomotive Emission Inventories

	Emissions, Per Year	Percent of Total Inventory (All Sources)
NOx	980,000	4.7
PM-10	24,000	0.1
HC	38,000	0.2

What Are the Environmental Benefits?

When fully phased-in, the proposed emission standards will reduce NOx emissions from locomotives by nearly two-thirds, and HC and PM emissions by half. However, they will also achieve very significant emission reductions in the near term. These reductions, which are shown below, are being heavily relied upon by those areas that have very high rail traffic, as well as Southern California, which has moderately high rail traffic and very significant air quality needs. To put these national NOx emission reductions into context, the 348,000 ton per year reduction expected in 2005 would be equivalent to removing about 20 million passenger cars from the road. In addition, NOx emission reductions will also lead to reductions in ambient concentrations of secondary PM. It has been estimated that about 4 tons of nitrate particulate is formed from every 100 tons of NOx emitted. Thus, the secondary PM reduction expected in 2005 is about 14,000 tons per year.

Projected National Emission Reductions (Metric Tons Per Year)

Year	2005	2010	2015	2020
NOx	348,000	382,000	417,000	451,000
PM	300	1,700	3,200	4,700
HC	400	2,500	4,500	6,600
Secondary PM*	14,000	15,000	17,000	18,000

* Assumes 4 tons of nitrate particulate formed for each 100 tons of NOx emitted.

Reductions from Existing Locomotive Fleet

The fact that so much of the NOx emission reduction will come early in the program is due to the Tier 0 standards that apply to existing locomotives when they are remanufactured. These standards are a unique feature of this proposed regulation, and would represent the first time that EPA has regulated the remanufacturing of an existing fleet on such a large scale. Such regulation of the remanufacturing process is critical because locomotives are generally remanufactured five to ten times during their total service lives (typically 40 years or more). Standards that would only apply to locomotives originally manufactured after the effective date of the rule would not achieve significant emissions reductions until those future locomotives replaced a significant number locomotives in the existing fleet. For the first 13 years of the program, the majority of projected NOx emission reductions will be the result of the Tier 0 emission standards that apply to existing locomotives.

Projected NOx Emission Reductions From Locomotives Manufactured Before and After January 1, 2000 (Metric Tons Per Year)

Year	2005	2010	2015	2020
Tier 0 (Pre-2000 Locomotives)	275,000	234,000	194,000	153,000
Tier I & II (Later Locomotives)	73,000	148,000	223,000	298,000

For More Information

Information on the proposed rule is available electronically via the EPA Internet server via the dial-up modem on the Technology Transfer Network (TTN), an electronic bulletin board system (BBS).

World Wide Web: <http://www.epa.gov/OMSWWW>

TTN BBS: 919-541-5384 (1200-1440 bps, no parity, 8 data bits, 1 stop bit); voice helpline 919-541-5384.

For further information on the proposed rule, please write to:

U.S. Environmental Protection Agency
Engine Programs and Compliance Division
2565 Plymouth Road
Ann Arbor, MI 48105

or call: (313) 668-4333.

Attachment H

**STATEMENT TO THE FEDERAL RAILROAD ADMINISTRATION
SEPTEMBER 21, 1997**

**BY:
WESTERN-ELMWOOD-BEREA CORPORATION (WEBCO)
Anita R. Brindza, Executive Director**

The Western-Elmwood-Berea Corporation (WEBCO) is a twenty-three year old industrial-based not-for-profit economic development corporation primarily serving the manufacturing and service base on the west side of Cleveland in the Berea Road/West 117th Street area. The forty member group focuses on industrial retention and growth through strategies based in investment, vision, planning, cohesion and collaboration.

The WEBCO membership is opposed to any decision by the Surface Transportation Board that will divert freight traffic now being served by CONRAIL on the line that runs through the heart of the west side manufacturing district to the area of the airport and city of Berea. WEBCO does not support putting additional freight on the Westshore line that runs through the heart of residential neighborhoods in Cleveland and the west suburbs.

Receipt of raw materials and shipping of finished products by WEBCO members and other industrial plants is now virtually *"invisible"* to the residential population of Cleveland and its suburbs due to the availability of below grade or above grade track service that CONRAIL provides. Most residents remain unaware of the large machinery, paper products, chemicals, steel, automotive components and other raw materials and finished products that are shipped weekly in and out of the west side via rail.

If companies were forced into making a decision to only ship via truck, surface traffic would quadruple. For every rail car that now is utilized, it would take three to four tractor trailers to service the company's needs. Quadrupling truck traffic exponentially increases the likelihood of accidents throughout our area.

In addition to safety issues, it is critical to note that many of the WEBCO member companies have been in business more than 50 years and employ hundreds of Cleveland and Lakewood residents in good paying positions with full benefits. At a time when companies are attempting to compete in a global economy, forcing manufacturers to increase costs through higher shipping expenses and perhaps longer shipping times only defeats our ability to remain competitive in the marketplace. When operating costs soar, businesses close, residents are laid-off and tax dollars are lost.

STB

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January 13, 1998

Via Hand Delivery

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

I

FD 33388



Re: Finance Docket No. ~~32760~~ *Motion for Leave to File Supplement to Comments and Requests for Conditions.*

Dear Secretary Williams:

Please find enclosed for filing in the above-referenced proceeding an original and twenty-five (25) copies of the Motion for Leave to File Supplement to Comments and requests for Conditions, submitted on behalf of The National Industrial Transportation League.

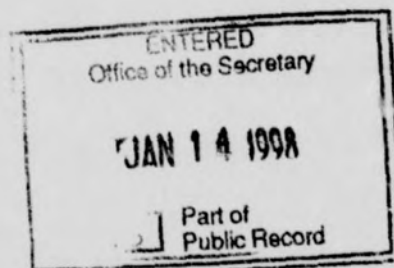
Respectfully submitted,

Nicholas J. DiMichael ^{SA}
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Attorneys for The National Industrial
Transportation League

ENCLOSURES

0124-532

cc: All Parties of Record



185193

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

**MOTION FOR LEAVE TO FILE
SUPPLEMENT TO COMMENTS AND REQUEST FOR CONDITIONS**

submitted on behalf of

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

The National Industrial Transportation League ("League") respectfully requests leave to file the attached Supplement to its Comments and Request for Conditions filed in this proceeding on October 21, 1997. On December 12, 1997, the League entered into an Agreement with the Norfolk Southern Corporation ("NS") and the CSX Corporation ("CSX") regarding a number of matters that the League had raised in its October 21 Comments and Request for Conditions. That Agreement was submitted to the Board by NS and CSX on December 15, 1997.

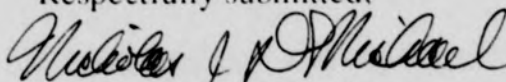
Among other things, the December 12 Agreement obligates the League to file a statement with the Surface Transportation Board withdrawing its request for conditions and supporting the transaction in all respects other than with respect to matters directly related to conditions requested by the League at page 6, Section III of its October 21, 1997 Comments and Requests for Conditions. Thus, this

Supplement is filed to fulfill an obligation of the December 12 Agreement; and to specify those parts of its Comments and Request for Conditions that are being withdrawn, and those parts that the League desires the Board still to consider..

In addition, since the December 12 Agreement seeks Board approval of a number of its terms, the League desires to explain to the Board the process by which the League entered into this Agreement, and to present its views as to why the December 12 Agreement is in the public interest.

The League in the attached Supplement strictly limits its discussion to the December 12 Agreement. No party will be prejudiced by the filing of this Supplement, and the League believes that the Board's consideration of this matter will be assisted by this discussion. Therefore, the League respectfully requests leave to file the attached Supplement to its October 21, 1997 Comments and Request for Conditions.

Respectfully submitted,



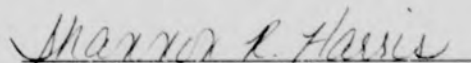
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*Attorneys for The National Industrial
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January 13, 1998

Certificate of Service

I hereby certify that I have on this 13th day of January 1998 served a copy of the foregoing Motion for Leave to File Supplement to Comments and Request for Conditions on all parties of record, in accordance with the Rules of Practice.



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Post Office Box 730
Susanville, CA 96130

STB

FD

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185339

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

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

January 22, 1998

VIA HAND DELIVERY

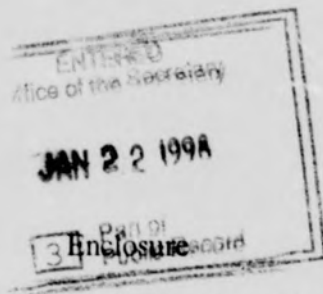
Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., Seventh Floor
Washington, DC 20423-0001

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

Dear Secretary Williams:

Enclosed are the original and 25 copies of the "Notice of Withdrawal of Counsel for Atlantic City Electric Company" for use in the above-referenced proceeding. Also enclosed is a 3/5" diskette containing the documentation in WordPerfect format.

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



Very truly yours,

Michael F. McBride

Michael F. McBride
Brenda Durham

Attorneys for Atlantic City Electric Company

cc: All Parties of Record

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388



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

**NOTICE OF WITHDRAWAL OF
ATLANTIC CITY ELECTRIC COMPANY**

Atlantic City Electric Company hereby withdraws as Party of Record in this proceeding. We are also hereby withdrawing our appearance as counsel for this party.

Respectfully submitted,

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

Date: January 22, 1998

Attorneys for Atlantic City Electric Company

¹ In order to avoid confusion with earlier pleadings labeled "ACE, et al. -1 through -6 and -8 through -20," we have numbered -7 and this pleading in sequence, even though submitted only on behalf of Atlantic City Electric Company.

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1-23-98

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NEFCO

NORTHEAST OHIO FOUR COUNTY REGIONAL PLANNING & DEVELOPMENT ORGANIZATION

969 Copley Road, Akron, Ohio 44320-2992

(330) 836-5731 • Fax (330) 836-7703

Gayle Jackson, Chair

Joseph Hadley, Jr., Executive Director

185343

January 22, 1998

VIA HAND DELIVERY

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
Case Control Unit
ATTN: Finance Docket No. 33388
1925 K Street, N.W., Room 715
Washington, D.C. 20006



ENTERED
Office of the Secretary

JAN 23 1998

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

Part of
Public Record

Dear Secretary Williams:

Please find enclosed for filing in the above-captioned docket the original and twenty-five (25) copies of a Petition to File Supplemental Comments and Supplemental Comments. Also enclosed are a 3.5-inch disk containing the text of these documents in WordPerfect 6.1 format and certificates of service.

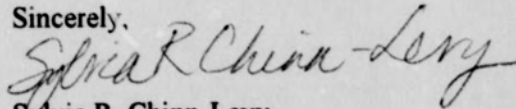
This filing is made by the Northeast Ohio Four County Regional Planning and Development Organization (NEFCO) as a participant of record on behalf of METRO Regional Transit Authority (METRO). The intent of the petition and supplemental comments is to clarify misleading statements and characterizations included in the Applicants' Rebuttal. The timing of the receipt of the Applicants' Rebuttal did not allow NEFCO to submit this filing sooner. NEFCO's governing board has established a procedure for the review and approval of comments to be filed with the Surface Transportation Board. The Applicants' Rebuttal was not received in time to allow a thorough review, to prepare supplemental comments, and to gain approval for submission by NEFCO's governing board at its monthly meeting in mid-December. All entities involved in this filing have worked in earnest to submit the petition and supplemental comments immediately after their approval at the NEFCO Board's January meeting, which was held on January 21, 1998.

NEFCO has filed on behalf of METRO as a regional council representing Portage, Stark, Summit, and Wayne counties and their local governments in northeast Ohio. NEFCO assists its members and local communities by serving as a forum for regional economic and environmental issues, such as the creation of a commuter rail system, that have extensive benefits to the four-county area.

Honorable Vernon A. Williams, Secretary
January 22, 1998
Page 2

Copies of MRTA-3 and MRTA-4 were served via hand delivery on the Honorable Jacob Leventhal and counsel for Applicants, and by first-class mail, postage prepaid, on all parties of record, the U.S. Secretary of Transportation, and the U.S. Attorney General. If you have any questions please contact me at (330) 836-5731. Thank you.

Sincerely,



Sylvia R. Chinn-Levy
Economic Development Planner

Enclosures

pc: Hon. Jacob Leventhal
Counsel for Applicants
All Parties of Record
U.S. Secretary of Transportation
U.S. Attorney General

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 LEASE/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

NORTHEAST OHIO FOUR COUNTY REGIONAL PLANNING AND DEVELOPMENT
ORGANIZATION

on behalf of

METRO REGIONAL TRANSIT AUTHORITY

**PETITION TO FILE SUPPLEMENTAL COMMENTS
AND SUPPLEMENTAL COMMENTS**

Sylvia Chinn-Levy
Economic Development Planner and Intergovernmental
Review Coordinator
Northeast Ohio Four County Regional Planning
and Development Organization
969 Copley Road
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(330) 836-5731
Filing on behalf of METRO Regional Transit Authority
as a Participant of Record

Robert K. Pfaff
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(330) 762-7267

Charles Zumkehr
Roetzel & Andress Co. LPA
75 East Market Street
Akron, Ohio 44308
(330) 376-2700
Counsel

Dated: January 21, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

NORTHEAST OHIO FOUR COUNTY REGIONAL PLANNING AND DEVELOPMENT
ORGANIZATION

on behalf of

METRO REGIONAL TRANSIT AUTHORITY

PETITION TO FILE SUPPLEMENTAL COMMENTS

Pursuant to 49 C.F.R. Section, 1117.1, Northeast Ohio Four County Regional Planning and Development Organization ("NEFCO") hereby petitions to file Supplemental Comments in support of its request for conditional operating rights in the above proceeding.

NEFCO filed a Request for Condition on October 21, 1997.¹ Applicants' Rebuttal was not received until December 17, 1997. Upon receipt, the Rebuttal was immediately reviewed and a response was drafted. NEFCO would have filed its response immediately however it is a public agency which must comply strictly to its "General Policy Board" schedule for approving any document to be filed. These Supplemental Comments were presented to the NEFCO board on January 21, 1998, its first meeting after the receipt of Applicants' Rebuttal. Upon approval from the NEFCO board, NEFCO immediately Federal Expressed this motion to the Board.

This motion is necessitated by the fact that new evidence became available to NEFCO after its original filing. It is also filed to clarify for the record inaccurate and misleading

¹ A copy of NEFCO's Request for Condition is attached hereto as Exhibit "A".

statements made by the Applicants. As the Board recognized in Finance Docket No. 32760, Union Pacific Corp. -- Control and Merger -- Southern Pacific Rail Corp., at 52 n. 64 (Decision No. 44 served August 12, 1996), commenting parties may submit subsequent evidentiary filings if new evidence becomes available to them.

NEFCO received Applicants' Rebuttal on December 17, 1997. Applicants' Rebuttal and attached verified statements contain material evidence not available to NEFCO prior to its filing. Applicants addressed two issues in its Rebuttal: 1) whether any potential harm exists and 2) whether the Board should impose conditions. As outlined in the attached Supplemental Comments, statements made in the Response establish in and of themselves both potential harm and the need for the Board to grant conditions to the merger.

Applicants assert that "future development of a proposed rail system should be the subject of negotiations between the interested parties, not the Board imposed conditions." However, in the Rebuttal Verified Statement of R. Paul Carey², it is stated that, "Conrail has declined to even entertain granting such rights." RVS Carey at 11. This and other statements describe the intent of Applicants in regards to the Hudson to Cleveland line -- in particular the refusal to grant operating rights. These statements are thus evidence of potential harm and further establish the need for the Board to address METRO's concern prior to approving the merger.

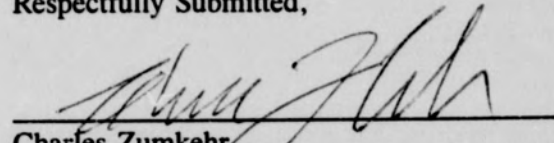
As also noted in the Supplemental Comments, Applicants have opposed granting trackage rights to a party not requesting such rights. Applicants have confused the Greater Cleveland Regional Transit Authority with METRO.

Therefore, in order to submit new evidence and to clarify the record, NEFCO

² A copy of the verified statement of R. Paul Carey is attached hereto as Exhibit "B".

respectfully requests that the Board grant this Petition to file Supplemental Comments relating to NEFCO's Request for Condition.

Respectfully Submitted,



Charles Zumkehr
Roetzel & Andress Co. LPA
75 East Market Street
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(330) 376-2700
Counsel

Sylvia Chinn-Levy
Economic Planner and Intergovernmental
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Filing on behalf of METRO Regional Transit Authority
as a Participant of Record

Robert K. Pfaff
General Manager, Secretary-Treasurer
METRO Regional Transit Authority
416 Kenmore Blvd.
Akron, Ohio 44310
(330) 762-7267

Dated: January 21, 1998

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of January, 1998, I served copies of the Petition to File Supplemental Comments on behalf of METRO Regional Transit Authority (MRTA-3) by first class mail, postage prepaid, upon all parties of record and by hand upon the following:

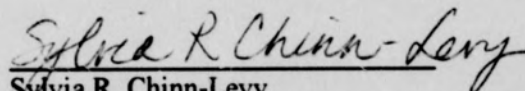
Richard A. Allen, Esq.
Zuckert, Scoutt & Rasenberger, LLP
888 Seventeenth Street, N.W. Suite 600
Washington, D.C. 20006-3939

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

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Sylvia R. Chinn-Levy
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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

NORTHEAST OHIO FOUR COUNTY REGIONAL PLANNING AND DEVELOPMENT
ORGANIZATION

on behalf of

METRO REGIONAL TRANSIT AUTHORITY

SUPPLEMENTAL COMMENTS

Applicants summarily opposed requests for conditions from various parties by characterizing them as shortsighted, overly broad, and lacking in legitimate operational or economic concerns. These Supplemental Comments attempt to distinguish METRO's request from those described by the Applicants and to point out the evidentiary statements contained in Applicants' Rebuttal which further support METRO's Request for Condition.

METRO's request is anything but a shortsighted attempt to gain some type of windfall; rather it is a response to the potential harm to a joint-community project started over four years ago. As noted in the original request, numerous public and private entities have invested significant resources over the past four years for the purpose of developing a rail transportation system to link the cities of Canton, Akron, and Cleveland ("CAC corridor") in Ohio. Cooperating agencies have spent or appropriated almost \$11 million for the development of

commuter rail service. The Freedom Secondary and the Akron Secondary lines were purchased from Conrail back in 1994. A contract has recently been drafted and will be executed within months for the purchase of the Sandyville Local line from CSX. It is anticipated that approximately 60% of the 62 miles of lines from Canton to Cleveland will have been purchased for the CAC project by April 30, 1998.

The Hudson to Cleveland rail line owned by Conrail was identified as a necessary link in this rail system long before the merger was ever announced. The Hudson to Cleveland mainline was identified as a key component to completing the commuter rail project, not simply "one option" as Applicants claim. A study conducted by URS in 1995 found that a comparison of options "favors the selection of the [Conrail] route..."³ Considering the magnitude of the investment and the initial determination by the URS study, the failure to receive operating rights poses great potential harm to commuter rail efforts in northeast Ohio.

In the request for condition, METRO explained its concern regarding the transfer of ownership. METRO had what it considered to be a working relationship with Conrail. However, the verified statement of Paul Carey, filed along with Applicants' Rebuttal, sets forth a different scenario. In particular, Paul Carey states, "Conrail has declined to even entertain granting such rights." RVS Carey at 11. Such a statement not only evidences a different position on the previous "working relationship", but also an attitude which causes METRO concern for the successful implementation and operation of commuter rail in Ohio.

Applicants also set out an argument of why operating rights are not practical on the Conrail line. According to Conrail "...this double track route has limited flexibility due to its

³ See the verified statement of Philip Pasterak, Vice President of Parsons Brinckerhoff Ohio, Inc., attached hereto as Exhibit "C".

Automatic Block Signal System (ABS)." Applicants fail to point out that METRO has offered to invest in signals and even to purchase a right of way for constructing a third track. Again, these summary statements regarding the feasibility of granting operating rights evidence both potential harm and the need for Board intervention.

Applicants conclude that they do not foresee a basis for granting trackage rights to RTA on this line. Carey refers in his verified statement to discussions he had with the General Manager of RTA. Although these discussions may have occurred, RTA is not the entity requesting operating rights. Conrail is confusing Greater Cleveland Regional Transit Authority with METRO Regional Transit Authority which are two completely separate public agencies with separate tax and service areas as defined by Ohio Revised Code Section 306.31.

Carey's statement explaining the discussions is additional evidence supporting METRO's request. Carey states that he indicated to RTA that "there was no point in unduly raising expectations for a Hudson Commuter service that neither party could then (or now) prudently foresee." RVS Carey at 12. In fact, numerous entities throughout northeast Ohio do prudently foresee a commuter project -- so much so that almost \$11 million has been invested in its implementation. In addition, the Northeast Ohio Areawide Coordinating Agency⁴("NOACA") is conducting Phase I of a \$1.5 million Northeast Ohio Commuter Rail Feasibility Study in ISTEA.⁵ There is also an allocation of \$2.0 million for a Major Investment Study (MIS) to evaluate the impact of commuter rail, specifically in the CAC corridor.⁶ The MIS is not only

⁴NOACA is the Metropolitan Planning Organization ("MPO") for portions of Cuyahoga, Medina, Lorain, Lake, and Geauga Counties.

⁵Inter-modal Surface Transportation Efficiency Act of 1991, Publ. L. No. 102-240 (codified as amended at 49 U.S.C. Section 1601 et seq.).

⁶See, Fiscal Year (FY) 1998 Transportation Appropriations Act, H.R. 2169, 105th Congress, (1997) (recently passed as a conference agreement by the House and Senate on October 9, 1997).

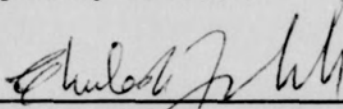
proposed but will be conducted by the Metropolitan Planning Organizations, Regional Transit Authorities, and the Ohio Department of Transportation.

Carey's verified statement sets forth the proposition that if "a determination is made that commuter operations will cause unreasonable interference with freight operations, Conrail will not grant trackage rights for the commuter operations." METRO also desires to have a determination made based on reasonable analysis. Applicants' Rebuttal, however, indicates an unwillingness to negotiate reasonably. Although Applicants have not made clear its reasons for denying operating rights, the Rebuttal surely indicates an intention to so deny. Based on the foregoing statements made by Paul Carey, METRO has no security that its significant investment in the CAC corridor will be protected without the Board granting conditional operating rights in this proceeding.

Obviously this project is not simply a request of a shortsighted opportunist, but rather a request from numerous entities attempting to protect a long term project identified as essential to economic development in northeast Ohio. As supported by the evidence submitted in NEFCO's request and by the additional evidence submitted in these Supplemental Comments significant potential harm exists if this Board does not take action and proceeds with approving the merger without conditions.

WHEREFORE, NEFCO, representing its members' interests, on behalf of METRO Regional Transit Authority respectfully submits these supplemental comments in support of its request for conditional operating rights as a condition precedent to the acquisition's approval in this proceeding.

Respectfully Submitted,



Charles Zumkehr
Roetzel & Andress Co. LPA
75 East Market Street
Akron, Ohio 44308
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Counsel

Sylvia Chinn-Levy
Economic Planner and Intergovernmental
Review Coordinator
Northeast Ohio Four County Regional Planning
and Development Organization
969 Copley Road
Akron, Ohio 44320-2992
(330) 836-5731

Filing on behalf of METRO Regional Transit Authority
as a Participant of Record

Robert K. Pfaff
General Manager, Secretary-Treasurer
METRO Regional Transit Authority
416 Kenmore Blvd.
Akron, Ohio 44310
(330) 762-7267

Dated: January 21, 1998

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of January, 1998, I served copies of Supplemental Comments on behalf of METRO Regional Transit Authority (MRTA-4) by first class mail, postage prepaid, upon all Parties of Record and by hand delivery upon the following:

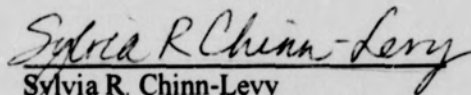
The Honorable Jacob Leventhal
Administrative Law Judge
Federal Energy Regulatory Commission
888 First Street, NE, Suite 11F
Washington, D.C. 20426

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Washington, D.C. 20036-1795



Sylvia R. Chinn-Levy
Northeast Ohio Four County Regional Planning
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Akron, OH 44320-2992

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 LEASE/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

NORTHEAST OHIO FOUR COUNTY REGIONAL PLANNING AND DEVELOPMENT
ORGANIZATION

on behalf of

METRO REGIONAL TRANSIT AUTHORITY
--OPERATING RIGHTS--
LINES OF CONSOLIDATED RAIL CORPORATION

REQUEST FOR CONDITION

Sylvia Chinn-Levy
Economic Development Planner and Intergovernmental
Review Coordinator
Northeast Ohio Four County Regional Planning
and Development Organization
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Filing on behalf of METRO Regional Transit Authority
as a Participant of Record

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Charles Zumkehr
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75 East Market Street
Akron, Ohio 44308
(330) 376-2700
Counsel

Dated: October 21, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

NORTHEAST OHIO FOUR COUNTY REGIONAL PLANNING AND DEVELOPMENT
ORGANIZATION

on behalf of

METRO REGIONAL TRANSIT AUTHORITY

**REQUEST FOR CONDITIONAL OPERATING RIGHTS
FOR THE METRO REGIONAL TRANSIT AUTHORITY**

The Northeast Ohio Four County Regional Planning and Development Organization ("NEFCO") is a regional council of local governmental units in Portage, Stark, Summit, and Wayne Counties, Ohio, based at 969 Copley Rd., Akron, Ohio 44320-5731, and participant of record in this proceeding. The METRO Regional Transit Authority ("METRO") operates a county-wide mass transit system transporting citizens of Summit County within the Cleveland-Akron-Lorain Consolidated Metropolitan Statistical Area ("CMSA") authorized by Ohio Revised Code section 306.31. METRO is a political subdivision of the state with all the powers of a corporation; its office location is at 416 Kenmore Boulevard, Akron, Ohio 44301-1099 and is served by NEFCO.

METRO believes the proposed control and realignment of trackage operations in Northeast Ohio by CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS") will have serious impacts on future commuter rail operations in Ohio which could prohibit adequate

public transportation absent conditions to ameliorate this potential harm. Therefore, METRO opposes the merger-acquisition of the Consolidated Railway Corporation ("Conrail") by CSX and NS without a condition¹ for commuter rail operating rights on what is currently the Conrail mainline connecting Cleveland and Hudson, Ohio.

METRO has been actively pursuing a commuter rail transportation system to link the cities of Canton, Akron, and Cleveland ("CAC corridor") in Ohio. The Ohio Department of Transportation ("ODOT") initially recognized the potential for economic growth and business development through the construction of a commuter rail system in the CAC corridor.² Paralleling the State's policy statement, a study conducted by URS in 1995 identified the Conrail mainline connecting Hudson and Cleveland³ as the "favor[ed]" alternative rail line to connect the cities of Akron and Cleveland. Again in January 1997, ODOT recognized commuter rail service in its Major Investment Study ("MIS") of Interstate I-77, affirming commuter rail service as a component⁴ of the "preferred alternative" to reduce traffic congestion on I-77 between Canton and Akron.⁵

Extensive resources are already invested in the CAC corridor; the Hudson to Cleveland mainline is a key component to completing this project. Cooperating agencies have spent or

¹ METRO is relying upon Board Decision No. 33, served September 17, 1997, which provided a waiver of the formal responsive application process for commuter rail systems currently operating. METRO requests that the Board offer instruction as to what information must be submitted to grant conditional operating rights for potential commuter rail operations.

² State Policy Statement on Commuter Rail, Excerpt from: ACCESS OHIO, OHIO MULTI-MODAL STATE TRANSPORTATION PLAN TO THE YEAR 2020, Ohio Department of Transportation, October 1993, p. 21.

³ SCATS/METRO RTA-AKRON/GREATER CLEVELAND RTA: Alternative Implementation Report Canton-Akron-Cleveland via Kent/W&LE, conducted by URS Consultants, October 1995, p. 3-28. "In the context of the project objectives, a comparison of technical characteristics favors the selection of the route via Hudson for further consideration of Canton-Akron-Cleveland commuter rail demonstration service" (emphasis added). See also, URS Study, Figure 2, Route Via Hudson (CR/CSX).

⁴ See, n.s. In addition to the development of a commuter rail system, the MIS report recommended the addition of a general purpose lane being added to I-77 in each direction.

⁵ See, "Interstate 77 Corridor Major Investment Study: Stark/Summit Counties," Ohio Department of Transportation, Office of Planning, prepared January 9, 1997, p. 50.

appropriated \$10,726,627⁶ for the development of commuter rail service. In addition, the Northeast Ohio Areawide Coordinating Agency⁷("NOACA") was appropriated approximately \$1.5 million to conduct the Northeast Ohio Commuter Rail Feasibility Study in ISTEA.⁸ There is currently a proposed allocation of \$2.0 million pending in Congress for an MIS to study the impact of commuter rail, specifically in the CAC corridor.⁹

One of the proposed regional commuter rail routes in Northeast Ohio would operate on what is currently the Conrail mainline. METRO's working relationship with Conrail will be dissolved as a result of the acquisition. According to the proposed realignment, NS will have ownership rights to this trackage. NS has been responsive to the invitation for dialogue concerning the use of this line for passenger service; however, in light of the magnitude and funds invested in this project, the absence of guaranteed Conditional Operating Rights would jeopardize the efficient implementation and operation of commuter rail in Northeast Ohio.

⁶ Federal Highway Administration's Surface Transportation Program ("FHWA STP")		
Freedom Secondary and	FHWA STP (AMATS)	\$ 517,475
Akron Secondary Purchase Price	FHWA STP (ODOT)	394,297
	FHWA STP (ODOT)	76,200
	METRO	<u>71,658</u>
	Sub-Total	\$ 1,059,630
CSX (Sandyville Local)	FHWA STP (SCATS)	\$ 1,000,000
Purchase Allocation	FTA Sec. 5309	<u>992,500</u>
	Sub-Total	\$ 1,992,500
Other Federal Approp.	FY 96-Sec. 5309	\$ 4,198,917
For Sandyville Rehab.	FY 97-Sec.5309	<u>3,475,580</u>
	Sub-Total	<u>\$ 7,674,497</u>
	Total	\$10,726,627

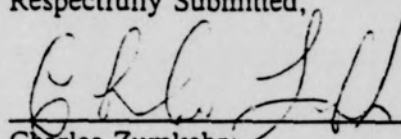
⁷NOACA is the Metropolitan Planning Organization ("MPO") for portions of Cuyahoga, Medina, Lorain, Lake, and Geauga Counties.

⁸Inter-modal Surface Transportation Efficiency Act of 1991, Publ. L. No. 102-240 (codified as amended at 49 U.S.C. Section 1601 et seq.).

⁹See, Fiscal Year (FY) 1998 Transportation Appropriations Act, H.R. 2169, 105th Congress, (1997) (recently passed as a conference agreement by the House and Senate on October 9, 1997).

WHEREFORE, NEFCO, representing its members' interests, on behalf of METRO Regional Transit Authority respectfully submits this request for conditional operating rights as a condition precedent to the acquisition's approval in this proceeding.

Respectfully Submitted,



Charles Zumkehr
Roetzel & Andress Co. LPA
75 East Market Street
Akron, Ohio 44308
(330) 376-2700
Counsel

Sylvia Chinn-Levy
Economic Planner and Intergovernmental
Review Coordinator
Northeast Ohio Four County Regional Planning
and Development Organization
969 Copley Road
Akron, Ohio 44320-2992
(330) 836-5731
Filing on behalf of METRO Regional Transit Authority
as a Participant of Record

Robert K. Pfaff
General Manager, Secretary-Treasurer
METRO Regional Transit Authority
416 Kenmore Blvd.
Akron, Ohio 44310
(330) 762-7267

Dated: October 21, 1997

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of October, 1997, I served a copy of the Request for Conditional Operating Rights for The METRO Regional Transit Authority by first class mail, postage prepaid, upon:

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

Administrative Law Judge Jacob Leventhal
Federal Energy Regulatory Commission
888 First Street, NE, Suite 11F
Washington, D.C. 20004-1202

Paul A. Cunningham, Esq.
Markins Cunningham
1300 19th Street, N.W., Suite 600
Washington, D.C. 20002

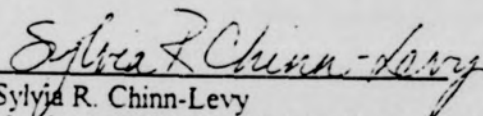
Dennis G. Lyons
Arnold & Porter
555 12th St. NW
Washington, D.C. 20004-1202

Janet Reno
U.S. Attorney General
U.S. Dept. of Justice
Tenth St. and Constitution Ave. NW
Washington, D.C. 20530

Rodney Slater
Secretary of Transportation
U.S. Dept. of Transportation
400 Seventh St. SW
Washington, D.C. 20590

Samuel M. Sipe, Jr., Esq.
Steptoe and Johnson LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036-1795

and upon all other Parties of Record in this proceeding.


Sylvia R. Chinn-Levy
Northeast Ohio Four County Regional Planning
and Development Organization
969 Copley Road
Akron, OH 44320

REBUTTAL VERIFIED STATEMENT OF
R. PAUL CAREY

My name is R. Paul Carey and I am General Manager-Contracts for Consolidated Rail Corporation ("Conrail"). I have served in this capacity for over five years. In December 1990 and throughout the year 1991 I held the position of General Manager-Route Optimization in which my primary responsibility was to define and act upon opportunities to improve Conrail's network asset utilization through restructured operations, line sales, abandonments and other initiatives. Prior to my appointment to that position, I was Conrail's General Manager-Albany Division, a position that I had held since 1988. I have served in the railroad industry for over 26 years and have previously offered testimony before the ICC and the Surface Transportation Board.

In this verified statement I will respond to certain issues raised in various Comments submitted in Finance Docket No. 33388, as follows:

- 1) Amtrak, for cooperation on higher speed service between Detroit and Chicago;
- 2) Metra, regarding its request to transfer control of a number of interlockers in Chicago to it;
- 3) Metro North Commuter Railroad, regarding its desire to purchase Conrail's Southern Tier Line between Suffern and Port Jervis;
- 4) Congressman Jerrold Nadler, proposing a freight route using existing passenger railroad tunnels through Manhattan;
- 5) New Jersey Transit ("NJT"), for cooperation on its proposed Light-rail Project over Conrail's Bordentown Secondary between Camden and Trenton, New Jersey;

- 6) Northeast Ohio Four County Regional Planning and Development Organization, requesting a grant of trackage rights to METRO Regional Transit Authority ("RTA") for the Hudson to Cleveland corridor;
- 7) Southeastern Pennsylvania Transportation Authority ("SEPTA"), requesting extension to its trackage rights agreement, Conrail relinquishment of dispatching control on Trenton Line and a proposal of light-rail service on Harrisburg and Morrisville Lines; and
- 8) Southern Tier West Regional Planning and Development Board, regarding the redeployment of assets for the New York Department of Transportation ("NYDOT").

1. Amtrak: Higher Speed Service between Detroit and Chicago

Notwithstanding various statements in the press concerning Amtrak's professed interest in higher speed passenger operations between Chicago and Detroit, Conrail has neither been asked by Amtrak, nor consented to, nor made any specific plans, nor developed any agreements with Amtrak that would permit higher speed passenger operations over the Conrail-owned portions of this route (i.e. Chicago-Porter and Kalamazoo-Detroit).

Should Amtrak introduce such plans to Conrail, Conrail would cooperate in negotiations with a view toward developing terms that would satisfactorily protect the integrity of present and future freight operations without shifting increased costs to Conrail.

2. Metra: Transfer of Control of Interlockers

Metra complains about delays experienced by its Southwest Service Corridor trains at four interlockers in Chicago, including the CP-518 interlocker controlled by Conrail, and suggests that the delays are attributable to the fact that the railroads controlling the interlockers

are biased in favor of their own trains and against Metra trains. Metra asks the Board to transfer control of the interlockers to it so that its trains will not be delayed.

It is worthy of note in this regard that at the Englewood interlocker controlled by Metra, Amtrak trains often are delayed. In November 1997, for example, Amtrak trains were delayed a total of 2 hours and 40 minutes at the interlocker. Carey Exhibit 1. Under federal law Amtrak has dispatching priority. The delay to Amtrak's trains thus indicates that either Metra is not affording Amtrak the priority to which it is entitled by law, or that certain delays inevitably occur even in the absence of a bias in dispatching. Whichever the reason, I do not believe that transferring control of the interlockers to Metra would promote the smooth flow of traffic through Chicago.

3. Metro North Commuter Railroad: Purchase of Conrail's Southern Tier Line between Suffern and Port Jervis

In March 1997, I notified Donald N. Nelson, the President of Metro North Commuter Railroad Company ("MNCR") of Conrail's position at that time regarding the sale of the Southern Tier Line between Suffern and Port Jervis. Although Conrail and MNCR had conversations on several occasions prior to March 1997, Conrail at no time solicited offers for the sale of the Southern Tier Line between Suffern and Port Jervis, New York. There was no agreement, let alone any offer or acceptance from Conrail, for sale of this line segment. Conrail's position on the sale of the line segment has not changed since March 1997. To date, Conrail has not furthered any discussions with MNCR on a possible sale of this portion of the Southern Tier Line, and has no present plans to do so.

4. Congressman Jerrold Nadler: Freight route using existing passenger railroad tunnels through Manhattan

The Intervention Petition of Congressman Nadler and a number of his colleagues proposes a new freight route directly along the Northeast Corridor rail line, north and east from Newark, New Jersey using existing passenger railroad tunnels to and through Manhattan. From west to east, the line in question passes through the Bergen (Hudson) River Tunnels consisting of two single track "tubes" leading into Manhattan from the west through Penn Station in Manhattan, and continuing through the East River tubes to "Harold" interlocking, the point where the Amtrak and Long Island Railroad routes diverge in Long Island City, New York. Conrail has never operated freight trains between Newark and New Haven through Penn Station, nor has there ever been any business justification to even consider such a method of operation.

There are several operational and maintenance problems associated with using Penn Station and the tunnels for freight service. Even a limited operation through the tunnels entails the exposure to incur prohibitive costs for apportioned maintenance and other charges. The only time Amtrak can maintain the route through the tunnels and Penn Station is at night. The complexity of this infrastructure is enormous from any perspective whether for maintenance of trackage (there are dozens of "slip switches"), electric traction (catenary and third rail throughout), or signals (all the routes are signaled). Additionally, while limited in number, passenger trains do operate throughout the night. Thus, unlike most segments of the Northeast Corridor where multiple tracks and less complex maintenance allow a window for freight operations, this is just not the case throughout the tunnels and Penn Station complex.

Moreover, the Petition overlooks an early 1900's New York City ordinance prohibiting the use of any internal or external combustion locomotive in underground tunnels.¹ Thus, only electric locomotives would be permitted. Neither Conrail nor CSX or NS have any electric locomotives.

Clearances through this route are restricted (maximum permitted height is 14 feet 8 inches, limited to a profile only 3 feet wide at that height) so as to preclude the unrestricted operation of most conventional freight equipment or any RoadRailers™ as operated by Conrail's Triple Crown subsidiary. Amtrak's own RoadRailer™ equipment of the same design, along with its bilevel passenger equipment, does not clear for operation via this route.

¹ "In October 1902, this body (the New York City Board of Aldermen) extended its blessing to the project (construction of Penn Station and the associated Hudson (North) and East River tunnels) on the condition that the railroad assure it that 'electricity or other approved power not involving combustion' would always be used as motive power." (parentheses added)

Michael Bezilla, "Electric Traction on the Pennsylvania Railroad 1895-1968", Page 18.
Pennsylvania State University Press, 1980"

In addition, Mr. Bezilla reprinted (at Page 24) a cross-sectional diagram (from the American Society of Civil Engineers) of one of the Hudson Tubes. This diagram was "as built", showing the third rail - but not the catenary - which was later added in the early 1930's as part of a conversion to alternating-current traction (the third rail, however, has been retained), and which has served to further constrict overhead clearances within the Tubes.

The basis of electric traction on this route was not limited to the above-cited action by the New York City Board of Aldermen. In response to events culminating in an accident in Manhattan on January 8, 1902, "New Yorkers petitioned their state legislature to take action to prevent a recurrence of the disaster. Bowing to citizen pressure, the legislators passed a law in 1903 which prohibited the use of steam locomotives south of the Harlem River after July 1, 1908." (Id., at 28). Diesel locomotives were not introduced until the 1920's (as experimental units), but the operating practice has been to treat operation of any combustion locomotive - steam or diesel - as prohibited.

Furthermore, Amtrak has necessarily observed a nominal train length limit of 18 cars (at a length of 85 feet per car) at and through Penn Station, so as to "clear" and not impede other "parallel" commuter and intercity passenger movements through the interlockings at each end of the Penn Station platforms. Any freight operation would be subject to the same length limitations and would therefore be impractical and inefficient.

At no time during my years at Amtrak (1971 to 1977) or at Conrail (1979 to the present) has a credible proposal ever surfaced to suggest either a benefit to be gained by using this route for freight operation, or that Amtrak, for its part, would lend its consent to such an undertaking. In addition, the limited capacities of Amtrak's route to and through Penn Station are rationed to reconcile maximum safe passenger utilization (intercity and commuter) with a maintenance program that ensures a state of adequate repair.

These and other factors explain why Conrail has never had reason to negotiate any operating protocols or details, including frequency of movement, time of day operations (or restrictions) and the like, for freight movement through the tunnels. The best use of this route has been, and is, for the movement of passengers. Informal expressions by Amtrak to consider or study (as opposed to act upon) proposals of this sort merely reflect the deference to the opinions of some public officials, upon whose support Amtrak depends.

5. New Jersey Transit ("NJT"): Light-rail Project over Conrail's Bordentown Secondary between Camden and Trenton, New Jersey

Conrail has had a balanced and amicable business relationship with NJT for many years. We have worked with NJT in the development of many of its new services, including its assumption of the Atlantic City services from Amtrak (which requires its use of Conrail's Delair Bridge), the extension of commuter service to Hackettstown NJ, and NJT's continued lease of Conrail's Boonton Line (the unused Conrail portion, pending completion of the NJT Montclair Connection). We have entered into an agreement with NJT that contemplates the eventual separation of our North Jersey through freight operations on the west side of the Palisades (via the Marion Connection) from a new light-rail passenger system that, when completed, will utilize the Conrail right-of-way between Bayonne, Hoboken, along the east side of the Palisades, through the Weehawken Tunnel and on to Secaucus.

It should be no surprise that Conrail and NJT have been successful in establishing and maintaining an environment of mutual cooperation. Conrail and NJT were the parties to the Transfer Agreement dated September 1, 1982, in which the parties specifically recognized the need to provide for, inter alia, NJT's future access to other, unspecified, Conrail rail lines. It is my position that the Transfer Agreement does not provide operating rights for non-railroad operations such as the light-rail plan proposed by NJT. The terms for access are set forth under the Trackage Rights Agreement, as prescribed in the Transfer Agreement. This right of access limits NJT's operations, however, to those which "*do not unreasonably interfere with freight service.*" [emphasis added] (see Transfer Agreement 2.07 (b)(i)). Conrail, for its part, is

similarly bound by a covenant that its access shall "not unreasonably interfere with commuter operations" over NJT's lines. (id., (b)(ii).)

The provisions of the Trackage Rights Agreement dated October 1, 1984 reinforce the governing principle that, with respect to NJT's use of additional Conrail rail lines, "*NJT's use shall not unreasonably interfere with Conrail's freight service.*" [emphasis added] (Trackage Rights Agreement, Sec. 2.04)

NJT has indicated in its Comments that it desires to appropriate Conrail's Bordentown Secondary Track for light-rail operations. This track, among others, was a candidate for sale by Conrail in 1996 to a shortline for continued freight operations, but no sale was consummated. At no time did Conrail promise to sell the Bordentown Secondary Track to NJT, or to any party acting on behalf of NJT. I am personally familiar with the circumstances surrounding that line sale. After noticing some 1996 press accounts touting a prospective NJT light-rail service over the Bordentown Secondary Track, I called Bill Herkner (NJT's Assistant General Manager, Special Projects and Contract Administration) to advise him that no proposal for such service on the line had been formally introduced to Conrail by NJT. In that conversation, I did note that some of NJT's consultants were seeking access to our property, and to this I had no objection, subject to the understanding this access was necessary for NJT to introduce any proposal for light-rail service to us at a later time.

Through the summer of 1997, I had no contact from NJT concerning the Bordentown Secondary Track, but I learned that NJT had initiated a meeting in August with NS and CSXT to introduce a proposed operating plan and its suggested terms for NJT to obtain control of the line. At a meeting in Mount Laurel, New Jersey on September 8, 1997, Frank Russo of NJT introduced the same plan to Conrail that was presented to NS and CSXT the prior month. At this meeting, Conrail explained to NJT the reasons why its operating plan was not acceptable. There was, therefore, no reason to discuss the proposed term sheet (prepared by its consultant) for NJT to acquire and control the line, and I said so at that September 8 meeting. Conrail's essential requirements for an acceptable NJT operation were set forth in my letter dated September 22, 1997 (Carey Exhibit 2) which confirmed the substance of our earlier meeting.

It is Conrail's position that the introduction of light-rail operations raises extraordinarily difficult operating issues affecting access for freight operations, since it is well-accepted practice throughout the rail industry that, for safety reasons, freight operations must be either physically separated (on separate track) or separated by scheduled "windows" from light-rail operations, with freight operations typically confined to limited hours of operation at night. NJT's plan for the Bordentown Secondary would reduce Conrail's freight window to a shorter time interval than is currently needed and used, and would preclude introduction of future new services. In our view this constitutes "unreasonable interference" with Conrail's ability to meet its freight service obligations.

There are alternatives available to NJT, including constructing dedicated light-rail tracks on the excess width of the right-of-way, which could be utilized to mitigate the impact of light-rail operations upon freight service (the right-of-way was at one time a double track for all but a short segment in Burlington, New Jersey). In keeping with our intention to cooperate with NJT on this project, Conrail met with NJT on November 7, 1997, which resulted in what Conrail believes was a productive review of the operating issues associated with NJT's proposal. This meeting was conducted with the express understanding that the matters discussed would be confidential and that we would be available for further meetings as warranted.

6. Northeast Ohio Four County Regional Planning and Development Organization - Hudson to Cleveland Trackage Rights

In determining whether to grant trackage rights to a commuter rail agency to operate over Conrail freight lines, Conrail looks to the feasibility of both freight and passenger operations over that line. If a determination is made that commuter operations will cause unreasonable interference with freight operations, Conrail will not grant trackage rights for the commuter operations.

The freight operations over the Conrail mainline between Hudson and Cleveland are dense, with a mixture of time-sensitive intermodal and manifest freight trains, some of which dwell on the Cleveland Line to pick up and set out blocks of cars at Motor Yard on a daily basis. From an operational standpoint, this double track route has limited flexibility due to its

Automatic Block Signal system (ABS) between CP Hudson and CP White, almost the entire route proposed for commuter service, which establishes a right-handed current of traffic and this limits the capacity of the line for movements "against the current" of traffic.

A commuter operation on this line would unduly interfere with existing freight operations by increasing the need to move traffic against the current and further would introduce morning and evening "windows" during which Conrail's use of its Cleveland Line would be further restrained. The importance of this route to Conrail has escalated with the completion of the double-stack Pennsylvania clearance route, of which this line is an integral part. Accordingly, Conrail does not foresee a basis for granting trackage rights to RTA on this line.

Conrail has never agreed, or been close to an agreement, to grant trackage rights between Hudson and Cleveland; in fact, Conrail has declined even to entertain granting such rights. Conrail has made this well-known to RTA, their consultants, the Northeast Ohio Four County Regional Planning & Development Organization, and other interested parties.

As recently as September 1997, I had conversations with Ron Tober, General Manager and Secretary Treasurer of the RTA in which we discussed his interest in two "demonstration" excursions over Conrail lines between Cleveland and Madison and/or Hudson, Ohio respectively. Conrail approved the request for a Cleveland to Madison demonstration excursion, but declined, with emphasis, the request for an excursion from Cleveland to Hudson. At that time, I noted that

there was no point in unduly raising expectations for a Hudson commuter service that neither party could then (or now) prudently foresee.

7. Southeastern Pennsylvania Transportation Authority ("SEPTA"): Trackage Rights Agreement Extension, Dispatching on Trenton Line and Light-rail Service on Harrisburg and Morrisville Lines

In my position as Conrail's General Manager-Contracts I am responsible for Conrail's contractual relationship with the Southeastern Pennsylvania Transportation Authority (SEPTA). Conrail believes its working relationship with SEPTA has been (and continues to be) mutually beneficial and cordial. Conrail and SEPTA have successfully maintained a balanced arms-length business relationship under the terms of the Transfer Agreement dated September 1, 1982 and the Trackage Rights Agreement dated October 1, 1990.

Subsequent to the filing of the Application for control of Conrail by CSX and NS, I participated in several discussions and meetings with SEPTA to address contractual and transitional issues, and although not every issue has been resolved, Conrail remains available to continue discussions with SEPTA. My understanding has been that these discussions are confidential, but to the extent necessary to reply to comments filed by SEPTA in this proceeding, I will address the issues SEPTA has raised.

I have had discussions with Bernard Cohen, SEPTA's newly appointed Assistant General Manager - Strategic Business and Ridership Development, in recent months regarding an

extension of the current Trackage Rights Agreement, but liability apportionment remains an unresolved issue and no agreement on an extension has been reached.

As to the question of surrendering to SEPTA rights to dispatching control of portions of Conrail's own Trenton Line, in a letter dated October 20, 1997, I advised Mr. Cohen that not only was Conrail unwilling to do so, but that such invasive action by SEPTA was unnecessary for a number of reasons. One reason was that another Assistant General Manager of SEPTA had proposed to Conrail in 1996 to separate passenger from freight operations on the Trenton Line. I arranged to meet with Mr. Cohen (and his associate) on October 13, 1997, to review the 1996 SEPTA plan with Mr. Cohen (who was not with SEPTA at that time).

SEPTA has also sought to establish terms for its prospective Cross County Metro and Schuylkill Valley projects, each of which is in a very preliminary stage of planning. We have been advised that either, or both, of these projects may involve the use of light-rail, as opposed to conventional commuter rail equipment. Our understanding is that SEPTA, unable to commit itself at this time, wishes to protect the option to introduce light-rail over these routes.

For the same reasons I have set forth in my reply to NJT's Trenton-Camden proposal for Conrail's Bordentown Secondary, I believe the operation of such services upon the Conrail Morrisville Line or Harrisburg Line (these are both vital main line arteries) could not be introduced without undue and unreasonable interference with present and future freight

operations. Nothing in the 1982 Transfer Agreement confers (or was intended to confer) upon SEPTA the right to introduce light-rail operations on Conrail lines, and SEPTA should not misconstrue Conrail's attendance at the Schuylkill Valley Metro meetings as evidence of tacit consent.

Finally, I find SEPTA's request for a condition pertaining to the Schuylkill Valley route (between Philadelphia and Reading, PA) to be curious. To the best of my knowledge, SEPTA's operating authority is presently limited to the so-called "five county" area of Pennsylvania, namely: Philadelphia, Montgomery, Bucks, Chester, and Delaware Counties. Since Reading is located in Berks County, and SEPTA has no operating authority in Berks County, it would appear that SEPTA may not have the authority to negotiate for rights for itself or any other party over the sixteen (16) miles of this route between the Montgomery County line and Reading, PA.

8. Southern Tier West Regional Planning and Development Board - Redeployment of Assets for New York Department of Transportation ("NYDOT")

In my capacities while serving at Albany and subsequently in Philadelphia, I have had extensive and direct personal involvement with representatives of the New York Department of Transportation (NYDOT) on many subjects of mutual interest.

I was an active participant in the negotiations with NYDOT that culminated in the Amendment and Extension of the Southern Tier Agreement dated December 13, 1990. I represented Conrail in the negotiations related to Article 3, which amended Section 2.2 of the so-

called Southern Tier Agreement dated October 12, 1982 (and amended June 18, 1987), and which incorporated specific reference to the TCS Wellsville Agreement dated December 6, 1979. The TCS Wellsville Agreement provided, among other things, for pole line repairs and signal system improvements between Hornell and Salamanca, NY.

The essence of the December 13, 1990 Agreement was the suspension of through-freight train service over the portion of Conrail's Meadville Line between Hornell, NY and Meadville, PA ("the Southern Tier Extension"). Therefore, there was no longer any purpose to retain the Traffic Control Signal System ("TCS") on the Meadville Line. Accordingly, the 1990 Agreement states: "On or before December 31, 1991, Railroad [Conrail] will submit for approval of the Commissioner [of New York Department of Transportation] a plan for the removal and reinstallation of State-owned materials elsewhere on the Southern Tier or for a project equivalent in value." During 1991, I initiated several conversations with NYDOT and proposed several initiatives, including relocation of Control Point bungalows to a new TCS project between River Junction and Hornell, or a TCS extension between Hornell and Waverly, NY. Both of these TCS projects were on the Conrail Southern Tier Line in New York. Conrail also proposed that NYDOT allow extensive rail, tie, and surfacing programs that we were planning for the Southern Tier Line to satisfy this provision. I remember one conversation, where I had gone so far as to propose that NYDOT consider offering these materials to the CP Rail System, which at the time was undertaking a major rehabilitation of its newly acquired D&H lines. All of these discussions took place in 1991.

19. NYDOT's representative responded that for unspecified "political reasons" the only acceptable plan for redeployment of these assets, notwithstanding the express language of the December 1990 Amendment (allowing redeployment to be anywhere on the Southern Tier), would be for these assets to be deployed (or another project of equivalent value to be undertaken) on the "Southern Tier WEST", that is, the Meadville Line west of Hornell. No investment elsewhere would be considered, irrespective of the language of the December 1990 Amendment. As a result, Conrail expended substantially over \$10 million of its own capital funds on the Southern Tier Line (without contribution from NYDOT or others), and the materials from the 1979 Wellsville TCS project (as cited in Section 2.2 of the 1990 Agreement) that were reusable in 1990 have remained in place.

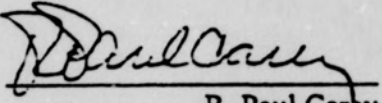
Conrail's actions since 1990 have not been inconsistent with either the 1979 Agreement or the 1990 Agreement. We have not abandoned any portion of the Meadville Line in New York. Instead, we entertained negotiations with the so-called Southern Tier West group over several years with a view toward a sale that would otherwise provide for continued operation of this part of the Meadville Line. Those negotiations did not reach a successful conclusion.

Finally, I would note that, within the past two years, I traveled to Albany to review a number of subjects with NYDOT, and had the pleasure of renewing contact with my counterpart in the 1990 negotiations. At the time of that meeting, the question of our interpretation of the 1990 Agreement was discussed and, without waiving our rights in this regard, continued on with an amicable discussion of the then-pending sale negotiations with the Southern Tier West group.

VERIFICATION

I, R. Paul Carey, verify under penalty of perjury that I am General Manager -
Contracts Consolidated Rail Corporation, that I have read the foregoing document and know
its contents, and that the same is true and correct to the best of my knowledge and belief.

Executed on December 8, 1997.


R. Paul Carey

AMTRAK TRAIN DELAYS
AT ENGLISWOOD - METRA ILLINOIS

**VERIFIED STATEMENT OF
PHILIP G. PASTERAK, P.E.
JANUARY 9, 1998**

I am Philip G. Pasterak, P.E., Vice President of Parsons Brinckerhoff Ohio, Inc., in its Cleveland, Ohio office. I have provided professional services in rail planning, engineering, and operations for more than 16 years in Ohio, Michigan, New York, Virginia, and numerous other locations.

I am submitting this statement in support of the position of the Northeast Ohio Regional Planning and Development Organization on behalf of Metro Regional Transit Authority (MRTA) of Akron, Ohio, in response to the Applicants' Rebuttal of December 1997. Specifically, this pertains to Applicants' Rebuttal Section XII "The Requests for Conditions Filed by Passenger Agencies Should Be Denied".

As the author of a series of implementation and feasibility studies regarding this corridor, performed in 1995 and referenced by MRTA-1@2, I note that a relatively comprehensive public planning process was undertaken at that time regarding the Canton-Akron-Cleveland corridor. The studies were sponsored by the Greater Cleveland Regional Transit Authority, Metro Regional Transit Authority (Akron), Stark County Area Transit Study (Canton), and the Ohio Rail Development Commission. An active Policy Committee including these and other public stakeholders (including the Metropolitan Planning Organizations and transit authorities from all three cities) considered the available data and selected the corridor via Hudson and the Conrail Cleveland Line as the preferred corridor for the service. This matched the studies' recommendation based on my technical evaluation.

The Applicants cite two reasons why the MRTA request for commuter rail operating rights over what is now the Conrail Cleveland Line connecting Cleveland and Hudson (the "Subject Line") should be denied.

The first stated reason is that "...MRTA has not shown that proposed commuter operations in the geographical area encompassing the cities of Canton, Akron, and Cleveland will suffer any harm as a result of the proposed Transaction." The second stated reason is that "... future development of a proposed commuter rail system should be the subject of negotiation between interested parties, not Board imposed conditions."

In fact, the proposed Transaction will increase traffic volumes on the Subject Line, causing harm to the ability to operate the commuter service under consideration. According to the Applicants' Operating Plan, traffic on the segment between Cleveland Drawbridge and CP White (line N-061) will increase from 12.5 to 29.7 daily trains. The segment between CP White and Alliance (line N-064) will increase from 26.4 to 30.1 daily

trains. During consideration of the proposed commuter services, Conrail emphatically made the case that capacity on the Subject Line was sufficiently restricted so as to make the operation of any commuter trains practically impossible.

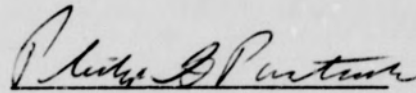
Clearly, the increase in traffic proposed by the Transaction will have harmful impacts on the ability to operate this commuter service, making the issue appropriate for Board consideration. The effects of this impact are not dependent on the existence, or non-existence, of a current agreement between MRTA and Conrail.

It is not argued that Board action be the replacement in total for an appropriate agreement between MRTA or others and Norfolk Southern, the proposed operator of the Subject Line, regarding the terms of commuter rail operation. As a condition to the approval of the Transaction, however, the Board should require that the proposed operator of the line and MRTA negotiate a mutually acceptable binding agreement to mitigate the impacts of the Transaction on the planned commuter rail service.

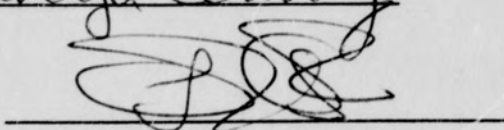
VERIFICATION

STATE OF OHIO)
) ss:
COUNTY OF CUYAHOGA)

Philip G. Pasterak, being duly sworn, deposes and says that he has read foregoing statement, knows the facts asserted therein are true and that the same are true as stated.


Philip G. Pasterak

Subscribed and sworn to before me this 12th day of
January, ~~1997~~ ¹⁹⁹⁸

Notary Public of Cuyahoga County


My Commission expires:

Raluca Uleia
Notary Public
Commission Expires Jan. 31, 2000

STB

FD

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I

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185014
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SPI-11

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3 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 --
TRANSFER OF RAILROAD LINE BY NORFOLK SOUTHERN
RAILWAY COMPANY TO CSX TRANSPORTATION, INC.



MOTION FOR LEAVE TO FILE COMMENTS ON
NITL SETTLEMENT AGREEMENT

The Chemical Manufacturers Association ("CMA") and The Society of the Plastics Industry, Inc. ("SPI") respectfully request leave to file the attached comments on the agreement entered between Applicants and the National Industrial Transportation League ("NITL") on or about December 12, 1997 (hereinafter the "NITL Agreement").

This motion is necessitated by the facts that (1) CMA and SPI did not receive a copy of the NITL Agreement until after the December 15, 1997, due date for responsive comments, when it was served as part of Applicants' Rebuttal,¹ (2) it would have been confusing and pointless for CMA and SPI to comment on the conditions originally sought by NITL without taking into

¹ The Agreement was filed as Appendix B in Vol. 1 of Applicants' Rebuttal, CSX/NS-176, pages P-768-P-774.

account the changes to those conditions in the NITL Agreement, especially inasmuch as the NITL Agreement requires NITL to withdraw its previous request for conditions, except on one point, (3) CMA and SPI believe that the intent of the Board's procedural order in this case is that parties have a full and fair opportunity to comment on the conditions sought by other parties,² and (4) CMA and SPI have reviewed the NITL Agreement and prepared the attached comments as quickly as possible following their receipt of the NITL Agreement.

CMA and SPI in their attached proffered comments do not respond to any portion of the filings by Applicants or others on December 15, 1997, except for the NITL Agreement itself. Thus, CMA and SPI do not seek to file a "reply to a reply," or to comment on anything other than the conditions sought by NITL, as modified by the NITL Agreement.

This motion and the attached comments have been served on all parties of record. CMA and SPI submit that, particularly in view of the short time that has elapsed since the December 15 due date for comments on other parties' conditions, no party will be prejudiced by the filing of the proffered comments.

² Decision No. 12, served July 23, 1997.

For all the foregoing reasons, CMA and SPI respectfully request leave to file the attached comments on the NITL Agreement.

Respectfully submitted,

Martin W. Bercovici *SNS*

Martin W. Bercovici
Keller and Heckman, L.L.P.
1001 G Street, N.W.
Suite 500 West
Washington, DC 20001
(202) 434-4144

Counsel for The Society of the
Plastics Industry, Inc.

Thomas E. Schick *SNS*

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

Scott N. Stone

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

Counsel for the Chemical
Manufacturers Association

Dated: December 23, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have, in accordance with the Board's decisions in this proceeding, served copies of the foregoing Motion for Leave to File Comments on NITL Settlement Agreement this 23rd day of December, 1997, by first class mail upon all parties of record and by hand upon the following:

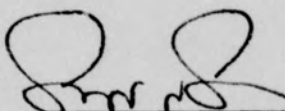
Administrative Law Judge Jacob Leventhal
Federal Energy Regulatory Commission
888 First Street, N.E.
Suite 11F
Washington, DC 20426

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

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

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

David A. Coburn, Esq.
Steptoe & Johnson, LLP
1330 Connecticut Avenue, NW
Washington, DC 20036-1795



Scott N. Stone

STB

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12-18-97

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184925

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DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

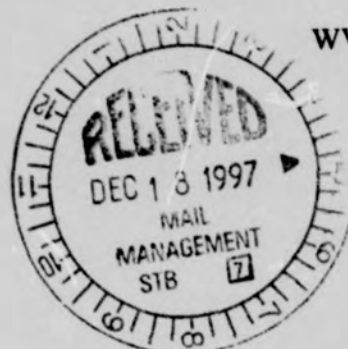
TELECOPIER: (202) 371-0900

December 18, 1997

WVCI-2

Via Hand Delivery

Honorable Vernon A. Williams, Secretary
Case Control Unit
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001



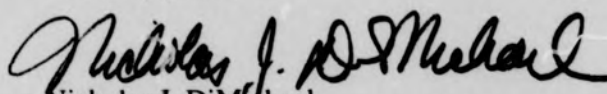
Re: Finance Docket No. 33388 *CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY—Control and Operating Leases/Agreements—CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION*

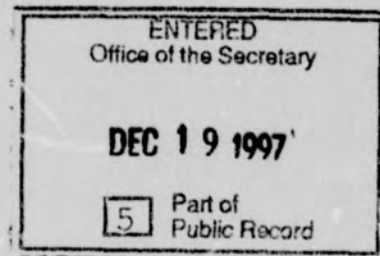
Dear Secretary Williams:

This will advise that West Virginia Coals, Inc. desires to withdraw from this proceeding. We request leave for the Board's records to be amended to reflect this withdrawal.

Should you have any questions concerning this request, please do not hesitate to contact the undersigned.

Sincerely yours,


Nicholas J. DiMichael
Attorney for West Virginia Coals, Inc.



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12-16-97

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CONIGLIO & UTHOFF

A PROFESSIONAL LAW CORPORATION

110 WEST OCEAN BOULEVARD, SUITE C
LONG BEACH, CALIFORNIA 90802-4615

TERRY J. CONIGLIO
STEPHEN M. UTHOFF

TELEPHONE: (562) 491-4644
TELECOPIER: (562) 435-1976
E-MAIL: candulaw@aol.com

ALSO ADMITTED IN THE
DISTRICT OF COLUMBIA

December 15, 1997

VIA FEDERAL EXPRESS

DEC 16 1997

Part of
Public Record



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

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

Our File No. 2012

Dear Secretary Williams:

Enclosed for filing please find an original, twenty-five (25)
copies and a 3.5 diskette of The Rail Bridge Terminals (New Jersey)
Corporation's Notice of Withdrawal from Proceedings designated
RBTC-11. The Notice of Withdrawal is saved on the disk in
WordPerfect 5.2 and Text formats.

Please file the enclosed and return a conformed copy to our
office in the enclosed self-addressed stamped envelope.

Very truly yours,

Stephen M. Uthoff

SMU:lme2
Enclosures

184865
ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388



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

DEC 16 1997

RBTC-11

NOTICE OF WITHDRAWAL FROM PROCEEDINGS

TO: THE SURFACE TRANSPORTATION BOARD AND TO ALL PARTIES OF
RECORD:

PLEASE TAKE NOTICE THAT The Rail-Bridge Terminals (New Jersey)
Corporation hereby withdraws its Comments and Request for
Conditions on Behalf of The Rail-Bridge Terminals (New Jersey)
Corporation and Verified Statement of Mark Schepp in Support
Thereof filed in RBTC-9; withdraws as a Party of Record and
participant in this proceeding, and requests that it be removed
from all applicable proof of service lists.

DATED: December 15, 1997

Respectfully submitted,

By: 

STEPHEN M. UTHOFF
CONIGLIO & UTHOFF

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

CERTIFICATE OF TRANSMITTAL AND SERVICE

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

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

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

Samuel M. Sipe, Jr.
David H. Coburn
Steptoe & Johnson
1330 Connecticut Ave., N.W.
Washington, D.C. 20036

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

John M. Nannes
Scot B. Hutchins
Skadden, Arps, Slate,
Meagher & Flom, LLP
1440 New York Ave., N.W., 9th Flr.
Washington, D.C. 20005

Paul A. Cunningham
Harkins & Cunningham
1300 19th St., N.W.
Suite 600
Washington, D.C. 20036

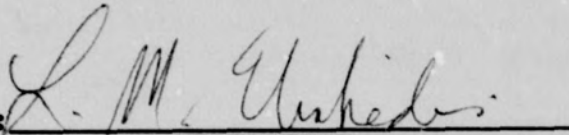
Richard A. Allen
John V. Edwards
Patricia Bruce
Zuckert, Scoutt & Rasenberger
888 17th St., N.W.
Washington, D.C 20006

And all Parties of Record in this proceeding, by mailing,
first class, postage prepaid a copy to each such person.

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

Dated at this 15th day of December, 1997 at Long Beach,
California.

By:



LISA M. ELIAKEDIS

STB

FD

33388

12-15-97

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DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

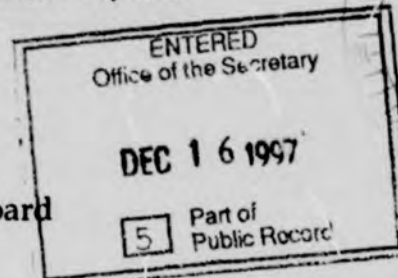
OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

December 15, 1997

Via Hand Delivery

The Honorable Vernon A. Williams
Secretary, Surface Transportation Board
1925 K Street, N.W., Rm. 704
Washington, D.C. 20423-0001



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

Dear Secretary Williams:

On October 21, 1997, Inland Steel Company filed "Comments and Request for Conditions" in the above-referenced proceeding. As a result of recent discussions with Norfolk Southern Corporation ("NS"), Inland Steel Company hereby withdraws its request for Conditions Numbers 1 and 3,¹ and expresses its support for the acquisition of Conrail by CSX Corporation ("CSX") and NS with the exception of Inland's request to the STB to impose trackage rights over the Indiana Harbor Belt Railroad to facilitate direct NS access to Inland Steel's Indiana Harbor Works facility located in East Chicago, Indiana (Request for Condition Number 2). This condition specifically stated:

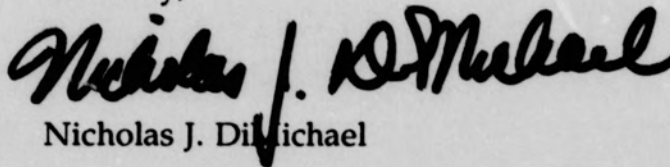
¹ Withdrawn Condition Number 1. "NS and CSXT shall agree to provide single line or run-through service from NCW to ISC customers in Kenton, Ohio and Indianapolis, Indiana, along with detailed operating plans which ensure the continuation of the service that is currently being provided from NCW to Kenton, which replicates the service planned for the NCW to Indianapolis lane. Service shall be provided at rates specified in the current single line contract with CR. As the carrier directly servicing the ISC joint ventures, NS shall manage the single line or run-through service.

Withdraw Condition Number 3. "The full set of conditions advocated by The National Industrial Transportation League in its filing to the STB in this proceeding shall be adopted as conditions to the joint acquisition of CR by NS and CSXT.

Letter to The Honorable Vernon A. Williams
December 15, 1997
Page 2

"NS shall be granted trackage rights to directly service ISC's IHW,
at trackage fee levels which shall allow NS to effectively compete for
traffic originating from and destined to IHW."

Sincerely,

A handwritten signature in black ink, reading "Nicholas J. DiMichael". The signature is written in a cursive, flowing style. The first name "Nicholas" is written with a large, prominent "N". The middle initial "J." is written in a smaller, more compact script. The last name "DiMichael" is written with a large, prominent "D" and "M". The signature is positioned above the printed name "Nicholas J. DiMichael".

Nicholas J. DiMichael

Attorney for Inland Steel Company

STB

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12-10-97

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SLOVER & LOFTUS
ATTORNEYS AT LAW
1894 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20006

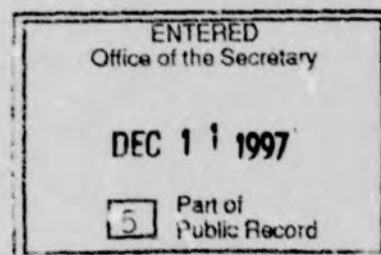
WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN E. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III



December 10, 1997

BY HAND DELIVERY

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



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

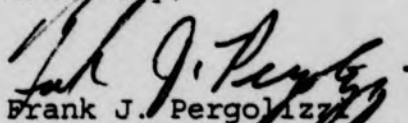
Dear Secretary Williams:

Enclosed for filing under seal in the above-referenced proceeding, please find a separately packaged original and twenty-five (25) copies of the HIGHLY CONFIDENTIAL VERSION of Centerior Energy Corporation's ("Centerior") "Petition to File Supplemental Comments and Supplemental Comments" (CEC-14). In accordance with the Board's order, we have enclosed a Wordperfect 5.1 diskette containing this filing.

Also enclosed for filing please find an original and twenty-five (25) copies of the REDACTED, PUBLIC VERSION of Centerior's "Petition to File Supplemental Comments and Supplemental Comments" (CEC-15).

We have included an extra copy of each of these filings. Kindly indicate receipt by time-stamping these copies and returning them with our messenger.

Sincerely,


Frank J. Pergolizzi
An Attorney for Centerior
Energy Corporation

Enclosures

184730

BEFORE THE
SURFACE TRANSPORTATION BOARD

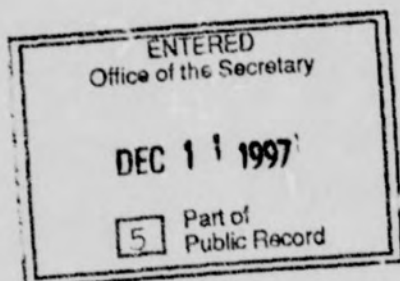


CSX CORPORATION AND CSX
TRANSPORTATION, INC., NORFOLK
SOUTHERN CORPORATION AND NORFOLK
SOUTHERN RAILWAY COMPANY --
CONTROL AND OPERATING LEASES/
AGREEMENTS -- CONRAIL INC. AND
CONSOLIDATED RAIL CORPORATION

Finance Docket No. 33388

CENTERIOR ENERGY CORPORATION'S
PETITION TO FILE SUPPLEMENTAL COMMENTS
AND SUPPLEMENTAL COMMENTS

REDACTED, PUBLIC VERSION



CENTERIOR ENERGY CORPORATION
6200 Oak Tree Boulevard
Independence, OH 44131

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: December 10, 1997

By: C. Michael Loftus
Frank J. Pergolizzi
Andrew R. Kolesar III
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Attorneys and Practitioners

DEC 10 1997
RECEIVED
MAIL
MANAGEMENT
STB

Finance Docket No. 33388

Pursuant to 49 C.F.R. § 1117.1, Centerior Energy Corporation ("Centerior") hereby petitions to file Supplemental Comments in support of its request for protective conditions in the above proceeding.¹ Centerior is petitioning to file these Supplemental Comments now to enable Applicants to respond to the same in their December 15, 1997 Reply Comments. In support of this Petition, Centerior states as follows.

On October 21, 1997, Centerior submitted Comments on the proposed acquisition and division of Conrail (CEC-05/CEC-06). In its Comments, Centerior identified three respects in which approval of the transaction would harm its interests. Specifically, Centerior showed that approval of the transaction: (1)

¹Centerior's Supplemental Comments are appended hereto as "Attachment A."

would eliminate a single-line Conrail routing for coal movements from southeastern Ohio coal mines to Centerior's Cleveland area generating stations (i.e., the Lake Shore, Eastlake and Ashtabula Generating Stations); (2) would impair the competitiveness of Centerior relative to utility shippers who will be better positioned to take advantage of joint access at both origin and destination as a result of the transaction; and (3) would expose Centerior, as an exclusively-served shipper, to pass-through of the substantial acquisition premium that CSX and NS have paid for the Conrail assets. Verified Statement of Michael A. Kovach ("Kovach V.S."), at 9. As a remedy, Centerior requested that the Board condition approval of the acquisition on granting Norfolk Southern trackage rights to serve Centerior's Cleveland stations. Kovach V.S., at 18-19.²

Shortly before filing its Comments, Centerior learned that Applicants had entered an agreement with the Ohio Valley Coal Company ("Ohio Valley"), a principal coal supplier to Centerior that is located on the current single-line Conrail route that will become a joint-line movement as a result of the Conrail division. As Witness Kovach explained:

While Centerior recently has been informed that Ohio Valley has reached an agreement with the Applicants, this agreement has not been provided to Centerior. Centerior is not a party to the agreement and has no way of

²Centerior also requested that the Board quantify the amount of the acquisition premium and direct Applicants to exclude that amount from their net investment bases for regulatory costing purposes.

knowing whether its terms are sufficient to preserve the existing single-line option. In addition, even if the Ohio Valley agreement satisfies Ohio Valley's concerns, it does nothing for the other Ohio coal producers that could supply coal to Centerior via the existing single-line routing.

Kovach V.S., at 13.

In an effort to determine whether the terms of the Ohio Valley Agreement were sufficient to protect Centerior's single-line option, Centerior asked Ohio Valley counsel to request the Applicants to release the document for review by Centerior counsel.³ When this effort failed, Centerior submitted its Third Set of Requests for Production of Documents to Applicants on November 18, 1997 (CEC-09). On Tuesday November 25, 1997, Applicants filed objections (CSX/NS-172).

In response to these objections, Centerior filed a Motion to Compel on November 26, 1997 (CEC-13). Centerior noted its concerns regarding the apparent anticompetitive effects of this Agreement. Motion to Compel at 3-4. These concerns were based on information received from Ohio Valley indicating that the agreement contained provisions providing for:

- (a) a commitment from the Applicants to assist Ohio Valley in finding new markets for its coal;

³Centerior was unable to pursue discovery on this matter prior to submitting its Comments because it first learned of the existence of the agreement during the discovery moratorium imposed by the paragraph 19 of the Discovery Guide lines. STB Finance Docket No. 33388, at 10 (Decision No. 10 served June 26, 1997).

(b) a commitment from CSX to quote transportation rates solely from Ohio Valley's Powhatan No. 6 Mine to Centerior that are consistent with current rate levels under Centerior's existing rail transportation contract with Conrail, unless and until the Applicants are successful in helping Ohio Valley to find a new market for its coal;

(c) a limited term; and

(d) a commitment from the Applicants to permit Ohio Valley to audit the transportation rates that Centerior will pay under its coal transportation contracts for movements from OVCC's mine.

Id. at 4-5.

The matter was scheduled for a discovery conference before Judge Leventhal for December 3, 1997. On December 2, 1997, Applicants produced a copy of the Ohio Valley Agreement by releasing it to Centerior on a highly confidential basis, without placing it in Applicants' document depository. As noted in the attached Supplemental Comments, Centerior can now unequivocally state that the Ohio Valley Agreement does not preserve the single-line Ohio movement, and in fact raises serious concerns that the agreement between the Applicants and Ohio Valley is anticompetitive as to Centerior and other Ohio coal suppliers.

ARGUMENT

The Ohio Valley Agreement represents new evidence that was not available to Centerior at the time it filed its Comments. This new evidence has a direct bearing on the issue of whether Centerior will be harmed by the transaction, and in particular,

the manner in which Applicants have decided to address the loss of the single-line option from southeastern Ohio coal origins.

As the Board recognized in Finance Docket No. 32760, Union Pacific Corp. -- Control and Merger -- Southern Pacific Rail Corp., at 52 n.64 (Decision No. 44 served August 12, 1996), commenting parties may submit subsequent evidentiary filings if new evidence becomes available to them. In this decision, the Board permitted the two shipper groups to submit evidence regarding tariffs that were issued after the March 29, 1996 due date for Comments. Id.

The same conclusion is warranted here. The Ohio Valley Agreement establishes the Applicants' recognition that the loss of single-line service in southeastern Ohio needs to be remedied. The question for the Board is whether that remedy should be for the benefit of all affected parties, or only Ohio Valley. Consideration of that issue requires that the Board review the terms of the Ohio Valley Agreement and evaluate its serious, adverse impact on Centenor and other interested parties.

CONCLUSION

For all the foregoing reasons, Centerior respectfully requests that the Board grant this Petition to File Supplemental Comments relating to the Ohio Valley Agreement.

Respectfully submitted,

CENTERIOR ENERGY CORPORATION

By: Mary E. O'Reilly
Centerior Energy Corporation
6200 Oak Tree Boulevard
Independence, Ohio 44131

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

C. Michael Loftus
Frank J. Pergolizzi
Andrew B. Kolesar III
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Attorneys for Centerior
Energy Corporation

Dated: December 10, 1997

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

**CENTERIOR ENERGY CORPORATION'S
SUPPLEMENTAL COMMENTS**

I.

INTRODUCTION

Centerior Energy Corporation ("Centerior") hereby submits these Supplemental Comments in further support of the relief requested in the October 21, 1997 Comments of Centerior Energy Corporation on the Proposed Acquisition and Division of Conrail. The purpose of these Supplemental Comments is to advise the Board of certain critical new evidence that Centerior received in discovery on December 2, 1997. Specifically, these Supplemental Comments will focus on the anticompetitive impacts of the October 7, 1997 agreement entered by and between the Applicants, the Ohio Valley Coal Company, and Mr. Robert E.

Murray¹ (referred to herein as "Ohio Valley Agreement"), a copy of which is attached hereto as Counsel's Exhibit No. __ (CE-1).²

II.

SUPPLEMENTAL COMMENTS

Through the Ohio Valley Agreement, the Applicants and Ohio Valley evidence their recognition that the loss of single-line service from Ohio coal origins to Centerior's Cleveland area generating stations is a harm that must be addressed. The disagreement, however, lies in the nature of the remedy proposed by the respective parties. On the one hand, Centerior has requested that it be protected from the loss of single-line service by the entry of a protective condition that is fully consistent with the remedies available to the Board under its authority to review rail mergers. See Centerior October 21, 1997 Comments, Argument at 5-6, 16-19. On the other hand, the Applicants and Ohio Valley propose to "remedy" the loss of single-line service by entering into an arrangement that protects Ohio Valley's interests at the expense of its competing Ohio suppliers and Centerior.

Centerior detailed the criteria for imposing conditions in its October 21 Comments. Id. at 5-6. As noted therein, the

¹Mr. Murray, the Ohio Valley Coal Company, and its affiliates will be referred to collectively herein as "Ohio Valley".

²In advancing these Supplemental Comments and requesting the relief stated in Centerior's October 21, 1997 Comments and herein, Centerior expressly reserves all rights to pursue any legal remedies that may exist beyond the jurisdiction of the STB with regard to the terms of the Ohio Valley Agreement.

Board "does not favor consolidations that substantially reduce the transport alternatives available to shippers unless there are substantial and demonstrable benefits to the transaction that cannot be achieved in a less competitive fashion." Id. at 5, citing 49 C.F.R. § 1180.1(a).

In the instant matter, the consolidation will have a substantially anticompetitive impact on Centerior and Ohio coal suppliers if the Ohio Valley Agreement is allowed to stand independent of Centerior's requested trackage rights condition. As set forth in the following sections, far from "solving" the loss of Ohio single-line coal options, this Agreement provides several layers of objectionable dealing.

A.

The most troubling aspect of the Ohio Valley Agreement can be found in . This provision requires that Applicants

Suffice it to say is truly outrageous in the context of the Conrail division proceeding. This provision is objectionable on several levels.

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3

³As Centerior noted in its November 26, 1997 Motion to Compel (CEC-13), providing Centerior's rail pricing information to Ohio Valley "would constitute disclosure of highly sensitive pricing information that could be used by [Ohio Valley] to Centerior's detriment, and therefore, would raise concerns regarding a violation of 49 U.S.C. § 11904." Motion to Compel at 5. The attempt to

- Finally, Centerior will face additional competitive harm relative to those utilities which now will have joint access at origin and destination (see Verified Statement of Michael A. Kovach ("Kovach V.S."), at 14-17; Verified Statement of Frank S. Harris II ("Harris V.S.") at 14-16), since Centerior will

B.

Paragraph of the Ohio Valley Agreement reflects that

In addition, Centerior's Comments make clear that its concerns over the loss of the single-line option from Ohio origins are not limited to coal purchased from Ohio Valley.

C. _____

Paragraph of the Ohio Valley Agreement specifies that

By contrast, granting the trackage rights remedy proposed by Centerior in its Comments will assure that the single-line option is retained for the benefit of both Centerior, Ohio Valley and Ohio coal suppliers competing with Ohio Valley who were not so fortunate as to have the Applicants agree to enter into a deal to . This remedy, unlike the Ohio Valley Agreement, will not be a temporary solution. Rather, the trackage rights remedy would continue the present availability of a single-line routing that the Applicants and Ohio Valley themselves recognize must be preserved to avoid increased costs.

III.

CONCLUSION

Applicants, Ohio Valley and Centerior all agree that the loss of single-line service from Ohio coal origins is a significant concern. The only question for the Board then is how to address that concern. In making that determination, the Board should carefully consider the impacts of the Ohio Valley Agreement. This Agreement represents a back-door deal that is clearly not designed to preserve the single-line option for Ohio coal origins, but rather is simply an attempt by the Applicants and Ohio Valley to protect the interests of Ohio Valley at the

expense of Centerior and Ohio Valley's competitors in the Ohio coal market.⁴

For all the foregoing reasons, and the reasons set forth in Centerior's October 21, 1997 Comments, the Board should condition the approval of the Conrail division on the conditions requested in Centerior's October 21 Comments. In addition, regardless of whether the Board imposes Centerior's requested conditions, it should condition approval of the transaction on the rejection, nullification and/or termination of the offending provisions of the Ohio Valley Agreement.

Respectfully submitted,

CENTERIOR ENERGY CORPORATION

By: Mary E. O'Reilly
Centerior Energy Corporation
6200 Oak Tree Boulevard
Independence, Ohio 44131

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

C. Michael Loftus
Frank J. Pergolizzi
Andrew B. Kolesar III
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Attorneys for Centerior
Energy Corporation

Dated: December 10, 1997

⁴Paragraph of the Ohio Valley Agreement may reflect the true motivations of the Agreement.

ARNOLD & PORTER

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

(202) 942-5000
FACSIMILE (202) 942-5999

DREW A. HARKER
(202) 942-5022

NEW YORK
DENVER
LOS ANGELES
LONDON

December 2, 1997

VIA TELECOPY

Frank J. Pergolizzi, Esq.
Slover & Loftus
1224 17th Street, N.W.
Washington, D.C. 20036

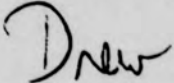
Dear Frank:

Pursuant to Document Request No. 23 in Centerior's Third Set of Document Production Requests To the Applicants, attached please find a copy of the Settlement Agreement among CSX, Norfolk Southern, and the Ohio Valley Coal Company. The three parties to the agreement have all consented to its release to Centerior on a highly confidential basis, without placing the document in the Applicants' depository. In consideration of furnishing you the agreement, we understand that Centerior will withdraw its motion to compel, dated November 18, 1997, with respect to Request Nos. 23 and 24 in Centerior's Third Document Production Request.

It is understood that furnishing Centerior the Settlement Agreement on this basis is without waiver of the Applicants' right to move to strike any evidence or argument based on or related to the terms of the Settlement Agreement and Centerior's right to seek later production of other documents relating to the Settlement Agreement.

Please let me know if you have a different understanding.

Sincerely yours,


Drew A. Harker

Attachment

cc: Fred Birkholz, Esq.
John Edwards, Esq.
Michael McBride, Esq.

CERTIFICATE OF SERVICE

I hereby certify that this 10th day of December, 1997,
I served Highly Confidential copies of the foregoing Petition and
Supplemental Comments by hand upon Applicants' counsel:

Dennis G. Lyons, Esq.
Arnold & Porter
555 Twelfth Street, N.W.
Washington, D.C. 20004-1202

Samuel M. Sipe, Esq.
Stephoe & Johnson L.L.P.
1330 Connecticut Ave., N.W.
Washington, D.C. 20036-1795

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

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

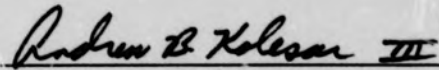
and by first-class mail, postage prepaid on all parties to the
Highly Confidential, Restricted Service List in this proceeding.

I further certify that copies of the Redacted, Public
Version of the foregoing Petition and Supplemental Comments were
served by first class mail, postage prepaid on:

The Hon. Rodney E. Slater
Secretary
U.S. Dept. of Transp.
400 7th Street, S.W.
Suite 10200
Washington, D.C. 20590

The Hon. Janet Reno
Att'y Gen. of the United States
U.S. Dept. of Justice
10th & Constitution Ave., N.W.
Room 4400
Washington, D.C. 20530

and upon all other parties of record in Finance Docket No. 33388.



Andrew B. Kolesar III

STB

FD-33388

ID-184175

11-24-97

I

OPPENHEIMER WOLFF & DONNELLY

1020 Nineteenth Street N.W.
Suite 400
Washington, D.C. 20036-6105

(202) 293-6300
FAX (202) 293-6200

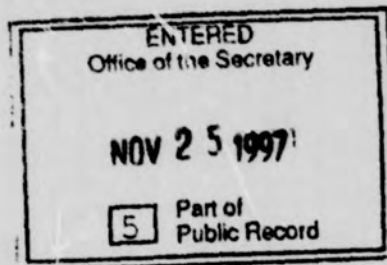


VTR-4

November 24, 1997

By Messenger

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



I

184175
Brussels
Chicago
Detroit
Geneva
Irvine
Los Angeles
Minneapolis
New York
Paris
Saint Paul
San Jose
Washington, D.C.

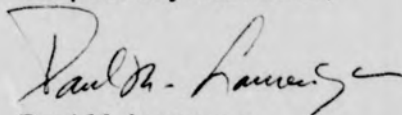
Re: STB Finance Docket No. 33388 -- CSX Corp. and CSX Transportation, Inc.,
Norfolk Southern Corp. and Norfolk Southern Railway Co. - Control
and Operating Leases/Agreements - Conrail Inc. and Consolidated Rail Corp.

Dear Secretary Williams:

Pursuant to a settlement agreement, Vermont Railways, Inc. ("VTR") hereby withdraws its request for conditions and informs the Board that it will no longer participate in this proceeding. Please remove my name and the name of my co-counsel, Edward J. Fishman, from the Service List for VTR.

Thank you for your attention to this matter.

Respectfully submitted,


Paul M. Laurenza

cc: All Parties of Record on the Service List

STB

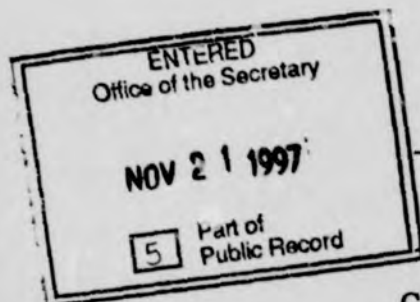
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ID-184122

11-21-97

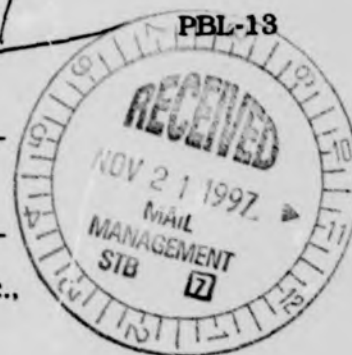
I

184122



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

**MOTION OF PHILADELPHIA BELT LINE RAILROAD COMPANY TO COMPEL
RESPONSES TO SECOND SET OF INTERROGATORIES AND DOCUMENT
REQUESTS TO APPLICANTS AND FIRST SET OF INTERROGATORIES AND
DOCUMENT REQUESTS TO THE CANADIAN PACIFIC PARTIES**

Pursuant to 49 C.F.R. 1114.31(a), the Philadelphia Belt Line Railroad Company ("PBL") moves, by counsel, for an order compelling responses to PBL's Second Set of Interrogatories and Document Requests to Applicants (PBL-11)¹ and PBL's First Set of Interrogatories and Document Requests to the Canadian Pacific Parties (PBL-12).² Pursuant to the Discovery Guidelines adopted in Decision No. 10, PBL requests that this matter be scheduled for a hearing via telephone on Tuesday, November 25, 1997.

¹ "Applicants" refers collectively to CSX Corporation and CSX Transportation, Inc. (collectively, "CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") and Conrail Inc. and Consolidated Rail Corporation (collectively "Conrail").

² "The Canadian Pacific Parties" refers collectively to Canadian Pacific Railway Company ("CP"), Delaware and Hudson Railway Company, Inc. ("D&H"), the St. Lawrence & Hudson Railway Company, Ltd. ("S&H") and Soo Line Railroad Company ("SL").

Background

Following a long succession of submissions that indicated its opposition to the proposed transaction that is the subject of this Proceeding,³ Canadian Pacific Railway Company ("CP") filed a letter with this Board on October 22, 1997 ("the Letter"), that changed CP's position. CP's prior filings had been consistent with PBL's position that issues related to competitive rail service in the Philadelphia market were not adequately addressed by Applicants' proposal. Now, CP has advised the Board that the Canadian Pacific Parties reached a settlement with the Applicants, and that as a consequence, "the Canadian Pacific Parties now support Board approval of the Primary Application, and will not seek protective conditions related to that Application."

PBL is directly interested in the Canadian Pacific Parties' resolution of any issue that relates to service to the Philadelphia Metropolitan area. PBL seeks in this Proceeding to insure that all shippers on its lines have commercially feasible access to all carriers that reach Philadelphia. To the extent that the Canadian Pacific Parties' Settlement affects those interests, PBL needs to ascertain that information in order to prepare the comments it plans to file on December 15, 1997.

To that end, on November 3, 1997, PBL served upon the Applicants and on November 10, 1997, PBL served upon the Canadian Pacific Parties requests for interrogatory responses and documents which sought information regarding the Settlement described in the Letter. (See Exhibits A (PBL-11) and B (PBL-12), respectively, attached hereto.) On November 17, 1997, the Canadian Pacific Parties

³ This included a Description of Anticipated Responsive Application (CP-10), in which CP stated its plan to seek elimination of particular restrictions in D&H's trackage rights.

served objections to those interrogatories and document requests (CP-23) indicating that they would not file a response. (Exhibit C, attached hereto.) The Canadian Pacific parties base their objections on the grounds that the responses sought are "unrelated to any issue in the case and are not discoverable."

Likewise, on November 10, 1997, the Applicants filed initial objections (CSX/NS-152), stating that the requests were irrelevant and untimely. (Exhibit D, attached hereto.) Therefore, Applicants contend, they should not be required to respond at this time.

For the reasons set forth herein, both the Applicants and the Canadian Pacific Parties should be compelled to respond to PBL's discovery requests.

The Information Sought Is Relevant

49 C.F.R. § 1114.21(a)(1) provides, "Parties may obtain discovery . . . which is relevant to the subject matter involved in a proceeding." A party may not object on the grounds "that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." 49 C.F.R. § 1114.21(a)(2).

The information sought in the discovery requests is directly relevant to issues affecting PBL. The Canadian Pacific Parties have been quite clear in this proceeding that they sought improved access to Philadelphia. See Description of Anticipated Responsive Application (CP-10). If the Settlement Agreement addresses services in the Philadelphia Metropolitan region, the interests PBL represents in this Proceeding will be directly and materially affected. Presently, it is impossible to determine from the Letter whether this Settlement Agreement will affect services in the Philadelphia Metropolitan area.

Indeed, the information sought is particularly relevant here where the parties are permitted to file responses to comments, protests, requested conditions and inconsistent and responsive applications. Decision 6, p. 5. PBL is presently preparing a response to the numerous comments and other documents that were filed on October 21, 1997 and that relate to the interests it has articulated in its own submission. Because the Canadian Pacific Parties' Letter supports the Application, it should be considered a Comment to which PBL may respond. Likewise, PBL should be permitted to discover the basis upon which that Comment was made and how the resulting Settlement will affect its position regarding the Application. Production of the requested information should be compelled.

The Request is Timely

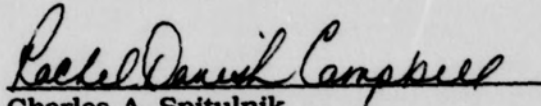
The Applicants' position that PBL's discovery requests are untimely is meritless. PBL could not have requested this information prior to submitting its Comments. The Letter advising of the Settlement was not filed until after those Comments were filed.⁴ Further, while the Discovery Guidelines in this Proceeding provide for a discovery moratorium between October 6, 1997 and October 21, 1997, (Decision No. 10 at p. 10), there are no other limitations in the Order regarding when discovery can be conducted. Thus, this discovery is not time barred.

For all the reasons set forth above, PBL's motion to compel should be granted in its entirety.

⁴ It is on this basis that this dispute is distinguishable from Union Pacific Corporation et al., I.C.C. Docket No. 32133 (Sub-No. 3), Decision No. 17, 1994 WL 323928 (Serv. Date July 11, 1994). In Union Pacific, the Board determined that discovery was limited to information relevant to the party's rebuttal because the remaining discovery sought could have been obtained during the initial, pre-responsive application, stage of the Proceeding.

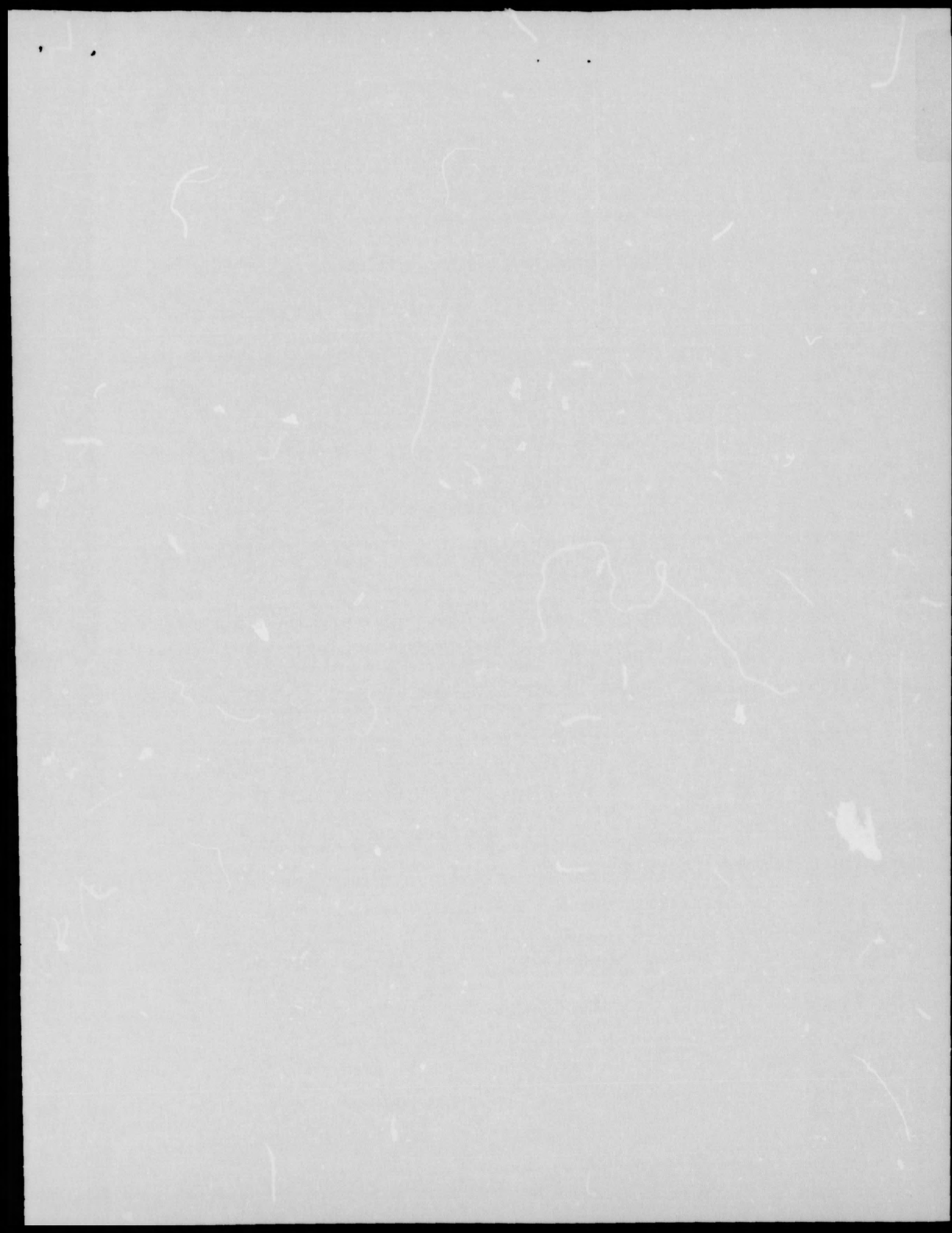
Dated: November 20, 1997

Respectfully submitted,

A handwritten signature in cursive script, reading "Rachel Danish Campbell", written over a horizontal line.

Charles A. Spitulnik
Rachel Danish Campbell
Jamie P. Rennert
HOPKINS & SUTTER
888 Sixteenth Street, NW
Washington, D.C. 20006
(202) 835-8000

Counsel for Philadelphia Belt Line
Railroad Company



Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

PBL-11

Finance Docket No. 33388 (Sub-No. 53)

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

**Philadelphia Belt Line Railroad Company's
Second Set of Interrogatories
and Document Requests To Applicants**

Pursuant to 49 C.F.R. §§ 1114.21 - 1114.31 and the Discovery Guidelines adopted in Decision No. 10, served June 27, 1997 (the "Discovery Guidelines"), Philadelphia Belt Line Railroad Company ("PBL") hereby serves its Second Set of Interrogatories and Documents Requests upon CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation, Norfolk Southern Railway Company, Conrail, Inc. and Consolidated Rail Corporation (collectively referred to as "Applicants"). PBL requests that Applicants answer these interrogatories and provide the requested documents within fifteen (15) days after service hereof. If Applicants object to any interrogatory or document request and do not intend to provide any substantive answer or document in response thereto absent an order compelling such answer or production, then Applicants are requested to serve such objections on undersigned counsel within five (5) days after service hereof.

DEFINITIONS

PBL incorporates by reference the definitions set forth in its First Set of Interrogatories and Document Requests, PBL-6, and supplements those definitions as set forth below.

1. "Settlement Agreement" means the settlement agreement between CP and the Applicants which is referred to in the letter of George W. Mayo, Jr., dated October 22, 1997, addressed to The Honorable Vernon A. Williams.

2. "D&H" means Delaware and Hudson Railway Company, Inc.

INSTRUCTIONS

PBL incorporates by reference the instructions set forth in its First Set of Interrogatories and Document Requests, PBL-6, and supplements those instructions as set forth below.

Unless otherwise specified, these discovery requests cover the period beginning January 1, 1994 to present.

INTERROGATORIES AND DOCUMENTS REQUESTS

INTERROGATORIES

1. State the date on which CP and the Applicants entered into the Settlement Agreement.
2. Describe in detail the terms and provisions of the Settlement Agreement.
3. Identify any document containing information regarding the Settlement Agreement, including but not limited to, drafts, notes, correspondence and proposals.
4. Identify the persons who negotiated the Settlement Agreement.

5. Describe in detail the substance of the negotiations regarding the Settlement Agreement.

6. Describe in detail how the Settlement Agreement will affect (1) PBL (2) the Philadelphia area and (3) shippers moving traffic along PBL.

7. Do CP and the Applicants intend to make the Settlement Agreement, or any portion thereof, public?

8. If the answer to Interrogatory No. 7 is yes, state: (1) what portions of the Settlement Agreement will be made public; (2) the manner in which it will be made public; and (3) when it will be made public. If the Settlement Agreement will not be made public, please state why not.

9. State whether STB approval is required for any portion of the Settlement Agreement.

10. If the answer to Interrogatory 9 is yes, describe what portion(s) of the Settlement Agreement require(s) STB approval.

11. State whether Applicants have agreed to the specific requests made in CP's August 22, 1997 filing including, but not limited to:

a. Access through reciprocal switching rights at non-discriminatory rates with respect to:

- i. North Jersey Shared Assets Area
- ii. South Jersey/Philadelphia Shared Assets Area
- iii. Buffalo-Niagara Frontier terminal area
- iv. Baltimore, MD terminal area

b. Elimination of the particular restrictions contained in D&H's existing trackage rights over CR lines, as set forth in the August 22, 1997 filing.

c. Trackage rights including full service trackage rights at non-discriminatory rates over the following routes:

i. over Conrail (CSX) trackage between Schenectady, NY and Poughkeepsie, NY; over Metro-North trackage between Poughkeepsie, NY and New York City; and then on to CR (CSX) trackage to Fresh Pond, NY.

ii. over CR (CSX) trackage between its junction with D&H at Kenwood Yard in Albany, NY, including Selkirk, NY as an intermediate point, and D&H's Oak Island, NJ terminal and/or the appropriate shared assets terminal in the North Jersey Shared Assets Area, including the right to serve directly Port of New York and New Jersey facilities.

12. Identify all individuals who have assisted counsel for Applicants in responding to these interrogatories.

DOCUMENTS REQUESTED

1. All documents relied upon in responding to the foregoing interrogatories.

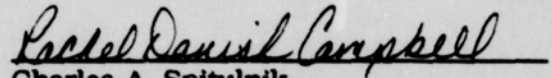
2. All documents relating to the negotiation and/or drafting of the Settlement Agreement

3. All documents evidencing the Settlement Agreement.

4. All documents relating in any way to the Settlement Agreement.

Dated: November 3, 1997

Respectfully submitted,



Charles A. Spitulnik
Rachel Danish Campbell
Jamie P. Rennert
HOPKINS & SUTTER
388 Sixteenth Street, NW
Washington, D.C. 20006
(202) 835-8000

Counsel for the Philadelphia Belt Line
Railroad Company

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 1997, a copy of the foregoing Philadelphia Belt Line Railroad Company's Second Set of Interrogatories and Document Requests To Applicants (PBL-11) was served, as indicated below, upon the following:

By Hand Delivery:

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

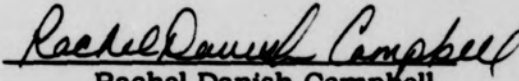
David H. Coburn, Esquire
Steptoe & Johnson, L.L.P.
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795

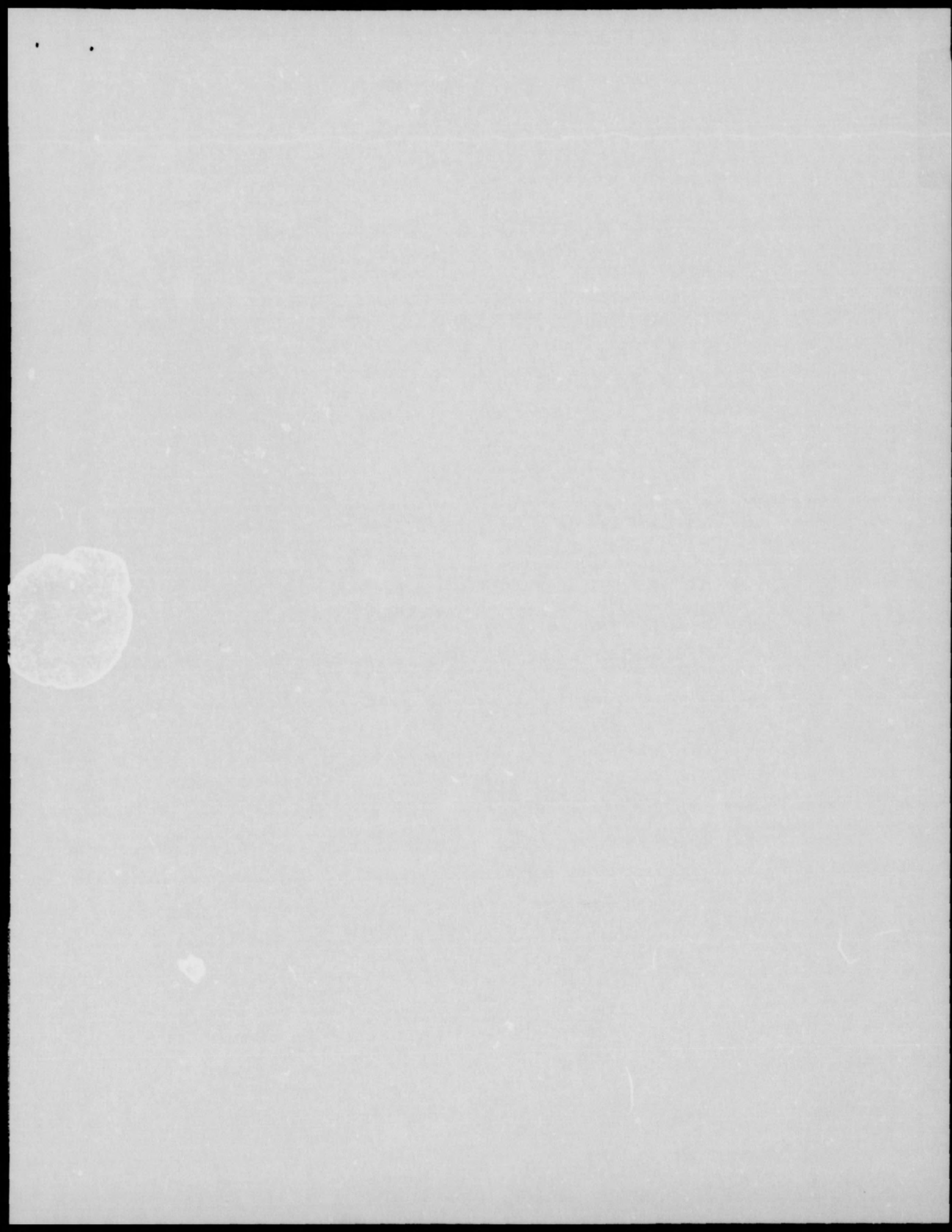
John V. Edwards, Esquire
Patricia Bruce, Esquire
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Suite 600
Washington, D.C. 20006-3939

Gerald P. Norton, Esquire
Harkins Cunningham
1300 Nineteenth Street, N.W.
Suite 600
Washington, D.C. 20036

By First-Class U.S. Mail. Postage Prepaid:

On all other parties on the Restricted Service List.


Rachel Danish Campbell



Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

PBL-12

Finance Docket No. 33388 (Sub-No. 53)

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

**Philadelphia Belt Line Railroad Company's
First Set of Interrogatories and Document
Requests To The Canadian Pacific Parties**

Pursuant to 49 C.F.R. §§ 1114.21 - 1114.31 and the Discovery Guidelines adopted in Decision No. 10, served June 27, 1997 (the "Discovery Guidelines"), Philadelphia Belt Line Railroad Company ("PBL") hereby serves its First Set of Interrogatories and Documents Requests upon Canadian Pacific Railway Corporation, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited (collectively referred to as "the Canadian Pacific Parties"). PBL requests that the Canadian Pacific Parties answer these interrogatories and provide the requested documents within fifteen (15) days after service hereof. If the Canadian Pacific Parties object to any interrogatory or document request and do not intend to provide any substantive answer or document in response thereto absent an order compelling such answer or production, then the Canadian Pacific Parties are requested to serve such objections on undersigned counsel within five (5) days after service hereof.

DEFINITIONS

1. "Applicants" means CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation, Norfolk Southern Railway Company, Conrail, Inc. and Consolidated Rail Corporation, individually and collectively, together with any parent, subsidiary or affiliated corporation, partnership or other legal entity.
2. "Belt Line North" means the property owned by the Philadelphia Belt Line Railroad Company between Bridge Street and Allegheny Avenue (at the site of Conrail's former Port Richmond Yard), and currently operated by Conrail pursuant to a lease agreement between Conrail and PBL dated March 1, 1987.
3. "CSX" means CSX Corporation and CSX Transportation, Inc.
4. "Conrail" means Conrail, Inc. and Consolidated Rail Corporation.
5. "NS" means Norfolk Southern Corporation and Norfolk Southern Railway Company.
6. "PBL" means the Philadelphia Belt Line Railroad Company.
7. "Shared Asset Operator" means the entity that will conduct operations between the former Port Richmond Yard and Greenwich Yard in Philadelphia after consummation of the transaction and who will assume the rights and obligations of Conrail under a lease agreement dated March 1, 1987, between Conrail and PBL.
8. "STB" means the Department of Transportation's Surface Transportation Board and any predecessor or successor agency or department charged by Congress with authority over railroad mergers and combinations.

9. "Analyses or evaluations" include studies, analyses, assessments and reports in whatever form, including letters, memoranda, tabulations, and computer printouts of data selected from a database.

10. "Application" means the application that CSX, NS, and Conrail filed with the STB on June 23, 1997, seeking STB approval for CSX and NS to acquire control of Conrail.

11. "Describe in detail" means to supply a complete narrative account of the information requested.

12. "Document" means any and all writings and recordings as defined in Rule 1001 of the Federal Rules of Evidence, including drafts, typings, printings, minutes, tapes, recordings, or other electronic compilations, or copies or reproductions thereof, in the possession, custody, or control of the Canadian Pacific Parties.

13. "Identify,"

(a) when used in relation to an individual, means to state the name, address, and home and business telephone number of the individual, the job title or position and the employer of the individual at the time of the activity inquired of, and the last-known position and employer of the individual;

(b) when used in relation to a corporation, partnership, or other entity, means to state the name of the entity and the address and telephone number of its principal place of business;

(c) when used in relation to a document, means to:

(1) state the type of document (*e.g.*, letter, memorandum, report, chart);

- (2) identify the author, each addressee and each recipient; and
 - (3) state the number of pages, title, and date of the document;
- (d) when used in relation to an oral communication or statement, means to:
 - (1) identify the person making the communication or statement and the person, persons, or entity to whom the communication or statement was made;
 - (2) state the date and place of the communication or statement;
 - (3) describe in detail the contents of the communication or statement; and
 - (4) identify all documents that refer to, relate to or evidence the communication or statement;
- (e) when used in any other context means to describe or explain.

14. "Including" means including without limitation.

15. "Person" means an individual, company, partnership, or other entity of any kind.

16. "Relate to and relating to" have the broadest meaning accorded to them and include but are not limited to the following: directly or indirectly describing, setting forth, discussing, commenting upon, analyzing, supporting, contradicting, referring to, constituting, concerning or connected in any way with the subject in question or any part thereof.

17. "Shipper" means a user of rail services, including a consignor, a consignee, or a receiver.

18. "CP" or "the Canadian Pacific Parties" means Canadian Pacific Railway Company, Delaware and Hudson Railway Company Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited.

19. Unless otherwise specified, all uses of the conjunctive include the disjunctive and vice versa, and words in the singular include the plural and vice versa.

20. "Settlement Agreement" means the settlement agreement between CP and the Applicants which is referred to in the letter of George W. Mayo, Jr., dated October 22, 1997, addressed to The Honorable Vernon A. Williams.

21. "D&H" means Delaware and Hudson Railway Company, Inc.

INSTRUCTIONS

1. Unless otherwise specified, these discovery requests cover the period beginning January 1, 1994 to present.

2. If the Canadian Pacific Parties have information that would permit a partial answer to any interrogatory, but they would have to conduct a special study to obtain information necessary to provide a more complete response to that interrogatory, and if the burden of conducting such special study would be greater for the Canadian Pacific Parties than for PBL, then:

(a) state that fact;

(b) provide the partial answer that may be made with information available to the Canadian Pacific Parties:

(c) identify such business records, or any compilation, abstract, or summary based thereon, as will permit PBL to derive or ascertain a more complete answer; and

(d) as provided in 49 C.F.R. § 1114.26(b), produce such business records, or any compilation, abstract, or summary based thereon, as will permit PBL to derive or ascertain a more complete answer.

3. All documents responsive to a document request should be produced, including each copy of an original that differs in any way from the original, including, but not limited to, differences caused by markings on, or other additions to, such copy or deletions of parts of the original.

4. If a document responsive to a particular document request is known to have been in existence but no longer exists, state the circumstances under which it ceased to exist, and identify all persons having knowledge of the contents of such documents.

5. If the information sought in a particular interrogatory is contained in existing documents, those documents may be specifically identified, and pursuant to 49 C.F.R. § 1114.26(b), the Canadian Pacific Parties may produce legible, complete and exact copies thereof so long as the original documents are retained and will be made available if requested.

6. If the Canadian Pacific Parties' reply to any interrogatory includes a reference to the Application filed in this proceeding, such response shall specify the volume(s) and exact page number(s) of the Application where the information is contained. If any response includes a reference to documents on file in the Document

Depository, the Canadian Pacific Parties should denote the document number and/or page number(s) of each document as it is filed in the Depository.

7. If any information or document is withheld on the ground that it is privileged or otherwise not discoverable,

(a) identify the information or document (in the manner provided in Definition 13 *supra*); and

(b) state the basis for the claim that it is privileged or otherwise not discoverable.

8. Where any interrogatory or document request refers to "CP," and the response of one of the Canadian Pacific Parties would be different from the response of another Canadian Pacific Party, provide separate responses of each Canadian Pacific Party.

9. If any Canadian Pacific Party knows or later learns that its response to any interrogatory is incorrect it is under a duty seasonably to correct that response. Pursuant to 49 C.F.R. § 1114.29, the Canadian Pacific Parties are under a duty seasonably to supplement their responses with respect to any questions directly addressed to the identity and locations of persons having knowledge of discoverable matters.

INTERROGATORIES AND DOCUMENTS REQUESTS

INTERROGATORIES

1. State the date on which CP and the Applicants entered into the Settlement Agreement.

2. Describe in detail the terms and provisions of the Settlement Agreement.

3. Identify any document containing information regarding the Settlement Agreement, including but not limited to drafts, notes, correspondence and proposals.

4. Identify the persons who negotiated the Settlement Agreement.

5. Describe in detail the substance of the negotiations regarding the Settlement Agreement.

6. Describe in detail how the Settlement Agreement will affect (1) PBL (2) the Philadelphia area and (3) shippers moving traffic along PBL.

7. Do CP and the Applicants intend to make the Settlement Agreement, or any portion thereof, public?

8. If the answer to Interrogatory No. 7 is yes, state: (1) what portions of the Settlement Agreement will be made public; (2) the manner in which it will be made public; and (3) when it will be made public. If the Settlement Agreement will not be made public, please state why not.

9. State whether STB approval is required for any portion of the Settlement Agreement.

10. If the answer to Interrogatory 9 is yes, describe what portion(s) of the Settlement Agreement require(s) STB approval.

11. State whether Applicants have agreed to the specific requests made in CP's August 22, 1997 filing including, but not limited to:

a. Access through reciprocal switching rights at non-discriminatory rates with respect to:

i. North Jersey Shared Assets Area

ii. South Jersey/Philadelphia Shared Assets Area

- iii. Buffalo-Niagara Frontier terminal area
- iv. Baltimore, MD terminal area
- b. Elimination of the particular restrictions contained in D&H's existing trackage rights over CR lines, as set forth in the August 22, 1997 filing.
- c. Trackage rights including full service trackage rights at non-discriminatory rates over the following routes:
 - i. over Conrail (CSX) trackage between Schenectady, NY and Poughkeepsie, NY; over Metro-North trackage between Poughkeepsie, NY and New York City; and then on to CR (CSX) trackage to Fresh Pond, NY.
 - ii. over CR (CSX) trackage between its junction with D&H at Kenwood Yard in Albany, NY, including Selkirk, NY as an intermediate point, and D&H's Oak Island, NJ terminal and/or the appropriate shared assets terminal in the North Jersey Shared Assets Area, including the right to serve directly Port of New York and New Jersey facilities.

12. Identify all individuals who have assisted counsel for the Canadian Pacific Parties in responding to these interrogatories.

DOCUMENTS REQUESTED

- 1. All documents relied upon in responding to the foregoing interrogatories.
- 2. All documents relating to the negotiation and/or drafting of the Settlement Agreement
- 3. All documents evidencing the Settlement Agreement.
- 4. All documents relating in any way to the Settlement Agreement.

Dated: November 10, 1997

Respectfully submitted,

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Rachel Danish Campbell
Jamie P. Rennert
HOPKINS & SUTTER
888 Sixteenth Street, NW
Washington, D.C. 20006
(202) 835-8000

Counsel for the Philadelphia Belt Line
Railroad Company

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 1997, a copy of the foregoing Philadelphia Belt Line Railroad Company's First Set of Interrogatories and Document Requests To The Canadian Pacific Parties (PBL-12) was served, as indicated below, upon the following:

By Hand Delivery:

Drew A. Harker, Esquire
Arnold & Porter
555 12th Street, N.W.
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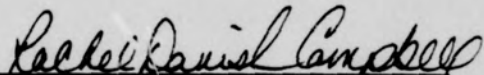
David H. Coburn, Esquire
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Gerald P. Norton, Esquire
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By First-Class U.S. Mail. Postage Prepaid:

On all other parties on the Restricted Service List.


Rachel Danish Campbell

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 --
TRANSFER OF RAILROAD LINE BY NORFOLK SOUTHERN
RAILWAY COMPANY TO CSX TRANSPORTATION, INC.

**CANADIAN PACIFIC PARTIES' OBJECTIONS TO
PHILADELPHIA BELT LINE RAILROAD COMPANY'S
FIRST SET OF INTERROGATORIES AND DOCUMENT REQUESTS**

Canadian Pacific Railway Company Delaware and Hudson Railway Company, Inc., the St. Lawrence & Hudson Railway Company, Ltd., and Soo Line Railroad Company (collectively, the "Canadian Pacific Parties"), through their counsel, hereby submit their initial objections ^{1/} to the Philadelphia Belt Line Railroad Company's First Set of Interrogatories and Document Requests to the Canadian Pacific Parties (PBL-12).

Philadelphia Belt Line Railroad Company ("PBL") requests documents and responses to interrogatories all relating to an agreement reached between the Canadian Pacific Parties and Norfolk Southern Corporation and Norfolk Southern

^{1/} The Canadian Pacific Parties submit these initial objections pursuant to Paragraph 16 of the Discovery Guidelines. See Decision No. 10 (served June 27, 1997).

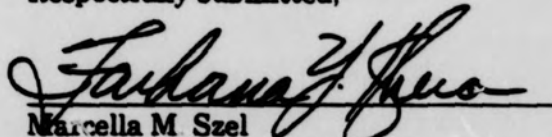
Railway and an agreement between the Canadian Pacific Parties and CSX Corporation and CSX Transportation, Inc. (collectively, the "CP Agreements").

The Canadian Pacific Parties object to these discovery requests on the ground that they seek information that is neither relevant nor likely to lead to the discovery of evidence relevant to this proceeding. The CP Agreements are business transactions that do not require Board approval. Furthermore, neither the Canadian Pacific Parties nor the Applicants 2/ have, in any way, relied on the CP Agreements in this proceeding or put the CP Agreements at issue herein. The Applicants have not relied on the CP Agreements to support their Application, and the Canadian Pacific Parties have not filed a Responsive Application. Therefore, information and documents relating to the CP Agreements are unrelated to any issue in this case and are not discoverable.

2/ "Applicants" refers collectively to CSX Corporation and CSX Transportation, Inc. (collectively, "CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") and Conrail, Inc. and Consolidated Rail Corporation (collectively, "Conrail").

Accordingly, the Canadian Pacific Parties object to, and will not produce information responsive to, PBL's first set of interrogatories and document requests.

Respectfully submitted,



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November 17, 1997

Attorneys for Canadian Pacific Railway
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Company, Inc., the St. Lawrence & Hudson
Railway Company, Ltd. and Soo Line Railroad
Company

CERTIFICATE OF SERVICE

I hereby certify that, on this 17th day of November, 1997, I served the Canadian Pacific Parties' Objections to Philadelphia Belt Line Railroad Company's First Set of Interrogatories and Document Requests (CP-23) by hand on the parties below and by first-class mail, postage prepaid, on all parties on the Restricted

Service List:

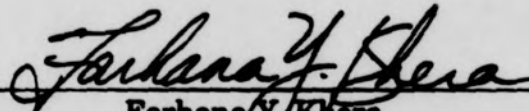
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Farhana Y. Khara



ALL STATE LEGAL 860 222 8510 EDS11 RECYCLED

CSX/NS-152

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

STB FINANCE DOCKET NO. 33388

**APPLICANTS' INITIAL OBJECTIONS TO
PHILADELPHIA BELT LINE RAILROAD COMPANY'S
SECOND SET OF INTERROGATORIES AND
DOCUMENT REQUESTS TO APPLICANTS**

Applicants^{1/} hereby submit their initial objections to the Philadelphia Belt Line Railroad Company's ("PBL") Second Set of Interrogatories and Document Requests to Applicants (PBL-11).

These initial objections are filed pursuant to Paragraph 16 of the Discovery Guidelines adopted by Decision No. 10, served June 27, 1997, which provide that "[a] responding party shall, within five business days after receipt of service, serve a response stating all its objections to any discovery request as to which the responding party has then decided that it will be providing no affirmative response. . . ." Applicants reserve the right to answer or

^{1/}"Applicants" refers collectively to CSX Corporation and CSX Transportation, Inc. (collectively "CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS") and Conrail Inc. and Consolidated Rail Corporation (collectively "Conrail").

object to each and every discovery request, definition and instruction set forth in PBL-11 within the time frame set forth in Paragraph 16.

PBL's requests seek information about a settlement between a third party and one or more of the Applicants, much of which would be privileged. Applicants object to PBL-11 on the basis that the deadlines have passed for evidentiary filings or discovery by PBL. PBL should not be permitted to conduct discovery at this time because, except for Applicants' recent submission of the North Jersey Shared Asset Area Operating Plan² which these requests do not address, the discovery period has closed for PBL on Applicants' case-in-chief. As a result, these requests are irrelevant and PBL has no particular need for the requested information that would justify these requests.

On October 21, 1997, PBL filed its Comments and Request for Conditions (PBL-10). PBL had a full, fair and adequate opportunity to serve discovery and participate in the depositions of Applicants' witnesses during the initial discovery period (June 23, 1997 through October 5, 1997) in this proceeding. PBL served one set of discovery requests on Applicants (PBL-6) on September 24, 1997. Applicants responded to each of PBL's requests, and PBL did not serve any additional discovery requests within the permitted time frame.

Because PBL's opposition filing consists of comments, and is not a responsive or

²Pursuant to Decision No. 44, on October 29, 1997, Applicants filed CSX/NS-119, CSX/NS Operating Plan for the North Jersey Shared Assets Area and Supporting Statement. In that decision, the Board issued a separate procedural schedule for the North Jersey Shared Assets Area Operating Plan. Under that procedural schedule, the Port Authority of New York/New Jersey and other interested parties have until November 24, 1997 to complete discovery and file comments with respect to those operating plans. Decision No. 44, Slip Op. at 4.

inconsistent application, PBL is not entitled to file rebuttal in this proceeding. Therefore, PBL will not be prejudiced by not obtaining responses to these discovery requests. For these reasons, Applicants should not be required to respond to these requests.

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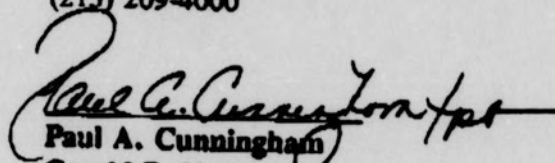
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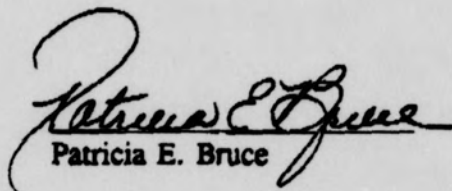
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(202) 973-7600

Counsel for Conrail Inc. and
Consolidated Rail Corporation

Dated: November 10, 1997

CERTIFICATE OF SERVICE

I, Patricia E. Bruce, certify that on November 10, 1997, I caused to be served by facsimile service a true and correct copy of the foregoing CSX/NS-152, Applicants' Initial Objections to the Philadelphia Belt Line Railroad Company's Second Set of Interrogatories and Document Requests to Applicants (PBL-11) on all parties that have submitted to the Applicants a Request to be Placed on the Restricted Service List in STB Finance Docket No. 33388.



Patricia E. Bruce

Dated: November 10, 1997

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 1997, a copy of the foregoing Motion of Philadelphia Belt Line Railroad Company To Compel Responses To Second Set Of Interrogatories And Document Requests To Applicants And First Set Of Interrogatories And Document Requests To The Canadian Pacific Parties (PBL-13) was served, as indicated below, upon the following:

By Hand Delivery:

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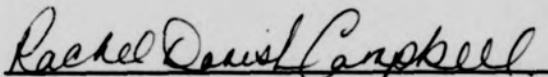
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By First-Class U.S. Mail, Postage Prepaid:

On all other parties on the Restricted Service List.


Rachel Danish Campbell