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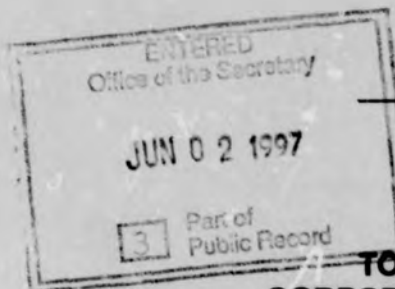
ARU-5

179981

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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



**ALLIED RAIL UNIONS' FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS
AND FIRST SET OF INTERROGATORIES
TO CSX CORPORATION, NORFOLK SOUTHERN
CORPORATION, AND CONSOLIDATED RAIL CORPORATION**

I. DEFINITIONS

1. "CSX" means CSX Corporation, Inc.
2. "NS" means Norfolk Southern Corporation.
3. "Conrail" means the Consolidated Rail Corporation.
4. "Allied Rail Unions" means the American Train Dispatchers Department/BLE;
Brotherhood of Locomotive Engineers; Brotherhood of Maintenance of Way
Employees; Brotherhood of Railroad Signalmen; Hotel Employees and Restaurant
Employees International Union; International Brotherhood of Boilermakers, Iron
Ship Builders, Blacksmiths, Forgers and Helpers; International Brotherhood of
Electrical Workers; The National Conference of Firemen & Oilers/SEIU; and
Sheet Metal Workers' International Association.
5. "STB" means Surface Transportation Board.

6. "Application" refers to the application that CSX, NS, and Conrail intend to file with the STB seeking STB approval for CSX and NS to acquire control of Conrail.
7. "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a). A draft or non-identical copy is a separate document within the meaning of this term.
8. "You" and "your" mean and refer to the carriers responding to the requests for production of documents and interrogatories.

II. INSTRUCTIONS

1. You shall supplement your responses to the following requests for production of documents and interrogatories in accordance with 49 C.F.R. § 1114.29.
2. If you object to or otherwise decline to comply with any portion of any request for production or interrogatory, provide all documents or information requested by that portion of the request or interrogatory to which you do not object or with which you do not decline to comply. If you object to a request for production or interrogatory on the ground that it is too broad, provide all information and documents or portions of documents that you agree are discoverable. If you object to a request or production or interrogatory on the ground that to provide the requested discovery would constitute an undue burden, provide all requested discovery that can be supplied without undertaking what you claim is an undue burden. For those portions of any request for production or interrogatory to which you object or with which you decline to comply, state each reason for your objection or declination. If you object to any portion of any request for production or interrogatory on the ground that it seeks privileged or otherwise non-

discoverable information, state the privilege or other protection asserted, identify all persons to whom the information that you claim is non-discoverable have been communicated or displayed, and identify all documents that constitute, contain or reflect such information.

III. Request for Production

Pursuant to 49 C.F.R. § 1114.30, the Allied Rail Unions serve the following requests for production of documents upon CSX Corporation, Norfolk Southern Corporation, and Consolidated Rail Corporation. Documents responsive to these requests should be produced at the offices of the carriers' Washington, D.C. counsel or at some other agreed-upon location within fifteen (15) days after service.

1. Any and all agreements establishing and pertaining to the trust that holds or will hold the Conrail shares until the STB rules on the Application.
2. Any and all agreement(s) between Conrail and CSX and/or NS regarding capital improvements that Conrail may undertake until the STB rules on the Application.
3. Any and all agreement(s) between Conrail and CSX and/or NS regarding routine maintenance that Conrail may undertake until the STB rules on the Application.
4. Any and all agreements between Conrail and CSX and/or NS relating to acquisitions or leases of locomotives by Conrail until the STB rules on the Application.

5. Any and all agreements between Conrail and CSX and/or NS relating to levels of locomotive maintenance repairs, rebuilding, and/or overhauls that Conrail may undertake until the STB rules on the Application.
6. Any and all agreements between Conrail and CSX and/or NS relating to the level of services that Conrail should or must provide until the STB rules on the Application.
7. Any and all agreements between Conrail and CSX and/or NS that relate to the number of employees that Conrail employs in any craft represented by the Allied Rail Unions until the STB rules on the Application.
8. Any and all agreements between Conrail and CSX and/or NS that requires or may cause Conrail to reduce its employment levels in any craft represented by the Allied Rail Unions, as compared to the number of employees Conrail employed during the comparable quarter one year ago.
9. Documents submitted or to be submitted to the Appropriations Subcommittee on Transportation in response to specific requests made at the hearings held by that Committee in Washington, D.C., Harrisburg, PA, and Philadelphia, PA, including but not limited to written responses regarding the severance package for executive officers of Conrail, the factors which make the Philadelphia port competitive with other ports on the Atlantic seaboard, the extent to which the agreement among the parties provides for reductions by Conrail in capital improvements and

maintenance, and whether the south Philadelphia yard is being adequately manned?

IV. Interrogatories

Pursuant to 49 C.F.R. § 1114.26, the Allied Rail Unions serve the following interrogatories upon CSX Corporation, Norfolk Southern Corporation, and Consolidated Rail Corporation. Responses to these requests should be served upon counsel for the Allied Rail Unions, HIGHS AW, MAHONEY & CLARKE, P.C., 1050 17th Street, N.W., Suite 210, Washington, DC 20036, fifteen (15) days after service.

Interrogatory No. 1. Identify all agreements between Conrail and CSX and/or NS dated since September 1996 that controls, or in any way relates, to the manner in which Conrail conducts its operations, including but not limited to the level of service, the number of employees it hires, the amount of overtime that employees perform, the amount of capital improvement it undertakes, and its maintenance of track or locomotives. For each agreement, provide the name of the agreement, the date of the agreement, a brief statement regarding the purpose of the agreement, and how the agreement impacts employees.

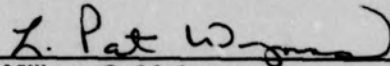
Interrogatory No. 2. Identify all actions taken by Conrail since December 1, 1996 which involve a reduction in the level of services offered by Conrail, a reduction in the use of certain lines, a reduction in overtime for employees, or deferred maintenance on tracks or locomotives. For each such action, describe in detail the action taken, the date of the action, and the specific impact, if any, the action had upon employees.

Interrogatory No. 3. Identify all actions that Conrail intends to take in the next twelve months which involve a reduction in the level of services offered by Conrail, a

reduction in the use of certain lines, a reduction in overtime for employees, or deferred maintenance on tracks or locomotives. For each such action, describe in detail the action to be taken, the anticipated date of the action, and the specific impact, if any, the action will have upon employees.

Interrogatory No. 4. State the number employees in each craft represented by the Allied Rail Unions that performed work on Conrail in each month of 1996 and 1997, the number of straight time hours they worked, and the number of overtime hours they worked. Your response to this interrogatory must be supplemented as the information for future months in 1997 becomes available.

Respectfully submitted,



William G. Mahoney
Richard S. Edelman
L. Pat Wynns
HIGHS AW, MAHONEY & CLARKE, P.C.
1050 17th Street, N.W., Ste. 210
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(202) 296-8500

Date: May 30, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served one copy of Allied Rail Unions' First Request For Production Of Documents And First Set Of Interrogatories To CSX Corporation, Norfolk Southern Corporation, And Consolidated Rail Corporation, by hand delivery to the offices of the following:

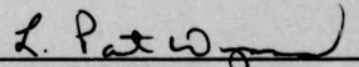
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and by first-class mail, postage prepaid, to the offices of the parties on the attached list.

Dated at Washington, D.C. this 30th day of May, 1997.



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RICHARD A. ALLEN



May 22, 1997

Via Hand Delivery

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

179884

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

Dear Secretary Williams:

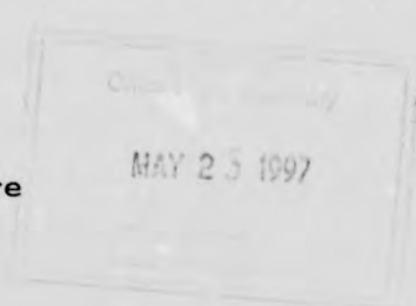
Enclosed for filing is an original and twenty five copies of
CSX/NS-14 Applicants' Motion to Strike ARU-4, Allied Rail Unions'
Request for Leave to File Reply in Opposition to Petition for
Waiver or Clarification of Railroad Consolidation Procedures and
Reply in Opposition to Petitions for Waiver of 49 CFR
§1180.4(c)(2)(vi). Also enclosed is a 3 1/2" computer disk
containing the filing in Wordperfect 5.1 format, which is capable
of being read by Wordperfect for Windows 7.0.

Should you have any questions regarding this, please call.

Sincerely,


Richard A. Allen

Enclosure



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

APPLICANTS' MOTION TO STRIKE ARU-4,
ALLIED RAIL UNIONS' REQUEST FOR LEAVE TO FILE REPLY
IN OPPOSITION TO PETITION FOR WAIVER OR CLARIFICATION
OF RAILROAD CONSOLIDATION PROCEDURES
AND REPLY IN OPPOSITION TO PETITIONS FOR WAIVER OF
49 CFR §1180.4(c)(2)(vi)

179884

CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"),^{1/} Norfolk
Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSRC"),^{2/} and
Conrail Inc. ("CRI") and Consolidated Rail Corporation ("CRC")^{3/} (collectively,
"Applicants") hereby move to strike ARU-4, Allied Rail Unions' Request for Leave to File
Reply in Opposition to Petition for Waiver or Clarification of Railroad Consolidation
Procedures and Reply in Opposition to Petitions for Waiver of 49 CFR §1180.4(c)(2)(vi)

^{1/} CSXC and CSXT are referred to collectively as "CSX."

^{2/} NSC and NSRC are referred to collectively as "NS."

^{3/} CRI and CRC are referred to collectively as "Conrail."

submitted by Allied Rail Unions ("ARU") on May 20, 1997.^{4/} ARU's pleading is prohibited under the Board's Railroad Consolidation Procedures^{5/} and should be stricken. Even if the Board were to consider the ARU's pleading, its arguments against granting one of the Applicants' waiver requests are without merit and should be rejected.

Discussion

In CSX/NS-10, filed May 2, 1997, the Applicants requested waiver or clarification of Section 1180.6(a)(2)(v) of the Board's Railroad Consolidation Procedures to permit them to use dates other than 1995 as a base line for setting forth the impacts of the proposed transaction on rail carrier employees. Applicants wish to use November 1996 to create the base line for rail carrier employees covered by collective bargaining agreements. ARU objects to this requested waiver or clarification because, according to ARU, "it would be highly prejudicial to employees of the railroads involved . . ." and "would minimize the impact of the Transaction on employees." ARU-4 at 2 and 5.

ARU's pleading is not permitted by the Board's Consolidation Procedures. Section 1180.4(f)(3) states, in relevant part:

No replies to a petition for waiver will be permitted, except where a proceeding involving the same parties and a related transaction is pending before us. . . . Replies to a petition for clarification shall be permitted within 10 days of the petition's filing.

^{4/} Although ARU cites to 49 CFR §1180.4(c)(2)(vi) in the caption and body of its pleading, ARU's arguments are in fact directed toward that part of CSX/NS-10 addressing information to be submitted by the Applicants pursuant to 49 CFR §1180.6(a)(2)(v).

^{5/} The Board's Railroad Consolidation Procedures are found at 49 C.F.R. part 1180, subpart A.

ARU's reply is directed to that part of the Applicants' request seeking waiver of the Board's Consolidation Procedures to permit them to use dates other than 1995 as a base line for setting forth the impacts on rail carrier employees. As such, ARU's reply is prohibited and should be stricken. Section 1180.4(f)(3) is a recognition of the fact that a Petition for Waiver or Clarification raises issues relevant to the Board's needs in reviewing railroad consolidations, not those of other parties. The Board should not entertain replies like ARU's, thereby encouraging parties simply to disregard the rule and burden the Board and Applicants.

Furthermore, even if ARU's pleading were only responding to a request for clarification by Applicants, it would have been substantially out of time, and ARU made no effort to show good cause why such an untimely pleading should be considered. Under Section 1180.4(f)(2), Applicants must file a petition for waiver or clarification at least 45 days prior to the filing of the Control Application. Section 1180.4(f)(3) requires that permitted replies to a petition for clarification (which ARU's pleading is not) be filed within 10 days of the filing of the petition. The strict timing requirements set forth in the regulations permit the Board to review and consider requests for clarification, and comments on those requests, in time for the Applicants to accommodate the Board's decision regarding same. CSX/NS-10 was filed on May 2. It was not until May 20th -- 18 days later -- that ARU filed its pleading. The Board should strike ARU's pleading for this reason as well.

Even if the Board were to consider ARU's reply, however, it should grant Applicants' request for waiver or clarification of Section 1180.6(a)(2)(v) because ARU's position is factually incorrect. ARU claims that "November employment figures are typically

significantly lower for the maintenance of way craft than for figures for the rest of the year; employment figures for November are therefore not reflective of the actual number of employees working in the craft during the year." ARU-4 at 3. That is not correct.

In fact, as stated in CSX/NS-10, Applicants' wish to use November 1996 to create the base line for rail carrier employees covered by collective bargaining agreements because that is the most recent period for which figures are available and for which the figures would not be affected by seasonal fluctuations. The Declaration of William L. Holland, Senior Director, Financial Planning for Conrail at ¶2, attached hereto as Exhibit A, confirms that the November 1996 figures provide the most accurate basis for formulating the required labor impact analysis for these rail carrier employees. Contrary to ARU's assertions, Mr. Holland states: "[I]n 1996 seasonal furloughs did not begin until December, and November 1996 is the most recent month for which figures were available which would not be affected by seasonal fluctuations."

Indeed, for all crafts, Conrail's employment figures for July 1996 -- an alternative month proposed by ARU -- were essentially the same as for November 1996 (some slightly lower, some slightly higher). *Id.* at ¶3. The level of maintenance of way employees in particular in November 1996 was less than one percent lower than the level of those employees in July 1996. *Id.* Despite ARU's arguments to the contrary, there is no significant difference between the July 1996 and November 1996 figures. Therefore, use of November 1996, as opposed to July 1996, as a base line for rail carrier employees covered by collective bargaining agreements would not result in an understatement of the difference between employment before and after the proposed transaction.

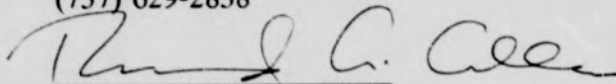
Furthermore, Applicants wish to use the most current Conrail employee figures that do not reflect seasonal fluctuations in order to provide the most accurate projection possible of the impact of the transaction on Conrail's employees. Use of calendar 1995 figures would not do so because they would include the effect of seasonal furloughs and would also fail to reflect changes in employment levels since 1995 that were unrelated to the proposed transaction.

Conclusion

The Board should strike or deny ARU-4.

Respectfully submitted,

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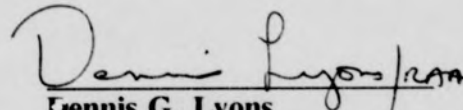
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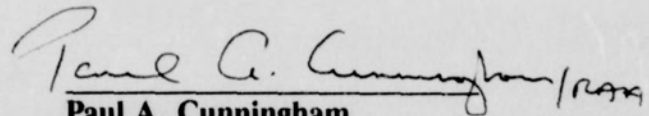


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Constance L. Abrams
Consolidated Rail Corporation
Two Commerce Square
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Philadelphia, PA 19103
(215) 209-4000

Handwritten signature of Paul A. Cunningham in cursive, with a horizontal line underneath it.

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Counsel for Conrail Inc. and Consolidated
Rail Corporation

May 22, 1997

EXHIBIT A

**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 --**

DECLARATION OF WILLIAM L. ROLLAND

1. I am Senior Director, Financial Planning, for Consolidated Rail Corporation ("Conrail"). My responsibilities have made me familiar with the levels of employment for Conrail employees covered by collective bargaining agreements and I have worked with such Conrail data since 1980. I have also been involved in the process of gathering information for the application to be filed in this docket.

2. Conrail and the other applicants in this docket have sought permission to use November 1996 as the base line for rail carrier employees covered by collective bargaining agreements (CSX/NS-10, at 22-23). That was done because in 1996 seasonal furloughs did not begin until December, and November 1996 is the most recent month for which figures were available which would not be affected by seasonal fluctuations. Such furloughs are typically in effect through the first three months of the following year.

3. Conrail's employment figures for July 1996 were basically the same as for November 1996 for all crafts. There

were slight differences in the levels in July and November, with some crafts being higher in July and some higher in November, but these differences were not significant. For example, the level of maintenance of way employees in November 1996 was less than one percent lower than the level in July 1996.

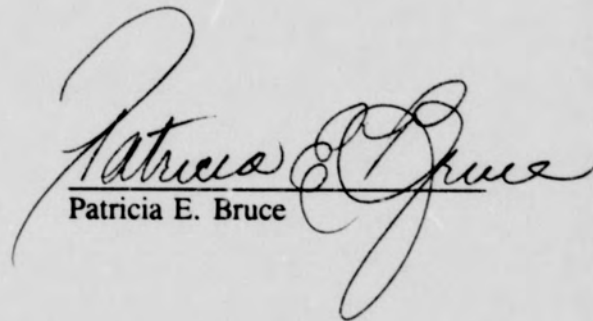
I declare under penalty of perjury that the foregoing is true and correct.

William L. Holland 5/27/97
William L. Holland

CERTIFICATE OF SERVICE

I, Patricia E. Bruce, certify that on May 22, 1997 I have caused to be served by first class mail, postage prepaid, or by more expeditious means a true and correct copy of the foregoing CSX/NS-14, Applicants' Motion to Strike ARU-4, Allied Rail Unions' Request for Leave to File Reply in Opposition to Petition for Waiver or Clarification of Railroad Consolidation Procedures and Reply in Opposition to Petitions for Waiver of 49 CFR §1180.4(c)(2)(vi) on all parties that have appeared in STB Finance Docket No. 33388 and by hand delivery on the following:

The Honorable Jacob Leventhal
Administrative Law Judge
Federal Energy Commission
Office of Hearings
825 North Capitol Street, N.E.
Washington, D.C. 20426



Patricia E. Bruce

Dated: May 22, 1997

STB

FD-

33388

5-21-97

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May 21, 1997



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

Re: STB Finance Docket No. 33388

Dear Secretary Williams:

On May 2, 1997, CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT")¹, Conrail Inc. ("CRI"), and Consolidated Rail Corporation ("CRC")² filed a petition seeking a waiver of certain requirements of 49 C.F.R. § 1180.4(c)(2)(vi) relating to four proposed construction projects.

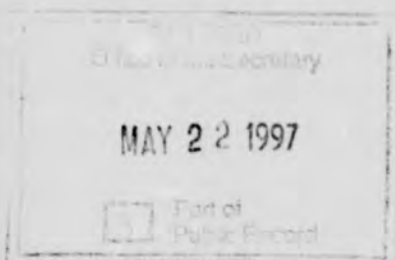
On May 13, 1997, the Board issued Decision No. 5 for the above referenced docket number seeking comments on the petition. After reviewing the Decision, CSX would like to make a minor clarification to its Petition relating to the description of the proposed Crestline connection.

The correct description is provided below.
Underscored portions reflect changes:

Two main line CRC tracks cross at Crestline, and CSXT proposes to construct in the northwest quadrant a connection track between two CRC main lines. The connection would extend approximately 1507 feet between approximately MP 75.4 in CRC's North-South main between Greenwich, OH and Indianapolis,

¹ CSX and CSXT are referred to collectively as CSX.

² CRI and CRC are referred to collectively as Conrail.



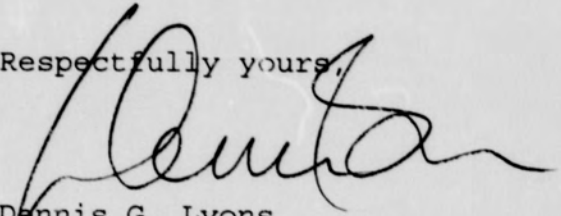
ARNOLD & PORTER

Hon. Vernon A. Williams
May 21, 1997
Page 2

IN and approximately MP 188.8 on CRC's East-
West main line between Pittsburgh, PA and
Ft. Wayne, IN.

CSX and Conrail will serve this clarification on
all parties on its service list, as well as the
environmental entities identified by the Board in
Decision No. 5.

Respectfully yours,



Dennis G. Lyons
Counsel for CSX

cc: As stated

SERVICE LIST
Finance Docket No. 33388

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Finance Docket No. 33388
Decision No. 5
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RICHARD A. ALLEN

May 16, 1997

Via Hand Delivery

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Secretary
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1925 K Street, N.W.
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

Enclosed for filing is an original and twenty five copies of CSX/NS-13, Applicants' Motion to Strike NYNJ-3, The Port Authority's Reply To Petition for Waiver or Clarification of Railroad Consolidation Procedures, and Related Relief. Also enclosed is a 3 1/2" computer disk containing the filing in Wordperfect 5.1 format, which is capable of being read by Wordperfect for Windows 7.0.

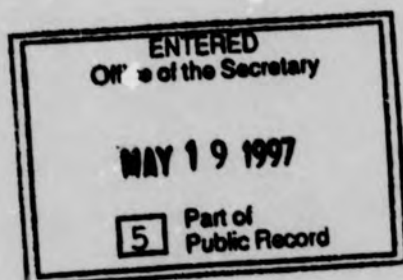
Should you have any questions regarding this, please call.

Sincerely,

Richard A. Allen

Enclosure





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

APPLICANTS' MOTION TO STRIKE NYNJ-3,
THE PORT AUTHORITY'S REPLY TO PETITION FOR WAIVER OR
CLARIFICATION OF RAILROAD CONSOLIDATION
PROCEDURES, AND RELATED RELIEF

CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"),^{1/} Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSRC"),^{2/} and Conrail Inc. ("CRI") and Consolidated Rail Corporation ("CRC")^{3/} (collectively, "Applicants") hereby move to strike NYNJ-3, the Reply to Petition for Waiver or Clarification of Railroad Consolidation Procedures, and Related Relief submitted by The Port Authority of New York and New Jersey (the "Port Authority") on May 7, 1997. The Port Authority's pleading is prohibited under the Board's Railroad Consolidation Procedures^{4/}

^{1/} CSXC and CSXT are referred to collectively as "CSX."

^{2/} NSC and NSRC are referred to collectively as "NS."

^{3/} CRI and CRC are referred to collectively as "Conrail."

^{4/} The Board's Railroad Consolidation Procedures are found at 49 C.F.R. part 1180, subpart A.

and should be stricken. Even if the Board were to consider the Port Authority's pleading, its arguments against granting one of the Applicants' waiver requests are without merit and should be rejected.

Discussion

In CSX/NS-10, filed May 2, 1997, the Applicants requested waiver or clarification of Section 1180.9(a), (b) and (c) of the Board's Railroad Consolidation Procedures to permit them to reflect Conrail financial information in the respective financial pro forma statements of CSX and NS, as appropriate, and not to file separate pro forma financial statements for Conrail. The Port Authority objects to this requested waiver or clarification, apparently based in part on the assumption that Conrail, although jointly-owned by CSX and NS, would operate as an independent entity whose fortune would rise or fall solely on its own independent operations.^{5/}

The Port Authority's pleading is not permitted by the Board's Consolidation Procedures. Section 1180.4(f)(3) states, in relevant part:

(3) No replies to a petition for waiver will be permitted, except where a proceeding involving the same parties and a related transaction is pending before us. * * * Replies to a petition for clarification shall be permitted within 10 days of the petition's filing.

The Port Authority's reply is directed to that part of Applicants' request seeking waiver of the Board's Consolidation Procedures to permit them not to submit separate pro forma

^{5/} The Port Authority states that "[t]he decision to keep Conrail in place as the only carrier serving the metropolitan area of New York and New Jersey raises several important issues [including] whether an independent, although jointly owned, Conrail would provide the service necessary to the future development of New York/New Jersey area." NY/NJ-3 at 3.

statements for Conrail. As such, the Port Authority's reply is prohibited and should be stricken.

Even if the Board were to consider the Port Authority's reply, however, it should grant Applicants' request for waiver or clarification of Section 1180.9(a), (b) and (c). It is the intention of CSX and NS that Conrail's operations will not be independent of its new owners. Instead, they intend that Conrail will be operated in such a manner as to provide meaningful access to its co-owners to the New York/New Jersey and other areas. They intend that the financial effects of providing this access, and any book-keeping profits or losses, will inure to the benefit of those owners. For that reason, Applicants propose to reflect financial information relating to the continuing Conrail in the pro forma statements of NS and CSX. Those statements will reflect the most accurate reporting of the financial effects of the proposed transaction.

Conrail will hold at least two subsidiaries ("Sub A" and "Sub B") which will, in turn, own and make available, respectively, to CSX and NS for their separate operation and use certain lines, facilities and other assets. Conrail or a Conrail subsidiary will hold other lines, facilities and other assets, including but not limited to the lines and facilities of concern to the Port Authority, access to which will be made available to both CSX and NS pursuant to various agreements. The financial effects of Conrail activities will flow in some cases to CSX or NS alone, and in other cases to both CSX and NS in proportions specified in agreements which will be submitted with the Control Application. Thus, creating separate Conrail pro forma financial statements, which the Port Authority seems to want, would entail a complex and duplicative effort that would serve no useful purpose. Since Conrail after the

transaction will be wholly-owned by CSX and NS or their subsidiaries, neither the Board nor other parties need to review separate pro forma financial statements in order to assess the financial effects of the transaction on the rail carriers involved or on Conrail's ability to provide rail transportation services.

Further, creating separate pro forma financial statements for Conrail would not aid the Board or the Port Authority in evaluating the true economic and competitive effects of the proposed transaction on the New York/New Jersey area. The statements would reflect the consolidated financial activities of Conrail, Sub A and Sub B over the entire physical plant of Conrail, Sub A and Sub B, not the particularized financial activities in the New York/New Jersey area which will be but one of several areas to which both CSXT and NSRC will have access. Granting the Port Authority's request will not address the concerns it has expressed.

The Port Authority's concerns -- the nature of the Applicants' operations in the New York/New Jersey area, the competitive and economic effect of those operations, the investment CSX and NS anticipate making in the New York/New Jersey rail facilities, and the level of competition that the New York/New Jersey area will experience following the proposed transaction -- will be addressed in the Control Application. That application will fully describe the post-transaction Conrail, its structure, management and operations. CSX and NS will set forth an operating plan which will delineate the rail operations in the New York/New Jersey area, and how those operations fit into the separately integrated operations of the CSX and NS systems. CSX and NS will offer testimony as to the competitive and economic effects of those operations on the New York/New Jersey area. Requiring the

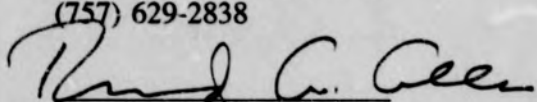
Applicants to develop pro forma financial statements for Conrail would add nothing to the ability of the Board or the Port Authority to evaluate these effects.

CONCLUSION

For the foregoing reasons, the Applicants ask the Board to strike NY/NJ-3, or, if it decides to accept NY/NJ-3 for the record, to deny the relief requested therein and grant Applicants' requested waiver and clarification with regard to Section 1180.9(a), (b) and (c) of the Board's Railroad Consolidation Procedures, all as set forth more fully in CSX/NS-10. Requiring separate pro forma statement for Conrail would add nothing to the process of review and evaluation of the proposed transaction, and would subject the Applicants to a substantial and unnecessary burden.

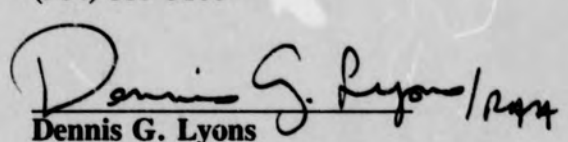
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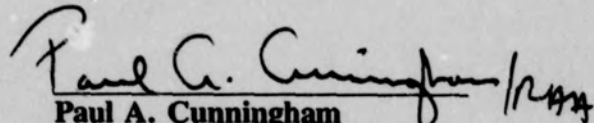
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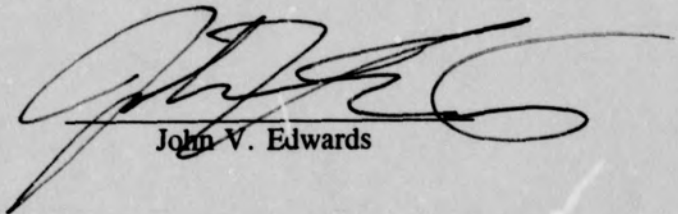
Counsel for Conrail Inc. and Consolidated
Rail Corporation

May 16, 1997

CERTIFICATE OF SERVICE

I, John V. Edwards, certify that on May 16, 1997 I have caused to be served by first class mail, postage prepaid, or by more expeditious means a true and correct copy of the foregoing CSX/NS-13, Applicants' Motion to Strike NYNJ-3, The Port Authority's Reply to Petition for Waiver or Clarification of Railroad Consolidation Procedures, and Other Relief, on all parties that have appeared in STB Finance Docket No. 33388 and by hand delivery on the following:

The Honorable Jacob Leventhal
Administrative Law Judge
Federal Energy Commission
Office of Hearings
825 North Capitol Street, N.E.
Washington, D.C. 20426



John V. Edwards

Dated: May 16, 1997

STB

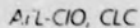
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**TRANSPORTATION • COMMUNICATIONS
INTERNATIONAL UNION**

LEGAL DEPARTMENT

179663

ROBERT A. SCARDELLETTI
International President

MITCHELL M. KRAUS
General Counsel

LARRY R. PRUDEN
Assistant General Counsel

May 9, 1997



VIA HAND DELIVERY

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

Re: Finance Docket No. 33388

Dear Mr. Williams:

Enclosed please find an original and twenty-five copies each of the Transportation•Communications International Union, United Transportation Union and International Association of Machinists and Aerospace Workers' Petition for Leave to Amend Comments on Proposed Procedural Schedule (TCU/UTU/IAM-3) and Amended Comments on Proposed Procedural Schedule (TCU/UTU/IAM-4) in the above-referenced matter. Copies have been served as indicated in the Certificates of Service. I have also enclosed a copy of each pleading to be date stamped and returned to our messenger.

Thank you for your attention to this matter.

Very truly yours,

Harry R. Pinder

Larry R. Pruden
Assistant General Counsel

LRP:fm

Enclosures

ENTERED
Office of the Secretary

MAY - 9 1997

5 Part of
Public Record

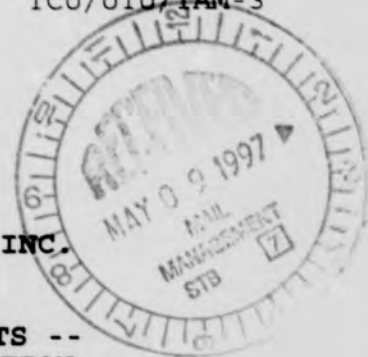
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TCU/UTU/IAM-3

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL, INC. AND CONSOLIDATED RAIL CORPORATION --
TRANSFER OF RAILROAD LINE BY NORFOLK SOUTHERN
RAILWAY COMPANY TO CSX TRANSPORTATION, INC.



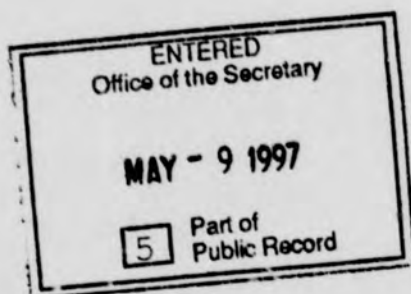
TRANSPORTATION•COMMUNICATIONS INTERNATIONAL UNION,
UNITED TRANSPORTATION UNION AND
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS'
PETITION FOR LEAVE TO AMEND
COMMENTS ON PROPOSED PROCEDURAL SCHEDULE

The Transportation•Communications International Union ("TCU"),
United Transportation Union ("UTU") and the International
Association of Machinists and Aerospace Workers ("IAM") hereby
Petition the Surface Transportation Board for Leave to Amend our
April 30, 1997, Comments on Proposed Procedural Schedule in this
matter pursuant to 49 C.F.R. § 104.11.

Respectfully submitted,

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Counsel for IAM

Dated: May 9, 1997

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were mailed this 9th day of May, 1997, via first-class mail, postage prepaid, to the following:

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Administrative Law Judge
Federal Energy Regulatory Commission
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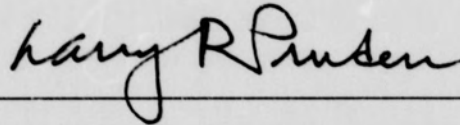
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May 2, 1997



BY HAND

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

Re: Petition for Waiver of
49 C.F.R. § 1180.4(c)(2)(vi);
Finance Docket 33388

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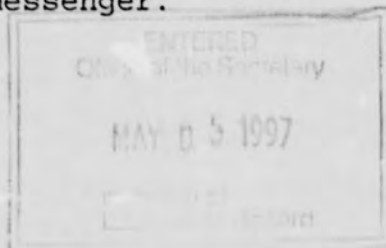
Dear Secretary Williams:

Enclosed please find CSX-1, the Petition for Waiver of 49 C.F.R. § 1180.4(c)(2)(vi) in the above referenced docket.

Accompanying this letter are twenty-five copies of the Petition, as well as a formatted diskette in WordPerfect 5.1.

Thank you for your assistance in this matter. Please contact myself ((202) 942-5858) or Susan Cassidy ((202) 942-5966) if you have any questions.

Kindly date stamp the enclosed additional copy of this letter at the time of filing and return it to our messenger.



Very truly yours,

Dennis G. Lyons
ARNOLD & PORTER
Counsel for CSX Corporation
and CSX Transportation, Inc.

Enclosures

EXPEDITED CONSIDERATION REQUESTED

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 FOR WAIVER OF
49 C.F.R. § 1180.4(c)(2)(vi)

CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"),¹
Conrail Inc. ("CRI") and Consolidated Rail Corporation ("CRC"),² hereby
petition the Board, pursuant to 49 C.F.R. § 1180.4(f), for waiver of those
provisions of 49 C.F.R. § 1180.4(c)(2)(vi) which might otherwise require that
certain Notices or Petitions for Exemption that CSX and Conrail wish to file
forthwith, for construction of certain connections, be delayed and filed
concurrently with the filing of the Primary Application.

CSX has determined that it is necessary to construct four connections
prior to a decision on the Primary Application. This construction must be
completed and ready to operate immediately in order for CSXT to provide
efficient service over its portions of Conrail and to compete effectively with
Norfolk Southern Railway Company ("NSRC") if the application for joint control

¹ CSXC and CSXT are referred to collectively as "CSX."

² CRI and CRC are referred to collectively as "Conrail."



of Conrail is approved. If the Board ultimately were to grant this Petition and the construction exemptions, CSXT would undertake to complete construction of these connections prior to the Board's decision on the Primary Application. As discussed more fully below, completion of these connections is essential if CSXT is to be able immediately to compete vigorously with NSRC at such time as the Board might grant the Primary Application. Without early authorization to proceed with such construction, CSXT would be severely limited in its ability to serve important customers.

Petitioners realize that such a request is not typical of the waivers routinely sought in major control transactions. For that reason, Applicants have limited the request as much as possible. If the Board agrees to waive the concurrent filing requirements of § 1180.4(c)(2)(vi), Petitioners initially would seek authority only to construct these essential connections. Petitioners would not operate over these connections unless and until the Board authorizes such operations pursuant to the Primary Application. Thus, the decision on operating authorization would depend on the Board's decision on the Primary Application.

If the Board grants this Petition for Waiver, CSX and Conrail will file, in separate dockets, a Notice of Exemption pursuant to 49 C.F.R. § 1150.36 for construction of a connection at Crestline, OH, and Petitions for Exemption pursuant to 49 U.S.C. § 10502 and 49 C.F.R. §§ 1121.1, 1150.1(a) for the construction of connections at Willow Creek, IN, Greenwich, OH, and Sidney, OH. CSX and Conrail expect to demonstrate that the standards for exemption set forth in 49 U.S.C. § 10502 are satisfied here: regulation of the proposed constructions is not necessary to carry out the national transportation policy or to protect shippers from abuse of market power. CSX would consult with appropriate federal, state and local agencies with respect to any potential

environmental effects from the construction of their connections and would file environmental reports with SEA at the time that the notice and petitions are filed.

If CSXT must wait for approval of the Primary Application before it can begin construction of these four essential connections, its ability to compete effectively with NSRC upon the effectiveness of a Board order approving the Primary Application (the "Control Date") would be severely compromised; neither CSX nor the shipping public would be able to reap the full competitive benefits of the proposed transaction. Specifically, if CSXT could not offer competitive rail service from New York to Chicago and New York to Cincinnati using lines that it proposes to acquire from Conrail (including its new "Water Level Route" between New York and Cleveland), the achievement of effective competition between NSRC and CSXT -- one of the fundamental underlying bases for the transaction proposed in the Primary Application -- would be delayed significantly. This delay would adversely affect the shipping public, which would benefit from the anticipated vigorous competition between CSXT and NSRC. Moreover, if CSXT cannot compete effectively with NSRC "out of the starting blocks," this initial competitive imbalance could have a deleterious -- and long term -- effect on CSXT's future operations and its ability to compete effectively with NSRC even when the connections were ultimately built. For example, if only NSRC is able to offer direct service to Chicago and other major midwestern cities, shippers examining their new rail options may turn away from CSXT to NSRC -- or trucks. Customers lost as a result of less competitive service would be hard to win back when the connections are finally ready.

Waiver of the "related application" concurrent filing requirement of 49 C.F.R. § 1180.4(c)(2)(vi) with respect to exemptions for the construction of these connections would not require the Board to prejudge the Primary

Application. While the connections are essential to the prompt and full realization of the benefits of the Primary Application, exemption of their construction from regulation does not require the Board to make any assessment of the merits of the Primary Application itself. CSX is prepared to accept the risk that the Primary Application will not be granted and that CSXT will not benefit from the connections.

I. **DESCRIPTION OF THE CONNECTIONS**

Maps illustrating the locations of the proposed connections are included as Exhibits A-C. Exhibit A is a depiction of the proposed CSXT/NSRC rail lines in the Northeast. Exhibits B and C depict the location of the Willow Creek, IN, connection and its relationship to Chicago and Gibson Yard. A narrative description of the four proposed connections follows.

A. **Crestline**

Two main line tracks of Conrail cross at Crestline. Petitioners propose to construct a connection track between those two Conrail main lines in the NW Quadrant. The connection will extend approximately 1,142 feet between approximately Milepost 75.5 on Conrail's North-South main line between Greenwich, OH, and Indianapolis, IN, and approximately Milepost 188.8 on Conrail's East-West main line between Pittsburgh, PA, and Ft. Wayne, IN.

B. **Greenwich**

The lines of CSXT and Conrail cross each other at Greenwich, OH. Petitioners propose to construct connection tracks in the NW and SE Quadrants between CSXT's main line and Conrail's main line. The connection in the NW Quadrant will extend approximately 4,600 feet between approximately Milepost BG-193.1 on CSXT's main line between Chicago and Pittsburgh, and

approximately Milepost 54.1 on Conrail's main line from Cleveland to Cincinnati. A portion of this connection in the NW Quadrant will be constructed utilizing existing trackage and/or right-of-way of the Wheeling & Lake Erie Railway Company (W&LE). The connection in the SE Quadrant will extend approximately 1,044 feet between approximately Milepost BG-192.5 on CSXT's main line and approximately Milepost 54.6 on Conrail's main line.

C. Sidney

CSXT and Conrail lines cross each other at Sidney Junction, OH. Petitioners propose to construct a connection track in the SE Quadrant between CSXT's main line and Conrail's main line. The connection will extend approximately 3,263 feet between approximately Milepost BE-96.5 on CSXT's main line between Cincinnati, OH, and Toledo, OH, and approximately Milepost 163.5 on Conrail's main line between Cleveland, OH, and Indianapolis, IN.

D. Willow Creek

CSXT and Conrail cross each other at Willow Creek, IN. Petitioners propose to construct a connection track in the SE Quadrant between CSXT's main line and Conrail's main line. The connection will extend approximately 2,800 feet between approximately Milepost BI-236.5 on CSXT's main line between Garrett, IN, and Chicago, IL, and approximately Milepost 248.8 on Conrail's main line between Porter, IN, and Gibson Yard, IN (outs. Chicago).

II. **EARLY CONSTRUCTION OF THESE CONNECTIONS IS NECESSARY TO REALIZE THE PUBLIC BENEFITS OF THE TRANSACTION IN THE EVENT THE BOARD APPROVES THE PRIMARY APPLICATION**

An essential feature of the proposed transaction is the creation of two competitive routes between New York and Chicago, and between New York and

other major midwestern cities such as Cincinnati. The proposed transaction would provide both CSXT and NSRC with competitive routes from New York to Chicago and other major midwestern cities through, among other things, the division of operating rights over the "Conrail X"³ between them.

Under the terms of the Letter Agreement of April 8, 1997, between CSX and Norfolk Southern Corporation ("NSC"),⁴ CSXT would acquire the rights to operate over the leg of the Conrail "X" that runs from New York and Boston, through Cleveland, to St. Louis. NSRC would acquire the rights to operate over the leg that runs from Philadelphia to Chicago, and both parties will reach the New York/Northern New Jersey area. While CSXT has acquired the right to operate the Water Level Route to Chicago from New York and Boston as far west as Cleveland, the remainder of that route, running to Chicago, will be operated by NSRC.

The proposed transaction is designed, *inter alia*, to give CSXT and NSRC each competitive routes from New York to Chicago (and through the Chicago gateway to the West). The creation of two competitive rail routes from New York to Chicago is one of the most important competitive public benefits to be created by the division of Conrail. CSXT must find an alternative or alternatives for the "missing part" of the Water Level Route between Cleveland and Chicago. In addition, an efficient service route from Cleveland to Cincinnati (and beyond, to the Memphis gateway) must be developed by connections with existing parts of CSXT's system. The connections that CSXT proposes to

³ The Conrail lines running diagonally from Boston and New York to St. Louis, through Cleveland, form one half of the formation commonly known as the "Conrail X." The other half of the "X" encompasses the Conrail lines from Chicago to the Philadelphia area.

⁴ NSRC and NSC are referred to collectively as "NS."

construct on an expedited basis would facilitate the establishment of such efficient routes between the Northeast and Chicago over the Water Level Route and from New York to Cincinnati.

To reach Chicago, CSXT would route its New York-Chicago trains southwest from Cleveland on the Conrail line running through Greenwich and Crestline (which CSXT will operate under the proposed division). CSXT then would have two alternative routes to reach Chicago. At Greenwich, CSXT's Chicago-bound trains would be able to connect to the existing CSXT line (part of the former B&O line) from Greenwich to Chicago. At Crestline, these Chicago-bound trains would be able to connect to the Conrail line (which CSXT will operate under the proposed division) from Crestline, OH, to Chicago (via Lima, OH, and Fort Wayne, IN).⁵ Neither connection exists today.

Of these two alternatives, the primary route to Chicago would be the former B&O line, which would be accessed at Greenwich, OH. CSX has committed itself to a multimillion dollar program of improvement of the B&O line to Chicago.⁶ Yet, presently at Greenwich there is no connection at the only point where movement on and off the B&O line, coming off or going to the Water Level Route at Cleveland, can take place. Thus, a connection must be constructed.

The line from Crestline through Fort Wayne, IN, will handle less time-sensitive traffic. Again, there is no existing connection at the intersection of the

⁵ NS presently owns this line from Fort Wayne, IN, to Chicago. The Fort Wayne-Chicago line will be the subject of a like-kind exchange by NS with Conrail for another line.

⁶ During the pendency of the Primary Application, CSX intends to make substantial improvements, which are not subject to STB jurisdiction, to various of its lines such as double tracking, the installation of side tracks and the rehabilitation of track.

Conrail northeast to southwest line with its Fort Wayne line at Crestline. A connection must be constructed.

Trains moving to Chicago over the CSXT (former B&O) line would have to switch to the Porter Branch of the Conrail line at Willow Creek, IN, in order to enter the IHB's Gibson Yard in Chicago. Again, there is no connection at Willow Creek. Construction of connections at Greenwich, Crestline, and Willow Creek therefore are essential to permit CSXT's trains to move efficiently between New York and Chicago (and vice versa).

Similarly, to operate trains efficiently between New York and Cincinnati via the Water Level Route to Cleveland, CSXT must be able to run its trains from the existing Conrail line between Cleveland and Sidney, OH, to the CSXT line segment between Sidney and Cincinnati.⁷ Thus, construction of a connection at Sidney is essential to give CSXT the benefit of the competitive route it would acquire, and is necessary to effectuate the competitive purposes of dividing the "Conrail X."

It is critical that CSXT be able to complete construction of the connections at Greenwich, Crestline, Willow Creek, and Sidney before the decision on the Primary Application. Without these connections, CSXT would be unable to provide efficient, competitive service to the public on these important routes until several months after the Control Date.⁸ If CSXT could not

⁷ Cincinnati is important, not only as an originating/terminating area, but also as the location of CSXT's Queensgate Yard.

⁸ The time needed for construction and signal work could delay competitive operations over these important segments of the proposed CSXT rail system for as long as six months after the Board took action on the Primary Application. CSXT needs to begin construction by September 1, 1997, to avoid delay that would result from the interruption of construction due to the onset of winter in northern Ohio.

immediately begin operation over its new competitive routes from New York to Chicago and New York to Cincinnati, the opportunity for shippers to have access to new head-to-head competition -- a primary benefit of the proposed transaction -- would be delayed.

CSXT's initial inability to link its lines to create competitive routes from the New York to Chicago-Cincinnati markets would place CSXT at a severe competitive disadvantage if NSRC is able to run on its lines from the start. This initial competitive disadvantage could have continuing effects well into the future, diminishing CSXT's strength as a competitor and detracting from the public benefits of the CSXT/NSRC competition anticipated by the Primary Application.

III. **APPROVAL OF THIS WAIVER WOULD NOT AFFECT BOARD CONSIDERATION OF THE PRIMARY APPLICATION OR OTHER RELATED APPLICATIONS**

A waiver of 49 C.F.R. § 1180.4(c)(2)(vi) would not compromise the Board's ability to consider independently the merits of the Primary Application. First, the waiver simply would permit Conrail and CSX to seek exemptions for construction of the connections. Any grant of authority for CSXT to operate over the connections with Conrail lines would be deferred until the Board's ruling on the Primary Application.

Second, CSX is willing to assume the financial risks associated with constructing these connections without any assurances that operating authority would be granted. If the Board does not approve the Primary Application, it need not approve operations over these connections; the Board also could entertain notices of exemption or other appropriate petitions to permit operations by the interested railroad or railroads over any of the four connections that would provide public benefits independent of the proposed transaction.

CSX's express acceptance of the financial risks attendant to constructing these connections prior to Board action on the Primary Application is intended to reassure the Board and the parties to Docket No. 33388 that CSX neither requests nor expects the Board to prejudge the Primary Application. Indeed, the costs and scope of these connections is quite small in comparison to the scope of the stock acquisition, construction and other expenditures associated with the transaction proposed in the Primary Application.

In the event that the Board rejects the Primary Application, the connections would remain the property of the railroad or railroads on which they are located. Some or all of the connections might later be determined to provide benefits to the national rail system independent of the proposed transaction. Or, the track materials could be removed and reused if needed elsewhere.

The Board has recognized, in other contexts, that conditionally approving construction projects before the Board completes its analysis of all issues related to those projects does not constitute prejudgment of any unresolved issues. For example, the Board has conditionally approved the construction of connections before it completed its environmental review, explaining that "[g]ranting the requested conditional exemption [would] not diminish [its] capacity to consider environmental matters when [it] issue[d] a final decision addressing environmental issues and making the exemption effective at that time." Hastings Indus. Link R.R. -- Constr. and Operation Exemption -- Hastings, NE, F.D. No. 32984, 1996 WL 706769 *2 (I.C.C.) (decided Dec. 2, 1996); see also Jackson County Port Auth.--Constr. Exemption-- Pascagoula, MS, F.D. No. 31536, 1990 WL 287815 *2 (I.C.C.) (decided Aug. 6, 1990).

Permitting Conrail and CSX to file the requisite notice and petitions for exemptions for construction of the connections described herein prior to the filing

of the Primary Application would not affect the Board's ability to decide the Primary Application independently on its merits.

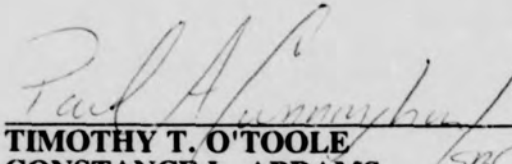
IV. **NO ISSUE OF PREMATURE CONTROL IS PRESENTED**

The construction of these connections in whole or in part on Conrail property would not involve any unauthorized or premature exercise of control over Conrail by CSX. The constructions would take place only with Conrail's consent, given by its present independent management, and on terms overwhelmingly favorable to Conrail. Construction would be entirely at CSX's expense. Steps would be taken to assure that there is no adverse impact on Conrail's train movements. Conrail would obtain title to the improvements made on its property. Appropriate indemnification of Conrail would be provided. If the Board does not approve the control transaction, Conrail would not be any the worse for having had new construction work done on its property, and may be benefited by it; it would own the constructed connections and, if it wishes, could seek authority from the Board to commence operations using them.

CONCLUSION

CSX and Conrail therefore request that the Board grant this Petition for Waiver of § 1180.4(c)(iv), so that the proposed Notice of Exemption and Petitions for Exemptions may be filed and acted upon separately from the

Primary Application. Further, to facilitate the environmental review process and achieve the benefits described herein in a timely manner, CSX and Conrail request that the Board act expeditiously on this petition.


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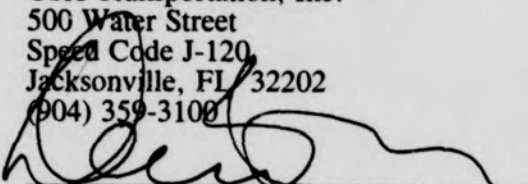
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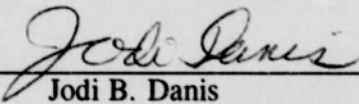
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May 2, 1997

CERTIFICATE OF SERVICE

I, Jodi B. Danis, certify that on May 2, 1997, I have caused to be served a true and correct copy of the foregoing CSX-1, Petition for Waiver of 49 C.F.R. § 1180.4(c)(vi), on all parties that have appeared in Finance Docket No. 33388, by first-class mail, postage prepaid, or by more expeditious means, as listed on the attached Service list.



Jodi B. Danis

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Finance Docket No. 33388

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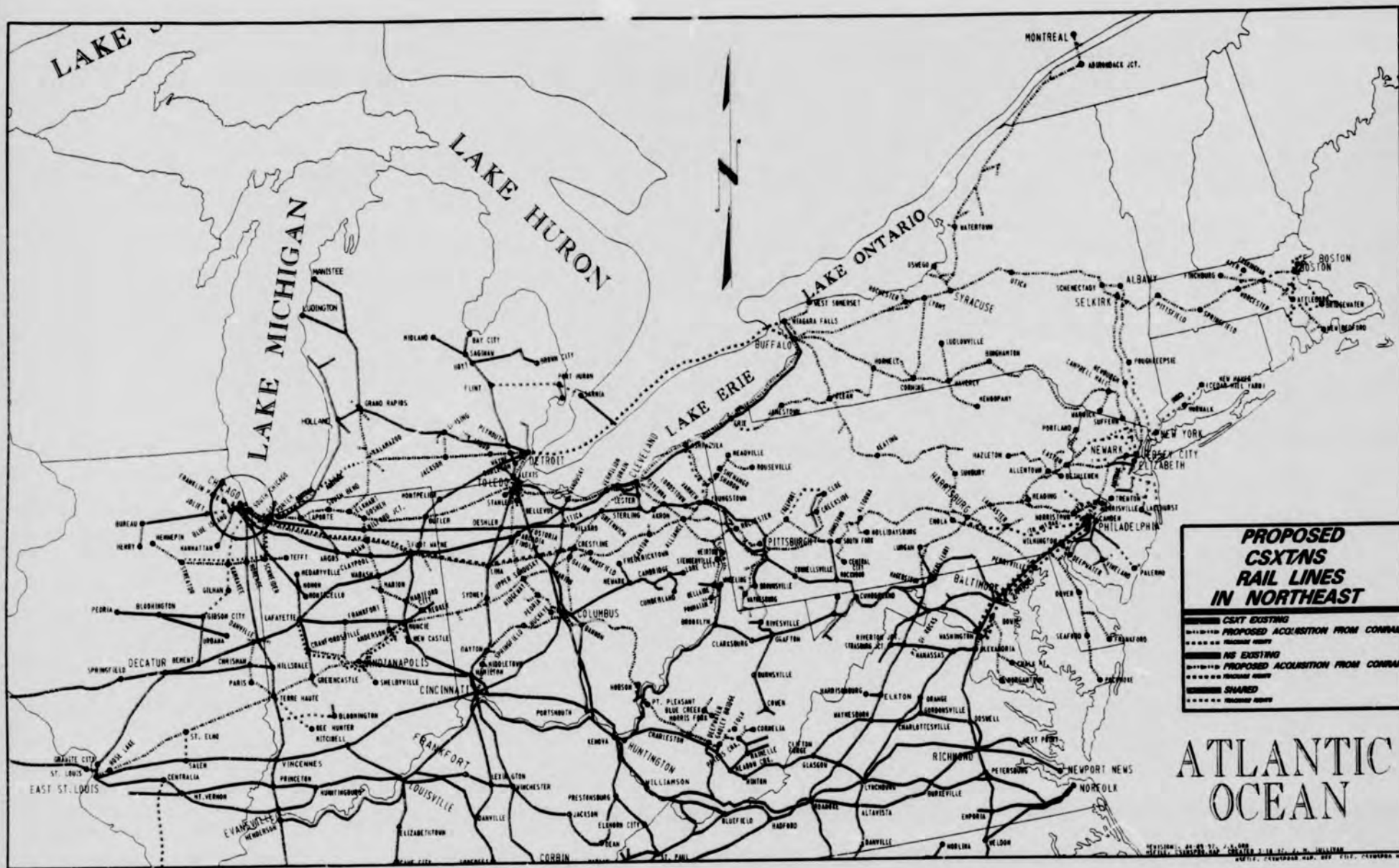
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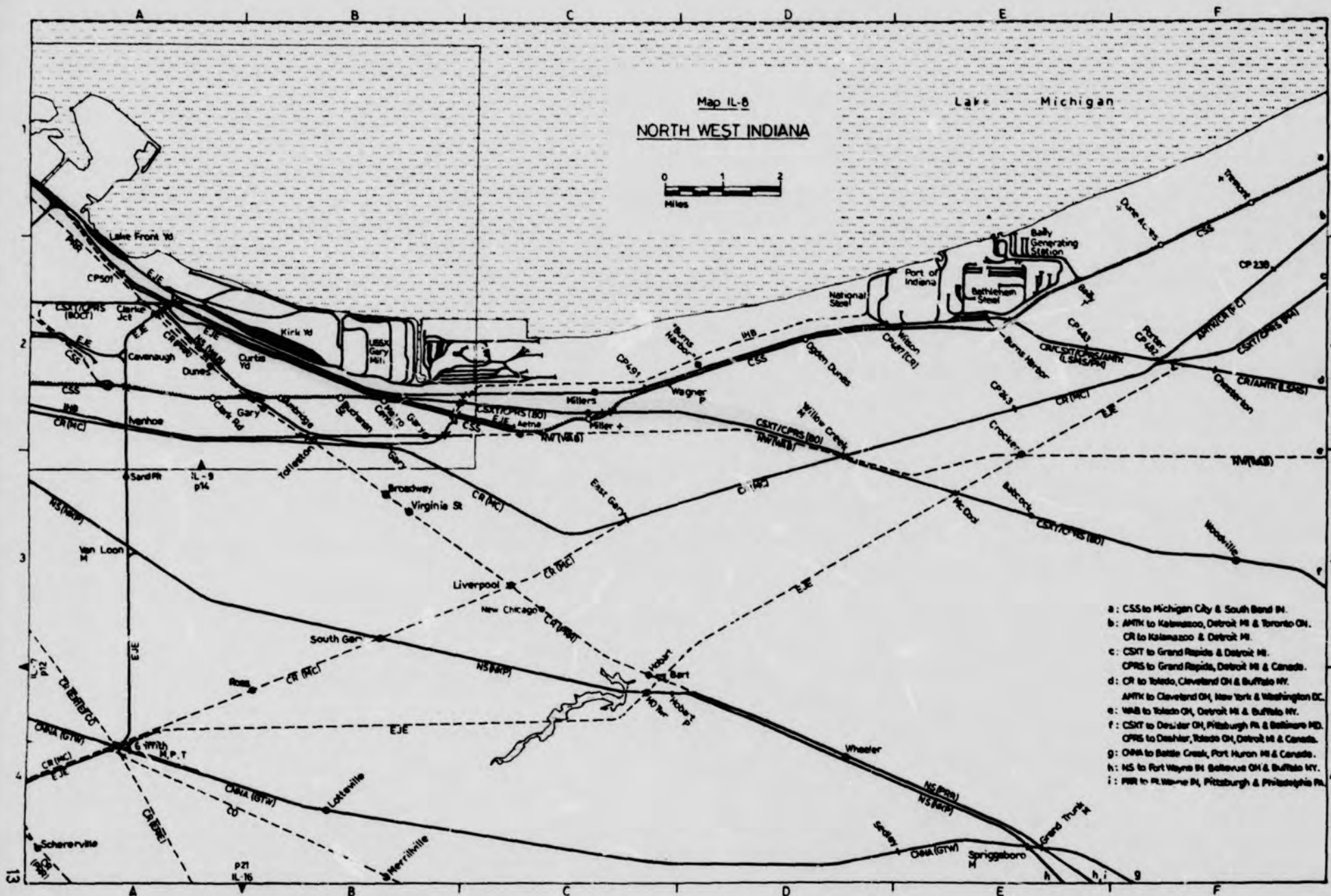
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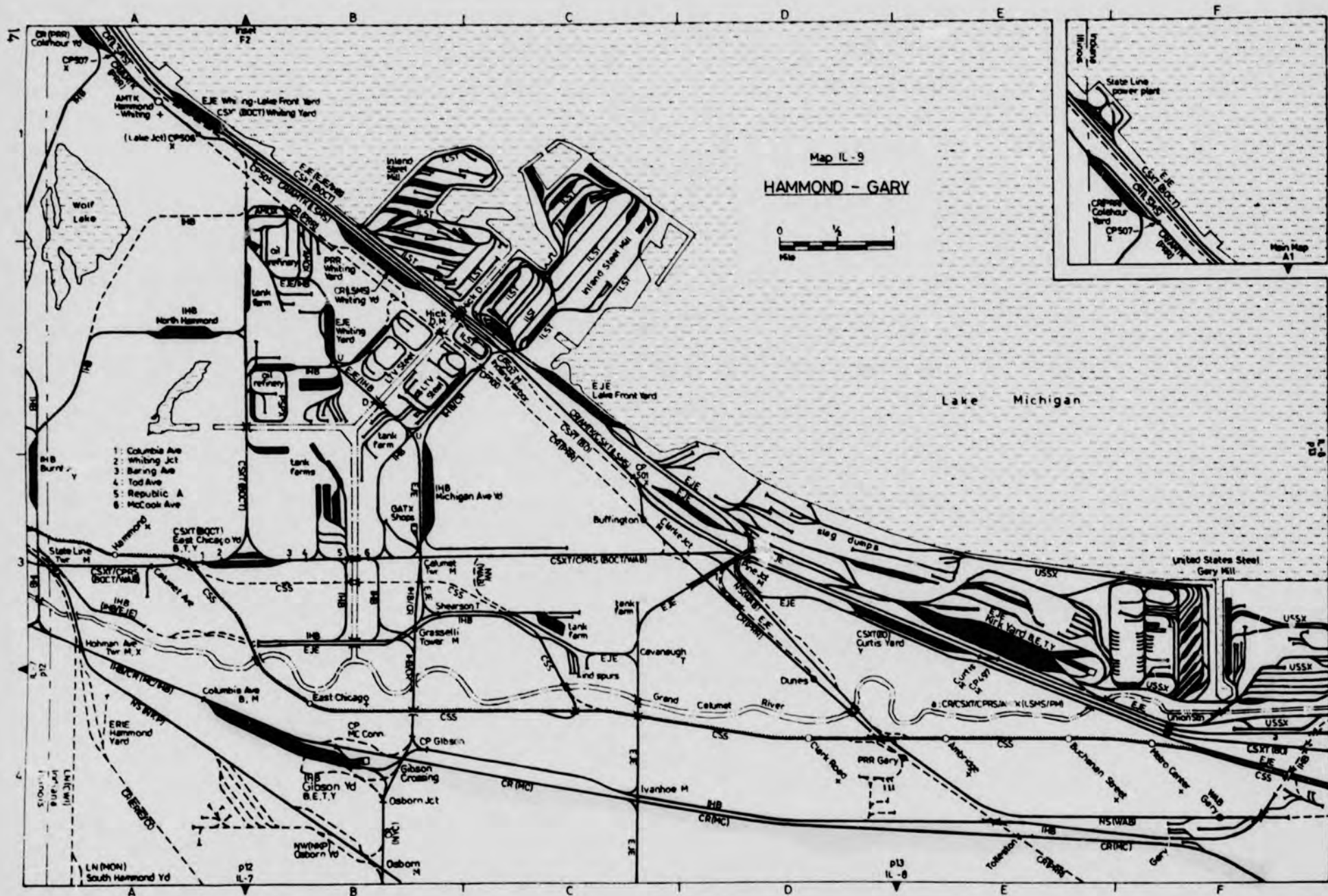
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NEW YORK: 40° 45' N, 74° 00' W
 PHILADELPHIA: 39° 55' N, 75° 10' W
 BALTIMORE: 39° 15' N, 76° 30' W
 WASHINGTON: 38° 50' N, 77° 00' W
 RICHMOND: 37° 30' N, 77° 00' W
 NORFOLK: 36° 50' N, 76° 10' W
 NEWPORT NEWS: 36° 50' N, 76° 10' W
 PITTSBURGH: 40° 20' N, 79° 50' W
 CINCINNATI: 39° 00' N, 84° 30' W
 CLEVELAND: 41° 30' N, 81° 30' W
 DETROIT: 42° 30' N, 83° 00' W
 CHICAGO: 41° 50' N, 87° 45' W
 BOSTON: 42° 20' N, 71° 00' W
 NEW YORK: 40° 45' N, 74° 00' W
 PHILADELPHIA: 39° 55' N, 75° 10' W
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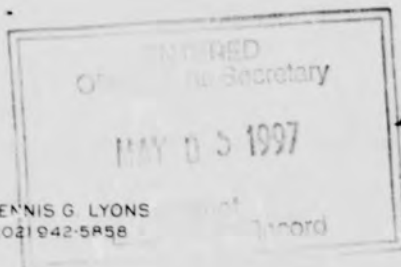
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May 2, 1997

BY HAND

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



Re: Petition for Waiver or Clarification of
Railroad Consolidation Procedures, and
Related Relief -- Finance Docket 33388

Dear Secretary Williams:

179582

Enclosed please find CSX/NS-10, the Petition for
Waiver or Clarification of Railroad Consolidation
Procedures, and Related Relief in the above referenced
docket.

Accompanying this letter are twenty-five copies
of the Petition, as well as a formatted diskette in
WordPerfect 5.1.

Thank you for your assistance in this matter.
Please contact myself ((202) 942-5858), Jeff Burt ((202)
942-5929), or Susan Morita ((202) 942-5252) if you have
any questions.

Kindly date stamp the enclosed additional copy of
this letter at the time of filing and return it to our
messenger.

~~RECEIVED~~

~~APR 05 1997~~

~~SURFACE
TRANSPORTATION BOARD~~

Very truly yours,

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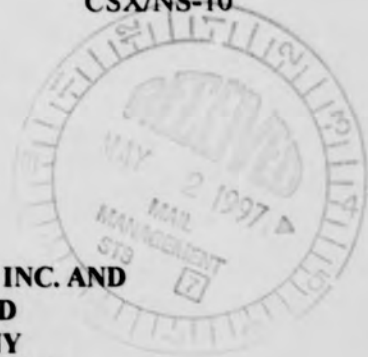
Enclosures

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 33388

CSX/NS-10



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

**PETITION FOR WAIVER OR CLARIFICATION OF
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May 2, 1997

EXPEDITED CONSIDERATION REQUESTED

CSX/NS-10

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

**PETITION FOR WAIVER OR CLARIFICATION OF
RAILROAD CONSOLIDATION PROCEDURES, AND RELATED RELIEF**

CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"),¹
Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company
("NSRC"),² Conrail Inc. ("CRI") and Consolidated Rail Corporation ("CRC")³
notified the Board on April 10, 1997, of their intention to file a joint application
seeking Board authorization under 49 U.S.C. §§ 11323-11325 for (1) the
acquisition of control by CSX and NS of CRI, which is to be jointly owned by
CSXC and NSC, by and through a special purpose limited liability company
("LLC") and LLC's wholly-owned subsidiary, Green Acquisition Corp. ("Tender
Sub") and (2) as soon as practicable after the authorization and exercise of such
control, the division of Conrail's assets into (i) certain assets which will be the
subject of separate long-term operating agreements, operating leases or other

¹ CSXC, CSXT and their wholly owned subsidiaries are referred to collectively
as "CSX."

² NSC, NSRC and their wholly owned subsidiaries are referred to collectively as
"NS."

³ CRI, CRC and their wholly owned subsidiaries are referred to collectively as
"Conrail." CSX, NS and Conrail are referred to collectively as the "Applicants."

operating arrangements with CSX and NS, respectively, (ii) certain assets which will be separately owned by CSX and NS, and (iii) certain assets which will continue to be held by CRI and CRC or their subsidiaries and operated for the benefit of CSX and NS. See CSX/NS-1, Notice of Intent to File Railroad Control Application, Finance Docket No. 33388, filed April 10, 1997, as clarified by CSX/NS-5, Clarification of Notice of Intent to File Railroad Control Application filed April 21, 1997.

As the Board is aware, the fundamental objective of this transaction is to divide existing Conrail operations between CSX and NS (the "Division"). In that Division, certain facilities and operations will be assigned individually to either CSX or NS through operating agreements or other mechanisms; other facilities and operations will be shared by, and operated for the benefit of, both NS and CSX. For these reasons, as well as corporate and tax considerations unrelated to any transportation impact, the transaction will be effected through a series of interdependent steps, each of which is integral to the transaction as a whole.

DESCRIPTION OF THE PROPOSED TRANSACTION

CSX and NS will participate jointly in the acquisition of CRI consistent with the Agreement and Plan of Merger dated as of October 14, 1996, by and among CSXC, CRI and Tender Sub, as amended⁴ (the "Merger Agreement"), and the Letter Agreement dated as of April 8, 1997, between CSXC and NSC (the "CSX/NS Letter Agreement"). In accordance with the CSX/NS Letter Agreement, CSX will contribute to LLC all of the capital stock of Tender Sub.

⁴ The last amendment to date is the Fourth Amendment dated as of April 8, 1997.

Tender Sub currently holds a beneficial interest in the 17,775,124 shares of the capital stock of CRI acquired by CSX pursuant to its tender offer and held in a voting trust pending Board approval of the proposed transaction. NS will cause its wholly owned subsidiary, Atlantic Acquisition Corp., to contribute to LLC its interest in 8,200,000 shares of the capital stock of CRI that Atlantic Acquisition Corp. has acquired pursuant to its tender offer and which are currently being held in a separate voting trust. Following these contributions and the closing of the current pending joint tender offer of CSX and NS for the remaining outstanding shares of CRI, each of CSX and NS will have a 50% voting interest in LLC and will have the right to appoint 50% of LLC's board of managers or directors or similar governing persons. NS will have a 58% equity interest and CSX a 42% equity interest in LLC.

In addition, both CSX and NS will contribute, directly or indirectly, cash to LLC to enable LLC to purchase the remaining outstanding shares of CRI in the joint tender offer, and in a subsequent merger (the "Merger"). Pursuant to the Merger Agreement, in the Merger, Green Merger Corp. ("Merger Sub"), a wholly-owned subsidiary of Tender Sub, will be merged with and into CRI, with CRI as the surviving corporation. That surviving corporation will be a wholly-owned indirect subsidiary of LLC and immediately upon the Merger will continue to be named "Conrail Inc."

As promptly as possible after receiving authorization from the Board for CSX and NS to exercise control over Conrail, Applicants will carry out several steps to effect the Division. Two wholly-owned subsidiaries of CRC, Sub A and Sub B (collectively sometimes referred to herein as the "Subsidiaries"),⁵ will be

⁵ It is currently proposed that these Subsidiaries will themselves be limited liability companies, with CRC as their sole "member" (the equivalent to
[Footnote continued on next page]

created, and, following authorization from the Board, each will acquire certain of CRC's assets. Sub A will acquire certain CRC assets designated to be operated as part of CSX's rail system, and Sub B will acquire certain CRC assets designated to be operated as part of NS's rail system; among other things, these assets will include routes currently operated by CRC, whether owned by CRC or operated by it under trackage rights. Certain assets will continue to be held by CRI and CRC (or their subsidiaries) and will be operated by them for the benefit of CSX and NS. Sub A and Sub B will operate certain CRC assets held by them for the benefit of CSX and NS, respectively, and CSX, NS or their subsidiaries will operate certain properties of Sub A and Sub B pursuant to long-term operating agreements, leases and indemnity arrangements as more fully set forth in definitive documentation to be entered into by CSX and NS (and where appropriate, Conrail). Similarly, Conrail will enter into operating arrangements with CSX and NS pursuant to which Conrail will operate the assets held by CRI or CRC (or their subsidiaries other than Sub A and Sub B) for the shared benefit of CSX and NS.

As part of the Division of the Conrail assets, CSX and NS will acquire trackage rights on certain of the Conrail lines and will jointly use certain Conrail lines and facilities. Conrail will retain certain incidental trackage rights over certain line segments to be acquired by the Subsidiaries to facilitate its operation of such lines and facilities.

In addition, the former Conrail line now owned by NS that runs from Fort Wayne, IN, to Chicago, IL, will be transferred to CRC or a newly-created subsidiary of CRC in a like-kind exchange for CRC's Chicago South/Illinois

[Footnote continued from previous page]
"stockholder" in a corporation). Their names are not yet determined; "Sub A" and "Sub B" are used herein as placeholders.

Lines (the Streator Line). CRC or that newly-created subsidiary of CRC, as the case may be, will in turn assign the former NS Fort Wayne to Chicago line to Sub A, to be operated together with the other Conrail lines to be assigned to Sub A and used by CSX as part of CSX's rail system under the operating arrangements referred to above.

All of the proposed actions and agreements described above are integral elements of the proposed acquisition and Division of Conrail by NS and CSX, approval for which Applicants will be filing an application under 49 U.S.C. § 11323 (the "Primary Application"). Specifically, the Primary Application will seek authorization for the acquisition of control of Conrail by CSX and NS (the "Control Transaction") and for the following interrelated elements thereof (collectively, the "Transaction Elements"):⁶

1. Authorization under 49 U.S.C. § 11323 for Sub A to acquire certain assets of Conrail (including without limitation trackage and other rights) designated to be operated as part of CSX's rail system, and for Sub B to acquire certain assets of Conrail (including without limitation trackage and other rights) designated to be operated as part of NS's rail system (the "Sub A/Sub B Acquisitions"). The Primary Application will seek a declaratory order that 49 U.S.C. § 10901 is not applicable to the Sub A/Sub B Acquisitions. If the Board does not so rule, Applicants will also seek authorization under 49 U.S.C. § 10901 for the Sub A/Sub B Acquisitions.

2. Authorization under 49 U.S.C. § 11323 for CSX, NS and Conrail to continue to control Sub A and Sub B, subsequent to Sub A and Sub B acquiring the assets of Conrail identified in the preceding paragraph, and thereby

⁶ In addition, Applicants anticipate filing a number of separate, but directly-related applications to authorize abandonments and construction activities that Applicants anticipate will take place if the Primary Application is approved.

becoming rail carriers (the "Continuance in Control"). This will be necessary because, although Sub A and Sub B will continue after the Division to be wholly-owned subsidiaries of CRC and thus under the control of CSX, NS and CRI, they will no longer be part of a Conrail "single system" of rail carriers to the extent that their operations will be conducted under the operating arrangements referred to in the following paragraph for the respective separate accounts of CSX and NS.

3. Authorization under 49 U.S.C. § 11323: (a) for Sub A to enter into operating arrangements with CSX for the operation of the Conrail assets held by Sub A for the benefit of CSX; (b) for Sub B to enter into operating arrangements with NS for the operation of the Conrail assets held by Sub B for the benefit of NS; and (c) for CRI, CRC or one or more of their subsidiaries (other than Sub A or Sub B) to enter into operating arrangements with CSX and NS for the operation of assets held by CRI, CRC or one or more of their subsidiaries (other than Sub A or Sub B), as the case may be, for the benefit of CSX or NS or both (the "Operating Arrangements").

4. Authorization under 49 U.S.C. § 11323 for the acquisition of trackage rights by Sub A or CSX over NS (being trackage rights formerly held by Conrail over NS) and by Sub B or NS over CSX (being trackage rights formerly held by Conrail over CSX), and for the acquisition of any other trackage rights by Sub A or by CSX over Sub B or by Sub B or NS over Sub A, (the "CSX/NS Trackage Rights").

5. Authorization under 49 U.S.C. § 11323 for the acquisition by CSX and NS of trackage rights over certain Conrail rail lines (and the retention of certain incidental trackage rights by Conrail over certain line segments to be

acquired by the Subsidiaries) and for the joint use of certain Conrail rail lines, rights and facilities (the "Joint Use").

6. Authorization under 49 U.S.C. § 11322, to the extent that any of the activities of CRI, CRC, the Subsidiaries, or other subsidiaries of CRI or CRC, or the performance by NS or CSX of any contracts of Conrail entered into prior to the effective date on which the Board shall have authorized the control of Conrail by NS and CSX (the "Control Date") might be deemed to be a pooling or division by CSX and NS of traffic or services or any part of their earnings (the "Pooling").

7. Authorization under 49 U.S.C. § 11323 for the transfer to Conrail of the former Conrail line now owned by NS that runs from Fort Wayne, IN, to Chicago, IL, and the transfer from CRC to NS of CRC's Streator Line in exchange (the "Like-Kind Exchange").

Applicants intend to file the Primary Application and other directly-related applications in mid-June 1997.⁷ Applicants are in the process of preparing the Primary Application and other directly-related applications and require waivers or clarifications from the Board, as stated herein, in order to facilitate that preparation.

REQUEST FOR WAIVER OR CLARIFICATION

Pursuant to §§ 1110.9, 1180.4(f) and 1152.24(e)(5),⁸ Applicants hereby seek waiver or clarification of certain requirements of the Board's

⁷ Applicants' request for waiver of the three-month pre-filing notification requirement of 49 C.F.R. § 1180.4(b)(1) was granted in Finance Docket 33388, Decision No. 2 served April 21, 1997.

⁸ All section references are to title 49 of the Code of Federal Regulations unless otherwise noted.

Railroad Consolidation Procedures, in connection with the Control Transaction and the Transaction Elements. Applicants also seek waiver or clarification to permit them to seek Board approval of the Control Transaction and the Transaction Elements in a single Primary Application. Applicants also seek exemption from certain requirements otherwise applicable to directly-related constructions and abandonments as discussed further below.

SUMMARY

I. The Control Transaction

Applicants seek the following waivers or clarifications of requirements of the Board's Railroad Consolidation Procedures with respect to the Control Transaction.

A. Waiver or clarification of § 1180.3(a) to exclude LLC, Tender Sub, Merger Sub, Sub A and Sub B and any other subsidiary of CRC created or used to provide services for the account of CSX, NS or both of them from the definition of "applicant."

B. Waiver or clarification of § 1180.3(b) to limit the definition of "applicant carriers" to those Board-regulated rail carriers in which either CSX, NS or Conrail now holds a majority interest. Also, where the Board's rules require the submission of information or data pertaining to "applicant carriers," waiver or clarification to permit Applicants to submit, as appropriate, information or data pertaining to CSX, NS and Conrail on a consolidated basis.

C. Waiver or clarification of § 1180.6(a)(2)(v) to permit Applicants to submit employee impact data using the classifications described below.

D. Waiver or clarification of § 1180.6(b)(1), (2), and (4) to permit Applicants to file only: (a) the most recent Securities and Exchange Commission

("SEC") Form 10-Ks for CSXC, CSXT, NSC, NSRC, CRI, and CRC; (b) the SEC Schedule 14D-1s filed by CSX and NS relating to their tender offers for CRI's stock, and amendments thereto; and (c) the most recent annual reports to shareholders of CSXC, NSC, NSRC and CRI.

E. Waiver or clarification of § 1180.6(b)(3), (6), and (8), relating to matters of corporate structure and intercorporate relationships, to permit Applicants to exclude data, described below, not relevant to a thorough evaluation of the Primary Application.

F. Waiver or clarification of § 1180.9(a), (b), and (c), relating to financial information, to permit Applicants not to file separate pro forma financial statements for Conrail.

G. Waiver or clarification of §§ 1180.6(a)(2)(v) and 1180.7 to permit Applicants to use periods other than 1995 as the base period for labor impact analyses, while the full year 1995 will be employed as the base year for other economic, marketing and financial analyses.

H. Waiver or clarification of §§ 1180.7 and 1180.8 to permit applicants to provide separate impact analyses and operational data for the CSX and NS post-acquisition systems.

I. Waiver or clarification of (a) the six-month pre-filing notice provisions of §§ 1105.10(a) (if an Environmental Impact Statement ("EIS"), rather than an Environmental Assessment, is required or contemplated) and 1150.1(b), to provide that Applicants may advise the Board's Section of Environmental Analysis ("SEA"), by no later than 30 days before the filing of the Primary Application, of any directly-related construction projects that will be the subject of applications for approval, petitions for exemption, and notices of exemption submitted together with the Primary Application; and (b) waiver of the

pre-filing notice provisions of § 1150.36(c), to provide that Applicants may notify the designated state agencies of construction of connections on existing rail rights-of-way or on land owned by connecting railroads at the time of the filing of the Primary Application.

J. As directed by the Board in Finance Docket No. 33388, Decision No. 2 served April 21, 1997, Applicants request related relief, discussed below, to permit the filing of any directly-related abandonment applications (or notices of, or petitions for, exemption) together with the Primary Application and the processing of any such abandonment applications on the same schedule as the control proceeding, as well as the waiver or clarification of certain abandonment regulations pursuant to § 1152.24(e)(5).

II. The Transaction Elements

Applicants request related relief, discussed below, in connection with the Transaction Elements.

A. Waiver or clarification of § 1180.3(a), to the extent applicable, to exclude Sub A and Sub B and any other subsidiary of CRC created or used to provide services for the account of CSX and NS or either of them from the definition of "applicant."

B. Waiver or clarification of § 1180.3(b), to the extent applicable, to limit the definition of "applicant carriers" to those Board-regulated rail carriers in which either CSX, NS or Conrail now holds a majority interest. Also, wherever the Board's rules require the submission of information or data pertaining to "applicant carriers," waiver or clarification to permit Applicants to submit, as appropriate, information or data pertaining to CSXT, NSRC and CRC and their respective majority- or wholly-owned rail subsidiaries on a consolidated basis.

C. Waiver or clarification of § 1180.4(c)(2)(vi) to permit Applicants not to file separate related applications for each of the Transaction Elements, but to incorporate in the Primary Application information that might otherwise be required to be filed in separate related applications for approval of the Transaction Elements.

D. While in their Application Applicants will seek a declaratory order that 49 U.S.C. § 10901 is not applicable to the Sub A/Sub B Acquisitions, Applicants propose to submit information in their Application sufficient to show that, if 49 U.S.C. § 10901 were applicable to the Sub A/Sub B Acquisitions, authority under that section should be granted. In that connection, Applicants request waiver or clarification that the requirements of part 1150, subpart A, will be satisfied to the extent the requirements of part 1180, subpart A will be satisfied, except as described below.

E. Waiver or clarification that, although the § 1180.2(d)(3) exemption for transactions within a corporate family, or the § 1150.31 class exemption for acquisitions by noncarriers of rail property that would be operated by a third party, may otherwise apply to the Sub A/Sub B Acquisitions, the Applicants may proceed under the formal application process in part 1180, subpart A, and, if required, part 1150, subpart A, and seek to receive affirmative authority to effect the Sub A/Sub B Acquisitions. Applicants also seek waiver or clarification that, although the § 1180.2(d)(3) class exemption for transactions within a corporate family may apply to the Continuance in Control and the Operating Arrangements, Applicants may proceed under the formal application process in part 1180, subpart A, and seek to receive affirmative authority for CSX, NS and Conrail to continue in control of Sub A and Sub B and any other subsidiary of Conrail, and for CSX and NS to enter into operating arrangements with respect to the assets

held by Sub A, Sub B, or CRI or CRC or one of their subsidiaries (other than Sub A or Sub B).

F. Waiver or clarification that, although the § 1180.2(d)(7) exemption for the acquisition of trackage rights may otherwise apply to various acquisitions of trackage rights related to the Control Transaction or the Transaction Elements, the Applicants seek revocation of the § 1180.2(d)(7) exemption such that they may proceed under the formal application process in part 1180, subpart A, and receive affirmative authority to acquire such trackage rights.

G. Applicants also request a waiver or clarification with respect to fees relating to the Transaction Elements.

DISCUSSION

I. WAIVERS OR CLARIFICATIONS OF RAILROAD CONSOLIDATION PROCEDURES IN CONNECTION WITH THE CONTROL TRANSACTION

A. Definition of "Applicant"

Section 1180.3(a) of the Railroad Consolidation Procedures defines "applicant" as one of the "parties initiating a transaction." Applicants seek clarification that, for purposes of the Primary Application relating to the Control Transaction, this term includes only CSXC, CSXT, NSC, NSRC, CRI and CRC, but not LLC, Tender Sub, Merger Sub, Sub A or Sub B.⁹ LLC, a newly-created

⁹ Similar requests were granted by the Board's predecessor, the Interstate Commerce Commission ("ICC"), in Finance Docket No. 32760, Union Pac. Corp. -- Control and Merger -- Southern Pac. Rail Corp., Decision served Sept. 5, 1995, at 1-2 ("UP/SP", Decision No. 3"); Finance Docket No. 32133, Union Pac. Corp. -- Control -- Chicago & N.W. Holdings Corp., Decision served Oct. 26, 1992, at 1-2 ("UP/CNW", Decision No. 3"); Finance Docket No. 31700, Canadian Pac., Ltd. -- Purchase & Trackage Rights -- Delaware & H. Ry., Decision served July 3, 1990, at 1-2 ("CP/D&H"); Finance Docket No. 31562, Union Pac. R.R. -- Trackage Rights Over Lines of Chicago & N. W. Transp. Co. Between Fremont, NE/Council Bluffs, IA & Chicago, IL, Decision

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limited liability corporation jointly owned by CSX and NS, Tender Sub, a wholly-owned subsidiary of LLC, and Merger Sub, a wholly-owned subsidiary of Tender Sub, function only to effectuate the proposed joint acquisition by CSX and NS of CRI stock and currently have no other operations. The Applicants will set forth in the Primary Application detailed descriptions of LLC, Tender Sub and Merger Sub, including the nature of the business organization, the nature of the business governance and management, and the law governing the companies' existence. There accordingly should be no need for LLC, Tender Sub or Merger Sub to be formal applicants.

Similarly, until the effective date on which the Board shall have authorized the control of Conrail by NS and CSX (the "Control Date"), each of Sub A and Sub B will have no operations. Thus, the Board would gain no meaningful information by requiring the Subsidiaries to be "applicants." Following the Control Date, Sub A and Sub B will each hold certain assets of Conrail, but most of those assets will be operated by CSX and NS. All economic

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served Nov. 30, 1989, at 4 ("Fremont"); Finance Docket No. 31522, Rio Grande Indus., Inc. -- Purchase & Trackage Rights -- Chicago, M. & W. Ry. Line Between St. Louis, MO & Chicago, IL, Decision served Aug. 18, 1989, at 2-3 ("RGI/CMW"); Finance Docket No. 31505, Rio Grande Indus., Inc. -- Purchase & Related Trackage Rights -- Soo Line R.R. Line Between Kansas City, MO & Chicago IL, Decision served Aug. 16, 1989, at 1-2 ("RGI/Soo"); Finance Docket No. 32000, Rio Grande Indus., Inc. -- Control -- Southern Pac. Transp. Co., Decision served Jan. 22, 1988, at 1, 2 ("RGI/SPT, Decision No. 3"), & Decision served May 11, 1988, at 3-4; and Finance Docket No. 31000, Union Pac. Corp. -- Control -- Overnite Transp. Co., Decision served Dec. 15, 1986, at 1 ("UP/Overnite"); and Finance Docket No. 30500, Norfolk S. Corp. -- Control -- North Am. Van Lines, Inc., Decision served Aug. 7, 1984, at 2 ("NS/NAVL"). As to Tender Sub, the Board granted this waiver in connection with the Petition for Waiver or Clarification submitted by CSX and Conrail in Finance Docket No. 33220 (Tender Sub was referred to as "Acquisition" in that decision). In the present transaction, Tender Sub, LLC and Merger Sub will serve the same limited purpose that Tender Sub (Acquisition) would have served in the proposed CSX/Conrail merger. See STB Finance Docket No. 33220, CSX Corp. -- Control and Merger -- Conrail Inc., Decision No. 7, served Jan. 24, 1997, slip op. at 3 ("CSX/Conrail").

benefits and liabilities arising as a result of those operations will flow to CSX and NS, respectively. The Applicants will set forth in the Primary Application detailed descriptions of Sub A and Sub B, including the nature of the business organization, the nature of the business governance and management, and the law governing the companies' existence. There accordingly should be no need for Sub A or Sub B to file the information that would normally be required of formal applicants. The same would be the case for any other subsidiary of CRC created or used for the purposes of providing services to CSX and NS or either of them.

B. Definition of "Applicant Carriers"

Section 1180.3(b) defines "applicant carriers" to include not only an applicant, but also "all carriers related to the applicant and all other carriers involved in the transaction." Applicants request a waiver or clarification to limit the definition of "applicant carrier," for purposes of the Primary Application, to CSXT, NSRC, and CRC, and those Board-regulated rail carriers in which either CSX, NS or Conrail now holds an interest greater than 50%. The requested waiver or clarification would exclude from that definition any rail carrier subsidiaries not subject to the Board's jurisdiction (for example, those located entirely in foreign countries), any in which CSX, NS or Conrail have interests of 50% or less, and any carrier subsidiaries other than rail carriers.

CSXT, NSRC and CRC have less-than-majority interests in a number of rail carriers, all of which are operated and managed independently of CSXT, NSRC and CRC and maintain their own records (*e.g.*, terminal, switching, or short-line railroads owned jointly with other railroads).¹⁰ Requiring the Primary

¹⁰ All such carriers will be identified for the Board either in the corporate chart required by § 1180.6(b)(6) (Exhibit 11 to the Primary Application) or in the statement of direct or indirect intercorporate or financial relationships required by § 1180.6(b)(8). Furthermore, Applicants will describe in the Primary Application the effects of the transaction, if any, on these excluded carriers.

Application to include information on these entities as "applicant carriers" would impose significant burdens on Applicants without enhancing the Board's ability to evaluate the transaction proposed in the Primary Application.¹¹

Applicants' proposed waiver or clarification would also exclude from the definition of "applicant carrier" The Lakefront Dock and Railroad Terminal Company ("Lakefront"), a terminal railroad company in which CSXT and CRC each hold 50% interests. The Primary Application will fully describe the effects, if any, of the proposed transaction on Lakefront's operations. Applicants will also file, together with the Primary Application, an application or a petition for exemption with respect to CSX's control of Lakefront as a result of its acquisition of Conrail's 50% interest in Lakefront. In prior cases waivers have been granted for the exclusion of similarly situated railroads from the definition of "applicant carrier."¹²

Finally, Applicants' requested waiver or clarification would exclude Applicants' motor carrier and water carrier affiliates¹³ from the definition of

¹¹ Similar waivers or clarifications were granted in *UP/SP*, Decision No. 3, at 2-4; Finance Docket No. 32549, *Burlington N. Inc. -- Control & Merger -- Santa Fe Pac. Corp.*, Decision served Oct. 3, 1994, at 1-2 ("*BN/SF*"); and *UP/CNW*, Decision No. 3, at 2. The Board granted similar waivers to Conrail, CSX and NS in Finance Docket Nos. 33220 and 33286, *see* Finance Docket No. 33286, *Norfolk So. Corp. -- Control -- Conrail Inc.*, Decision No. 5, served Feb. 21, 1997, slip op. at 5 ("*NS/Conrail*"); *CSX/Conrail*, at 3-4.

¹² *See, e.g., UP/SP*, Decision No. 3, at 3; *BN/SF*, at 2-3. The Board granted this waiver in Finance Docket No. 33220, *see CSX/Conrail* at 5.

¹³ Those affiliates are: American Commercial Barge Line Company ("ACBL"), CSX Intermodal, Inc. ("CSX Intermodal"), Customized Transportation, Inc. ("Customized Transportation"), Sea-Land Service, Inc. ("Sea-Land"), Conrail Direct, Inc. ("Conrail Direct"), North American Van Lines ("Van Lines"), and Triple Crown Services Company ("Triple Crown").

ACBL is a water carrier and is an indirect wholly owned subsidiary of CSXC. CSX Intermodal and Customized Transportation are indirect wholly owned subsidiaries of CSXC, both of which have motor carrier authority. Sea-Land, an
[Footnote continued on next page]

"applicant carrier." Since enactment of the ICC Termination Act of 1995 ("ICCTA"), approval is no longer required for common control of rail carriers together with motor and water carriers. There is therefore no need for detailed information about Applicants' non-rail-carrier affiliates to be included in the Primary Application.¹⁴

Applicants also seek clarification that information and data required by the Board's Railroad Consolidation Procedures may be submitted on a consolidated basis (*i.e.*, consolidated information regarding each of CSXT, NSRC and CRC, or CSXC, NSC and CRI, as appropriate, with their respective majority-owned subsidiaries except as noted below). Separate information regarding majority-owned subsidiaries is not necessary for the Board's

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ocean carrier subject to the authority of the Federal Maritime Commission, is a direct wholly owned subsidiary of CSXC. Each of these companies has its own management and operations.

Conrail Direct, a motor carrier with broker authority (MC-222314), is an indirect wholly owned subsidiary of CRI (but not of CRC); its applications for freight forwarder and motor contract carrier authority are pending before the Federal Highway Administration.

Van Lines, a motor carrier, is a direct subsidiary of NSC.

Triple Crown is an intermodal carrier that also holds motor carrier authority. Fifty percent of Triple Crown is owned indirectly by NSC and 50% is owned indirectly by CRI. Triple Crown is managed and operated independently of NSRC and CRC.

¹⁴ Even before enactment of the ICCTA, similar requests for waiver were granted in UP/SP, Decision No. 3, at 3-4; BN/SF, at 3; UP/CNW, Decision No. 7, served June 8, 1993, at 2; UP/CNW, Decision No. 3, at 2-3; and Fremont, at 4. *See also* NS/NAVL, at 2. Again, information about these entities will be included in the corporate chart required by § 1180.6(b)(6) or in the statement of direct or indirect intercorporate or financial relationships required by § 1180.6(b)(8). The Board granted these waivers in Finance Docket Nos. 33220 and 33286, *see* NS/Conrail at 5-6; CSX/Conrail at 4-5.

consideration and disposition of the Primary Application.¹⁵ Use of consolidated information will avoid both unnecessary burdens on Applicants and redundancy in the Primary Application. CSX, NS and Conrail can provide consolidated information for all of their majority-owned subsidiaries.¹⁶ Use of consolidated data will avoid the unnecessary burden and redundancy of preparing and providing the information and data on a carrier-by-carrier basis.

C. Classification of Employee Impact Data

Section 1180.6(a)(2)(v) requires an applicant to discuss the "effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impact will occur, the time frame of the impact (for at least 3 years after consolidation), and whether any employee protection agreements have been reached." Because the regulations do not specify the "class

¹⁵ Similar waivers or clarifications were granted in UP/SP, Decision No. 3, at 4; BN/SF, at 3-4; UP/CNW, Decision No. 3, at 2; Finance Docket No. 31801, Illinois Cent. Corp. -- Control -- MidSouth Corp., Decision served Feb. 22, 1991, at 3 ("IC/MidSouth"); CP/D&H, at 2-3; RGI/CMW, at 3; Fremont, at 3-4; RGI/Soo, at 2-3; Finance Docket No. 31247, CSX Corp. -- Control -- SCNO Acquisition Corp., Decision served May 25, 1988, at 2; RGI/SPT, Decision No. 3, at 1, & Decision No. 8, served Mar. 25, 1988, at 1-2; Finance Docket No. 31088, Southern Ry. -- Purchase -- Illinois Cent. R.R. Line Between Fulton, KY & Haleyville, AL, Decision served Oct. 2, 1987, at 1-2 ("Southern/ICG"); UP/Overnite, at 2-3; Union Pac. Corp. -- Control -- Missouri-K.-T. R.R., Decision served Oct. 24, 1986, at 1 ("UP/MKT, Decision No. 6"), & Decision served Mar. 17, 1987, at 1 ("UP/MKT, Decision No. 10"); NS/NAVL, at 2; Finance Docket No. 30400, Santa Fe S. Pac. Corp. -- Control -- Southern Pac. Transp. Co., Decision served Feb. 3, 1984, at 1 ("SFSP, Decision No. 3"), Decision served July 3, 1984, at 2 ("SFSP, Decision No. 8"), & Decision served July 9, 1984, at 1 ("SFSP, Decision No. 10"); and Finance Docket No. 30000, Union Pac. Corp. -- Control -- Missouri Pac. Corp., Decision served Aug. 25, 1980, at 5-6, 8-9. The Board granted these waivers in Finance Docket Nos. 33220 and 33286, see NS/Conrail at 6; CSX/Conrail at 5-6.

¹⁶ CSXT obtained authority to control The Indiana Rail Road Company ("INRD"), a majority-owned subsidiary, in November 1996. Applicants request that, to the extent that CSX's consolidated data do not include data relating to INRD, CSXC and CSXT be permitted to provide any unconsolidated information that may be called for with respect to INRD in footnotes to the consolidated CSXC or CSXT information.

or craft" to be used, Applicants seek confirmation that they may use the system of classification shown in Appendix A hereto.¹⁷

D. Form 10-Ks, Form S-4s, and Annual Reports

Paragraphs (1), (2), and (4) of § 1180.6(b) require the submission of applicant carriers' most recent Form 10-K and Form S-14 (now S-4) filings with the SEC as Exhibits 6 and 7, respectively, and their two most recent annual reports as Exhibit 9. Any Form 10-Ks, Form S-4s, and annual or quarterly reports to stockholders issued during the pendency of the proceeding must also be submitted to the Board upon their issuance. Applicants request a waiver or clarification of these requirements as follows:¹⁸

1. Section 1180.6(b)(1) requires the filing of applicant carriers' most recent Form 10-K. Applicants request waiver or clarification to permit satisfaction of this requirement with the filing of the most recent Form 10-Ks for CSXC, CSXT, NSC, NSRC, CRI and CRC, together with any supplementation required by the regulations. Although two of CSXT's majority-owned carrier subsidiaries filed Form 10-Ks for 1995 and one filed such a form for 1996, none of NSRC's or CRC's majority-owned carrier subsidiaries did so in 1995 or 1996, and no useful purpose would be served by requiring such additional reports, as data for the CSXT subsidiaries are included in the CSX consolidated data.

¹⁷ The ICC granted similar requests in UP/SP, Decision No. 3, at 4-5; BN/SF, at 4; UP/CNW, Decision No. 3, at 3; Fremont, at 4-5; RGI/SPT, Decision No. 8, at 3; UP/MKT, Decision No. 6, at 2, & Decision No. 10, at 1; and SFSP, Decision No. 10, at 1. The Board granted this waiver in Finance Docket Nos. 33220 and 33286, see NS/Conrail at 6; CSX/Conrail at 6.

¹⁸ The ICC granted requests similar to these in UP/SP, Decision No. 3, at 5-6; UP/CNW, Decision No. 3, at 3; Fremont, at 5-6; CP/D&H, at 3-4; RGI/Soo, at 4; RGI/SPT, Decision No. 3, at 1-2; UP/Overnite, at 7; and UP/MKT, Decision No. 6, at 2. The Board granted these waivers in Finance Docket Nos. 33220 and 33286, see NS/Conrail at 7; CSX/Conrail at 6-7.

2. Applicants request waiver of the requirement in § 1180.6(b)(2) that applicant carriers file past Form S-4s. CRC last filed a Form S-4 in 1993 and CSXC filed a Form S-4 in January 1997 in connection with a previously proposed acquisition of Conrail by CSX, which acquisition has been abandoned. No other applicant carrier has filed a Form S-4 or S-14 for at least five years. Financial information relevant to this proceeding will be contained in the Applicants' various Form 10-Ks and annual reports, as well as in the SEC Schedule 14D-1s relating to the tender offers of CSX and NS for CRI's stock, and in amendments to those filings. Applicants propose to file these materials as part of the Primary Application (with supplementation as required by the regulations), rather than any Form S-4s or S-14s that may have been filed in the past.

3. Applicants request waiver of the requirement of § 1180.6(b)(4) that the Primary Application include each applicant carrier's two most recent annual reports to stockholders. Applicants propose to submit the two most recent CSXC, NSC, NSRC and CRI annual reports to stockholders, as well as any subsequent annual or quarterly reports to CSXC, NSC, NSRC and CRI stockholders as required by § 1180.6(b)(4). Neither CSXT nor CRC prepares an annual report to stockholders. While certain majority-owned carrier subsidiaries of CSXT do issue annual reports, no useful purpose would be served by requiring those additional reports -- data for those companies are included in the CSX consolidated data. No NS or Conrail majority-owned carrier subsidiaries other than NSRC issue annual reports.

E. Corporate Information and Reports

Section 1180.6(b) requires applicants to submit a substantial amount of information on their own and applicant carriers' corporate structure, corporate

officers and directors, and intercorporate relationships. Applicants request that the Board authorize omission or modification of particular requirements of § 1180.6(b), as follows:

1. Section 1180.6(b)(3) requires applicants to list any change in officers not indicated on the most recent Form R-1. Applicant railroads and their subsidiaries have a large number of officer positions that could arguably be within the scope of this requirement. Compiling this list would be burdensome and of little or no value to the Board in assessing the merits in this proceeding. Applicants seek waiver or clarification that they be required to list only the principal six officers of CSXT, NSRC, CRC, and their majority-owned subsidiaries.¹⁹

2. Section 1180.6(b)(6) requires applicants to submit a corporate chart including, for each company identified in the chart, a statement indicating any directors or officers which that company has in common with any other company on the chart. Applicants seek a partial waiver or clarification of this requirement. In order to present the information on the corporate chart in a concise and intelligible manner, Applicants propose to list only those officers and directors who are (a) common to either: (i) CSXC (including majority-owned subsidiaries) and CRI (including majority-owned subsidiaries), (ii) NSC (including majority-owned subsidiaries) and CRI (including majority-owned subsidiaries); or (iii) common to CSXC (including majority-owned subsidiaries) and NSC (including majority-owned subsidiaries); or (b) common to CSXC,

¹⁹ Similar requests were granted in *UP/SP*, Decision No. 3, at 6; *BN/SF*, at 5; *UP/CNW*, Decision No. 3, at 4; *Fremont*, at 6; *RGI/CMW*, at 3; *RGI/Soo*, at 4; *Southern/ICG*, at 2; *NS/NAVL*, at 3; and Finance Docket No. 30300, *CSX Corp. -- Control -- American Commercial Lines, Inc.*, Decision served Oct. 19, 1983, at 7-8 ("*CSX/ACL*"). The Board granted these waivers in Finance Docket Nos. 33220 and 33286, *see NS/Conrail* at 8; *CSX/Conrail* at 8.

NSC, CRI, or any of their majority-owned subsidiaries, and any carrier outside the CSX, NS or Conrail corporate families.²⁰

3. Section 1180.6(b)(8) requires disclosure of intercorporate relationships between applicant carriers or affiliated persons and other carriers or any persons affiliated with them. Applicants seek waiver or clarification that this requirement pertains only to significant intercorporate or financial relationships. Applicants request that they be permitted to describe only those relationships involving ownership by Applicants or their affiliates of more than 5% of a non-affiliated carrier's stock, including those relationships in which a group affiliated with Applicants own more than 5% of a non-affiliated carrier's stock.²¹

F. Financial Information

Section 1180.9(a), (b) and (c) require the submission of pro forma balance sheets and income statements and statements of sources and application of funds. Applicants request waiver or clarification of these requirements to permit them to reflect Conrail financial information in the respective financial pro forma statements of CSX and NS, as appropriate, and not to file separate pro forma financial statements for Conrail. While Conrail and its subsidiaries will continue to exist as separate legal entities following the acquisition of control of Conrail by

²⁰ Similar requests were granted in UP/SP, Decision No. 3, at 6; BN/SF, at 5; UP/CNW, Decision No. 3, at 4; CP/D&H, at 4; Fremont, at 6; RGI/CMW, at 3; RGI/Soo, at 4; RGI/SPT, Decision No. 3, at 2, & Decision No. 8, at 2; Southern/ICG, at 2; UP/Overnite, at 7; UP/MKT, Decision No. 6, at 3; NS/NAVL, at 3-4; SFSP, Decision No. 10, at 2; and CSX/ACL, at 8. The Board granted these waivers in Finance Docket Nos. 33220 and 33286, see NS/Conrail at 8; CSX/Conrail at 8.

²¹ Similar requests were granted in UP/SP, Decision No. 3, at 6; BN/SF, at 5; UP/CNW, Decision No. 3, at 4-5; IC/MidSouth, at 6; CP/D&H, at 4; Fremont, at 6-7; RGI/CMW, at 3-4; RGI/Soo, at 4; RGI/SPT, Decision No. 3, at 2, & Decision No. 8, at 2; UP/Overnite, at 7-8; UP/MKT, Decision No. 6, at 3; SFSP, Decision No. 3, at 2; and CSX/ACL, at 8-9. The Board granted these waivers in Finance Docket Nos. 33220 and 33286, see NS/Conrail at 8; CSX/Conrail at 8.

CSX and NS, the ultimate transportation and other economic effects of this transaction (including gains and losses from continuing Conrail operations) will be fully reflected in the pro forma financial statements of CSX and NS. Those statements will accordingly provide the most accurate reporting of the transaction's effects. By contrast, Conrail will cease to be an independent rail carrier and separate pro formas for it on a freestanding basis would not be meaningful and would not contribute to the Board's analysis of the proposed transaction.²²

G. Base Period Data for Labor-Related Matters

In the Notice of Intent to File Railroad Control Application filed on April 10, 1997 (CSX/NS-1), Applicants informed the Board of their intention to use 1995 as a base year for impact analyses under § 1180.7 (traffic studies, financial projections, etc.). In connection with labor impact analyses Applicants will submit pursuant to § 1180.6(a)(2)(v), concerning the impact of the proposed transaction on rail carrier employees, Applicants request waiver or clarification to permit them to use dates other than 1995 as a base line for setting forth the impacts on rail carrier employees. Applicants wish to use figures from the most recent practicable month in the first half of 1997 to create the base line for rail carrier employees not covered by collective bargaining agreements because that is

²² Analogous requests were granted in CP/D&H, Decided June 27, 1990, Slip Copy at *4 (stating that the ICC's focus is on the financial condition of the purchase and its related carriers to ensure that they will be able to operate the line to be acquired, waiving § 1180.9 requirements for bankrupt seller); RGI/Soo, Decided April 9, 1989, Slip Copy at *1, 3 (stating that the ICC's focus is on the financial condition of the purchaser and its related carriers to insure they will be able to operate the line acquired, waiving § 1180.9 requirements for parent corporations of vendee and vendor carriers since impact on parents would be reflected in carriers' financial information); Rio Grande Indus., Inc. -- Control -- Southern Pac. Acquisition Co., Decision served May 3, 1988, Slip Copy at *2 (stating that purpose of § 1180.9 pro forma financial statement requirements is to show the effect on the transportation entities of the transaction and post-merger operations).

a more recent period for which figures are available that could be used for developing the Primary Application. Applicants wish to use November 1996 to create the base line for rail carrier employees covered by collective bargaining agreements because that is the most recent period for which figures are available and for which the figures would not be affected by seasonal fluctuations.²³

H. Market Analyses and Operational Data

Section 1180.7 requires impact analyses showing the anticipated effects of the transaction and § 1180.8 requires a summary of operating plan changes. While the immediate situation at the time when any order of the Board authorizing control of Conrail by CSX and NS becomes effective will be that CSX and NS jointly will be in control of the entire, undivided Conrail, the intent of the transaction is that that condition be transitory and continue only as long as necessary to put into effect the authorized Transaction Elements and thus effect the Division. It would, accordingly, be misleading and irrelevant to present impact analyses and related information on the basis of an undivided Conrail jointly controlled by CSX and NS. Applicants request waiver or clarification of these sections to the extent necessary to permit them to provide separate sets of impact analyses and separate operating plans, rather than a single set of impact analyses and related materials dealing with the transitory condition of an

²³ The ICC has granted analogous requests from applicants wishing to deviate from the base year requirements set out in the regulations. ICC Finance Docket No. 32556, Illinois Central Corp. -- Common Control -- Illinois Cent. R.R. Co.; Decision served October 17, 1994, Slip Copy at *4 (allowing an applicant to use a split year rather than the "latest available full calendar year" required by the regulations when the split year would provide a more accurate base for comparison); IC/Midsouth decided February 20, 1991, Slip Copy at *7 (allowing an applicant to use 1990 for any traffic diversion, competitive impact analyses, cost purposes and pro forma financial statements, but, to the extent complete 1990 data was not available, the applicant could use 1989 data).

undivided Conrail.²⁴ As Applicants have described above, the proposed transaction contemplates that most existing Conrail operations either will be divided among CSX and NS or shared by them. After the transaction is complete, Conrail's operations will have been divided and become two separate CSX and NS systems. Thus, Applicants seek clarification that they may provide a separate set of impact analyses and a separate operating plan regarding each post-acquisition system, rather than a single set of impact analyses and related materials dealing with the transitory condition of an undivided Conrail.

i. Directly-Related Construction Applications

Section 1105.10(a) requires that written notice be provided to SEA at least six months in advance of the filing of a construction application (if an EIS is required or contemplated), and § 1150.1(b) requires compliance with the Board's environmental rules at 49 C.F.R. Part 1105, including consultation with SEA six months before the filing of a construction application under 49 U.S.C. § 10901. As the Board's predecessor agency recognized, however, such requirements need not be applied to directly-related construction projects.²⁵

Applicants have begun consultations with SEA regarding the Primary Application and related applications, and intend to furnish a Preliminary Environmental Report ("PER") advising SEA of all specific directly-related construction projects, and will provide SEA with such other reasonably available information as that office may require regarding those projects. The PER will be furnished no later than 30 days before the filing of the Primary Application, thus allowing SEA the opportunity to initiate its environmental analysis of these

²⁴ In addition, appropriate information about the continuing post-Division operations of Conrail also will be included.

²⁵ UP/MKT, Decision No. 6, at 3.

projects.²⁶ Applicants also will file a detailed joint Environmental Report with the Primary Application.

Section 1150.36(c)(1) requires that Applicants provide at least 20 days pre-filing notice to various state agencies before filing a notice of exemption with the Board with respect to the construction of connections on existing rail right-of-way or property owned by the connecting railroads. Applicants request waiver of this pre-filing notice requirement so that they may serve that notice no later than the date on which they file with the Board any § 1150.36 verified notices of exemption that may accompany their Primary Application. Applicants also request waiver of the requirement in § 1150.36(c)(2) that any verified notices of exemption filed with the Board recite that the pre-filing requirements of § 1150.36(c)(1) have been met.

The purpose of the pre-filing requirement is to provide state agencies with adequate time to consider any issues that may be raised by a proposed construction project in a context where the project may be undertaken on the relatively expedited basis provided by the Board's § 1150.36 class exemption rules. However, with respect to any directly-related construction projects that may fall within the class exemption provided under § 1150.36, state agencies will have ample time -- much more than is normally available -- to review the projects, and to undertake appropriate consultations, before the Board has taken final action on the Primary Application. Accordingly, the pre-filing notice requirements should be waived in these circumstances.

²⁶ In CSX/NS-4, filed April 10, 1997, Applicants proposed to furnish a PER 30 days before they file the Primary Application. *See* Finance Docket No. 33388, Decision No. 2 served April 21, 1997. The PER would identify any merger-related construction projects to which this request for waiver would apply.

Applicants request that the Board waive or clarify the pre-filing notice provisions of §§ 1105.10(a) (if an EIS is required or contemplated) and 1150.1(b) and find that notice to the SEA of directly-related construction projects will be satisfactory if provided no later than 30 days before the filing of the Primary Application. Applicants further request that the Board waive the pre-filing notice provisions of § 1150.36(c) and find that notice to state agencies of the construction of connections on existing rail rights-of-way or property owned by the connecting railroads will be satisfactory if provided at the time of filing the Primary Application.²⁷

J. Relief in Regard to Directly
Related Abandonment Applications

1. Filing of Directly-Related Abandonment Applications

Applicants anticipate a limited number of directly-related line abandonments for which they will seek either exemption or approval in connection with the Primary Application.²⁸ However, Applicants will not be in a position to definitively identify these abandonments, or the extent to which Applicants will file applications rather than seek exemptions relating to these abandonments, 60 days before the filing of the Primary Application, and thus are not in a position to comply with the requirement in § 1152.13(c) that a line for which abandonment approval is sought be identified in Category 1 on the

²⁷ Similar waivers of §§ 1105.10 and 1150.1 were granted in UP/SP, Decision No. 3, at 7, and BN/SF, at 6. The Board granted these waivers in Finance Docket Nos. 33220 and 33286, see NS/Conrail at 9-10; CSX/Conrail at 9.

²⁸ It is also possible that some segments may be proposed for discontinuance of service, rather than abandonments, in connection with the Primary Application. Applicants request that any waivers or clarification applicable to abandonments also be made applicable to any directly-related discontinuances that Applicants may propose.

abandoning railroad's system diagram map for at least 60 days before the filing of the abandonment application. Applicants thus request that the 60-day notice requirement of § 1152.13(c) be waived, and that Applicants be permitted to file directly-related abandonment applications simultaneously with the Primary Application without first including the segments proposed for abandonment in Category 1 of the appropriate system diagram map.

Since the Board will not be ruling on any directly-related abandonments until it also rules on the proposed transaction, the planning needs of shippers and state and local governments affected by the proposed abandonments will be adequately met, even if those parties first learn of the proposed abandonment at the time the Primary Application is filed.²⁹

Section 1105.7(b) requires that railroads seeking to abandon a line distribute an Environmental Report 20 days prior to the filing of a notice of exemption, petition for exemption or application for abandonment with the Board. Section 1105.8(c) now requires the distribution of an Historic Report in connection with any proposed abandonment "preferably at least 60 days in advance" of a Board filing, "but not later than 20 days prior to filing with the Board." These requirements are also reflected in § 1152.20(c).

Applicants request waiver of these advance filing requirements so that they may provide to SEA an identification of proposed abandonments in the PER 30 days before filing their Primary Application, and so that they may distribute a full Environmental Report -- which will also embrace any historical data that may be required under the Board's rules -- at the time that they file their Primary Application. Normally, abandonment proceedings would be decided by the

²⁹ The Board granted these waivers in Finance Docket Nos. 33220 and 33286, *see NS/Conrail* at 10-11; *CSX/Conrail* at 10-11.

Board within 110 days from the date an abandonment application is filed, or more quickly if an exemption procedure is used. The purpose of the advance distribution requirements in §§ 1105.7 and 1105.8 is to facilitate prompt initiation of the environmental review process in such abandonment proceedings by giving the Board and the public early notice of abandonment proposals.³⁰ However, with respect to any abandonments that may be sought in connection with the acquisition of Conrail by CSX and NS, abandonment decisions will not be made until a decision is reached on the Primary Application, no earlier than early 1998. Thus, the Board and public here will have ample time (more than might normally be available in a freestanding abandonment setting) for the full assessment of the impacts of any abandonment proposals, thus fulfilling the purposes sought to be served by the advance filing rules from which waiver is requested.³¹

2. Scheduling Requirements in Abandonment Proceedings

Applicants request that proceedings arising out of directly-related abandonment proceedings be exempted, pursuant to 49 U.S.C. § 10502, from the procedural requirements of 49 U.S.C. §§ 10904(b)-(f) (relating to procedures for forced sales or subsidies in connection with offers of financial assistance ("OFA")). Applicants request that the following procedural schedule apply to all directly-related abandonments: (1) all directly-related abandonment applications, petitions, and notices shall be filed, with any and all supporting documentation, simultaneously with the Primary Application; (2) if the Primary Application is complete, the Board shall publish in the *Federal Register*, by the 30th day after the date of filing of the Primary Application, notice of acceptance of that

³⁰ See *Ex Parte* No. 537, Abandonment and Discontinuance of Rail Lines and Rail Transportation under 49 U.S.C. ½ 10903, Decision served Dec. 24, 1996.

³¹ The Board granted these waivers in Finance Docket Nos. 33220 and 33286, see NS/Conrail at 11-12; CSX/Conrail at 11.

application pursuant to 49 U.S.C. § 11325(a), and shall also publish in the *Federal Register*, by that 30th day, notice of any directly-related abandonment applications, petitions and notices; (3) that *Federal Register* publication shall include the finalized version of the procedural schedule that will thereafter govern this and all related proceedings; (4) with respect to each directly-related abandonment, the procedural schedule shall set a date by which interested parties must file opposition submissions, requests for public use conditions (§ 1152.28), and/or Trails Act requests (§ 1152.29);³² (5) the procedural schedule shall also set a date by which Applicants may file rebuttal in support of their abandonment proposals, and/or responses to any requests for public use conditions and Trails Act requests;³³ and (6) if, in the final decision, the Board approves the Primary Application, the Board shall also address each of the various abandonment proposals, and all matters (including requests for public use conditions and Trails Act requests) relative thereto; and (7) the Board shall allow interested parties to file, no later than 10 days after the date of service of the final decision, OFAs with respect to any of the approved or exempted abandonments.³⁴

Under 49 U.S.C. §§ 10904(b)-(f) and 49 C.F.R. § 1152.27, financially responsible parties may offer to purchase a line that is the subject of an abandonment application, or may offer to subsidize continued operations over that line. The railroad may be required to accept such an offer, so long as the offeror agrees to pay compensation determined by the Board. In the case of a dispute between the railroad and the offeror, the statute and regulations provide

³² In CSX/NS-4, Applicants proposed F + 120.

³³ In CSX/NS-4, Applicants proposed F + 150.

³⁴ The Board granted this waiver in Finance Docket Nos. 33220 and 33286, *see NS/Conrail* at 12; *CSX-Conrail* at 12.

procedures which, if invoked by either party in a proceeding involving a directly-related abandonment, could require a forced sale or subsidy of the subject line before the Board has decided on the merits of the Primary Application.

Such an outcome would be inappropriate in this case. By definition, directly-related abandonments are those that the railroad would not undertake unless the transaction proposed in the Primary Application were to be effected. Until it is determined whether that transaction is to be authorized, the railroads should not be subject to the possibility of forced sales of lines that will be needed if the transaction is disapproved, nor should any offeror be subject to the possibility of being bound to subsidize operations on a line that, if the transaction is disapproved, the railroad would continue to operate.

Instead, the Board should defer consideration of OFAs until after it has made a determination on the Primary Application and after Applicants have determined to effect the transaction. The exemption Applicants are requesting from the procedural requirements of 49 U.S.C. §§ 10904(b)-(f), and the corresponding waiver from the procedural requirements of § 1152.27 of the Board's abandonment regulations, would permit the Board to do so.³⁵

3. Information to Accompany Abandonment Applications

Section 1152.22 lists the information that must be included in abandonment applications. Certain information normally required for abandonment applications is unnecessary in the context of directly-related

³⁵ The standards for a 49 U.S.C. § 10502 exemption are plainly met here. Compliance with the 49 U.S.C. §§ 10904(b)-(f) procedures and deadlines in the context of this proceeding is not necessary to carry out the transportation policy of 49 U.S.C. § 10101, and in fact would undermine the Applicants' ability to achieve the public benefits to the nation's transportation system that will result from the combination of their systems. Further, the exemption requested will merely delay the OFA process. The exemption is thus of limited scope and will not subject shippers to an abuse of market power.

abandonments. Therefore, in accordance with § 1152.24(e)(5), Applicants seek the following waivers of the abandonment regulations:³⁶

a. Applicants request partial waiver of § 1152.22(c)(8), which requests information on any important changes in train service during the two years preceding the abandonment application. Much of the trackage that could be the subject of Applicants' abandonment applications is trackage being used primarily for overhead operations. Numerous changes in overhead train service undoubtedly occurred without any relation to the local traffic on the line segments to be abandoned. Section 1152.22(c)(8) would impose a substantial burden on Applicants to accumulate data that would be of little or no value to the Board in evaluating the merits of a directly-related abandonment application. Therefore, Applicants ask that § 1152.22(c)(8) be limited to important changes in local train service.

b. Applicants request that revenue and cost data required by § 1152.22(d), relating to overhead traffic to be retained by the combined CSX/Conrail or NS/Conrail systems, be waived, and that Applicants be authorized to prepare cost data on a pro forma basis reflecting the exclusion of overhead traffic. Revenues unaffected by abandonment are not revenues of the abandoned line.³⁷ Requiring the submission of financial data on overhead traffic would merely impose an unnecessary burden on Applicants without serving any useful purpose.³⁸

³⁶ Similar requests were granted in UP/SP, Decision No. 3, at 10-12; UP/MKT, Decision No. 6, at 4. The Board granted these waivers in Finance Docket Nos. 33220 and 33286, see NS/Conrail at 12-14; CSX/Conrail at 13-14.

³⁷ Illinois v. ICC, 722 F.2d 1341, 1346 (7th Cir. 1983).

³⁸ See, e.g., Docket No. AB-3 (Sub-No. 57), Missouri Pac. R.R. -- Abandonment -- Between Lomax and Topeka, KS, served July 3, 1985, at 1.

To the extent that train operations and maintenance practices are governed by overhead traffic, Applicants should be allowed to provide costing based on pro forma operations related to the handling of local traffic only. Pro forma costing is appropriate where historical train operations and maintenance cost data are affected by overhead operations, as where local traffic has been handled in through trains or maintenance practices have been geared to overhead traffic.³⁹

Applicants also request clarification (or, if necessary, a waiver to the effect) that any applications for authorization of directly-related abandonments may report costs on a pro forma consolidated post-acquisition basis, using the same consolidated cost data that are to be used in the operating plan and in other parts of the Primary Application.

The purpose of the cost data in an application seeking authorization for a directly-related abandonment is to permit an assessment of the cost of handling the traffic that will remain on the line after the transaction and a determination whether handling that traffic will constitute a burden on the carrier. Obviously, for this purpose, the relevant cost data are those of the combined system, and thus it makes sense for the "forecast" year in the application to be based on the consolidated cost data of the combined system. It likewise makes sense to use the same consolidated cost data for the "base" year (if such data is required), so that comparisons on a common basis can be made between those years and the forecast year.⁴⁰ In addition, use of the same consolidated data for the

³⁹ See, e.g., Docket No. AB-1 (Sub-No. 230), Chicago & N.W. Transp. Co. -- Abandonment -- Between Norfolk & Chadron, NE, Decision served Oct. 9, 1991; UP/M.T., 4 I.C.C.2d at 493.

⁴⁰ The use of consolidated cost data is consistent with Applicants' request above for a waiver to allow costs in the abandonment applications to be reported on a
[Footnote continued on next page]

abandonment applications as will be used in the Primary Application will simplify the process of preparing the abandonment applications.

c. The regulations, at § 1152.22(d), also require that abandonment applications include information about costs attributable to traffic on the line to be abandoned for a "base" year and a "forecast" year. In the case of line abandonments related to a major transaction, where operations on the affected lines will be substantially altered, historic data are particularly misleading, reflecting revenues and costs associated with both local and, more important, the overhead traffic that will be rerouted following consummation of the proposed transaction. The revenues and costs associated with the overhead traffic to be rerouted following consummation of the proposed transaction will be reflected in the revenue and cost projections set forth in the Primary Application. The revenues and costs of the local traffic that would remain if the line were not abandoned will be reflected in the forecast year projections in the abandonment application, notice of exemption or petition for exemption. Accordingly, Applicants request that the requirements of § 1152.22(d) concerning revenue and cost data for a base year be waived, and that Applicants be authorized to present revenue and cost data for the forecast year only. Applicants recognize that a similar request was denied in CSX/Conrail at 13, but request reconsideration of such request in view of these factors.

[Footnote continued from previous page]
pro forma basis, rather than on an actual basis, to reflect the exclusion of overhead traffic.

II. WAIVERS OR CLARIFICATIONS OF
APPLICATION REQUIREMENTS WITH
RESPECT TO TRANSACTION ELEMENTS

A. Definition of "Applicant"

As noted above in Section I.A., § 1180.3(a) of the Railroad Consolidation Procedures defines "applicant" as one of the "parties initiating a transaction." For the reasons stated in the Section I.A. above, Applicants seek waiver or clarification that, for purposes of the Transaction Elements, this term does not include Sub A and Sub B or any other subsidiary of CRC created or used for the purposes of providing services to CSX, NS or both of them.

B. Definition of "Applicant Carriers"

As noted above in Section I.B., § 1180.3(b) defines "applicant carriers" to include not only an applicant, but also "all carriers related to the applicant and all other carriers involved in the transaction." For the reasons set forth in Section I.B. above, Applicants seek waiver or clarification that, for purposes of the Transaction Elements, the definition of "applicant carrier" is limited to CSXT, NSRC and CRC, and those Board-regulated rail carriers in which CSX, NS or Conrail now holds an interest greater than 50%, and is otherwise limited as requested in Section I.B. above.

C. Incorporation of Transaction Elements
Into the Primary Application

Applicants seek waiver or clarification that Applicants may incorporate in the Primary Application information otherwise required to be submitted in separate related applications in connection with each of the Transaction Elements.⁴¹ Applicants propose to undertake the Transaction Elements in order to effectuate the Division. The proposed acquisition of Conrail by CSX and NS

⁴¹ This waiver does not apply to abandonments and constructions, for which separate related applications will be filed.

and the proposed Division cannot be accomplished without effecting each of the Transaction Elements. In connection with seeking approval of the Control Transaction in the Primary Application, Applicants will provide a full description of the entire transaction, including the Division of CRC's assets, the operation of those assets by CSX and NS, and the continuing operations of Conrail. Indeed, it would not be appropriate to consider any of the Transaction Elements standing in isolation. Their transportation and competitive effects can only be evaluated in light of the entire integrated transaction, based on the same record that the Board will consider in addressing the Control Transaction itself.

If Applicants were to pursue approval for each of these Transaction Elements in separate related applications as permitted by § 1180.4(c)(2)(vi), each application would contain substantially the same information, in identical or similar form, that the Applicants will already have provided in the Primary Application in connection with the Control Transaction.⁴² No useful purpose would be served by filing separate related applications for each of the Transaction Elements. Moreover, each of the Transaction Elements is integral to the Control Transaction and interdependent with one another. None can be described or evaluated without an understanding and evaluation of the others. Requiring Applicants to submit separate piecemeal related applications with respect to each of the Transaction Elements would result in a proliferation of filings containing duplicative information, and would not reflect the effects of the overall control

⁴² The Board has not promulgated specific regulations as to the content of applications under 49 U.S.C. § 11322. Applicants will provide in the Primary Application the necessary information to support findings under 49 U.S.C. § 11322 for the approval of poolings. *See RGI/Soo*, Decision No. 6, November 13, 1989 (stating that application properly submitted pursuant to 49 U.S.C. § 11343 (predecessor of 49 U.S.C. § 11323) provided sufficient information for ICC to evaluate and approve any aspect of the transaction that might constitute pooling).

transaction in any one place. The additional filings would not be informative or contribute to the Board's ability to analyze the totality of the proposed transaction. At worst, they could be confusing. Applicants accordingly seek waiver or clarification that it is sufficient for purposes of the Transaction Elements to provide the required information as part of the Primary Application, with the exception noted below, subject to the waivers or clarifications the Board grants in connection with the Primary Application.⁴³

With respect to the Transaction Elements, the information required by each section of part 1180, subpart A, will be included or reflected in the information that will be provided in the Primary Application in connection with the Control Transaction (taking into account the waivers and clarifications requested herein with respect to the requirements for the Primary Application), except in each case for the opinion of Conrail's counsel required by § 1180.6(a)(4). In connection with the Control Transaction, Applicants are required to provide opinions of CSX's and NS's counsel. An opinion of Conrail's counsel is not required in that context because Conrail is the party sought to be controlled (§ 1180.6(a)(4) n.2). Applicants accordingly seek waiver or clarification that either (i) the opinions of counsel of CSX and NS to be

⁴³ Similar requests were granted in ICC Finance Docket No. 29430, Notice: NWS Enterps., Inc.--Control--Norfolk & W. Ry. Co. and So. Ry. Co., October 8, 1980, 45 FR 66911, 66914 (waiving certain informational requirements of related construction application when applicant was required to provide same information in primary control application); see also ICC Finance Docket No. 32133, Union Pac.--Control--Chicago and N.W., Decision No. 12, served Nov. 19, 1993, Slip Copy at *2 (waiving certain 1180.9 financial information requirements in responsive application when information would be duplicative of that to be provided by primary applicants); ICC Finance Docket No. 31505, Rio Grande Industries, Inc., et al.--Purchase and Related Trackage Rights--Soo Line Railroad Company Line Between Kansas City, MO and Chicago, IL, Decision No. 8, decided December 11, 1989, slip copy 1989 WL 246976 (I.C.C.) at *2 (waiving map exhibits required by 1180.6(a)(6) for responsive application when map would be duplicative of map to be provided by primary applicants).

provided in response to § 1180.6(a)(4) in connection with the Control Transaction in the Primary Application may address the issues required to be addressed in connection with the Transaction Elements or (ii) opinions of Conrail's, CSX's, and NS's counsel may collectively be provided addressing in the aggregate such issues.

D. Requirements of Part 1150, Subpart A

In connection with the Sub A/Sub B Acquisitions, Board precedent indicates that seeking authority exclusively under 49 U.S.C. § 11323 rather than 49 U.S.C. § 10901 is appropriate for this aspect of the transaction because the rail lines to be acquired by Sub A and Sub B will be operated as integral parts of the CSX and NS rail systems, respectively.⁴⁴ To eliminate any uncertainty with respect to the matter, Applicants intend to include in the Primary Application a request for a declaratory order that 49 U.S.C. § 10901 is not applicable to the Sub A/Sub B Acquisitions. Applicants intend to do so in the Primary Application rather than in this petition because the issue is one of statutory application and because the Primary Application will provide the Board with more complete information about all aspects of the transaction on which to make its determination, and demonstrate that 49 U.S.C. § 11323 is the more appropriate basis for authorization of the Sub A/Sub B Acquisitions. While in their Primary Application Applicants will seek such a declaratory order regarding 49 U.S.C. § 10901 Applicants also intend to submit information in the Primary Application sufficient to show that if the Board finds that 49 U.S.C. § 10901 is applicable to the Sub A/Sub B Acquisitions, authority under that provision should be granted as well as authority under 49 U.S.C. § 11323.

⁴⁴ See, e.g., *RGI/Soo*, Decision No. 6, Nov. 13, 1989, Slip Copy at 9-10; *RGI/CMW*, Decision effective Sept. 29, 1989, Slip Copy at n.15.

In the event the Board were to hold that 49 U.S.C. § 10901 is applicable, the informational requirements of part 1150, subpart A would apply. Those informational requirements, however, would be largely satisfied by the information that will be provided in the Primary Application in connection with the Control Transaction pursuant to part 1180, subpart A. Applicants attach as Appendix B hereto a cross reference table that indicates for each section of part 1150, subpart A, the corresponding section of part 1180, subpart A. Applicants seek waiver or clarification of those sections of part 1150, subpart A, that are not otherwise satisfied by the requirements of part 1180, subpart A, as follows:⁴⁵

1. Section 1150.3(d) requires information regarding Applicants' affiliation with any industry to be served by the acquired rail line. Applicants need not provide this information in the Primary Application in connection with the Control Transaction. Applicants request waiver or clarification that this information is not required for the Board's evaluation of the Sub A/Sub B Acquisitions.

2. Section 1150.3(e) requires information regarding the date and place of organization of Applicants and applicable State statutes. Applicants need not provide this information in the Primary Application in connection with the Control Transaction, and request waiver or clarification that this information is not required for the Board's evaluation of the Sub A/Sub B Acquisitions.

3. Section 1150.3(f)(2) requires as an exhibit, resolutions of the stockholders or directors authorizing the proposal. Applicants need not provide this information in the Primary Application in connection with the Control

⁴⁵ Certain of the requirements of part 1150, subpart A may have been rendered moot by changes made in the ICCTA.

Transaction. Applicants will, however, provide opinions of counsel of CSX and NS as required by § 1180.6(a)(4), as well as copies of the acquisition agreements as required by § 1180.6(a)(7)(ii). Additional information regarding corporate authorizations will also be provided in the SEC filings being submitted pursuant to § 1180.6(b)(2). Applicants seek waiver or clarification that this information is sufficient to satisfy the requirements of § 1150.3(f)(2).

4. Section 1150.4(e) requires, among other things, a list of the counties and cities to be served under the proposal. Applicants will provide a list in the Primary Application in connection with the Control Transaction pursuant to § 1180.6(a)(5) of the states in which the applicant carriers' property is located, but not the counties and cities served. Due to the size of the networks that CSX and NS will operate, compiling such a list for the entire network would be burdensome and of little value to the Board in assessing the merits of the proposed transactions. Applicants accordingly seek waiver or clarification that they may satisfy this requirement of § 1150.4(e) through information responsive to § 1180.6(a)(5).

5. Section 1150.6(c) requires a present value determination of the full costs of the proposal. While Applicants need not provide such a present value determination in the Primary Application in connection with the Control Transaction, Applicants will provide a variety of financial information that will permit the Board to evaluate the financial impact of the Sub A/Sub B Acquisitions on Applicants, including information pursuant to §§ 1180.6(a)(1)(i), (a)(1)(iv), (a)(2)(ii), (a)(7)(i), and 1180.9. Applicants request waiver or clarification that this information is sufficient to satisfy the requirements of § 1150.6(c).

6. Section 1150.9 requires a summary of the proposed transaction which will be used to provide the notice required by § 1150.10(f).

Applicants need not provide such a summary or such notice as part of the Primary Application in connection with the Control Transaction. Because Applicants will include a summary of the transaction pursuant to § 1180.6(a)(1) and because Applicants request below a waiver of § 1150.10(f), Applicants seek clarification that the information provided pursuant to § 1180.6(a)(1) in the Primary Application will satisfy § 1150.9.

7. Applicant also seek waiver or clarification of the procedural requirements of part 1150, subpart A as follows:

a. Section 1150.10(e) requires service upon various parties and the submission to the Board, within two weeks of filing, of a certificate of service. Applicants seek waiver or clarification that by complying with the service requirements of part 1180, subpart A, this requirement will be satisfied.

b. Section 1150.10(f) requires publication of a summary of an application pursuant to part 1150, subpart A within two weeks of filing such application in a newspaper of general circulation in each county in which the lines to be affected by the transaction are located. The Board is also required to publish the summary in the *Federal Register*. The public and all potentially interested parties have received sufficient notice of the proposed transaction. The Applicants have filed a Notice of Intent as required by § 1180.4(b) (CSX/NS-1) and pursuant to § 1180.4(b)(iv)(2), the Board has on April 21, 1997 published notice of the application in the *Federal Register*. The proposed transaction has received extensive media coverage both in trade journals and newspapers of general circulation throughout the country. Thus, Applicants seek waiver or clarification that compliance with § 1150.10(f) is not necessary.

c. Sections 1150.10(g) and (h) provide for a procedure through which part 1150, subpart A applications can be evaluated by the Board.

Applicants seek waiver of this procedural process and request that the Board evaluate the Sub A/Sub B Acquisitions under the procedural schedule adopted in connection with the Primary Application.

E. Revocation of Corporate Family
and Non-Rail Carrier Exemptions

Applicants intend to seek authorization under 49 U.S.C. § 11323 and, if required, 49 U.S.C. § 10901, to accomplish the Sub A/Sub B Acquisitions. While the class exemption under § 1180.2(d)(3) (for corporate family transactions) may be available with respect to authority under 49 U.S.C. § 11323, and class exemptions under § 1150.31 (for non-rail carriers) may be available with respect to authority under 49 U.S.C. § 10901, if required, Applicants seek revocation of these exemptions in order to proceed under the formal application process. Similarly, while the § 1180.2(d)(3) exemption may also apply to the Continuance in Control and the Operating Arrangements, Applicants seek revocation of this exemption as to those matters as well. Applicants believe these revocations are appropriate to permit the Board's full consideration and decision on the merits regarding these transactions and to preclude any issue as to whether the transactions may be carried out without challenge under laws other than those administered by the Board.⁴⁶

⁴⁶ Although Applicants believe that immunity from the antitrust laws and from all other law pursuant to 49 U.S.C. § 11321 may apply whether the Board acts by approval or exemption (*see UP/SP*, Decision No. 44, served Aug. 12, 1996, at 173, n.221; *but cf. Railway Labor Executives' Association v. United States*, 987 F.2d 806, 813 (D.C. Cir. 1993) (dictum), action by approval would eliminate any question on the matter and prevent any interference with the approved transaction under color of any other laws. In previous cases, the Board has found a party's desire to obtain the benefits of 49 U.S.C. § 11321 (or its predecessor, § 11341) antitrust immunity legitimate grounds to revoke a class exemption. *See RGI/CMW*, Decided Aug. 16, 1989, Slip Copy at *4 (revoking class exemption, in part, in response to applicants' desire to obtain the benefits of 49 U.S.C. § 11341 antitrust immunity which would accompany formal approval).

The Sub A/Sub B Acquisitions, the Continuance in Control and the Operating Arrangements are integral to the Control Transaction and should be analyzed as part of the joint control proceeding. Moreover, because the information that would be required to be submitted in an application for any of these Transaction Elements will already be provided as part of the Primary Application, submitting a notice of exemption is unlikely to reduce paperwork or simplify the proceeding. Therefore, Applicants seek revocation of the § 1180.2(d)(3) and, if required, the § 1150.31 class exemptions and waiver or clarification that Applicants need not avail themselves of the exemptions, but may proceed under the applicable formal application process.⁴⁷

F. Revocation of Trackage Rights Exemption

Applicants intend to seek authorization under 49 U.S.C. § 11323 for the acquisition by CSX, NS and Conrail of trackage rights. While the class exemption for the acquisition of trackage rights under § 1180.2(d)(7) may be available in whole or in part with respect to such authority, for the same reasons that Applicants discuss in the preceding section with respect to revocation of the § 1180.2(d)(3) and if required, the § 1150.31 class exemptions, Applicants seek revocation of the § 1180.2(d)(7) exemption in order to proceed under the formal application process.⁴⁸

G. Waiver or Clarification Regarding Applicable Fees

Applicants understand that the Secretary to the Board considers the joint control of Conrail to entail in substance two major control applications for

⁴⁷ Similar waivers or clarifications were granted in ICC Finance Docket No. 31387, *Canadian Nat'l Ry. Co. -- Partial Revocation of Class Exemption -- Lease From G.T.W. R.R. Co.*, Decided Jan. 24, 1989, Slip Copy *1-2; *see also* *Fremont*, Decided Nov. 22, 1989, Slip Copy at *2-3. *RGI/Soo*, Decided Aug. 9, 1989, Slip Copy at *4; *Southern/ICG*, Decided Sept. 1, 1987, Slip Copy at *4.

⁴⁸ *See* the authorities cited in the preceding footnote.

fee purposes -- one by CSX and one by NS. Applicants do not object to paying two fees. As Applicants have detailed above, the Control Transaction and the Transaction Elements are indivisible parts of an integral proposal that will have to be evaluated on the same record, taking into account their overall transportation and competitive effects. Applicants therefore request waiver or clarification that a single major control transaction filing fee may be paid by each of CSX and NS covering the Control Transaction and all of the Transaction Elements. We note that in Finance Docket No. 33388, Decision No. 2, the Board found that what Applicants were proposing would be "a major transaction" (emphasis added).

In the interim rule that took effect March 4, 1997, the Board required separate fees for certain directly-related applications in control proceedings because of its experience in processing some 30 related applications that were filed with the primary application in the UP-SP merger proceeding.⁴⁹ The Board based its decision on the fact that 21 of those related applications involved requests for abandonment or discontinuances of service and "engendered substantial additional staff work, such as the environmental review process that was required for each abandonment or discontinuance proceeding."⁵⁰ Indeed, the Board noted that it had requested and received filing fees for those 21 abandonment or discontinuance proposals.⁵¹ Applicants are prepared to pay any additional filing fees required under the interim rule for other directly-related applications, such as those for constructions, abandonments or incidental control of third-party carriers. The Board's rationale, however, should not require a

⁴⁹ Railroad Consolidation Procedures -- Modification of Fee Policy, Ex Parte No. 556, slip op. at 2 (served March 4, 1997).

⁵⁰ Id.

⁵¹ Id. at n.3.

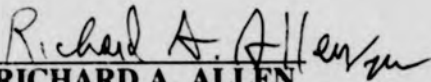
cascading of fees with respect to the integral elements of the basic transaction found in the Transaction Elements.

CONCLUSION

For the foregoing reasons, Applicants respectfully request that the Board grant the waivers, clarifications, revocations and exemptions specified in this petition.

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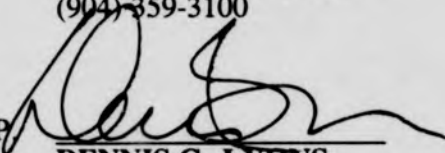

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APPENDIX A

CLASSIFICATION OF JOBS SHOWN IN LABOR IMPACT DATA, 49 C.F.R. § 1180.6(a)(2)(v)

Blacksmiths
Boilermakers
Bridge Inspectors
Carmen
Clerical Employees
Communication Workers
Dock Workers
Electricians
Engineers
Fireman and Oilers
Foremen
Laborers
Machinists
Maintenance of Way
Nonagreement
Police
Railway Supervisors
Sheet Metal Workers
Signalmen
Train Dispatchers
Trainmen
Yardmasters

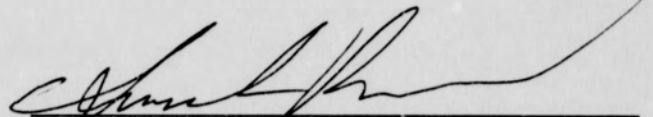
APPENDIX B

49 CFR Part 1150/49 CFR Part 1180

| Part 1150, Subpart A Requirement | Part 1180, Subpart A Corresponding Section |
|---|--|
| 1150.2(a)-(b), 1150.3(a) | 1180.6(a)(1)(i) |
| 1150.3(b) | 1180.6(a)(1)(i), 1180.6(a)(7) |
| 1150.3(c) | 1180.6(a)(1)(i), 1180.6(a)(7), 1180.8 |
| 1150.3(d), 1150.3(e) | No corresponding sections |
| 1150.3(f)(1) | 1180.6(b)(1),(3),(4), 1180.6(b)(6)(i) |
| 1150.3(f)(2) | In part: 1180.6(a)(4), 1180.6(a)(7)(ii), 1180.6(b)(2) |
| 1150.3(g)-(i) Do not apply | |
| 1150.4(a) | 1180.6(a)(1)(i), (iv), 1180.6(a)(7)(i), (ii) |
| 1150.4(b) | 1180.7 |
| 1150.4(c) | 1180.6(a)(1)(iii), 1180.6(a)(2) |
| 1150.4(d) | 1180.6(a)(6), 1180.6(a)(7)(vi) |
| 1150.4(e) | In part: 1180.6(a)(5), 1180.6(a)(6), 1180.6(a)(7) |
| 1150.4(f) | 1180.6(a)(1)(ii) |
| 1150.4(g) Does not apply | |
| 1150.5 | 1180.8 |
| 1150.6(a) | 1180.6(a)(1)(iv), 1180.6(a)(2)(ii), 1180.6(a)(7)(i) |
| 1150.6(b) | 1180.9(a)-(b) |
| 1150.6(c) | In part: 1180.6(a)(1)(i), 1180.6(a)(1)(iv), 1180.6(a)(2)(ii), 1180.6(a)(7)(i), 1180.9 |
| 1150.6(d) | 1180.9(b) |
| 1150.7 | 1180.6(a)(8) |
| 1150.8 | 1180.6(a)(3) |
| 1150.9 | No corresponding section |

CERTIFICATE OF SERVICE

I, Amanda J. Paracuellos, certify that on May 2, 1997, I have caused to be served a true and correct copy of the foregoing CSX/NS-10, Petition for Waiver or Clarification of Railroad Consolidation Procedures, and Related Relief, on all parties that have appeared in Finance Docket No. 33388, by first-class mail, postage prepaid, or by more expeditious means, as listed on the attached Service list.


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STB

FD-

33388

5-2-97

I

179584

PROPOSED TRACK LENGTH INCLUSIVE 22172 - 21112
PROPOSED TUBS 22000 - 21000
PROPOSED CONNECTION 22000 - 21000
MAXIMUM MUMDAM 22000 - 21000

"CONTROL POINT" THROU JORDAN

CR - PORT WAYNE LINE

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ROVERLA
MOTATE

DO NOT REMOVE
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NOTHING KNOWN TO DATE - BEING KEPT ON
NOTHING KNOWN TO DATE - BEING KEPT ON

[illegible]

BUCHYRUS, OHIO

PROPOSED NEW CONNECTION

4500-79-AT

2001 41 1192A

NORTHERN SOUTHERN

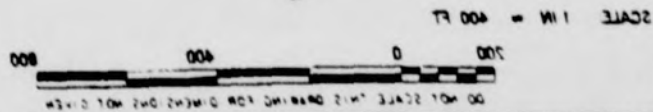
NORFOLK SOUTHERN RAILWAY CO.

NO. 100-100000-100000

SIDNEY, ILLINOIS

PROPOSED TRACK LENGTH INCLUDING TURNOUTS - 3229 FT
 PROPOSED GRADE - - 0.30 %
 PROPOSED TURNOUTS - 412 POWER
 MAXIMUM CURVATURE - 3.50°
 PROPOSED CONNECTION SPEED - 25 MPH

NOTE: DRAWING BASED ON AVAILABLE INFORMATION
 NO FIELD SURVEY MADE - NOT ALL TRACKS SHOWN



SIDNEY, ILLINOIS

PROPOSED NEW CONNECTION

D-357

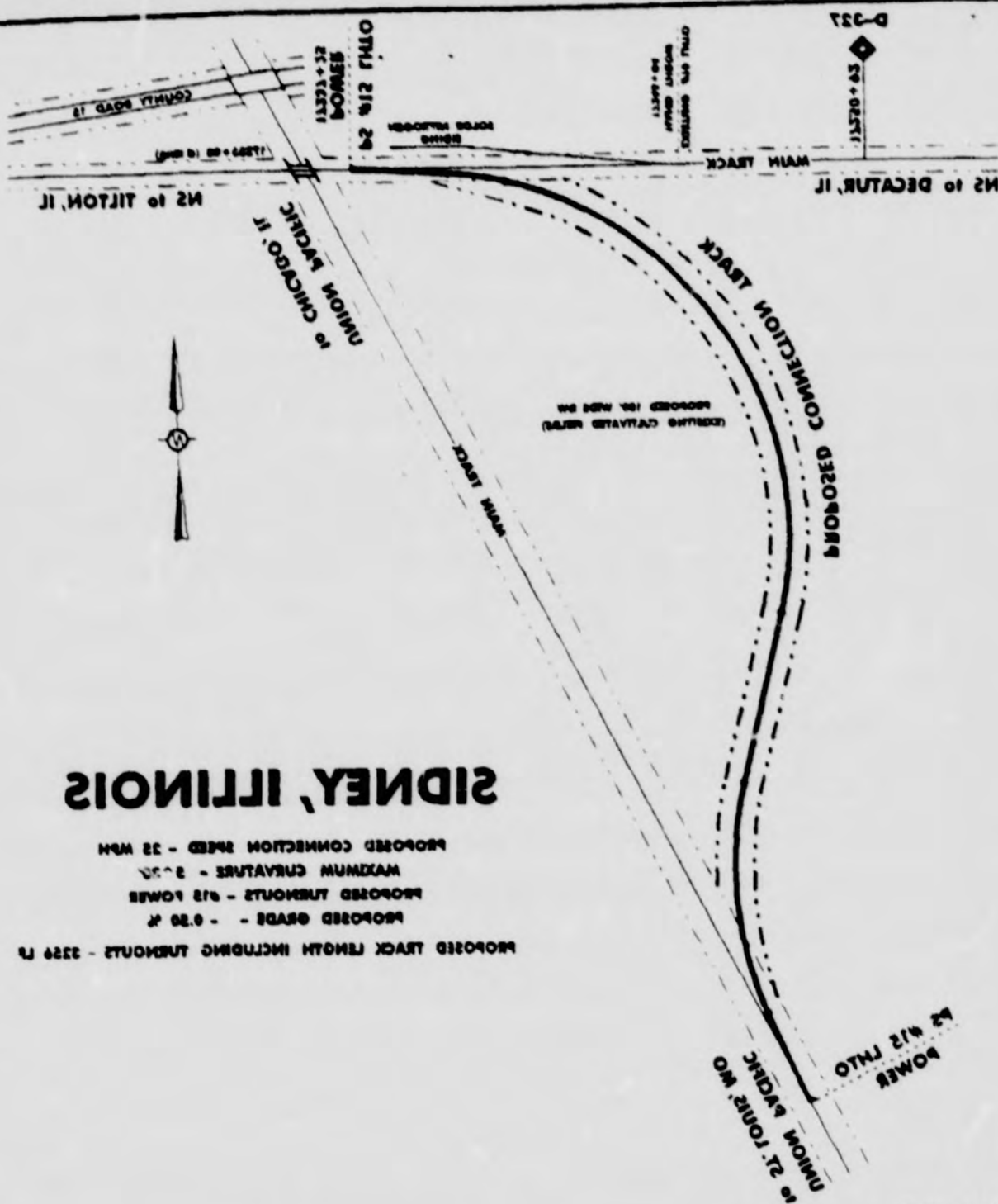
TA-97-0093

MARCH 17, 1987

NORFOLK SOUTHERN

NORFOLK SOUTHERN RAILWAY CO.

ILLINOIS DIVISION



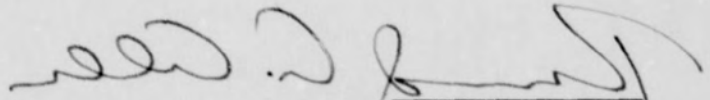
May 2, 1997

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Corporation and Norfolk Southern
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George A. Aspatore
Robert J. Cooney
James L. Howe III
J. Gary Lane
William C. Woolbridge
James C. Bishop, Jr.

Respectfully submitted,

*2 (I.C.C.) (decided Aug. 6, 1990).

III. Granting This Request Would Not Result In Premature Control

Constructing the two proposed connections with Conrail will not involve any unauthorized or premature exercise of control over Conrail by NS. The connections will take place only with Conrail's consent and on terms overwhelmingly favorable to Conrail. Construction will be entirely at NS's expense. Steps will be taken to assure that there is no impact on Conrail's train movements. Conrail will obtain title to the improvements made on its property. Appropriate indemnification of Conrail will be provided. If the Board does not approve the primary control transaction, Conrail will not be any the worse for having had new construction work done on its property, and may be benefited by it; it will own the constructed connections and, if it wishes, may seek authority from the Board to commence operations using them.

Conclusion

For the foregoing reasons, NS respectfully requests that the Board waive those provisions of 49 C.F.R. § 1180.4(c)(vi) which might otherwise require NS to file petitions for exemption for the construction of the connections described in this petition.

1996 WL 706769 *2 (I.C.C.) (decided Dec. 2, 1996); see also Jackson County Port

Link Railroad -- Construction and Operation Exemption, NE, F.D. No. 32984, environmental issues and making the exemption effective at that time." Hastings Industrial

capacity to consider environmental matters when [it] issue[d] a final decision addressing explaining that "[e]ntaining the requested conditional exemption [would] not diminish [its] approved the construction of connections before it completed its environmental review,

constitute prejudgment of any unresolved issues. For example, the Board has conditionally projects before the Board completes its analysis of all issues related to those projects does not In other cases the Board has recognized that conditionally approving construction

renued if needed elsewhere.

independent of the proposed transaction. Or, the track materials could be removed and connections might later be determined to provide benefits to the national rail system property of the railroad or railroads on which they are located. Some or all of the

If the Board rejects the primary control application, the connections would remain the application.

construction and expenditures associated with the transaction proposed in the primary control the costs and scope of these connections is quite small in comparison to the scope of

neither requests nor expects the Board to prejudge the primary control application. Indeed, connections prior to Board action on the primary control application makes clear that NS NS's express acceptance of the financial risks attendant to constructing these

connections.

approve the primary control application, it need not approve operations over these

an equivalent NS\UP connection at Sidney must be constructed. Otherwise, NS would be at

a serious competitive disadvantage to CSX.

The St. Elmo junction is favored by customers as well as UP, so NS will face a serious competitive challenge to divert traffic away from the St. Elmo junction and CSX. The first requirement to compete for this traffic is an efficient connection, such as that proposed for Sidney. If NS lacks such a connection and route it and when it and CSX begin operation of Conrail lines, existing traffic patterns through St. Elmo will be solidified, and thus will lessen the benefits to customers that would result from having competitive options. NS estimates that the new connection at Sidney will take approximately 10 months to construct, during which NS will be disadvantaged in offering truly competitive service between UP and former Conrail points.

II. Approval of This Waiver Would Not Affect Board Consideration of the Primary Application or Other Related Applications

A waiver of 49 C.F.R. § 1180.4(c)(vi) would not compromise the Board's ability to consider independently the merits of the primary control application. First, the waiver simply would permit NS to seek exemptions for construction of the proposed connections. It will not authorize the construction itself, which would depend upon the Board's consideration of the petitions for exemption. Nor, of course, would it permit operation over the connections. Any grant of authority to operate over the connections would be deferred until the Board's ruling on the primary control application. NS will assume all the financial risks associated with constructing these connections without any assurances that operating authority would be granted. If the Board does not

affecting both employment and service. Existing run-through train service with western carriers could be jeopardized by diminished volumes, and less reliable alternative interchange arrangements will render new NS services less competitive.

C. Sidney, Illinois

A connection is required in the southwestern quadrant of the existing NS\Union Pacific crossing at Sidney to permit efficient handling of traffic flows between UP points in the Gulf Coast\Southwest and NS points in the Midwest and Northeast, particularly customers on Conrail properties to be served by NS. Current NS and UP midwestern connections are through terminal companies at Chicago, Peoria, and St. Louis. These connections are neither efficient nor reliable, particularly for unit train service. Conrail handles substantial traffic originating on UP in the Gulf Coast\Southwest over its connection with UP at St. Elmo, Illinois, south of Sidney. In 1994 this volume exceeded 10 million gross tons, and NS believes that the potential volume increased substantially as a result of UP's acquisition of SP. This Conrail\UP service bypasses junctions in Chicago and St. Louis, saving substantial transit time and distance. Traffic is pre-blocked by yards as far away as Pittsburgh (by Conrail) and North Little Rock (by UP), saving the costs and delays of intermediate switching.

In the proposed division of Conrail, CSX will inherit Conrail's St. Louis line, including the connection with UP at St. Elmo. NS currently has no equivalent junction with Union Pacific and would not obtain a suitable junction in the contemplated division of Conrail. To handle efficiently traffic to Conrail points that formerly moved over St. Elmo,

construct, during which NS will be disadvantaged in offering truly competitive service between these points.

B. Alexandria, Indiana

A new connection in the northeast quadrant between former Conrail Marion district lines to be operated by NS and NS's existing Frankfort district line will be constructed at Alexandria, Indiana. This new connection is required for efficient handling of combined NS/Conrail carload flows over the Chicago gateway.

The connection at Alexandria will allow traffic flowing over the Cincinnati gateway to be routed via a Conrail line to be acquired by NS to Conrail's Elkhart Yard, a major Conrail classification yard for carload traffic. NS will rely upon Elkhart to combine NS and former Conrail traffic into run-through trains for forwarding to western carriers, as Conrail traffic is handled today. This handling will permit such traffic to bypass the congested Chicago gateway, and to compete with CSX for traffic from the Southeast to and through the Chicago area.

Adding NS traffic to Conrail flows at Elkhart is crucial to implementation of the Conrail transaction. The Conrail division will reduce traffic flows through Elkhart as a result of diversions to CSX lines. The addition of NS traffic volume is important to maintain the critical mass of traffic needed to create efficient run-through services with western carriers.

NS estimates that the new connection at Alexandria will take approximately 9.2 months to construct. If this connection is not in place if and when the proposed division of Conrail is approved by the Board, efficient operation of Elkhart Yard will be disrupted.

A new connection is required in the southeast quadrant at Bucyrus, Ohio between NS's existing Sandusky district line and the former Conrail Ft. Wayne line. This new connection will permit NS to preserve efficient traffic flows, which otherwise would be broken, between the Cincinnati gateway and former Conrail northeastern points to be served by NS.

In the division of Conrail contemplated in the primary control application, NS will receive Conrail's route between Pittsburgh (a major connection to points farther east) and Crestline, Ohio. CSX will receive Conrail's route between Crestline and Columbus, Ohio. This division preserves existing primary Conrail traffic flows from the Conrail line through Crestline to Columbus and Indianapolis (which will be allocated to CSX), but will impose a disadvantage on existing traffic flows on the Conrail line between Pittsburgh and Columbus (which will be allocated to NS) and on to the important Cincinnati gateway connection with existing NS lines into the South.

The new connection between NS and former Conrail lines at Bucyrus will prevent this disadvantage from seriously diminishing NS's competitive position with CSX. The only alternative on NS would require this traffic to move via Cleveland, imposing a significant mileage -- and therefore, service -- penalty. While CSX, not NS, will acquire the Conrail track at Bucyrus, NS will have trackage rights over the former Conrail line. NS will use those rights for certain traffic moving between former Conrail points and the South and Southwest. Without the new connection NS will not be competitive for such moves. NS estimates that the new connection at Bucyrus will take approximately 0.2 months to

With respect to the environmental review of the proposed construction, NS will consult with the Board's Section of Environmental Analysis (SEA) regarding the three proposed constructions. Further, NS agrees to file with SEA an Environmental Report addressing the proposed projects after consultation with the appropriate federal, state, and local authorities.

The waiver NS seeks here would not require the Board to prejudge the merits of the Applicants' primary control application, nor would it suggest any such prejudgment. Rather, it would simply allow NS to seek authority, separate from the primary control application, to construct the proposed connections at its own expense and risk prior to final Board action on the primary application. NS fully recognizes that granting the requested waiver would require NS to assume the financial risk of the cost of constructing connections from which it will not benefit should the Board ultimately decide not to grant the underlying primary application. NS expressly agrees to bear that risk, in order to ensure that it will be able to provide efficient, competitive service immediately if the primary control application is approved.

I. Description and Discussion of the Proposed Connections

Following is a description of each of the proposed connections and a discussion of the importance of each in promoting rail competition. Diagrams depicting the proposed connections are attached hereto.

A. Columbus, Ohio

Indiana, and Colson/Bucyrus, Ohio -- will be between NS and Conrail lines; the third, at Sidney, Illinois, will be between NS and Union Pacific lines. If the Board were to grant this

petition and the construction exemptions contemplated hereby, NS would undertake to complete construction of these connections prior to the Board's decision on NS's and CSX's primary control application.

While NS fully recognizes that this request is somewhat out of the ordinary in major

control transactions, the requested relief is of critical importance in this case in order to ensure that NS will be able to compete effectively with CSX if the Board decides to approve the Applicants' primary application. As more fully discussed in Section I, construction of the connections at issue before the Board's final decision on the underlying primary control application will ensure that, if the Board ultimately approves the control transaction, a central purpose of the transaction -- the creation of vigorous and effective rail competition between NS and CSX -- will be possible immediately. Although NS intends to file a number of other directly related construction applications or exemptions with the primary control application, prompt construction of the three connections that are the subject of this petition is particularly critical to permit NS to provide service competitive with CSX when and if the Board approves the primary control application.

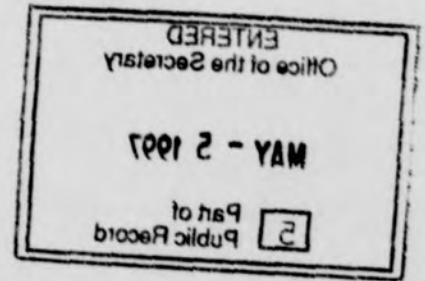
If the Board grants this Petition, NS will file, in separate dockets, petitions for exemption pursuant to 49 U.S.C. § 10502 and 49 C.F.R. § 1150.1(a) for each of the three proposed connections. NS expects to demonstrate, pursuant to 49 U.S.C. § 10502, that regulation of the proposed connections is not necessary to carry out the national transportation policy or to protect shippers from abuse of market power.

NS-1



BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388



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

PETITION FOR WAIVER OF
49 C.F.R. § 1180.4(c)(vi)

NS has determined that it is necessary to construct three connections to permit NS to
filing of the primary application for control in the above-captioned docket.
file petitions for exemption for the construction of certain connections concurrently with the
waiver of those provisions of 49 C.F.R. § 1180.4(c)(vi) which might otherwise require NS to
Company ("NSI") hereby petition the Board, pursuant to 49 C.F.R. § 1180.4(c)(vi), for a
Norfolk Southern Corporation ("NSC") and Norfolk Southern Railway

1. NSC and NSRC are referred to collectively as "NS".
2. CSX Corporation ("CSXC") and CSXT are referred to collectively as "CSX".
3. Conrail Inc. and Consolidated Rail Corporation are referred to collectively as "Conrail". CSX, NS and Conrail are referred to collectively as the "Applicants".

Enclosure

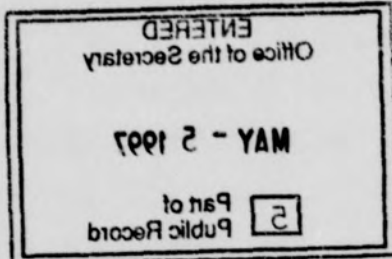
Richard A. Allen
Sincerely,

Should you have any questions regarding this, please call.

Wordperfect for Windows 7.0.
Wordperfect 5.1 format, which is capable of being read by
enclosed is a 3 1/2" computer disk containing the filing in
NS-1, Petition for Waiver of 49 C.F.R. § 1180.4(c) (vi). Also
Enclosed for filing is an original and twenty five copies of

Dear Secretary Williams:

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



May 2, 1997

Via Hand Delivery

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

RICHARD A. ALLEN

(202) 345-1318
FACSIMILES: (202) 345-0883
TELEPHONE: (202) 598-8860
WASHINGTON, D.C. 20006-3939
888 SEVENTEENTH STREET, N.W.

ZUCKERT, SCOUTT & RASENBERGER, L.L.P.

LAW OFFICES

109784

CERTIFICATE OF SERVICE

I, John V. Edwards, certify that on May 2, 1997 I have caused to be served by first

class mail, postage prepaid, or by more expeditious means a true and correct copy of the foregoing NS-1, Petition for Waiver of 49 C.F.R. § 1180.4(c)(vi), on all parties that have appeared in STB Finance Docket No. 33388 and all persons which NS would be required pursuant to 49 C.F.R. Part 1105 to consult with in the event it filed the petitions for

exemption described herein and the following:

U.S. EPA, Office of Federal Activities
Ariel Rios Building, Room 7235
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20044

The Federal Railroad Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20503

and by hand delivery on the following:

The Honorable Jacob Leventhal
Administrative Law Judge
Federal Energy Commission
Office of Hearings
825 North Capitol Street, N.E.
Washington, D.C. 20426

John V. Edwards

Dated: May 2, 1997

STB

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5-2-97

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(202) 342-1316

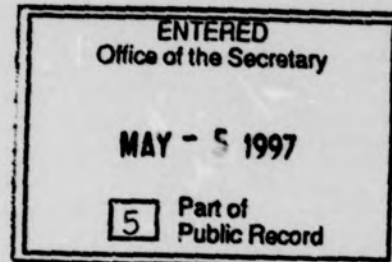
MAY 2 1997

RICHARD A. ALLEN

May 2, 1997

Via Hand Delivery

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



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

Dear Secretary Williams:

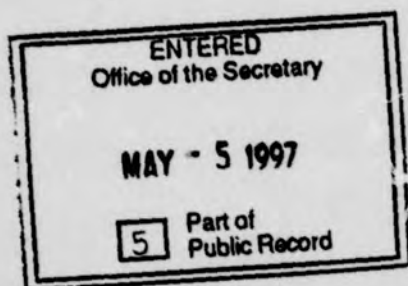
Enclosed for filing is an original and twenty five copies of
NS-1, Petition for Waiver of 49 C.F.R. § 1180.4(c)(vi). Also
enclosed is a 3 1/2" computer disk containing the filing in
Wordperfect 5.1 format, which is capable of being read by
Wordperfect for Windows 7.0.

Should you have any questions regarding this, please call.

Sincerely,

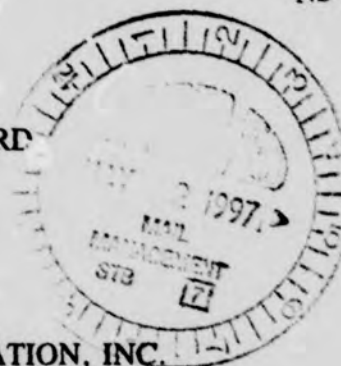
Richard A. Allen
Richard A. Allen

Enclosure



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 FOR WAIVER OF
49 C.F.R. § 1180.4(c)(vi)

Norfolk Southern Corporation ("NSC") and Norfolk Southern Railway Company ("NSRC")^{1/} hereby petition the Board, pursuant to 49 C.F.R. § 1180.4(c)(vi), for a waiver of those provisions of 49 C.F.R. § 1180.4(c)(vi) which might otherwise require NS to file petitions for exemption for the construction of certain connections concurrently with the filing of the primary application for control in the above-captioned docket.

NS has determined that it is necessary to construct three connections to permit NS to compete effectively with CSX Transportation, Inc. ("CSXT")^{2/} if the application for joint NS and CSX control of Conrail is approved.^{3/} Two of these connections -- at Alexandria,

^{1/} NSC and NSRC are referred to collectively as "NS."

^{2/} CSX Corporation ("CSXC") and CSXT are referred to collectively as "CSX".

^{3/} Conrail Inc. and Consolidated Rail Corporation are referred to collectively as "Conrail." CSX, NS and Conrail are referred to collectively as the "Applicants."

Indiana, and Colsan/Bucyrus, Ohio -- will be between NS and Conrail lines; the third, at Sidney, Illinois, will be between NS and Union Pacific lines. If the Board were to grant this petition and the construction exemptions contemplated hereby, NS would undertake to complete construction of these connections prior to the Board's decision on NS's and CSX's primary control application.

While NS fully recognizes that this request is somewhat out of the ordinary in major control transactions, the requested relief is of critical importance in this case in order to ensure that NS will be able to compete effectively with CSX if the Board decides to approve the Applicants' primary application. As more fully discussed in Section I, construction of the connections at issue before the Board's final decision on the underlying primary control application will ensure that, if the Board ultimately approves the control transaction, a central purpose of the transaction -- the creation of vigorous and effective rail competition between NS and CSX -- will be possible immediately. Although NS intends to file a number of other directly related construction applications or exemptions with the primary control application, prompt construction of the three connections that are the subject of this petition is particularly critical to permit NS to provide service competitive with CSX when and if the Board approves the primary control application.

If the Board grants this Petition, NS will file, in separate dockets, petitions for exemption pursuant to 49 U.S.C. § 10502 and 49 C.F.R. § 1150.1(a) for each of the three proposed connections. NS expects to demonstrate, pursuant to 49 U.S.C. § 10502, that regulation of the proposed constructions is not necessary to carry out the national transportation policy or to protect shippers from abuse of market power.

With respect to the environmental review of the proposed construction, NS will consult with the Board's Section of Environmental Analysis (SEA) regarding the three proposed constructions. Further, NS agrees to file with SEA an Environmental Report addressing the proposed projects after consultation with the appropriate federal, state, and local authorities.

The waiver NS seeks here would not require the Board to prejudge the merits of the Applicants' primary control application, nor would it suggest any such prejudgment. Rather, it would simply allow NS to seek authority, separate from the primary control application, to construct the proposed connections at its own expense and risk prior to final Board action on the primary application. NS fully recognizes that granting the requested waiver would require NS to assume the financial risk of the cost of constructing connections from which it will not benefit should the Board ultimately decide not to grant the underlying primary application. NS expressly agrees to bear that risk, in order to ensure that it will be able to provide efficient, competitive service immediately if the primary control application is approved.

I. Description and Discussion of the Proposed Connections

Following is a description of each of the proposed connections and a discussion of the importance of each in promoting rail competition. Diagrams depicting the proposed connections are attached hereto.

A. Colsan/Bucyrus, Ohio

A new connection is required in the southeast quadrant at Bucyrus, Ohio between NS's existing Sandusky district line and the former Conrail Ft. Wayne line. This new connection will permit NS to preserve efficient traffic flows, which otherwise would be broken, between the Cincinnati gateway and former Conrail northeastern points to be served by NS.

In the division of Conrail contemplated in the primary control application, NS will receive Conrail's route between Pittsburgh (a major connection to points farther east) and Crestline, Ohio. CSX will receive Conrail's route between Crestline and Columbus, Ohio. This division preserves existing primary Conrail traffic flows from the Conrail line through Crestline to Columbus and Indianapolis (which will be allocated to CSX), but will impose a disadvantage on existing traffic flows on the Conrail line between Pittsburgh and Columbus (which will be allocated to NS) and on to the important Cincinnati gateway connection with existing NS lines into the South.

The new connection between NS and former Conrail lines at Bucyrus will prevent this disadvantage from seriously diminishing NS's competitive position with CSX. The only alternative on NS would require this traffic to move via Cleveland, imposing a significant mileage -- and therefore, service -- penalty. While CSX, not NS, will acquire the Conrail track at Bucyrus, NS will have trackage rights over the former Conrail line. NS will use those rights for certain traffic moving between former Conrail points and the South and Southwest. Without the new connection NS will not be competitive for such moves. NS estimates that the new connection at Bucyrus will take approximately 10.5 months to

construct, during which NS will be disadvantaged in offering truly competitive service between these points.

B. Alexandria, Indiana

A new connection in the northeast quadrant between former Conrail Marion district lines to be operated by NS and NS's existing Frankfort district line will be constructed at Alexandria, Indiana. This new connection is required for efficient handling of combined NS/Conrail carload flows over the Chicago gateway.

The connection at Alexandria will allow traffic flowing over the Cincinnati gateway to be routed via a Conrail line to be acquired by NS to Conrail's Elkhart Yard, a major Conrail classification yard for carload traffic. NS will rely upon Elkhart to combine NS and former Conrail traffic into run-through trains for forwarding to western carriers, as Conrail traffic is handled today. This handling will permit such traffic to bypass the congested Chicago gateway, and to compete with CSX for traffic from the Southeast to and through the Chicago area.

Adding NS traffic to Conrail flows at Elkhart is crucial to implementation of the Conrail transaction. The Conrail division will reduce traffic flows through Elkhart as a result of diversions to CSX lines. The addition of NS traffic volume is important to maintain the critical mass of traffic needed to create efficient run-through services with western carriers.

NS estimates that the new connection at Alexandria will take approximately 9.5 months to construct. If this connection is not in place if and when the proposed division of Conrail is approved by the Board, efficient operation of Elkhart Yard will be disrupted,

affecting both employment and service. Existing run-through train service with western carriers could be jeopardized by diminished volumes, and less reliable alternative interchange arrangements will render new NS services less competitive.

C. Sidney, Illinois

A connection is required in the southwestern quadrant of the existing NS/Union Pacific crossing at Sidney to permit efficient handling of traffic flows between UP points in the Gulf Coast/Southwest and NS points in the Midwest and Northeast, particularly customers on Conrail properties to be served by NS. Current NS and UP midwestern connections are through terminal companies at Chicago, Peoria, and St. Louis. These connections are neither efficient nor reliable, particularly for unit train service.

Conrail handles substantial traffic originating on UP in the Gulf Coast/Southwest over its connection with UP at St. Elmo, Illinois, south of Sidney. In 1994 this volume exceeded 10 million gross tons, and NS believes that the potential volume increased substantially as a result of UP's acquisition of SP. This Conrail/UP service bypasses junctions in Chicago and St. Louis, saving substantial transit time and distance. Traffic is pre-blocked by yards as far away as Pittsburgh (by Conrail) and North Little Rock (by UP), saving the costs and delays of intermediate switching.

In the proposed division of Conrail, CSX will inherit Conrail's St. Louis line, including the connection with UP at St. Elmo. NS currently has no equivalent junction with Union Pacific and would not obtain a suitable junction in the contemplated division of Conrail. To handle efficiently traffic to Conrail points that formerly moved over St. Elmo,

an equivalent NS/UP connection at Sidney must be constructed. Otherwise, NS would be at a serious competitive disadvantage to CSX.

The St. Elmo junction is favored by customers as well as UP, so NS will face a serious competitive challenge to divert traffic away from the St. Elmo junction and CSX. The first requirement to compete for this traffic is an efficient connection, such as that proposed for Sidney. If NS lacks such a connection and route if and when it and CSX begin operation of Conrail lines, existing traffic patterns through St. Elmo will be solidified, and thus will lessen the benefits to customers that would result from having competitive options. NS estimates that the new connection at Sidney will take approximately 10 months to construct, during which NS will be disadvantaged in offering truly competitive service between UP and former Conrail points.

II. Approval of This Waiver Would Not Affect Board Consideration of the Primary Application or Other Related Applications

A waiver of 49 C.F.R. § 1180.4(c)(vi) would not compromise the Board's ability to consider independently the merits of the primary control application. First, the waiver simply would permit NS to seek exemptions for construction of the proposed connections. It will not authorize the construction itself, which would depend upon the Board's consideration of the petitions for exemption. Nor, of course, would it permit operation over the connections. Any grant of authority to operate over the connections would be deferred until the Board's ruling on the primary control application.

NS will assume all the financial risks associated with constructing these connections without any assurances that operating authority would be granted. If the Board does not

approve the primary control application, it need not approve operations over these connections.

NS's express acceptance of the financial risks attendant to constructing these connections prior to Board action on the primary control application makes clear that NS neither requests nor expects the Board to prejudge the primary control application. Indeed, the costs and scope of these connections is quite small in comparison to the scope of construction and expenditures associated with the transaction proposed in the primary control application.

If the Board rejects the primary control application, the connections would remain the property of the railroad or railroads on which they are located. Some or all of the connections might later be determined to provide benefits to the national rail system independent of the proposed transaction. Or, the track materials could be removed and reused if needed elsewhere.

In other cases the Board has recognized that conditionally approving construction projects before the Board completes its analysis of all issues related to those projects does not constitute prejudgment of any unresolved issues. For example, the Board has conditionally approved the construction of connections before it completed its environmental review, explaining that "[g]ranted the requested conditional exemption [would] not diminish [its] capacity to consider environmental matters when [it] issue[d] a final decision addressing environmental issues and making the exemption effective at that time." Hastings Industrial Link Railroad -- Construction and Operation Exemption -- Hastings, NE, F.D. No. 32984, 1996 WL 706769 *2 (I.C.C.) (decided Dec. 2, 1996); see also Jackson County Port

*2 (I.C.C.) (decided Aug. 6, 1990).

III. Granting This Request Would Not Result In Premature Control

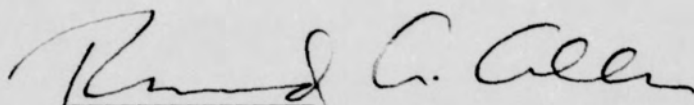
Constructing the two proposed connections with Conrail will not involve any unauthorized or premature exercise of control over Conrail by NS. The constructions will take place only with Conrail's consent and on terms overwhelmingly favorable to Conrail. Construction will be entirely at NS's expense. Steps will be taken to assure that there is no impact on Conrail's train movements. Conrail will obtain title to the improvements made on its property. Appropriate indemnification of Conrail will be provided. If the Board does not approve the primary control transaction, Conrail will not be any the worse for having had new construction work done on its property, and may be benefitted by it; it will own the constructed connections and, if it wishes, may seek authority from the Board to commence operations using them.

Conclusion

For the foregoing reasons, NS respectfully requests that the Board waive those provisions of 49 C.F.R. § 1180.4(c)(vi) which might otherwise require NS to file petitions for exemption for the construction of the connections described in this petition.

Respectfully submitted,

James C. Bishop, Jr.
William C. Wooldridge
J. Gary Lane
James L. Howe III
Robert J. Cooney
George A. Aspatore
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-9241
(757) 629-2838



Richard A. Allen
James A. Calderwood
Andrew R. Plump
John V. Edwards
Zuckert, Scoutt & Rasenberger, LLP
888 Seventeenth Street, N.W.
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(202) 298-8660

John M. Nannes
Scot B. Hutchins
Skadden, Arps, Slate, Meagher
& Flom LLP
1440 New York Ave., N.W.
Washington, D.C. 20005-2111
(202) 371-7400

Counsel for Norfolk Southern
Corporation and Norfolk Southern
Railway Company

May 2, 1997

BUCYRUS, OHIO

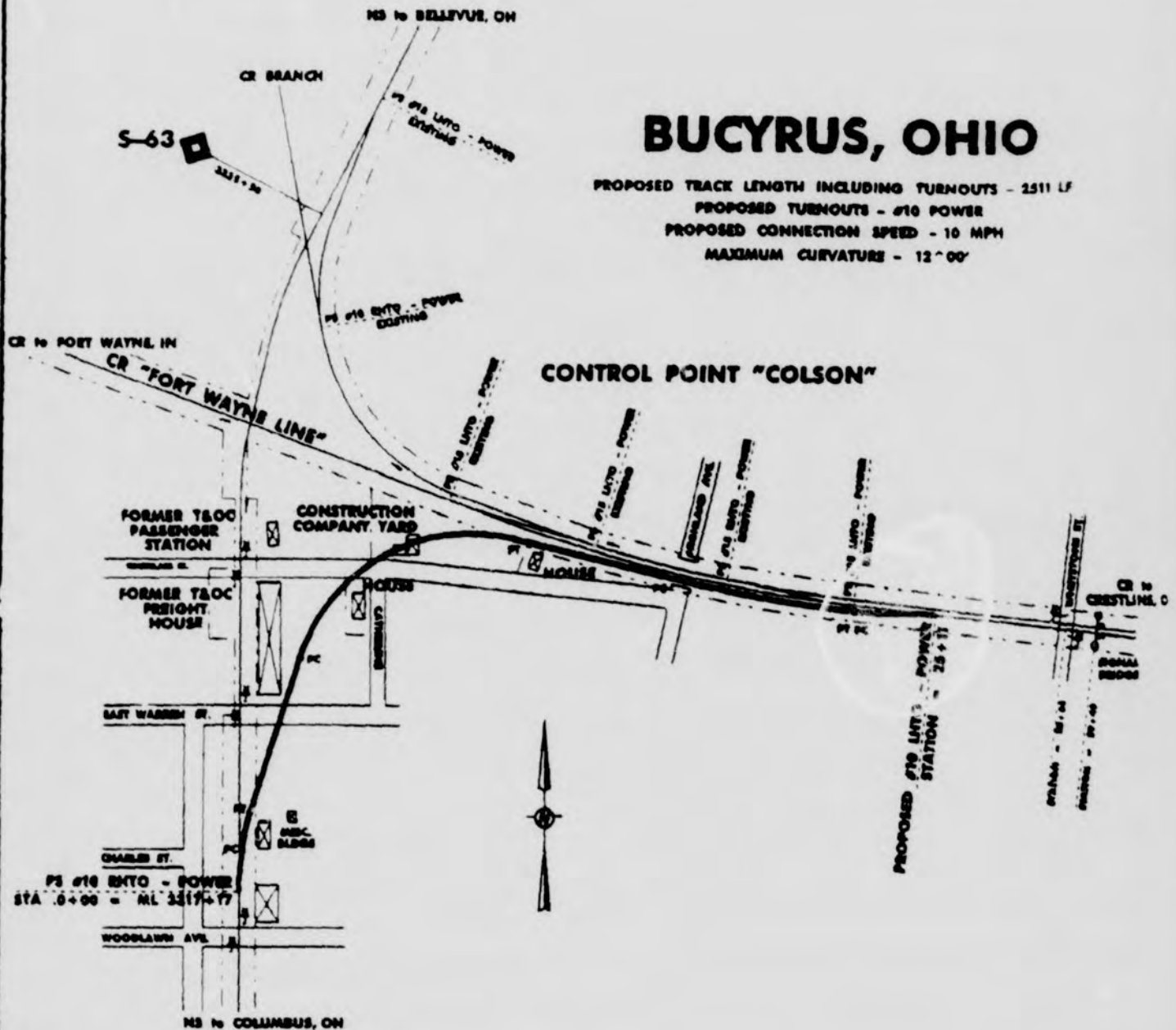
PROPOSED TRACK LENGTH INCLUDING TURNOUTS - 2511 LF

PROPOSED TURNOUTS - #10 POWER

PROPOSED CONNECTION SPEED - 10 MPH

MAXIMUM CURVATURE - 12° 00'

CONTROL POINT "COLSON"



SCALE 1" = 200'

100 0 200 400

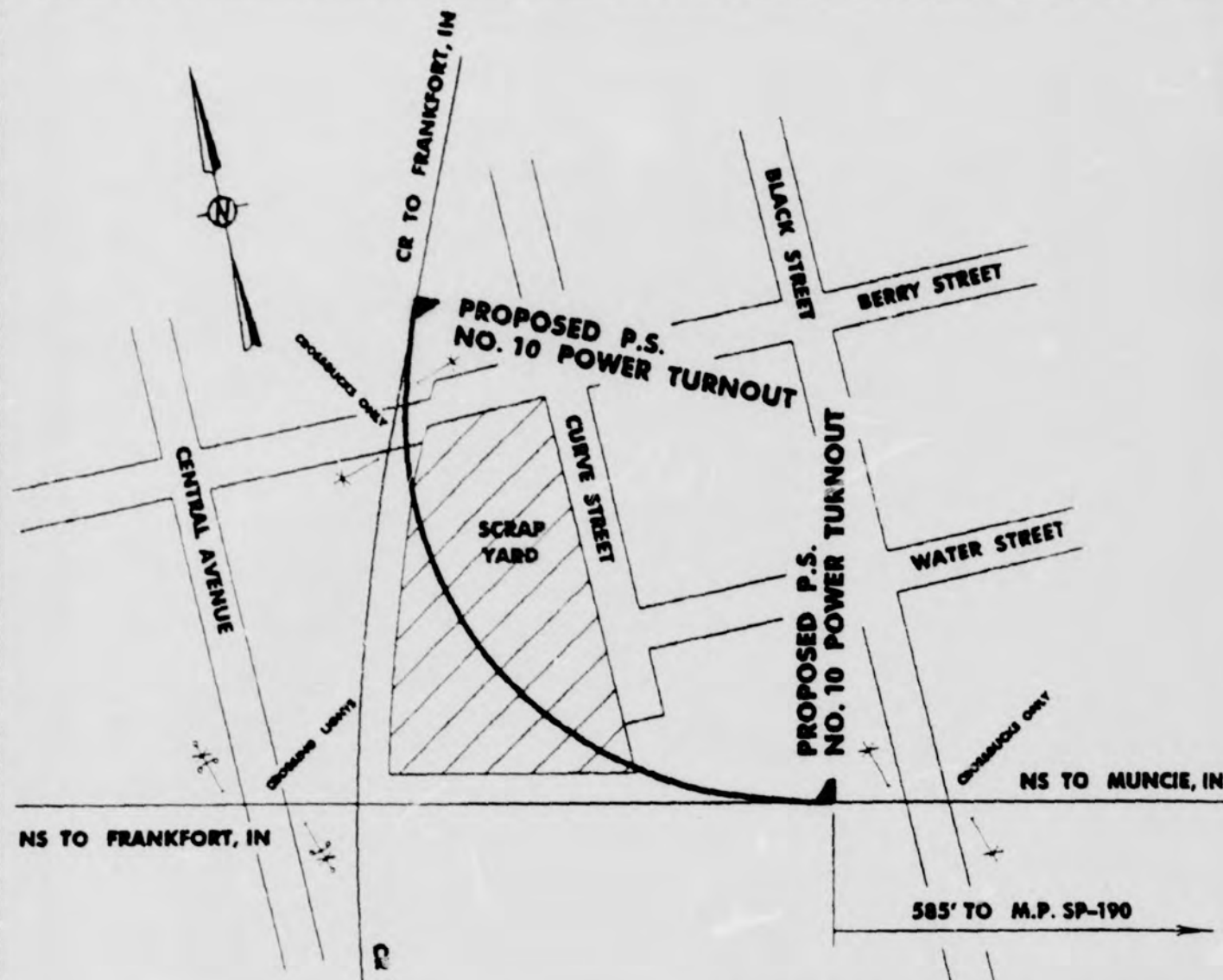
DO NOT SCALE THIS DRAWING FOR DIMENSIONS NOT GIVEN

NOTE: DRAWING BASED ON AVAILABLE INFORMATION
NO FIELD SURVEY MADE - NOT ALL TRACKS SHOWN

NS NORFOLK SOUTHERN

NORFOLK SOUTHERN RAILWAY CO.

| | | | |
|----------------|-----|-------------------------|----------------|
| LOCATION | | BUCYRUS, OHIO | |
| TITLE | | PROPOSED NEW CONNECTION | |
| DESIGNED BY | DAB | DATE | APRIL 14, 1997 |
| CHECKED BY | DAB | DATE | APRIL 14, 1997 |
| DRAWING NUMBER | | TA-97-0074 | |



ALEXANDRIA, INDIANA

(NORTHEAST QUADRANT)

PROPOSED TRACK SPEED - 10 MPH
 PROPOSED CONNECTION CURVE 12° 00'
 PROPOSED TRACK LENGTH INCLUDING TURNOUTS 970'

NOTE: DRAWING BASED ON AVAILABLE INFORMATION
 NO FIELD SURVEY MADE

NS NORFOLK SOUTHERN

NORFOLK SOUTHERN RAILWAY CO.

TRAINING COMPANY
 LAKE DIVISION

OFFICE OF THE CHIEF ENGINEER, DESIGN AND CONSTRUCTION, ATLANTA, GA

LOCATION ALEXANDRIA, INDIANA

TITLE PROPOSED CONNECTION TRACK

| | | | | | | |
|-----|------|------------------|--------|----------------|----------|---------|
| DGN | WLN | VAL | SEC | MAP | FILE NO. | SP-1801 |
| DGN | WLN | FILL | 180-24 | DRAWING NUMBER | | |
| CHK | DATE | JANUARY 18, 1987 | | | | |

TA-97-0003

CADD FILE: 2-1 TRACK WLN/DGN/CHK DGN

CERTIFICATE OF SERVICE

I, John V. Edwards, certify that on May 2, 1997 I have caused to be served by first class mail, postage prepaid, or by more expeditious means a true and correct copy of the foregoing NS-1, Petition for Waiver of 49 C.F.R. § 1180.4(c)(vi), on all parties that have appeared in STB Finance Docket No. 33388 and all persons which NS would be required pursuant to 49 C.F.R. Part 1105 to consult with in the event it filed the petitions for exemption described herein and the following:

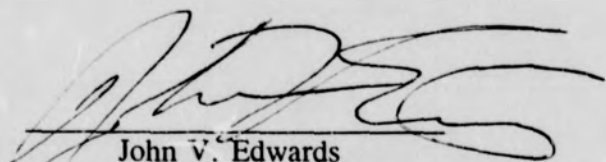
U.S. EPA, Office of Federal Activities
Ariel Rios Building, Room 7235
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20044

The Federal Railroad Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20503

and by hand delivery on the following:

The Honorable Jacob Leventhal
Administrative Law Judge
Federal Energy Commission
Office of Hearings
825 North Capitol Street, N.E.
Washington, D.C. 20426



John V. Edwards

Dated: May 2, 1997

STB

FD

33388

4-23-97

I

179430

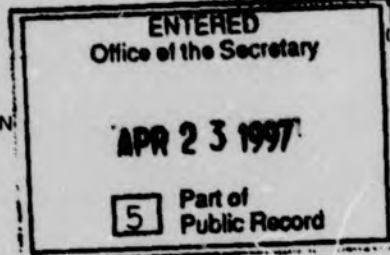
LAW OFFICES

ZUCKERT, SCOUTT & RASENBERGER, L.L.P.

888 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20006-3939
TELEPHONE : (202) 298-8660

FACSIMILE : (202) 342-0683
(202) 342-1316

RICHARD A. ALLEN



April 22, 1997

Via Hand Delivery

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

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

Dear Secretary Williams:

Enclosed for filing is an original and twenty five copies of
three documents:

- 1) CSX/NS-8, Petition for Leave to Reply to the Consumers
United for Rail Equity Reply in Opposition to Petition
for Waiver; and
- 2) CSX/NS-9, Reply to the Consumers United for Rail Equity
Reply in Opposition to Petition for Waiver.

Also enclosed is a 3 1/2" computer disk containing the filing in
Wordperfect 5.1 format, which is capable of being read by
Wordperfect for Windows 7.0.

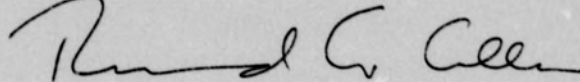
Applicants are serving this pleading, as they have served
all other pleadings in Finance Docket No. 33388, on all parties
that have made an appearance in any of Finance Docket No. 33220,
Finance Docket No. 33286, or Finance Docket No. 33388, and
Applicants will continue to do so until April 28, 1997. In light
of the Board's decision of April 17, 1997 discontinuing Finance
Docket Nos 33220 and 33286, beginning April 28, 1997, Applicants
will serve only persons who have made an appearance in Finance
Docket No. 33388.

ZUCKERT, SCOUTT & RASENBERGER, L.L.P.

The Honorable Vernon A. Williams
April 22, 1997
Page -2-

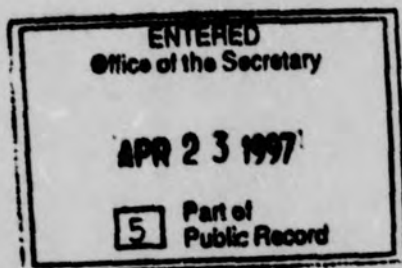
Should you have any questions regarding this, please call.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard A. Allen". The signature is fluid and cursive, with the first name "Richard" being more prominent and the last name "Allen" following in a similar style.

Richard A. Allen

Enclosure



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 FOR LEAVE TO REPLY TO
THE CONSUMERS UNITED
FOR RAIL EQUITY REPLY
IN OPPOSITION TO PETITION FOR WAIVER

On April 10, 1997, CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"),^{1/} Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSRC")^{2/} and Conrail, Inc. ("CRI") and Consolidated Rail Corporation ("CRC")^{3/} filed a notice of intent to file a railroad merger application for Board authorization under 49 U.S.C. §§ 11323-25 for a transaction that is more fully described in that Notice of Intent (CSX/NS-1) as clarified in the Clarification of Notice of Intent to File Railroad Control Application, (CSX/NS-5), filed April 21, 1997. On April 13, Consumers United for Rail Equity

^{1/} CSXC and CSXT are referred to collectively as "CSX."

^{2/} NSC and NSRC are referred to collectively as "NS."

^{3/} CRI and CRC are referred to collectively as "Conrail." CSX, NS and Conrail are referred to collectively as the "Applicants."

("CURE") filed an undesignated pleading (which Applicants will refer to as "CURE-1"), a Reply in Opposition to Petition for Waiver. Applicants hereby request leave to respond to CURE-1.

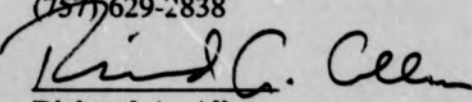
On April 21, the Board served Decision No. 2 in which the Board, among other things, granted Applicants' request for the waiver of the three-month prefiling notice requirement set forth at 49 C.F.R. § 1180.4(b)(1) to which CURE focuses its opposition.

The Board may consider CURE-1 as a request for clarification or reconsideration of Decision No. 2. If so, Applicants would be entitled to reply.

For the foregoing reasons, Applicants request leave to submit the attached response to CURE-1.

Respectfully submitted,

James C. Bishop, Jr.
William C. Wooldridge
J. Gary Lane
James L. Howe III
Robert J. Cooney
George A. Aspatore
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-9241
(757) 629-2838

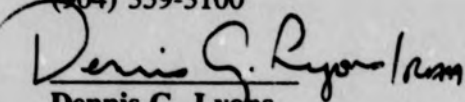

Richard A. Allen
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Scot B. Hutchins
Skadden, Arps, Slate, Meagher
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(202) 371-7400

Counsel for Norfolk Southern
Corporation and Norfolk Southern
Railway Company

Mark G. Aron
Peter J. Shudtz
CSX Corporation
One James Center
902 East Cary Street
Richmond, VA 23129
(804) 782-1400

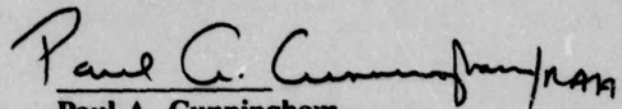
P. Michael Giftos
Paul R. Hitchcock
CSX Transportation, Inc.
500 Water Street
Speed Code J-120
Jacksonville, FL 32202
(904) 359-3100


Dennis G. Lyons
Richard L. Rosen
Paul T. Denis
Arnold & Porter
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Washington, D.C. 20004-1202
(202) 942-5000

Samuel M. Sipe, Jr.
Timothy M. Walsh
Steptoe & Johnson LLP
1330 Connecticut Avenue
Washington, D.C. 20036-1795
(202) 429-3000

Counsel for CSX Corporation
and CSX Transportation, Inc.

Timothy T. O'Toole
Constance L. Abrams
Consolidated Rail Corporation
Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
(215) 209-4000

A handwritten signature in dark ink, appearing to read "Paul A. Cunningham", with a stylized flourish at the end.

Paul A. Cunningham
Harkins Cunningham
1300 Nineteenth Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 973-7600

Counsel for Conrail Inc. and Consolidated
Rail Corporation

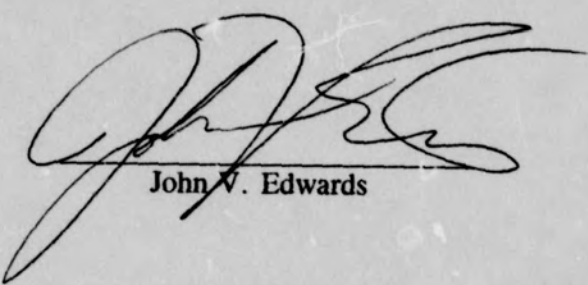
April 22, 1997

CERTIFICATE OF SERVICE

I, John V. Edwards, certify that on April 22, 1997 I have caused to be served a true and correct copy of the foregoing CSX/NS-8, Petition for Leave to Reply to the Consumers United for Rail Equity Reply in Opposition to Petition for Waiver, on all parties that have appeared in Docket No. 33286, Finance Docket No. 33220 and Finance Docket No. 33388, by first class mail, postage prepaid, or by more expeditious means, and by hand delivery on the following:

The Honorable Jacob Leventhal
Administrative Law Judge
Federal Energy Commission
Office of Hearings
825 North Capitol Street, N.E.
Washington, D.C. 20426

Dated: April 22, 1997



John V. Edwards

STB

FD

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4-22-97

I

179427

Mac A. Fleming
President



179427
William E. LaRue
Secretary-Treasurer

Brotherhood of Maintenance of Way Employees
Affiliated with the A.F.L.-C.I.O. and C.L.C.

April 16, 1997



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

Re: Finance Docket No. 33388, CSX Corp., et al.--Merger--Conrail, Inc., et al.

Dear Mr. Williams:

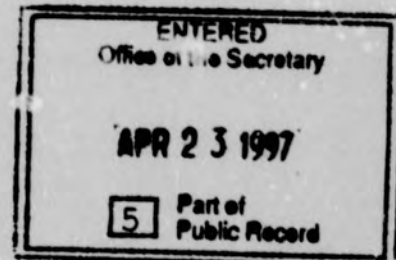
Enclosed for filing with the Board are the original and ²⁵~~many~~ copies of the petition for intervention submitted by the Brotherhood of Maintenance of Way Employees.

Please stamp the extra enclosed copy as received and return it to the undersigned in the enclosed, self-addressed, postage prepaid envelope. Thank you.

Sincerely,

Donald F. Griffin
Assistant General Counsel

cc: Applicants' representatives
M. A. Fleming
W. A. Bon
H. W. Wise, Jr.
R. A. Lau



William A. Bon
General Counsel
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225
Telephone 248-948-1010
FAX 248-948-7150

Donald F. Griffin
Assistant General Counsel
400 North Capitol Street, N.W.
Suite 852
Washington, D.C. 20001
Telephone 202-638-2135
FAX 202-737-3085

BEFORE THE SURFACE TRANSPORTATION BOARD



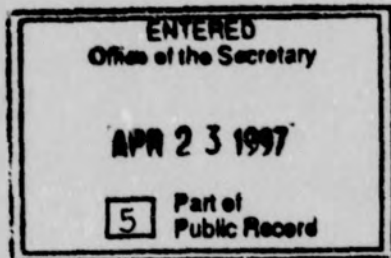
CSX CORPORATION AND CSX)
 TRANSPORTATION, INC., NORFOLK SOUTHERN) Finance Docket
 CORPORATION & NORFOLK SOUTHERN RAILWAY) No. 33388
 COMPANY--CONTROL & OPERATING LEASES/AGREEMENTS--)
 CONRAIL, INC., & CONSOLIDATED RAIL CORPORATION--)
 TRANSFER OF RAILROAD LINE BY NORFOLK SOUTHERN)
 RAILWAY COMPANY TO CSX TRANSPORTATION, INC.)

PETITION FOR INTERVENTION

William A. Bon
 General Counsel
 Brotherhood of Maintenance
 Of Way Employees
 26555 Evergreen Road
 Suite 200
 Southfield, Michigan 48076
 (810) 948-1010

Donald F. Griffin
 Assistant General Counsel
 Brotherhood of Maintenance
 Of Way Employees
 400 N. Capitol St., N.W.
 Suite 852
 Washington, D.C. 2001
 (202) 638-2135

Attorneys for Brotherhood of Maintenance
 of Way Employees



Dated: April 16, 1997

Petition for Intervention

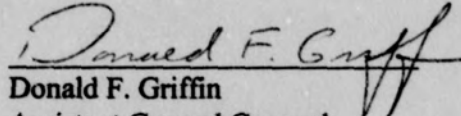
The Brotherhood of Maintenance of Way Employees ("BMWE") respectfully petitions this Board for the right to intervene in this proceeding. In support of this petition, BMWE states the following.

BMWE represents those employees working in the class or craft of maintenance of way employee for the Consolidated Rail Corporation ("Conrail"), CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NS"). On April 8, 1997, CSX Corporation and Norfolk Southern Corporation signed an agreement that provides for their joint acquisition and division of Conrail. Shortly thereafter, CSXT, NS and their respective holding companies filed a notice with this Board of their intention to file a control and merger application pursuant to 49 U.S.C. §11324.

The joint acquisition and division of Conrail contemplated by CSXT and NS will result in the elimination of Conrail and have a substantial impact upon the employees of all three rail carriers. In any proceeding involving two or more Class 1 carriers such as NS, Conrail and CSXT, the Board is required to consider the interest of rail employees affected by the merger. 49 U.S.C. §11324(b)(4). BMWE submits that it is reasonable to assume that its members working for CSXT, NS and Conrail will be affected by the proposed division of the latter by the former. BMWE, therefore, has a legitimate interest in intervening in this proceeding in order protect the interests of those Conrail, NS and CSXT employees that it represents.

WHEREFORE, based upon the foregoing, BMW respectfully requests that its petition to intervene be granted by this Board.

Respectfully submitted,



Donald F. Griffin
Assistant General Counsel
Brotherhood of Maintenance of
Way Employes
400 N. Capitol Street, N.W.
Suite 852
Washington, D.C. 20001
(202) 638-2135

William A. Bon
General Counsel
Brotherhood of Maintenance of
Way Employes
26555 Evergreen Road - Suite 200
Southfield, Michigan 48076
(810) 948-1010

Attorneys for BMW

Dated: April 16, 1997

Certificate of Service

I hereby certify that today I served a copy of the foregoing petition to intervene upon the following by first class mail delivery:

Paul A. Cunningham
HARKINS CUNNINGHAM
1300 19th Street, N.W.
Washington, D.C. 20036

Dennis G. Lyons
ARNOLD & PORTER
555 12th Street, N.W.
Washington, D.C. 20004-1202

James C. Bishop, Jr.
Norfolk Southern Corp.
Three Commercial Place
Norfolk, VA 23510-9241

Mark G. Aron
CSX Corporation
One James Center
902 East Cary Street
Richmond, VA 23129

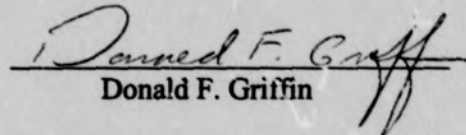
Richard A. Allen
ZUCKERT, SCOUTT &
KASENBERGER, L.L.P.
888 17th Street, N.W.
Suite 600
Washington, D.C. 20006-3939

John M. Nannes
SKADDEN, ARPS, SLATE, MEAGHER
& FLOM, L.L.P.
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

P. Michael Giftos
CSX Transportation, Inc.
500 Water Street
Speed Code J-20
Jacksonville, FL 32202

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

Timothy T. O'Toole
Consolidated Rail Corporation
Two Commerce Square
2001 Market Street
Philadelphia, PA 19103


Donald F. Griffin

Dated: April 16, 1997

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4-21-97

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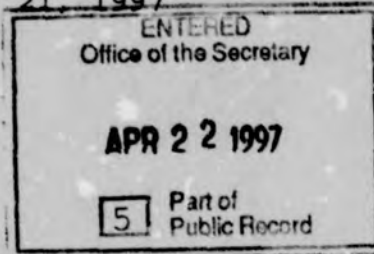
LAW OFFICES
ZUCKERT, SCOUTT & RASENBERGER, L.L.P.
888 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20006-3939
TELEPHONE (202) 298-8660
FACSIMILES (202) 342-6683
(202) 342-1316

RICHARD A. ALLEN

April 21, 1997

Via Hand Delivery

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



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

Dear Secretary Williams:

Enclosed for filing is an original and twenty five copies of
three documents:

- 1) CSX/NS-5, Clarification of the Applicants' Notice of
Intent to File Railroad Control Application;
- 2) CSX/NS-6, Petition for Leave to Reply to CN-5, Canadian
National Railway Company's Response in Opposition to
Petition for Waiver of Three-Month Notice Requirement,
CN-5, Canadian National Railway Company's Response in
Opposition to Petition for Protective Order, and Reply
in Opposition to Petition for Waiver and to Petition
for Protective Order of Atlantic City Electric Company,
Delmarva Power & Light Company, Indianapolis Power &
Light Company, and The Ohio Valley Coal Company; and
- 3) CSX/NS-7, Applicants' Consolidated Reply to CN-5,
Canadian National Railway Company's Response in
Opposition to Petition for Waiver of Three-Month Notice
Requirement, CN-5, Canadian National Railway Company's
Response in Opposition to Petition for Protective
Order, and Reply in Opposition to Petition for Waiver
and to Petition for Protective Order of Atlantic City
Electric Company, Delmarva Power & Light Company,

ZUCKERT, SCOUTT & RASENBERGER, L.L.P.

The Honorable Vernon A. Williams
April 21, 1997
Page -2-

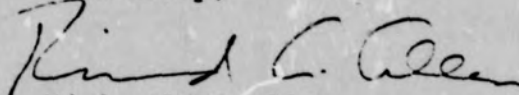
Indianapolis Power & Light Company, and The Ohio Valley
Coal Company.

Also enclosed is a 3 1/2" computer disk containing the filing in
Wordperfect 5.1 format, which is capable of being read by
Wordperfect for Windows 7.0.

Applicants are serving this pleading, as they have served
all other pleadings in Finance Docket No. 33388, on all parties
that have made an appearance in any of Finance Docket No. 33220,
Finance Docket No. 33286, or Finance Docket No. 33388, and
Applicants will continue to do so until April 28, 1997. In light
of the Board's decision of April 17, 1997 discontinuing Finance
Docket Nos 33220 and 33286, beginning April 28, 1997, Applicants
will serve only persons who have made an appearance in Finance
Docket No. 33388.

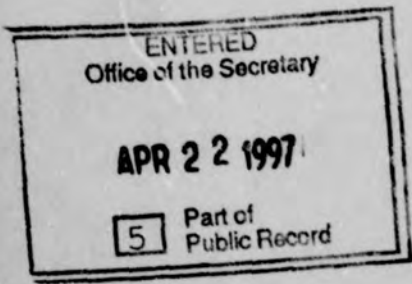
Should you have any questions regarding this, please call.

Sincerely,


Richard A. Allen

Enclosure

179407



CSX/NS-6



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 FOR LEAVE TO REPLY TO
CN-4, CANADIAN NATIONAL RAILWAY COMPANY'S RESPONSE
IN OPPOSITION TO PETITION FOR WAIVER
OF THREE-MONTH NOTICE REQUIREMENT,
CN-5, CANADIAN NATIONAL RAILWAY COMPANY'S
RESPONSE IN OPPOSITION TO PETITION
FOR PROTECTIVE ORDER, AND
REPLY IN OPPOSITION TO PETITION FOR
WAIVER AND TO PETITION FOR PROTECTIVE ORDER OF
ATLANTIC CITY ELECTRIC COMPANY, DELMARVA POWER & LIGHT COMPANY,
INDIANAPOLIS POWER & LIGHT COMPANY, AND
THE OHIO VALLEY COAL COMPANY

On April 10, 1997, CSX Corporation ("CSXC"), CSX Transportation, Inc.
("CSXT"),^{1/} Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company
("NSRC")^{2/} and Conrail, Inc. ("CRI") and Consolidated Rail Corporation ("CRC")^{3/} filed a

^{1/} CSXC and CSXT are referred to collectively as "CSX."

^{2/} NSC and NSRC are referred to collectively as "NS."

^{3/} CRI and CRC are referred to collectively as "Conrail." CSX, NS and Conrail are referred to collectively as the "Applicants."

notice of intent to file a railroad merger application for Board authorization under 49 U.S.C. §§ 11323-25 for a transaction that is more fully described in that Notice of Intent (CSX/NS-1) as clarified in the Clarification of Notice of Intent to File Railroad Control Application, (CSX/NS-5), filed April 21, 1997. On April 16, Canadian National Railway Company ("CN") filed CN-4, a Response in Opposition to Petition for Waiver of Three-Month Notice Requirement, and CN-5, a Response in Opposition to Petition for Protective Order.^{4/} Also on April 16, Atlantic City Electric Company, Delmarva Power & Light Company, Indianapolis Power & Light Company, and The Ohio Valley Coal Company (hereinafter referred to as the "Associated Power Companies") filed an undesignated Reply in Opposition to Petition for Waiver and to Petition for Protective Order ("APC-1"). Applicants hereby request leave to respond to each of these pleadings in a consolidated response.

On April 16, the Board served Decision No. 1 in which the Board imposed a protective order to permit Applicants to exchange information necessary to preparation of the primary application and to facilitate any necessary discovery at subsequent stages of this proceeding. On the same day, CN and the Associated Power Companies filed pleadings addressing certain aspects of the protective order that Applicants proposed and the Board imposed. The Board may consider these pleadings as requests for clarification or reconsideration. If so, Applicants would be entitled to reply.

^{4/} CN also filed, in both Finance Docket Nos. 33220 and 33286, a Response in Opposition to Motions to Dismiss (CN-4). Because the Board has clarified that STB decisions discontinuing Finance Docket Nos. 33220 and 33286 will not impede the resolution of pending discovery disputes initially filed in those dockets, Applicants are not responding to CN-4 filed in those two dockets. See, the combined order issued in Finance Docket No. 33220, Decision No. 11, and Finance Docket No. 33286, Decision No. 7, served April 17, 1997.

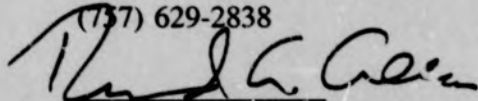
The Board has not yet ruled on Applicants' petition for waiver. The responses filed by CN and the Associated Power Companies are prohibited by the Board's regulations, 49 C.F.R. § 1180.4(f)(3), but if the Board chooses to accept those responses for consideration, it should also accept our reply to complete the record.

For the foregoing reasons, Applicants request leave to submit the attached consolidated response to CN-4, CN-5 and APC-1.

Respectfully submitted,

James C. Bishop, Jr.
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J. Gary Lane
James L. Howe III
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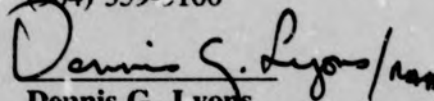
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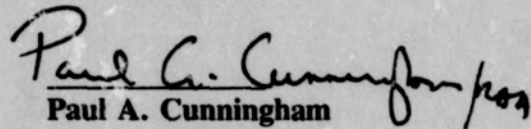


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Counsel for Conrail Inc. and Consolidated
Rail Corporation

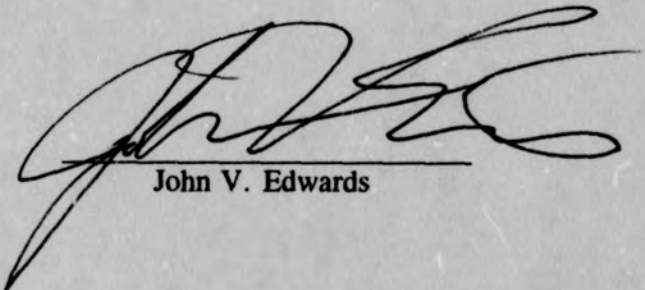
April 21, 1997

CERTIFICATE OF SERVICE

I, John V. Edwards, certify that on April 18, 1997 I have caused to be served a true and correct copy of the foregoing CSX/NS-6, Petition for Leave to Reply to CN-5, Canadian National Railway Company's Response in Opposition to Petition for Waiver of Three-Month Notice Requirement, CN-5, Canadian National Railway Company's Response in Opposition to Petition for Protective Order, and Reply in Opposition to Petition for Waiver and to Petition for Protective Order of Atlantic City Electric Company, Delmarva Power & Light Company, Indianapolis Power & Light Company, and The Ohio Valley Coal Company, on all parties that have appeared in Docket No. 33286, Finance Docket No. 33220 and Finance Docket No. 33388, by first class mail, postage prepaid, or by more expeditious means, and by hand delivery on the following:

The Honorable Jacob Leventhal
Administrative Law Judge
Federal Energy Commission
Office of Hearings
825 North Capitol Street, N.E.
Washington, D.C. 20426

Dated: April 21, 1997


John V. Edwards

STB

FD

33388

4-16-97

• I

SONNENSCHN NATH & ROSENTHAL

CHICAGO
LOS ANGELES
NEW YORK
SAN FRANCISCO
ST. LOUIS



1301 K STREET N.W.
SUITE 600, EAST TOWER
WASHINGTON, D.C. 20005

April 14, 1997



408-6400
FACSIMILE
(202) 408-6396
DIRECT LINE
(202) 408-6351

By Hand

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

Re: Finance Docket No. 33220, CSX -- Control and Merger -- Conrail 179288
Finance Docket No. 33286, Norfolk Southern -- Control -- Conrail 179289
Finance Docket No. 33388, CSX and Norfolk Southern -- Control and Lease -- Conrail 179290

Dear Secretary Williams:

On behalf of Canadian National Railway Company, enclosed are the signed original and 25 copies of its Motion to Compel Discovery Responses by Conrail. For your convenience, a 3.5-inch floppy diskette in Wordperfect 5.1 is enclosed. In order to avoid wasteful duplication, we are not filing three sets of this motion, even though these related dockets have not formally been consolidated; if you do require additional copies, please do not hesitate to let me know.

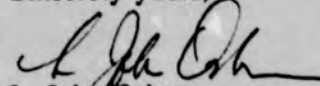
This letter will serve as CN's Notice of Appearance in Finance Docket No. 33388. I would be grateful if you would add the names of CN counsel in both Montreal and Washington as separate entries to the service list, and if all parties would make service on both CN counsel, as indicated below:

Jean Pierre Ouellet
Chief Legal Officer and Corporate
Secretary
Canadian National Railway Company
935 de La Gauchetiere Street West
16th Floor
Montreal, Quebec H3B 2M9

L. John Osborn
Sonnenschein Nath & Rosenthal
1301 K Street, N.W.
Suite 600 East
Washington, D.C. 20005

Kindly stamp the enclosed additional copy of this letter at the time of filing and return it to our messenger.

Sincerely yours,


L. John Osborn

Enclosures

cc: Director David M. Konschnik
Administrative Law Judge Leventhal
Counsel for all parties

BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No. 33220

CSX CORPORATION AND CSX TRANSPORTATION, INC. - CONTROL AND
MERGER -- CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

Finance Docket No. 33286

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY
COMPANY -- CONTROL -- CONRAIL, INC. AND CONSOLIDATED RAIL
CORPORATION

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 NATIONAL RAILWAY COMPANY'S
MOTION TO COMPEL DISCOVERY RESPONSES BY CONRAIL

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Attorneys for:
CANADIAN NATIONAL RAILWAY COMPANY

Dated: April 14, 1997

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33220

**CSX CORPORATION AND CSX TRANSPORTATION, INC. -- CONTROL AND
MERGER -- CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION**

Finance Docket No. 33286

**NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY
COMPANY -- CONTROL -- CONRAIL, INC. AND CONSOLIDATED RAIL
CORPORATION**

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 NATIONAL RAILWAY COMPANY'S
MOTION TO COMPEL DISCOVERY RESPONSES BY CONRAIL**

**Pursuant to the Board's Rules of Practice, 49 C.F.R. 1114.21 *et seq.*, Canadian
National Railway Company ("CN") hereby moves the Board for an order directing
Consolidated Rail Corporation ("Conrail") to respond to CN's First Set of Interrogatories and**

Document Requests.¹ In keeping with customary practice, CN respectfully requests that Judge Leventhal set the instant motion for hearing on not less than seven (7) days notice, on April 21, 1997 or as soon thereafter as the motion can be heard, with Conrail's response to be due no later than one business day before the hearing.

I. BACKGROUND

This motion seeks limited, introductory discovery against Conrail in connection with the sale of Conrail to another carrier or carriers. CN requires certain basic information regarding Conrail's operations and properties so that CN can develop proposals to acquire trackage rights over, or ownership of, certain Conrail lines, either through negotiations with the primary applicants or through requests for conditions to be imposed on the proposed Conrail merger. Preliminary discovery is needed now because, under current merger case practice, critical negotiations take place at the beginning of the proceeding, and responsive applications, if necessary, must be filed on stringent deadlines.

On October 14, 1996, CSX Corporation and Conrail Inc. entered into an agreement for CSX to acquire Conrail. On October 18, 1996, CSX and Conrail filed a Notice of Intent to file a railroad control application in Finance Docket No. 33220. Soon thereafter, Norfolk Southern Corporation announced its intention to oppose the CSX-Conrail merger, and to pursue an NS-Conrail merger through an inconsistent application. On November 6, 1996, NS filed a Notice of Intent to file a railroad control application in Finance Docket No. 33286.

¹ CN recognizes that Finance Docket Nos. 33220, 33286 and 33388 have not been formally consolidated. This motion bears a joint caption in order to avoid wasteful duplication. This motion is being served on Conrail and on known parties in all three dockets, and it is designated as "CN-3" in all three dockets.

At the request, for the most part, of the applicants themselves, the Board thus far has issued a total of nine (9) decisions in Finance Docket No. 33220 and five (5) decisions in Finance Docket No. 33286. Protective orders have been established in both dockets. Waivers have been granted with respect to certain information requirements under the Board's consolidation rules. Numerous parties have entered appearances. The Board, after considering vigorous comments from many of these parties and from applicants themselves, has established 365-day procedural schedules in both dockets.

Although Finance Docket Nos. 33220 and 33286 have been active since last fall, an application has not yet been filed in either docket. Instead, on April 10, 1997, CSX, NS and Conrail filed a new Notice of Intent in Finance Docket No. 33388, indicating that they propose to file a joint application under which CSX and NS would "carve up" Conrail.² While this proposed new transaction will raise issues quite different from those that had been raised by the earlier proposals, as a procedural matter the new proposal represents a continuation of the process of breaking up Conrail that began with the initiation of these proceedings last fall.

CN apparently is the first non-applicant to seek discovery in these proceedings, but discovery among the applicants has been underway for some time. The process began with an attempt by NS to engage in preliminary, informal discovery against Conrail, through letters dated November 27, 1996 and December 19, 1996. Conrail declined to produce even the

² In related developments, CSX and Conrail moved on April 10, 1997 to dismiss Finance Docket No. 33220, and NS moved on April 11, 1997 to dismiss Finance Docket No. 33286. CN reserves the right to respond to those motions within the time allowed under the Board's rules.

rudimentary information sought by NS. Through a letter-motion dated January 14, 1997, NS then moved for an order compelling Conrail to respond.

Judge Leventhal heard argument on the NS motion on January 27, 1997. Conrail (with support from its then-merger-partner CSX) followed a hardline approach, arguing that there should be no discovery whatsoever. NS, for its part, demonstrated that the very limited information it sought -- Conrail's full traffic tapes for 1995, and certain basic information as to Conrail's operations and facilities as listed in Attachment 1 to the December 19, 1996 NS letter -- unquestionably is relevant to the proposed sale of Conrail, and could be produced by Conrail without undue burden. Judge Leventhal was prepared to rule, but before ruling he invited Conrail, NS and CSX to make a further attempt to resolve the discovery dispute amicably. After a private, off-the-record meeting, they reported that they had reached an amicable resolution of the dispute, and NS withdrew its discovery motion subject to renewing it if the agreed upon information was not furnished by February 15, 1997. NS never renewed its motion, and the agreed upon information presumably was furnished.

By letter dated February 5, 1997 (Attachment 1 hereto), CN sought informal discovery from Conrail. As the letter indicates, CN at that point sought to avoid placing any burden whatsoever on Conrail by limiting its requests in two ways: (1) CN sought only the so-called "Attachment 1 Information" NS already had requested (but excluding the full Conrail traffic tapes sought by NS), and (2) CN sought such information only to the extent it already was being produced for NS. This effort to engage in burdenless, informal discovery was unsuccessful. Conrail never responded in writing, and in telephone conversations its counsel was never willing even to discuss the discovery production being made to NS.

On March 18, 1997, CN filed the formal discovery requests (Attachment 2 hereto) that are the subject of the instant motion. CN anticipated that Conrail would claim that discovery was "premature." For this reason, CN limited its requests to the same basic "Attachment 1 Information" (but not the full Conrail traffic tapes) that NS had requested as early as December 19, 1996, and CN itself had requested on February 5, 1997.³ In other words, CN sought only basic information regarding Conrail's operations and properties, and refrained from seeking discovery as to the specifics of the proposed Conrail merger.

By response dated April 2, 1997 ("Conrail Objections"), Conrail objected to each and every CN discovery request, and produced no information whatsoever. Despite the fact that Conrail apparently has been making informal discovery production to NS since late January, Conrail argues that every facet of CN's limited discovery is premature. Conrail makes other "boilerplate" objections to all but one of CN's requests.⁴

II. CONRAIL'S OBJECTIONS ARE WITHOUT MERIT, AND CONRAIL SHOULD BE DIRECTED TO RESPOND PROMPTLY TO CN'S DISCOVERY REQUESTS, WHICH SEEK ONLY BASIC INFORMATION REGARDING CONRAIL

A. CN's Limited Discovery Is Not Premature

Conrail's principal objection is that discovery allegedly is premature. Conrail argues, in effect, that there can be no discovery whatsoever in a control proceeding until an

³ Obviously, CN could not limit its requests to information already produced by Conrail to NS, since those parties refused to divulge the extent of that production.

⁴ Conrail's objections were filed only in Finance Docket No. 33220, despite the fact that CN also sought discovery in Finance Docket No. 33286. Conrail may argue that it should be immune from discovery in Finance Docket No. 33286 because it did not join in the Notice of Intent filed in that docket, but Conrail did enter an appearance in that proceeding on November 25, 1996, and its status is that of a party. Having failed even to respond to CN's discovery requests in Finance Docket No. 33286, Conrail is in default.

application has been filed. Conrail's extreme position is wrong, both as a matter of law and as a matter of Board policy.

First, there can be no doubt that the Board has jurisdiction to order discovery, and that this jurisdiction has been vested in Judge Leventhal. Nor can there be any doubt that there are pending Board proceedings involving the proposed merger of Conrail with either CSX or NS, or both. As previously indicated, Notices of Intent initiating the first two proceedings were filed in October and November of last year. In both proceedings, protective orders have been entered, numerous parties have entered appearances, and procedural schedules have been adopted. As most pertinent to discovery, the Board has assigned both proceedings to Judge Leventhal "for handling of all discovery matters and initial resolution of all discovery disputes". See Finance Docket No. 33220, Decision No. 4, served December 19, 1996; Finance Docket No. 33286, Decision No. 3, served December 19, 1996.

Second, the Board's policy is to favor the prompt and inexpensive determination of issues, and its Rules of Practice and discovery rules are patterned after the Federal Rules of Evidence and the Federal Rules of Civil Procedure. The Board's rules are to be construed liberally:

The rules will be construed liberally to secure just, speedy and inexpensive determination of the issues presented.

49 C.F.R. § 1100.2. The Board's rules permit discovery at any time in a railroad control proceeding, and contain no limitation on when discovery in a proceeding may begin. The pertinent rule provides in part:

(a) *When discovery is available.* (1) Parties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding. . . .

49 C.F.R. § 1114.21(a).

The Board recently amended its rules of practice to make discovery more freely available. Under the old rules, parties could file interrogatories and requests for admissions without prior Board approval, but could obtain other types of discovery only upon an order of the Board. As a result of recent amendments,⁵ the rules now simply provide (49 C.F.R. § 1114.21(b)):

(b) *How discovery is obtained.* All discovery procedures may be used by parties without filing a petition and obtaining prior Board approval.

While the Board's rules clearly do not bar discovery in a control proceeding prior to the filing of an application, this does not necessarily mean that unlimited discovery should be permitted before an application is filed. It may be assumed, for purposes of the present motion, that discovery regarding the terms and competitive effects of a proposed control transaction would be premature at any time before the application is filed. A policy deferring such discovery until after an application has been filed would safeguard any legitimate interest applicants may have in finalizing the terms of their transaction and presenting their affirmative case before being called upon to explain and defend that proposed transaction.

But such a Board policy, even if it could be gleaned from the Board's rules and precedents, would not bar all pre-application discovery, and certainly would not bar the limited discovery CN seeks at this time. CN does not now seek discovery regarding the terms or effects of a proposed Conrail merger with CSX, with NS, or with both of them. Instead, CN merely seeks certain basic information regarding Conrail's operations and properties.

⁵ See Ex Parte No. 527, Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings, served October 1, 1996.

Such information is relevant to any proposed Conrail merger, and can be produced with little or no burden to Conrail.

CN has a legitimate need for this limited discovery, moreover, and it would be poor policy to delay CN's access to this basic information until a latter stage of the proceeding. The proposed breakup of Conrail raises important issues as to the balance of rail competition in the eastern United States, and presents what may be the last opportunity to put in place a rail structure that will afford balanced competitive rail access to the Northeast from all directions. CN, in order to assure such balanced access, is interested in acquiring ownership of and/or trackage rights over certain Conrail lines, and needs basic information on Conrail's operations and facilities in order to further develop these proposals. The importance of obtaining such information now (subject, of course, to appropriate protective measures) is increased by the accelerated handling of railroad merger cases in recent years. At the request of applicants, the Board already has established expedited procedural schedules in each of the first two dockets, and by motion dated April 10, 1997, applicants now have requested an even more expedited schedule in Finance Docket No. 33388.⁶ In addition, as the Board is well aware, negotiations between applicants and other parties frequently result in settlements that determine the shape of a proceeding, even before an application is filed.

As part of its argument that CN's discovery requests are premature, Conrail suggested that an application might never be filed in either of the first two dockets "because of material changes in the proposed transaction." Conrail Objections at 1. This was a reference

⁶ CN, of course, reserves the right to comment on the proposed schedule in Finance Docket No. 33388.

to the recent CSX-NS settlement negotiations, which now have led to the initiation of Finance Docket No. 33388. But this new Notice of Intent, and the dismissal of the earlier dockets (if granted), provide no justification for delaying the type of limited discovery CN now seeks. As noted above, even though the new transaction will raise new issues to be considered by the Board and all parties, it nevertheless reflects a continuation of the Conrail merger process that began months ago. It would be illogical and unfair to force CN to "start over" simply because applicants have switched dockets.⁷ More importantly, CN's discovery requests do not seek information relating to a particular Conrail merger -- they seek only *information about Conrail*, which is relevant to *any* Conrail merger. CN needs this information now, so that it will be able to respond, within the constraints of even a 365-day procedural schedule, to the merger proposal in its final form.

The wisdom and logic of permitting limited, pre-application discovery in railroad control proceedings was effectively stated by NS in January, when it sought from Conrail the same basic information CN now seeks (plus full traffic tapes, which CN has not requested).

As NS stated:

If a third party shows a substantial need for information from applicants who have announced their intention to file a major merger application and those applicants can provide it without undue burden, there is no basis for construing the discovery rules to allow applicants to stonewall the request until they file the application.

NS Letter of January 14, 1997 at 5 (emphasis added).

⁷ For this reason, the instant motion to compel properly is filed in Finance Docket No. 33388, even though CN's discovery requests were filed in the earlier dockets.

There is no Board rule or policy insulating Conrail from such discovery at this stage of the proceeding, nor should there be.

B. Conrail's Other General Objections Are Without Merit

In addition to arguing that no discovery whatsoever should be permitted until after the application has been filed, Conrail states 10 other "general objections" to CN's discovery requests. These general objections lack merit, and can be dealt with summarily.

General Objection 2: Conrail objects to production of documents or information subject to the attorney-client privilege.

General Objection 3: Conrail objects to production of documents or information subject to the work product doctrine.

General Objection 4: Conrail objects to production of documents prepared in connection with, or containing information relating to, possible settlement of this or any other matter.

CN does not disagree that certain documents and information may be beyond the reach of discovery because they are protected by one or more recognized privileges. However, a general objection on the basis of any such privilege serves no useful purpose. As discussed below, the proper procedure, when a party seeks to invoke a privilege, is to demonstrate that the invoked privilege actually applies to the specific documents or information sought to be withheld.

General Objection 5: Conrail objects to production of public documents or information that is readily available, including but not limited to documents on public file at the Surface Transportation Board ("STB"), the Securities and Exchange Commission, or any other government agency or court, or that have appeared in newspapers or other public media.

STB

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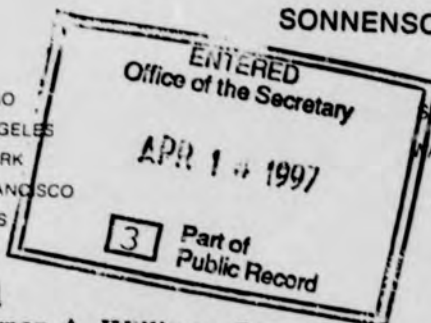
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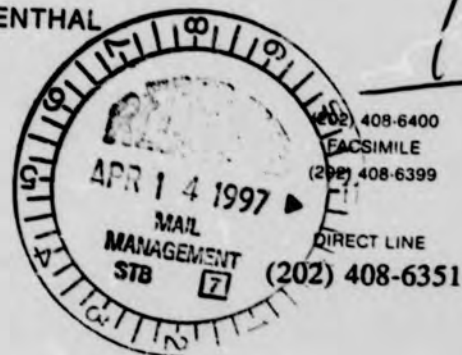
SONNENSCHN NATH & ROSENTHAL

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NEW YORK
SAN FRANCISCO
ST. LOUIS



1301 K STREET N.W.
SUITE 600, EAST TOWER
WASHINGTON, D.C. 20005

April 14, 1997



By Hand

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

Re: Finance Docket No. 33220, CSX -- Control and Merger -- Conrail 179288
Finance Docket No. 33286, Norfolk Southern -- Control -- Conrail 179289
Finance Docket No. 33388, CSX and Norfolk Southern -- Control and Lease -- Conrail 179290

Dear Secretary Williams:

On behalf of Canadian National Railway Company, enclosed are the signed original and 25 copies of its Motion to Compel Discovery Responses by Conrail. For your convenience, a 3.5-inch floppy diskette in Wordperfect 5.1 is enclosed. In order to avoid wasteful duplication, we are not filing three sets of this motion, even though these related dockets have not formally been consolidated; if you do require additional copies, please do not hesitate to let me know.

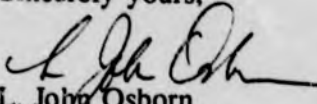
This letter will serve as CN's Notice of Appearance in Finance Docket No. 33388. I would be grateful if you would add the names of CN counsel in both Montreal and Washington as separate entries to the service list, and if all parties would make service on both CN counsel, as indicated below:

Jean Pierre Ouellet
Chief Legal Officer and Corporate
Secretary
Canadian National Railway Company
935 de La Gauchetiere Street West
16th Floor
Montreal, Quebec H3B 2M9

L. John Osborn
Sonnenschein Nath & Rosenthal
1301 K Street, N.W.
Suite 600 East
Washington, D.C. 20005

Kindly stamp the enclosed additional copy of this letter at the time of filing and return it to our messenger.

Sincerely yours,


L. John Osborn

Enclosures

cc: Director David M. Konschnik
Administrative Law Judge Leventhal
Counsel for all parties

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33220

CSX CORPORATION AND CSX TRANSPORTATION, INC. -- CONTROL AND
MERGER -- CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

Finance Docket No. 33286

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY
COMPANY -- CONTROL -- CONRAIL, INC. AND CONSOLIDATED RAIL
CORPORATION

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 NATIONAL RAILWAY COMPANY'S
MOTION TO COMPEL DISCOVERY RESPONSES BY CONRAIL

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Dated: April 14, 1997



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33220

CSX CORPORATION AND CSX TRANSPORTATION, INC. -- CONTROL AND
MERGER -- CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

Finance Docket No. 33286

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY
COMPANY -- CONTROL -- CONRAIL, INC. AND CONSOLIDATED RAIL
CORPORATION

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 NATIONAL RAILWAY COMPANY'S
MOTION TO COMPEL DISCOVERY RESPONSES BY CONRAIL

Pursuant to the Board's Rules of Practice, 49 C.F.R. 1114.21 *et seq.*, Canadian
National Railway Company ("CN") hereby moves the Board for an order directing
Consolidated Rail Corporation ("Conrail") to respond to CN's First Set of Interrogatories and

Document Requests.¹ In keeping with customary practice, CN respectfully requests that Judge Leventhal set the instant motion for hearing on not less than seven (7) days notice, on April 21, 1997 or as soon thereafter as the motion can be heard, with Conrail's response to be due no later than one business day before the hearing.

I. BACKGROUND

This motion seeks limited, introductory discovery against Conrail in connection with the sale of Conrail to another carrier or carriers. CN requires certain basic information regarding Conrail's operations and properties so that CN can develop proposals to acquire trackage rights over, or ownership of, certain Conrail lines, either through negotiations with the primary applicants or through requests for conditions to be imposed on the proposed Conrail merger. Preliminary discovery is needed now because, under current merger case practice, critical negotiations take place at the beginning of the proceeding, and responsive applications, if necessary, must be filed on stringent deadlines.

On October 14, 1996, CSX Corporation and Conrail Inc. entered into an agreement for CSX to acquire Conrail. On October 18, 1996, CSX and Conrail filed a Notice of Intent to file a railroad control application in Finance Docket No. 33220. Soon thereafter, Norfolk Southern Corporation announced its intention to oppose the CSX-Conrail merger, and to pursue an NS-Conrail merger through an inconsistent application. On November 6, 1996, NS filed a Notice of Intent to file a railroad control application in Finance Docket No. 33286.

¹ CN recognizes that Finance Docket Nos. 33220, 33286 and 33388 have not been formally consolidated. This motion bears a joint caption in order to avoid wasteful duplication. This motion is being served on Conrail and on known parties in all three dockets, and it is designated as "CN-3" in all three dockets.

At the request, for the most part, of the applicants themselves, the Board thus far has issued a total of nine (9) decisions in Finance Docket No. 33220 and five (5) decisions in Finance Docket No. 33286. Protective orders have been established in both dockets. Waivers have been granted with respect to certain information requirements under the Board's consolidation rules. Numerous parties have entered appearances. The Board, after considering vigorous comments from many of these parties and from applicants themselves, has established 365-day procedural schedules in both dockets.

Although Finance Docket Nos. 33220 and 33286 have been active since last fall, an application has not yet been filed in either docket. Instead, on April 10, 1997, CSX, NS and Conrail filed a new Notice of Intent in Finance Docket No. 33388, indicating that they propose to file a joint application under which CSX and NS would "carve up" Conrail.² While this proposed new transaction will raise issues quite different from those that had been raised by the earlier proposals, as a procedural matter the new proposal represents a continuation of the process of breaking up Conrail that began with the initiation of these proceedings last fall.

CN apparently is the first non-applicant to seek discovery in these proceedings, but discovery among the applicants has been underway for some time. The process began with an attempt by NS to engage in preliminary, informal discovery against Conrail, through letters dated November 27, 1996 and December 19, 1996. Conrail declined to produce even the

² In related developments, CSX and Conrail moved on April 10, 1997 to dismiss Finance Docket No. 33220, and NS moved on April 11, 1997 to dismiss Finance Docket No. 33286. CN reserves the right to respond to those motions within the time allowed under the Board's rules.

rudimentary information sought by NS. Through a letter-motion dated January 14, 1997, NS then moved for an order compelling Conrail to respond.

Judge Leventhal heard argument on the NS motion on January 27, 1997. Conrail (with support from its then-merger-partner CSX) followed a hardline approach, arguing that there should be no discovery whatsoever. NS, for its part, demonstrated that the very limited information it sought -- Conrail's full traffic tapes for 1995, and certain basic information as to Conrail's operations and facilities as listed in Attachment 1 to the December 19, 1996 NS letter -- unquestionably is relevant to the proposed sale of Conrail, and could be produced by Conrail without undue burden. Judge Leventhal was prepared to rule, but before ruling he invited Conrail, NS and CSX to make a further attempt to resolve the discovery dispute amicably. After a private, off-the-record meeting, they reported that they had reached an amicable resolution of the dispute, and NS withdrew its discovery motion subject to renewing it if the agreed upon information was not furnished by February 15, 1997. NS never renewed its motion, and the agreed upon information presumably was furnished.

By letter dated February 5, 1997 (Attachment 1 hereto), CN sought informal discovery from Conrail. As the letter indicates, CN at that point sought to avoid placing any burden whatsoever on Conrail by limiting its requests in two ways: (1) CN sought only the so-called "Attachment 1 Information" NS already had requested (but excluding the full Conrail traffic tapes sought by NS), and (2) CN sought such information only to the extent it already was being produced for NS. This effort to engage in burdenless, informal discovery was unsuccessful. Conrail never responded in writing, and in telephone conversations its counsel was never willing even to discuss the discovery production being made to NS.

On March 18, 1997, CN filed the formal discovery requests (Attachment 2 hereto) that are the subject of the instant motion. CN anticipated that Conrail would claim that discovery was "premature." For this reason, CN limited its requests to the same basic "Attachment 1 Information" (but not the full Conrail traffic tapes) that NS had requested as early as December 19, 1996, and CN itself had requested on February 5, 1997.³ In other words, CN sought only basic information regarding Conrail's operations and properties, and refrained from seeking discovery as to the specifics of the proposed Conrail merger.

By response dated April 2, 1997 ("Conrail Objections"), Conrail objected to each and every CN discovery request, and produced no information whatsoever. Despite the fact that Conrail apparently has been making informal discovery production to NS since late January, Conrail argues that every facet of CN's limited discovery is premature. Conrail makes other "boilerplate" objections to all but one of CN's requests.⁴

II. CONRAIL'S OBJECTIONS ARE WITHOUT MERIT, AND CONRAIL SHOULD BE DIRECTED TO RESPOND PROMPTLY TO CN'S DISCOVERY REQUESTS, WHICH SEEK ONLY BASIC INFORMATION REGARDING CONRAIL

A. CN's Limited Discovery Is Not Premature

Conrail's principal objection is that discovery allegedly is premature. Conrail argues, in effect, that there can be no discovery whatsoever in a control proceeding until an

³ Obviously, CN could not limit its requests to information already produced by Conrail to NS, since those parties refused to divulge the extent of that production.

⁴ Conrail's objections were filed only in Finance Docket No. 33220, despite the fact that CN also sought discovery in Finance Docket No. 33286. Conrail may argue that it should be immune from discovery in Finance Docket No. 33286 because it did not join in the Notice of Intent filed in that docket, but Conrail did enter an appearance in that proceeding on November 25, 1996, and its status is that of a party. Having failed even to respond to CN's discovery requests in Finance Docket No. 33286, Conrail is in default.

application has been filed. Conrail's extreme position is wrong, both as a matter of law and as a matter of Board policy.

First, there can be no doubt that the Board has jurisdiction to order discovery, and that this jurisdiction has been vested in Judge Leventhal. Nor can there be any doubt that there are pending Board proceedings involving the proposed merger of Conrail with either CSX or NS, or both. As previously indicated, Notices of Intent initiating the first two proceedings were filed in October and November of last year. In both proceedings, protective orders have been entered, numerous parties have entered appearances, and procedural schedules have been adopted. As most pertinent to discovery, the Board has assigned both proceedings to Judge Leventhal "for handling of all discovery matters and initial resolution of all discovery disputes". See Finance Docket No. 33220, Decision No. 4, served December 19, 1996; Finance Docket No. 33286, Decision No. 3, served December 19, 1996.

Second, the Board's policy is to favor the prompt and inexpensive determination of issues, and its Rules of Practice and discovery rules are patterned after the Federal Rules of Evidence and the Federal Rules of Civil Procedure. The Board's rules are to be construed liberally:

The rules will be construed liberally to secure just, speedy and inexpensive determination of the issues presented.

49 C.F.R. § 1100.2. The Board's rules permit discovery at any time in a railroad control proceeding, and contain no limitation on when discovery in a proceeding may begin. The pertinent rule provides in part:

(a) *When discovery is available.* (1) Parties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding. . . .

49 C.F.R. § 1114.21(a).

The Board recently amended its rules of practice to make discovery more freely available. Under the old rules, parties could file interrogatories and requests for admissions without prior Board approval, but could obtain other types of discovery only upon an order of the Board. As a result of recent amendments,⁵ the rules now simply provide (49 C.F.R. § 1114.21(b)):

(b) How discovery is obtained. All discovery procedures may be used by parties without filing a petition and obtaining prior Board approval.

While the Board's rules clearly do not bar discovery in a control proceeding prior to the filing of an application, this does not necessarily mean that unlimited discovery should be permitted before an application is filed. It may be assumed, for purposes of the present motion, that discovery regarding the terms and competitive effects of a proposed control transaction would be premature at any time before the application is filed. A policy deferring such discovery until after an application has been filed would safeguard any legitimate interest applicants may have in finalizing the terms of their transaction and presenting their affirmative case before being called upon to explain and defend that proposed transaction.

But such a Board policy, even if it could be gleaned from the Board's rules and precedents, would not bar all pre-application discovery, and certainly would not bar the limited discovery CN seeks at this time. CN does not now seek discovery regarding the terms or effects of a proposed Conrail merger with CSX, with NS, or with both of them. Instead, CN merely seeks certain basic information regarding Conrail's operations and properties.

⁵ See Ex Parte No. 527, Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings, served October 1, 1996.

Such information is relevant to any proposed Conrail merger, and can be produced with little or no burden to Conrail.

CN has a legitimate need for this limited discovery, moreover, and it would be poor policy to delay CN's access to this basic information until a latter stage of the proceeding. The proposed breakup of Conrail raises important issues as to the balance of rail competition in the eastern United States, and presents what may be the last opportunity to put in place a rail structure that will afford balanced competitive rail access to the Northeast from all directions. CN, in order to assure such balanced access, is interested in acquiring ownership of and/or trackage rights over certain Conrail lines, and needs basic information on Conrail's operations and facilities in order to further develop these proposals. The importance of obtaining such information now (subject, of course, to appropriate protective measures) is increased by the accelerated handling of railroad merger cases in recent years. At the request of applicants, the Board already has established expedited procedural schedules in each of the first two dockets, and by motion dated April 10, 1997, applicants now have requested an even more expedited schedule in Finance Docket No. 33388.⁶ In addition, as the Board is well aware, negotiations between applicants and other parties frequently result in settlements that determine the shape of a proceeding, even before an application is filed.

As part of its argument that CN's discovery requests are premature, Conrail suggested that an application might never be filed in either of the first two dockets "because of material changes in the proposed transaction." Conrail Objections at 1. This was a reference

⁶ CN, of course, reserves the right to comment on the proposed schedule in Finance Docket No. 33388.

to the recent CSX-NS settlement negotiations, which now have led to the initiation of Finance Docket No. 33388. But this new Notice of Intent, and the dismissal of the earlier dockets (if granted), provide no justification for delaying the type of limited discovery CN now seeks. As noted above, even though the new transaction will raise new issues to be considered by the Board and all parties, it nevertheless reflects a continuation of the Conrail merger process that began months ago. It would be illogical and unfair to force CN to "start over" simply because applicants have switched dockets.⁷ More importantly, CN's discovery requests do not seek information relating to a particular Conrail merger -- they seek only *information about Conrail*, which is relevant to *any* Conrail merger. CN needs this information now, so that it will be able to respond, within the constraints of even a 365-day procedural schedule, to the merger proposal in its final form.

The wisdom and logic of permitting limited, pre-application discovery in railroad control proceedings was effectively stated by NS in January, when it sought from Conrail the same basic information CN now seeks (plus full traffic tapes, which CN has not requested).

As NS stated:

If a third party shows a substantial need for information from applicants who have announced their intention to file a major merger application and those applicants can provide it without undue burden, there is no basis for construing the discovery rules to allow applicants to stonewall the request until they file the application.

NS Letter of January 14, 1997 at 5 (emphasis added).

⁷ For this reason, the instant motion to compel properly is filed in Finance Docket No. 33388, even though CN's discovery requests were filed in the earlier dockets.

There is no Board rule or policy insulating Conrail from such discovery at this stage of the proceeding, nor should there be.

B. Conrail's Other General Objections Are Without Merit

In addition to arguing that no discovery whatsoever should be permitted until after the application has been filed, Conrail states 10 other "general objections" to CN's discovery requests. These general objections lack merit, and can be dealt with summarily.

General Objection 2: Conrail objects to production of documents or information subject to the attorney-client privilege.

General Objection 3: Conrail objects to production of documents or information subject to the work product doctrine.

General Objection 4: Conrail objects to production of documents prepared in connection with, or containing information relating to, possible settlement of this or any other matter.

CN does not disagree that certain documents and information may be beyond the reach of discovery because they are protected by one or more recognized privileges. However, a general objection on the basis of any such privilege serves no useful purpose. As discussed below, the proper procedure, when a party seeks to invoke a privilege, is to demonstrate that the invoked privilege actually applies to the specific documents or information sought to be withheld.

General Objection 5: Conrail objects to production of public documents or information that is readily available, including but not limited to documents on public file at the Surface Transportation Board ("STB"), the Securities and Exchange Commission, or any other government agency or court, or that have appeared in newspapers or other public media.

Conrail should indicate which, if any, requested documents or information are publicly available, and should direct CN to the public source whenever such source is not readily apparent.

General Objection 6: Conrail objects to the extent that the requests seek documents containing confidential or sensitive commercial information, including information subject to disclosure restrictions imposed in other proceedings or by contractual obligation to third parties, and that is of insufficient materiality to warrant production here even under a protective order.

Protective orders routinely are used in Board proceedings to permit the production in discovery of confidential information. Reading this objection most charitably, Conrail apparently does not dispute the effectiveness of protective orders generally, but only when applied to confidential information of "insufficient materiality." As stated earlier, under the Board's rules discovery is permitted as to "any matter, not privileged, which is relevant to the subject matter involved in a proceeding. . . ." 49 C.F.R. § 1114.21. If Conrail has objections based on relevance, it should make them as to specific discovery requests.

General Objection 7: Conrail objects to any request seeking documents created or information from before January 1, 1995.

Conrail does not explain the basis for this general objection, and the objection is unjustifiable. Although applicants have stated that they will use the year 1995 for purposes of their impact analyses to be filed in the application, this fact alone provides no basis for barring all discovery of prior years. Under certain circumstances, discovery of documents created many years ago might be objectionable on the ground of undue burden or relevance, but this provides no basis for a general prohibition against discovery of all documents more than two years old. Such a limitation on discovery would be particularly inappropriate in the

case of a merger involving Conrail, since Conrail is the product of unique events over the past two decades, some of which undoubtedly are highly relevant to the public interest issues raised by a proposed Conrail merger. In any event, the validity of any time-based barrier to discovery need not be determined now, since the only CN request that seeks documents prepared prior to January 1, 1995 is No. 23, which seeks all Amtrak, passenger and joint facility agreements to which Conrail is a party. While a response that excludes all pre-1995 documents clearly would be inadequate, CN is willing to discuss with Conrail a reasonable time limit for documents within the scope of this request.

General Objection 8: Conrail objects to Instructions A-J to the extent they seek to impose requirements that exceed those specified in the STB's discovery rules.

This general objection is inappropriate, and erroneously assumes that the Board's rules articulate all reasonable requirements for responding to legitimate discovery requests. If Conrail has specific objections to, or seeks clarification of, any particular Instruction, CN will be willing to discuss that Instruction with Conrail.

General Objection 9: Conrail objects to Instruction B of the requests to the extent it requests detailed information regarding otherwise responsive documents that fall within the scope of a privilege. Such detailed information is not necessary, and is unreasonably burdensome to provide. Such information was not required or provided in the most recent major control case, and no showing has been made here to warrant different treatment.

This general objection apparently seeks to permit Conrail to invoke privileges at its pleasure, with no accountability to the discovering party or to the Board. This is not the law. A party asserting a privilege bears the burden of providing a log or other information sufficient to show that the disputed materials are indeed within the scope of the privilege. See Wright, Miller and Marcus, *Federal Practice and Procedure: Civil* § 2016.1.

General Objection 10: Conrail objects to the requests to the extent they seek production of executed written agreements between Conrail and CN, or agreements to which CN is a party.

If a document within the scope of CN's requests is an executed written agreement between Conrail and CN, or an agreement to which CN is a party, Conrail should identify the document, but need not produce it.

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

This general objection to discovery requests requiring "special studies" is meaningless unless made as to a specific discovery request, as Conrail does elsewhere in its response.

C. Conrail's "Additional Objections to Specific Requests"
Are Deficient and Unfounded

Conrail, after listing nearly a dozen general objections to CN's discovery, finally purports to articulate objections to specific CN discovery requests. But Conrail does not really raise specific objections. Instead, Conrail merely applies a few "Addition Objections" to groups of discovery requests, without specifically addressing the merits of most of the requests. In broad-brush fashion, CN deploys the time-worn phrases of a party opposing discovery -- "unduly vague," "burdensome," "overbroad," "requiring special studies" -- but Conrail makes no effort whatsoever to explain why any specific CN request is deserving of such a label.

Given that CN is requesting only the most basic information as to Conrail's operations and properties, it perhaps is not surprising that Conrail has made no attempt to explain its

objections. What could possibly be "vague" or "burdensome" or "overbroad," for example, about CN's requests for maps (Request Nos. 1, 2 and 12), track charts (Request No. 18), slow order reports (Request No. 19), and current organizational charts (Request No. 22)? Why would it be "burdensome" for Conrail to produce its empty car movement file (Request No. 7), its existing reports evaluating its deferred locomotive and freight car maintenance (Request No. 15), its existing reports assessing its deferred track maintenance (Request No. 21), or available information regarding its existing and planned double-stack cleared routes (Request No. 20)? As to Amtrak, passenger and joint facility agreements (Request No. 23), why would production be "burdensome" (keeping in mind that CN is prepared to discuss a reasonable cutoff date for agreements within the scope of this request)?

As to eleven of CN's discovery requests (Request Nos. 2, 3, 8, 9, 10, 11, 13, 14, 16, 17 and 24), Conrail claims -- again without explanation -- that responding to the request would require a "special study." While there are limits on the extent to which a party responding to discovery will be required to perform "special studies," Conrail's wholesale use of this objection is suspicious on its face, and is frivolous when the substance of the CN requests is considered. Does Conrail not, like all major railroads, keep a record of the annual gross ton miles handled on its various line segments (Request No. 2)? Doesn't Conrail know its average daily train movements by line segment (Request No. 3)? The same questions could be asked as to the other CN requests as to which Conrail has raised the "special study" objection. These requests call for information that railroads keep in ordinary course of business, and Conrail's "special study" objections can be given no credence.

Conrail disputes the relevance all but two of CN's discovery requests (Requests Nos. 4 and 6), but never explains why it believes the requested information is not relevant. It should be obvious that, in connection with a proposed merger of Conrail, basic information as to the nature of Conrail's operations and facilities is highly relevant and, at the very least, is reasonably calculated to lead to the discovery of admissible evidence. Such information is relevant to any party seeking to understand the Conrail system. The information is especially relevant for CN, which is interested in acquiring ownership of, or trackage rights over, various parts of the Conrail system in order to provide balanced rail competition for traffic moving to and from the Northeast.

Finally, as to CN's request for Conrail's operating employee timetables, Conrail raises an additional objection based on the fact that the Board has requested that 10 copies be submitted to the agency when the application is filed. Conrail does not claim that the timetables are unavailable, or irrelevant, or that producing them would be "burdensome," or that the request for them is "vague." Conrail simply wants CN to wait because the Board has not asked that they be produced yet. If Conrail's reasoning were carried to its logical extreme, no party could ever obtain discovery unless the Board already had requested the same information. This clearly is not the approach to discovery contemplated by the Board's rules, and Conrail has stated no valid basis for withholding production.

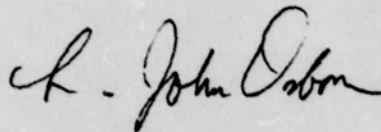
III. CONCLUSION

CN sought in good faith to engage Conrail in informal discovery on terms that would have imposed no burden whatsoever on Conrail. This effort was rebuffed. CN then submitted formal discovery requests that replicate (with the exception of full traffic tapes) the NS

requests that were the subject of a discovery hearing in January, and were resolved through negotiations just as Judge Leventhal was about to rule. In response, Conrail has thrown up blanket objections to every CN request, and has produced not a single document or bit of information. Conrail has "stonewalled" even though CN's discovery requests seek only the most basic information regarding Conrail's system, and altogether avoid any demand for information regarding the terms and effects of the proposed Conrail merger.

CN respectfully requests that this motion be brought on for hearing at the earliest opportunity, on not less than seven (7) days notice. Specifically, CN requests that a hearing be scheduled for April 21, 1997, or as soon thereafter as Judge Leventhal's schedule permits, and that any Conrail response be due no later than one business day before the hearing. It is clear that Conrail has no intention of producing any documents or information in discovery unless and until ordered to do so. Moreover, a prompt hearing will not prejudice Conrail, since the substance of CN's requests has been before Conrail since mid-December of last year, when NS requested essentially the same information.

Respectfully submitted,



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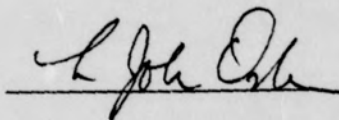
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Attorneys for:
CANADIAN NATIONAL RAILWAY COMPANY

Dated: April 14, 1997

Certificate of Service

The undersigned hereby certifies that on this 14th day of April, 1997, he served a true copy of the foregoing on counsel for all known parties by first-class mail, postage prepaid.



L. John Osborn

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By Fax and U.S. Mail

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Re: Finance Docket No. 33220, CSX Corporation and CSX Transportation, Inc. --
Control and Merger -- Conrail, Inc. and Consolidated Rail Corporation

Finance Docket No. 33286, Norfolk Southern Corporation and Norfolk
Southern Railway Company -- Control -- Conrail, Inc. and Consolidated Rail
Corporation

Dear Paul:

I am writing on behalf of Canadian National Railway Company to request informally that Conrail produce certain information that CN needs in connection with the potential merger of Conrail with either CSX or NS. CN is framing these requests so that they will place no burden on Conrail.

Specifically, CN requests that Conrail produce copies of the information listed on Attachment 1 of Dick Allen's December 19, 1996 letter to you, in the same form and to the same extent that such information is furnished to NS pursuant to the negotiations (and any continuation thereof) that began during the hearing before Judge Leventhal on January 27, 1997. For convenience, a copy of Attachment 1 is attached to this letter. We ask that Conrail immediately produce those portions of the Attachment 1 information that already have been produced to NS, and provide CN with copies of any remaining information on the same date(s) as it is produced to NS.

As you can see, CN is requesting only information that Conrail already has agreed to produce to NS, following the comments of Judge Leventhal at the January 27 hearing. Since CN was not a party to the CSX-NS-Conrail off-the-record discussions, I will rely on you to replicate the production Conrail has agreed to make to NS. If you feel for any reason that this CN request should be tailored or clarified in any way, I will be pleased to discuss that with you. CN has no desire to place any unnecessary burden on you or on Conrail at this point, and we believe that limiting our request to the scope of your Attachment 1 production to NS will avoid any such burden.

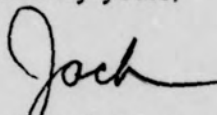
Paul A. Cunningham, Esq.
February 5, 1997
Page 2

CN recognizes the need to preserve the confidentiality of information exchanged pursuant to this informal request, and we agree that the persons having access will execute appropriate confidentiality agreements.

CN has a very strong interest in the outcome of the current merger discussions. As you may know, CN not only is looking closely at ways in which it can protect its interests (and those of its customers) from the adverse effects of either a CSX/Conrail or an NS/Conrail merger, but also is examining ways in which CN can play a constructive role in the implementation of either of these potential mergers. For both of these purposes, CN needs the above information as soon as possible. We hope that we can have Conrail's cooperation in this regard, on an informal basis. If, however, Conrail is not willing to provide this information informally, I ask that you advise me promptly so that we can make a formal request.

I will give you a call to discuss this request, and I look forward to talking with you.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "John", with a stylized flourish extending to the right.

L. John Osborn

Enclosure

cc: Richard A. Allen, Esq.
Dennis G. Lyons, Esq.

ATTACHMENT 1

Information Requested from Conrail by NS

Transportation Information

- Local Terminal Maps (both as intergraph or similar data/graph files and printed map copies)
- Annual gross tons for the base period by line segment, all inclusive - 1995 in map and tabular form
- Average daily train movements by line segment
- Most recent system diagram map
- Detailed Conrail system maps, including special maps indicating number of tracks along given routes
- Operating employee timetables - 3 sets
- Empty car movement file, for 1995
- List and descriptions of all local train service including typical assignment done by each crew
- List of unit train movements
- List and descriptions of all yard engine assignments, by terminal or yard
- A count of all employees, by craft, department, and location: distinguishing between craft, officer and exempt
- A current set of ZTS maps
- Description of all crew districts, including identification of home terminals, and number of crew runs for a representative 1995 month

Equipment

- Locomotive roster, by number, build date, manufacturer, HP, fuel cap, service status

Locomotive maintenance histories, system computer records, last unit overhaul or rebuild (5 yr., or million mile rebuild equivalent by Conrail's definition), availability and reliability data

Management reports in possession or control of the engineering department, for period January 1, 1995 to present, that evaluate deferred locomotive and freight car maintenance

General description of all shops by location, including size, capacity, 1995 output and list of major shop equipment

Average locomotive fleet age

Ways and Structures

Current track charts/data and/or other documents showing at least the following data by line segment:

Rail weight, type, CWR or conventional installation date.

Tie installation dates

Surfacing intervals

Curvature, grade and authorized speeds

Cumulative tonnage on rail

Current slow order reports

Summary of double-stack cleared routes, and plans or studies for clearance improvement of Pattenburg Tunnel to handle domestic double-stack traffic

Management reports or studies in possession or control of the engineering department, for period January 1, 1995 to present, assessing possible deferred track maintenance, including main track, siding and yard

General

Current organization charts for all functions

Amtrak, passenger and joint facility agreements

Environmental

Base line data showing truck traffic counts to and from all intermodal and automotive facilities

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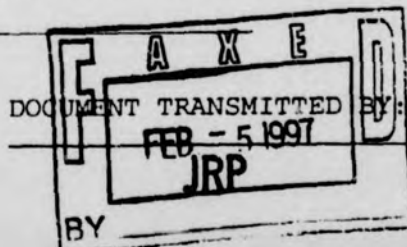
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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33220

CSX CORPORATION AND CSX TRANSPORTATION, INC. -- CONTROL AND
MERGER -- CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

Finance Docket No. 33286

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY
COMPANY -- CONTROL -- CONRAIL, INC. AND CONSOLIDATED RAIL
CORPORATION

CANADIAN NATIONAL RAILWAY COMPANY'S
FIRST SET OF INTERROGATORIES AND DOCUMENT REQUESTS TO CONRAIL

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Washington, D.C. 20005
(202) 408-6351

Attorneys for:
CANADIAN NATIONAL RAILWAY COMPANY

Dated: March 18, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33220

CSX CORPORATION AND CSX TRANSPORTATION, INC. -- CONTROL AND
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COMPANY -- CONTROL -- CONRAIL, INC. AND CONSOLIDATED RAIL
CORPORATION

CANADIAN NATIONAL RAILWAY COMPANY'S
FIRST SET OF INTERROGATORIES AND DOCUMENT REQUESTS TO CONRAIL

Pursuant to the Board's Rules of Practice, 49 C.F.R. 1114.21 *et seq.*, Canadian National Railway Company ("CN") hereby submits its First Set of Interrogatories and Document Requests to Consolidated Rail Corporation ("Conrail").¹

I. INSTRUCTIONS

A. To the extent that Conrail considers any of the following interrogatories or document requests objectionable, respond to each part thereof that is not objectionable,

¹ CN recognizes that Finance Docket Nos. 33220 and 33286 have not been formally consolidated. This discovery request is being served on Conrail and on known parties in both dockets. It bears a joint caption in order to avoid wasteful duplication, and it is designated as "CN-2" in both Finance Docket No. 33220 and Finance Docket No. 33286.

separately identify that part of the interrogatory or document request that Conrail finds objectionable, and state the grounds for each such objection.

B. If Conrail objects to any interrogatory or document request on the ground that it seeks information or documents protected by a privilege, identify which privilege is claimed, state the specific factual and legal basis for such claim of privilege, provide information sufficient to permit an independent determination as to the applicability of the privilege (including the date and subject matter of the document, and the names and positions of all recipients of the document), and answer any remaining part of the interrogatory or document request for which such objection is not made.

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

D. All documents should be produced or made available for inspection in the form in which they are retained in the usual course of business (e.g., if the documents are in a file, the file containing the documents should be produced), unless otherwise agreed by Conrail and CN.

E. If a responsive document was, but is no longer, in Conrail's possession, custody or control, describe what disposition was made of it.

F. Please organize or number the documents produced in such a manner that CN may readily determine which documents are being produced in response to each specific

request. If no document is being produced in response to any specific request, please so indicate in the response.

G. Unless specified otherwise in a particular interrogatory or document request, these discovery requests seek information and documents for the year 1995. Further, these discovery requests are deemed to be continuing in nature so that if at any time during the course of this proceeding Conrail discovers information or documents that are within the scope of these discovery requests, it shall supplement its responses within ten (10) days.

H. If exact data cannot be supplied in answering any interrogatory or document request that calls for a numerical response, Conrail should provide its best estimate of the data called for, indicate that it has done so by the notation "(est.)" in conjunction with the response, and describe the basis upon which the estimate was made.

I. If Conrail cannot answer any part of any interrogatory or document request in full, after exercising due diligence to secure the information to do so, Conrail should so state and answer to the extent possible, specifying its inability to answer the remainder and stating whatever information or knowledge it has with respect to each unanswered part.

J. If Conrail believes that any of interrogatory or document request is unclear, counsel for Conrail is requested to immediately contact counsel for CN, so that any appropriate clarification can be made.

K. Conrail should respond to these interrogatories and document requests on or before fifteen (15) days from the date hereof.

II. INTERROGATORIES AND DOCUMENT REQUESTS

1. Produce local terminal maps (both as intergraph or similar data/graph files and printed map copies) for the Conrail system.
2. Provide the annual gross tons handled by Conrail line segment, in map and tabular form.
3. Provide Conrail's average daily train movements by line segment.
4. Produce Conrail's most recent system diagram map.
5. Produced detailed Conrail system maps, including special maps indicating number of tracks along given routes.
6. Produce Conrail's operating employee timetables (3 sets).
7. Produce Conrail's empty car movement file.
8. Identify and describe (including the typical assignment done by each crew) all local train service currently provided by Conrail.
9. Produce a list of Conrail unit train movements.
10. List and describe all Conrail yard engine assignments, by terminal or yard.
11. Provide a count of all Conrail employees, by craft, department, and location, distinguishing between craft, officer and exempt.
12. Produce a current set of Conrail ZTS maps.
13. Describe all Conrail crew districts, including identification of home terminals, and provide the number of crew runs for a representative 1995 month.
14. For each locomotive in Conrail's fleet, identify and describe such locomotive's number, build date, manufacturer, horsepower, fuel capacity, service status, maintenance

history, last unit overhaul or rebuild (5 year or million mile rebuild equivalent by Conrail's definition), availability and reliability.

15. Produce all management reports or studies, for the period January 1, 1995 to present, that evaluate Conrail's deferred locomotive and freight car maintenance.

16. Describe all Conrail maintenance or repair shops by location, including size, capacity, 1995 output and list of major shop equipment.

17. Provide the average age of Conrail's locomotive fleet.

18. Produce current Conrail track charts/data and/or other documents showing at least the following data by line segment:

(a) Rail weight, type, CWR or conventional installation date.

(b) Tie installation dates.

(c) Surfacing intervals.

(d) Curvature, grade and authorized speeds.

(e) Cumulative tonnage on rail.

19. Produce current Conrail slow order reports.

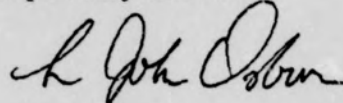
20. Describe Conrail's double-stack cleared routes, and produce all plans or studies for clearance improvement of Pattenburg Tunnel to handle domestic double-stack traffic.

21. Produce all Conrail management reports or studies, for the period January 1, 1995 to present, assessing actual or possible deferred track maintenance, including main track, siding and yard.

22. Produce current Conrail organization charts for all functions.

23. Produce all Amtrak, passenger and joint facility agreements to which Conrail is a party.
24. Provide truck traffic counts to and from all Conrail intermodal and automotive facilities.

Respectfully submitted,



Jean Pierre Ouellet
Chief Legal Officer and Corporate
Secretary
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16th Floor
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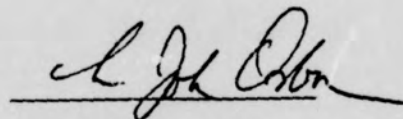
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Attorneys for:
CANADIAN NATIONAL RAILWAY COMPANY

Dated: March 18, 1997

Certificate of Service

The undersigned hereby certifies that on this 18th day of March, 1997, he served a true copy of the foregoing on counsel for all known parties by first-class mail, postage prepaid.



L. John Osborn