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April 29, 1998

VIA HAND DELIVERY

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

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

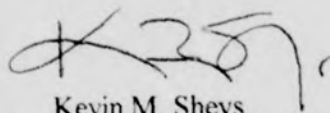
Dear Secretary Williams:

New Jersey Department of Transportation/New Jersey Transit Corporation ("NJDOT/NJTC") have entered into a letter agreement with Applicants CSX and NS to address certain concerns of NJDOT/NJTC regarding the impact of the transactions contemplated by the Application. The letter agreement was filed with the Board on April 20, 1998.

Based upon the letter agreement, NJDOT/NJTC hereby withdraw their Request For Conditions, as set forth in NJT-8, and will support the transactions contemplated by the Application.

Please contact me if you have any questions or comments regarding the foregoing.

Respectfully submitted,



Kevin M. Sheys
Attorney for New Jersey Department of
Transportation/New Jersey Transit Corporation

cc: All Parties of Record

Firm/Affiliate Offices

Brussels

Chicago

Geneva

Irvine

Los Angeles

Minneapolis

New York

Paris

Saint Paul

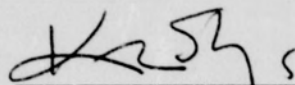
San Jose

Washington, D.C.



CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 1998, a copy of the foregoing was served by first class mail, postage prepaid, upon the entities listed in 49 C.F.R. § 1105.7(b), Administrative Law Judge Jacob Leventhal and all Parties of Record on the Service List.

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

Kevin M. Sheys

STB

FD-33388

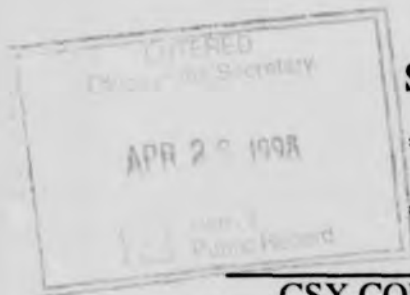
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CYPR-1



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 33388



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

**PETITION TO INTERVENE AND COMMENTS
OF
CYPRUS AMAX COAL SALES CORPORATION**

Cyprus Amax Coal Sales Corporation ("Cyprus Amax"), pursuant to 49 C.F.R. § 1117.1 and Part 1180, hereby petitions for leave to intervene in the above-captioned proceeding before the Surface Transportation Board ("STB"), and to file as part of the record of this proceeding these Comments and the attached Verified Statement of Richard J. Elston. Cyprus Amax makes this petition to bring to the attention of the STB a serious unresolved situation concerning the plans of CSXT Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NSR") to obtain control of, and to divide the properties of, Conrail, Inc. ("Conrail"). Specifically, Cyprus Amax here addresses the failure of CSXT and NSR to agree fully upon open and equal terms for the operation of unit coal trains over the facilities of the former Monongahela Railway Company ("MGA"), now owned by Conrail, such that CSXT can and will be a fully equal competitor to NSR for service to coal mines captive to the MGA facilities.¹

¹ A detailed Petition concerning these same issues was filed on April 9, 1998, by CONSOL Inc., the owner of substantial coal mining properties that are captive to the MGA facilities. Cyprus Amax fully supports the CONSOL Petition and the relief requested therein. Cyprus

Identity and Interest of Cyprus Amax

Cyprus Amax Coal Sales Corporation is a wholly owned subsidiary of Cyprus Amax Coal Company which, in turn, is a wholly owned subsidiary of Cyprus Amax Minerals Corporation. Cyprus Amax produces and sells approximately 85 million ton/year of coal from mines located in Pennsylvania, Wyoming, Utah, Colorado, and Australia. Cyprus Amax Coal Sales Corporation provides sales and logistical support services to individual coal mines owned by Cyprus Amax Coal Company.

One such coal mine is the Emerald Mine in southwestern Pennsylvania, which produces approximately 5.5 million tons/year of coal sold to various customers in the eastern United States. All of the coal produced by the Emerald Mine is transported over the MGA facilities. Cyprus Amax plans construction of another mine in the vicinity of the Emerald Mine which, when it becomes operational in the future, is expected to produce approximately 5 million tons/year additional coal. Like the Emerald Mine, this production will have to be transported over the facilities of the MGA.

Under the plans submitted by CSXT and NSR to the STB for the division and operation of Conrail properties, the MGA facilities are to be owned and operated by NSR subject to agreements which will give CSXT equal rights and access to all present and future mines served by the MGA facilities. Cyprus Amax has a strong interest in assuring that there is real competition between CSXT and NSR, and that NSR's ownership and status as operator of the MGA facilities does not create a condition in which competition is more ephemeral than real.

Amax is aware that in Decision No. 77, served April 24, 1998, the STB rejected CONSOL's petition on procedural grounds. Cyprus Amax independently presents these issues for the consideration of the STB, but also requests that the STB modify Decision No. 77 and consider the issues presented by CONSOL on the merits along with consideration on the merits of the issues presented in Cyprus Amax's petition.

Petition for Leave To Intervene and To File Comments

Cyprus Amax did not intervene in this proceeding at its earlier stages because Cyprus Amax had been assured that CSXT and NSR would create arrangements that would guarantee equal access for CSXT to mines served by the MGA facilities to be owned and operated by NSR. Unfortunately, such arrangements have not materialized, creating a substantial risk that NSR will exercise authority over the MGA facilities in a way that will disadvantage CSXT and impair, rather than promote, competition.

Cyprus Amax's decision to take CSXT and NSR at their word, and not to burden the STB with filings that appeared unnecessary, should not serve as a reason to penalize Cyprus Amax now that it appears that earlier promises are not being kept. Cyprus Amax is aware that these issues recently were raised in detail by another coal mine operator on the MGA facilities, CONSOL Inc., and that in Decision No. 77, served April 24, 1998, the STB denied CONSOL's petition to intervene.² Cyprus Amax requests that its petition to intervene be granted, and that the STB consider this important competition issue on its merits rather than dismiss the issue on procedural grounds.³

One reason for rejection of CONSOL's petition appears to be the fear that the "CONSOL's proposed conditions would impose an artificial and unnecessary

² Along with its petition to intervene, CONSOL filed comments seeking relief in the form of conditions if the CSXT and NSR do not voluntarily fulfill their promises of providing equal competitive access by both carriers to mines captive to the MGA facilities. In Decision No. 77, the STB also rejected CONSOL's comments.

³ To the extent necessary, Cyprus requests waiver of 49 C.F.R. § 1180.4(d) to permit Cyprus Amax's comments to be filed. Cyprus notes that its intervention complies with the requirements of 49 C.F.R. §1112.4. Specifically, acceptance of these comments will not unduly disrupt the schedule in this case nor unduly broaden the issues to be decided by the STB. In addition, Cyprus Amax's interest, position, and request for relief are fully set out in this petition to intervene and comments.

deadline for arriving at an implementing operating agreement.”⁴ This is a false concern. CONSOL sought prophylactic protective conditions that would govern the operating arrangements when they are eventually worked out between CSXT and NSR; CONSOL did *not*, as Decision No. 77 implies, request a condition that would require that the agreement be reached by a date certain. The problem arises because CSXT and NSR have not reached a timely agreement that assures equal access; the failure of the railroads to act in a timely fashion should not give rise to dismissal of CONSOL’s petition—or this Cyprus Amax petition—on the false claim that CONSOL is seeking, as a condition from the STB, to create a deadline for the railroads to act.⁵

Cyprus Amax also notes that it is in a different position than CONSOL in at least one respect. The STB noted in Decision No. 77 that CONSOL’s one-half parent, E.I. DuPont de Nemours and Company, Inc. (“DuPont”), is a participant in these proceedings and, according to the STB, has “addressed the interests of CONSOL in [its] submissions.” No Cyprus Amax affiliate has participated in this proceeding to address Cyprus Amax’s interests.

Finally, Cyprus Amax notes the STB’s statement that NSR’s and CSXT’s application will be “assessed in light of representations made in the application, including the stated intention to afford equal access to all facilities in the Monongahela area.”⁶ To do so, the STB should consider the views of Cyprus

⁴ Decision No. 77, page 2.

⁵ CONSOL did mention the date of May 15, 1998, but only to say that if the railroads had not voluntarily fulfilled their promises to shippers by reaching a mutually satisfactory agreement for equal access by that date, the STB would need to act to protect the shippers’ interests. This date, however, was never presented as a date by which the railroads would be *required* to act. Similarly, Cyprus Amax is not requesting that CSXT or NSR act by any specific date but, rather, Cyprus Amax is seeking direction from the STB that the arrangements eventually settled upon achieve real equality in service for CSXT as the non-operator and non-dispatching railroad on the MGA facilities.

⁶ Decision No. 77, page 2.

Amax on problems that have arisen in affording the promised equal access. It is far easier for the STB to avoid a competitive problem at this stage of the proceeding by taking careful pro-competitive action, than to correct a mistake of omission after the CSXT/NSR application has been acted upon. To that end, Cyprus Amax requests that this petition for leave to intervene be granted, and that the STB accept and act upon the following Cyprus Amax comments:

The STB Must Enforce Equal Access
by CSXT and NSR over the MGA Facilities

In statements filed with the STB, both CSXT and NSR presented operating plans in which they stated that there would be a joint use agreement for the MGA facilities that "*will provide CSXT equal, perpetual access to all current and future facilities located or accessed from the former Monongahela Railway.*"⁷ The intended equality of this arrangement was explained by James W. McClellan, Vice President-Strategic Planning for NSR, as follows: "*under NS operation with full CSX access via trackage rights, both will serve all customers directly, in a position of equality.*"⁸

In Volume 8C of the Application, NSR and CSXT filed the Monongahela Usage Agreement. This Agreement sets out certain terms necessary for NSR and CSXT to share various costs and to establish a framework within which the two railroads can work out specific details for equal operations. The Agreement repeatedly states that access is to be equal for both railroads, despite the NSR ownership and operation of the MGA facilities.⁹

⁷ CSXT Operating Plan, Application Vol. 3A, page 255; NSR Operating Plan, Application Vol. 3B, page 229 (emphasis added).

⁸ Application Vol. 1, page 514 (emphasis added).

⁹ See, e.g., Application Vol. 8C, page 715 *et seq.*: "CSXT shall have equal access" (pages 715 & 723); "fairness and equality of treatment" (page 723); "procedures . . . shall be fair and

Cyprus Amax has learned, however, that major disagreements have arisen between CSXT and NSR over critical aspects of implementing the promised equal access. These are that (1) NSR intends to hire all Conrail MGA crews, rather than sharing the hiring of the critical MGA crews equally with CSXT; (2) NSR will not provide CSXT a tie-in to NSR's computer for dispatching trains over the MGA facilities; (3) NSR will not include CSXT in the important discussions for coordinating train scheduling; and (4) NSR is unwilling to engage in swapping cars when coal quality specifications are such that coal should be shipped to an alternate customer rather than the intended customer.

These are implementation issues that will, if not addressed in advance, severely undermine the promise that CSXT will be an equal competitor to NSR over the MGA facilities. Certainly this is the case for the first three problems that have arisen; in each case, CSXT stands to be severely at a disadvantage to NSR in transporting Cyprus Amax's coal because NSR will have the superior personnel and information that will enable NSR to offer performance that CSX will be unable to match.

1. Crew hiring. Crews must be trained and authorized to operate over the MGA facilities, particularly given the single-track nature of most of the route and the high degree of utilization. If CSXT must furnish new crews to this service, it will face a long delay in training and obtaining authorization from NSR to operate its trains. To remedy this impediment to competition, CSXT should be permitted to hire half of the existing Conrail MGA crews.

2. Computer tie-in for dispatch. Absent a direct tie-in to NSR's computer, CSXT will be at NSR's mercy in planning movement of its trains over

impartial" (page 724); "operation and equal access to the mines" (p. 725); "equal local representation from NSR and CSXT" (page 726); "impartial access" (page 726); "practices and orders must be impartially administered as between NSR and CSXT" (page 727); "operated without prejudice or partiality to either party" (page 728); "given the rights of equal access to the Monongahela" (page 733).

the MGA facilities. Superior service would be rendered by NSR merely by virtue of its preferential access to dispatch data. This would certainly undermine the equality of operational terms between the two railroads, and can be avoided with a tie-in by CSXT to NSR's dispatch computer operations solely for the purpose of dispatching over the MGA facilities.

3. Discussions in scheduling. Similar to the dispatch function, it is critical that CSXT be on an equal footing in coordinating the scheduling of trains over the MGA facilities. As mine operations shift, customer requirements change, or operating conditions change, each railroad should have an equal opportunity to schedule its trains to and from mines. Without direction on this issue, NSR will again have preferential access to information, permitting it to offer superior service to that of CSXT.

4. Car swapping. It is helpful to mine operators to be able to shift trains from one customer to another if the quality of the coal loaded does not meet the requirements of the intended first customer. NSR has indicated that it is not willing to do so, which would make this aspect of service unequal between CSXT and NSR.

Preventive Action Is Superior to After-the-Fact Disputes

The STB can act simply and effectively to avoid problems on the MGA facilities. Given the specific impediments to achieving the promised equal access, the STB must step in and require that NSR and CSXT share Conrail crew hiring, share computer dispatch information, and share equally in scheduling trains. These steps would permit CSXT to be a viable alternative to NSR for transportation of coal over the MGA facilities. Absent action assuring that CSXT will obtain equal crews, dispatch tie-in, and scheduling opportunities, by default NSR will be able to offer superior service to CSXT after the division of Conrail facilities takes place.

Cyprus Amax has had some experience with post-merger implementation of service by carriers in another context. Cyprus Amax exports coal from a mine in Utah to export markets through terminals in Long Beach and Los Angeles. Union Pacific Railroad Company ("UP") and Southern Pacific Transportation Company ("SP") competed for this business with the result that Cyprus obtained favorable terms of service from SP. Once the STB approved the merger of SP into UP ("UP/SP"), Cyprus found that the UP/SP was unwilling to honor the favorable terms of service after the expiration of Cyprus Amax's contract with SP. As a condition of the UP/SP merger, Burlington Northern Santa Fe Railway Company ("BNSF") was granted trackage rights over tracks previously owned by SP, but Cyprus also found that BNSF was unwilling or unable to replicate the favorable terms that SP had previously provided to Cyprus Amax.

Cyprus Amax has brought to the STB's attention in Finance Docket No. 32760 (Sub-No. 21) and in other pending dockets the fact that the UP/SP merger order did not produce competition comparable to that which Cyprus Amax enjoyed prior to the combination of UP and SP, along with requests for additional post-merger relief that would increase competition for Cyprus Amax' export business. To date, the STB has not granted any relief to Cyprus Amax.

An important conclusion can readily be drawn from Cyprus Amax's experience in the UP/SP proceedings: to ensure that shippers have real competitive choices following any merger or combination of railroad facilities, it is critical that adequate conditions be adopted at the outset because, as a practical matter, once an order is entered and the combination has taken place, the threshold for obtaining relief becomes significantly higher.

Applying this lesson to the present case calls for careful scrutiny of the failure of CSXT and NSR to produce their promised agreement giving CSXT fully equal access to shippers captive to the MGA facilities. There can be no doubt that

the principal of equality has been agreed to; indeed, the Monongahela Usage Agreement referred to earlier is replete with references to the equal treatment which NSR has promised in the abstract, but has failed to reduce to specifics. It is the latter step—pinning down the crucial details that spell the difference between equality in name only and operating equality in delivering service to shippers over NSR's facilities—that cannot be left to NSR's sole discretion.

Cyprus Amax notes that the Monongahela Usage Agreement provides that if CSXT is "dissatisfied with the fairness and equality of treatment of CSXT's movements by NSR's Monongahela dispatchers," CSXT can "request a change of control of Monongahela dispatching to CSXT." If NSR refuses the change in control, the parties must submit the dispute to binding arbitration. Following any change in dispatch control, the non-dispatching party can request another change in control after a year's experience.¹⁰ This underscores the importance of neutral and equal dispatching. From the shippers' perspective, however, it would be far superior for CSXT and NSR to reach agreement now, or for the STB to impose strict conditions on CSXT and NSR, that would result in fair and equal dispatch and, therefore, permit both carriers to offer service of equal quality from the outset. It would be unnecessarily disruptive to the shippers to have CSXT and NSR litigating over dispatching control while one carrier is in an inferior competitive position.

Conclusion

The STB has indicated that it intends to act on CSXT's and NSR's application "in light of representations made in the application, including the stated intention to afford equal access to all facilities in the Monongahela area."¹¹

¹⁰ Application Vol. 8C, pages 723-24.

¹¹ Decision No. 77, page 2.

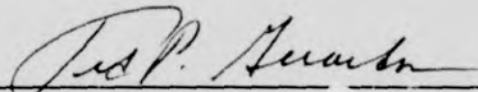
General statements that CSXT should have equal access, however, will be insufficient to accomplish that goal, as the failure of CSXT and NSR to work out equal terms despite the guidance of the Monongahela Usage Agreement shows. To resolve this issue at the time of action on the CSXT/NSR plan, the STB should grant Cyprus Amax's petition to intervene and accept and act upon Cyprus Amax's comments. By ordering specific relief with respect to equal crew hiring, dispatch tie-in, equal scheduling rights, and car swapping arrangements, the STB can avoid the situation in which competition promised in the abstract becomes non-competition in reality.

WHEREFORE, Cyprus Amax requests that its petition for leave to intervene be granted and that the STB consider the comments filed herein. Cyprus Amax further requests that the STB require that CSXT and NSR implement truly equal service conditions for both carriers through equal crew hiring, CSXT computer access to NSR dispatch for the MGA facilities, equal scheduling discussions, and common agreement to swap cars when indicated by coal quality conditions.

Respectfully submitted,

Morris W. Kegley, Esq.
General Attorney
Cyprus Amax Minerals Company
9100 East Mineral Circle
Englewood, Colorado 80112

By



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*Attorneys for Cyprus Amax Coal
Sales Corporation*

April 28, 1998

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33388

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

**VERIFIED STATEMENT
OF
RICHARD J. ELSTON**

My name is Richard J. Elston. I am over the age of 21 years. I am employed as the Vice President - Logistics for Cyprus Amax Coal Sales Corporation, a wholly owned subsidiary of Cyprus Amax Coal Company which, in turn, is a wholly owned subsidiary of Cyprus Amax Minerals Corporation ("Cyprus Amax"). Cyprus Amax's offices are located at 9100 East Mineral Circle, Englewood, Colorado 80112.

Cyprus Amax Minerals Company is a leading copper and coal producer, the world's largest producer of molybdenum and lithium, and holds a significant position in gold. Cyprus Amax Coal Company is a leading producer of coal with two underground mines in Pennsylvania, as well as mines in Wyoming, Colorado, Utah, and Australia. Cyprus Amax Coal Sales Corporation coordinates sales of coal produced at Cyprus Amax's various mines. Cyprus Amax produces approximately 85 million tons of coal in the United States annually. Of this production, approximately 5.5 million tons are produced at Cyprus Amax's Emerald Mine located on the former Monongahela Railway Company ("MGA") now owned and operated by Conrail, Inc. ("Conrail").

In this proceeding, CSX Transportation, Inc. ("CSX") and Norfolk Southern Railway Company ("NS") propose to divide between them operating lines of Conrail. Of particular interest to Cyprus Amax are the proposed arrangements for the MGA, which has been operated by Conrail since 1991. Cyprus Amax's Emerald Mine is dependent on transportation over the MGA facilities to move Cyprus Amax's coal production to market.

As Vice President - Logistics, I am responsible for the transportation of coal produced at all of Cyprus Amax's mines. Part of this responsibility is to make sure that Cyprus Amax maintains and improves its competitive position in the market place. As a major coal producer in the western United States, Cyprus Amax has been negatively affected by a reduction in competition between carriers and the catastrophic service collapse of the Union Pacific Railroad Corporation ("UP") following its merger with the Southern Pacific Railway Company ("SP") in 1996. Cyprus Amax has been active in communicating to the STB Cyprus Amax's dissatisfaction with the results of that merger, Cyprus Amax wants to make sure that similar mistakes or problems do not result from the proposed treatment of the MGA facilities in this proceeding.

Cyprus Amax has not previously participated in this proceeding because Cyprus Amax had been assured by CSX and NS that both carriers had committed to arrangements in which NS and CSX each would have equal access to mines served by MGA, even though the plan called for NS to own and operate the MGA facilities. Properly implemented, such arrangements would improve competition for the transportation of the Emerald Mine coal.

Cyprus Amax has reviewed the Petition of CONSOL, Inc to intervene in this proceeding and to bring to the STB's attention the failure of the NS and CSX to implement their agreement for equal service on the MGA. Cyprus Amax shares the same concerns as those expressed by CONSOL. Cyprus Amax has had several meetings with both CSX and NS since their announced intent to control and divide Conrail assets. Cyprus Amax, like CONSOL, was assured by both NS and CSX that a satisfactory operating plan would be put in place for the MGA. That plan has not been completed and shared with Cyprus Amax and, to my knowledge, will not be forthcoming before the Voting Conference scheduled to take place on June 8, 1998.

Cyprus Amax is keenly interested in assuring that the NS-CSX proposal actually results in fair and equal competition between NS and CSX to serve Cyprus Amax. In addition to the ongoing 5.5 million tons/year production at Emerald, Cyprus Amax anticipates opening a second mine in the area in the near future which is expected to produce approximately another 5.0 million tons/year, virtually doubling Cyprus Amax's production dependent on transportation over the MGA facilities.

Cyprus Amax's recent experience in the wake of the UP/SP merger points to the need to assure at the outset that adequate competitive conditions will be preserved following STB action. Prior to the UP/SP merger, Cyprus Amax could select either UP or the SP to transport coal from Utah to Long Beach, California, for export. In the merger, Burlington Northern Santa Fe Railway Company ("BNSF") was given certain trackage rights over former SP lines. Nonetheless, Cyprus Amax soon learned that UP/SP was unwilling to continue favorable shipping terms that Cyprus Amax had obtained from SP prior to the

merger, and that BNSF was either not able or willing to replicate the favorable terms that Cyprus Amax lost following the UP/SP merger.

Cyprus Amax has brought the matter of these UP/SP service problems to the attention of the STB through various filings, and has requested relief in the form of additional access by the BNSF that could bring about more equal competition between UP/SP and BNSF for Cyprus Amax's export business. To date, however, the STB has declined to provide any post-merger relief to Cyprus Amax.

Cyprus Amax is concerned that without appropriate STB oversight prior to the planned NS-CSX division of Conrail properties, the business of all coal shippers on the MGA will be adversely affected by the failure of NS and CSX to finalize a fair and workable equal access operating agreement. It is imperative that steps be taken before the NS-CSX plan is approved to enforce the principle that CSX will have fully equal access, on an operational basis, to the access that NS will have as the operator of the MGA facilities.

Cyprus Amax believes, therefore, that it is critical that careful attention be paid to assuring equal terms for access by NS and CSX to the Emerald Mine, and other mines on the MGA facilities, before any division of Conrail facilities is granted. Cyprus Amax's experience in the UP/SP cases shows that the STB is reluctant to delve into details of operating arrangements once the broad outline of a change in control over facilities has been approved.

To avoid an anti-competitive result in the order on the NS and CSX plan to divide the Conrail properties, the STB should provide for the following in regards to the ownership

and operation of the MGA facilities. These protections will permit CSX to be a fully equal competitor to NS for the transportation of coal captive to the MGA line.

1. Crew hiring. Crews must be trained and authorized to operate over the MGA facilities, particularly given the single-track nature of most of the route and the high degree of utilization. If CSX must furnish new crews to this service, it will face a long delay in training and obtaining authorization from NS to operate its trains. To remedy this impediment to competition, CSX should be permitted to hire half of the existing Conrail MGA crews.
2. Computer tie-in for dispatch. Absent a direct tie-in to NS computer, CSX will be at NS' mercy in planning movement of its trains over the MGA facilities. Superior service would be rendered by NS merely by virtue of its preferential access to dispatch data. This clearly would undermine the equality of operational terms between the two railroads, and can be avoided with a tie-in by CSX to NS' dispatch computer operations solely for the purpose of dispatching over the MGA facilities.
3. Discussion in scheduling. Similar to the dispatch function, it is critical that CSX be on an equal footing in coordinating the scheduling of trains over the MGA facilities. As mine operations shifts, customer requirements change, operating conditions change, each railroad should have an equal opportunity to schedule its trains to and from mines. Without direction on this issue, NS will again have preferential access to information, permitting it to offer superior service to that of CSX.
4. Car swapping. It is helpful to mine operators to be able to shift trains from one customer to another if the quality of the coal loaded does not meet the

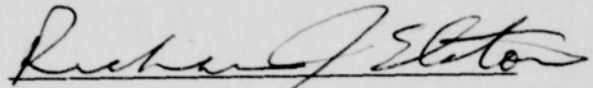
requirements of the intended first customer. NS has indicated that it is not willing to do so, which would make this aspect of service unequal between CSX and NS.

For all the foregoing reasons, and for the reasons given in the Comments which accompany this Verified Statement, Cyprus Amax fully supports the Petition and Comments of CONSOL, Inc.; requests that the STB consider these and CONSOL's comments in deciding the equal access issues presented by the NS and CSX plan; and grant carefully drawn specific conditions upon the MGA as recommended by CONSOL and Cyprus Amax.

VERIFICATION

I, Richard J. Elston, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

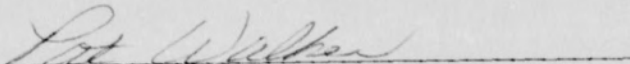
Executed this 27th day of April, 1998.



Richard J. Elston

County of Arapahoe

My Commission Expires November 29, 1998


Pat Walker

CERTIFICATE OF SERVICE

I certify that I have this day served copies of the "Petition to Intervene and Comments of Cyprus Amax Coal Sales Corporation" upon all parties of record in this proceeding, by first class mail, postage pre-paid.

Amin H. Rana

Dated: April 28, 1998

STB

FD-33388

4-21-98

I

ID-187213

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

ATTORNEYS AND COUNSELORS AT LAW

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April 21, 1998

Via Hand DeliveryHonorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001Re: STB Finance Docket No. 33388, *CSX Corporation, et al., Norfolk Southern Corporation, et al.—Control And Operating Leases/Agreements—Conrail Inc., et al.*

Dear Secretary Williams:

On October 21, 1997, the Institute of Scrap Recycling Industries, Inc. ("ISRI") filed Comments and Requests for Conditions (ISRI-6) in the above-referenced proceeding. ISRI sought the following five general categories of conditions: (1) Implementation Conditions; (2) Continuing Oversight Conditions; (3) Post-Implementation Conditions; (4) Broad-based Conditions; and (5) ISRI Member Conditions.

Several of ISRI's conditions closely parallel conditions that had been requested by The National Industrial Transportation League ("the League"). The League subsequently entered into a partial settlement agreement with the Applicants. In March, ISRI's Board of Directors voted to sign onto the settlement agreement between Applicants and the League. As a result, ISRI hereby withdraws its requests for conditions in Categories 1, 2, and 4, as identified above. ISRI continues to seek the conditions requested in Categories 3 and 5.

An original plus 25 copies of this document have been filed with the Board and all parties of record in this proceeding have been served. Please contact the undersigned with any questions.

ENTERED
Office of the Secretary

APR 21 1998

Part of
Public Record

Respectfully submitted,

John K. Maser III

Jeffrey O. Moreno

Attorneys for Institute of Scrap
Recycling Industries, Inc.cc: All Parties of Record
3310/070

STB

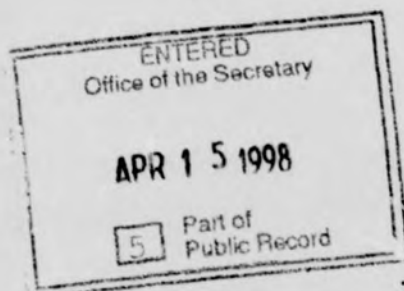
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RETR-10

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

MOTION OF
PAUL J. ENGELHART, WILLIAM J. FITZPATRICK,
H. C. KOHOUT, THOMAS F. MEEHAN, JR.,
LAWRENCE CIRILLO, CHARLES D. NESTER,
JACQUELINE A. MACE, DONALD E. KRAFT
AND ROBERT E. GRAHAM, FORMER EMPLOYEES OF
CONSOLIDATED RAIL CORPORATION ("RETIREEES")
FOR LEAVE TO FILE LATE
NOTICE TO PARTICIPATE IN THE ORAL ARGUMENT

HARRY C. BARBIN, ESQUIRE, attorney for the Former Employees of Consolidated Rail Corporation ("Retirees"), hereby moves the Surface Transportation Board for permission to serve late his request to participate in the Oral Argument to be held on June 4, 1998, and in support assert as follows:

1. The Former Employees ("Retirees") filed their Notice of Intent to Participate in Proceeding in the above-captioned matter with the Surface Transportation Board on August 5, 1997.

2. On August 5, 1997, the Retirees filed their Notice of Intent to Participate in the proceeding as Parties of Record.

3. On October 20, 1997, the Retirees filed their Comments, Protests and Request for Conditions.

4. On February 19, 1998, the Retirees filed their Brief in Support of comments, Protests and Request for Conditions.

5. Decision No. 70 of the Board requires that all Parties of Record who wish to participate in the Oral Argument submit their request no later than April 10, 1998.

6. The attorney for the Retirees either did not receive the mailed copy of Decision No. 70 from the Secretary's Office or it was misplaced in his office. When he realized that other parties were filing Notices to Participate in the Oral Argument, he called the Office of the Secretary on April 9, 1998 to request a copy of Decision No. 70 and he was advised by a staff person that such a request must be in writing.

7. On April 9, 1998, the Retirees' attorney sent a letter, via fax, to the Office of the Secretary requesting a copy of Decision No. 70. On April 13, 1998, the Retirees' attorney, after not yet receiving the response from the Office of the Secretary, obtained a copy of Decision No. 70 from an attorney for another Party of Record in this case. Therefore, the Retirees' attorney was not aware of the requirement to file a Notice to Participate in the Oral Argument until 4:00 P.M. on April 13, 1998, when he first received a copy of Decision No. 70.

8. The attorney for the Retirees requested that he be permitted to serve the Notice of Intent to Participate in the Oral Argument pursuant to Decision No. 70, which Notice is attached to this Motion.

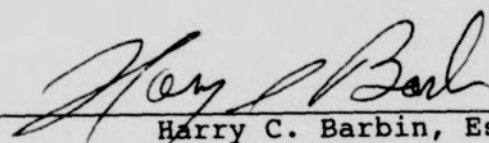
9 The late service of the Notice of Intent to Participate in Oral Argument will not unduly complicate or delay this proceeding or its procedural schedule.

10. The Retirees' Oral Argument with respect to the Supplemental Pension Plan of Consolidated Rail Corporation ("SPP") will provide very important information regarding the interest of the employees and retirees in the SPP, which will be affected by the proposed transaction, for the STB's consideration.

10. For the reasons set forth herein, the Retirees request leave to serve late their Notice of Intent to Participate in the Oral Argument.

Respectfully submitted,

BARBIN, LAUFFER & O'CONNELL

By: 
Harry C. Barbin, Esquire
PA I.D. No. 08539
608 Huntingdon Pike
Rockledge, Pennsylvania 19046
(215) 379-3015

Dated: April 14, 1998

LAW OFFICES
BARBIN, LAUFFER & O'CONNELL
(PROFESSIONAL CORPORATION)
608 HUNTINGDON PIKE
ROCKLEDGE, PENNSYLVANIA 19046-4490
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HARRY C. BARBIN
JOHN W. LAUFFER
GEORGE P. O'CONNELL
WILLIAM M. O'CONNELL, III

RETR-11

April 14, 1998

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

Re: **STB Finance Docket No. 33388**
Notice to Participate in Oral Argument

Dear Secretary Williams:

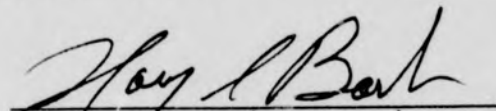
We represent certain former employees of Consolidated Rail Corporation ("Retirees") in the above-mentioned proceedings.

Pursuant to the Board's Decision No. 70, we hereby notify you of our intent to participate in the June 4, 1998 oral argument in these proceedings.

In the oral argument, we will request the Board to impose appropriate conditions to protect the Retirees' interests in the Supplemental Pension Plan of Consolidated Rail Corporation and the surplus assets of the Plan, as set forth in the Retirees' Brief in Support of Comments, Protests and Request for Conditions of the Retirees.

We request ten (10) minutes to present the oral argument by the undersigned attorney.

Respectfully submitted,



Harry C. Barbin, Esquire
Barbin, Laufer & O'Connell
PA I.D. No. 08539
608 Huntingdon Pike
Rockledge, Pennsylvania 19046
(215) 379-3015

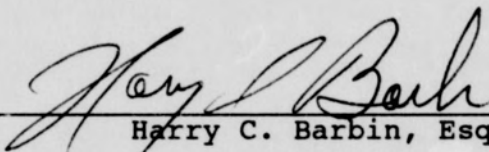
cc: The Honorable Jacob Leventhal
Service List

VIA FEDERAL EXPRESS
AIRBILL NO. 803148061191

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion for Leave to File Late Notice to Participate in the Oral Argument and Notice to Participate were served this 14th day of April, 1998, by first-class mail, postage prepaid, upon all Parties of Record in this Proceeding, and upon:

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



Harry C. Barbin, Esquire