

STB

FD-33388

4-27-00

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MOC



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

30-33388

April 27, 2000

The Honorable Frank Mascara
U.S. House of Representatives
140 Beeson Avenue
Suite 408
Uniontown, PA 15401

Dear Congressman Mascara:

Thank you for your letter forwarding correspondence from two of your constituents, D. Clark Sealy and Mark Whyel. They wrote to you regarding their problems with the Conrail acquisition transaction and the labor agreements related to that transaction.

I had heard from Mr. Whyel earlier, and replied directly to him. I have enclosed a copy of my response to Mr. Whyel, which I hope will be of help to you in addressing the concerns of both of your constituents.

I appreciate your interest in this matter. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Linda J. Morgan

Linda J. Morgan

Enclosure



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

Mr. Mark Whyel
441 Twin Hills Road
Grindstone, PA 15442

April 26, 2000

Dear Mr. Whyel:

This responds to your letter of February 19, 2000, regarding the effect of certain implementing agreements and arbitration decisions, reached in connection with the implementation of the Conrail transaction approved by the Board in Finance Docket No. 33388, upon your prior rights seniority as an employee of Conrail and before that of the Monongahela Railway (MGA). Specifically, you ask what the effect of Article I, Section 3 of the New York Dock conditions is upon your MGA prior rights seniority, which was agreed to in connection with implementing an ICC approved merger of MGA into Conrail. You also refer to a letter from me to Mr. George Donahue dated February 6, 1999. I assume your reference is to Mr. Donahue's letter to me dated February 6, enclosed with your letter, to which I responded on March 16, 1999. A copy of my March 16, 1999 letter to Mr. Donahue is enclosed.

As in the case of my correspondence with Mr. Donahue, I am in no position to comment upon the effect of Article I, Section 3 upon voluntarily negotiated implementing agreements or unappealed arbitral decisions involving implementation of Board approved transactions. However, I would call to your attention that the Supreme Court's decision in Norfolk & W. Ry. v. American Train Dispatchers, 499 U.S. 117 (1991)—holding that prior collective bargaining agreements can be superceded to the extent necessary to carry out a Board-approved transaction—involved collectively bargained protections for employees involved in prior merger proceedings (in the embraced case of CSX and the Brotherhood of Railway Carmen, the so-called "Orange Book" agreement). Moreover, there is no reason that an arbitrator is compelled to reach precisely the same accommodation of interests that is negotiated by other parties. But, in the absence of issues specifically framed by pursuit of the arbitration process and an appeal to the Board, neither I nor the Board is in a position to be of further assistance.

I am having your letter and a copy of this response made a part of the public docket for the Conrail acquisition proceeding.

Sincerely,

Linda J. Morgan

Enclosure



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

March 16, 1999

Mr. George Donahue
258 Pennsylvania Blvd.
Pittsburgh, PA 15228

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

Dear Mr. Donahue:

This responds to your letter of February 6, 1999.

I am puzzled as to your continuing insistence that you have been deprived of the opportunity to be a part of the implementing process in connection with the NS/CSX/Conrail transaction. Your letters to me appear to reflect that you and the other employees listed in the attachments to your letters have been very much involved in the implementation process.

I understand that there are certain elements of the process and of the implementing agreement with which you do not agree. However, as I have pointed out to you before, the way in which you may appropriately bring these to the Board's attention is by submission of them to arbitration if they cannot be resolved voluntarily among you, your elected union representatives, and the railroads involved.

Contrary to your understanding, any dispute or controversy with respect to the interpretation, application or enforcement of our labor protective conditions is required to be submitted to arbitration. The exception for section 4 to which you refer addresses simply the initial arbitration process for arriving at a negotiated agreement. Here there is such an agreement and, accordingly, that exception is inapplicable.

In your prior letter you called attention to the fact that certain provisions in the implementing agreement about which you are concerned are not as favorable as comparable provisions in other negotiated implementing agreements that have been approved by the Board or its predecessor the Interstate Commerce Commission. Negotiated implementing agreements in other proceedings do not establish a minimum for protection under our conditions. Our approval only establishes that such agreements meet or exceed the minimum requirements of the conditions. The point of negotiating agreements is to obtain protection superior to that which is

mandated as a minimum in our conditions. If such negotiated agreements were then accepted as the minimum protection that is acceptable, it would eliminate all incentive to negotiate.

Please understand that I am not unsympathetic to your concerns and those of your fellow employees. However, I am firmly convinced that they will be best served by following the well-settled process for resolving such concerns.

As with your other letters, a copy of this letter will be made a part of the docket in the proceeding. Also I reiterate the offer contained in my letter of January 12, 1999, to provide assistance in pursuing your arbitral remedies, should you desire to do so, through our Office of Congressional and Public Services. That office may be reached at (202) 565-1592.

Sincerely,

Linda J. Morgan
Linda Morgan

FRANK MASCARA
20TH DISTRICT, PENNSYLVANIA

314 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4665
<http://www.house.gov/mascara>

TRANSPORTATION AND
INFRASTRUCTURE COMMITTEE

BANKING AND FINANCIAL
SERVICES COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515-3820

In Reply: 140 North Beeson Avenue, Suite 408
Uniontown, PA. 15401

FILE IN DOCKET

March 31, 2000

Linda Morgan, Chairman
Surface Transportation Board
1925 K Street NW
Washington DC 20423

**RE: D. Clark Sealy/Mark Whyel
Letter of Inquiry**

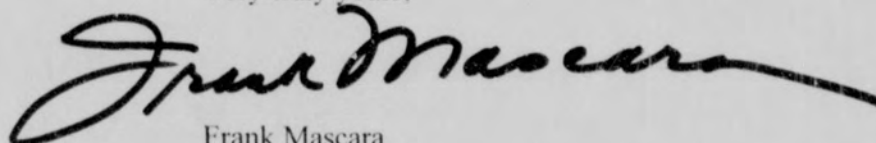
Dear Ms. Morgan:

I write to you today on behalf of the above referred constituent, D. Clark Sealy and Mark Whyel. Recently they contacted my office in Uniontown where they advised me they had forwarded a letter to you in February of this year in which they shared their concerns about a significant problem they are experiencing with the Conrail Labor Contract.

To better address this inquiry, I have enclosed a copy of the original letter. Might I please ask for you to review this letter for me and then to respond to my office at your earliest convenience. I hope that their concerns may be readily addressed.

Once again and on behalf of my constituents, I appreciate your thoughtful consideration with this letter of inquiry. I look forward to hearing from you. I remain,

Very truly yours,



Frank Mascara
Member of Congress

FM:cb

DISTRICT OFFICES

(800) 213-5570

Greene Co. Ofc. Bldg.
93 E. High St. Rm. 303
Waynesburg, PA 15370
(724) 852-2182

Suite 408
140 North Beeson Avenue
Uniontown, PA 15401
(724) 437-5078

Professional Plaza
Suite 210
625 Lincoln Avenue
North Charleroi, PA 15022
(724) 483-9016

96 North Main Street
Washington, PA 15301
(724) 226-4326

Greensburg City Hall
416 South Main Street
Greensburg, PA 15601
(724) 834-6441

Congress of the United States

House of Representatives

Washington, DC 20515-3820

LETTER OF AUTHORIZATION

I HEREBY AUTHORIZE THE OFFICE OF CONGRESSMAN FRANK MASCARA TO INVESTIGATE MY LETTER TO MS LINDA MORGAN OF THE SURFACE IN ANY MANNER NECESSARY TO CONCLUDE SAID INQUIRY. TRANSPORTATION BOARD

SIGNED: D Clark Sealy Mark Whyel

(PLEASE PRINT)

DATE MARCH 28, 2000

NAME D CLARK SEALY AND MARK WHYEL

ADDRESS 113 SIXTH AVENUE TWIN HILLS ROAD
BROWNSVILLE, PA 15417-1930 GRINDSTONE, PA 15442
SEALY WHYEL (BOTH)

PHONE 724-785-5039 724-246-0898 (HOME) 724-852-5100 (WORK)
SEALY WHYEL

SOCIAL SECURITY # 179 - 52 - 4083 SS # 197-38-2503
SEALY WHYEL

DATE OF BIRTH 5-5-59 12-11-52
SEALY WHYEL

* IF VETERAN CLAIM, PLEASE STATE NATIONAL SERVICE ORGANIZATION, FILE NUMBER, AND BRANCH OF SERVICE —

* IF MILITARY, PLEASE STATE BRANCH AND RANK —

* IF THIS INQUIRY IS FOR OTHER THAN SIGNER, PLEASE INCLUDE THE FOLLOWING:

YOUR NAME _____ RELATIONSHIP _____
ADDRESS _____
PHONE # _____

PLEASE SEND COMPLETED AUTHORIZATION TO: **CONGRESSMAN FRANK MASCARA
140 NORTH BEESON AVENUE, SUITE #408
UNIONTOWN, PA. 15401**

February 19, 2000

Linda Morgan
Chairman
Surface Transportation Board

Dear Chairman Morgan:

I am writing in regard to the issue of the Conrail Labor Contract, specifically the letter dated February 6, 1999 to Mr. George J. Donahue, a copy of which is attached. I would like a clarification of New York Dock Article I Section 3. As a former employee of Conrail, I am particularly interested in Section 3 which states, "Nothing in this Appendix shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employee may have under existing job security or other protective conditions or arrangements."

In 1992, as an employee of the Monongahela Railway, we were merged into Consolidated Rail Corporation, I.C.C. Finance Docket No. 31875 (Decision dated October 4, 1991). To compensate and protect employees affected by the merger, the I.C.C. imposed the employee merger protection conditions set forth in New York Dock Railway-Control-Brooklyn Eastern Terminal, 360 I.C.C. 60,84-90 (1979); affirmed, New York Dock Railway v. United States (New York Dock Conditions") on the Conrail and the MGA pursuant to the relevant enabling statute. 49 U.S.C. 55 11343, 11347. We were given prior rights seniority on all jobs we had worked under the former MGA.

It is ironic that now these prior rights have been given away by an agreement between the Brotherhood of Locomotive Engineers (BLE) and Norfolk Southern Corporation (NSR). This goes directly against Article I Section 3 of the New York Dock Agreement.

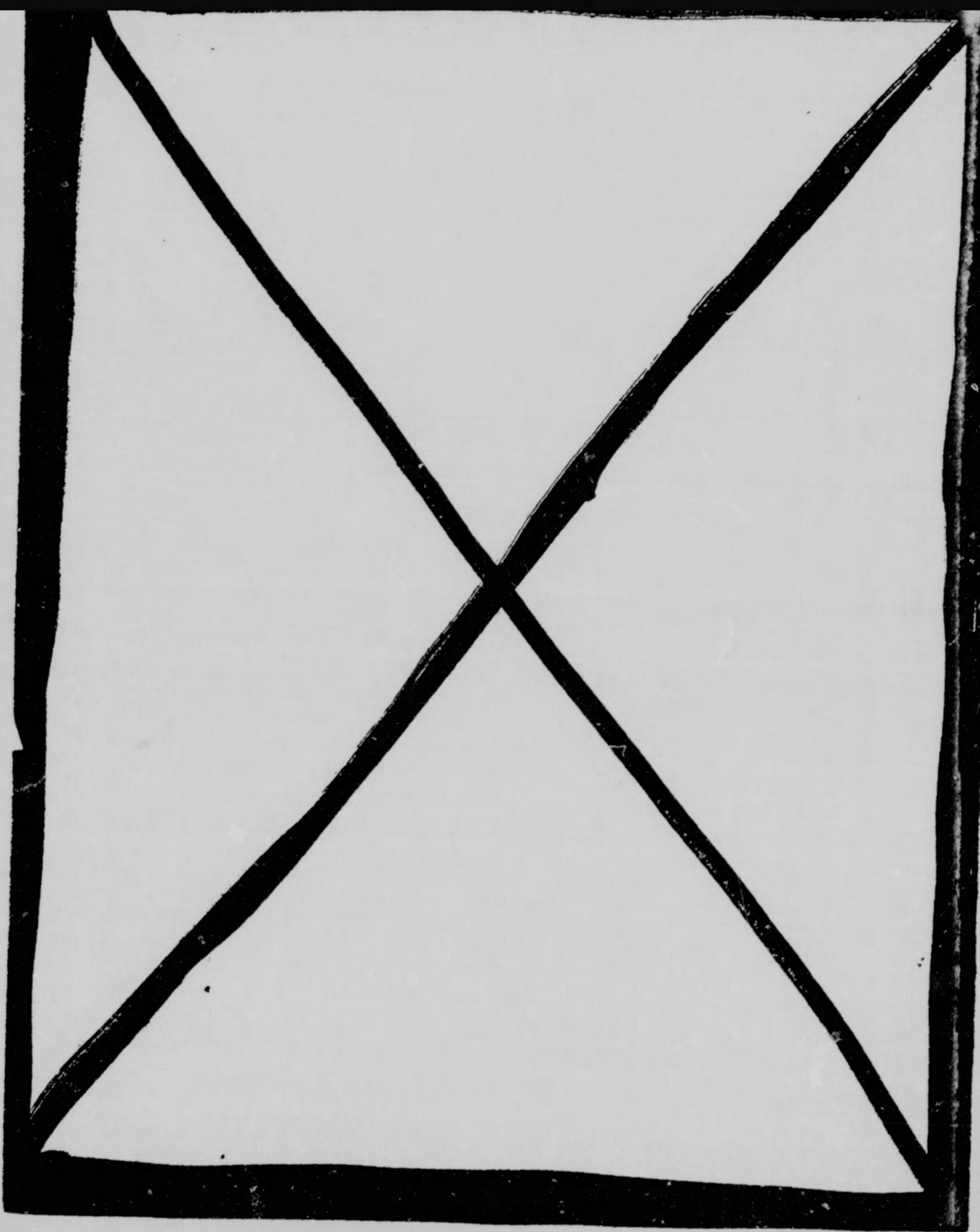
A further irony is that the BLE was rebuffed in their attempt to take away prior rights from engineers employed by CSX Corporation. In the matter involving CSX Transportation, Inc., and Consolidated Rail Corporation vs. the Brotherhood of Locomotive Engineers, Arbitrator Richard R. Kasher ruled against the BLE. Finance Docket No. 33388, April 2, 1999). In one instance, the BLE is denied in their bid to take away prior rights, but between the BLE and NSR, our prior rights were allowed to be given away.

In conclusion, a double standard seems to have been applied with regard to protections afforded by the New York Dock Agreement. Whereas, we were

granted prior rights by the I.C.C. in 1992, we had them taken away by a carrier and a union in 1998. While our prior rights have be summarily dismissed on Norfolk Southern, the first five pages of the implementing agreement on CSX Corporation deals entirely with the matter of prior rights. (a copy of which is attached)

Any input or clarification of the transaction from your office would be greatly appreciated.

Sincerely,
Mark Whyel
Locomotive Engineer
Norfolk Southern Corporation
Waynesburg Terminal



STB

FD-33388

8-6-98

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ID-MOCH



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

FD-33388

August 6, 1998

The Honorable Marcy Kaptur
U.S. House of Representatives
Washington, D.C. 20515

Dear Congresswoman Kaptur:

Thank you for your letter enclosing correspondence from the Toledo Metropolitan Area Council of Governments regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding is docketed at the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

As you know, the Board recently conducted an extensive oral argument on the proposed transaction, hearing from more than 70 witnesses over the course of the 2-day argument held on June 3 and 4, 1998. Following oral argument, the Board held an open voting conference on June 8, 1998, at which we voted to approve the proposed transaction, subject to a number of conditions. The Board's final written decision implementing the vote at the voting conference was issued on July 23, 1998.

In voting for approval, the Board found that the transaction, as augmented by numerous settlement agreements among the parties and as further conditioned, would inject competition into the eastern United States in an unprecedented manner. The conditions adopted by the Board, while significant, recognize the operational and competitive integrity of the overall proposal and the importance of promoting and preserving privately-negotiated agreements. In particular, the Board's conditions include 5 years of oversight, along with substantial operational monitoring and reporting to ensure that the transaction is successfully implemented; mitigation of potential adverse impacts on the environment and on safety; recognition of employee interests, including a reaffirmation of the negotiation and arbitration process as the proper way to resolve important issues relating to employee rights; and several conditions that address the vital role of smaller railroads and regional concerns about competition.

With regard to your specific concerns, the Board voted to impose several conditions to mitigate harm to the Wheeling and Lake Erie Railway from the proposed transaction. I have enclosed copies of the Board's press releases describing the results of the voting conference and the issuance of the Board's final written decision. Your name appears on the service list for this proceeding, and your office should have received a copy of that decision.

I appreciate your interest in this matter, and will have your letter, all attachments, and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Linda J. Morgan
Linda J. Morgan

Enclosures

MARCY KAPTUR
MEMBER
9TH DISTRICT, OHIO

COMMITTEES:
APPROPRIATIONS
SUBCOMMITTEES
RURAL DEVELOPMENT,
AGRICULTURE, AND RELATED AGENCIES
LEGISLATIVE BRANCH
VA, HUD, AND INDEPENDENT AGENCIES



WASHINGTON OFFICE
2311 RAYBURN BUILDING
WASHINGTON, DC 20515-3509
(202) 225-4146

DISTRICT OFFICE
FEDERAL BUILDING
234 SUMMIT ST., ROOM 719
TOLEDO, OH 43604
(419) 259-7500

Congress of the United States
House of Representatives
Washington, DC 20515-3509

FILE IN DOCKET

July 14, 1998

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

RECEIVED
SURFACE TRANSPORTATION
BOARD
JUL 20 1 57 PM '98
OFFICE OF
CHAIRMAN HORGAN

Re: Finance Docket No. 33388
(Sub No. 80) CSX Corporation
and CSX Transportation, Inc.

Dear Mr. Williams:

I am writing to ask for your special attention to the request of the Toledo Metropolitan Area Council of Governments (TMACOG) and the Toledo business community for a more complete explanation of the Surface Transportation Board's decision allowing the Wheeling & Lake Erie Railway access to Toledo, Ohio. I feel it is incumbent on the STB to providing for continued and effective rail competition in the Toledo area and your decision regarding the W&LE is an important step in that direction. However, further clarification of the Board's specific recommendations is required.

Enclosed is a copy of a letter addressed to you from TMACOG. I understand that other governmental and non-governmental entities in the Toledo area have or will write expressing similar concerns. I, again, ask for the Board's serious consideration of these requests.

Thank you for your time and attention to this matter.

Sincerely,

Marcy Kaptur
Member of Congress



300 Central Union Plaza
Toledo, OH 43602

July 8, 1998

P.O. Box 9508
Toledo, OH
43697-9508
419-241-9155
Fax 419-241-9116

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

RE: Finance Docket No. 33388 (Sub.No. 80), 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

Chair:

Stephen J. Pauken
Mayor
City of Maumee

Vice-Chair:

James F. Carter
Commissioner
Wood County

2nd Vice-Chair:

Kathleen M. Steingraber
Trustee
Lake Township

Executive Director:

William L. Knight

Dear Secretary Williams:

As local governmental entities and entities with major rail-served facilities in Toledo, Ohio, we have noted with great interest and approval the Board's recent vote to require that, as a condition to the Board's approval of the proposed Conrail transaction, Applicants provide the Wheeling & Lake Erie Railway with access to Toledo, Ohio. We understand that the Board's written decision, due to be issued by July 23, 1998, will provide additional details regarding this important condition which had been recommended by the Board's staff. We are eager to begin working with the W&LE. However, we are concerned that unless the Board clearly articulates the intended scope and operation of the condition, the Applicants, acting in their own self interest, may seek to implement the condition in ways that could seriously undermine its effectiveness.

Specifically, we respectfully request that the Board in its written decision, make clear:

1. That W&LE will have direct access to the Port of Toledo and all industries in the Toledo Switching District open to NS and CSXT with haulage and underlying trackage rights. We believe that such a provision is necessary to protect against Applicants providing non-competitive switching service on W&LE traffic and thereby decreasing the traffic density needed by W&LE to sustain viable trackage rights operations. In the event that the Board denies direct access, please clarify that W&LE haulage with underlying trackage rights will include the right to receive reciprocal switching within the Toledo switching district at the agreed switch charge applicable for Applicants in this merger or (\$250/car).

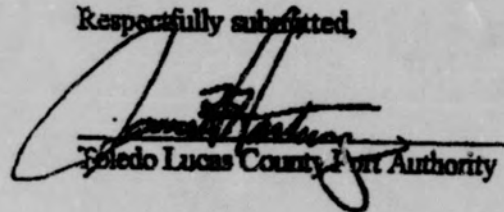


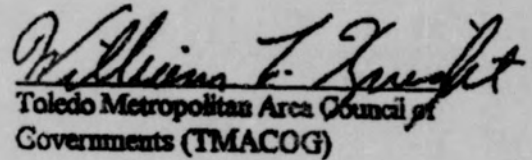
Mr. Vernon A. Williams
July 8, 1998
Page 2

- 2. That the lines and terminals to be used by W&LE in implementing trackage rights under this condition be acceptable to W&LE and not simply those unilaterally selected by Applicants. We believe that Applicants should not have the ability to restrict W&LE's access to Toledo to lines and terminals that are operationally inadequate for W&LE to provide competitive service.

We request that the Board provide clear and specific guidelines to assist the parties in negotiating an acceptable arrangement and that the Board retain jurisdiction to decide unresolved issues on an expedited basis, should that be necessary.

Respectfully submitted,


James Hartman
Toledo Lucas County Port Authority


William F. Zuehlke
Toledo Metropolitan Area Council of Governments (TMACOG)

STB

FD-33388

7-30-98

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Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

FD-33388

July 30, 1998

The Honorable Bill Goodling
U.S. House of Representatives
2020 Yale Avenue
Camp Hill, PA 17011

Dear Congressman Goodling:

This responds to your letter enclosing correspondence from Bethanne Upperman, the wife of a Conrail employee, who is concerned that Norfolk Southern Corporation and Norfolk Southern Railway Company (NS) will be closing the Enola Diesel Yard and will be building a new shop in Conway, PA. Ms. Upperman states that everyone who presently works at the Enola Diesel Yard will have to move to Conway, Beaver County, in order to keep working for the railroad. She requests your help to keep the Enola Diesel Yard from closing.

NS and CSX Corporation and CSX Transportation, Inc. (CSX) described in their joint Operating Plan filed with the Surface Transportation Board (Board) on June 23, 1997, the efficiencies that would derive from the acquisition of control of Conrail Inc., and Consolidated Rail Corporation (Conrail). In the Operating Plan, NS summarized the more important initiatives concerning operating efficiencies. Concerning locomotive and car repair facilities coordination, NS stated that, in addition to improving efficiency and fully utilizing the facilities of Conrail and NS in the Altoona/Hollidaysburg, PA and Roanoke, VA areas, it also intends to implement a "home shop" program for its 92-day locomotive inspection procedures, in which all locomotives will be assigned to a particular maintenance base. In conjunction with this initiative, NS stated that it will invest \$30 million in a locomotive shop for running repair inspections at a point to be determined between Enola Yard, PA, and Conway Yard, PA (including those end points).

With respect to Ms. Upperman's concerns, yard consolidations normally are not subject to prior approval of the Board. Actions such as these are considered to be internal management decisions. Nonetheless, if this change results from NS' and CSX's acquisition of control of Conrail, which the Board approved in STB Finance Docket No. 33388, any adversely affected employees are protected by the labor protective conditions of New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (New York Dock).

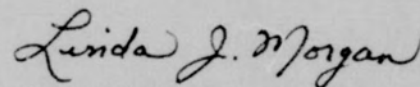
One of the New York Dock requirements is that, before the merger can be consummated, management and representatives of rail labor must establish an implementing agreement. If NS proposes to close its Enola Diesel Yard and this action is found to result from the merger, the railroad must negotiate an implementing agreement with representatives of affected workers to

The Honorable Bill Goodling

address the adverse effects on the workers. If the railroad and the workers fail to negotiate an agreement, an arbitrator will impose one. If the railroad claims that the relocation of the employees does not result from the merger, the affected employees may obtain arbitration of that issue. The Board's regulations provide a process of limited appeal from the arbitrator's decision. New York Dock also provides specific protections for employees who are adversely affected by the merger.

I will have your letter and my response placed in the formal docket of the Conrail acquisition proceeding. I appreciate your interest in this matter, and if I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

BILL GOODLING
19TH DISTRICT, PENNSYLVANIA

CHAIRMAN:
COMMITTEE ON EDUCATION AND
THE WORKFORCE

COMMITTEE ON
INTERNATIONAL RELATIONS

TOLL FREE DISTRICT NUMBER:
800-632-1811
<http://www.house.gov/goodling/>



Congress of the United States
House of Representatives
Washington, DC 20515-3819

June 26, 1998

ROOM 2263
RAYBURN HOUSE OFFICE BUILDING
TELEPHONE: (202) 225-5836
FILE IN DOCKET

DISTRICT OFFICES:
FEDERAL BUILDING
200 SOUTH GEORGE STREET
YORK, PA 17405-9999
CHAMBER BUILDING
212 NORTH HANOVER STREET
CARLISLE, PA 17013-2423
140 BALTIMORE STREET
ROOM 301
GETTYSBURG, PA 17325-2311
2020 YALE AVENUE
CAMP HILL, PA 17011-5456
44 FREDERICK STREET
HANOVER, PA 17331-3588

RECEIVED
SURFACE TRANSPORTATION
OFFICE OF
CHAIRMAN MORGAN
JUN 29 4 09 PM '98

Mr. Daniel King
Office Of Congressional & Public Services
Surface Transportation Board
1925 K St, NW
Room 843
Washington, D.C. 20423

Dear Mr. King:

The attached communication sent to me by Bethanne Upperman has been respectfully referred to you for your review, consideration, and comment.

I ask that you kindly return the enclosed correspondence to Peddrick Young of my staff.

Please mail response to:
Congressman Bill Goodling
2020 Yale Avenue
Camp Hill, PA 17011

If you have any questions, concerning this inquiry, please contact Peddrick Young at 717-782-4526.

Thank you in advance for your assistance.

Sincerely,

Bill
BILL GOODLING
Member of Congress

WFG/py

STB.

MAY 12 1998

May 10, 1998

Representative William F. Goodling
2020 Yale Ave.
Camp Hill, Pa.

Re: Closing of Conrail Enola Diesel Yard

Dear Mr. Goodling,

I am a very upset and concerned Conrail employees wife. On April 30, 1998, a Norfolk Southern executive came to the Conrail Enola Yard, and informed the employees there, that as of 2 years from this August, (August 2000), they will be closing the Enola Diesel Shop and everyone will have to move to Conway, Pa., in Beaver County, in order to keep working for the Railroad.

Many of us are confused about Norfolk Southern's business decision to close Enola, and displace approximately 250 families from a shop that is #1 on Conrail, and spend almost, if not more than 35 million dollars on building a new shop in Conway.

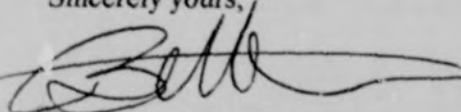
My concern is the fact that most of us do not want to move out of the Harrisburg area, all of our families are here. My 10year old son's father lives here and I do not want to move him from his father, they are very close. I am sure that there are other families in the same situation.

It is my understanding that a lot of the employees have over 20 years on the railroad, if not more, and will almost have to move with the company because they are at an age where it would be difficult to secure another job. Therefore, the Harrisburg area economy will be greatly affected by this closure, and maybe all of Pennsylvania, because Conway is very close to Ohio and West Virginia.

I hope that with these concerns, and the concerns of others, that somehow you will be able to help keep the Enola Diesel Yard from closing, and help alot of people stay in the Harrisburg area that is being modernized all the time.

Thank you for all your concern and support in this matter.

Sincerely yours,



Bethanne Upperman
4 Mayfair Ct.
Camp Hill, Pa. 17011

STB

FD-33388

7-22-98

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ID-MOCH



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

FD-33388

July 22, 1998

The Honorable Dennis J. Kucinich
U.S. House of Representatives
1730 Longworth House Office Building
Washington, D.C. 20515

Re: Finance Docket No. 33388: CSX and Norfolk Southern -- Control and
Acquisition -- Conrail

Dear Congressman Kucinich:

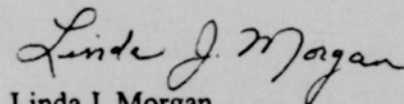
Thank you for your letter dated July 13, 1998, expressing your concerns about the Conrail Acquisition-related noise impacts on the City of Brooklyn, Ohio.

On June 8, 1998, the Surface Transportation Board (Board) voted to approve the Conrail Acquisition. As a condition of that approval, the Board voted to impose a number of environmental conditions addressing adverse environmental impacts resulting from acquisition-related train traffic increases. In voting to adopt the Section of Environmental Analysis' (SEA) recommendations in the Final Environmental Impact Statement (EIS), the Board is requiring CSX to implement certain measures addressing increased movement of hazardous materials along the Short Line which goes through Brooklyn. Those conditions also require NS to implement certain hazardous material and noise mitigation measures along its rail line between Cloggsville and CP-190 (which also includes Brooklyn). However, they do not include any noise abatement requirements for CSX along the Short Line segment between Marcy and Short, because that segment did not meet SEA's mitigation threshold for a noise increase of 5 decibels or more.

In your letter, you forwarded to us the Parsons Brinckerhoff (PB) noise study, which concludes that, based on its methodology, the potential increase in noise in the Brooklyn area would be greater than 5 decibels. We believe that SEA's noise analysis, which is thoroughly explained in the Final EIS, used accepted industry standards and techniques and is appropriate. We stated in the June 8th vote that we would only consider clarifications of the environmental conditions prior to issuing our written decision on July 23, 1998, and that any requests for modifications to the conditions we impose in our final decision would be considered only on administrative appeal. As you know, such a petition would need to be filed with the Secretary within 20 days of the service date of that decision. Accordingly, if you would like your filing to be considered as a petition for reconsideration, please certify to Secretary Vernon Williams that it has been served on all the parties of record.

If you have additional questions concerning the environmental review process, please call me, or contact Elaine K. Kaiser, SEA's Environmental Project Director, or Mike Dalton, SEA's Project Manager for the Conrail Acquisition, at (202) 565-1530.

Sincerely,


Linda J. Morgan

DENNIS J. KUCINICH

11TH DISTRICT, OHIO

1730 LONGWORTH OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225 - 5871

14400 DETROIT AVENUE
LAKEWOOD, OHIO 44107
(216) 228-8850
(216) 228-6465 FAX

59R3 W 54TH
PARMA, OHIO 44129
(216) 245-2707



Committees:
Government Oversight
Education and Labor

Congress of the United States
House of Representatives

FILE IN DOCKET

July 13, 1998

Ms. Linda J. Morgan
Chairman
Surface Transportation Board
1925 K St. NW #820
Washington, D.C. 20423

RECEIVED
SURFACE TRANSPORTATION
BOARD
JUL 15 11 55 AM '98
OFFICE OF
CHAIRMAN MORGAN

Re: Finance Control Docket No. 33388

Dear Ms. Morgan:

Enclosed are the findings of Parsons Brinckerhoff, an engineering firm hired by the City of Brooklyn, Ohio, to do a noise analysis of the Marcy to Short rail line segment that traverses that city. The findings of this study show that the noise projected after the transaction-related increase in the number of trains will meet the STB-imposed criteria for mitigation.

The STB will impose noise mitigation where the post-acquisition noise levels would be higher than 70 dBA L_{dn} and where the transaction-related increase will be higher than 5 dBA L_{dn} . According to the STB's analysis in the FEIS, the transaction-related increase falls just short of the 5 dBA threshold at 4.3. According to the Parsons Brinckerhoff study, both criteria are met.

The STB, in its FEIS, "recognized the unique characteristics of the Greater Cleveland Area and the challenges of analyzing the environmental effects of the proposed Conrail Acquisition." (FEIS Vol. 2, p. 4-111.) Among the factors that make the Greater Cleveland Area unique are the "high population density of communities along some high-traffic rail corridors through Cleveland and East Cleveland." (FEIS Vol. 2, p. 4-112.) Because the Idlewood Drive section of Brooklyn is a densely concentrated population center along the more sparsely populated Marcy to Short rail line segment, the effects to the residents of Idlewood may have been overlooked in the STB study. Specifically, because the STB study analyzed for the entire Marcy to Short line, the results for the Idlewood Drive neighborhood may have been underestimated. The Parsons Brinckerhoff study took into consideration the unique population density of the Idlewood Drive neighborhood as a population center on a sparsely populated track.



Please review the information in the Parsons Brinckerhoff study. I believe that this is relevant to adequate and appropriate mitigation for the residents of the Idlewood Drive neighborhood of Brooklyn, Ohio.

Sincerely,

Dennis J. Kucinich

Dennis J. Kucinich
Member of Congress

DJK:mg

*I would appreciate
a timely response.
Thank you -*

City of Brooklyn, Ohio
Noise Impacts Relating to the Conrail Acquisition
Analysis and Recommendations
June 8, 1998

Background Information

In general, operational noise from a rail system is a function of distance from the noise receptor to the tracks. The type of intervening terrain; whether or not there are natural or constructed noise barriers; and noise from existing local sources is also important. Other factors include vehicle speed, type of track support structure (e.g., aerial structure), and the number of trains operating on the system. Noise exposure from operations depends on noise levels resulting from individual events (trains) and the number of trains occurring in any given period of time (usually considered within 1 hour or within 24 hours).

Two railroads, Norfolk Southern (NS) and CSX, have applied to the Surface Transportation Board (STB) for the approval to acquire and split up Conrail between them. The STB has mandated that the railroads evaluate environmental impacts on adjacent communities as a result of this transaction, and mitigate the impacts. One of the most serious impacts is noise.

The CSX/NS proposal identifies the Short Line route, which runs south of Idlewood Drive in Brooklyn, as being transferred to CSX. According to the proposal, following the acquisition, the projected level of rail traffic is to increase from about 16.4 trains to about 45.8 trains daily. As a result of revisions to the plan based on negotiations with other communities, and other changes in assumptions, this future level of traffic may be closer to 44 trains.

At the request of the City of Brooklyn, PB was asked to identify existing noise levels, project future noise levels based on the CSX/NS proposal, and recommend mitigation measures if applicable for the Idlewood Drive area.

Field Measurements

A 24-hour, continuous noise monitoring was performed on June 2/3, 1998 in the rear yard of a residential property (residence no. 9603 on Idlewood Drive) adjacent to the rail corridor. The purpose was to document the existing noise levels at the backyard of a residential site, which is representative of a cluster of residences in the same row with similar acoustical characteristics. The monitored existing noise levels will be used to assess the estimated noise impacts from additional train traffic from the proposed Conrail acquisition, which will result in increases in wayside train noise from both locomotive engines and wheel/rail noise. Because no grade crossings are located nearby, train horn

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noise was not expected to be a factor. Noise impacts will be assessed by applying the criteria specified in STB and Federal Transit Authority (FTA) standards.

The noise measurements were performed using a calibrated set of Bruel & Kjaer (B&K) equipment, which consisted of a B&K Type 4426 Noise Analyzer a B&K Type 4165 microphone. The microphone and its windshield was mounted on a tripod, at ear level (at a height of approximately 5 feet), and was placed on the backyard property line, in clear line-of-sight to the tracks. A long extension cable was used to connect the outside microphone to the Noise Analyzer, which was located inside the residence. The train tracks are built on an embankment at a height of approximately 13 feet relative to the residences. The distance from the near track to the microphone was on the order of 80 feet.

The monitoring site is relatively flat except for the elevated track embankment and is landscaped. The ground surface is acoustically soft, with a well-maintained lawn. Most of the other residences in Idlewood Drive, whose backyards face the train tracks, are somewhat visually shielded from the train tracks with at least one row of trees between the track and the residences. These trees are not expected to provide any train noise reduction.

STB Requirements for Analysis

The Surface Transportation Board's Final Environmental Impact Statement, released in May 1998, specifies noise analysis methods for use in considering noise impacts. The Board rules specify that noise analysis should be performed on all rail line segments where traffic would, as a result of the proposed Conrail acquisition, increase by at least 8 trains per day or at least 100 percent as measured in annual gross ton-miles. This criteria is satisfied in Brooklyn.

The STB also specifies two types of "noise level criteria" for analysis. Although meeting this criteria does not necessarily require mitigation, it does require that the analysis be performed in cases involving:

- an increase in noise level to 65 dBA L_{dn} or greater (regardless of the incremental increases) and
- an incremental increase in noise levels of 3 dBA L_{dn} or greater.

These criteria are both met for residences on Idlewood Drive in Brooklyn.

City of Brooklyn

Results of 24-hour Noise Monitoring (9053 Idlewood Dr. - June 2-3, 1998)

Percentile Noise Levels (L-levels) and Equivalent Continuous Noise Levels (Leq-dBA)							
Time	L 1	L 5	L 10	L 50	L 90	L 95	L eq
13:00-13:30	77.8	72.3	63.3	51.3	49.3	49.00	64.1(T)
13:30-14:00	56.3	54.3	53.5	51.3	49.5	49.3	51.6
14:00-14:30	82.3	75.0	71.3	51.8	49.3	48.8	69.1(T)
14:30-15:00	58.8	55.5	54.0	50.8	48.5	48.0	51.9
15:00-15:30	56.3	53.5	52.5	50.3	48.8	48.3	50.8
15:30-16:00	59.5	57.5	56.5	50.8	48.5	48.0	52.9
16:00-16:30	78.3	69.8	65.8	53.0	50.8	50.3	65.4(T)
16:30-17:00	57.5	56.0	55.3	53.0	50.8	50.3	53.3
17:00-17:30	72.3	66.5	66.3	53.3	51.0	50.5	59.3
17:30-18:00	61.8	59.8	59.0	56.8	54.8	54.0	58.8
18:00-18:30	70.3	66.0	63.8	57.8	55.3	54.8	62.5
18:30-19:00	62.3	60.0	59.3	57.3	55.5	55.0	57.5
19:00-19:30	77.3	60.0	59.0	56.3	54.5	54.0	65.7(T)
19:30-20:00	59.8	58.0	57.3	54.8	53.0	52.5	55.1
20:00-20:30	58.5	57.0	56.3	54.5	52.8	52.5	54.6
20:30-21:00	59.3	57.5	56.8	54.5	52.8	52.5	64.9
21:00-21:30	59.5	57.8	57.0	55.0	53.3	52.8	56.3
21:30-22:00	61.3	57.0	55.5	52.8	51.0	50.5	53.8
22:00-22:30	76.3	57.8	54.0	51.3	49.5	49.0	62.9
22:30-23:00	78.3	73.0	70.0	51.8	49.8	49.3	65.7(T)
23:00-23:30	74.3	62.5	57.8	51.0	48.3	47.8	62.5
23:30-00:00	78.3	65.3	63.8	49.3	47.5	47.0	65.1(T)
00:00-00:30	53.3	51.5	50.8	48.3	46.3	46.3	48.7
00:30-01:00	72.3	56.5	50.0	47.3	46.3	46.3	57.8
01:00-01:30	82.3	50.8	49.3	46.3	46.3	46.3	57.2
01:30-02:00	77.8	71.8	66.5	46.3	46.3	46.3	64.7(T)
02:00-02:30	78.3	69.0	65.5	46.5	46.3	46.3	65.1(T)
02:30-03:00	71.3	51.8	48.5	46.3	46.3	46.3	50.1
03:00-03:30	48.8	47.3	46.5	46.3	46.3	46.3	46.2
03:30-04:00	48.3	46.5	46.3	46.3	46.3	46.3	46.1
04:00-04:30	79.3	50.5	48.5	46.3	46.3	46.3	64.4
04:30-05:00	54.8	52.3	50.5	46.3	46.3	46.3	47.8
05:00-05:30	62.3	57.3	54.8	47.0	46.3	46.3	51.9
05:30-06:00	72.8	67.8	61.3	46.3	46.3	46.3	62.2
06:00-06:30	77.3	73.3	70.8	46.3	46.3	46.3	67.1(T)
06:30-07:00	70.3	58.5	52.6	46.3	46.3	46.3	56.7
07:00-07:30	80.3	72.8	66.3	48.8	46.3	46.3	66.3(T)
07:30-08:00	71.8	67.3	63.8	46.3	46.3	46.3	59.5
08:00-08:30	70.3	62.3	55.5	46.5	46.3	46.3	57.7
08:30-09:00	76.3	67.3	60.8	46.3	46.3	46.3	67.0(T)
09:00-09:30	84.3	69.0	54.5	46.3	46.3	46.3	70.4(T)
09:30-10:00	80.3	68.5	52.5	47.0	46.3	46.3	66.0(T)
10:00-10:30	60.3	52.5	49.8	46.3	46.3	46.3	50.7
10:30-11:00	57.3	50.5	48.8	46.3	46.3	46.3	48.3
11:00-11:30	54.0	51.5	50.0	46.3	46.3	46.3	47.6
11:30-12:00	78.3	69.5	67.5	49.8	47.0	46.5	65.0(2T)
12:00-12:30	71.8	66.8	60.0	50.0	46.8	46.3	59.2(T)
12:30-13:00	82.3	70.5	59.5	51.3	49.8	49.3	72.5(T)
L dn							69

* 12 trains during the daytime (7:00 hours to 22:00 hours) and 8 trains during the nighttime (22:00 hours to 07:00 hours) contributed to the L dn noise levels. These are shown as (T) under the last column, during the time periods they occurred.

* L dn is the day-night average noise level, which is the receptor's cumulative noise exposure from all noise events over a full 24 hours, adjusted to account for the perception that a noise at night is more bothersome than the same noise during the day.

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Field Measurement Results

Results of the field measurements are shown on the previous page. The key figure is shown in the lower right hand corner, indicating that for this 24 hour period, the day-night average noise level L_{dn} is equivalent to 69 dBA. This is calculated from the L_{eq} levels identified for each half-hour period, giving added weight to the night levels. The L_{eq} levels represent average noise energy levels for each period. During this period, 17 trains passed the site, almost exactly the same number as the railroads suggest.

We project that, based on several very reasonable assumptions, the future noise levels following acquisition will be an L_{dn} of 74 to 75, which is an increase in L_{dn} of 5 to 6 over the existing L_{dn} of 69. This assumes that 44 trains are operated per 24-hour period (which could actually be higher), and that the trains travel at the same speed. CSX has indicated that speeds will in fact be similar. Lastly, it is assumed that 40 to 50 percent of the train operations will occur during the nighttime. This is the same distribution as occurred on the day of the field test. If a greater number of trains operate at night, the noise levels as measured in L_{dn} will be even higher.

Conclusion

STB considers the impacts of wayside noise to warrant mitigation if the noise level at sensitive receptor sites (homes, schools, etc.) would increase by at least 5 dBA L_{dn} and reach 70 dBA L_{dn} as a result of the proposed Conrail acquisition.

The STB analysis procedures and mitigation criteria were followed while performing noise analysis for residences on Idlewood Drive, City of Brooklyn. Our conclusion is that, based on the STB noise mitigation criteria, mitigation will be warranted for the row of houses on Idlewood Drive facing the tracks because:

- the future noise levels with Conrail acquisition would be higher than 70 dBA L_{dn} , and
- the future noise level increases would be at least 5 dBA L_{dn} , depending on the distribution of trains at night.

In addition, the STB has been criticized for using criteria that are too 'loose'; that leave many actual impacts unmitigated. For example, the most recent noise criteria, considered by many to be most applicable to rail noise, was developed by the FTA. This criteria limits an increase in L_{dn} in an area with an ambient L_{dn} of 69 (such as Idlewood) to a value of 1. This is far less than the proposed increase of 5 to 6 dB L_{dn} over the existing noise level. Therefore, mitigation is also warranted by this approach.

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No mitigation is required for the second row of homes, on the north side of Idlewood Drive, because these homes are already shielded by the first row of homes and garages. Projected noise levels at these homes is not expected to reach the STB threshold.

Mitigation

The following mitigation options are available and/or have been discussed:

1. Landscaping the backyards of affected homes in Idlewood Drive.
2. Constructing a 15 to 20 feet high earth berm to provide noise insulation and shielding for the exposed homes. The top of the berm would be approximately 8 feet above the track level.
3. A combination of berm and landscaping.
4. A 15 to 20 feet tall noise barrier located near the tracks on the railroad right-of-way, about 15 to 20 feet from the track. It is expected that this location will be free of gas pipelines, which are located farther from the track.
5. Home insulation. This consists of window insulation by providing acoustically sealed double-glazed windows on the three exposed walls of the residences, and other treatments as necessary.
6. Three to five foot high earth berm. CSX has proposed this treatment in other locations on the Short Line. However, insufficient space is available to construct this. Additionally, this treatment only reduces wheel noise, and leaves residents exposed to locomotive noise.

Option 1 will provide no substantial noise reduction. Additionally, most of the residences in the area are already landscaped. The only benefit to this option is that, psychologically, the noise is often less obvious if the source of it is not visible.

Option 2, the earth berm, is not practical because of the lack of space to construct a berm with the required, wide base for its stability. The land between the embankment and the existing gas line is not wide enough to accommodate an earth berm. Options 3 and 6 are also not feasible for the same reasons.

The most effective choice is Option #4, the construction of a noise barrier, which would effectively shield the first row of properties from the future rail noise. This wall must rise about 8 feet above the level of the tracks, making the total height likely to be 15 feet to 20 feet. Although the noise barrier could be visually relatively unobtrusive because of the trees already existing behind most of the houses facing the tracks, some residents may not find this appealing regardless. The future train noise levels would be reduced to the presently existing noise levels in the backyards of the affected homes. The cost of this option was calculated (including 4060 feet of noise wall protecting the south

side of Idlewood and the end of the Summer Lane cui-de-sac, 17 feet in height, and 15% for engineering and administration of the program) to be about \$2 million.

Option #5, home insulation, would also be an effective measure to reduce the interior noise which could be disruptive especially during the nighttime. However, this form of noise insulation would not reduce outdoor noise levels and therefore, may not be acceptable in situations where use of outdoor space is also an important consideration. Where installed in other locations to mitigate rail noise, this treatment has been found to cost approximately \$ 16,000 per home. With 56 homes affected, the total cost would be about \$900,000.

Appendix

Noise Prediction Methodology

FTA Formulas for Calculating Hourly Leq Noise Levels from reference source noise levels at 50 feet:

$L_{eq}(h) = SEL_{ref} + 10 \log(N) + 20 \log(S/50) + 10 \log(V) - 15 \log(D/50) - 35.6$ where:

SEL ref = 92 dBA for locomotives

SEL ref = 82 dBA for rail cars

N = number of rail cars or locomotives in the measured group;

S = speed of measured vehicle(s), in miles per hour; S = train speed, in miles per hour

V = average hourly volume of train traffic, in trains per hour.

D = closest distance between measurement position and source, in feet

FTA Standards

FTA standards (Transit Noise and Vibration Impact Assessment, DOT-T-95-16, April 1995) are based on a relative impact criteria whereby project noise impacts are assessed by comparing the increase in future combined total (rail plus all other noise sources) hourly Leq or Ldn noise levels against the existing ambient hourly Leq or Ldn noise levels. As the existing level of ambient noise increases, the allowable level of transit noise increases, but the total amount by which that community's noise can increase is reduced. This accounts for the unexpected result that a noise level that is less than the ambient noise level can still cause an impact. This is illustrated in an example where the allowed transit noise is shown for different existing ambient noise levels. Any increase greater than shown in the Table will cause an impact. For example, as the existing noise level increases from 50 to 70 dBA, the allowed transit noise level increases from 53 to 64 dBA. However, the allowed increase in community noise level decreases from 1 to 5 dBA.

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The FTA criteria are provided for "Category 1", "Category 2", and "Category 3" land uses. Category 1 includes tracts of land where quiet is essential for their intended use, such as outdoor concert arenas and historic sites. Category 2 includes residences and buildings where people sleep. Category 3 includes institutional land uses, involving primarily day and evening activities, such as schools, and churches. Impacts upon Category 1 and category 3 land uses primarily are based upon "peak hour" L_{eq} . L_{dn} (day night noise level) is the descriptor normally used for Category 2 land uses, where there is greater sensitivity to nighttime noise.

EXAMPLES OF NOISE IMPACT CRITERIA FOR TRANSIT PROJECTS

Existing Noise Level	Allowable Study Noise Level	Allowable Combined Total Noise Level	Allowable Noise Level Increase
45	51	52	7
50	53	55	5
55	55	58	3
60	57	62	2
65	60	66	1
70	64	71	1
75	65	75	0

Source: FTA Manual for Transit Noise and Vibration Impact Assessment, FTA, April 1995.

STB

FD-33388

7-22-98

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Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 22, 1998

The Honorable Paul E. Gillmor
120 Jefferson Street, 2D Floor
Port Clinton, OH 43452

Re: STB Finance Docket No. 33388

Dear Congressman Gillmor:

Thank you for your recent letter referring to the concerns of your constituent, Richard W. Kelsey of Perrysburg, OH. Mr. Kelsey complains that CSX Transportation, Inc. (CSXT) parks and switches trains in Perrysburg residential areas and that, despite assurances to the contrary, CSXT may continue such operations after its acquisition of Conrail is implemented.

As you know, at its June 8 open voting conference in the Conrail acquisition proposal in STB Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail, Inc. and Consolidated Rail Corporation, the Board voted to approve the merger application, with conditions. In particular, the Board's conditions are to include 5 years of oversight, along with substantial operational monitoring and reporting to ensure that the transaction is successfully implemented; mitigation of potential adverse impacts on the environment and on safety; recognition of employee rights and interests; and conditions addressing the role of smaller railroads and regional concerns about competition.

Although several of the conditions relate to CSXT's train operations in Ohio, the condition Mr. Kelsey indicates he would favor is not specifically included. It appears, however, from correspondence referred to in Mr. Kelsey's letter, that CSXT has acknowledged the complaints and has indicated that it expects the problem to be eliminated when it assumes control of Conrail's Stanley Yard in Toledo, OH, as CSXT crew changes would evidently occur at the Stanley Yard after the acquisition. Thus, Mr. Kelsey's concerns are likely to be alleviated once the Conrail acquisition has been accomplished.

I appreciate your interest in this matter, and will have your letter and my response made a part of the public docket in this proceeding. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Linda J. Morgan

Linda J. Morgan

PAUL E. GILLMOR
5TH DISTRICT, OHIO

1203 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3505
202-225-6405



COMMITTEE ON COMMERCE
VICE CHAIRMAN
SUBCOMMITTEES
TELECOMMUNICATIONS, TRADE AND
CONSUMER PROTECTION
FINANCE AND HAZARDOUS MATERIALS

Congress of the United States
House of Representatives
Washington, DC 20515-3505

FILE IN DOCKET

June 12, 1998

Office Of The Secretary
Case Control Unit
Finance Docket No. 33388
Surface Transportation Board
1925 K Street NW
Washington, D.C. 20423-0001

RECEIVED
SURFACE TRANSPORTATION
JUN 29 4 09 PM '98
OFFICE OF
CHAIRMAN MORGAN

Dear Sir/Madam:

I received the enclosed correspondence from my constituent, Richard W. Kelsey of Perrysburg, Ohio. Mr. Kelsey contacted me to express his continued frustration with CSX rail operations in Perrysburg.

I would appreciate your review of Mr. Kelsey's correspondence. In addition, please provide a report to my Port Clinton office that addresses his concerns. I look forward to hearing from you soon.

Thank you in advance for your time and assistance.

Sincerely,

Paul E. Gillmor
Member of Congress

PEG:emw

Enclosure

cc: Thomas O'Leary, Ohio Rail Development Commission
M. Beth Ellensohn, The Public Utilities Commission of Ohio

DEFIANCE
613 WEST THIRD STREET
DEFIANCE, OH 43512
419-782-1996

NORWALK
130 SHADY LANE DRIVE
NORWALK, OH 44857
419-668-0206

PERRYSBURG
148 EAST SOUTH BOUNDARY STREET
PERRYSBURG, OH 43551
419-872-2500

PORT CLINTON
120 JEFFERSON STREET, 2D FLOOR
PORT CLINTON, OH 43452
419-734-1999

TOLL FREE IN OHIO 1-800-541-6446
TOLL FREE FAX IN OHIO 1-800-278-8203

JUN 03 1998

1-800 Fax

JUN 03 1998

Richard W. Kelsey
9754 St. Andrews Rd.
Perrysburg OH 43551

Work 419-241-5000
Home 419-666-8815

June 3, 1998

Representative Paul Gillmor
148 East Boundary St.
Perrysburg, Ohio 43551

Re. CSX Railroad Operations Perrysburg Township

Dear Representative Gillmor:

Thank you very much for your May 20th response to my letter regarding CSX operations in Perrysburg Township. Thanks also for the PUCO letter from M. Beth Ellensohn. I have received a similar letter from Robert E. Marvin, Chief, Railroad Division of the PUCO.

I have met with PUCO inspector Buehla Swartz. I asked Ms. Swartz to schedule a meeting with CSX, myself and Richard Britten (Perrysburg Township Trustee) to discuss the issues affecting us. CSX refused to attend such a meeting.

The Toledo Blade ran an article June 1st which stated that Norfolk Southern agreed to certain requests by The Toledo-Lucas County Port Authority as a condition of Port Authority approval of the railroad merger.

My concern, and that of my neighbors, is that after this merger occurs, we will still have this problem, which long term will be intolerable.

Can we get the Railroad to agree to eliminate this practice as a condition of merger approval? If not, can we depend on you to vigorously oppose parking and switching trains in a residential neighborhood if it continues after the merger is complete?

From the tone of the Blade article, Railroad operations are a major concern in many parts of Ohio, not just Perrysburg. I trust we made it clear from our initial correspondence, this problem is troubling to several hundred people in this area, not just a few. Coincidentally, since our first letter, conditions have gotten worse.

On Jun 2nd The Wall Street Journal reported on this issue with regard to other communities. Cleveland Ohio was mentioned.

Thank you again for your help.

Yours truly,

R. W. Kelsey

Richard W. Kelsey



The Public Utilities Commission of Ohio

George V. Voinovich, *Governor*

Craig A. Glazer, *Chairman*

May 11, 1998

The Honorable Paul Gillmor
United States House of Representatives
148 E. South Boundary
Perrysburg, Ohio 43551

Dear Congressman Gillmor:

Thank you for your recent inquiry concerning CSX, Inc., rail operations in Perrysburg. The Public Utilities Commission of Ohio (PUCO) has been contacted by many of the area's public officials and residents individually concerning this situation. We have informed CSX officials of the complaints we have received regarding the trains blocking Bates Road and Ford Road in Perrysburg and the trains idling on the tracks behind homes in the area.

It is our understanding CSX was using this area to park its trains to allow for crew changes. We have encouraged the railroad to revise its operations in the area to reduce the amount of times CSX trains are parked between Bates Road and Ford Road. CSX has reported that when Stanley Yard is taken over as part of the Conrail acquisition later this year, the problem at issue should be eliminated. At that time, CSX crew changes will occur at the Stanley Yard in Toledo.

The PUCO will continue to monitor the situation in Perrysburg. If you have any questions in this matter, please contact the PUCO Legislative Office at 614-466-1224.

Sincerely,

A handwritten signature in cursive script that reads "M. Beth Ellensohn".

M. Beth Ellensohn, Director
Legislative Affairs

STB

FD-33388

7-21-98

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ID-MOCH



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

FD-33388

July 21, 1998

The Honorable Dennis J. Kucinich
U.S. House of Representatives
1730 Longworth House Office Building
Washington, D.C. 20515

Re: Finance Docket No. 33388: CSX and Norfolk Southern -- Control and
Acquisition -- Conrail

Dear Congressman Kucinich:

Thank you for your letter dated July 10, 1998, expressing your concerns about CSX's withdrawal from environmental discussions with the City of Brooklyn, Ohio, regarding the Conrail Acquisition.

As the Board stated in its June 8, 1998 vote approving the transaction, negotiated agreements continue to remain available as an alternative to the local and site specific mitigation that we impose. As I indicated in my July 14 letter to you, the Board's vote of June 8th in no way prohibits or discourages the pursuit or continuation of private sector negotiations. In fact, as you know, the Board encourages private sector negotiations and resolution in any matters within our jurisdiction. We believe that negotiated solutions to address environmental concerns are more effective and may at times be more far-reaching than environmental mitigation options we could impose unilaterally.

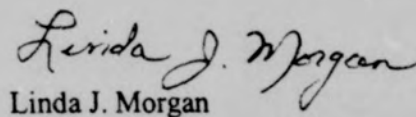
As we stated in Decision No. 71, we have intended to facilitate negotiations among the various interested parties throughout the duration of this Conrail Acquisition proceeding. Any party that has a legitimate interest in these matters is free, and indeed encouraged, to participate in negotiations. Therefore, in Decision No. 71, we instructed our environmental staff not to engage in informal discussions with the affected parties in the Greater Cleveland area until April 15, 1998 (later extended to April 23, 1998). Noting that the Board's practice is to encourage privately negotiated agreements to address environmental concerns, we expressed concern that informal involvement by Board staff could impede independent discussion among private parties. We further stated that, to the extent agreements are not reached, SEA would take the necessary steps to develop its own environmental mitigation for each of the communities in the Greater Cleveland area in the Final Environmental Impact Statement (EIS).

To address adverse environmental impacts in the Brooklyn area, SEA recommended in the Final EIS that the Board require NS to implement hazardous material mitigation and noise abatement measures along the Cloggsville to CP-190 rail line segment (N-074) and CSX to implement hazardous material mitigation measures along the Short Line, including the Marcy to Short segment (C-069). Based on its analysis, SEA concluded that the noise impacts along the C-069 segment did not warrant mitigation since the post-acquisition train noise increases would not exceed the 5 dBA increase mitigation threshold. The Brooklyn area would also receive benefit from additional safety-related mitigation measures included in environmental conditions imposed for the Greater Cleveland Area. On June 8th, the Board voted to adopt all of these environmental conditions.

We also stated in our June 8th vote that requests for modifications to the conditions adopted would be considered only on administrative appeal. Petitions for reconsideration are due 20 days after the service date of our final decision, scheduled for July 23, 1998.

If you have additional questions concerning the environmental review process, please call me, or contact Elaine K. Kaiser, SEA's Environmental Project Director, or Mike Dalton, SEA's Project Manager for the Conrail Acquisition, at (202) 565-1530.

Sincerely,


Linda J. Morgan

DENNIS J. KUCINICH

10TH DISTRICT, OHIO

1730 LONGWORTH OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-5871

EMERGED
Office of the 1400 DETROIT AVENUE
LAKEWOOD, OHIO 44107
(216) 228-8850

JUL 13 1998

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Public Record



**Congress of the United States
House of Representatives**

Committees:
Government Oversight
Education
and the
Workforce

FILE IN DOCKET

July 10, 1998



Ms. Linda J. Morgan
Chairman
Surface Transportation Board
1925 K St. NW #820
Washington, D.C. 20423

Re: Docket No. 33388

Dear Ms. Morgan:

On June 30, 1998, CSX Corporation expressed its intention to retreat from environmental settlement discussions with the City of Brooklyn, a community in Ohio's 10th Congressional District that I represent in Congress. CSX defended its retreat from negotiations by citing the Surface Transportation Board's June 8, 1998, interim decision in the Conrail merger case.

Because I believe that the Board is committed to seeing that communities such as Brooklyn reach mutually acceptable settlement agreements with railroads seeking approval for mergers, I am filing this brief to ask the Board to intervene on my behalf, and on behalf of the City of Brooklyn, Ohio. Thank you very much for your attention this very important matter for my district.

Sincerely,

Dennis J. Kucinich
Member of Congress

DJK:mg
cc: Parties of Record

[PUBLIC]
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

IN RE BROOKLYN, OHIO
FILED BY CONGRESSMAN DENNIS J. KUCINICH

Dated July 10, 1998

[PUBLIC]

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

IN RE BROOKLYN, OHIO
FILED BY CONGRESSMAN DENNIS J. KUCINICH

Congressman Dennis J. Kucinich, representing the 10th Congressional District of Ohio which includes the City of Brooklyn, Ohio, hereby submits this brief in response to CSX's unilateral withdrawal from negotiations ordered by the Surface Transportation Board (STB) in Decision No. 71 and Decision No. 73.

I. STATEMENT OF FACTS

As part of the proposed acquisition of Conrail by Norfolk Southern Corporation (NS) and CSX Transportation Corporation (CSX), CSX proposed increasing the freight traffic on the Cleveland Short Line from approximately 16.4 trains per day to approximately 45.8 trains per day. This increase will have a significant impact on the City of Brooklyn, Ohio, a city in Ohio's 10th Congressional District which Congressman Kucinich represents in the U.S. House of Representatives. Congressman Kucinich brought the plight of Brooklyn to the STB's attention

through his environmental comments filed with the Section on Environmental Analysis on February 4, 1998. The SEA included information about Brooklyn in its Final Environmental Impact Statement (FEIS), issued in May 1998.

On March 17, 1998, the STB issued Decision No. 71, which ordered affected communities in the Greater Cleveland area to negotiate with the railroads in an effort to reach mutually acceptable agreements on the mitigation of adverse environmental effects of the Conrail acquisition. On March 18, 1998, Congressman Kucinich's office contacted the STB's Congressional Affairs office with a request for clarification as to the scope of Decision No. 71. Specifically, the request asked: "How long can the parties negotiate an independent settlement? Until the oral decision in June? Until the written decision in July? Or some other date?" (See Electronic Correspondence from Martin Gelfand to Nancy Beiter, Mar. 18, 1998 (Attachment 1)). In response, Nancy Beiter of the STB's Congressional Affairs office replied that

there is no deadline on a negotiated settlement. Until everyone is happy, my suspicion is that these issues will always be in litigation.

For example, in the UP/SP merger the cities of Reno and Wichita had environmental issues similar to those facing the Cleveland area now. All during the environmental review process the cities were negotiating with the carrier and they continued to do so while the various appeals from our decision went through the court of appeals. The court sent the environmental review back to us for further clarification. Still the parties have continued to negotiate.

In short, it ain't over 'til the fat lady sings and we don't know when that is.

(See Electronic Correspondence from Nancy Beiter to Martin Gelfand, Mar. 18, 1998 (Attachment 2)).

On March 20, 1998, the STB issued Decision No. 73, clarifying Decision No. 71. This decision says that Decision No. 71 was meant to be inclusive rather than exclusive. It further stated that nothing in Decision No. 71 was meant "to define who should, or should not, be involved in any specific negotiation [nor] limit the participation of any appropriate party. . . ."

(See Decision No. 73, STB Docket No. 33388, Mar. 20, 1998).

Upon learning about the STB's instruction in Decision No. 71 for the railroads and the affected communities to begin negotiations, Brooklyn Mayor John M. Coyne requested that CSX begin discussions with the City of Brooklyn to resolve environmental problems in that city associated with the increase in freight train traffic along the Cleveland Short Line. (See Letter from Mayor John Coyne to Stephen Watson, Mar. 25, 1998 (Attachment 3)). CSX Regional Vice President Stephen Watson responded that since "the City of Brooklyn was not identified in the [Draft Environmental Impact Statement] as an "affected community", nor was it so identified in the STB's Decision No. 71," CSX would not have discussions with the City of Brooklyn. (See Letter from Stephen Watson to Mayor John Coyne, Apr. 3, 1998 (Attachment 4)).

Upon learning about CSX's refusal to negotiate with Brooklyn, Congressman Kucinich contacted Surface Transportation Board Chairman Linda J. Morgan. In his April 8, 1998, letter to Chairman Morgan, Congressman Kucinich pointed out that CSX's refusal to negotiate with Brooklyn was erroneous on two counts. First, although Brooklyn was not included in the Draft Environmental Impact Statement, the STB was not unaware of the plight of Brooklyn. The STB became aware of the environmental problems associated with increased train traffic through Brooklyn because of the Congressman's February 4, 1998, environmental filing with the Section on Environmental Analysis in response to the Draft Environmental Impact Statement. (See Letter from Congressman Dennis J. Kucinich to Linda J. Morgan, Apr. 8, 1998 (Attachment 5)). Second, the scope of Decision No. 71 was not limited to the Greater Cleveland communities listed in footnote no. 1 of that decision. Rather,

Decision No. 71 was intended to facilitate negotiations among the various interested parties. It was not intended to define who should, or should not, be involved in any specific negotiations, and it was certainly not intended to limit the participation of any appropriate party in any negotiations that may be conducted. Any party that has a legitimate interest in these matters is free and indeed encouraged to participate in negotiations.

(See id.) (See also Decision No. 73, STB Docket No. 33388, Mar. 20, 1998.)

In his letter, Congressman Kucinich pointed out to the STB that the STB ordered CSX to "engage in environmental mitigation discussions with the affected communities." (See Attachment 5, supra.) Congressman Kucinich concluded in his April 8, 1998, letter:

As Congressman from Ohio's 10th Congressional District, I demand that the STB take action to assure representation for the people of Brooklyn, Ohio, in environmental mitigation discussions with CSX Corporation. I am demanding that the STB order CSX to meet with the Mayor and the people of Brooklyn for discussion about how the merger will affect Brooklyn and to order good faith settlement discussions as ordered by Decision No. 71.

(See id.) On April 13, the STB's Congressional Affairs office contacted Congressman Kucinich's staff to inform the Congressman that CSX agreed to contact the City of Brooklyn. (Telephone Correspondence between Nancy Beiter and Martin Gelfand, Apr. 13, 1998).

Between April 13, 1998, and June 30, 1998, the Mayor of Brooklyn believed, based on the foregoing, that the City and CSX were engaged in good faith negotiations. However, on June 30, 1998, CSX Vice President Michael Ruehling wrote to Mayor Coyne informing him that CSX would no longer engage in discussions with Brooklyn because the STB's oral decision of June 8, 1998, would preclude the need for any further discussion. (See Letter from Michael Ruehling to John Coyne, June 30, 1998 (Attachment 6)).

II. NEED FOR FILING

On July 6, 1998, upon receipt of the June 30 letter from CSX to Brooklyn, Congressman Kucinich's office reported CSX's unilateral withdrawal from settlement negotiations to the STB. Congressman Kucinich was informed that because an interim decision was made, the STB would be precluded from any *ex parte* discussions about an applicant's lack of cooperation with earlier decisions and commitments. Therefore, a formal filing would be necessary.

III. REQUEST FOR STB ACTION

The STB, in issuing its oral decision, did not signal an end to on-going settlement

negotiations among the railroads and affected parties. On the contrary, the STB, in correspondence with Congressman Kucinich's office, denied that there are any deadlines to negotiated settlements among railroads and communities. (See Attachment 2, supra.) CSX Corporation made a commitment to negotiate in good faith with the City of Brooklyn after the STB responded to intervention from Congressman Kucinich's office.

However, good faith negotiations must be backed up by good faith. In this case, CSX exploited the opportunity of the STB's oral decision to back out of negotiations. At no time during negotiations did CSX indicate to Brooklyn or to Congressman Kucinich that it intended to end discussions once the STB issued its oral decision.

Congressman Kucinich respectfully requests that the STB honor its commitment to negotiated settlements in the Conrail merger case, as ordered in Decision No. 71 and Decision No. 73, and in its representations regarding deadlines made to his Congressional Office. (See Decision No. 71, Decision No. 73, and Attachment 2, supra.) Congressman Kucinich further requests that in honoring its commitments in deciding the Conrail merger, that it order CSX to continue to negotiate in good faith with Brooklyn, either directly or in conjunction with Congressman Kucinich, a Party of Record to the Conrail merger case, to settle their differences on environmental mitigation for that community.

ATTACHMENT 1**Gelfand, Marty**

From: Gelfand, Marty
Sent: Wednesday, March 18, 1998 1:03 PM
To: 'Nancy Beiter'
Subject: RE: FD 33388, Decision No. 71

I just received Decision No. 71. It's pretty self-explanatory, but I did want some clarification on the April 15, 1998, deadline mentioned in the second paragraph.

Intuitively, that deadline makes sense from the perspective of the SEA's planning needs. If an agreement is not reached, SEA needs to know so that it could hire enough staff and consultants to make recommendations to the STB to impose conditions, if necessary.

However, from the perspective of the affected parties, what, if anything, does this deadline mean? How long can the parties negotiate an independent settlement? Until the oral decision in June? Until the written decision in July? Or some other date?

Thank you in advance for your clarification.

Martin D. Gelfand
Staff Attorney
District Office of Congressman Dennis J. Kucinich
Lakewood, Ohio
marty.gelfand@mail.house.gov

ATTACHMENT 2

Gelfand, Marty

From: Nancy Beiter[SMTP:BeiterN@stb.dot.gov]
Sent: Wednesday, March 18, 1998 5:27 PM
To: Gelfand, Marty
Subject: RE: FD 33388, Decision No. 71

We love negotiated settlements here. We know we function in a quasi-judicial capacity and, like judges, our decisions are often unpopular with everyone. Negotiated settlements are much better because the parties live far more happily with the results. My point is that there is no deadline on a negotiated settlement. Until everyone is happy, my suspicion is that these issues will always be in litigation.

For example, in the UP/SP merger the cities of Reno and Wichita had environmental issues similar to those facing the Cleveland area now. All during the environmental review process the cities were negotiating with the carrier and they continued to do so while the various appeals from our decision went through the court of appeals. The court sent the environmental review back to us for further clarification. Still the parties have continued to negotiate.

In short, it ain't over 'til the fat lady sings and we don't know when that is.

The answer to your earlier question is that the ICC and STB decisions that are not in print and not on our WEB site are available on legal research services such as Lexis and Westlaw. Generally only lawyers have access to such services but there is not a large public demand for our decisions in most cases. Interest is usually limited to the parties and the legal community. The decisions are also available for individual purchase from our contractor, DC News and Data, Inc. at 202 289-4357.

Does that help?

John M. Coyne
Mayor

CITY OF

**BROOKLYN
OHIO**

COUNCIL:

John E. Frey
Paula A. Ritter
Kenneth P. Loei
Thomas E. Coyne
Gregory L. Frey
Rita M. Brown
Regis Barrett

7619 Memphis Avenue, Brooklyn, Ohio 44144-2197 • (216) 351-2133

"Home of the Seatbelt Law"

ATTACHMENT 3

March 25, 1998

Stephen Watson
Regional Vice President
CSX
143 W. Market Street, #700
Indianapolis, IN 46204

Dear Mr. Watson:

It is my understanding that increased freight rail traffic will occur in the City of Brooklyn if the proposed acquisition of Conrail by CSX and Norfolk Southern is approved by the U. S. Surface Transportation Board.

I am strongly opposed to any rail merger which will increase the frequency of freight train traffic through residential areas and fails to take into consideration the safety and environmental ramifications of their actions, specifically, noise, air and traffic pollution, decrease in property values, potential delays in safety forces' emergency response times, and hazardous material incident training and equipment.

Brooklyn may be a small community but nonetheless deserves equal consideration in terms of safety and environmental mitigation measures. It has been reported that one section of the Conrail line to be acquired by CSX, which runs parallel to I-480 and adjacent to homes in Brooklyn's Idlewood neighborhood, will see an increase in train traffic from 7 to 44 trains daily! Residents are concerned for their safety, quality of living and property values!

Stephen Watson

Page Two

March 25, 1998

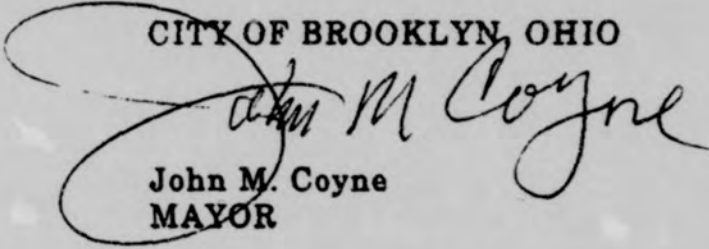
What I find particularly disturbing is that to date no representative of CSX has contacted me to address these concerns and negotiate a mitigation agreement. I understand that the Surface Transportation Board's Section of Environmental Analysis (SEA) in its Draft Environmental Impact Statement requires the railroad proponents of the merger to negotiate a mutually agreeable mitigation settlement with the affected communities, and further, requires the parties to reach a mutually acceptable agreement by April 15, 1998 or live with the SEA's recommendation in its Final Environmental Impact Statement.

Be assured that I stand ready to make myself and our city's legal department available to CSX representatives to discuss these concerns and work out a resolution which will benefit Brooklyn's affected citizens.

You may contact me at 216/351-2133 (telephone) or 216/351-7601 (fax) to schedule an appointment. I look forward to hearing from you soon!

Sincerely,

CITY OF BROOKLYN, OHIO



John M. Coyne
MAYOR

cc: Thomas F. O'Malley, Director of Law
Congressman Dennis Kucinich, Ohio CD10
Elaine Kaiser, U. S. Surface Transportation Board
George Voinovich, Governor, State of Ohio
Tom O'Leary, Ohio Rail Authority
Paul Alsenas, Exec. Director, Cuyahoga Co. Planning Commission



Stephen L. Watson
Regional Vice President - State Relations

040698

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

ATTACHMENT 4

April 3, 1998

Hon. John M. Coyne, Mayor
City of Brooklyn
7619 Memphis Avenue
Brooklyn, Ohio 44144-2197

Dear Mayor Coyne:

We have received your letter of March 25, 1998 concerning the CSX/NS acquisition of Conrail.

As you correctly note, the Surface Transportation Board's Section of Environmental Analysis (SEA) in its Draft Environmental Impact Statement (DEIS) requires CSX and NS to consult with and attempt to negotiate mutually acceptable mitigation settlements with "affected communities." However, the City of Brooklyn was not identified in the DEIS as an "affected community", nor was it so identified in the STB's Decision No. 71, issued March 17, 1998, which set the April 15, 1998 deadline you cite in your letter.

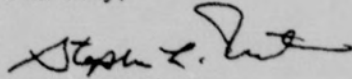
The portion of the Conrail Short Line passing through Brooklyn is expected to experience an increase in train traffic from the current average of 20 Conrail trains per day to approximately 44 trains per day on average. The increase from "7 to 44" you cite in your letter is incorrect for the portion of the line passing through Brooklyn. Also, the Brooklyn portion of the line has no at-grade rail-highway crossings, and is entirely grade separated, so there will be no delays in safety forces' response times. Additionally, the DEIS identified for noise mitigation those areas where the projected train noise exceeded certain noise thresholds established by SEA. Brooklyn had no areas exceeding the thresholds, and therefore requires no noise mitigation. Finally, the SEA has recommended to the STB that CSX and NS develop and implement a comprehensive hazardous materials safety and training program for the communities on our railroads that will experience an increase in hazardous materials traffic, and we have agreed to fully comply with that recommendation. Your public safety forces will be contacted and invited to participate in this program after the acquisition is approved by the STB.

The portion of the current CSX line from Lester, which passes through Brooklyn, is not expected to experience any increase in train traffic as a result of the acquisition. The train traffic on that line is only 5.8 trains per day on average.

Mayor J. Coyne 4/3/98
page 2

I trust that this addresses the issues raised in your letter of March 25, and explains why we have not contacted your community concerning the CSX/NS acquisition of Conrail.

Sincerely,



Stephen L. Watson

cc: Congressman Dennis Kucinich
Ms. Elaine Kaiser, SEA
Mr. Thomas O'Leary, ORDC
Mr. Paul Alsenas, Cuyahoga Planning Comm.
Mr. Thomas F. O'Malley, Brooklyn Law Dir.

DENNIS J. KUCINICH
10TH DISTRICT, OHIO

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LAKEWOOD, OHIO 44107
(216) 228-8850



Committees:
Government Oversight
Education
and the
Workforce

Congress of the United States
House of Representatives

ATTACHMENT 5

April 8, 1998

Ms. Linda J. Morgan
Chairman
Surface Transportation Board
1925 K St. NW #820
Washington, D.C. 20423

Re: Finance Control Docket No. 33388

Dear Ms. Morgan:

On April 3, 1998, Stephen L. Watson, Regional Vice President for State Relations for CSX Corporation, wrote to Brooklyn, Ohio, Mayor John M. Coyne, stating his refusal to discuss environmental mitigation for Brooklyn. Mr. Watson acknowledged that Brooklyn would experience an increase from 20 to 44 trains per day as a result of CSX's acquisition of the Conrail Short Line. However, Mr. Watson cited the Draft Environmental Impact Statement and Decision No. 71 as justification for excluding Brooklyn from environmental mitigation discussions.

On February 4, 1998, this office filed an addendum to our comments on the DEIS that asked the STB to analyze the environmental effects the proposed Conrail merger would have on Brooklyn. Even though Brooklyn was not mentioned in the DEIS, the STB is aware of the environmental problems that the proposed merger will cause in Brooklyn and is working on a mitigation plan to be included in the Final Environmental Impact Statement.

On March 23, 1998, the Surface Transportation Board issued Decision No. 73. That decision interprets Decision No. 71 as follows:

Decision No. 71 was intended to facilitate negotiations among the various interested parties. It was not intended to define who should, or should not, be involved in any specific negotiation, and it was certainly not intended to limit the participation of any appropriate party in any negotiations that may be conducted. Any party that has a legitimate interest in these matters is free and indeed encouraged to participate in negotiations.

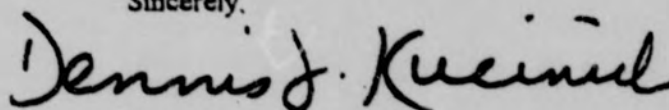
Page 2

The STB ordered Decisions 71 and 73 to encourage inclusion of affected communities in environmental mitigation discussions. CSX Corporation and Mr. Watson have misunderstood Decision No. 71 and applied it in a way that purposely excludes the City of Brooklyn from environmental mitigation discussions.

The STB has ordered CSX and Norfolk Southern railroads to engage in environmental mitigation discussions with the affected communities. The STB has further ordered that if the railroads and affected communities fail to settle their differences by April 15, 1998, then the STB's Section on Environmental Analysis will develop its own environmental mitigation for each of the communities in the Greater Cleveland area.

As Congressman from Ohio's 10th Congressional District, I demand that the STB take action to assure representation for the people of Brooklyn, Ohio, in environmental mitigation discussions with CSX Corporation. I am demanding that the STB order CSX to meet with the Mayor and the people of Brooklyn for discussions about how the merger will affect Brooklyn and to order good faith settlement discussions as ordered by Decision No. 71.

Sincerely,



Dennis J. Kucinich
Member of Congress

DJK:mg

enclosures: Addendum to Comments on the Draft Environmental Impact Statement
Letter from Stephen Watson to Brooklyn Mayor John M. Coyne



ATTACHMENT 6

One James Center
Richmond, Virginia 23219
(804) 782-1444

Michael J. Ruehling
Vice President
State Relations

June 30, 1998

The Honorable John M. Coyne
Mayor, City of Brooklyn, Ohio
7619 Memphis Avenue
Brooklyn, Ohio 44144

Dear Mayor Coyne:

As the individual at CSX responsible for coordinating state and local government agreements related to the Conrail transaction, I am responding to your June 17, 1998 letter to Stephen L. Watson.

The Surface Transportation Board voted on June 8, 1998 to approve the CSX/Norfolk Southern acquisition of Conrail. Numerous conditions were imposed in the STB's oral decision addressing various competitive and environmental impacts the agency determined would result from the transaction.

Prior to the June 8 vote, we engaged in extensive consultations with state and local government officials in those areas identified by the STB as potentially experiencing adverse impacts on lines that CSX would acquire as a result of the Conrail transaction. Our efforts focused on negotiating voluntary agreements, when and where possible, with these states and communities to resolve the concerns raised by the STB and preclude the need for imposed conditions.

We were successful in reaching numerous negotiated agreements prior to the June 8 STB voting conference. The STB accepted these agreements as alternatives to mandated conditions and at the June 8 Voting Conference advised that the negotiated agreements would be imposed as conditions.

In those cases where CSX was unable to reach negotiated settlements prior to the Voting Conference, the STB imposed conditions requiring a variety of mitigation measures. These conditions were summarized in the STB's oral decision and included recommendations for certain locations in the Greater Cleveland area. The conditions range from enhanced train defect detection to hazardous materials emergency response coordination and training to noise mitigation. Some of these conditions may be applicable in the case of your community.

Mayor Coyne
June 30, 1998
Page Two

We are now awaiting the STB's issuance of its written decision in the case in order to finalize plans to move forward with implementation of the mitigation measures that are imposed as conditions. You can be assured that we intend to comply fully with the terms of any and all conditions imposed by the STB that may involve the City of Brooklyn. As soon as our plans are complete, we will be in contact with you. In the meantime, if you have any questions, please let me know.

Sincerely,

Michael J. Ruchling

trt

cc: Elaine K. Kaiser, Esquire, Surface Transportation Board
The Honorable Linda Morgan, Chairman, Surface Transportation Board
Mr. Stephen L. Watson, CSX Transportation

STB

FD-33388

7-21-98

J

ID-MOCH



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

70-33388

July 21, 1998

The Honorable Bud Shuster
Chairman
House Committee on Transportation
and Infrastructure
Washington, D.C. 20515

Dear Chairman Shuster:

Thank you for your letter supporting the actions taken by the Surface Transportation Board (Board) at its June 8, 1998 voting conference approving the application by CSX and Norfolk Southern to acquire control of Conrail and to divide certain of that carrier's assets between them. Specifically, you express your approval of the Board's handling of the issue of modification to existing collective bargaining agreements (CBAs).

In our June 8 voting conference, we reaffirmed that Board approval of the transaction does not indicate approval or disapproval of any of the involved CBA overrides that the applicants have argued are necessary to carry out the transaction. In addition, we reaffirmed the negotiation and arbitration process as the appropriate way to resolve issues relating to employee rights and imposed New York Dock conditions. As you point out, we believe that our action is in keeping with the existing statute and relevant court decisions. Our final written decision implementing our vote at the voting conference is scheduled to be issued on July 23, 1998.

I am having your letter and my response made a part of the public docket for this proceeding. I appreciate your appearance at the Board's oral argument in this proceeding, and your interest in this particular matter. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Linda J. Morgan
Linda J. Morgan



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 21, 1998

The Honorable Bob Franks
Chairman
Subcommittee on Railroads
House Committee on Transportation
and Infrastructure
Washington, D.C. 20515

Dear Chairman Franks:

Thank you for your letter supporting the actions taken by the Surface Transportation Board (Board) at its June 8, 1998 voting conference approving the application by CSX and Norfolk Southern to acquire control of Conrail and to divide certain of that carrier's assets between them. Specifically, you express your approval of the Board's handling of the issue of modification to existing collective bargaining agreements (CBAs).

In our June 8 voting conference, we reaffirmed that Board approval of the transaction does not indicate approval or disapproval of any of the involved CBA overrides that the applicants have argued are necessary to carry out the transaction. In addition, we reaffirmed the negotiation and arbitration process as the appropriate way to resolve issues relating to employee rights and imposed New York Dock conditions. As you point out, we believe that our action is in keeping with the existing statute and relevant court decisions. Our final written decision implementing our vote at the voting conference is scheduled to be issued July 23, 1998.

I am having your letter and my response made a part of the public docket for this proceeding. I appreciate your interest in this particular matter, and if I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Linda J. Morgan



FILE IN DOCKET

Committee on Transportation and Infrastructure

Congress of the United States

House of Representatives

Washington, DC 20515

Bob Shuster
Chairman

James L. Oberstar
Ranking Democratic Member

July 16, 1998

Jack Schenendorf, Chief of Staff
Michael Strachn, Deputy Chief of Staff

David Heymsfeld, Democratic Chief of Staff

RECEIVED
SURFACE TRANSPORTATION
BOARD
JUL 20 4 31 PM '98
OFFICE OF
CHAIRMAN MORGAN

Honorable Linda J. Morgan, Chairman
Surface Transportation Board
1925 K St. N.W.
Washington, DC 20423-0001

Dear Chairman Morgan:

It has recently come to our attention that there has been a coordinated letter-writing campaign to criticize the Board's actions in its recent voting conference dealing with the proposed acquisition of Conrail by Norfolk Southern and CSX. Specifically, the Board is being criticized for "breaking" pre-existing collective bargaining agreements and for not precluding any displacement of any pre-existing agreement on a blanket, *a priori* basis. We are writing to express our view that the Board acted properly regarding what the current law requires of the Board in any order approving a merger or acquisition among Class I rail carriers.

The current legal authority granted to the Board in 49 U.S.C. 11321(a) is self-executing, *i.e.*, that the statute itself displaces "all other law" (including antitrust law and the Railway Labor Act, among others) "as necessary" to carry out the approved transaction.

The carrier applicants in the present case asked the Board, in at least some instances, to determine *in the approval order itself* that certain provisions of existing labor agreements have to give way in order to implement the transaction and achieve the efficiencies on which the transaction is premised. In fact, at the June 8 voting conference, the Board denied the request to act on a such an *a priori* basis—even though its legal authority to do so has been settled by past agency and court precedent. Instead of making any categorical determination, the Board stated that it would rely on the well established, traditional, case-by-case sequence to address any perceived conflicts between the implementation of the acquisition and pre-existing labor agreements: (1) good faith bargaining between labor and management to reach a voluntary accommodation; (2)

Honorable Linda J. Morgan
July 16, 1998
Page Two

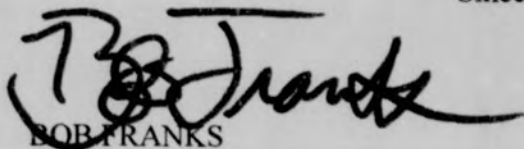
failing such agreement, a hearing and decision before a neutral arbitrator; (3) appeal of right by the losing party to the STB itself; and (4) optional judicial review of the Board's decision.

We commend the Board for taking this moderate, middle-ground approach—doing what the law *requires*, but not short-circuiting the opportunity of both labor and management to reach voluntary agreements and, if necessary, to have a full and fair hearing on their respective positions. This wise, prudent, and legally sound action contrasts sharply with what some are criticizing the Board for *not* doing—making an advanced blanket determination that the Railway Labor Act and associated agreements would not be affected by the approval of the acquisition of Conrail. Had the Board taken such a position in the Conrail case, it would in effect have been ignoring the current law and administratively repealing a self-executing federal statute.

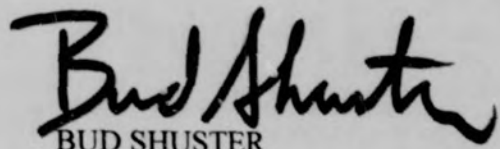
In short, the STB is doing the right thing—administering the law as Congress wrote it. We commend you for your moderate and straightforward approach to this sensitive issue.

Please place a copy of this letter in the public docket of the Conrail acquisition case. Thank you for your outstanding public service on this and other critically important rail transportation issues, including your timely and highly efficient implementation of the ICC Termination Act. .

Sincerely,



BOB FRANKS
Chairman
Subcommittee on Railroads



BUD SHUSTER
Chairman

cc: Honorable Gus Owen
Vice-Chairman, Surface Transportation Board

STB

FD-33388

7-21-98

J

ID-MOCH



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

FD-33388

July 21, 1998

The Honorable Spencer Bachus
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Bachus:

Thank you for your letter supporting the actions taken by the Surface Transportation Board (Board) at its June 8, 1998 voting conference approving the application by CSX and Norfolk Southern to acquire control of Conrail and to divide certain of that carrier's assets between them. Specifically, you express your approval of the Board's handling of the issue of modification to existing collective bargaining agreements (CBAs).

In our June 8 voting conference, we reaffirmed that Board approval of the transaction does not indicate approval or disapproval of any of the involved CBA overrides that the applicants have argued are necessary to carry out the transaction. In addition, we reaffirmed the negotiation and arbitration process as the appropriate way to resolve issues relating to employee rights and imposed New York Dock conditions. As you point out, we believe that our actions are in keeping with the existing statute and relevant court decisions. Our final written decision implementing our vote at the voting conference is scheduled to be issued on July 23, 1998.

I am having your letter and my response made a part of the public docket for this proceeding. I appreciate your interest in this particular matter, and if I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Linda J. Morgan
Linda J. Morgan

SPENCER T. BACHUS, III
6TH DISTRICT, ALABAMA

COMMITTEES:
BANKING AND FINANCIAL
INSTITUTIONS
CHAIRMAN, SUBCOMMITTEE ON GENERAL
OVERSIGHT AND INVESTIGATIONS
TRANSPORTATION AND
INFRASTRUCTURE
VETERANS' AFFAIRS

Congress of the United States
House of Representatives
Washington, DC

442 CANNON BUILDING
WASHINGTON, DC 20515
(202) 225-4921

1900 INTERNATIONAL PARK DRIVE
SUITE 107
BIRMINGHAM, AL 35243
(205) 969-2296

NORTHPORT CIVIC CENTER
3500 MCFARLAND BOULEVARD
PO DRAWER 569
NORTHPORT, AL 35476
(205) 333-9894

July 16, 1998

The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423

Dear Chairman Morgan:

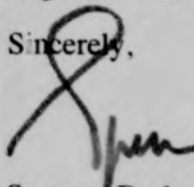
I am writing to you concerning the labor conditions imposed by the Surface Transportation Board (STB) as part of the June 8 voting conference on the acquisition of Conrail by CSX and Norfolk Southern (STB Finance Docket No. 33388).

As a member of the House Transportation and Infrastructure Committee's Railroads Subcommittee, I am well aware of the misleading information that has circulated charging that the Board has "broken" collective bargaining agreements for the convenience of the carriers. Even a cursory review of the Merger Team Final Recommendations indicates that these accusations are without basis. The Board's action, I believe, is totally in accord with the established law and the intent of Congress.

Congress has never expected the Railway Labor Act's laborious negotiation procedures to be the vehicle for implementing these transactions. Also, Congress has always understood that these transactions require changes in the labor agreements. That is why Congress has mandated such generous protection for employees affected by these transactions. Moreover, the imposed labor protective conditions, through their negotiation and arbitration procedures, provide a fair method for making the changes to the labor agreements which are necessary to permit the implementation of the transactions and the realization of the public benefits to be derived from the approved transactions.

I commend you, Vice Chairman Owen, and the Board's staff for being guided by existing law and precedents in imposing labor conditions.

Sincerely,



Spencer Bachus
Member of Congress

STB:shg

RECEIVED
SURFACE TRANSPORTATION
BOARD
JUL 27 2 55 PM '98
OFFICE OF
CHAIRMAN MORGAN

SPENCER T. BACHUS, III
6TH DISTRICT, ALABAMA

COMMITTEES:
BANKING AND FINANCIAL INSTITUTIONS
CHAIRMAN, SUBCOMMITTEE ON GENERAL OVERSIGHT AND INVESTIGATIONS
TRANSPORTATION AND INFRASTRUCTURE
VETERANS' AFFAIRS

Congress of the United States
House of Representatives
Washington, DC

442 CANNON BUILDING
WASHINGTON, DC 20516
(202) 225-4821

1900 INTERNATIONAL PARK DRIVE
SUITE 107
BIRMINGHAM, AL 35243
(205) 989-2298

NORTHPORT CIVIC CENTER
3500 MCFARLAND BOULEVARD
PO DRAWER 508
NORTHPORT, AL 35476
(208) 723-8994

FILE IN DOCKET

July 16, 1998

The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423

Dear Chairman Morgan:

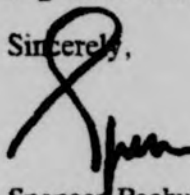
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I commend you, Vice Chairman Owen, and the Board's staff for being guided by existing law and precedents in imposing labor conditions.

Sincerely,



Spencer Bachus
Member of Congress

STB:shg

RECEIVED
SURFACE TRANSPORTATION BOARD
JUL 22 2 23 PM '98
OFFICE OF
CHAIRMAN MORGAN

Congress of the United States
House of Representatives
Washington, DC

CONGRESSMAN SPENCER BACHUS
SIXTH DISTRICT, ALABAMA

TO: Honorable Linda Morgan
FROM: Cong. Spencer Bachus
DATE: July 22, 1998
FAX #: 202-565-9015
SUBJECT: STB Finance Packet No. 33288
NUMBER OF PAGES: 2

note: original mailed 7/14/98

442 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515

PHONE: (202) 225-4921
FAX: (202) 225-2082

STB

FD-33388

7-21-98

J

ID-MOCH



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

70-33388

July 21, 1998

The Honorable John J. Duncan, Jr.
U.S. House of Representatives
Washington, D.C. 20515-1202

Dear Congressman Duncan:

Thank you for your most recent letter regarding the proposed acquisition of control of Conrail by CSX and Norfolk Southern (NS) and the division of certain of the assets of Conrail by the two acquiring railroads, and the potential impact of that transaction on APL Limited. You seek clarification as to APL's rights under its rail transportation contract with Conrail, which contains an antiassignment clause and an equities clause, in view of the June 8, 1998 vote by the Surface Transportation Board (Board) to approve the proposed transaction, subject to certain conditions.

At its June 8 voting conference, the Board voted to override antiassignment and other similar provisions in Conrail transportation contracts for a period of 180 days following the date of the division of Conrail's assets between the two acquiring railroads. The Board believes that this relief is necessary to permit the applicants to carry out their transaction in an orderly manner. Once the 180-day period expires, a shipper may elect to exercise any termination or renegotiation rights contained in the contract, provided that the shipper has given 30 days' written notice to the carrier currently serving it under the contract.

As you may know, the Board currently is preparing its final written decision implementing the June 8 vote. The decision is scheduled for service on July 23, 1998. Because the case remains pending before the Board, it would be inappropriate for me to comment on the rights of specific parties such as APL.

I hope you find this information helpful. I appreciate your interest in this matter, and I will have your letter and my response made a part of the public docket in this proceeding.

Sincerely,

Linda J. Morgan
Linda J. Morgan

JOHN J. DUNCAN, JR.
2D DISTRICT, TENNESSEE

2400 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4202
PHONE: (202) 225-5435

800 MARKET STREET
SUITE 110
KNOXVILLE, TN 37902
PHONE: (423) 523-3772

262 E. BROADWAY
MARYVILLE, TN 37804-5782
PHONE: (423) 984-5484

COURTHOUSE
ATHENS, TN 37303-4297
PHONE: (423) 745-4671

Congress of the United States
House of Representatives
Washington, DC 20515-4202

July 15, 1998

COMMITTEES:
TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEES:
AVIATION—CHAIRMAN
PUBLIC BUILDINGS AND
ECONOMIC DEVELOPMENT

RESOURCES

SUBCOMMITTEES:
NATIONAL PARKS, FORESTS AND LANDS
ENERGY AND MINERAL
RESOURCES

OFFICE OF
CHAIRMAN MORGAN
JUL 23 12 45 PM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

FILE IN DOCKET

Chairman Linda Morgan
Surface Transportation Board
Chairman
1925 K Street, NW
Washington, D.C. 20423

Dear Chairman Morgan:

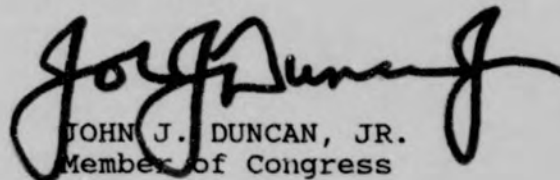
My staff recently contacted your office to clarify an action taken at the Surface Transportation Board's voting conference June 8, 1998, concerning the acquisition of Conrail by CSX Transportation and Norfolk Southern (NS).

I understand that the Board has decided to override anti-assignment clauses in rail transportation contracts for the first 180 days so that the railroads can avoid potential operational problems with their implementation of the transaction but, that at the end of the 180-day implementation period, all of the terms of the contracts, including those which provide the right or ability to a shipper to select the railroad serving it, would then be in full force and effect.

I interpret this to mean that APL Limited would be free to negotiate with both CSX or NS and to select either rail carrier for full service under its contract after the 180-day implementation period.

I would appreciate it if you could confirm for me if my understanding is correct, and if not, I would respectfully ask the board clarify if APL has this option in its final decision.

Sincerely,


JOHN J. DUNCAN, JR.
Member of Congress

JJD:db

STB

FD-33388

7-17-98

J

ID-MOCH



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

FS-33388

July 17, 1998

The Honorable Frank Mascara
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Mascara:

Thank you for your letters regarding the processing of railroad consolidation transactions by the Surface Transportation Board (Board), and, in particular, of the application of CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide the assets of Conrail among the two acquiring railroads. You express concern that actions taken by the Board in approving consolidation transactions may result in the breaking of existing collective bargaining agreements (CBAs) between the involved railroads and their employees, while all other contracts are left intact, and you specifically express disappointment that the Board failed to rule in its June 8, 1998 voting conference on the proposed Conrail control transaction that the breaking of CBAs in that case was not necessary.

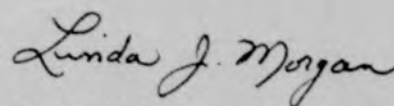
The courts have affirmed that, under what is now 49 U.S.C. 11321(a), agency approval of a consolidation transaction confers self-executing immunity on all material terms of the transaction from all other laws to the extent necessary to permit implementation of the transaction. And, in Norfolk & Western R. Co. v. Train Dispatchers, 499 U.S. 117 (1991) (N&W), the United States Supreme Court specifically held that the immunity provided by statute includes the carrier's obligations under a CBA. Moreover, since at least 1936 when the Washington Job Protection Agreement was executed by representatives of virtually all of the railroads and national rail unions, agency approved rail consolidations have been implemented without resort to bargaining under the Railway Labor Act. Implementing agreements that require changes in CBAs have been negotiated, and, failing negotiation, arbitrators have made modifications to CBA provisions as necessary to permit implementation. Thus, it is well established that the self-executing immunity statute, consistent with longstanding prior practice, provides for the overriding of CBA provisions as necessary to implement the approved transaction, and such overrides are not due to specific agency actions other than approval of the proposed transaction. And finally, courts have affirmed that the passage of time itself does not eliminate the nexus between an approved transaction and subsequent actions to implement it required for the operation of the immunity statute.

At the Board's June 8, 1998 voting conference on the proposed Conrail control transaction, we reaffirmed that the negotiation and arbitration process is the proper way to resolve important issues relating to employee rights that may be affected by the transaction. To ensure this result, we made clear, as requested by rail labor, that the Board's approval of the transaction did not indicate approval or disapproval of any of the involved CBA overrides that the applicants had argued were necessary. We also voted to provide the protections of New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C.60 (1979), and, as suggested by representatives of rail labor, to direct that the applicant carriers meet with labor representatives and to form task forces for the purpose of promoting labor-management dialogue concerning implementation and safety issues. To the maximum extent possible, the Board has urged labor and management to reach voluntary implementing agreements.

The Supreme Court in N&W made clear that all categories of contracts are subject to abrogation to the extent necessary to permit an approved railroad consolidation to be implemented. One such category of contract rights that is frequently abrogated in rail consolidations is the contract rights of stock and bond holders of consolidating railroads, which the Supreme Court had previously held did not survive approval of a consolidation by the agency that modified their terms. Most recently, at the June 8 voting conference on the Conrail control transaction, the Board voted to override anti-assignment provisions of certain shipper transportation contracts to ensure a smooth implementation of the approved transaction and to require modification of provisions of agreements among railroads and between shippers and railroads involving such matters as switching rights and charges to address competitive concerns. Clearly then, both in theory and in practice, rail employee CBAs are not the only contractual provisions that have been overridden as a result of agency approval of a rail consolidation proposal. Because the Conrail control transaction remains pending before the Board, it would be inappropriate for me to comment further on that case.

I hope you find this information useful, and I emphasize that the Board remains committed to giving full and fair consideration in accordance with the law to rail labor concerns in consolidation proceedings. I am having your letter and my response made a part of the public docket for this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely



Linda J. Morgan



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 17, 1998

The Honorable William Coyne
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Coyne:

Thank you for your letters regarding the processing of railroad consolidation transactions by the Surface Transportation Board (Board), and, in particular, of the application of CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide the assets of Conrail among the two acquiring railroads. You express concern that actions taken by the Board in approving consolidation transactions may result in the breaking of existing collective bargaining agreements (CBAs) between the involved railroads and their employees, while all other contracts are left intact, and you specifically express disappointment that the Board failed to rule in its June 8, 1998 voting conference on the proposed Conrail control transaction that the breaking of CBAs in that case was not necessary.

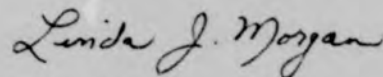
The courts have affirmed that, under what is now 49 U.S.C. 11321(a), agency approval of a consolidation transaction confers self-executing immunity on all material terms of the transaction from all other laws to the extent necessary to permit implementation of the transaction. And, in Norfolk & Western R. Co. v. Train Dispatchers, 499 U.S. 117 (1991) (N&W), the United States Supreme Court specifically held that the immunity provided by statute includes the carrier's obligations under a CBA. Moreover, since at least 1936 when the Washington Job Protection Agreement was executed by representatives of virtually all of the railroads and national rail unions, agency approved rail consolidations have been implemented without resort to bargaining under the Railway Labor Act. Implementing agreements that require changes in CBAs have been negotiated, and, failing negotiation, arbitrators have made modifications to CBA provisions as necessary to permit implementation. Thus, it is well established that the self-executing immunity statute, consistent with longstanding prior practice, provides for the overriding of CBA provisions as necessary to implement the approved transaction, and such overrides are not due to specific agency actions other than approval of the proposed transaction. And finally, courts have affirmed that the passage of time itself does not eliminate the nexus between an approved transaction and subsequent actions to implement it required for the operation of the immunity statute.

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The Supreme Court in N&W made clear that all categories of contracts are subject to abrogation to the extent necessary to permit an approved railroad consolidation to be implemented. One such category of contract rights that is frequently abrogated in rail consolidations is the contract rights of stock and bond holders of consolidating railroads, which the Supreme Court had previously held did not survive approval of a consolidation by the agency that modified their terms. Most recently, at the June 8 voting conference on the Conrail control transaction, the Board voted to override anti-assignment provisions of certain shipper transportation contracts to ensure a smooth implementation of the approved transaction and to require modification of provisions of agreements among railroads and between shippers and railroads involving such matters as switching rights and charges to address competitive concerns. Clearly then, both in theory and in practice, rail employee CBAs are not the only contractual provisions that have been overridden as a result of agency approval of a rail consolidation proposal. Because the Conrail control transaction remains pending before the Board, it would be inappropriate for me to comment further on that case.

I hope you find this information useful, and I emphasize that the Board remains committed to giving full and fair consideration in accordance with the law to rail labor concerns in consolidation proceedings. I am having your letter and my response made a part of the public docket for this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely



Linda J. Morgan



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 17, 1998

The Honorable Michael Doyle
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Doyle:

Thank you for your letters regarding the processing of railroad consolidation transactions by the Surface Transportation Board (Board), and, in particular, of the application of CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide the assets of Conrail among the two acquiring railroads. You express concern that actions taken by the Board in approving consolidation transactions may result in the breaking of existing collective bargaining agreements (CBAs) between the involved railroads and their employees, while all other contracts are left intact, and you specifically express disappointment that the Board failed to rule in its June 8, 1998 voting conference on the proposed Conrail control transaction that the breaking of CBAs in that case was not necessary.

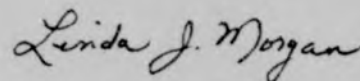
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The Supreme Court in N&W made clear that all categories of contracts are subject to abrogation to the extent necessary to permit an approved railroad consolidation to be implemented. One such category of contract rights that is frequently abrogated in rail consolidations is the contract rights of stock and bond holders of consolidating railroads, which the Supreme Court had previously held did not survive approval of a consolidation by the agency that modified their terms. Most recently, at the June 8 voting conference on the Conrail control transaction, the Board voted to override anti-assignment provisions of certain shipper transportation contracts to ensure a smooth implementation of the approved transaction and to require modification of provisions of agreements among railroads and between shippers and railroads involving such matters as switching rights and charges to address competitive concerns. Clearly then, both in theory and in practice, rail employee CBAs are not the only contractual provisions that have been overridden as a result of agency approval of a rail consolidation proposal. Because the Conrail control transaction remains pending before the Board, it would be inappropriate for me to comment further on that case.

I hope you find this information useful, and I emphasize that the Board remains committed to giving full and fair consideration in accordance with the law to rail labor concerns in consolidation proceedings. I am having your letter and my response made a part of the public docket for this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely



Linda J. Morgan

Congress of the United States

Washington, DC 20515

FILE IN DOCKET

May 27, 1998

Ms. Linda Morgan
Chair, Surface Transportation Board
1925 K. St., NW, #700
Washington, D.C. 20423

RECEIVED
SURFACE TRANSPORTATION
JUN 29 9 55 AM '98
OFFICE OF
CHAIRMAN MORGAN

Dear Ms. Morgan:

We are writing to express our opposition to the practice of the Surface Transportation Board of breaking collective bargaining agreements when the Board approves rail mergers or other transactions. There is simply no reason that a federal agency charged with the economic regulation of the railroad industry should use any authority it may have to break collective bargaining agreements.

The members of the STB continue to grant the railroads the authority to break collective bargaining agreements in mergers and other transactions simply because the railroads argue that it will be more efficient for them. The STB doesn't break contracts for fuel, for locomotives, for the movement of goods, or for anything else. Only if you are a worker will the STB break your contract.

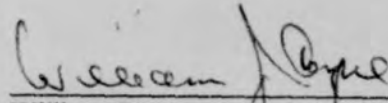
No other federal regulatory agency unilaterally breaks collective bargaining agreements as the STB has chosen to do. The actions of the STB are even more objectionable because of the extremes to which this policy has been taken -- recently the STB used the excuse of a merger more than twenty years ago to grant a railroad the authority to break a current collective bargaining agreement, merely because the railroad asked and stated it would be more convenient for them. The railroads affectionately call this authority to break contracts granted to them by the STB as the "cram down," which is an accurate description of its effect on rail employees.

We do not believe that the STB should continue the practice of breaking collective bargaining agreements. We hope you will take our views into account as the STB considers matters in the future.

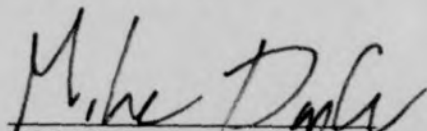
Sincerely,



Frank Mascara
Member of Congress



William Coyne
Member of Congress



Michael Doyle
Member of Congress

Congress of the United States

Washington, DC 20515

FILE IN DOCKET

June 18, 1998

Ms. Linda Morgan
Chairwoman
Surface Transportation Board
1925 K Street, N.W. #700
Washington, D.C. 20423

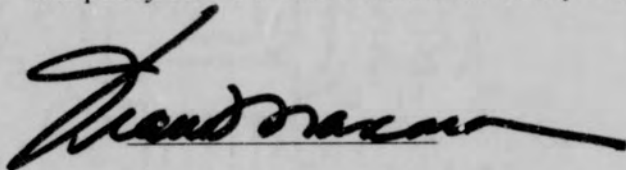
RECEIVED
SURFACE TRANSPORTATION
BOARD
JUN 24 4 43 PM '98
OFFICE OF
CHIEF COUNSEL
WASHINGTON

Dear Ms. Morgan:

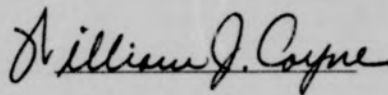
We sent a letter to you dated May 27, 1998 expressing our opposition to the practice of the Surface Transportation Board breaking collective bargaining agreements when the Board approves rail mergers or other transactions. While the Board made a statement making it clear that it does not approve or disapprove of any collective bargaining agreement overrides that the railroads requested, we feel your actions fell woefully short.

In fact, we are disappointed that the STB failed to rule that the breaking of collective bargaining agreements was absolutely unnecessary in approving of the CSX-Norfolk Southern breakup of Conrail. As stated in our previous letter, no other federal regulatory agency unilaterally breaks collective bargaining agreements as the STB has chosen to do.

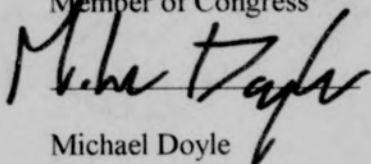
We sincerely hope you will reconsider the position of the STB on this matter and correct this policy before a final vote is taken in July. Thank you for your consideration.



Frank Mascara
Member of Congress



William Coyne
Member of Congress



Michael Doyle
Member of Congress

STB FD-33388 7-17-98 J ID-MOCS



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 17, 1998

The Honorable Mike DeWine
United States Senate
Washington, D.C. 20510

Dear Senator DeWine:

Thank you for your letter regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding remains pending before the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

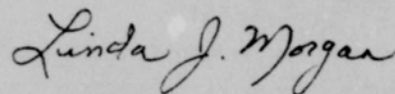
The Board recently conducted an extensive oral argument on the proposed transaction, hearing from more than 70 witnesses over the course of the 2-day argument held on June 3 and 4, 1998. Following oral argument, the Board held an open voting conference on June 8, 1998, at which we voted to approve the proposed transaction, subject to a number of conditions. The Board currently is preparing a final written decision that implements the vote at the voting conference, which is scheduled for issuance on July 23, 1998.

In voting for approval, the Board found that the transaction, as augmented by numerous settlement agreements among the parties and as further conditioned, would inject competition into the eastern United States in an unprecedented manner. The conditions adopted by the Board, while significant, recognize the operational and competitive integrity of the overall proposal and the importance of promoting and preserving privately-negotiated agreements. In particular, the Board's conditions include 5 years of oversight, along with substantial operational monitoring and reporting to ensure that the transaction is successfully implemented; mitigation of potential adverse impacts on the environment and on safety; recognition of employee interests, including a reaffirmation of the negotiation and arbitration process as the proper way to resolve important issues relating to employee rights; and several conditions that address the vital role of smaller railroads and regional concerns about competition. I have enclosed a copy of the Board's press release describing the results of the voting conference.

With respect to the specific concerns raised in your letter, as you know, the Board has voted to impose several conditions to mitigate harm to the Wheeling and Lake Erie Railway (WLE) from the proposed transaction. You can be assured that the Board is taking the comments included in your June 19 letter into consideration in preparing its final written decision.

I appreciate your interest in this matter. I will have your letter and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 17, 1998

The Honorable John Glenn
United States Senate
Washington, D.C. 20510

Dear Senator Glenn:

Thank you for your letter regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding remains pending before the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

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I appreciate your interest in this matter. I will have your letter and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Linda J. Morgan

Linda J. Morgan

Enclosure

Congress of the United States

House of Representatives

Washington, DC 20515

June 19, 1998

FILE IN DOCKET

CHAIRMAN MORGAN

JUL 1 10 53 AM '98

RECEIVED
SURFACE TRANSPORTATION

The Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
Attn: STB Finance Docket NO. 33388 (Sub. No. 80)
1925 K Street, NW
Washington, DC 20423-0001

Dear Secretary Williams:

We are writing to thank the Board for listening to our concerns regarding the many shippers that depend on service by the W&LE and our concerns over the fate of the W&LE itself.

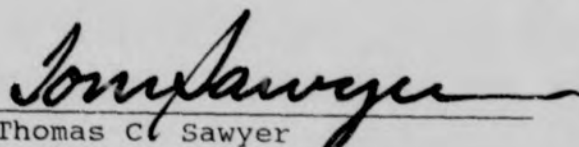
We believe that the conditions granted by the Surface Transportation Board will enable the W&LE to survive and service its debt in the new eastern post-merger consolidation. We anticipate that the W&LE will do everything it can to continue to serve its customers and to make the most of the opportunities to compete pursuant to the Board's conditions.

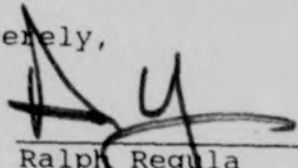
However, we are hearing from Ohio shippers and Ohio agencies that both the conditions and the opportunities appear to be ambiguous or unclear. These uncertainties--with their serious ramifications for local economies--are creating deep concern over whether there is sufficient revenue opportunity to ensure the survival of this line and its ability to continue to serve its shippers post merger.

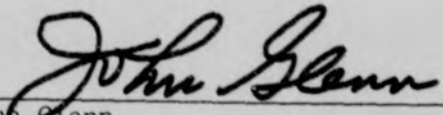
We understand that details of conditions are not typically spelled out in the staff recommendations in a merger voting conference. We are hopeful that the questions raised by the recommendations can be clarified in the Board's written decision.

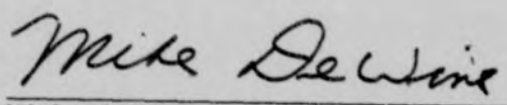
We thank you again for addressing the issues which the Ohio delegation has brought before the Board.

Sincerely,

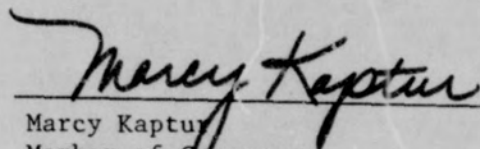

Thomas C. Sawyer
Member of Congress


Ralph Regula
Member of Congress

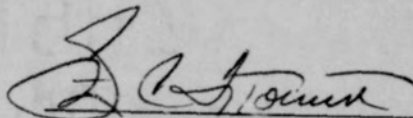

John Glenn
U.S. Senate


Michael DeWine
U.S. Senate

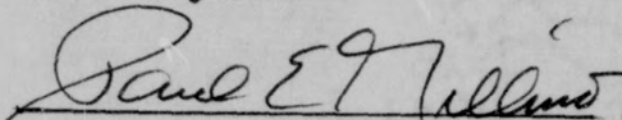
Surface Transportation Board
June 19, 1998
Page Two



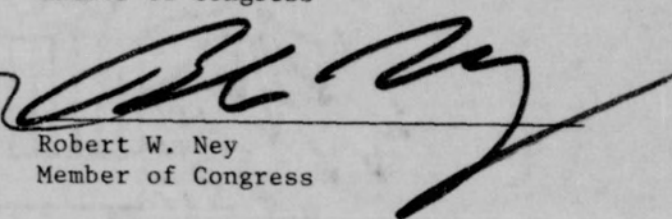
Marcy Kaptur
Member of Congress



Steven C. LaTourette
Member of Congress



Paul Gillmor
Member of Congress



Robert W. Ney
Member of Congress

STB

FD-33388

7-14-98

J

ID-MOCH



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN BUCKET
FD-33388

July 14, 1998

The Honorable Peter J. Visclosky
U.S. House of Representatives
Washington, D.C. 20515-1401

Dear Congressman Visclosky:

I appreciated the opportunity to meet with you on June 29, 1998, following the Surface Transportation Board's (Board) vote in its open voting conference on June 8, 1998, to approve, with various conditions, the acquisition of Conrail by the Norfolk Southern and CSX. At that meeting, you reiterated the concerns that you had expressed in your presentation at the Board's oral argument on June 4 regarding the impact of the acquisition on the Four Cities area.

Subsequent to our meeting, the Four City Consortium did formally file a pleading with the Board seeking certain changes in the environmental mitigation conditions imposed by the Board at its voting conference pertaining to the Four Cities area. In the Board's written decision to be issued on July 23, 1998, implementing the vote taken at the voting conference to approve the acquisition, the Board will address the issues in that pleading as appropriate.

Thank you for your interest in this matter. I will have this letter placed in the public docket for the Conrail acquisition proceeding.

Sincerely,

Linda J. Morgan

STB

FD-33388

7-14-98

J

ID-MOCH



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

FD-33388

July 14, 1998

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

Dear Congressman Kucinich:

This is in response to a letter to Ms. Nancy Beiter, of the Surface Transportation Board's (Board) Office of Public Services, from your Congressional Staff Counsel, Martin D. Gelfand, regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding remains pending before the Board as STB Finance Docket No. 33388.

In his letter, Mr. Gelfand claims that CSX has unilaterally cut off negotiations with the City of Brooklyn, Ohio, citing the Board's June 8 voting conference as authority for its action. The Board's vote on June 8 in no way prohibits the pursuit or continuation of private sector negotiations. In fact, as you know, the Board encourages private sector negotiations and resolution in any matters within the jurisdiction of the Board.

I hope that you find this information helpful, and I will have the letter from your office and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Linda J. Morgan

Linda J. Morgan

DENNIS J. KUCINICH
10TH DISTRICT, OHIO

1730 LONGWORTH OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225 - 5871

14400 DETROIT AVENUE
LAKEWOOD, OHIO 44107
(216) 228-8850
(216) 228-6465 FAX

5983 W 54TH
PARMA, OHIO 44129
(216) 845-2707



Congress of the United States
House of Representatives

Committees:
Government Oversight
Education and Labor

July 6, 1998

FILE IN DOCKET

BY FACSIMILE
202-565-9016

Ms. Nancy Beiter
U.S. Surface Transportation Board
Office Of Congressional Affairs
1925 K Street, NW
Washington, D.C. 20423

Dear Ms. Beiter:

This inquiry is on behalf of the City of Brooklyn, Ohio, in regard to the Conrail Merger Docket No. 33388.

As a result of the merger, the City of Brooklyn is projected to see an increase in freight train traffic from 16.4 trains per day to 45.8 trains per day, an increase of nearly 300%. Pursuant to Decision No. 71 and Decision No. 73 of the Conrail Docket, the City of Brooklyn and its Mayor, John Coyne, have been engaged in good faith negotiations with CSX regarding environmental mitigation for that city.

I understand that on June 8, 1998, the Surface Transportation Board (STB) held its voting conference. On that date, the STB issued an initial decision approving the merger with conditions. On July 23, 1998, the STB will issue its final written opinion which may supersede any particular provision of the initial decision at voting conference. Furthermore, I understand that in many cases, affected communities appeal the STB's decisions to the appropriate U.S. Circuit Court of Appeals. Thus, the June 8 decision is not the final decision.

More importantly, I do not believe, based on Decision No. 71, Decision No. 73, and other written and verbal correspondence with your office, that the June 8 voting conference is intended to cut off negotiations between applicant railroads and affected communities.

Unfortunately, on June 30, 1998, CSX unilaterally cut off negotiations with the City of Brooklyn. CSX cited the June 8 voting conference as authority for its unilateral action. Please be advised of CSX's unilateral action.

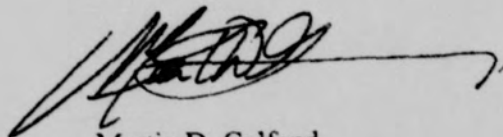


While other communities in the Greater Cleveland area finalized agreements prior to the June 8, 1998, voting conference, Brooklyn was still in negotiations at that time. Brooklyn did not intend to cut off negotiations. In fact, Brooklyn recently submitted an answer to CSX's proposed agreement and was awaiting a response when CSX unilaterally cut off negotiations.

Please investigate the STB's position on CSX's unilateral action of June 30, 1998, in light of Decision No. 71 and Decision No. 73. Is it appropriate for an applicant railroad to unilaterally cut off good faith negotiations with an affected community upon the initial decision of the STB in its voting conference?

Attached are CSX's June 30 letter, Decision No. 71, and Decision No. 73, for your reference. Your prompt response and advice will be greatly appreciated.

Sincerely,



Martin D. Gelfand
Congressional Staff Counsel

attachments (3)

cc: Hon. John Coyne
Hon. Linda Morgan
Elaine Kaiser
John Snow
Michael J. Ruehling
Stephen L. Watson



One James Center
Richmond, Virginia 23219
(804) 782-1444

Michael J. Ruehling
Vice President
State Relations

June 30, 1998

The Honorable John M. Coyne
Mayor, City of Brooklyn, Ohio
7619 Memphis Avenue
Brooklyn, Ohio 44144

Dear Mayor Coyne:

As the individual at CSX responsible for coordinating state and local government agreements related to the Conrail transaction, I am responding to your June 17, 1998 letter to Stephen L. Watson.

The Surface Transportation Board voted on June 8, 1998 to approve the CSX/Norfolk Southern acquisition of Conrail. Numerous conditions were imposed in the STB's oral decision addressing various competitive and environmental impacts the agency determined would result from the transaction.

Prior to the June 8 vote, we engaged in extensive consultations with state and local government officials in those areas identified by the STB as potentially experiencing adverse impacts on lines that CSX would acquire as a result of the Conrail transaction. Our efforts focused on negotiating voluntary agreements, when and where possible, with these states and communities to resolve the concerns raised by the STB and preclude the need for imposed conditions.

We were successful in reaching numerous negotiated agreements prior to the June 8 STB voting conference. The STB accepted these agreements as alternatives to mandated conditions and at the June 8 Voting Conference advised that the negotiated agreements would be imposed as conditions.

In those cases where CSX was unable to reach negotiated settlements prior to the Voting Conference, the STB imposed conditions requiring a variety of mitigation measures. These conditions were summarized in the STB's oral decision and included recommendations for certain locations in the Greater Cleveland area. The conditions range from enhanced train detect detection to hazardous materials emergency response coordination and training to noise mitigation. Some of these conditions may be applicable in the case of your community.

• Post Office Box 85629, Richmond, Virginia 23285-5629 •
• FAX (804) 783-1380 •

Mayor Coyne
June 30, 1998
Page Two

We are now awaiting the STB's issuance of its written decision in the case in order to finalize plans to move forward with implementation of the mitigation measures that are imposed as conditions. You can be assured that we intend to comply fully with the terms of any and all conditions imposed by the STB that may involve the City of Brooklyn. As soon as our plans are complete, we will be in contact with you. In the meantime, if you have any questions, please let me know.

Sincerely,

Michael J. Ruchling

trt

cc: Elaine K. Kaiser, Esquire, Surface Transportation Board
The Honorable Linda Morgan, Chairnan, Surface Transportation Board
Mr. Stephen L. Watson, CSX Transportation

29047
CO

SERVICE DATE - LATE RELEASE MARCH 17, 1998

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

Decision No. 71

Decided: March 17, 1998

The Board's Section of Environmental Analysis (SEA) currently is preparing a Final Environmental Impact Statement (FEIS) to meet the Board's responsibilities under the National Environmental Policy Act and related environmental laws in this case. The FEIS is scheduled to be issued in late May 1998. We are aware of ongoing environmental discussions between the railroads and various communities in the Greater Cleveland area.¹ The Board's practice is to encourage privately negotiated agreements to address environmental concerns. These agreements can often be more far-reaching and satisfactory to the parties than environmental mitigation that the Board could impose.

Within the context of the proposed Conrail acquisition, the Cleveland area is unique with respect to the proposed CSX and NS operations. The Cleveland area would be a major crossroad for the CSX and NS proposed systems for traffic moving between the Northeast and the Midwest. We are concerned that informal involvement by Board staff at this time could impede independent discussions among the private parties. Therefore, SEA and the consultants are instructed not to engage in any further informal discussions with the affected parties in the Greater Cleveland area at this time. Should the railroads and a community reach a mutually acceptable agreement by April 15, 1998, the involved parties shall immediately notify SEA. To the extent agreements are not reached, SEA will take the necessary steps to develop its own environmental mitigation for each of the communities in the Greater Cleveland area in the FEIS, which will be considered by the Board in reaching its final decision.

¹ The Greater Cleveland area includes Cleveland, East Cleveland, Berea, Brook Park, Olmstead Falls, and the West Shore suburbs (Lakewood, Bay Village, Rocky River, and Westlake).

STB Finance Docket No. 33388

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. SEA and the consultants are instructed not to engage in any further informal discussions with the affected parties in the Greater Cleveland area at this time.
2. This decision is effective on the date served.

By the Board, Chairman Morgan.

Vernon A. Williams
Secretary

Case

Docket No.
FD 33388 0

Title

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

Decision Summary

CLARIFIED DECISION NO. 71 TO THE EXTENT NOTED IN THIS DECISION.

Download Files

WP Envoy (requires viewer)

WordPerfect

Graphics/Maps/Figures:



- 29065.envy



- 29065.WPD

Full Text of Decision

29065

SERVICE DATE - MARCH 23, 1998

CO

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC .

NORFOLK SOUTHERN CORPORATION AND

NORFOLK SOUTHERN RAILWAY COMPANY

--CONTROL AND OPERATING LEASES/AGREEMENTS--

CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

Decision No. 73

Decided: March 20, 1998

Decision No. 71 issued in this matter on March 17, 1998, addressed certain ongoing environmental discussions between the railroads and various communities in the Greater Cleveland area. Noting that the Board's practice is to encourage privately negotiated agreements to address environmental concerns, the decision expressed concern that informal involvement by Board environmental staff at this time could impede independent discussions among the private parties. Therefore, the decision instructed Board staff not to engage in any further informal discussions with the affected parties in the Greater Cleveland area at this time.

In a letter dated March 19, 1998, counsel for the State of Ohio points out that the Draft Environmental Impact Statement issued in this proceeding encouraged negotiated settlements "among the Applicant[railroads], the locally affected communities, and the appropriate government agencies." Noting that Decision No. 71 did not specifically refer to negotiations and agreements among parties other than

railroads and communities, the March 19 letter requests "clarification that negotiations are expected to involve all interested parties and that the state will be a party to any agreement when state interests and state funding issues are involved."

Decision No. 71 was intended to facilitate negotiations among the various interested parties. It was not intended to define who should, or should not, be involved in any specific negotiation, and it was certainly not intended to limit the participation of any appropriate party in any negotiations that may be conducted. Any party that has a legitimate interest in these matters is free and indeed encouraged to participate in negotiations.

To that extent, Decision No. 71 is clarified.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. Decision No. 71 is clarified to the extent noted in this decision.
2. This decision is effective on the date served.

By the Board, Chairman Morgan.

Vernon A. Williams

Secretary

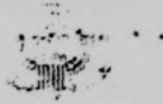
DENNIS J. KUCINICH
10TH DISTRICT, OHIO

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5983 W 54TH
PARMA, OHIO 44129
(216) 845-2707

Committees:
Government Oversight
Education and Labor



Congress of the United States
House of Representatives

FAX MEMORANDUM

DATE: _____

TO: HON. LINDA MORGAN

PHONE: _____
FAX: _____

FROM:

- Rep. Dennis J. Kucinich
- Patricia Vecchio
- Renee J. Epstein
- Marian Carey
- Martin D. Gelfand
- Luis Gomez
- Claudia Lee Jabo
- Malak Jadallah
- Jennifer Lawless
- Christine Gitlin Miles
- Gerry Nelson
- Betty Rodes
- Lynn Vittardi
- Other _____

PHONE: _____
Fax: _____

MESSAGE: _____

8 pages to follow

The contents of this facsimile are personal and confidential. Please forward to the addressee immediately. If there are any problems with this transmission, please notify (216) 228-8850.



STB

FD-33388

~~7-14-98~~

J

ID-MOCH



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

FD-33388

July 14, 1998

The Honorable Bob Wise
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Wise:

Thank you for your letters regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding remains pending before the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

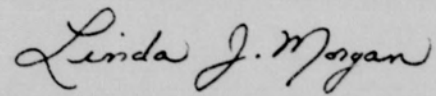
The Board recently conducted an extensive oral argument on the proposed transaction, hearing from more than 70 witnesses over the course of the 2-day argument held on June 3 and 4, 1998. Following oral argument, the Board held an open voting conference on June 8, 1998, at which we voted to approve the proposed transaction, subject to a number of conditions. The Board currently is preparing a final written decision that implements the vote at the voting conference, which is scheduled for issuance on July 23, 1998.

In voting for approval, the Board found that the transaction, as augmented by numerous settlement agreements among the parties and as further conditioned, would inject competition into the eastern United States in an unprecedented manner. The conditions adopted by the Board, while significant, recognize the operational and competitive integrity of the overall proposal and the importance of promoting and preserving privately-negotiated agreements. In particular, the Board's conditions include 5 years of oversight, along with substantial operational monitoring and reporting to ensure that the transaction is successfully implemented; mitigation of potential adverse impacts on the environment and on safety; recognition of employee interests, including a reaffirmation of the negotiation and arbitration process as the proper way to resolve important issues relating to employee rights; and several conditions that address the vital role of smaller railroads and regional concerns about competition. I have enclosed a copy of the Board's press release describing the results of the voting conference.

With respect to the specific concerns raised in your June 3 letter, the Board has voted to impose several conditions to mitigate harm to the Wheeling and Lake Erie Railway (WLE) from the proposed transaction, including requiring the applicants to negotiate with WLE concerning mutually beneficial arrangements allowing WLE to serve shippers along CSX's line from Benwood to Brooklyn Junction, WV. You can be assured that the Board is taking your further comments, included in your June 18 letter, into consideration in preparing its final written decision.

I appreciate your interest in this matter. I will have your letter and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure

BOB WISE
2nd DISTRICT, WEST VIRGINIA

COMMITTEES:
COMMITTEE ON TRANSPORTATION
& INFRASTRUCTURE
COMMITTEE ON GOVERNMENT REFORM
& OVERSIGHT
web address: <http://www.house.gov/wise/>
e mail address: bobwise@mail.house.gov

WASHINGTON OFFICE:
2367 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-2711
FAX: (202) 225-7856

DISTRICT OFFICES:
4710 CHIMNEY DRIVE
CHARLESTON, WV 25302
(304) 965-0865
FAX: (304) 965-0872
222 W. JOHN STREET
MARTINSBURG, WV 25401
(304) 264-8810
FAX: (304) 264-8815

Congress of the United States
House of Representatives
Washington, DC 20515

June 18, 1998

FILE IN DOCKET

JD-33388

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

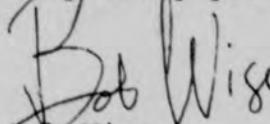
Dear Mr. Williams:

I appreciate your responding to my concerns regarding the numerous shippers that depend on service by the W&LE and the fate, indeed, over the future of the W&LE itself. I am grateful that the Surface Transportation Board determined to grant conditions intended to enable the W&LE to survive and service its debt in the new eastern port merger consolidation. I anticipate that the W&LE will do everything it can to continue to serve its customers and to make the most of the opportunities to compete pursuant to the Board's conditions.

However, I have been hearing that for the captive shippers on the Benwood to Brooklyn Junction line, as well as for the W&LE, the condition involving local service is very important. It would be helpful if the Board could clarify the rights to be granted to W&LE for local service to Brooklyn Junction from the CSX Benwood interchange (with haulage and underlying trackage rights) in accordance with W&LE condition #4 of its Trial Brief (WLE-8).

I understand that details of conditions are not typically spelled out in the staff recommendations in a merger voting conference. Nonetheless, I remain concerned that serious ambiguities in the recommendations could cloud the future of the railroad and its shippers. I would appreciate any clarification that the Board might deem appropriate. I thank you again for addressing these issues.

Very truly yours,



Bob Wise
U.S. Representative

BW:gs

BOB WISE
2d DISTRICT, WEST VIRGINIA

COMMITTEES:
COMMITTEE ON TRANSPORTATION
& INFRASTRUCTURE
COMMITTEE ON GOVERNMENT REFORM
& OVERSIGHT
web address: <http://www.house.gov/wise/>
e mail address: bobwise@mail.house.gov

Congress of the United States
House of Representatives
Washington, DC 20515

WASHINGTON OFFICE:
2367 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-2711
FAX: (202) 225-7856
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4710 CHIMNEY DRIVE
CHARLESTON, WV 25302
(304) 965-0865
FAX: (304) 965-0972
222 W. JOHN STREET
MARTINSBURG, WV 25401
(304) 264-8810
FAX: (304) 264-8815

June 3, 1998

FILE IN DOCKET
70-33388

OFFICE OF
CHAIRMAN MORGAN

JUN 9 3 39 PM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

The Honorable Verno Williams
Office of the Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423

Dear Mr. Williams:

The Board is aware of my views on rail consolidations and their effect on rail shippers in general, and captive shippers in particular. I am writing to express my concerns about possibilities which may be lost if the merger is approved without a specific condition which could protect West Virginia interests. Conversely, if this condition is granted it could bring competitive access to important West Virginia rail shippers, help preserve a regional railroad and preserve an important West Virginia gateway and bridge.

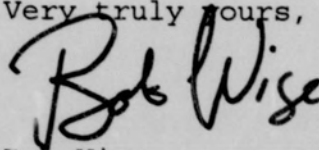
PPG and Bayer are two of several captive shippers located roughly 20 miles south of an interchange with CSXT and the Wheeling & Lake Erie Railway in Benwood, West Virginia. Because the merger threatens the very survival of the W&LE, the railroad has sought conditions from the Board to allow it access to compete for lost revenues. Local access to this CSX line is among the important conditions the W&LE seeks.

I support the Board's granting local trackage rights to serve the shippers south of Benwood for three reasons. It would give competitive access for important West Virginia shippers (including PPG & Bayer) who want and need options for rates routes and service which the W&LE could provide. Secondly, it would help ensure the survival of a regional carrier threatened by the merger and thus help many shippers that W&LE serves. Finally, the survival of the W&LE would mean the preservation of the Benwood Bridge and the gateway into West Virginia.

The Honorable Vernon Williams -- Page 2

To avoid the negative consequences and ensure the positive aspects of competitive access in which I strongly believe, I would appreciate your consideration of granting access to these shippers.

Very truly yours,

A handwritten signature in black ink that reads "Bob Wise". The signature is written in a cursive style with a large, prominent "B" and "W".

Bob Wise
U.S. Representative

BW:gs

STB FID-33388

7-13-98

J

ID-MOCS



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

JS-33388

July 13, 1998

The Honorable John Breaux
United States Senate
Washington, D.C. 20510-1803

Dear Senator Breaux:

Thank you for your letter forwarding correspondence from your constituent, Ms. Beulah Labostrie, regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. Specifically, your constituent voices opposition to the merger because of concerns regarding CSX and hazardous material safety, particularly in Louisiana. The Conrail proceeding remains pending before the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

The Board recently conducted an extensive oral argument on the proposed transaction, hearing from more than 70 witnesses over the course of the 2-day argument held on June 3 and 4, 1998. Following oral argument, the Board held an open voting conference on June 8, 1998, at which we voted to approve the proposed transaction, subject to a number of conditions. The Board currently is preparing a final written decision that implements the vote at the voting conference, which is scheduled for issuance on July 23, 1998.

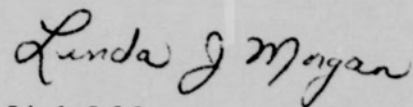
In voting for approval, the Board found that the transaction, as augmented by numerous settlement agreements among the parties and as further conditioned, would inject competition into the eastern United States in an unprecedented manner. The conditions adopted by the Board, while significant, recognize the operational and competitive integrity of the overall proposal and the importance of promoting and preserving privately-negotiated agreements. In particular, the Board's conditions include 5 years of oversight, along with substantial operational monitoring and reporting to ensure that the transaction is successfully implemented; mitigation of potential adverse impacts on the environment and on safety; recognition of employee interests, including a reaffirmation of the negotiation and arbitration process as the proper way to resolve important issues relating to employee rights; and several conditions that address the vital role of smaller railroads and regional concerns about competition.

With regard to your specific concerns, the Board for the first time in a railroad consolidation case required the preparation of an Environmental Impact Statement and Safety Integration Plans to address fully the environmental and safety concerns raised. The Board will be closely monitoring implementation of the environmental mitigation conditions and the safety

plans. In addition, you should be aware that, in connection with this merger, CSX has agreed to work with local officials to establish and maintain a specific hazardous materials transportation emergency response plan for the New Orleans area. I have enclosed a copy of the Board's press release describing the results of the voting conference.

I appreciate your interest in this matter. I will have your letter, your constituent's letter, and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure

JOHN BREAU
LOUISIANA

MINORITY
CHIEF DEPUTY WHIP

COMMITTEES:

COMMERCE, SCIENCE, AND
TRANSPORTATION

FINANCE

SPECIAL COMMITTEE ON AGING

WASHINGTON OFFICE
(202) 224-4623
TDD (202) 224-1986

senator@breau.senate.gov
http://www.senate.gov/~breau

United States Senate

WASHINGTON, DC 20510-1803

STATE OFFICES:

ONE AMERICAN PLACE, SUITE 2030
BATON ROUGE, LA 70825
(504) 382-2050

THE FEDERAL BUILDING
705 JEFFERSON STREET, ROOM 103
LAFAYETTE, LA 70501
(318) 262-6871

WASHINGTON SQUARE ANNEX BUILDING
211 NORTH 3RD STREET, ROOM 102A
MONROE, LA 71201
(318) 325-3320

HALE BOGGS FEDERAL BUILDING
501 MAGAZINE STREET, SUITE 1005
NEW ORLEANS, LA 70130
(504) 589-2531

CENTRAL LOUISIANA
(318) 487-8445

FILE IN DOCKET

June 22, 1998

Mr. Richard Fitzsimmons
Director, Office of Congressional
and External Affairs
Surface Transportation Board
Room 842
1925 K Street, NW
Washington, DC 20423-0001

RECEIVED
SURFACE TRANSPORTATION
BOARD
JUN 30 9 20 AM '98
OFFICE OF
CHAIRMAN MORGAN

Dear Mr. Fitzsimmons:

I have been sent a copy of a letter by Ms. Beulah Labostrie,
President of Louisiana ACORN, regarding the organization's opposition
to the merger of CSX and Norfolk Southern railroads with Conrail.

Please investigate the enclosed information sent to me and provide
me with a report, within federal guidelines, responding to the issues
raised by my constituent. Your reply may be forwarded to the attention
of Phil Thevenet.

Thank you for your attention and assistance.

Sincerely,

JOHN BREAU
United States Senator

JB/pmt
Enclosure

Louisiana ACORN

1024 Elysian Fields Ave., New Orleans, LA 70117 • (504) 943-0044

May 27, 1998

Ms. Linda J. Morgan
Chairperson
The U.S. Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Dear Chairperson Morgan:

ACORN is a community organization of low/moderate income people. We have community groups organized in the predominantly African-American, on either side of the CSX-Norfolk Southern railroad tracks and switching yard in New Orleans. These communities are endangered by their proximity to the railroad tracks, long the home of tankcars laden with toxic chemicals. The many dangers from the heavy traffic and storage of the tankcars at the railroad switching yard and on its tracks, and the chronic mismanagement of the them is one of the main reasons ACORN goes on record in opposition to the merger of CSX and Norfolk Southern with Conrail.

Since the prominent CSX disaster in our neighborhoods almost ten years ago, there have been continuous problems with this company's actions in New Orleans. There have even been more leaks and fires, with no remediation of the problems by CSX management. Further, CSX - Norfolk have property along the railroad tracks which is not maintained. This industrial strip is in the heart of New Orleans, the center of our city, amidst densely residential communities. Overgrown grass blights all of the properties surrounding these communities attracting rats, litter and other forms of dumping. CSX - Norfolk Southern Railroad are in constant violation of local health laws. They persist in stacking railroad ties and piles of gravel in one community, season in and season out, also in violation of local health laws. This property is also likely contaminated from creosote which has leached into the undrained ground after rains, when large pools of water stand there.

p. 2

Chairperson Morgan

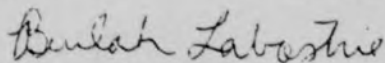
The location of the switching yard between the neighborhoods ensure that the neighborhood streets, including one state highway is blocked every day and night for the switching procedure. All but two of the streets in two African-American communities were completely severed and can no longer be used by the public. However, no streets in the adjacent predominantly white communities have been severed by the company. The chopped-up affect in the neighborhoods where the streets were severed has contributed to the decline and blight of those areas which is typical of communities with industrial encroachment of this magnitude. Further, even today's newspaper carries an article about the frequent accidents caused by drivers attempting to "beat the train" by driving up one-way streets the wrong way, accelerating to the point of losing control of their vehicles and physically crashing into the homes on Montegut Street (on at least three separate occasions recently).

The switching procedure itself also slams railroad car against railroad car causing heavy vibrations which break foundations, ceilings, and tear up the basic structure of nearby homes -- some are up to one hundred years old in two historic communities.

The relentless insensitivity of the railroads is personified in their attitude towards the neighboring public. They do not return telephone calls or agree to meet with our community groups. They have no intention of being a good neighbor. Can you imagine how much more insensitive they would be *after* a merger?

The move of this switching yard from it's original, higher income white community to a lower income, predominantly African-American neighborhood is certainly a major indicator of environmental racism, as are the other chronic problems CSX Norfolk have refused to solve, that are addressed here. Please decide against this merger,

On behalf of the low and moderate income people,



Beulah Labostrie
President

cc: Senators Landrieu and Breaux
Congressman Jefferson
Media

United States Senate

WASHINGTON, DC 20510-1803

OFFICIAL BUSINESS

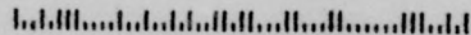
John Breaux

U.S.S.



Mr. Richard Fitzsimmons
Director, Office of Congressional
and External Affairs
Surface Transportation Board
Room 842
1925 K Street, NW
Washington, DC 20423-0001

20423-0001



STB

FD-33388

7-13-98

J

ID-MOCS



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 13, 1998

The Honorable Mary L. Landrieu
United States Senate
Washington, D.C. 20510

Dear Senator Landrieu:

Thank you for your inquiry regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. Specifically, you ask about conditions imposed regarding hazardous material safety, particularly in Louisiana. The Conrail proceeding remains pending before the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

The Board recently conducted an extensive oral argument on the proposed transaction, hearing from more than 70 witnesses over the course of the 2-day argument held on June 3 and 4, 1998. Following oral argument, the Board held an open voting conference on June 8, 1998, at which we voted to approve the proposed transaction, subject to a number of conditions. The Board currently is preparing a final written decision that implements the vote at the voting conference, which is scheduled for issuance on July 23, 1998.

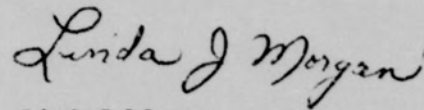
In voting for approval, the Board found that the transaction, as augmented by numerous settlement agreements among the parties and as further conditioned, would inject competition into the eastern United States in an unprecedented manner. The conditions adopted by the Board, while significant, recognize the operational and competitive integrity of the overall proposal and the importance of promoting and preserving privately-negotiated agreements. In particular, the Board's conditions include 5 years of oversight, along with substantial operational monitoring and reporting to ensure that the transaction is successfully implemented; mitigation of potential adverse impacts on the environment and on safety; recognition of employee interests, including a reaffirmation of the negotiation and arbitration process as the proper way to resolve important issues relating to employee rights; and several conditions that address the vital role of smaller railroads and regional concerns about competition.

With regard to your specific concerns, the Board for the first time in a railroad consolidation case required the preparation of an Environmental Impact Statement and Safety Integration Plans to address fully the environmental and safety concerns raised. The Board will

be closely monitoring implementation of the environmental mitigation conditions and the safety plans. In addition, you should be aware that, in connection with this merger, CSX has agreed to work with local officials to establish and maintain a specific hazardous materials transportation emergency response plan for the New Orleans area. I have enclosed a copy of the Board's press release describing the results of the voting conference.

I appreciate your interest in this matter, and will have your letter and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure

U.S. SENATOR MARY L. LANDRIEU

U.S. Senate

Washington, D.C. 20510

(202) 224-5824/(202) 224-9735 FAX #

DOCKET

FAX COVER SHEET

FILE IN DOCKET

DATE: 6/19/98

TO: Linda Morgan

FROM:

ALICIA D. WILLIAMS

Office Manager/Executive Assistant

(202) 224-5121

COMMENTS: Has this matter been
resolved. What type of
response should we send
to our constituents? We haven't
received anything. Call me to discuss
Thanks
Alicia

Number of pages including fax cover sheet. 3



U.S. Department
of Transportation
**Federal Railroad
Administration**

Office of the Administrator

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

APR 8 1998

The Honorable Mary L. Landrieu
United States Senate
Washington, D.C. 20510-1804

Dear Senator Landrieu:

Thank you for your letter on behalf of your constituents stating their concerns about the tank car fire in New Orleans in 1987.

I was moved by their descriptions of the suffering they endured following the September 1987 release of butadiene from a tank car and the resulting vapor cloud ignition and fire. I hope it will be of some comfort to them to know that the Department of Transportation has published regulations forbidding both the new construction and the continued use of tank cars similar to the one that caused so many Louisiana citizens such anguish. These regulations were part of an extensive revision of the rules for moving hazardous materials by railroad tank car. In addition to requirements for improved crashworthiness, the Department introduced several new technologies for the inspection and testing of tank cars, replacing inspection practices that had their origins at the turn of this century.

I note that your constituents are concerned about the proposed purchase by CSX of Conrail and whether it will affect CSX's ability to pay whatever judgment is finally determined against it. The Surface Transportation Board has jurisdiction over this proceeding. Your constituents may wish, perhaps through their counsel, to advise the Board of their concerns by writing:

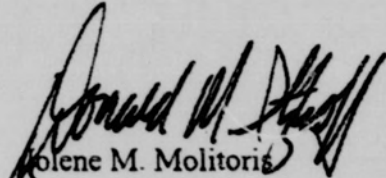
Surface Transportation Board
The Mercury Building
1925 K Street, N.W.
Washington, D.C. 20423

Commenters should refer to "STB Finance Docket No. 33388." Your constituents can follow this matter on the World Wide Web at a site created by the Board: www.conrailmerger.com. Both the New Orleans and the Metairie public libraries offer Internet access to citizens.

2

Thank you for sharing your concerns about the safe transportation of hazardous materials by railroad. I appreciate your interest in this matter and look forward to working with you on this and other transportation issues of importance to you and your constituents.

Sincerely,

A handwritten signature in black ink, appearing to read "Dolene M. Molitoris". The signature is stylized and written over the printed name.

Dolene M. Molitoris
Administrator

STB

FD-33388

7-8-98

J

ID-MOCS



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 8, 1998

The Honorable John D. Rockefeller IV
United States Senate
Washington, D.C. 20510-4802

Dear Senator Rockefeller:

Thank you for your letter of June 3, 1998, regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding remains pending before the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

The Board recently conducted an extensive oral argument on the proposed transaction, hearing from more than 70 witnesses over the course of the 2-day argument held on June 3 and 4, 1998. Following oral argument, the Board held an open voting conference on June 8, 1998, at which we voted to approve the proposed transaction, subject to a number of conditions. The Board currently is preparing a final written decision that implements the vote at the voting conference, which is scheduled for issuance on July 23, 1998.

In voting for approval, the Board found that the transaction, as augmented by numerous settlement agreements among the parties and as further conditioned, would inject competition into the eastern United States in an unprecedented manner. The conditions adopted by the Board, while significant, recognize the operational and competitive integrity of the overall proposal and the importance of promoting and preserving privately-negotiated agreements. In particular, the Board's conditions include 5 years of oversight, along with substantial operational monitoring and reporting to ensure that the transaction is successfully implemented; mitigation of potential adverse impacts on the environment and on safety; recognition of employee interests, including a reaffirmation of the negotiation and arbitration process as the proper way to resolve important issues relating to employee rights; and several conditions that address the vital role of smaller railroads and regional concerns about competition.

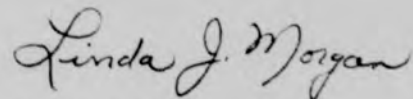
With regard to your specific concerns, the Board carefully considered the views of a number of West Virginia parties in determining exactly how to condition its approval of this transaction so as best to enhance the public interest, including the imposition of certain conditions that directly address a number of the concerns you have raised. We voted to expand the reciprocal switching provisions that applicants negotiated as a part of their settlement

agreement with the National Industrial Transportation League, the nation's largest shipper trade association, so that switching now provided by CSX and NS to Conrail will be preserved in the same manner as switching now provided by Conrail to NS and CSX. We voted to require applicants to offer the Wheeling and Lake Erie Railway (WLE) a specific package of trackage and haulage rights and property leases to ensure continued service by WLE. We have also required applicants to negotiate further with WLE concerning mutually beneficial arrangements, including allowing WLE to provide service to Ohio aggregate shippers and to serve shippers along CSX's line from Benwood to Brooklyn Junction, WV. And we voted to impose a general regional rail passenger monitoring condition as a component of the formal 5-year oversight of this transaction that we will soon be initiating, which will permit the Board to gather information on the ongoing implementation of the agreement negotiated last Fall between CSX and the Maryland Mass Transit Administration concerning the continued operation of MARC that resulted in the support of the State of Maryland for the transaction.

Regarding your remaining interest, that of requiring a second carrier to provide service to West Virginia coal producers located along CSX's B&O line, we carefully reviewed the submissions from West Virginia interests that had been previously filed. In this regard, it is important to point out that the West Virginia Coal Association, noting that "the proposed division of Conrail, Inc. will expand the market reach of, and enhance opportunities for, West Virginia's coal producers," was an early (May 1997) supporter of the transaction and did not seek such a condition. And while the West Virginia State Rail Authority did appear as a party of record and submitted an October 21, 1997 pleading in which it requested that the Board condition its approval of the transaction on trackage rights for NS into the B&O coal fields now served exclusively by CSX, this request appeared to us to have been withdrawn in Governor Underwood's December 3, 1997 letter to the Board, in which he stated: "Please find this letter as the state of West Virginia and our rail authority's support for the purchase of Conrail by CSX, CSXT, and Norfolk Southern and I rescind any previous objections or qualifications for consideration."

I have enclosed a copy of the Board's press release describing the results of the meeting conference. I appreciate your interest in this matter, and will have your letter and my response made a part of the public docket in this proceeding.

Sincerely,



Linda J. Morgan

Enclosure

United States Senate

WASHINGTON, DC 20510-4802

FILE IN DOCKET

June 3, 1998

The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

The Honorable Gus A. Owen
Vice Chairman
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

Via Hand Delivery

Dear Chairman ^{Linda}~~Morgan~~ and Vice Chairman ^{Gus}~~Owen~~,

As the Surface Transportation Board begins the final stages of consideration of the proposed division and acquisition of Conrail by CSX and Norfolk Southern, I write to share with you my continued concerns about the broader implications of railroad consolidation for our nation and about the specific implications of this transaction for my home state of West Virginia.

Almost two decades after enactment of the Staggers Rail Act, the railroad industry is reaching a point of near-total consolidation. Since 1980 the number of major Class I railroads has declined from 43 to 5 — and will drop to 4 if the division of Conrail is approved. Like the major railroad mergers that have come before it, the pending transaction is touted as one with the potential to increase efficiencies and improve rail freight transportation. Equally undeniable, however, is the merger's potential to bring economic hardship to shippers and their communities over the long-term should service disruptions, reduced access, or increased captivity result.

Particularly in the wake of the extraordinary crisis on the Union Pacific/Southern Pacific, it is incumbent upon the Board aggressively to establish competitive and alternative rail access as part of its review of the Conrail transaction — and to assure rail service availability and allow market forces to influence shipping costs going forward.

The Honorable Linda J. Morgan
The Honorable Gus A. Owen
June 3, 1998
Page 2

Rail-to-rail competition is an essential component not only of a healthy national economy but also of a healthy railroad industry, and the competitive balance struck by the Board in this transaction has long-term consequences for the future of rail transportation.

In the last year I have strongly encouraged both CSX and Norfolk Southern to address the concerns of West Virginia interests with regard to the division of Conrail. To their credit, both CSX and Norfolk Southern have made an effort to do so, and several West Virginia concerns appear to have been addressed for the near-term to the satisfaction of the parties. Nonetheless, I remain concerned about the long-term implications of some of these matters, and I ask for your consideration of several additional issues that have been brought to my attention in the interim:

- First, the proposed division of Conrail fails to improve the current anti-competitive situation faced by chemical industry and other shippers in the Kanawha and Ohio Valleys.

For example, PPG Industries and Bayer Corporation are two of several captive shippers located roughly 20 miles south of an interchange with CSX and the Wheeling & Lake Erie Railway (WL&E) in Benwood, WV. Because other aspects of the proposed transaction threaten its very survival, the WL&E is seeking access to the CSX line south of Benwood, among others, to allow it to compete for lost revenues. Such access is wholly supported by the affected shippers and would preserve the competitive balance offered by WL&E as a regional carrier. WL&E should be granted local trackage rights to serve the area south of Benwood as a means of facilitating competitive rail access for important West Virginia shippers.

In addition, Shell Chemicals faces an average revenue-to-variable-cost ratio of more than 300 percent for shipments from its single rail access facility in Apple Grove, West Virginia — twice the average freight cost at Shell's other facilities and in contrast to an average revenue-to-variable cost ratio near the 180 percent regulatory threshold at Shell facilities with access to multiple rail carriers. As a condition of this transaction, Norfolk Southern should be granted daily access to the Apple Grove plant — only 14.1 miles beyond the merger's anticipated access for Norfolk Southern to Pt. Pleasant — and/or CSX should be required to provide daily switching service at Pt. Pleasant for a reasonable switch charge.

Finally, a number of shippers in Belle, Institute, and Nitro, West Virginia, who are currently served by Conrail will not see their competitive situation improve, even though their competitors in New Jersey, Detroit and Indianapolis will be upgraded from single rail access to joint rail access. If the division of Conrail is to be implemented fairly, West Virginia shippers should receive the same kind of competitive solutions accruing to their competitors in other parts of the country.

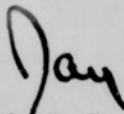
- Second, the proposed division of Conrail calls into question dual-carrier access that exists today in West Virginia through reciprocal switching arrangements. If the transaction is to be approved, reciprocal switching which CSX and NS now provide to Conrail should be expressly preserved for a minimum 10-year period, consistent with, and in addition to, the agreed 10-year continuation of reciprocal switching currently provided by Conrail to CSX and/or NS.
- Third, the proposed division of Conrail appears to upset the competitive balance between north-central West Virginia coal producers on the CSX/B&O line and their competitors in the Pittsburgh coal field served by the Monongahela Railway. The proposed transaction effectively upgrades service to shippers on the Monongahela by providing access to both CSX and Norfolk Southern, thus providing two major Class I carriers and single haul access to all CSX/Norfolk Southern markets by Monongahela coal producers, while coal producers on the CSX/B&O line will remain captive to one Class I carrier with single-line access only to CSX destinations. If joint access is to be provided on the Monongahela, then joint access also should be provided on the B&O line to maintain the current competitive balance among coal producers in the region.
- Fourth, various concerns have been raised about the potential for increases in freight traffic to exacerbate existing difficulties in scheduling commuter service, including service along the rail lines used by the MARC commuter trains between Martinsburg, West Virginia, and Washington, DC. The parties to the transaction have attempted to address these concerns, but the Board should review carefully their resolution and take whatever additional steps are needed to ensure safe and viable commuter service in the region.

The Honorable Linda J. Morgan
The Honorable Gus A. Owen
June 3, 1998
Page 4

In closing, let me state again my sense that if the proposed division of Conrail between CSX and Norfolk Southern holds promise for more efficient, cost-effective freight transportation in West Virginia and throughout the Northeast — as CSX and Norfolk Southern resoundingly say that it does — then I believe that promise can only be realized if the Board and the parties approach every detail of the transaction with an eye toward achieving competitive balance, now and in the future.

Thank you for your consideration.

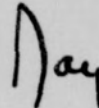
Sincerely,



John D. Rockefeller IV

As you know, these matters are so important to me.

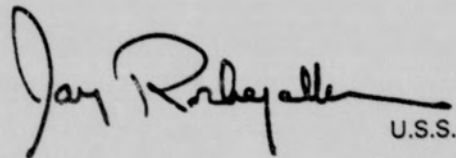
Thanks,



UNITED STATES SENATE

WASHINGTON, DC 20510-4802

OFFICIAL BUSINESS

 U.S.S.

**The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423**

- HAND DELIVERED -

STB

FD

33388

7-6-98

J

MOCH



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

JA-33388

July 6, 1998

The Honorable Ron Klink
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Klink:

Thank you for your letter regarding the application of CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide the assets of Conrail among the two acquiring railroads. Specifically, you express concern that approval of the transaction by the Surface Transportation Board (Board) will result in the breaking of existing collective bargaining agreements (CBAs) with carrier employees solely for the convenience of the involved railroads, while all other contracts are left intact.

The courts have affirmed that, under what is now 49 U.S.C. 11321(a), agency approval of a consolidation transaction confers self-executing immunity on all material terms of the transaction from all other laws to the extent necessary to permit implementation of the transaction. And, in Norfolk & Western R. Co. v. Train Dispatchers, 499 U.S. 117 (1991) (N&W), the United States Supreme Court specifically held that the immunity provided by statute includes the carrier's obligations under a CBA. Moreover, since at least 1936 when the Washington Job Protection Agreement was executed by representatives of virtually all of the railroads and national rail unions, agency approved rail consolidations have been implemented without resort to bargaining under the Railway Labor Act. Implementing agreements that require changes in CBAs have been negotiated, and, failing negotiation, arbitrators have made modifications to CBA provisions as necessary to permit implementation. Thus, it is well established that the self-executing immunity statute, consistent with longstanding prior practice, provides for the overriding of CBA provisions as necessary to implement the approved transaction, and such overrides are not due to specific agency actions other than approval of the proposed transaction.

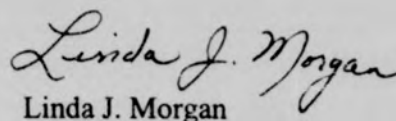
At the Board's June 8, 1998 voting conference on the proposed Conrail control transaction, we reaffirmed that the negotiation and arbitration process is the proper way to resolve important issues relating to employee rights that may be affected by the transaction. To ensure this result, we made clear, as requested by rail labor, that the Board's approval of the transaction did not indicate approval or disapproval of any of the involved CBA overrides that the applicants had argued were necessary. We also voted to provide the protections of New York

Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C.60 (1979), and also as suggested by representatives of rail labor, to direct that the applicant carriers meet with labor representatives and to form task forces for the purpose of promoting labor-management dialogue concerning implementation and safety issues. To the maximum extent possible, the Board has urged labor and management to reach voluntary implementing agreements.

The Supreme Court in N&W made clear that all categories of contracts are subject to abrogation to the extent necessary to permit an approved railroad consolidation to be implemented. One such category of contract rights that is frequently abrogated in rail consolidations is the contract rights of stock and bond holders of consolidating railroads, which the Supreme Court had previously held did not survive approval of a consolidation by the agency that modified their terms. Most recently, at the June 8 voting conference on the Conrail control transaction, the Board voted to override anti-assignment provisions of certain shipper transportation contracts to ensure a smooth implementation of the approved transaction and to require modification of provisions of agreements among railroads and between shippers and railroads involving such matters as switching rights and charges to address competitive concerns. Clearly then, both in theory and in practice, rail employee CBAs are not the only contractual provisions that have been overridden as a result of agency approval of a rail consolidation proposal.

I hope you find this information useful, and I emphasize that the Board remains committed to giving full and fair consideration in accordance with the law to rail labor concerns in consolidation proceedings. I am having your letter and my response made a part of the public docket for this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely


Linda J. Morgan

COMMITTEE ON COMMERCE
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS
BANKING MEMBER
SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE AND CONSUMER PROTECTION



RON KLINK
Congress of the United States
House of Representatives
11th District, Pennsylvania

June 5, 1998

FILE IN DOCKET

WASHINGTON OFFICE:
125 CANNON BUILDING
WASHINGTON, DC 20515
(202) 225-2565

DISTRICT OFFICES:
NORTH HUNTINGDON TOWNSHIP
(412) 864-8681
(800) 453-5078

BEAVER COUNTY
(412) 728-3005

CRANBURY TOWNSHIP
(412) 772-6080

NEW CASTLE
(412) 654-9036

LOWER BURRELL
(412) 335-4518

Ms. Linda Morgan
Chair
Surface Transportation Board
1925 K Street, NW #700
Washington, DC 20423

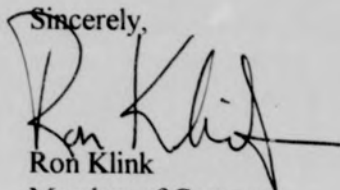
Dear Ms. Morgan:

I am writing to urge the Surface Transportation Board (STB) to respect the collective bargaining agreements that are currently in place when the Board considers the proposed merger between Conrail and Norfolk Southern railroads. There is simply no reason that a federal agency charged with the economic regulation of the railroad industry should use any authority it may have to break collective bargaining agreements.

The railroads have contracts for various goods and services such as fuel and locomotives needed to operate the railroad, but the Surface Transportation Board leaves those contracts alone. Only if you are a worker are you in danger of the STB breaking your contract. These contracts were bargained for in good faith and they should not be discarded just because it is convenient for the railroads.

Thank you for your attention to this matter. I hope you take my views into account as the STB considers the proposed merger.

Sincerely,


Ron Klink
Member of Congress

RK:eo

CHAIRMAN MORGAN
JUN 10 12 26 PM '98
RECEIVED
SURFACE TRANSPORTATION

STB

FD-33388

7-6-98

J

ID-MOCS



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 6, 1998

The Honorable Carol Moseley-Braun
United States Senate
Washington, D.C. 20510

Dear Senator Moseley-Braun:

Thank you for your letter regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding remains pending before the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

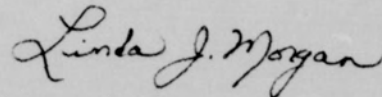
The Board recently conducted an extensive oral argument on the proposed transaction, hearing from more than 70 witnesses over the course of the 2-day argument held on June 3 and 4, 1998. Following oral argument, the Board held an open voting conference on June 8, 1998, at which we voted to approve the proposed transaction, subject to a number of conditions. The Board currently is preparing a final written decision that implements the vote at the voting conference, which is scheduled for issuance on July 23, 1998.

In voting for approval, the Board found that the transaction, as augmented by numerous settlement agreements among the parties and as further conditioned, would inject competition into the eastern United States in an unprecedented manner. The conditions adopted by the Board, while significant, recognize the operational and competitive integrity of the overall proposal and the importance of promoting and preserving privately-negotiated agreements. In particular, the Board's conditions include 5 years of oversight, along with substantial operational monitoring and reporting to ensure that the transaction is successfully implemented; mitigation of potential adverse impacts on the environment and on safety; recognition of employee interests, including a reaffirmation of the negotiation and arbitration process as the proper way to resolve important issues relating to employee rights; and several conditions that address the vital role of smaller railroads and regional concerns about competition. With respect to your specific concerns, the Board has voted to require the applicants to adhere to their representations made regarding Chicago and the continued neutral management of the Indiana Harbor Belt Railroad. In addition, in light of the service failures in the West and in particular the congestion experienced in the Houston area, the Board has directed the filing with the Board by applicants of significant operational data concerning Chicago as well as other areas. And, as part of the 5-

year oversight, the Board will carefully monitor for any harm requiring remedial action in the Chicago Switching District. I have enclosed a copy of the Board's press release describing the results of the voting conference.

I appreciate your interest in this matter, and will have your letter and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 6, 1998

The Honorable Richard J. Durbin
United States Senate
Washington, D.C. 20510

Dear Senator Durbin:

Thank you for your letter regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding remains pending before the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

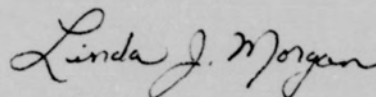
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year oversight, the Board will carefully monitor for any harm requiring remedial action in the Chicago Switching District. I have enclosed a copy of the Board's press release describing the results of the voting conference.

I appreciate your interest in this matter, and will have your letter and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure

United States Senate

WASHINGTON, DC 20510

FILE IN DOCKET

May 27, 1998

The Honorable Linda Morgan
Chair
Surface Transportation Board
1925 K Street, NW
Washington D.C. 20423-0003

RECEIVED
SURFACE TRANSPORTATION
BOARD
MAY 29 5 51 PM '98
LINDA MORGAN
CHAIRMAN

Dear Ms. Morgan:

We are writing to express our concerns regarding the operating plan submitted by Norfolk Southern and CSXT for their pending Conrail acquisition. Specifically, we want to call your attention to what we believe would be an unintended consequence of the transaction, the monopolization of the control of the Chicago gateway. While we support the goal of solving rail problems in the Northeast, we feel that the focus on that region has left other troubling consequences of the acquisition unexplored.

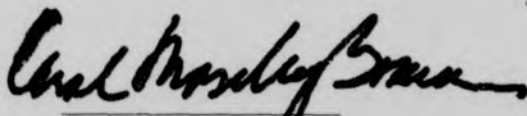
We understand that as part of their plan to acquire and divide up Conrail, Norfolk Southern and CSXT have agreed to divide control of Conrail's existing 51% stock ownership in the Indiana Harbor Belt Railroad (IHB), one of two principal switching railroads which provide intermediate switching services at Chicago, the nation's single largest rail gateway. As it stands now, CSXT and Norfolk Southern will control all three switching carriers.

Given the recent events in Houston related to Union Pacific, and the rail crisis that has ensued as a result of one carrier's control or dominance of a critical rail gateway, it is our sincere hope that you will act to prevent a similar situation from arising as a result of the CSXT-Norfolk Southern acquisition of Conrail. The potential for problems is heightened by Chicago's status as the largest rail gateway in the nation.

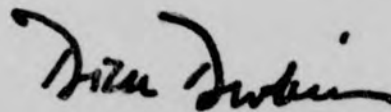
It is our understanding that you have been presented with alternatives to solving the Chicago gateway problem without affecting the Conrail acquisition. It is our position that continuing the operation of the IHB as an independent intermediate switching railroad, whose services and lines would be available to all railroads serving Chicago on a neutral basis, is a solution that merits strong consideration.

Please keep us advised as you proceed toward your decision on this issue and the CSXT-Norfolk Southern acquisition of Conrail in general. Thank you for your time and attention to this matter.

Sincerely,



Carol Moseley-Braun
U.S. Senator



Richard J. Durbin
U.S. Senator

United States Senate

WASHINGTON, DC 20510-1304

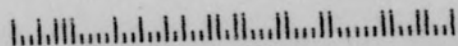
OFFICIAL BUSINESS

Richard Durbin
U.S.S.



The Honorable Linda Morgan
Chair
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0003

20423-0003



STB FD-33388 7-6-98 J ID-MOCS



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 6, 1998

The Honorable Richard G. Lugar
United States Senate
Washington, D.C. 20510

Dear Senator Lugar:

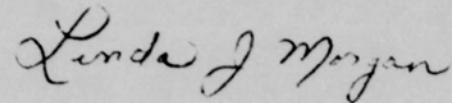
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I appreciate your interest in this matter, and will have your letter and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 6, 1998

The Honorable Dan Coats
United States Senate
Washington, D.C. 20510

Dear Senator Coats:

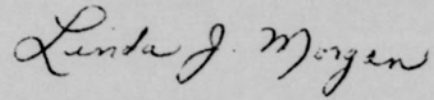
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Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan". The signature is written in dark ink and is positioned above the printed name.

Linda J. Morgan

Enclosure



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 6, 1998

The Honorable Dan Burton
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Burton:

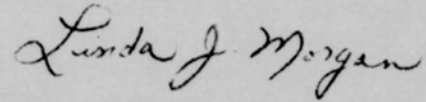
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Sincerely,

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Linda J. Morgan

Enclosure



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 6, 1998

The Honorable Julia Carson
U.S. House of Representatives
Washington, D.C. 20515

Dear Congresswoman Carson:

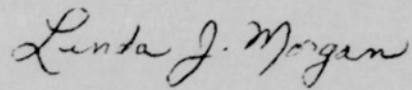
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Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure

Congress of the United States

Washington, DC 20515

FILE IN DOCKET

June 2, 1998

The Honorable Linda Morgan
Chairman
Surface Transportation Board (STB)
12th and Constitution Avenues, N.W.
Room 4126
Washington, D.C. 20423

CHAIRMAN MORGAN

JUN 9 3 38 PM '98

RECEIVED
SURFACE TRANSPORTATION
BOARD

Dear Ms. Morgan:

We are writing to share with you our interest in the pending application filed by CSX Transportation and the Norfolk Southern Railroad to acquire the assets of Conrail. This proposal could have a significant economic impact on the Indiana economy and on the movement of products and commodities within and through the Hoosier State.

Competitive and efficient rail transportation is critical to the nation's economic strength and should be a primary goal of the acquisition plan proposed by CSX and Norfolk Southern. At the same time -- as elected officials -- we are interested in ensuring a balance between the plan's anticipated efficiencies and the continued economic strength and viability of our cities, towns, communities and businesses.

As the Crossroads of America, Indiana serves as a vital economic center for manufacturing, trade and transportation of the nation's commerce. Indiana is one of the most rail-intensive states in the nation -- most of the rail traffic moving east and west across our nation travels through our State.

A sophisticated transportation network has been developed throughout Indiana to move people, goods and materials to their destinations in a safe and efficient manner. Today, The City of Indianapolis serves as a major hub for the nation's interstate commerce traveling by rail.

Indianapolis is also a central transportation link for manufacturers, utilities and agribusiness located in northern and southern Indiana. Many Hoosier businesses rely on Class I, Class II, and short-line railroads that either serve central Indiana customers or move through Indianapolis en route to delivering

products, raw materials and agricultural commodities to intrastate, interstate and overseas destinations. The competitive balance achieved with the Indianapolis "Belt" structure sustained a historically stable pricing environment that has benefitted rail customers throughout Indiana.

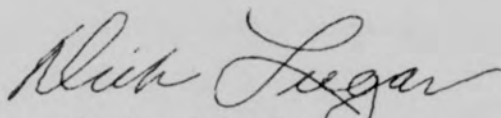
We understand the STB has received public comments from elected officials, federal agencies and private organizations about the acquisition proposal and its potential impact on competitive access for rail transportation services in Indiana and in the Indianapolis area.

Maintaining effective competition and access for rail transportation in the Indianapolis area is very important to the strength of our State's economy and to the continued efficient flow of intrastate and interstate commerce.

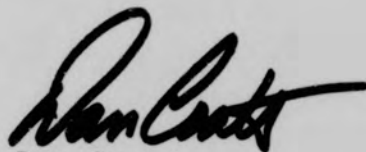
As you continue your work to review the CSX/Norfolk Southern acquisition proposal, we hope the STB will carefully consider these important issues to ensure Indiana and the nation continue to benefit from a balanced, competitive and efficient rail transportation network.

Thank you for your consideration.

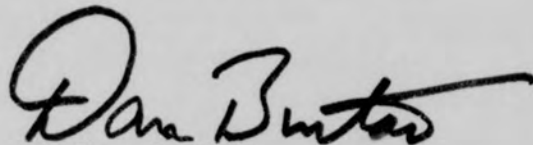
Sincerely,



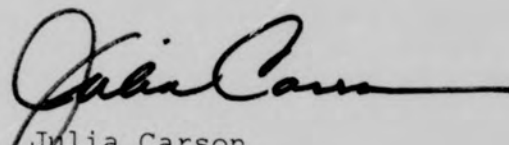
Richard G. Lugar
United States Senator



Dan Coats
United States Senator



Dan Burton
Member of Congress



Julia Carson
Member of Congress

United States Senate

WASHINGTON, DC 20510-1401

OFFICIAL BUSINESS

Richard B. Luger
U.S.S.

ELK-RT



STB

FD-3388

7-6-98

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ID-MOCH



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 6, 1998

The Honorable Richard G. Lugar
United States Senate
Washington, D.C. 20510

Dear Senator Lugar:

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I appreciate your interest in this matter, and will have your letter and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Linda J. Morgan
Linda J. Morgan

Enclosure



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 6, 1998

The Honorable Dan Coats
United States Senate
Washington, D.C. 20510

Dear Senator Coats:

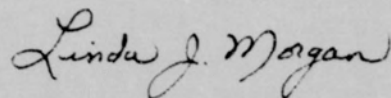
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In voting for approval, the Board found that the transaction, as augmented by numerous settlement agreements among the parties and as further conditioned, would inject competition into the eastern United States in an unprecedented manner. The conditions adopted by the Board, while significant, recognize the operational and competitive integrity of the overall proposal and the importance of promoting and preserving privately-negotiated agreements. In particular, the Board's conditions include 5 years of oversight, along with substantial operational monitoring and reporting to ensure that the transaction is successfully implemented; mitigation of potential adverse impacts on the environment and on safety; recognition of employee interests, including a reaffirmation of the negotiation and arbitration process as the proper way to resolve important issues relating to employee rights; and several conditions that address the vital role of smaller railroads and regional concerns about competition. With regard to your specific concerns, as a condition of approval, the Board has voted to require CSX to implement several operational improvements and safety measures in the Four City Consortium area of Indiana to mitigate the environmental impacts resulting from the proposed transaction. These include installing constant time warning devices, rerouting several trains off the Pine Junction to Barr Yard rail line segment, and upgrading the track structure and signal systems to allow increased train speeds on the Pine Junction to Barr Yard rail line. I have enclosed a copy of the Board's press release describing the results of the voting conference.

I appreciate your interest in this matter, and will have your letter and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure

United States Senate

WASHINGTON, DC 20510

FILE IN DOCKET

June 3, 1998

The Honorable Linda Morgan
Chairman
Surface Transportation Board (STB)
12th and Constitution Avenues, N.W.
Room 4126
Washington, D.C. 20423

CHAIRMAN MORGAN

JUN 9 3 30 PM '98

RECEIVED
SURFACE TRANSPORTATION

Dear Ms. Morgan:

We are writing to share with you our support for an alternative routing proposal submitted to the STB by the Indiana Cities of Gary, Hammond, East Chicago and Whiting ("The Four City Consortium"). As you continue your important work to evaluate the pending application filed by CSX Transportation and the Norfolk Southern Railroad to acquire the assets of Conrail, we hope the Board will give careful and thoughtful consideration to the merits of the Consortium's proposal.

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

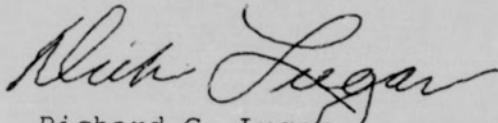
Northwest Indiana serves as a vital economic link for rail transportation moving between Chicago and the east coast. Indiana is one of the most rail-intensive states in the nation, with the Northwest Indiana region having the highest concentration of highway-rail grade crossings in the State. Indiana ranks among the top five states in the nation for numbers of motorists killed or injured as a result of vehicle-train crashes at highway-rail grade crossings.

The Consortium's plan recognizes the efforts of state and local officials to achieve a balance between transportation efficiency and public safety that is vital to sustaining strong communities. The Indiana Department of Transportation has reviewed the Consortium's plan and supports the alternative routing proposal.

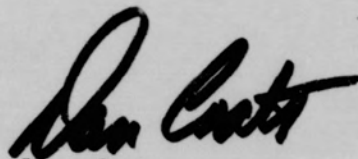
As the STB continues its important work to evaluate the CSX/Norfolk Southern acquisition plan, we hope you will be mindful of our support for the Four City Consortium's alternative routing proposal.

Thank you for your consideration.

Sincerely,



Richard G. Lugar
United States Senator



Dan Coats
United States Senator

United States Senate

WASHINGTON, DC 20510-1401

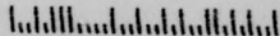
OFFICIAL BUSINESS



Hon. Linda Morgan
Chairman
Surface Transportation Board
12th & Constitution Ave., NW
Room 4126
Washington, D.C. 20423

Richard B. Lugar
U.S.S.

ELK-RT



STB

FD-3388

7-6-98

J

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Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

70-33388

July 6, 1998

The Honorable Louis Stokes
U.S. House of Representatives
Washington, D.C. 20515-3511

Dear Congressman Stokes:

I am writing to express my appreciation to you for appearing at the June 4, 1998 oral argument on the proposed acquisition of Conrail by Norfolk Southern (NS) and CSX. Given your important and positive involvement in the negotiations between CSX and the City of Cleveland, I was pleased that you could announce to the Surface Transportation Board (Board) the agreement that was reached between those two parties. Your efforts clearly helped to ensure that the agreement was beneficial to both sides.

As you know, at its June 8 open voting conference on the Conrail acquisition proposal, the Board approved the merger application, with several conditions. A final written decision will be issued on July 23, 1998. In accordance with the request of the parties, the Board will impose the agreement between Mayor White and Mr. Snow as a condition to Board approval.

Thank you for your interest in this matter. I will have your letter requesting time to testify at the oral argument, and this letter, made a part of the public record for this proceeding.

Sincerely,

Linda J. Morgan
Linda J. Morgan

LOUIS STOKES

11TH DISTRICT, OHIO

MEMBER,
COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

RANKING MEMBER,
VA/HUD/INDEPENDENT AGENCIES

MEMBER,
LABOR/HHS/EDUCATION

Congress of the United States

House of Representatives

Washington, DC 20515-3511

May 26, 1998

2365 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3511
(202) 225-7032

DISTRICT OFFICE:
3645 WARRENSVILLE CENTER RD.
SUITE 204
SHAKER HEIGHTS, OH 44122
(216) 522-4900

FILE IN DOCKET

RECEIVED
SURFACE TRANSPORTATION BOARD
JUN 10 12 20 PM '98
CHAIRMAN MORGAN

The Honorable Vernon Williams
Secretary, Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20425

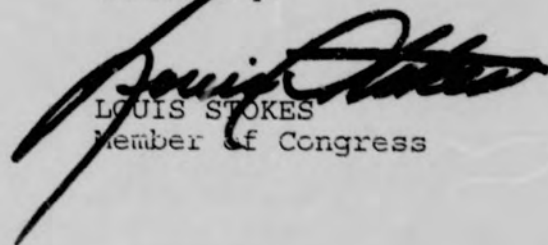
Dear Secretary Williams:

I am writing to formally request the opportunity to testify before the Surface Transportation Board during its upcoming hearing regarding the CSX and Norfolk Southern merger. As my staff has discussed with Ms. Nancy Byter on your staff, I would appreciate the opportunity to testify on June 4, 1998, at 10:00 a.m.

I look forward to testifying before the Board. I also want to thank you for your consideration of my request. If you and/or your staff have any questions and/or concerns regarding this request confirmation, please do not hesitate to contact my Chief of Staff, Ms. Fredette West. With regard to my schedule, the contact person in my Office is Ms. Rochelle Kelley. Ms. West and Ms. Kelley can be reached at (202) 225-7032.

Again, I thank you for this opportunity.

Sincerely,



LOUIS STOKES
Member of Congress

LS/fw

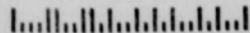
Congress of the United States
House of Representatives
Washington, DC 20515-3511

OFFICIAL BUSINESS

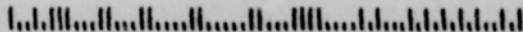
PRINTED ON RECYCLED PAPER



Quis Stokes
M.C.



AUTO



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FD-3388

7-6-98

J

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Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 6, 1998

The Honorable Michael N. Castle
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Castle:

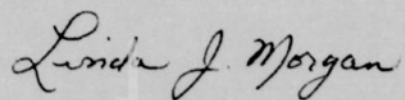
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I appreciate your interest in this matter, and will have your letter and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 6, 1998

The Honorable William V. Roth, Jr.
United States Senate
Washington, D.C. 20510

Dear Senator Roth:

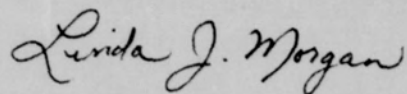
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Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

July 6, 1998

The Honorable Joseph R. Biden, Jr.
United States Senate
Washington, D.C. 20510

Dear Senator Biden:

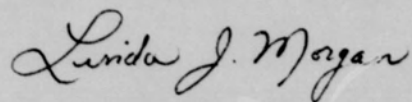
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Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure

Congress of the United States

Washington, DC 20515

FILE IN DOCKET

June 2, 1998

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit
1925 K St., NW
Washington, DC 20423-0001

RECEIVED
SURFACE TRANSPORTATION
BOARD
JUN 5 3 03 PM '98
OFFICE OF
CHAIRMAN HORGAN

Dear Mr. Williams:

The CSX and Norfolk Southern acquisition of Conrail is now before the Surface Transportation board and we would like you to address the following concerns.

First, while CSX will not become the exclusive carrier over Conrail's lines in Delaware, the joint access arrangements in Philadelphia, New Jersey, Indianapolis, Detroit and the Mononogahela coal fields of Pennsylvania, concerns us because Delaware industries could easily become competitively disadvantaged. We understand that joint access terminates in Marcus Hook, Pennsylvania – which is less than twelve miles from the Port of Wilmington and several large companies including DuPont, and Delmarva Power. The Port of Wilmington and Delaware companies deserve the same competitive access that our neighboring shippers are receiving under the proposed merger. At a minimum, we are asking that Delaware companies along the Northeast Corridor receive the same competitive advantage with respect to freight rates and service.

Second, the CSX line in Delaware cuts through the center of Newark and results in two dangerous at-grade crossings. The city contains over 27,000 people including 8,000 students from the University of Delaware who use the crossing to get back and forth to campus. The possibility of increased rail traffic through the city raises serious safety and traffic flow concerns. To address those concerns, we urge you to invest in grade separation at these crossings to protect the residents of the Newark community.

We encourage you to address Delaware's concerns in the operational plan and if you have any questions please do not hesitate to contact one of our offices. Thank you for your attention to these matters.

Sincerely,

Michael N. Castle
Michael N. Castle
Member of Congress

William Roth
William Roth
U.S. Senator

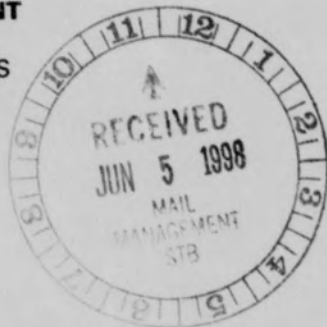
Joseph Biden
Joseph Biden
U.S. Senator

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515-0801

PUBLIC DOCUMENT

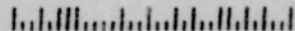
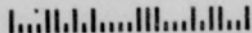
OFFICIAL BUSINESS



Michael N. Castle
M.C.

SNGLP

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



STB

FD-33388

7-6-98

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Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 6, 1998

The Honorable John N. Hostettler
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Hostettler:

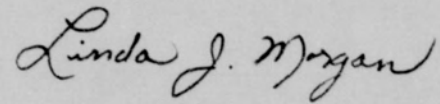
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I appreciate your interest in this matter, and will have your letter and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure

JOHN N. HOSTETTLER
8TH DISTRICT, INDIANA

COMMITTEE ON NATIONAL SECURITY

SUBCOMMITTEES:
MILITARY INSTALLATIONS AND FACILITIES
MILITARY RESEARCH AND DEVELOPMENT

COMMITTEE ON AGRICULTURE

SUBCOMMITTEES:
LIVESTOCK, DAIRY, AND POULTRY
RESOURCE CONSERVATION, RESEARCH, AND FORESTRY



Congress of the United States
House of Representatives

431 CANNON BUILDING
WASHINGTON, DC 20515
(202) 225-4636

INTERNET: John.Hostettler@mail.house.gov
http://www.house.gov/hostettler/

COUNTIES:

DAVISS MONROE
GIBSON ORANGE
GREENE PIKE
KNOX POSEY
LAWRENCE SULLIVAN
MARTIN WARRICK
VANDERBURGH

June 3, 1998

FILE IN DOCKET

The Honorable Linda Morgan, Chairman
The Honorable Gus A. Owen, Vice Chairman
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Dear Madam Chairman and Mr. Vice Chairman:

Generations of Americans have known Indiana as the "Crossroads of America." It was the several railroads that linked Indiana directly to buyers and sellers throughout the U.S. that earned us this name.

The proposed absorption of Conrail into CSX and Norfolk Southern now has the potential of turning central Indiana into a whistle stop instead of a crossroads. Coal, grain, and other vital shipments that our local economy depends upon and which today have access to two or more rail service options, will be reduced to a Hobson's choice: ship by the one surviving railroad with access to your site, or do not ship by rail at all. We understand that Indianapolis is the largest area under the proposal before you that you would see shippers lose practical access to a second railroad such as Indiana Southern or Norfolk Southern, making it unlikely that either alternative carrier will be able to compete with CSX in central Indiana. The implications are chilling for individual citizens whom we are privileged to represent. Regrettably, a year after this proposed merger was announced these concerns remain unresolved.

I am confident that your Board has both the legal tools and the knowledge to prevent the adverse impacts on the constituents that a loss of rail-to-rail competition represents. We urge you to use both in assuring a fair outcome consistent with applicable law and the interests of the public. Please make this letter a part of the record in your proceeding.

Thank you for your thoughtful consideration.

Sincerely,

John N. Hostettler
Member of Congress

RECEIVED
SURFACE TRANSPORTATION
JUN 9 3 00 PM '98
OFFICE OF THE
CHAIRMAN, HONORABLE

U.S. HOUSE OF REPRESENTATIVES

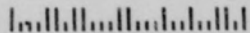
WASHINGTON, DC 20515-1408

PUBLIC DOCUMENT

OFFICIAL BUSINESS

John N. Hostettler
M.C.

ENGLF



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7-6-98

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Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 6, 1998

The Honorable Michael G. Oxley
U.S. House of Representatives
Washington, D.C. 20515-3405

Dear Congressman Oxley:

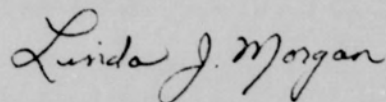
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I appreciate your interest in this matter, and will have your letter and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure

MICHAEL G. OXLEY
4TH DISTRICT, OHIO

2233 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3504
(202) 225-2676

COMMITTEE ON COMMERCE

SUBCOMMITTEE ON FINANCE AND
HAZARDOUS MATERIALS
CHAIRMAN

SUBCOMMITTEE ON
TELECOMMUNICATIONS
TRADE AND CONSUMER PROTECTION
VICE CHAIRMAN



FILE IN DOCKET

DISTRICT OFFICES:
3121 WEST ELM PLAZA
LIMA, OH 45805
(419) 999-6455

100 EAST MAIN CROSS
FINDLAY, OH 45840
(419) 423-3210

24 WEST THIRD STREET
ROOM 314
MANSFIELD, OH 44902
(419) 522-5757

TOLL-FREE IN OHIO:
1-800-472-4154

Congress of the United States
House of Representatives
Washington, DC 20515-3504

June 1, 1998

The Honorable Linda Morgan
Chairman
Surface Transportation Board
1925 K. Street, N.W.
Washington, DC 20423

Re: STB Finance Docket No. 33388

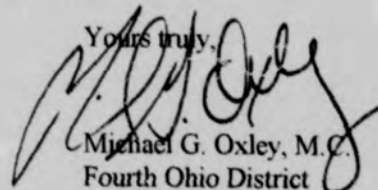
Dear Chairman Morgan:

As a U.S. Congressman representing several large rail shippers that account for a significant number of jobs in my district, I am writing to express both my concerns and those of the aforementioned shippers on the pending acquisition of Conrail by CSX and Norfolk Southern.

Based on my review of the information provided to me by Wyandot Dolomite and National Lime and Stone, two large stone shippers in my district, it appears to me that rail competition in Ohio, as a result of the acquisition plans as they now stand, would be severely reduced. Currently both companies enjoy the services of two class-one carriers that share rights on the most commonly used lines. This allows them not only much needed pricing competition, but the benefits of single-line service to most destinations. Under current post-merger scenarios, these competitive advantages would be lost. Service from their Carey, Ohio facilities would be confined to one class-one carrier, and access to important business destinations would require unneeded and expensive transfers to other rail carriers.

While the pro-competitive aspects of this merger have been discussed elsewhere, it is unfortunately not the case with affected industries in my district. While past negotiations have yielded some compromises, still more are needed to ensure the long-term vitality of both businesses and jobs in my district. I therefore urge the Board to give careful consideration to the competitive issues presented by this merger, and encourage further negotiations to encourage pro-competitive rail access for all Ohio shippers, consistent with the Board's applicable rules and procedures.

Thank you for your attention to this important matter.

Yours truly,

Michael G. Oxley, M.C.
Fourth Ohio District

CHAIRMAN MORGAN
OFFICE
JUN 1 3 29 PM '98
SURFACE TRANSPORTATION BOARD

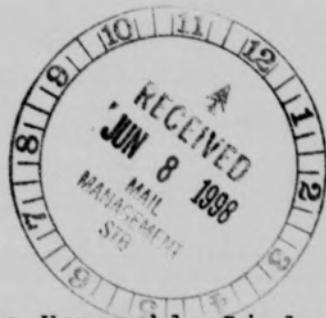
Congress of the United States

House of Representatives

Washington, DC 20515-3504

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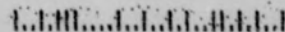
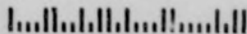
Forwarding and Address
Correction Requested



Michael G. Oxley
MICHAEL G. OXLEY M.C.

The Honorable Linda Morgan
Chairman
Surface Transportation Board
1925 K. Street, N.W.
Washington, DC 20423

ENCLF



STB

FD-3388

7-6-98

J

ID-MOCH



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 6, 1998

The Honorable Philip M. Crane
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Crane:

Thank you for your letter regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding remains pending before the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

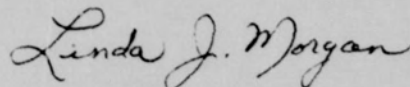
The Board recently conducted an extensive oral argument on the proposed transaction, hearing from more than 70 witnesses over the course of the 2-day argument held on June 3 and 4, 1998. Following oral argument, the Board held an open voting conference on June 8, 1998, at which we voted to approve the proposed transaction, subject to a number of conditions. The Board currently is preparing a final written decision that implements the vote at the voting conference, which is scheduled for issuance on July 23, 1998.

In voting for approval, the Board found that the transaction, as augmented by numerous settlement agreements among the parties and as further conditioned, would inject competition into the eastern United States in an unprecedented manner. The conditions adopted by the Board, while significant, recognize the operational and competitive integrity of the overall proposal and the importance of promoting and preserving privately-negotiated agreements. In particular, the Board's conditions include 5 years of oversight, along with substantial operational monitoring and reporting to ensure that the transaction is successfully implemented; mitigation of potential adverse impacts on the environment and on safety; recognition of employee interests, including a reaffirmation of the negotiation and arbitration process as the proper way to resolve important issues relating to employee rights; and several conditions that address the vital role of smaller railroads and regional concerns about competition. With respect to your specific concerns, the Board has voted to require the applicants to adhere to their representations made regarding Chicago and the continued neutral management of the Indiana Harbor Belt Railroad. In addition, in light of the service failures in the West and in particular the congestion experienced in the Houston area, the Board has directed the filing with the Board by applicants of significant operational data concerning Chicago as well as other areas. And, as part of the 5-

year oversight, the Board will carefully monitor for any harm requiring remedial action in the Chicago Switching District. I have enclosed a copy of the Board's press release describing the results of the voting conference.

I appreciate your interest in this matter, and will have your letter and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure

PHILIP M. CRANE

MEMBER OF CONGRESS
8TH DISTRICT OF ILLINOIS

COMMITTEE ON
WAYS AND MEANS
(VICE CHAIRMAN)

SUBCOMMITTEE ON
TRADE
(CHAIRMAN)

SUBCOMMITTEE ON
HEALTH

JOINT COMMITTEE ON
TAXATION



Congress of the United States
House of Representatives

Washington, DC 20515-1308

OFFICES:
SUITE 233
CANNON BUILDING
WASHINGTON, DC 20515-1308
(202) 225-3711

1100 W. NORTHWEST HIGHWAY
PALATINE, IL 60067
(847) 358-9160

300 NORTH MILWAUKEE AVENUE
SUITE C
LAKE VILLA, IL 60046
(847) 265-9000

May 29, 1998

FILE IN DOCKET

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

Dear Mr. Williams:

On March 5, 1998, six of my Illinois congressional colleagues wrote about the proposed acquisition of Conrail by CSX Transportation, Inc. (CSX) and the Norfolk-Southern (NS) Railway Company (NS). According to their letter, their concern was that certain aspects of that proposal could result in discriminatory practices and perhaps railroad bottlenecks in the Chicago area even worse than those experienced by the Union Pacific (UP) in the wake of its merger with the Southern Pacific (SP).

As you and your colleagues know, Chicago is the nation's largest rail hub. Over a dozen freight-carrying railroads, large and small, ship goods into the region, either for local consumption or for trans-shipment to other parts of the country. At present, the interconnection services that make these trans-shipments possible are provided by three of those railroads, two of which are independently owned and operated. But if this takeover of Conrail proceeds as proposed, those two "belt" railroads will, as I understand it, come under the control of the same two companies that have joined forces to acquire Conrail. In that event, the potential for service and access discrimination against other railroads would not only increase, but so too would the possibility of freight tie-ups even worse than those that continue to plague the Houston area.

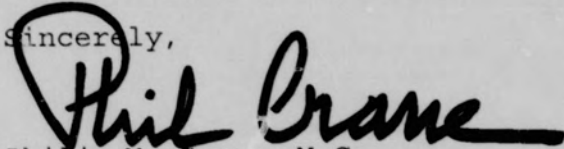
My purpose in writing is to say that I share the concerns expressed by my Illinois colleagues and agree that strong consideration should be given to preserving the independence and/or operational neutrality of at least one of the Chicagoland's "belt" railways, such as the Indiana Harbor Belt Railroad. Also, permit me to suggest that there are additional steps that could be taken to mitigate the threats that the CSX-NS acquisition of Conrail might pose to the movement of rail traffic through the Chicago metropolitan area -- or gateway as it is called. For instance, the Wisconsin Central Limited (WC), whose rail line into Chicago runs through my congressional district, would like to acquire (from CSX) six miles of under-utilized track known as the Altenheim Subdivision

Mr. Vernon A. Williams
May 29, 1998
Page 2

Line, which runs from just south of O'Hare Airport to just west of Chicago's Loop. Inasmuch as procurement of that line would lessen the WC's vulnerability to interconnection discrimination and/or major rail traffic bottlenecks, I would also encourage you and your colleagues to en'ertain that possibility very seriously during the course of your Conrail acquisition deliberations. Given our recent, ongoing experience with the UP-SP merger and all the rest that is stake, not just for those affected locally but for the economy nationwide, such attention to a potentially effective remedy would be both timely and appreciated.

Thank you in advance for the consideration given to these comments. Also, I would be most grateful if, for the record, you would insert this letter in the Public Docket (Finance Docket #33388) on the Conrail acquisition matter.

Sincerely,

A handwritten signature in black ink that reads "Philip M. Crane". The signature is written in a cursive style with a large, looped initial "P".

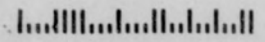
Philip M. Crane, M.C.

PMC/pb

Congress of the United States
House of Representatives
Washington, DC 20515-1308

OFFICIAL BUSINESS

Philip M. Crane
M.C.



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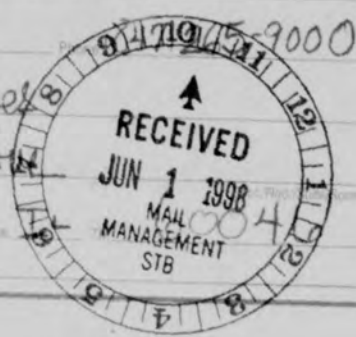
6 Mr Vernon A. Williams

7 Surface Transportation Board

8 1925 K Street NW

9 WASHINGTON DC

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Total Packages Total Weight Total Charges

8 Release Signature



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STB

FD-33388

7-6-98

J

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Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 6, 1998

The Honorable Sherrod Brown
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Brown:

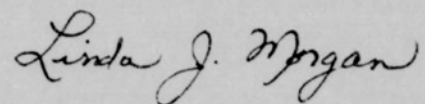
Thank you for your letters regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding remains pending before the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

As you know, the Board recently conducted an extensive oral argument on the proposed transaction, hearing from more than 70 witnesses over the course of the 2-day argument held on June 3 and 4, 1998. I certainly appreciated your participation and that of Mayor Hill in our hearings. Following oral argument, the Board held an open voting conference on June 8, 1998, at which we voted to approve the proposed transaction, subject to a number of conditions. The Board currently is preparing a final written decision that implements the vote at the voting conference, which is scheduled for issuance on July 23, 1998.

In voting for approval, the Board found that the transaction, as augmented by numerous settlement agreements among the parties and as further conditioned, would inject competition into the eastern United States in an unprecedented manner. The conditions adopted by the Board, while significant, recognize the operational and competitive integrity of the overall proposal and the importance of promoting and preserving privately-negotiated agreements. In particular, the Board's conditions include 5 years of oversight, along with substantial operational monitoring and reporting to ensure that the transaction is successfully implemented; mitigation of potential adverse impacts on the environment and on safety; recognition of employee interests, including a reaffirmation of the negotiation and arbitration process as the proper way to resolve important issues relating to employee rights; and several conditions that address the vital role of smaller railroads and regional concerns about competition. With regard to your specific concerns, the Board has voted to direct discussions between applicants and the City of North Ridgeville, OH, to address the City's environmental and safety concerns. I have enclosed a copy of the Board's press release describing the results of the voting conference.

I appreciate your interest in this matter, and will have your letters and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan". The signature is written in dark ink and is positioned above the typed name.

Linda J. Morgan

Enclosure

SHERROD BROWN
THIRTEENTH DISTRICT
OHIO

COMMITTEE ON COMMERCE

RANKING MEMBER,
SUBCOMMITTEE ON HEALTH
AND ENVIRONMENT

SUBCOMMITTEE ON ENERGY
AND POWER

COMMITTEE ON
INTERNATIONAL RELATIONS

SUBCOMMITTEE ON ASIA AND THE PACIFIC

sherrod@mail.house.gov
http://www.house.gov/sherrod/brown/

Congress of the United States
House of Representatives
Washington, DC 20515

DISTRICT OFFICES:

5201 ABBE ROAD
ELYRIA, OH 44035-1451
(440) 934-5100
FAX (440) 934-5145

124 WEST WASHINGTON STREET, SUITE A
MEDINA, OH 44256-1902
(330) 722-9262

15561 WEST HIGH STREET
MIDDLEFIELD, OH 44062-9292
(440) 632-5913

1-800-234-6413 (OH13)

WASHINGTON OFFICE:

328 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3401
FAX (202) 225-2266

May 20, 1998

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

FILE IN DOCKET

RECEIVED
SURFACE TRANSPORTATION
BOARD
MAY 26 2 45 PM '98
OFFICE OF
CHAIRMAN
MORAN

RE: STB Finance Docket No. 33388 Oral Argument

Dear Mr. Williams:

I am writing on behalf of the Mayor Deanna Hill, of North Ridgeville Ohio, who would like to share the concerns of her constituents during the Board's public hearing on the proposed acquisition of Conrail by the CSX corporation (CSX) and Norfolk Southern (NS).

Mayor Hill represents a densely populated area of northeast Ohio that will be significantly effected by this merger should it be approved. In the City of North Ridgeville, there are five intersections that have been identified as needing grade separations. Many of my constituents fear their access to vital fire, police, and emergency medical services may be compromised if these improvements are not made.

I am hopeful the Board will allow Mayor Hill an opportunity to share the concerns of the people of North Ridgeville. Thank you for your attention to this matter.

Sincerely,



SHERROD BROWN
Member of Congress

SB:jab

SHERROD BROWN
THIRTEENTH DISTRICT
OHIO

COMMITTEE ON COMMERCE

RANKING MEMBER,
SUBCOMMITTEE ON HEALTH
AND ENVIRONMENT

SUBCOMMITTEE ON ENERGY
AND POWER

COMMITTEE ON
INTERNATIONAL RELATIONS

SUBCOMMITTEE ON ASIA AND THE PACIFIC

sherrod@hr.house.gov
http://www.house.gov/sherrod/brown/

Ms. Elaine K. Kaiser, Chief
Surface Transportation Board
1925 K St. N.W.
Suite 500
Washington, D.C. 20423-0001

Dear Ms. Kaiser:

I am writing on behalf of 24,000 constituents in the City of North Ridgeville who have endured years of public health and safety hazards associated with the Conrail line that cuts through the heart of their community.

Today, residents of North Ridgeville have serious concerns about the effects the proposed Conrail acquisition may have on their community. While rail officials say the proposed operating plan could result in little or no increase in train traffic through North Ridgeville, Mayor Deanna Hill insists her city is facing an already intolerable situation, with as many as 100 trains traveling through her community every day.

Norfolk Southern appears willing to provide funding for grade separations in the neighboring cities of Olmsted Falls, Brook Park and Berea, but the same serious problems in North Ridgeville are being ignored. Grade separations are sorely needed at the Chestnut Ridge Road, Root Road and Avon-Beldon Road (Route 83) crossings. I also believe most of the responsibility for building and funding these improvements should fall on the shoulders of the railroad, rather than on local taxpayers.

It is my sincere hope that Section of Environmental Analysis will recommend environmental and safety mitigation for the City of North Ridgeville in the final Environmental Impact Statement.

Ohioans deserve an operating plan that is acceptable to every community affected by the proposed acquisition. It is incumbent upon the STB to demand that the railroads negotiate with every affected community to insure that adequate protection, including grade separations, be provided where they are needed.

Sincerely,

Sherrod Brown

SHERROD BROWN
Member of Congress

Congress of the United States
House of Representatives
Washington, DC 20515

March 19, 1998

DISTRICT OFFICES:

5201 ABBE ROAD
ELYRIA, OH 44035-1451
(216) 934-5100
FAX (216) 934-5145

124 WEST WASHINGTON STREET, SUITE A
MEDINA, OH 44256-1902
(330) 722-9262

15561 WEST HIGH STREET
MIDDLEFIELD, OH 44062-9292
(216) 632-5913

1-800-234-6413 (OH13)

WASHINGTON OFFICE:

328 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3401
FAX (202) 225-2266

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CHAIRMAN MORGAN

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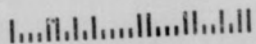
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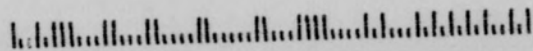
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Shewnd Brown
M.C.



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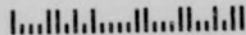
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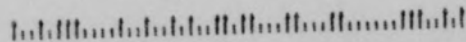
OFFICIAL BUSINESS

Sheldon Brown
M.C.

Ms. Elaine K. Kaiser, Chief
Surface Transportation Board
1925 K St. N. W.
Siute 500
Washington, D.C. 20423-0001



20423-0001



STB

FD-33388

7-6-98

J

ID-MOCH



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 6, 1998

The Honorable Steven C. LaTourette
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman LaTourette:

Thank you for your letter regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding remains pending before the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

The Board recently conducted an extensive oral argument on the proposed transaction, hearing from more than 70 witnesses over the course of the 2-day argument held on June 3 and 4, 1998. Following oral argument, the Board held an open voting conference on June 8, 1998, at which we voted to approve the proposed transaction, subject to a number of conditions. The Board currently is preparing a final written decision that implements the vote at the voting conference, which is scheduled for issuance on July 23, 1998.

In voting for approval, the Board found that the transaction, as augmented by numerous settlement agreements among the parties and as further conditioned, would inject competition into the eastern United States in an unprecedented manner. The conditions adopted by the Board, while significant, recognize the operational and competitive integrity of the overall proposal and the importance of promoting and preserving privately-negotiated agreements. In particular, the Board's conditions include 5 years of oversight, along with substantial operational monitoring and reporting to ensure that the transaction is successfully implemented; mitigation of potential adverse impacts on the environment and on safety; recognition of employee interests, including a reaffirmation of the negotiation and arbitration process as the proper way to resolve important issues relating to employee rights; and several conditions that address the vital role of smaller railroads and regional concerns about competition. With regard to ASHTA Chemicals, the Board has voted to require the applicants to adhere to their representations during oral argument to pursue discussions with ASHTA concerning the routing of its hazardous materials shipments. I have enclosed a copy of the Board's press release describing the results of the voting conference.

I appreciate your interest in this matter, and will have your letter and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Linda J. Morgan

Linda J. Morgan

Enclosure



FILE IN DOCKET

Steven C. LaTourette
Congress of the United States
19th District, Ohio

June 5, 1998

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

RECEIVED
SURFACE TRANSPORTATION
BOARD
JUN 10 6 12 PM '98
OFFICE OF
CHAIRMAN MORGAN

RE: Finance Docket No. 33388 / ASHTA Chemical, Inc.

Dear Chairman Morgan:

As outlined in ASHTA's presentation to you on Wednesday, June 3, 1998, ASHTA has made numerous attempts to contact CSX and NS to discuss ASHTA's request for Reciprocal Switching. Unfortunately and interestingly enough, I have contacted, on ASHTA's behalf, CSX several times to set up a meeting at which this issue could have been discussed, but never heard one word back.

I would like to stress the fact that ASHTA's request for Reciprocal Switching is, in my practical opinion, completely feasible and will bear no measurable cost to CSX or NS as the proposed switching facilities are already in existence and currently in use by Conrail. In addition, ASHTA has willingly agreed to pay CSX for access to NS lines.

Simply put, Madam Chairman, ASHTA has repeatedly tried to find alternative methods of introducing meaningful rail competition to the Ashtabula, Ohio area. Conrail always ignored their request, it appears CSX might ignore our request as well. I am hopeful you will condition approval of the acquisition on the parties entering into Reciprocal Switching arrangement at the West Yard or at the Gary Fitch Street rail interconnect. I know you are going to act and only approve an environmentally and economically sound deal, please help me bring real rail competition to Northeast Ohio by granting our request. As always, thank you for your consideration of this matter. I remain

Very truly yours,

Steven C. LaTourette
Member of Congress


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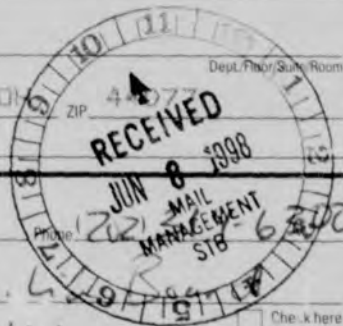
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1 From 6/5/98 Date 6/5/98Sender's Name Brian Dudley Phone (440) 352-3939Company CONGRESSMAN STEVEN LATOURETTEAddress 1 VICTORIA PLCity PAINESVILLE State OH ZIP 44122 Dept./Floor/Suite/Room**2 Your Internal Billing Reference Information****3 To**Recipient's Name Linda J. MorganCompany Sustara Transport. Co.Address 1975 K Street, NWCity Washington State DC ZIP 20123-0001**For HOLD at FedEx Location check here** **Hold Weekday** **Hold Saturday** **Hold Sunday** **Hold Monday** **Hold Saturday** **Hold Sunday** **Hold Monday** **Hold Tuesday****For Saturday Delivery check here** **Extra Charge** **Extra Charge** **Extra Charge** **Extra Charge**

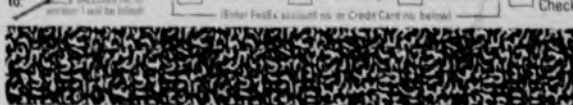
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ID-MOCS



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 2, 1998

The Honorable Patrick Leahy
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

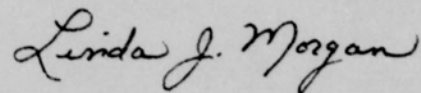
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I appreciate your interest in this matter, and will have your letter and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 2, 1998

The Honorable Jim Jeffords
United States Senate
Washington, D.C. 20510

Dear Senator Jeffords:

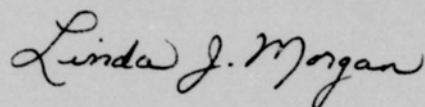
Thank you for your letter regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding remains pending before the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

The Board recently conducted an extensive oral argument on the proposed transaction, hearing from more than 70 witnesses over the course of the 2-day argument held on June 3 and 4, 1998. Following oral argument, the Board held an open voting conference on June 8, 1998, at which we voted to approve the proposed transaction, subject to a number of conditions. The Board currently is preparing a final written decision that implements the vote at the voting conference, which is scheduled for issuance on July 23, 1998.

In voting for approval, the Board found that the transaction, as augmented by numerous settlement agreements among the parties and as further conditioned, would inject competition into the eastern United States in an unprecedented manner. The conditions adopted by the Board, while significant, recognize the operational and competitive integrity of the overall proposal and the importance of promoting and preserving privately-negotiated agreements. In particular, the Board's conditions include 5 years of oversight, along with substantial operational monitoring and reporting to ensure that the transaction is successfully implemented; mitigation of potential adverse impacts on the environment and on safety; recognition of employee interests, including a reaffirmation of the negotiation and arbitration process as the proper way to resolve important issues relating to employee rights; and several conditions that address the vital role of smaller railroads and regional concerns about competition. With respect to your specific concern about the New England Central Railroad, the Board has voted to require that applicants grant that carrier trackage rights between Palmer, MA, and Springfield, MA, to connect with its affiliate railroad. I have enclosed a copy of the Board's press release describing the results of the voting conference.

I appreciate your interest in this matter, and will have your letter and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure

United States Senate

WASHINGTON, DC 20510

DOCKET

June 4, 1998

Ms. Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

CHAIRMAN MORGAN
JUN 9 3 26 PM '98
RECEIVED
SURFACE TRANSPORTATION BOARD

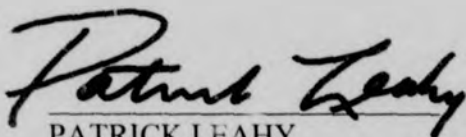
Dear Ms. Morgan,

We are writing regarding the proposed acquisition of Conrail by CSX and Norfolk Southern. As this matter draws to a close, it has come to our attention that not all of the concerns raised by railroads in northern New England have been addressed by CSX and Norfolk Southern. Accordingly, we believe the merger must maintain a competitive environment and hope that the Surface Transportation Board (STB) condition its approval of the proposed transaction on assurances that the short lines of the region remain economically viable after the merger.

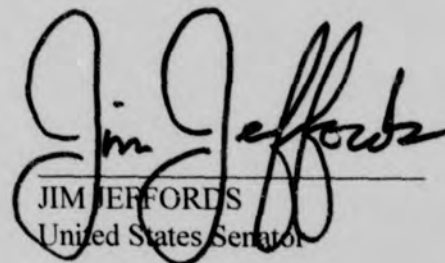
Of specific concern is the forecasted negative impact on the New England Central Railroad (NECR). This railroad not only carries the largest amount of freight through Vermont, it also hosts the *Vermont*, a state-funded Amtrak train that is a critical transportation and tourism link to New York City, Washington and the nation. Both the merging companies admit the NECR will suffer an annual loss of \$1.6 million, while NECR estimates that the loss will be closer to \$8 million annually. For a railroad that has an annual gross revenue of just \$16.8 million, a loss of that size would be catastrophic.

Therefore, it is our hope that the trackage rights being sought by the NECR from CSX and Norfolk Southern be granted by the STB. These rights will better assure the ability of NECR to compete in New England, and will help mitigate the anti-competitive impact of the proposed transaction east of the Hudson River. We also hope that the STB retains jurisdiction over competition issues relating to the short line railroads of New England. The last thing this merger should do is force out of business small freight railroads that carry the economic lifeblood of small rural states like Vermont.

Sincerely,



PATRICK LEAHY
United States Senator



JIM JEFFORDS
United States Senator

United States Senate

WASHINGTON, DC 20510-4502

OFFICIAL BUSINESS

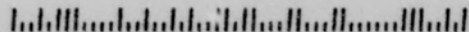


Patrick J. Leahy
U.S.S.

ELK-RT

Ms. Linda Morgan
Chairman
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

20423-0001



STB

FD-33388

7-2-98

J

ID-MOCS



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 2, 1998

The Honorable Robert C. Byrd
United States Senate
Washington, D.C. 20510-6025

Dear Senator Byrd:

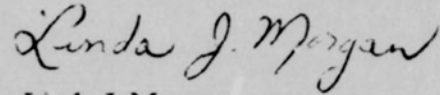
Thank you for your letter forwarding correspondence on behalf of several of your constituents regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding remains pending before the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

The Board recently conducted an extensive oral argument on the proposed transaction, hearing from more than 70 witnesses over the course of the 2-day argument held on June 3 and 4, 1998. Following oral argument, the Board held an open voting conference on June 8, 1998, at which we voted to approve the proposed transaction, subject to a number of conditions. The Board currently is preparing a final written decision that implements the vote at the voting conference, which is scheduled for issuance on July 23, 1998.

In voting for approval, the Board found that the transaction, as augmented by numerous settlement agreements among the parties and as further conditioned, would inject competition into the eastern United States in an unprecedented manner. The conditions adopted by the Board, while significant, recognize the operational and competitive integrity of the overall proposal and the importance of promoting and preserving privately-negotiated agreements. In particular, the Board's conditions include 5 years of oversight, along with substantial operational monitoring and reporting to ensure that the transaction is successfully implemented; mitigation of potential adverse impacts on the environment and on safety; recognition of employee interests, including a reaffirmation of the negotiation and arbitration process as the proper way to resolve important issues relating to employee rights; and several conditions that address the vital role of smaller railroads and regional concerns about competition. With respect to your constituents' specific concerns, the Board has voted to impose several conditions to mitigate harm to the Wheeling and Lake Erie Railway (WLE) from the proposed transaction, including requiring the applicants to negotiate with WLE concerning mutually beneficial arrangements allowing WLE to serve shippers along CSX's line from Benwood to Brooklyn Junction, WV. I have enclosed a copy of the Board's press release describing the results of the voting conference.

I appreciate your interest in this matter, and will have your letter, your constituents' letter, and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan". The signature is written in dark ink and is positioned above the printed name.

Linda J. Morgan

Enclosure

TED STEVENS, ALASKA, CHAIRMAN

THAD COCHRAN, MISSISSIPPI
ARLEN SPECTER, PENNSYLVANIA
PETE V. DOMENICI, NEW MEXICO
CHRISTOPHER S. BOND, MISSOURI
SLADE GORTON, WASHINGTON
MITCH MCCONNELL, KENTUCKY
CONRAD BURNS, MONTANA
RICHARD C. SHELBY, ALABAMA
JUDD GREGG, NEW HAMPSHIRE
ROBERT F. BENNETT, UTAH
BEN NIGHTHORSE CAMPBELL, COLORADO
LARRY CRAIG, IDAHO
LAUCH FAIRCLOTH, NORTH CAROLINA
KAY BAILEY HUTCHISON, TEXAS

ROBERT C. BYRD, WEST VIRGINIA
DANIEL K. INOUE, HAWAII
ERNEST F. HOLLINGS, SOUTH CAROLINA
PATRICK J. LEAHY, VERMONT
DALE BUMPERS, ARKANSAS
FRANK R. LAUTENBERG, NEW JERSEY
TOM HARKIN, IOWA
BARBARA A. MIKULSKI, MARYLAND
HARRY REID, NEVADA
HERB KOHL, WISCONSIN
PATTY MURRAY, WASHINGTON
BYRON DORGAN, NORTH DAKOTA
BARBARA BOXER, CALIFORNIA

STEVEN J. CORTESE, STAFF DIRECTOR
JAMES H. ENGLISH, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025

FILE IN DOCKET

June 5, 1998

The Honorable Linda Morgan
Chairman
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423

RECEIVED
SURFACE TRANSPORTATION
BOARD
JUN 10 12 20 PM '98
OFFICE OF
CHAIRMAN MORGAN

RE: STB Finance Docket 33388 (Sub. No. 80)

Dear Ms. Morgan:

I have recently been contacted by PPG Industries, Incorporated, on behalf of itself, the Bayer Corporation, and other chemical plants in the area of Natrium, West Virginia, regarding the matters of competitive rail service and the granting of trackage rights to the Wheeling & Lake Erie railroad by CSX. The enclosed communication is respectfully referred to you for whatever consideration it may merit.

I am hopeful that you will take into account the comments and concerns addressed in the attached correspondence as the Surface Transportation Board completes its current deliberations to establish competitive access as part of its review of the proposed acquisition of Conrail by CSX and Norfolk Southern.

With kind regards, I am

Sincerely yours,
Robert C. Byrd
Robert C. Byrd

RCB:lem
Enclosure

**PPG Industries, Inc.**

One PPG Place Pittsburgh, Pennsylvania 15272 USA Telephone: (412) 434-2967 Facsimile: (412) 434-2545

L. Blaine Boswell
Vice President
Public Affairs

June 5, 1998

The Honorable Robert C. Byrd
United States Senate
311 Senate Hart Office Building
Washington, DC 20510

Dear Senator Byrd:

This letter is being forwarded on behalf of Robert Holliday, Works Manager of our chemicals plant at Natrium, West Virginia. We employ 770 West Virginians at this location. The purpose of this letter is to address the matter of competitive rail service to our Natrium plant and, accordingly, competitive rail service to other chemical and industrial plants in this immediate area.

Rail service to our plant and that of our neighbor, Bayer Corporation, at Natrium is provided exclusively by CSX Transportation, Inc. Unless some specific direction is given by the Surface Transportation Board during their current final deliberations to establish competitive access as part of its review of the proposed acquisition of Conrail by CSX and Norfolk Southern, the plants in the Natrium area will continue to be solely captive to CSX for rail service for the foreseeable future.

In this regard, the Wheeling & Lake Erie railroad stands ready to provide competitive service to Natrium but must have the cooperation of CSX in order to do so. Today, this railroad extends as far south as Benwood, WV, about twelve to fourteen miles north of our plant at Natrium. The granting of trackage rights to the Wheeling & Lake Erie by CSX would establish an environment for competition in the provision of rail service to Natrium.

In May, 1997, we communicated our desire to the executive management of CSX to have the Wheeling & Lake Erie be able to provide service to Natrium. In their reply of June, 1997, CSX stated that it was unwilling to grant the Wheeling & Lake Erie trackage rights from Benwood to Natrium and would only consider "joint-line" service packages. CSX have maintained this position to date. Such a position constitutes continued control of access to Natrium by CSX. Accordingly, this position by CSX is not in the best interests of the shippers, including PPG, in the Natrium area.

The Wheeling & Lake Erie railroad also provides excellent service to our chemicals plant at Barberton, Ohio. We have been following the events and filings of the Norfolk Southern and the Wheeling & Lake Erie with the STB regarding the Conrail split-up and have become increasingly concerned about action by the Norfolk Southern to "take over"

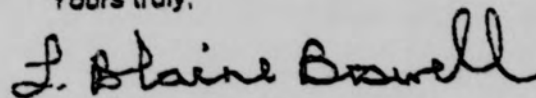
- 2 -

routes currently served by the Wheeling & Lake Erie that will negatively impact their revenues, profitability and long term viability. In view of the potential loss of some routes, the Wheeling & Lake Erie has endeavored to develop additional compensating business opportunities but have been resisted by both Norfolk Southern and CSX. The obtaining of trackage rights from Benwood to Natrium, West Virginia is one of those key beneficial opportunities for both the Wheeling & Lake Erie and the shippers concerned. The long term viability of the Wheeling & Lake Erie is of considerable importance to PPG and its ability to develop additional business is crucial to meeting that objective.

For all of these reasons we urgently seek your support in requesting the Surface Transportation Board to grant local trackage rights to the Wheeling & Lake Erie to serve the shippers south of Benwood, WV. That action by the STB would give competitive access for important West Virginia shippers (including PPG & Bayer) who want and need options for rates routes and service which the W&LE could provide. It would help ensure the survival of a regional carrier threatened by the merger and thus help the many shippers that W&LE serves. The survival of the W&LE would mean the preservation of the Benwood bridge and that gateway into West Virginia.

Your interest and support with respect to this important matter is most appreciated.

Yours truly,



L. Blaine Boswell

United States Senate

WASHINGTON, DC 20510-4801

OFFICIAL BUSINESS

Robert C. Byrd
U.S.S.



The Honorable Linda Morgan
Chairman
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423



STB

FD - 33388

7-2-98

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ID-MOCS



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 2, 1998

The Honorable Rick Santorum
United States Senate
Washington, D.C. 20510-6324

Dear Senator Santorum:

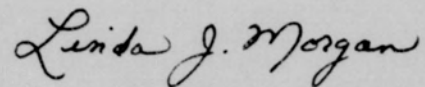
Thank you for your letter regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding remains pending before the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

The Board recently conducted an extensive oral argument on the proposed transaction, hearing from more than 70 witnesses over the course of the 2-day argument held on June 3 and 4, 1998. Following oral argument, the Board held an open voting conference on June 8, 1998, at which we voted to approve the proposed transaction, subject to a number of conditions. The Board currently is preparing a final written decision that implements the vote at the voting conference, which is scheduled for issuance on July 23, 1998.

In voting for approval, the Board found that the transaction, as augmented by numerous settlement agreements among the parties and as further conditioned, would inject competition into the eastern United States in an unprecedented manner. The conditions adopted by the Board, while significant, recognize the operational and competitive integrity of the overall proposal and the importance of promoting and preserving privately-negotiated agreements. In particular, the Board's conditions include 5 years of oversight, along with substantial operational monitoring and reporting to ensure that the transaction is successfully implemented; mitigation of potential adverse impacts on the environment and on safety; recognition of employee interests, including a reaffirmation of the negotiation and arbitration process as the proper way to resolve important issues relating to employee rights; and several conditions that address the vital role of smaller railroads and regional concerns about competition. With respect to your specific concern, the Board has voted to impose several conditions to mitigate harm to the Wheeling and Lake Erie Railway from the proposed transaction. I have enclosed a copy of the Board's press release describing the results of the voting conference.

I appreciate your interest in this matter, and will have your letter and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure

RICK SANTORUM
PENNSYLVANIA

COMMITTEES:
ARMED SERVICES
AGRICULTURE
RULES
AGING

PITTSBURGH OFFICE:
SUITE 250 LANDMARK BLDG.
ONE STATION SQUARE
PITTSBURGH, PA 15210
(412) 562-0533

United States Senate

WASHINGTON, DC 20510-3804
202-224-6324

FILE IN DOCKET

June 2, 1998

VIA FACSIMILE (202) 565-9015
RE: STB Finance Docket No. 33388

The Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
1925 K Street NW
Washington, D.C. 20423

CHAIRMAN MORGAN
JUN 2 4 43 PM '98
RECEIVED
SURFACE TRANSPORTATION

Dear Secretary Williams:

I am writing to express my concern that many Pennsylvanians involved in interstate commerce may lose vital shipping services and commercial viability of a regional carrier currently serving Southwest Pennsylvania and adjoining States. It is my understanding that the competitiveness of the surface transportation industry may be threatened by the pending merger of Norfolk Southern and CSX Railroad Companies.

Specifically, Pennsylvania shippers and the public interest may be adversely affected should this consolidation proceed without proper consideration of the competitive issues presented by this merger. I have been informed that the applicants have shown a lack of interest in negotiating an amicable solution that addresses the post-merger survival of the Wheeling and Lake Erie Railway Company.

It is indeed disappointing that a settlement agreement has not yet been reached. I request that the Surface Transportation Board grant these important issues full consideration to ensure the interests of Pennsylvania are properly protected. Thank you for your consideration.

Sincerely,

Rick Santorum
United States Senator

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Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 2, 1998

The Honorable Thomas C. Sawyer
U.S. House of Representatives
Washington, D.C. 20515-3514

Dear Congressman Sawyer:

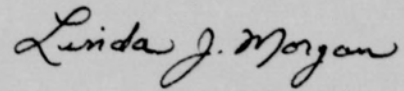
Thank you for your letters regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding remains pending before the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

The Board recently conducted an extensive oral argument on the proposed transaction, hearing from more than 70 witnesses over the course of the 2-day argument held on June 3 and 4, 1998. Following oral argument, the Board held an open voting conference on June 8, 1998, at which we voted to approve the proposed transaction, subject to a number of conditions. The Board currently is preparing a final written decision that implements the vote at the voting conference, which is scheduled for issuance on July 23, 1998.

In voting for approval, the Board found that the transaction, as augmented by numerous settlement agreements among the parties and as further conditioned, would inject competition into the eastern United States in an unprecedented manner. The conditions adopted by the Board, while significant, recognize the operational and competitive integrity of the overall proposal and the importance of promoting and preserving privately-negotiated agreements. In particular, the Board's conditions include 5 years of oversight, along with substantial operational monitoring and reporting to ensure that the transaction is successfully implemented; mitigation of potential adverse impacts on the environment and on safety; recognition of employee interests, including a reaffirmation of the negotiation and arbitration process as the proper way to resolve important issues relating to employee rights; and several conditions that address the vital role of smaller railroads and regional concerns about competition. With regard to your specific concerns, the Board has voted to impose several conditions to mitigate harm to the Wheeling and Lake Erie Railway from the proposed transaction. I have enclosed a copy of the Board's press release describing the results of the voting conference.

I appreciate your interest in this matter, and will have your letters and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure

THOMAS C. SAWYER
14TH DISTRICT
OHIO

COMMERCE
SUBCOMMITTEES:
TELECOMMUNICATIONS, TRADE
AND CONSUMER PROTECTION
FINANCE AND HAZARDOUS
MATERIALS
OVERSIGHT AND
INVESTIGATIONS

Congress of the United States
House of Representatives
Washington, DC 20515-3514

June 3, 1998

FILE IN DOCKET

The Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
ATTN: STB Financial Docket No. 33388 (Sub. No. 80)
1925 K Street, NW
Washington, DC 20423

CHAIRMAN MORGAN
JUN 3 11 24 AM '98
RECEIVED
SURFACE TRANSPORTATION

Dear Mr. Williams:

I am writing in regard to Conrail succession issues involving Ohio. I thank you for allowing Congressman Regula to include my remarks in the record.

The Wheeling & Lake Erie Railway is headquartered in Mr. Regula's district, which is adjacent to mine. We share serious concerns about how the proposed acquisition of Conrail lines will affect the financial viability of the Wheeling & Lake Erie Railway.

The comments previously filed before the STB by the Akron Regional Development Board and by numerous important rail shippers in my district indicate how important this regional railroad is to the economic well being of the Akron area. Consumers in my district, like Congressman Regula's, will depend on the Board's vigilance and fairness to assure that we will not lose the services of the W&LE or the competitive flexibility and rate and route options that our rail shippers have come to depend upon.

There is no question that the presence of the W&LE assures competition in our area. Because of the presence of this regional line, shippers have multiple routes by which to link up with three Class I lines. Absent the regional line, it is easy to predict that prices, timeliness, and frequency of service will all suffer. But without the W&LE, not only will competition suffer, some W&LE's customers--especially smaller shippers--will be faced with the possible loss of service. As you may know, these shippers were threatened with abandonment of these lines by a previous owner early in the decade. Now, without the Board's scrutiny of, and intervention in, arrangements offered by Conrail's successors, competition and even service may be irrevocably lost.

Surface Transportation Board
STB Financial Docket No. 33388 (Sub. No. 80)
Page Two

In an era of mega-mergers and shipper complaints about Class I market dominance and about serious problems with rates and service, the W&LE has demonstrated that a regional railroad can make a difference. This is evidenced by strong shipper support for its service and competitiveness. The depth of shipper support results from a number of economic development factors:

-From 1989-1995, 57% of the employment growth in Northeast Ohio occurred in Medina, Portage and Summit Counties;

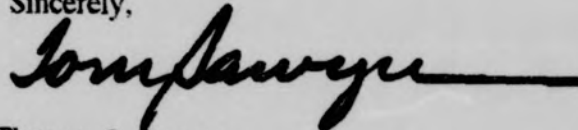
-From 1994-1997, industrial expansion activity in the tri-county region has averaged more than \$500 million; and

-In 1997, Akron was ranked 20th in the nation out of 320 cities by Site Selection Magazine for locating new manufacturing plants.

More than likely, every single decision that led to these impressive aggregated numbers was based on factors that included the presence of rail, the presence of a responsive carrier, and competition in pricing. Our communities are 35% more dependent on manufacturing than the national average. And these communities depend on the W&LE as an active and integral part of our regional manufacturing system. I urge the Board to protect our communities' interests as you craft your final ruling.

Thank you for your consideration of these vital consumer concerns.

Sincerely,



Thomas C. Sawyer
Member of Congress

TCS/bac

STB

FD-33388

7-2-98

J

ID-MOCH



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 2, 1998

The Honorable Ralph Regula
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Regula:

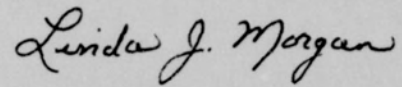
Thank you for your letter regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding remains pending before the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

As you know, the Board recently conducted an extensive oral argument on the proposed transaction, hearing from more than 70 witnesses over the course of the 2-day argument held on June 3 and 4, 1998. I certainly appreciate your participation in our hearings. Following oral argument, the Board held an open voting conference on June 8, 1998, at which we voted to approve the proposed transaction, subject to a number of conditions. The Board currently is preparing a final written decision that implements the vote at the voting conference, which is scheduled for issuance on July 23, 1998.

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I appreciate your interest in this matter, and will have your letter and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 2, 1998

The Honorable Robert Ney
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Ney:

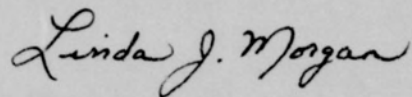
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Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 2, 1998

The Honorable David Hobson
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Hobson:

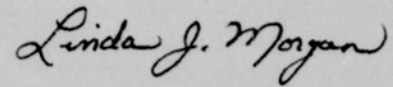
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I appreciate your interest in this matter, and will have your letter and my response made a part of the public docket in this proceeding. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Morgan".

Linda J. Morgan

Enclosure



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 2, 1998

The Honorable J^oim Glenn
United States Senate
Washington, D.C. 20510

Dear Senator Glenn:

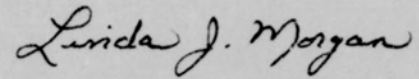
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Linda J. Morgan

Enclosure



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 2, 1998

The Honorable Steven LaTourette
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman LaTourette:

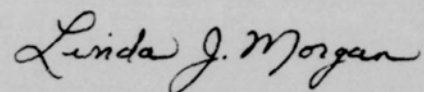
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Linda J. Morgan

Enclosure



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 2, 1998

The Honorable Marcy Kaptur
U.S. House of Representatives
Washington, D.C. 20515

Dear Congresswoman Kaptur:

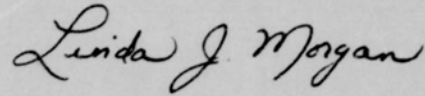
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Linda J. Morgan

Enclosure



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 2, 1998

The Honorable Paul Gillmor
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Gillmor:

Thank you for your letter regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding remains pending before the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

As you know, the Board recently conducted an extensive oral argument on the proposed transaction, hearing from more than 70 witnesses over the course of the 2-day argument held on June 3 and 4, 1998. I certainly appreciate your participation in our hearings. Following oral argument, the Board held an open voting conference on June 8, 1998, at which we voted to approve the proposed transaction, subject to a number of conditions. The Board currently is preparing a final written decision that implements the vote at the voting conference, which is scheduled for issuance on July 23, 1998.

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Sincerely,

Linda J. Morgan

Linda J. Morgan

Enclosure



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 2, 1998

The Honorable Sherrod Brown
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Brown:

Thank you for your letter regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding remains pending before the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

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Linda J. Morgan

Linda J. Morgan

Enclosure



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

July 2, 1998

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

Dear Congressman Kucinich:

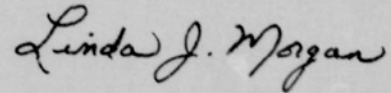
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Linda J. Morgan

Enclosure

RALPH REGULA
16TH DISTRICT, OHIO

RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3516
(202) 225-3876

DISTRICT OFFICE
4150 BELDEN VILLAGE STREET NW
SUITE 408
CANTON, OH 44718
(330) 489-4414

TOLL-FREE DISTRICT NUMBER
1-800-826-9015



Congress of the United States
House of Representatives
Washington, DC 20515-3516

COMMITTEE:
APPROPRIATIONS
SUBCOMMITTEES:
CHAIRMAN, INTERIOR
TRANSPORTATION
COMMERCE, STATE, JUSTICE

FILE IN DOCKET

May 22, 1998

The Honorable Linda Morgan
Chairman
Surface Transportation Board
1925 K Street NW
Washington, DC 20423

RECEIVED
SURFACE TRANSPORTATION
MAY 29 5 51 PM '98
LINDA MORGAN
CHAIRMAN

Re: STB Finance Docket No. 33388

Dear Chairman Morgan:

Since our Ohio delegation letter to you of February 12, we had been promised by representatives of Norfolk Southern and CSX that merger issues involving Ohio and especially the threat to the Wheeling & Lake Erie Railway, its many shippers, and the Neomodal intermodal facility would be negotiated expeditiously and in good faith.

We are dismayed to learn that such is not the case. A recent proposal from Norfolk Southern actually took off the table items it had made in a previous offer of August 1997. That proposal was not deemed sufficient for W&LE to remain viable but nonetheless provided for some rail access opportunities for the W&LE to compete for new traffic to attempt to replace the substantial losses that would result from the merger. The W&LE has indicated that there are a number of issues not yet addressed, including the W&LE route to bypass Cleveland.

The concern we wish to emphasize to the Board is that we believe Ohio shippers and public interest are particularly at risk in this merger and we believe the lack of earnestness in negotiations reflect an attitude by the Applicants that the STB cannot or will not take pro competitive action because of its past merger policy.

We, as members of the Ohio delegation, believe that the results from large rail consolidations and serious concerns raised during recent STB hearings make it more evident that pro competitive rail access for Ohio shippers (including W&LE Chicago access) should be encouraged for the resolution of competitive issues presented by this merger.

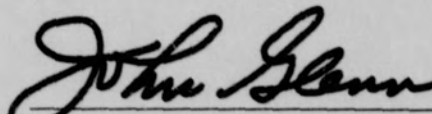
The recent lack of progress in negotiations appears to make private resolution of competitive concerns highly unlikely and it is our request that the STB give close scrutiny to the merger impact in Ohio and aggressively address appropriate solutions.

Thank you for your attention to our concerns.

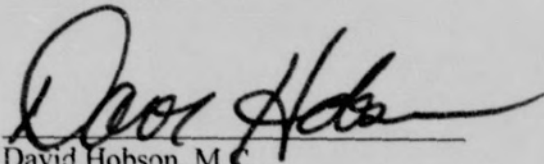
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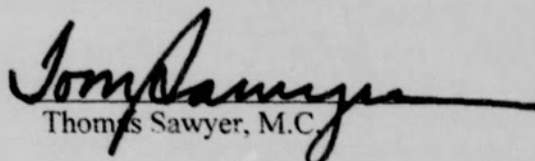
Ralph Regula, M.C.



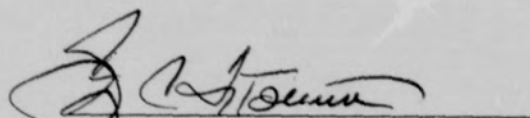
Senator John Glenn



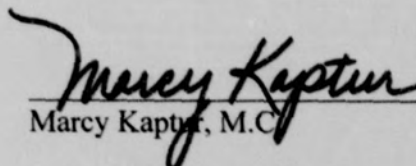
David Hobson, M.C.



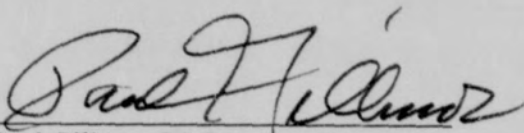
Thomas Sawyer, M.C.



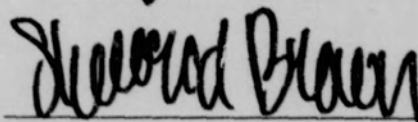
Steven LaTourette, M.C.



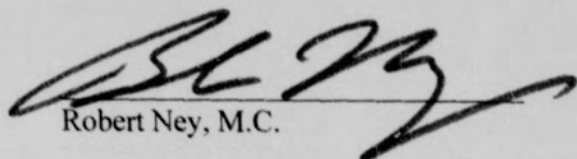
Marcy Kaptur, M.C.



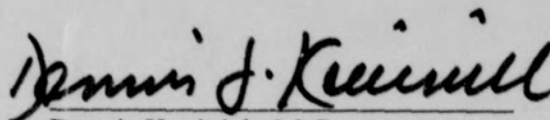
Paul Gillmor, M.C.



Sherrod Brown, M.C.



Robert Ney, M.C.



Dennis Kucinich, M.C.

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515-3516

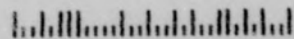
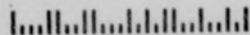
PUBLIC DOCUMENT

OFFICIAL BUSINESS

Ralph Regula
M.C.



Hon. Linda Morgan
Chairman
Surface Transp. Bd.
1925 K St. N.W.
Washington, DC 20423



STB

FD-33388

6-25-98

J

ID-MOCH



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

FD-33388

June 25, 1998

The Honorable Christopher Shays
U.S. House of Representatives
Washington, D.C. 20515-0704

Dear Congressman Shays:

I have received your correspondence regarding Finance Docket 33388, the Conrail acquisition proceeding. In accordance with your request, I will have your testimony made a part of the public docket for that case.

I appreciate your interest in this matter. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Linda J. Morgan
Linda J. Morgan



CONGRESS OF THE UNITED STATES

June 4, 1998

FILE IN DOCKET

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

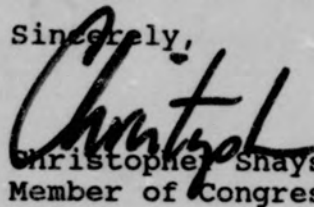
Dear Secretary Williams:

Please insert the following testimony into the record for the June 3 Surface Transportation Board hearing on the proposed CSX-Norfolk Southern acquisition of Conrail.

A copy of this testimony has also been faxed to your office. If you have any questions or comments on including my testimony, please contact my legislative assistant, Kristin Miller, at 202/225-5541.

Thank you for your attention to this request.

Sincerely,


Christopher Shays
Member of Congress

CS:km

Enclosure

Congressman
Christopher Shays
Fourth District Connecticut

Offices

10 Middle Street, 11th Floor
Bridgeport, CT 06604-4223

Government Center
888 Washington Boulevard
Stamford, CT 06901-2927

1502 Longworth Building
Washington, DC 20515-0704

Telephones

Bridgeport 579-5870
Norwalk 866-6469
Stamford 357-8277
Washington, DC 202/225-5541

RECEIVED
SURFACE TRANSPORTATION
BOARD
JUN 9 3 39 PM '98
OFFICE OF
CHAIRMAN MORGAN

Congressman Christopher Shays (R-CT)**Surface Transportation Board Hearing on the
Proposed CSX-Norfolk Southern Acquisition of Conrail
June 3, 1998**

Chairwoman Morgan: Thank you for providing me this opportunity to testify before the Surface Transportation Board (STB) regarding the proposed CSX-Norfolk Southern acquisition on Conrail.

When deciding railroad mergers and divisions, the STB needs to focus on more than just maintaining the status quo. America's transportation future lies in intermodalism. The transportation needs of shippers and consumers require a viable linking of railroads, highways and waterways.

The STB has a mandate to secure the public interest. The Board should take a proactive role to improve intermodal transportation while maintaining efficient, viable rail freight service. By increasing the efficiency and route schedule of railroads, companies currently shipping via rail will realize better service and those shipping long distances via trucks may be enticed to use rail travel.

Railroad merger decisions cannot occur in a vacuum. The needs of the railroads must be weighed against the needs of shippers, consumers and the general public. As evident by the many troubles of the Union Pacific-Southern Pacific merger, the STB needs to better examine all of the factors surrounding pending mergers.

During consideration of the agreement between CSX and Norfolk Southern rail companies to purchase and divide Conrail's assets, the STB should examine improvements to rail freight service east of the Hudson River and throughout New England. While Conrail did not previously provide this service, this merger allows the unique opportunity to improve rail service throughout the Northeast.

The use of rail freight in the Northeast is extremely low. Rail freight east of the Hudson River makes up only 3.8 percent of total freight moved. When compared to the national average of 40 percent rail freight traffic, the Northeast numbers are pathetic. A change needs to take place.

The low freight travel leads to high truck traffic. According to the Connecticut

Department of Transportation (ConnDOT), in 1996, daily trailer truck traffic on I-95 through the South Western region of Connecticut was more than 10,400 trucks per day -- or 8 percent of the total traffic level of 130,200 vehicles per day.

There should not be a reason for such a high percentage of long haul shipments to travel up and down the eastern coast via truck. This truck traffic leads to increased wear and tear on highways and bridges, as well as traffic congestion.

We need to find new ways to improve transportation and to alleviate gridlock -- and railroads can play a major part.

The division of Conrail offers a great opportunity to increase rail service, while decreasing traffic congestion. This is a win-win situation the STB should be examining.

Direct rail competition with trucks on I-95 is urgently needed. This can only happen if the most direct, high speed, high capacity rail route is used. That route is along the Amtrak Northeast Corridor rail line, directly through Penn Station in New York City during off-peak hours.

That is why I joined Congressman Jerry Nadler, and other Members of the Connecticut and New York delegations, in signing a petition urging freight access through New York's Penn Station during off-peak hours and shared access between CSX and Norfolk Southern in the crucial area east of the Hudson River. Because of the long, circuitous rail routings for travel between the south and New England via Albany -- 150 miles north of New York City -- the only way for the railroad to compete with trucks on I-95 is to run intermodal rail freight directly along the Northeast Corridor rail line.

This type of service was originally proposed by Norfolk Southern in early 1997. Norfolk Southern proposed the use of "Road Railers" and single-containers on flatcars directly through Penn Station.

Neither the proposed CSX route via Selkirk Yard in Albany, New York nor the Norfolk Southern/St. Lawrence and Hudson/Guilford Transportation route via Scranton, Pennsylvania and the Hoosac Tunnel in Western Massachusetts can effectively compete with trucks traveling on I-95. These two routes are longer by over 200 miles and slower than freight trains traveling the Northeast Corridor.

We urge you to allow Amtrak to negotiate with any willing rail operator to provide rail freight service in the Northeast. Road railer service will allow improved service to the Northeast, while decreasing truck traffic on our already crowded highways. If Norfolk Southern and CSX are not willing or able to provide such service, the Northeast should be able to achieve this direct service from another railroad.

The petition also included shared access for a cross-harbor freight car float service across New York Harbor. It is our hope these improvements will help improve rail freight service throughout the Northeast.

The serious gap existing in the national rail freight network, as demonstrated by the absence of trains across the Hudson River in New York City, would never be tolerated as part of our national highway system. Direct transportation connectivity is consistent with an efficient transportation system. Conversely, transporting freight east of the Hudson River via Albany is simply inefficient.

The STB is the only national instrument of the public interest to assure we have a national rail freight network which is as direct and complete as the national highway system. Therefore, the STB should not wait for the railroads to act where they have failed to do so. Specific conditions should be attached by the STB to the railroad control application to ensure the public interest is being served.

The STB has great potential to show proactive leadership in intermodal transportation. A strong rail structure helps improve our economy, moves needed goods from coast to coast, and helps reduce traffic congestion.

Madam Chairwoman, as you make a ruling on the Conrail acquisition, I hope you will address needed improvements to rail service east of the Hudson River.

Thank you for allowing me to testify. I am happy to answer any questions you may have.

STB

FD-3388

6-18-98

J

ID-MOCH



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

FD - 33388

June 18, 1998

The Honorable Rob Portman
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Portman:

I have received your correspondence regarding Finance Docket 33388, the Conrail acquisition proceeding. In accordance with your request, your name has been removed from the service list for that case.

I appreciate your interest in this matter. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Linda J. Morgan
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