

STB FD 33388 12-12-97 K 28629V5C 3/6

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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



FINANCE DOCKET NO. 33388 (SUB-NO. 36)

TRANSTAR, INC. AND
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY
-- CONTROL --
INDIANA HARBOR BELT RAILROAD COMPANY

VERIFIED STATEMENT OF
NO SIGNIFICANT ENVIRONMENTAL IMPACT

I am Thomas J. Healey, an attorney for Transtar, Inc. ("Transtar") and the Elgin, Joliet and Eastern Railway Company ("EJE"). Transtar is a non-carrier holding company which controls EJE and several other railroads. I am submitting this Verified Statement to explain why an Environmental Report is not required in connection with Transtar/EJE's anticipated Responsive Application in Finance Docket No. 33388 (Sub-No. 36). In that Responsive Application, Transtar/EJE will seek divestiture of Conrail's 51% ownership interest in Indiana Harbor Belt Railroad Company ("IHB"). As is explained below, if Transtar/EJE's Responsive Application and the Primary Application are granted, the environmental thresholds established in 49 C.F.R. § 1105.6 will not be exceeded and there will be no significant environmental impact.

As stated above, Transtar is a non-carrier transportation holding company which controls eight Board-regulated rail carrier subsidiaries: (1) EJB; (2) Bessemer and Lake Erie Railroad Company, a Class II carrier operating in Western Pennsylvania and northeastern Ohio; (3) Birmingham Southern Railroad Company, a Class III switching and terminal carrier in Birmingham, Ensley, Fairfield and Bessemer, Alabama; (4) Duluth, Missabe and Iron Range Railway Company, a Class II carrier operating in northeastern Minnesota and northwestern Wisconsin; (5) The Lake Terminal Railroad Company, a Class III switching carrier operating in Lorain, Ohio; (6) Union Railroad Company, a class III carrier operating from North Bessemer to Clairton Junction, Pennsylvania; (7) McKeesport Connecting Railroad Company, a Class III switching operation in McKeesport, Pennsylvania; and (8) The Pittsburgh and Conneaut Dock Company, which operates a rail/water dock facility on Lake Erie at Conneaut, Ohio.

EJB is a Class II carrier that owns and operates 196 miles of mainline and branchline trackage in and around Chicago in the states of Illinois and Indiana. EJB's main line extends from Waukegan, Illinois through Joliet, Illinois to Gary, Indiana. Branch lines extend from Plainfield to East Morris, Illinois and from Gary to Whiting and East Chicago, Indiana and Hegewisch and South Chicago, Illinois.

Transtar/EJB's anticipated filing pursuant to 49 C.F.R. § 1180.4(d)(4) would not cause any foreseeable increase in traffic. Divestiture of Conrail's 51% ownership of the IHB

should have no impact on current train or traffic levels. This condition is a transfer of ownership intended to preserve the status quo and to assure that IHB can continue to serve as an effective intermediate switching carrier in the Chicago terminal. The condition is not intended or expected to result in additional trains or traffic over IHB's lines.

It is thus not reasonably foreseeable that the environmental thresholds established in 49 C.F.R. § 1105.7 will be exceeded. IHB divestiture is not expected to cause the diversion of any rail traffic to motor carriers. The proposed transaction is not expected to result in (a) an increase in rail traffic on any segment of rail line, (b) an increase in rail yard activity, or (c) an increase in truck traffic on any road segment. Accordingly, there will be no significant impact on the environment, and submission of an environmental report is not required.

VERIFICATION

State of Illinois)
) ss.
County of Cook)

Thomas J. Healey, being duly sworn, deposes and says that he is an attorney for Transtar, Inc. and Elgin, Joliet and Eastern Railway Company, that he has read the foregoing statement and knows the facts asserted therein, and that the same are true as stated to the best of his knowledge, information and belief.

Tom Healey

Thomas J. Healey

SUBSCRIBED AND SWORN to
before me this 30th day
of September, 1997.

LM

Notary Public

My Commission expires:



CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 1997, a copy of the foregoing Verified Statement of No Significant Environmental Impact (EJE-7) was served by first class mail, postage prepaid, upon:

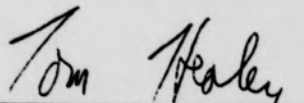
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Hon. Jacob Leventhal
Administrative Law Judge
Federal Energy Regulatory Commission
888 First Street, N.E., Suite 11F
Washington, DC 20426

and upon all parties of record appearing on the Surface Transportation Board's official service list in this proceeding, served August 19, 1997.



Thomas J. Healey

10/21/97 2:47:01 PM

W&LE-3

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub-No. 80)



VERIFIED STATEMENT OF NO
SIGNIFICANT IMPACT

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

Charles H. White, Jr.
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Counsel for Wheeling & Lake Erie
Railway Company

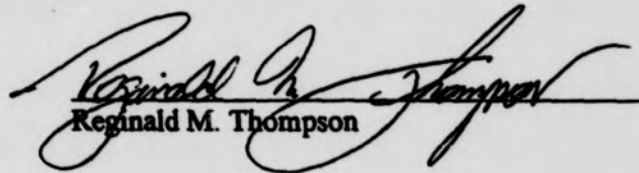
October 16, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub-No. 80)

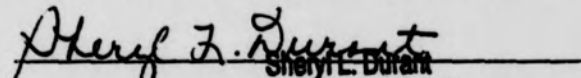
VERIFIED STATEMENT OF NO
SIGNIFICANT IMPACT

My name is Reginald M. Thompson. I am Vice President of Marketing and Sales at the Wheeling & Lake Erie Railway Company. As the executive sponsoring our analysis of traffic flow diversions and anticipated conditioned relief, I am most familiar with the impact of these proceedings. In my judgment the cumulative impact of the diversions and condition relief will result in no significant impact within the meaning of Decision No. 6 and 49 C.F.R. §1105.6(c)(4).


Reginald M. Thompson

Verification

Reginald M. Thompson being duly sworn on 16th October, deposes and says that he has read the foregoing, and that it is true and accurate to the best of his knowledge and belief.


Sheryl L. Duran
Notary Public, State of Ohio
(Notary Public) My Commission Expires August 29, 1999

My Commission expires Aug. 29, 1999

CENTRAL ADMINISTRATIVE UNIT

REC'D: 10/2/97

DOCUMENT # 10/8/97 8:13:51 AM

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

FINANCE DOCKET NO. 33388 (SUB-NO. 59)

WISCONSIN CENTRAL LTD.
-- PURCHASE AND RELATED TRACKAGE RIGHTS --
LINES OF THE BALTIMORE & OHIO CHICAGO TERMINAL
RAILROAD COMPANY AND CONSOLIDATED RAIL CORPORATION

FINANCE DOCKET NO. 33388 (SUB-NO. 60)

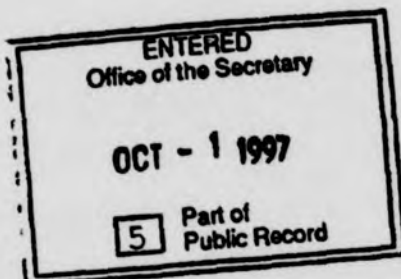
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
-- DIVESTITURE OF CONTROL --
INDIANA HARBOR BELT RAILROAD COMPANY

**VERIFIED STATEMENT OF
NO SIGNIFICANT ENVIRONMENTAL IMPACT**

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ATTORNEYS FOR
WISCONSIN CENTRAL LTD.



Dated: September 30, 1997

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



FINANCE DOCKET NO. 33388 (SUB-NO. 59)

WISCONSIN CENTRAL LTD.
-- PURCHASE AND RELATED TRACKAGE RIGHTS --
LINES OF THE BALTIMORE & OHIO CHICAGO TERMINAL
RAILROAD COMPANY AND CONSOLIDATED RAIL CORPORATION

FINANCE DOCKET NO. 33388 (SUB-NO. 60)

CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
-- DIVESTITURE OF CONTROL --
INDIANA HARBOR BELT RAILROAD COMPANY

VERIFIED STATEMENT OF
NO SIGNIFICANT ENVIRONMENTAL IMPACT

I am Thomas J. Healey, an attorney for Wisconsin Central Ltd. ("WCL"). After consulting with my client, I am submitting this Verified Statement to explain why an Environmental Report is not required in connection with WCL's anticipated Responsive Application in Finance Docket No. 33388 (Sub-Nos. 59 and 60). WCL seeks: 1) conveyance of the Altenheim Subdivision of The Baltimore & Ohio Chicago Terminal Railroad Company ("B&OCT"), a CSX Transportation, Inc. ("CSXT") subsidiary, between the connection with WCL at Madison Street in Forest Park and the connection with the Union Pacific Railroad Company and the former "Panhandle Line" of Consolidated Rail

Corporation ("Conrail") at Rockwell Street (also known as Ogden Junction) in Chicago; 2) conveyance of Conrail's "Panhandle Line" right-of-way and remaining track between Rockwell Street and Brighton Park in Chicago, together with related trackage rights to interchange traffic with The Burlington Northern and Santa Fe Railway Company ("BNSF") at 22nd Street, CSXT, Norfolk Southern Railway Company and BNSF at Brighton Park and Grand Trunk Western Railroad, Inc. (Canadian National) at the Railport facility in Chicago; and 3) the divestiture by Conrail of its controlling 51% stock interest in the Indiana Harbor Belt Railroad Company ("IHB").

None of these conditions will result in any appreciable increase in railroad traffic. As is explained below, if WCL's Responsive Application and the Primary Application are granted, the environmental thresholds established in 49 C.F.R. § 1105.6 will not be exceeded and there will be no significant environmental impact.

WCL is a Class II common carrier by rail which owns or operates approximately 2,000 route miles of rail line in the states of Wisconsin, Illinois, Michigan and Minnesota. WCL began operations in 1987 after acquiring its core rail lines from Soo Line Railroad Company. WCL's rail lines emanate north from Chicago, Illinois, and Chicago is the largest traffic gateway for the Wisconsin Central system. The efficient, timely and cost-effective interchange of traffic with other rail carriers at Chicago is absolutely critical to WCL's ability to offer competitive rail service.

WCL is a wholly-owned subsidiary of Wisconsin Central Transportation Corporation ("WCTC"), which also controls Fox Valley & Western Ltd. ("FVW"), a Class II common carrier by rail which owns approximately 500 miles of rail line within the state of Wisconsin, and the Sault Ste. Marie Bridge Company ("SSMB"), a Class III common carrier by rail which owns approximately 220 miles of rail line in northern Wisconsin and the Upper Peninsula of Michigan and between Sault Ste. Marie, Michigan and Sault Ste. Marie, Ontario, Canada. Together with its affiliates, WCL is the largest railroad in the state of Wisconsin and the Upper Peninsula of Michigan. WCTC, FVW and SSMB are each participating as parties of record in this proceeding, see WC-1, dated August 6, 1997, and the relief sought by WCL is sought on behalf of those entities as well.

WCL's anticipated filing pursuant to 49 C.F.R. § 1180.4(d)(4) would not cause any foreseeable increase in traffic. With respect to the Altenheim Subdivision, WCL does not anticipate that approval of WCL's Responsive Application will result in any change in traffic levels. WCL currently operates over this section of B&OCT's track pursuant to trackage rights, and in fact is the predominant user of that line segment. Approval of WCL's acquisition of the Altenheim Subdivision pursuant to a Responsive Application would result in a transfer of dispatching and maintenance over this track to WCL, and would change the nature of WCL's legal rights to operate over the track from trackage rights to ownership. WCL does not foresee a change

in the number of trains operating over the Altenheim Subdivision as a result of this transfer of ownership.

WCL's acquisition of Conrail's "Panhandle Line" between Rockwell Street and Brighton Park in Chicago will also have no impact on train or traffic levels. WCL understands portions of the track on this line are removed. WCL currently does not plan to operate trains on this property upon its acquisition. Should WCL desire to reinstall trackage and operate trains on the Panhandle Line, WCL would seek appropriate authority from the Surface Transportation Board, and the environmental impact of WCL's projected train operations would be subject to review at that time.

Finally, divestiture of Conrail's 51 $\frac{1}{2}$ ownership of the IHB should have no impact on current train or traffic levels. This condition is a transfer of ownership intended to preserve the status quo and to assure that IHB can continue to serve as an effective intermediate switching carrier in the Chicago terminal. The condition is not intended or expected to result in additional trains or traffic over IHB's lines.

It is thus not reasonably foreseeable that the environmental thresholds established in 49 C.F.R. § 1105.7 will be exceeded in any of the referenced transactions. The transactions are not expected to cause the diversion of any rail traffic to motor carriers. The proposed transactions are not expected to result in (a) an increase in rail traffic on any segment of rail line, (b) an increase in rail yard activity, or (c) an increase in truck traffic on any road segment.

Accordingly, there will be no significant impact on the environment, and submission of an environmental report is not required.

VERIFICATION

State of Illinois)
) ss.
County of Cook)

Thomas J. Healey, being duly sworn, deposes and says that he is an attorney for Wisconsin Central Ltd., that he has read the foregoing statement and knows the facts asserted therein, and that the same are true as stated to the best of his knowledge, information and belief.

Tom Healey

Thomas J. Healey

SUBSCRIBED AND SWORN to
before me this 3rd day
of September, 1997.

[Signature]

Notary Public

My Commission expires:



CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 1997, a copy of the foregoing Verified Statement of No Significant Environmental Impact (WC-5) was served by first class mail, postage prepaid, upon:

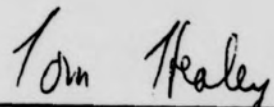
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Hon. Jacob Leventhal
Administrative Law Judge
Federal Energy Regulatory Commission
888 First Street, N.E., Suite 11F
Washington, DC 20426

and upon all parties of record appearing on the Surface Transportation Board's official service list in this proceeding, served August 19, 1997.



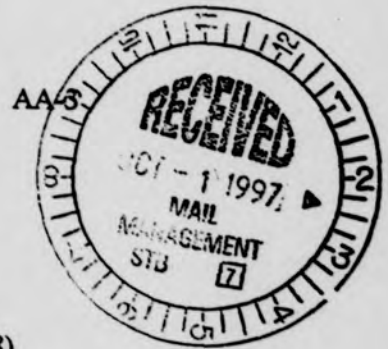
Thomas J. Healey

**ENVIRONMENTAL
DOCUMENT**

CENTRAL ADMINISTRATIVE UNIT

REC'D: 10/2/97

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388 (SUB-NO. 78)

ANN ARBOR RAILROAD
-TRackage RIGHTS-
CONSOLIDATED RAIL CORPORATION OR CSX TRANSPORTATION, INC.

ENVIRONMENTAL VERIFIED STATEMENT

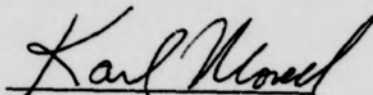
Ann Arbor Railroad ("AA"), pursuant to Decision No. 6 (served May 30, 1997) and Decision No. 38 (served September 18, 1997), hereby submits its Environmental Verified Statement.

In its Description of Anticipated Responsive Application (AA-2), AA stated that it anticipated seeking trackage rights between Toledo, OH and Chicago, IL over one of three alternate routes. The grant of trackage rights to AA over any one of these three alternate routes will have no significant environmental impact.

The proposed trackage rights will not result in significant changes in carrier operation. There will not be a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of this line to motor carriage. The granting of the trackage rights will also not result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the line; (2) an increase in rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than

10 percent of the average daily traffic or 50 vehicles a day. To the extent that the trackage rights affect a class I or nonattainment area under the Clean Air Act, they will not result in: (1) an increase in rail traffic of at least 50 percent or an increase of at least three trains a day on any segment of the line; (2) an increase in rail yard activity of at least 20 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. Accordingly, no environmental documentation is required for AA's filing in this proceeding pursuant to the provisions of 49 C.F.R. 1105.6(c)(2).

Respectfully submitted,



KARL MORELL
Of Counsel
BALL JANIK LLP
1455 F Street, N.W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorney for:
ANN ARBOR RAILROAD

Dated: October 1, 1997

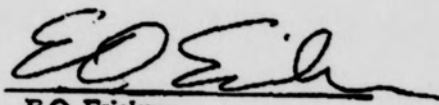
VERIFICATION

STATE OF MICHIGAN

COUNTY OF LIVINGSTON

)
) ss.
)

I, E. O. Erickson, being duly sworn depose and state that I am President of Ann Arbor Railroad, that I am authorized to make this verification, and that I have read the foregoing Environmental Verified Statement and know the facts asserted therein are true and accurate to the best of my knowledge, information, and belief.


E.O. Erickson

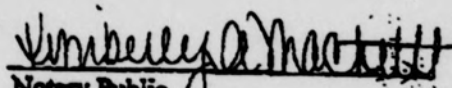
SUBSCRIBED AND SWORN TO before me this 30th day of September, 1997.

KIMBERLY A. MACHETTE

Notary Public, Ingham County, MI

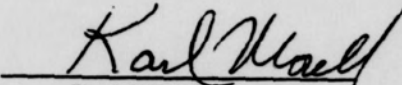
My Commission Expires Feb. 3, 2002

My Commission Expires: Acting in Livingston County, MI


Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of October, 1997, I caused a copy of the foregoing Environmental Verified Statement to be served by first class mail, postage prepaid, on Administrative Law Judge Jacob Leventhal and all parties of record in STB Finance Docket No. 33388.


Karl Morell

APPENDIX R
Verified Statements - Settlement Agreements

[FINAL EIS ONLY]

APPENDIX S

Railroad Mitigation Plans

CONTENTS OF APPENDIX S

NS Railroad Mitigation Plan for Erie, Pennsylvania

NS Railroad Mitigation Plan for Muncie, Indiana

NS Railroad Mitigation Plan for Areas West of Cleveland, Ohio

CSX Railroad Mitigation Plan for 59th Street Intermodal Facility in
Chicago, Illinois

NS Railroad Mitigation Plan for Erie, Pennsylvania

**NORFOLK
SOUTHERN**

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Bruno Maestri
System Director
Environmental Protection

RECEIVED NOV 25 1997

Washington, D.C. - November 25, 1997

BY HAND

Elaine K. Kaiser
Chief
Surface Transportation Board
Section of Environmental Analysis ("SEA")
1925 K Street, NW
Washington, DC 20423-0001

Re: Finance Docket No. 33388: CSX and NS - Control and
Acquisition of Conrail

Subject: Norfolk Southern Mitigation Proposal for Erie,
Pennsylvania

Dear Ms. Kaiser:

This letter responds to a request from SEA for a written description of Norfolk Southern's ("NS") proposal for mitigation relating to post-Acquisition NS rail traffic at Erie, Pennsylvania. We understand that SEA intends to include this letter as an appendix to the Draft Environmental Impact Statement for Finance Docket No. 33388. Described below is NS' proposal for mitigation relating to post-Acquisition NS rail traffic at Erie, Pennsylvania. Specifically, NS provides herein a detailed description and analysis of a proposal to relocate rail traffic from the existing NS mainline running through Erie to an alternate location on existing Conrail right-of-way.

Background

NS has given careful study to the proposed routing of its trains through Erie, Pennsylvania as described in Applicants' June 1997 Operating Plan (Volume 3B, pages 281-282) and Environmental Report (Volume 6B, Page 503) submitted to the Surface Transportation Board (the "Board" or "STB") in conjunction with the joint Application in the above-referenced docket. As a result of the continuing work by NS to address where appropriate the potential environmental impacts of the

Elaine K. Kaiser
November 25, 1997
Page 2

proposed Acquisition, NS has conducted further analysis of the proposed post-Acquisition traffic routing both along the existing NS route through Erie and an alternate route to be considered as a mitigation measure.

Applicants' Operating Plan and Environmental Report included a brief discussion of a proposal by NS to reroute its freight rail traffic currently moving through Erie along 19th Street. To implement that proposal, NS and CSX negotiated a permanent easement to be granted by CSX to NS, subject to the Board's approval of the Application; the easement agreement was made an exhibit to the Application. The easement would grant NS an exclusive right-of-way to build a new track adjacent and parallel to the Conrail Cleveland-Buffalo Line that is to be controlled by CSX post-Acquisition.

Purpose of the Proposed Mitigation

Although the plan discussed herein was included in Applicants' filings, many elements were necessarily conceptual. Therefore, for the purpose of assisting the Board's environmental review process, the proposed realignment is being submitted in the form of a proposed mitigation.

The relocation of NS rail traffic to a new track on the Conrail right-of-way north of the existing NS tracks would permit NS to divert its trains away from approximately 1.25 miles of track along 19th Street, in a largely residential area of Erie. All 24.2 NS trains per day expected to cross through Erie post-Acquisition (representing an increase from the 1995 base case of 13 trains per day) would be removed from the 19th Street route and would run instead over the relocated NS line.

Significant safety benefits would be realized by this rail traffic relocation since the 19th Street route includes numerous at-grade crossings in a densely populated area which would no longer be used for NS freight traffic. Other benefits of the rerouting proposal include elimination of grade crossing delays and street running, as well as noise impacts from rail traffic moving through a heavily residential neighborhood. The relocation would permit more efficient train movement between Toledo, Cleveland and Buffalo.

Description of the Proposed Mitigation

As described above, CSX has agreed to grant NS an exclusive right-of-way along the existing Conrail mainline, north of the existing NS mainline. The agreement between CSX and NS is memorialized in a Deed of Easement, Exhibit LL to Railroad Control Application, Volume 8C of 8, pp.784-788. (Copy attached as Exhibit 1.) The easement runs from west of Pittsburgh Avenue near CP 89 to the existing NS/Conrail connection west of Downing Avenue.

The precise alignment of the NS track within the Conrail right-of-way ("northern route") has not yet been determined by the NS Engineering Department and will be the subject of further discussion and agreement between NS and CSX. The exact location of the new NS northern route on the existing Conrail right-of-way will be dependent upon such factors as ensuring CSX access to the Conrail OD yard, NS interchange with the Allegheny and Eastern Railway (A&E) and CSX access to customers on the Conrail mainline. While these and other issues pertaining to the alignment of the NS track are the subject of on-going study by NS and CSX, the feasible alternative alignments available for this project are not expected to vary significantly in potential environmental impact. Therefore, the final selection of the preferred alignment for the new NS track should not affect the evaluation of the substantial safety benefits of the proposed relocation to be realized by rerouting the NS traffic away from 19th Street to the easement along the Conrail right-of-way.

Although the precise siting of the proposed NS realignment on the existing Conrail right-of-way has not yet been determined, and engineering plans have not yet been drawn up, best estimates at this time would place the new NS line approximately as described below:

A potential plan that would avoid separation of the CSX mainline from the Conrail "OD" yard would provide for the new NS alignment to diverge from the current NS mainline west of Downing Avenue, at the west end of the existing NS "Dean" passing siding, utilizing existing NS right-of-way westward toward East Avenue. The proposed NS track would then cross East Avenue at grade. This plan would require one new public grade crossing at East Avenue, and one private industry crossing at Gaskell Street. Westward from East Avenue, the Conrail Erie Yard Industrial Track would either be crossed at grade, or realigned to connect with the

Elaine K. Kaiser
November 25, 1997
Page 4

proposed NS track. The new alignment would then follow the former PRR/NYC connection track, partially still in place. The OD yard could be expanded, bracketed by the CSX and NS mainlines, to handle interchange between the A&E and NS and CSX. A minor realignment to the north of the current Conrail line is anticipated due to restrictive side clearance near MP 88. Relocation of small impediments such as crossing signals, signal boxes and overhead poles would also be required. This plan would eliminate 17 at-grade crossings presently crossed by the existing NS line on 19th Street.

NS will seek to engineer the relocated track such that trains could operate at mainline speed (currently 60 mph) through the new alignment. Also, NS will seek to maintain Dean's Siding as a controlled siding for the realigned project.

It must be stressed that this is only a potential plan for the realignment and that no final decision has been made by NS as to its suitability. Moreover, discussions are ongoing with CSX and no formal agreement has yet been reached, beyond the easement deed, concerning the placement of the new NS track at the above-described location on the existing Conrail right-of-way. Adjustments may be necessary to accommodate specific engineering issues or CSX operational requirements. However, as discussed above, the environmental impacts of the siting of the new NS track within the confines of the defined easement would not vary appreciably.

The following attachments are included to assist understanding of this proposed mitigation project: Exhibit 2 - a map depicting the change in NS freight traffic routing that would result from the realignment; and Exhibit 3 - track charts of the project area.

Environmental Analysis of NS Rerouting Proposal

Burns & McDonnell has studied the environmental impacts of the proposed NS track relocation at Erie, based upon a site visit to the project area. The NS proposal would involve the relocation of the existing NS track and operation along 19th Street to a location parallel and adjacent to the existing northeast/southwest-trending Conrail lines through Erie. The new NS track would be constructed within the existing Conrail right-of-way through Erie and would not require the acquisition of new right-of-way. The existing NS line presently runs adjacent to

the Conrail lines from the northeast, turning south away from the Conrail lines at Downing Avenue. The existing NS line enters Erie from the east, parallel to the Conrail line. At a point just east of Downing Avenue, the NS line curves to the southwest and diverges from the Conrail line. The NS line then is commonly aligned with 19th Street westward through downtown Erie, while the Conrail line utilizes a private right-of-way located approximately 1/4 mile to the north. The Conrail line curves to the southwest at Raspberry Street and then again becomes parallel with the NS line just west of Pittsburgh Avenue.

The area of the proposed NS track relocation along the Conrail right-of-way is primarily gravel-covered, with sparse, scattered grasses and weedy annuals. Along some stretches, vegetation forms a buffer zone along both edges of the Conrail right-of-way. The right-of-way has been previously disturbed by rail line construction and removal activities. Adjacent areas are dominated by rail, other transportation, utility and industrial uses. Approximately 26 residences are located within the 65 dBA noise contour of the proposed northern route. All of these residences currently experience noise generated by passing trains on the Conrail mainline. The proposed northern route area is zoned for general industry.

Land use adjacent to the existing NS line is roadway and dense residential and commercial use. A total of 630 noise receptors were counted by Burns & McDonnell within the 65 dBA noise contour along the existing NS line. All of these receptors currently experience noise from passing trains. As a result of the proposed realignment of NS traffic to the northern route, none of those residences would continue to experience noise generated by the NS trains.

The relocated NS line is expected to branch from the vicinity of the existing NS line west of Downing Avenue to a point west of Pittsburgh Avenue along the Conrail right-of-way, then turn south to join again with the existing NS line. All traffic on the NS line would be rerouted from the existing 19th Street rail corridor, with 19 at-grade crossings, to the new NS line within the existing Conrail rail corridor. If the relocation plan is implemented, 17 at-grade crossings on the NS line will be eliminated as will all street running along 19th Street. The proposed relocated NS main track alignment would have 6 public grade crossings within the project area, including one new public grade crossing at East Avenue and the expansion of

Elaine K. Kaiser
November 25, 1997
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4 of the existing public crossings. A new private industry grade crossing at Gaskell Street would also be added. All of the existing public crossings presently experience Conrail traffic.

No surface waters are found within the proposed project site, nor are any of the soils at the site classified as prime farmland. National Wetland Inventory maps for the area do not indicate any wetlands within 500 feet of the proposed rail relocation, nor were any wetland areas observed during site visits. The area is not within the 100-year floodplain. No evidence of potential hazardous waste sites was observed during the site visit.

The potential for wildlife at the proposed project site is limited because the area is very sparsely vegetated and is heavily disturbed, surrounded by rail, industrial and residential development. Wildlife is mainly limited to birds and small mammals that have adapted to developed areas. Both the U.S. Fish and Wildlife Service (USFWS) and the Pennsylvania Department of Environmental Resources (PDER) were consulted regarding the potential for threatened and endangered species in the proposed rail relocation area. The response from USFWS did not include any comment regarding potential impacts to threatened or endangered species in the area. PDER said that it is unaware of any rare species or critical habitats in the proposed project area. Additionally, no endangered or threatened species or their habitats were observed during the site visit.

The proposed construction would occur solely within existing rail right-of-way. The area has been previously disturbed by rail operations and no undisturbed cultural resources are expected to occur with the existing right-of-way. No potential historic resources occur within the right-of-way. Prior to any construction activities, the Pennsylvania SHPO would be consulted and the Section 106 process completed.

Erie County is an ozone non-attainment area. However, the proposed realignment is not expected to increase total rail traffic within Erie County. Indeed, the realignment may result in a slight improvement in overall air quality since the proposed realignment will allow for more direct, more efficient routing of trains, reducing locomotive operating times within Erie County as well as grade crossing delays.

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November 25, 1997
Page 7

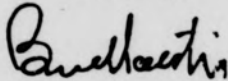
Cost Estimate

This proposal for the realignment of NS track in Erie is subject to public funding of a portion of the project cost. NS understands that the Commonwealth of Pennsylvania will support NS's efforts to obtain such public funding. NS would commit to pay its portion of the project cost. The total cost of realigning the NS track in Erie is estimated by NS to be approximately \$15,000,000.

Conclusion

NS believes that its track realignment proposal would eliminate or minimize any significant adverse environmental impacts related to post-Acquisition NS freight traffic changes at Erie. Should you or your staff have any questions or require additional information about this mitigation proposal, NS and its consultants would be pleased to offer any assistance needed.

Sincerely,



Bruno Maestri
System Director
Environmental Protection

Exhibit 1

Easement Agreement from Volume 8C
of the Joint Application Submitted
by CSX and NS for Control
and Acquisition of Conrail

Attorney for Grantor
Business Address:
500 Water Street
Jacksonville, Florida 32202

DEED OF EASEMENT

THIS DEED OF EASEMENT, made this _____ day of _____ 19__, by and among New York Central Lines LLC, a Delaware limited liability company (hereinafter called "NYC"), CSX Transportation, Inc., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202 (hereinafter called "CSXT") and Norfolk and Western Railway Company, a Virginia corporation, whose mailing address is Three Commercial Place, Norfolk, Virginia 23510 (hereinafter called "NW");

WITNESSETH:

THAT, for and in consideration of payment of the sum of ONE DOLLAR (\$1.00), which is the full monetary consideration for this conveyance, the receipt whereof is hereby acknowledged, NYC and CSXT do hereby GRANT and CONVEY, WITHOUT WARRANTY, unto NW, NW's successors and assigns, subject to the terms, conditions, exceptions and reservations herein made, a permanent EASEMENT, as hereinafter provided, on and over NYC's property in the County of Erie, State of Pennsylvania, hereinafter designated "the Easement", which Easement is more particularly described in Exhibit A attached hereto and incorporated herein.

TOGETHER WITH the right to construct, maintain, operate, replace and alter thereon, one line of railroad track together with all related signals and appurtenances deemed by NW to be necessary thereto.

TOGETHER WITH the right from time to time to redesign, rebuild or alter said line and to install such additional line(s), apparatus and equipment as NW may at any time deem necessary, and the right to remove any line(s) or any part thereof.

NW shall have the right from time to time to remove or clear and keep clear such trees, underbrush, and other obstructions from and upon the surface of said Easement area as in the judgment of NW may interfere with or endanger said line(s) or appurtenances; PROVIDED, however, any damage to the property of NYC (other than to property cleared or removed as hereinbefore provided) caused by NW in the course of constructing, rebuilding, repairing said line(s) or of such clearing shall be borne by NW.

L

INCLUDING the right-of-entry upon NYC's said lands for all of the purposes aforesaid.

EXCEPTING and RESERVING unto NYC, its successors and assigns, the paramount right to continue to occupy, possess and use the land upon which the Easement is imposed for any and all purposes, including but not limited to the location of fiber optic cable and the right to construct, reconstruct, relocate, operate, maintain, repair, renew, replace and remove NYC's tracks and other facilities as now exist or which may in the future be located in, upon, over, under or across the Easement provided such use does not interfere with or impair the rights herein granted to NW.

TO HAVE AND TO HOLD the Easement and rights herein granted, solely for the purpose herein contained; SUBJECT, however, to any other public utilities and other facilities located in, on, over, under or across the Easement, and all agreements, easements and rights granted or reserved therefor, whether the instruments granting or reserving the same be recorded or unrecorded, and ALSO SUBJECT TO the following conditions and covenants:

1. NW, its successors and assigns, shall provide and forever maintain, at NW's sole cost and expense, adequate drainage facilities to prevent runoff and other collected surface waters arising from NW's occupancy of the Easement rights herein granted from flowing upon or over NYC's adjacent property (including railroad tracks).

2. NW, its successors and assigns, shall not at any time impair or interfere with the lateral or subjacent support of NYC's properties, structures, tracks or improvements on or adjacent to the Easement or otherwise damage the same in any way.

3. If, at any time, the Easement herein granted, or any part thereof, shall no longer be used by NW, its successors or assigns, for the purposes for which granted, said Easement or unused portion shall terminate, and NW, its successors or assigns, shall execute such instrument as now provided or as hereafter may be provided by law to clear title to the aforesaid property.

4. NYC shall not be responsible in any manner for loss of or damage to NW's railroad track, signals or appurtenances from any cause whatsoever, and NW assumes all risk(s) therefor.

5. NW hereby assumes, and agrees to defend, indemnify and hold NYC and CSXT harmless from and against all loss, costs, expenses (including attorneys' fees), claims, suits and judgments whatsoever in connection with injury to or death

of any person(s) or loss of or damage to any property caused by or in any way connected with the installation, maintenance, use, presence, reconstruction, relocation, renewal or removal of said railroad track, signals, and appurtenances on the Easement, EXCEPT when caused in whole or in part by the fault, failure or negligence of NYC or CSXT.

IN WITNESS WHEREOF, NEW YORK CENTRAL LINES LLC and CSX TRANSPORTATION, INC., pursuant to due corporate authority, has caused its name to be signed hereto by its officers hereunto duly authorized and its corporate seal, duly attested, to be hereunto affixed.

Signed, sealed and delivered
in the presence of:

CSX TRANSPORTATION, INC.

By: _____
Vice President - Property Services

Attest _____ (SEAL)
Assistant Secretary

NEW YORK CENTRAL LINES LLC

By: _____
(Title)

Attest _____ (SEAL)
Assistant Secretary



ERIE, PA ERIE COUNTY

CSX TRANSPORTATION
JOINT FACILITIES JACKSONVILLE, FL
NS Permanent Easement on CSXT
Right of Way at Erie PA
west of Pittsburgh Ave to Downing Ave
SCALE - None DRAWING NO - None
May 9, 1997 RLB

LAKE ERIE

EXHIBIT A

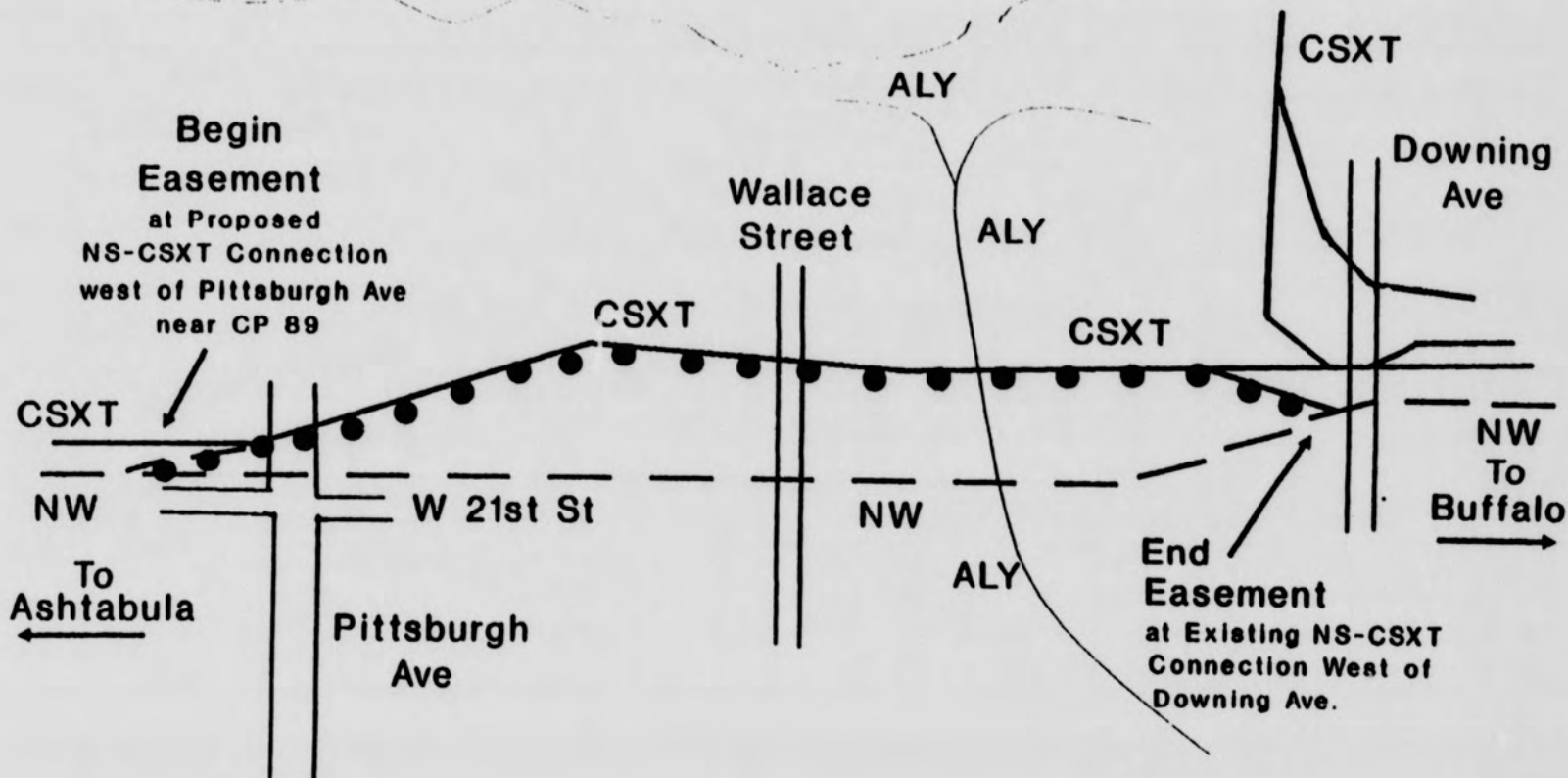
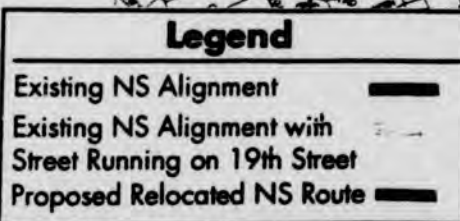


Exhibit 2

Map of Erie, PA. Project Site

ERIE, PA — Proposed NS



Existing NS Alignment
Existing NS Alignment with
Street Running on 19th Street
Proposed Relocated NS Route

1999

1

Relocation

New Private Crossing Goodall Street

Early Project Limit

New Public Crossing East Street

NS Alignment With turning on 19th Street

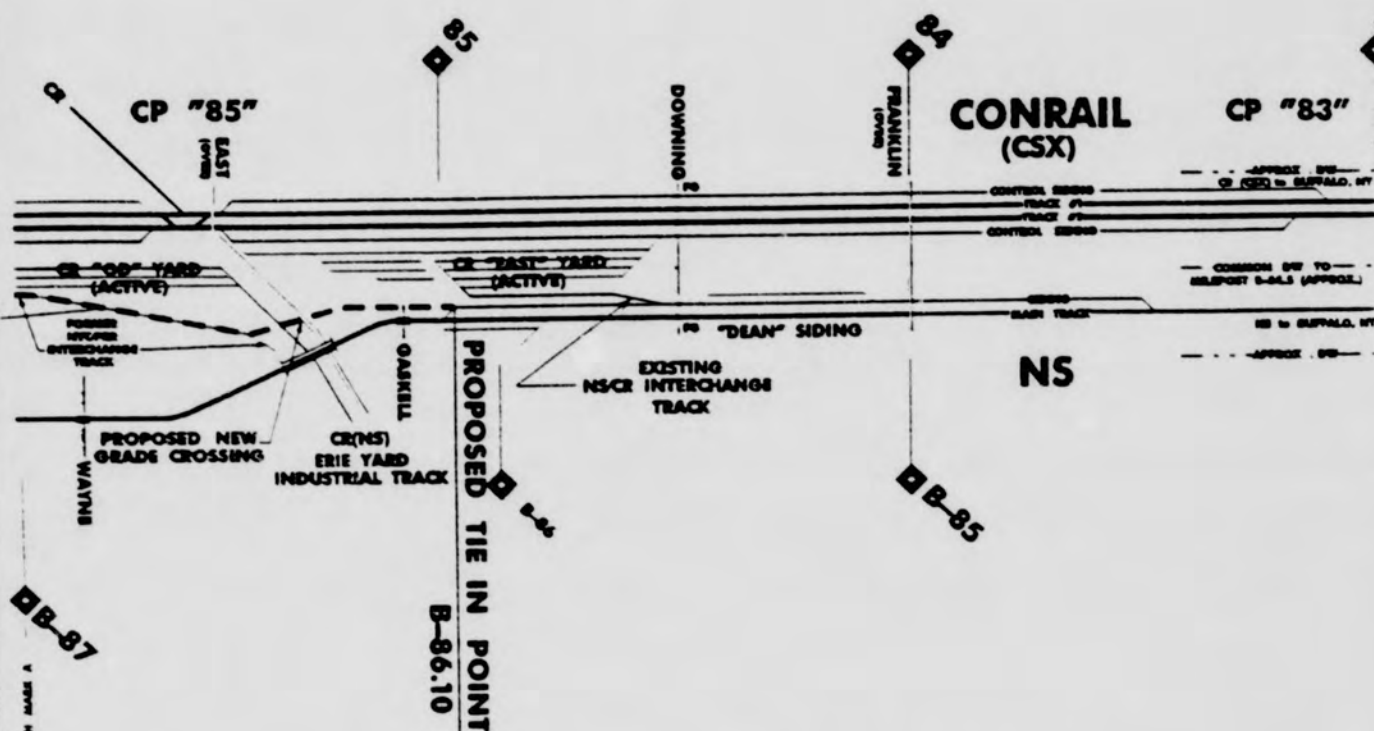
Exhibit 2

Exhibit 3

Track Charts of Project Site

ERIE, PA

PROPOSED NEW ROUTE - - -



SCALE: NOT TO SCALE

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

DO NOT SCALE THIS DRAWING FOR DIMENSIONS NOT GIVEN

NS NORFOLK SOUTHERN

NORFOLK SOUTHERN RAILWAY CO.

LOCATION				ERIE, PENNSYLVANIA	
TITLE				PROPOSED NEW ROUTE UTILIZING EXISTING CONRAIL (CSX) RIGHT OF WAY TO ELIMINATE STREET RUNNING	
CON	DAB	VAL	202	MAP	MILE POSTS B-85 TO B-
CON	DAB	P	42	200-24	DRAWING NUMBER
CON	DATE	OCTOBER 14, 1997		TA-97-0078 R	

PROPOSED NEW ROUTE ---

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



2000

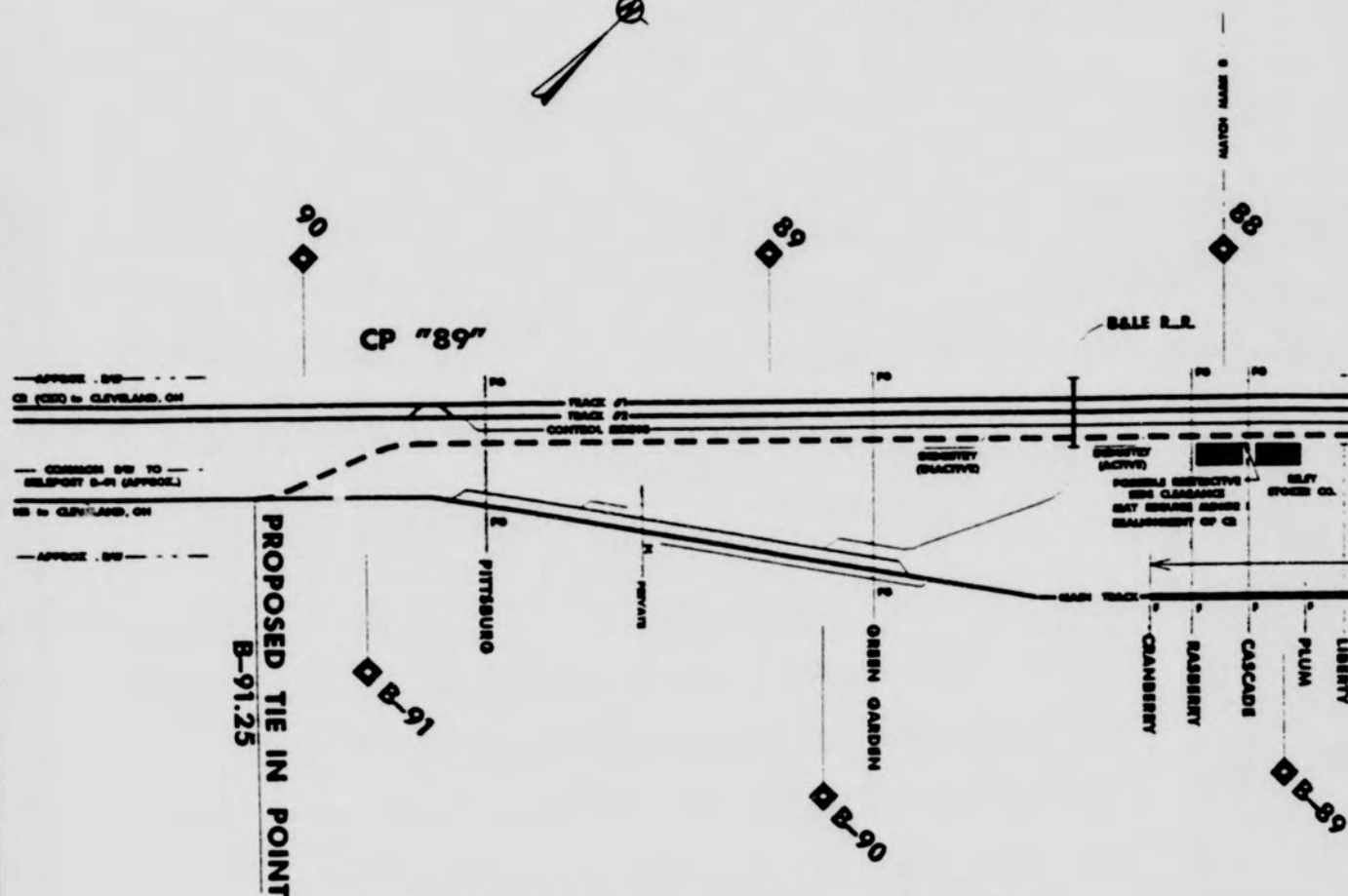
2024 W. V. CA

OPERATION ON

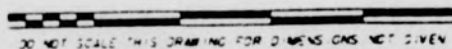
LOCAL USE				ERIE, PENNSYLVANIA			
TITLE				PROPOSED NEW ROUTE UTILIZING EXISTING CONRAIL (CSO) RIGHT OF WAY TO ELIMINATE STREET RUNNING			
CDN	DAB	VAL SEC	MAP	MILE POST		B-65 TO B-	
CDN	DAB	FILE	188-24	CORR. NO. NUMBER			
CDN	DAB	DATE	OCTOBER 14 1997	TA-97-0078 R1			

ERIE, PA

PROPOSED NEW ROUTE - - -



SCALE: NOT TO SCALE



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

NS NORFOLK SOUTHERN

NORFOLK SOUTHERN RAILWAY CO.

DRAWING COMPANY

OPERATING DIVISION

DESIGNED BY THE CIVIL ENGINEER, DESIGN AND CONSTRUCTION, ATLANTA, GA

LOCATION	ERIE, PENNSYLVANIA		
TITLE	PROPOSED NEW ROUTE UTILIZING EXISTING CONRAIL (CSX) RIGHT OF WAY TO ELIMINATE STREET RUNNING		
CHKD	DAB	DATE	MILE POSTS B-85 TO B-92
CHKD	DAB	198-24	DRAWING NUMBER
CHKD	DATE	OCTOBER 14, 1997	TA-97-0078 R1

NS Railroad Mitigation Plan for Muncie, Indiana

**NORFOLK
SOUTHERN**

Norfolk Southern Corporation
1500 K Street, N.W., Suite 375
Washington, D. C. 20005
202 383-4166
202 383-4425 (Direct)
202 383-4018 (Fax)

Bruno Maestri
System Director
Environmental Protection

Washington, D.C. - November 25, 1997

BY HAND

RECEIVED NOV 25 1997

Elaine K. Kaiser
Chief
Surface Transportation Board
Section on Environmental Analysis ("SEA")
1925 K Street, NW
Washington, DC 20423-0001

Re: Finance Docket No. 33388: CSX and NS - Control and
Acquisition of Conrail

Subject: Norfolk Southern Mitigation Proposal for Muncie,
Indiana - Line Segment Muncie to Alexandria

Dear Ms. Kaiser:

This letter responds to a request from SEA for a written description of Norfolk Southern's ("NS") proposal for mitigation relating to post-Acquisition NS rail traffic at Muncie, Indiana. We understand that SEA intends to include this letter as an appendix to the Draft Environmental Impact Statement for Finance Docket No. 33388. Described below is NS' proposal for mitigation at Muncie, Indiana to address the potential impact of increased NS rail traffic through Muncie should the Application in the above-referenced docket be approved by the Board.

The NS line that trends west from Muncie toward Alexandria, Indiana averages 2.6 trains per day (1995 base case). An increase of 9.2 trains per day, for a total of 11.8 trains, is anticipated post-Acquisition. Potential environmental impacts related to the projected increase in traffic along this NS line segment were analyzed in Volume 6B of the Environmental Report.

NS has evaluated the need for mitigation measures to address concerns raised by SEA, and further discussed in a local newspaper article, about the potential for vehicle delays at grade crossings related to the projected increase in rail traffic along the portion of this line segment that passes through Muncie. Specifically, NS has studied the spacing of

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trains passing through Muncie to assess whether the increase in projected rail traffic would likely result in significant vehicular delays at grade crossings at Kilgore Avenue and streets west past Tillotson Avenue. As a result of its study, NS has determined that grade crossing delays are not expected to occur with the addition of the projected increase in post-Acquisition traffic. NS has received no complaints about blocking delays in Muncie. Moreover, advanced warning is provided to anticipate potential congestion in merging onto the Conrail line. When this occurs, NS stops its trains and holds them between SP 178, just short of CR 400, and the next crossing at CR 500 (SP 179.1). The majority of NS trains are of a length that readily fits between these two crossings without blocking either crossing. In those rare instances where a train would not fit between SP 178 and SP 179. 1, the train instead would be stopped west of SP 180, also avoiding blocking crossings. NS would continue to employ current holding practices in this area to address the additional traffic projected on this line post-Acquisition. Thus, NS does not believe that blocking delays are an issue at Muncie.

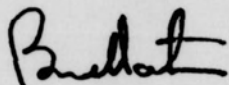
In connection with the status of the NS grade crossings in Muncie, NS proposes to work with the appropriate state agencies to address the potential upgrading of the existing grade crossings from Council Street to Morrison Street to include both automatic flashing lights and gates. Presently, six of the thirteen grade crossings are equipped with both flashing lights and gates. Five of the grade crossings have flashing lights only (Kilgore, Nichols, Goodman, Hutchinson and Jackson) and two of the grade crossings have crossbucks only (Celia and Manning). NS proposes that, subject to state approval of the addition of protective devices and the availability of federal and state funding, these seven grade crossings be equipped with flashing lights and gates. Accordingly, NS would work with the relevant governmental agencies to seek support for and public funding of this grade crossing upgrade project.

With the continuation of current procedures for managing rail traffic flow through Muncie and the upgrading of existing grade crossings to include flashing lights and gates at all thirteen locations between Council Street and Morrison Street, the potential impact from the increase in rail traffic on this line segment through Muncie would be substantially addressed.

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November 25, 1997
Page 3

Please contact me if you need additional information or if I
can be of further assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Bruno Maestri', with a stylized, cursive script.

Bruno Maestri
System Director
Environmental Protection

Muncie, Indiana



NS Railroad Mitigation Plan for Areas West of Cleveland, Ohio

**NORFOLK
SOUTHERN**

Norfolk Southern Corporation
1500 K Street, N.W., Suite 375
Washington, D. C. 20005
202 383-4166
202 383-4425 (Direct)
202 383-4018 (Fax)

Bruno Maestri
System Director
Environmental Protection

Washington, D.C. - November 25, 1997

BY HAND

RECEIVED NOV 25 1997

Elaine K. Kaiser
Chief
Surface Transportation Board
Section of Environmental Analysis ("SEA")
1925 K Street, NW
Washington, DC 20423-0001

Re: Finance Docket No. 33388: CSX and NS - Control and
Acquisition of Conrail

Subject: Norfolk Southern Mitigation Proposal for Lakewood,
Rocky River, West Lake and Bay Village, Ohio and on to
Vermilion, Ohio

Dear Ms. Kaiser:

This letter responds to a request from SEA for a written description of Norfolk Southern's ("NS") proposal for mitigation relating to post-Acquisition NS rail traffic at Lakewood, Rocky River, West Lake and Bay Village, Ohio and on to Vermilion, Ohio. We understand that SEA intends to include this letter as an appendix to the Draft Environmental Impact Statement for Finance Docket No. 33388. Described below is NS' proposal for mitigation to address potential environmental impacts related to post-Acquisition NS rail traffic changes along the former "Nickel Plate" line just west of Cleveland at Lakewood, Rocky River, West Lake and Bay Village, Ohio and on to Vermilion, Ohio ("Lakewood corridor"). This rail line is presently the only viable existing NS route through Cleveland for the increased east-west interstate commercial rail traffic anticipated by this transaction.

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Page 2

NS has identified a potential alternative routing through Cleveland that would shift all of the anticipated increased traffic from the Lakewood corridor to a line that is less densely residential and more industrial in nature. The alternate routing is not presently available and would require the completion of substantial improvements and construction of track and ancillary facilities. NS will work with federal, state, and local officials to garner the requisite support and approvals for such a project.

The rerouting proposal presented herein is thus made fully contingent upon the receipt of public support and funding for the projects indicated. If the proposed transaction is approved, NS will seek to secure the needed support and complete timely construction so that the rerouting of increased post-Acquisition traffic on the Lakewood corridor can take place as expeditiously as possible.

Background

The City of Lakewood and the three other communities that comprise the "West Shore" suburbs of Cleveland (Bay Village, West Lake and Rocky River) have indicated considerable community opposition to the NS plan for post-Acquisition routing of additional freight trains through the West Shore corridor along the Vermilion to Cleveland segment of the existing NS mainline. As described in the NS Operating Plan and the Environmental Report submitted with the joint CSX/NS Conrail control application and the Supplemental Environmental Report, traffic along the Vermilion to Cleveland rail line segment, part of the former Nickel Plate line, is projected to increase from the NS base case calculation (an average of 13.5 trains per day in 1995, the period analyzed by NS in its Operating Plan) to 34.1 trains per day post-Acquisition. Analysis of the most recent traffic data for this line segment shows that current 1997 traffic (as of May, 1997) averages 16.4 trains per day, which means that the West Shore communities would actually experience an increase of 17.7 trains per day above current 1997 levels if the Application were to be approved as submitted. This rail line is presently the only viable NS route through Cleveland for the increased east-west interstate commercial rail traffic anticipated by this transaction.

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Lakewood currently has 27 public at-grade crossings within an approximate two-mile long section of the NS mainline. Flashing lights have been installed as safety protection at all of these grade crossings; 13 of the crossings have gates in addition to flashing lights. Bay Village and Rocky River have a total of nine public at-grade crossings, all of which have both flashing lights and gates. West Lake has no public at-grade crossings.

East of Lakewood to Cloggsville there are six public at-grade public crossings, all of which have flashing lights and three of which have gates. West of Bay Village on to Vermilion (up to and including NS Milepost 223.7 - the proposed Vermilion connection, discussed below, is east of this point), there are an additional 25 public at-grade crossings with all but one having flashing lights and gates (Beaver Park Road in Lorain has neither flashing lights nor gates.) In summary, this NS corridor has:

- 67 at-grade public crossings;
- 49 at-grade public crossings now protected by flashing lights and gates;
- 17 at-grade public crossings that have flashing lights only; and
- Only 1 at-grade public crossing that currently has neither flashing lights nor gates

There are, in addition, several grade separated crossings along this NS line.

Purpose of the Proposed Mitigation

NS fully recognizes the community concerns for pedestrian and vehicle safety and emergency vehicle response time voiced by the citizens of Lakewood and the other West Shore communities. Grade crossing safety has been an important issue in these communities for some time. NS has for many years worked actively with state and local officials to seek improvements in grade crossing safety along this corridor.

NS has developed a proposal to re-route all of the projected post-Acquisition increase in freight traffic to avoid

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the West Shore communities following completion of track construction, improvements and other activities related to the rerouting proposal. Specifically, as an alternative to the route described in the Operating Plan and analyzed in the Environmental Report and the Supplemental Environmental Report submitted to the STB, NS proposes to re-route all of the 17.7 additional post-Acquisition NS trains presently slated for the Vermilion-Cleveland line via Lakewood to an alternate route via Berea and Cloggsville. If this NS mitigation proposal is implemented, the West Shore communities would experience on average no increase in train traffic, nor would any additional safety risks be experienced in these communities as a result of the proposed Acquisition.

NS's preliminary financial analysis of the proposed alternative route indicates that its cost far outweighs any economic benefits to NS, making implementation of this mitigation proposal unjustified without public funding. Therefore, NS will seek federal, state and local cooperation and funding. This alternative routing is designed solely to mitigate potential adverse effects on certain communities of a transaction that will provide very substantial transportation and economic benefits to most communities and the public at large; NS believes public funding is justified and will work with appropriate public officials to obtain requisite approvals and funding.

In addition to the rerouting proposal discussed above, NS proposes to eliminate any unnecessary grade crossings in Lakewood and to upgrade the remaining at-grade crossings along the West Shore corridor and on to Vermilion by adding automatic gates where they are not now in place. This grade crossing proposal would provide for enhanced rail safety to the communities along this corridor.

Description of the Proposed Mitigation

The alternate route proposed herein would require modification of a planned connecting track construction at Vermilion, Ohio between the existing NS mainline and Conrail's Chicago-Cleveland mainline. The Vermilion, Ohio connection construction discussed and analyzed in Volume 6C of the

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Environmental Report, Part 4, Section 8.9 would require reconfiguration and supplementation with a second connection in order to accommodate the NS mitigation proposal. The addition of a second connection at Vermilion will likely eliminate the need for a new at-grade public crossing anticipated by the original construction; however, additional property within the proposed project area will be required for the changed construction connection plans. The newly configured connecting tracks would allow NS traffic to move in both directions over the existing Conrail mainline via Berea to "CP 190" at Rockport Yard and the Flats Industrial Track. From there, the traffic would move over a portion of the NS Cleveland Belt Line to Cloggsville (NS Milepost B-185.50) where it would return to the NS mainline.

The mitigation project would include construction of a new connecting track and reconstruction and upgrading of the 7.5 miles of secondary trackage between Conrail's Rockport Yard and Cloggsville. This element of the proposal involves the most substantial construction, including track, bridge and signal activity. These improvements would permit NS to operate trains over the "Cloggsville Connection", which includes no at-grade crossings, at a speed of 40 mph, except for 25 mph speed restrictions for curves in the Rockport Yard area.

The present Conrail line from Berea to Vermilion is a mix of at-grade and grade-separated crossings. The mitigation plan includes provisions for two additional grade separation projects. A grade-separated crossing over the existing track would be constructed at Front Street (Conrail Milepost 193.6) in Berea and at Fitch Street (Conrail Milepost 197.5) in Olmsted Falls, Ohio. Based on a preliminary review by NS engineers, it appears the Berea separation would need to involve both the NS and CSXT tracks at this location. NS will seek to obtain the support of CSXT for this proposed project.

Highlights of the rerouting proposal, if funded and approved, include:

- Utilization of existing rail right-of-way.

- Upgrading of track between Cloggsville and CP190 to main line standards and addition of a second track.
- Rehabilitation or replacement of bridges over Clark Street and 65th Street and construction of a new double track bridge over Train Street.
- Provision of unrestricted clearance under the Dennison Ave. bridge.
- Construction of a new ramp at Cloggsville to reduce the maximum gradient.
- Construction of a new interchange with Flats Industrial Railroad.
- Installation of power switches and crossovers to fully signalize the NS line between Cloggsville and CP190.
- Construction of a new double track route around Rockport Yard.
- Reconfiguration of existing trackage to provide unrestricted operation to and from the Conrail Chicago Line at CP190, each end of Rockport Yard and the Ford Assembly Yard.
- Construction of a two-lane overhead grade separation at Front Street in Berea over the NS and CSXT tracks.
- Construction of a two-lane overhead grade separation at Fitch Street in Olmsted Falls over NS tracks.
- Construction of a second connection at Vermilion (i.e., changing the connection construction plan proposed in the Application to include a double crossover).

In addition to the re-routing alternative, NS proposes to eliminate several unnecessary grade crossings in Lakewood and to upgrade the remaining 17 at-grade public crossings along the corridor from west of Cloggsville and on to Vermilion by installing automatic gates to supplement the existing flashing lights. NS also proposes to upgrade the Beaver Park Road at-grade public crossing in Lorain to include both flashing lights and gates.

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This grade crossing effort, particularly in Lakewood, is not new for NS. Indeed, NS began working in 1992 with the Ohio Department of Transportation, the Public Utilities Commission of Ohio, the Ohio Rail Development Commission as well as the City of Lakewood to promote the Lakewood "Safety Corridor Project". The project was developed as a way to reduce the potential for vehicle/train collisions within Lakewood by closing twelve redundant grade crossings in town and installing flashing lights and gates at all remaining crossings. In order to facilitate vehicular traffic, some new roads running parallel to the tracks would be built (with attendant removal of crossings on some existing through streets). Several dead-end "T" streets would also be built. NS offered to donate land to the City for new roads. All funding would have been provided by NS and the State (through Federal Highway Administration state funds to improve grade crossing safety). In 1994, NS offered a new version of the Lakewood "Safety Corridor Project" which would have upgraded all grade crossings in the City by installing flashing lights and gates and eliminated three redundant crossings. Lakewood rejected both proposals for improved rail safety, refusing both the closure of unnecessary grade crossings and the installation of automatic gates.

NS continues to believe that both the elimination of all unnecessary grade crossings and the addition of automatic gates to supplement flashing lights at all remaining crossings (and in one case, both flashing lights and gates) in this corridor (from west of Cloggsville on to Vermilion) is a prudent and appropriate safety measure. NS will seek all available assistance from local, state and federal authorities to obtain the necessary support for this important rail safety enhancement project.

ANALYSIS OF THE NEW NS TRAFFIC REROUTING AND GRADE CROSSING PROPOSAL

Rerouting post-Acquisition traffic from the Vermilion to Cleveland NS rail line segment means that the communities along the Lakewood corridor would experience on average no train traffic increase beyond the 1997 current average as a result of

Elaine K. Kaiser
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Page 8

the Acquisition, once construction of the alternative routing is completed.

Implicit in any plan to reroute traffic from the West Shore corridor is an attendant increase in traffic along the alternate route. The "Cloggsville Connection" would eliminate the projected increase of 17.7 trains over present day (May, 1997) traffic; this is a reduction of 20.6 trains per day from the projection calculated from the 1995 base case from the Vermilion to Cleveland route that passes through from Vermilion through Lakewood and the other West Shore communities. This traffic would move over a line that contains no public at-grade crossings from Cloggsville to CP 190, and a total of 30 public at-grade crossings between CP 190 and the proposed second Vermilion connection. The Cloggsville Connection alternate route is located in a primarily industrial, and less densely residential area. Also, there are approximately 32 grade separated crossings along this highly trafficked route.

The proposed re-routing would result in train volume increases beyond those described in the Operating Plan at the following locations: Vermilion to CP 190 (Conrail mainline), an additional 17.7 trains per day; and CP 190 to Cloggsville via Rockport Yard, also an additional 17.7 trains per day.

Maps and drawings are attached as Exhibits 1 to 7 to show both the projected train volumes for the proposal included in the Operating Plan and for the alternate plan discussed herein. Exhibit 1 provides a schematic view of the NS proposal for additional post-Acquisition rail traffic through the West Shore corridor and on to Vermilion as described in both the NS Operating Plan and the Environmental Report. Exhibit 2 is a schematic drawing of the proposed alternate route discussed herein. A detailed map of the rail corridor through Lakewood is provided at Exhibit 3. A similar map is included as Exhibit 4 to indicate the location of the proposed grade separations to be constructed at Front Street in Berea and Fitch Street in Olmsted Falls. Finally, Exhibits 5 and 6 are maps indicating, respectively, the location of the NS proposal for the connection project at Vermilion described in the Environmental Report and the revised proposal discussed herein.

Elaine K. Kaiser
November 25, 1997
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Burns & McDonnell is conducting an environmental analysis of this NS proposal to reroute the additional post-Acquisition freight rail traffic away from the West Shore to Vermilion corridor. Upon completion of this work, NS will provide SEA and the third-party consultants with a copy of the written analysis.

FUNDING OF NS TRAFFIC REROUTING AND GRADE CROSSING PROPOSAL

NS expects that both the rerouting project and the grade crossing closure and upgrade project will qualify for federal and state funding.

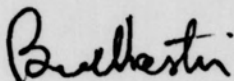
An "order of magnitude" estimate of the cost of the proposal to reroute the increased NS rail traffic resulting from the proposed Acquisition is \$46,950,000. This includes approximately \$24,350,000 to upgrade the existing Conrail track from CP 190 to Cloggsville, \$14,000,000 to construct the grade separation at Front Street in Berea, \$5,600,000 to construct the grade separation at Fitch Street in Olmsted Falls and \$3,000,000 to construct the second connection at Vermilion. NS estimates the cost of upgrading the West Shore to Vermilion at-grade public crossings to be approximately \$2,300,000. The cost of closing redundant at-grade crossings in Lakewood has not been calculated as it is dependent upon the location and number of such crossings to be eliminated. NS proposes that discussions with local and state officials be renewed to determine which of the grade crossings in the City are appropriate for closure and which should be upgraded to include both flashing lights and gates.

Both projects will require not only political and regulatory support from the federal government, the State of Ohio, and local officials but the commitment of public funding for these important safety-enhancing projects. To that end, NS will seek all available assistance from local, state and federal authorities to obtain the necessary funding to permit these projects to go forward to construction. Rerouting of the increased post-Acquisition rail traffic from the Lakewood corridor would take place upon completion of the proposed rerouting construction project.

Elaine K. Kaiser
November 25, 1997
Page 10

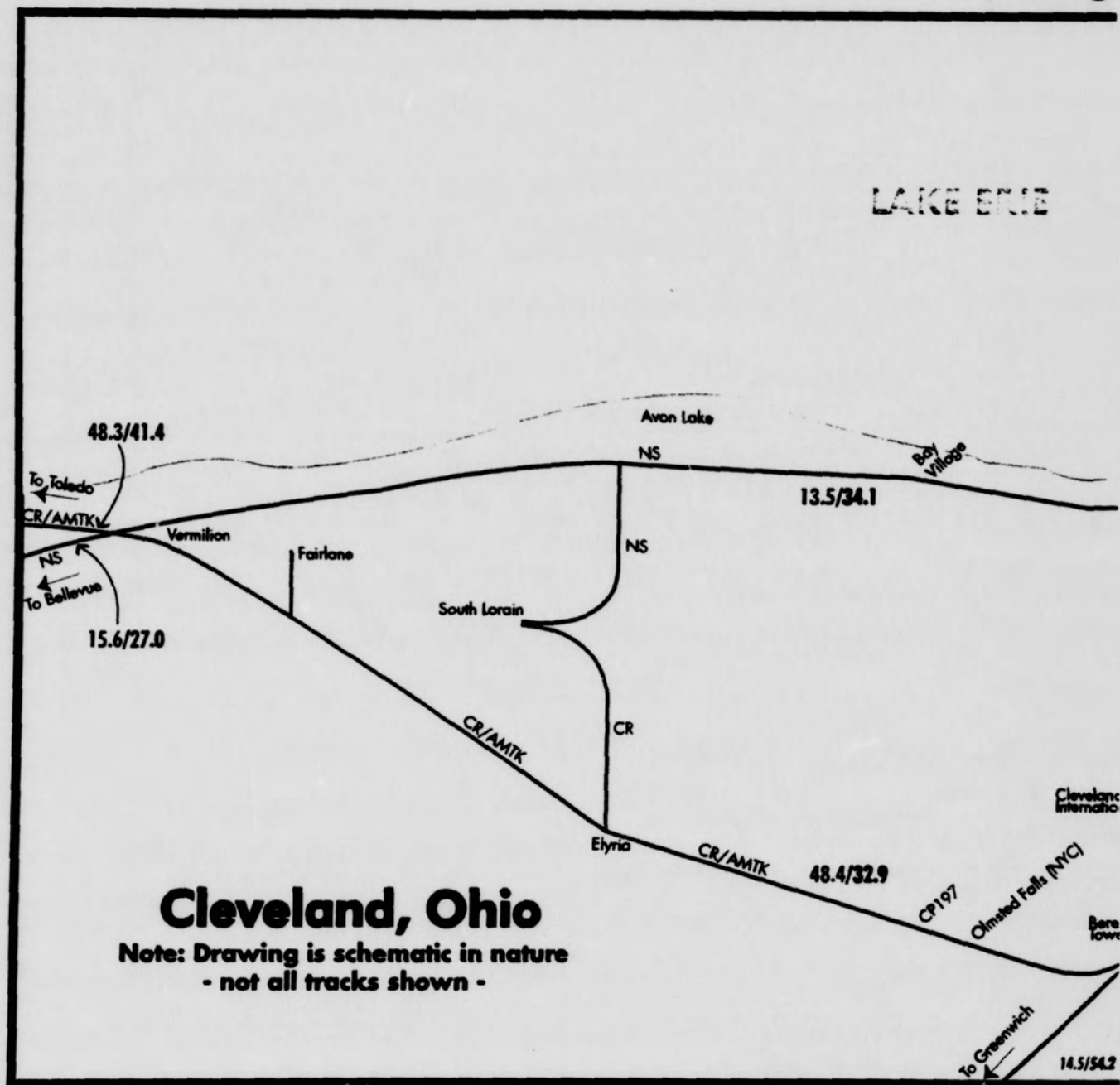
The proposed rerouting mitigation project is made fully
contingent upon securing such public financing and support.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bruno Maestri". The signature is written in a cursive, slightly stylized font.

Bruno Maestri
System Director
Environmental Protection

Existing (Freig



onditions

Only)

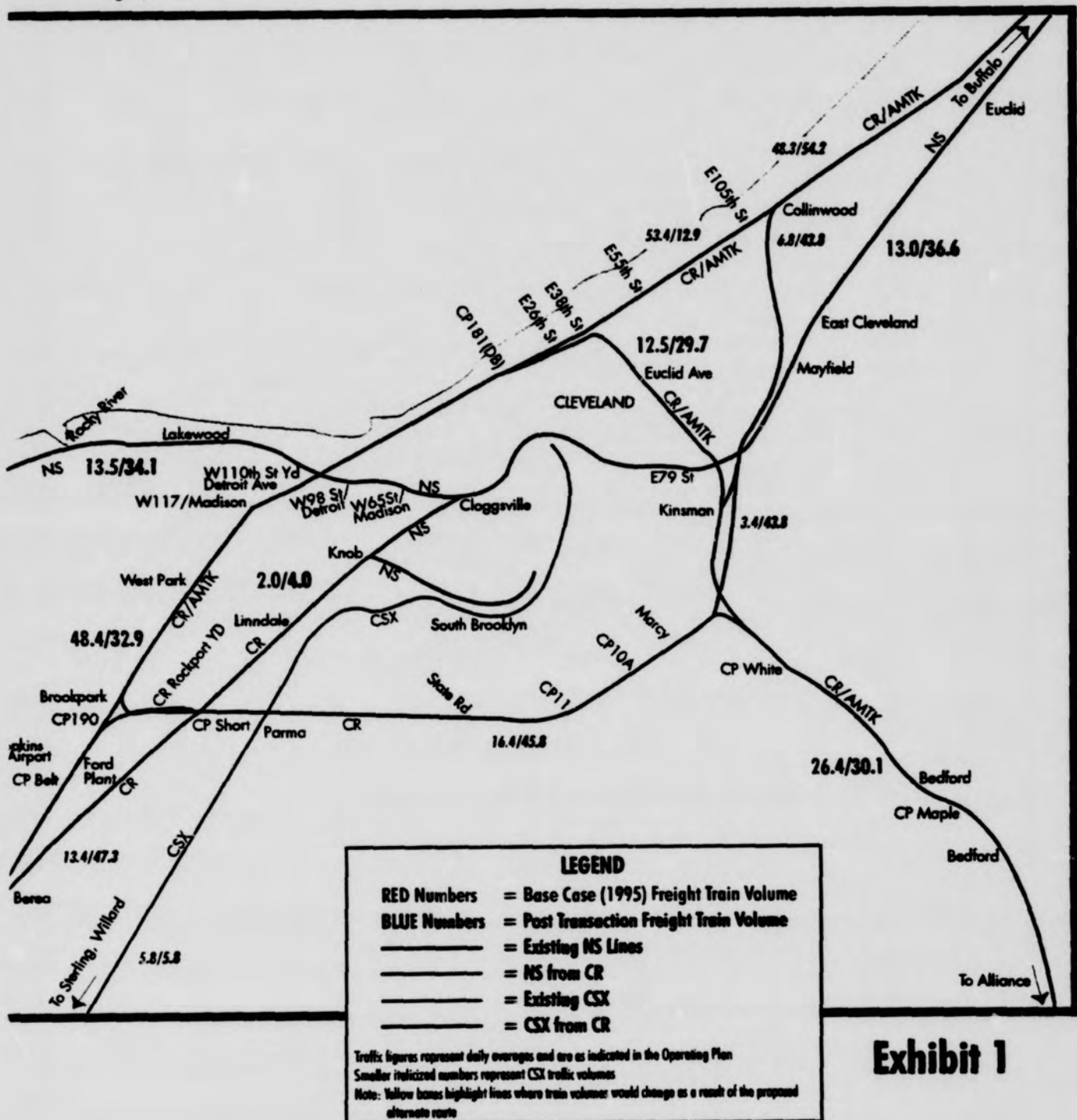
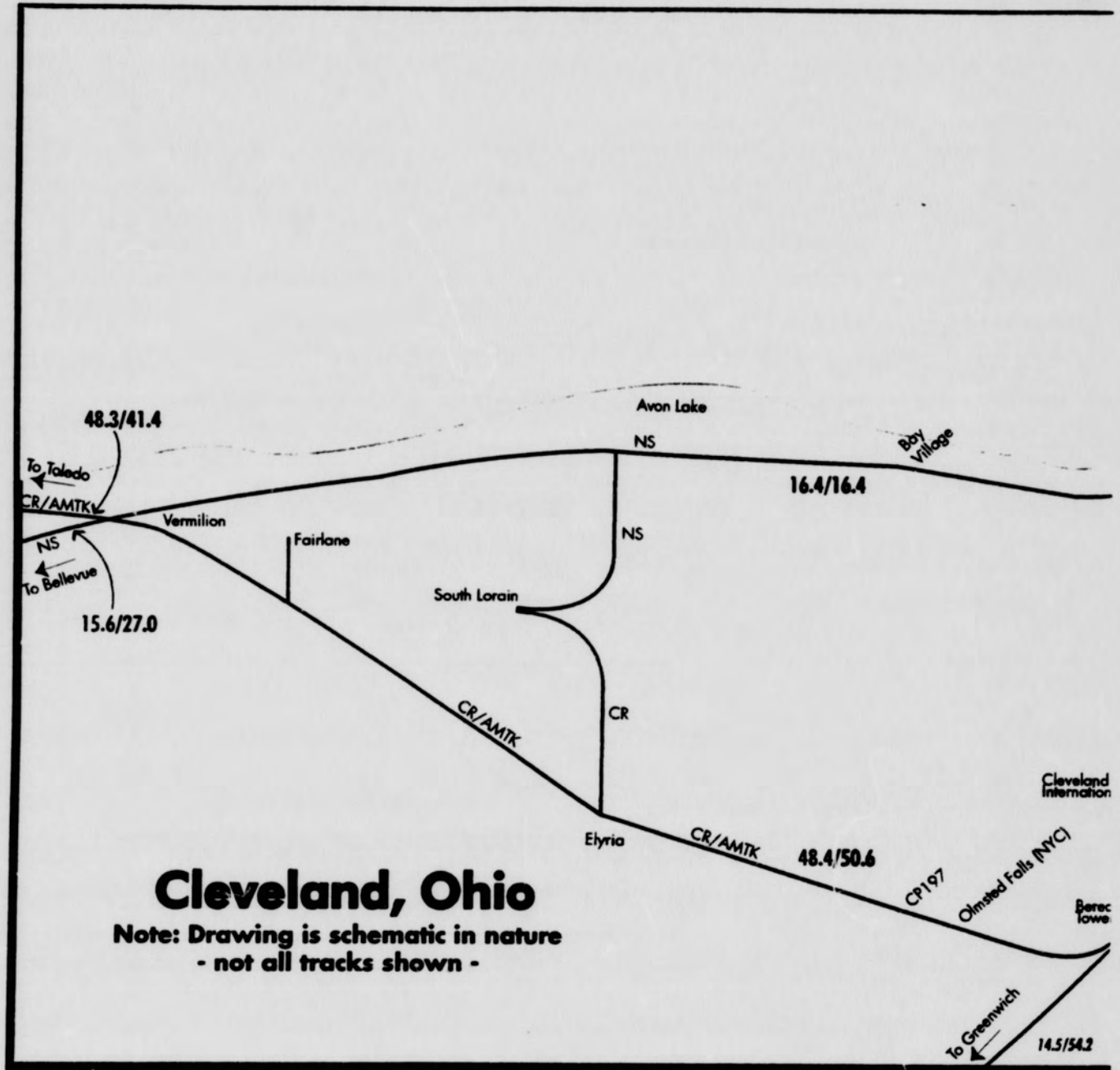


Exhibit 1

Proposed "Al" (Freight)



ernate" Route t Only)

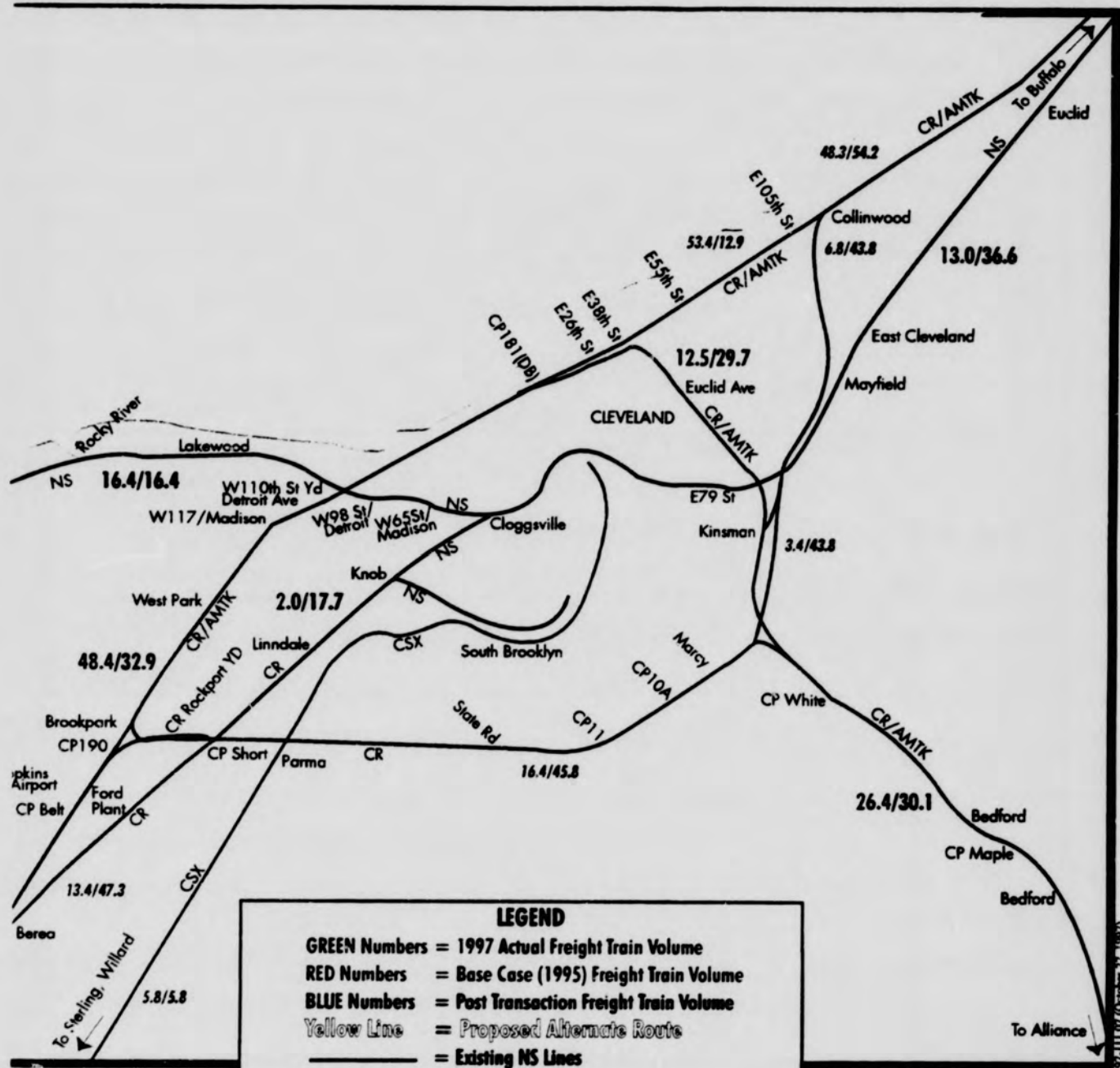


Exhibit 2

LAKEWOOD and CLEVELAND, OHIO WEST of CLOGGSVILLE

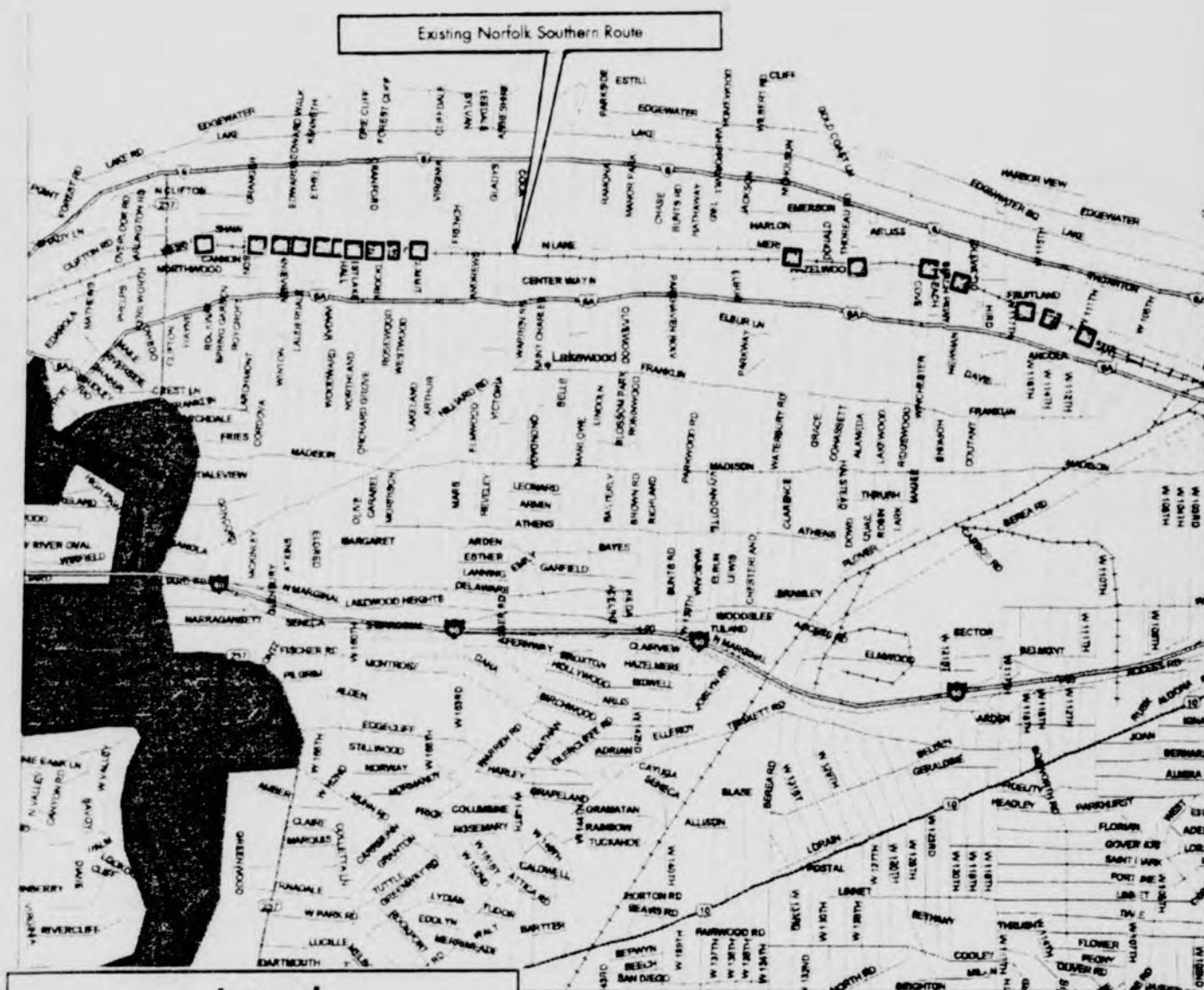
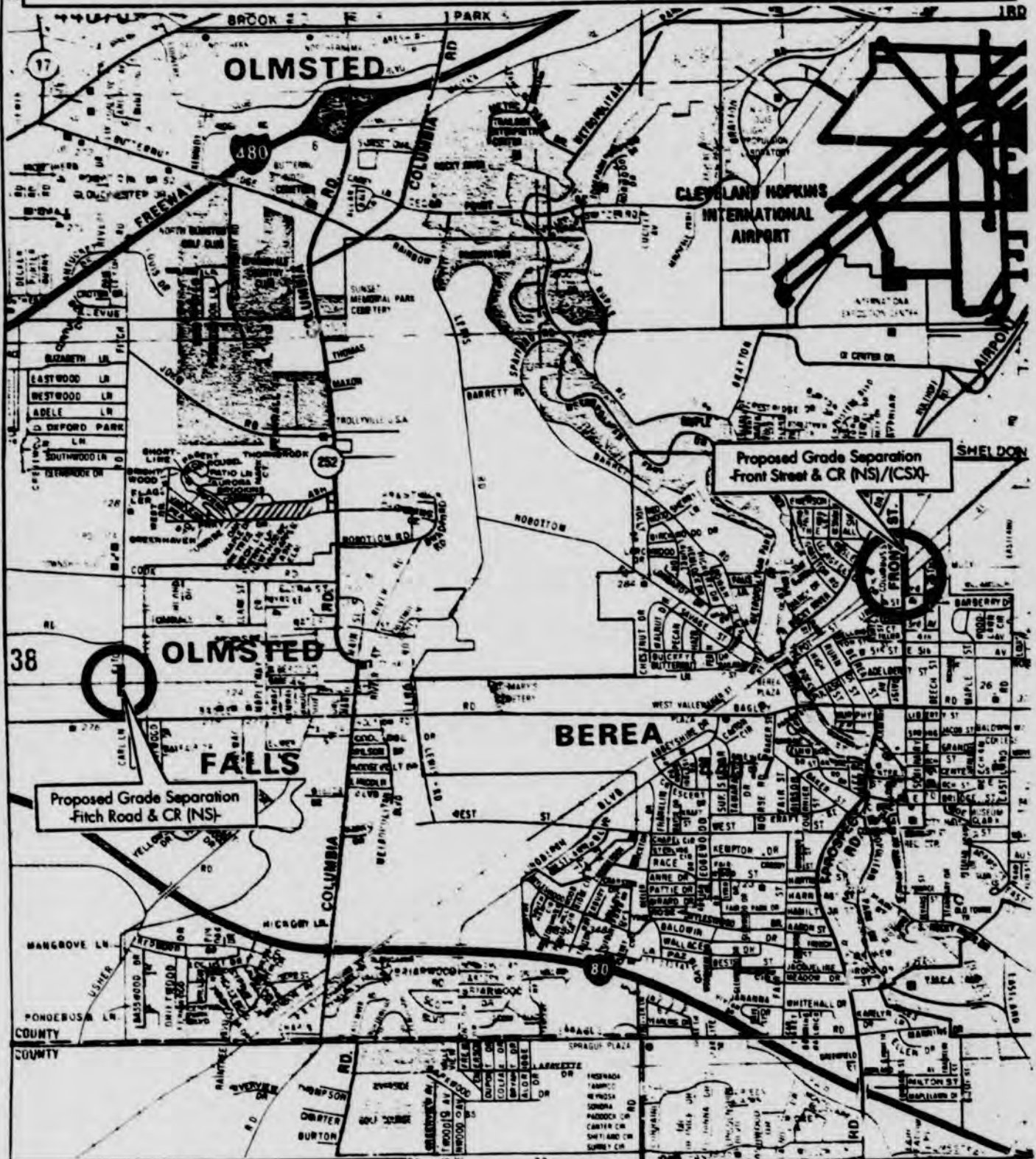


Exhibit 3

STB FD 33388 12-12-97 K 28629V5C 4/6

BEREA & OLMSTED FALLS, OHIO



Proposed Grade Separation
Fitch Road & CR (NS)

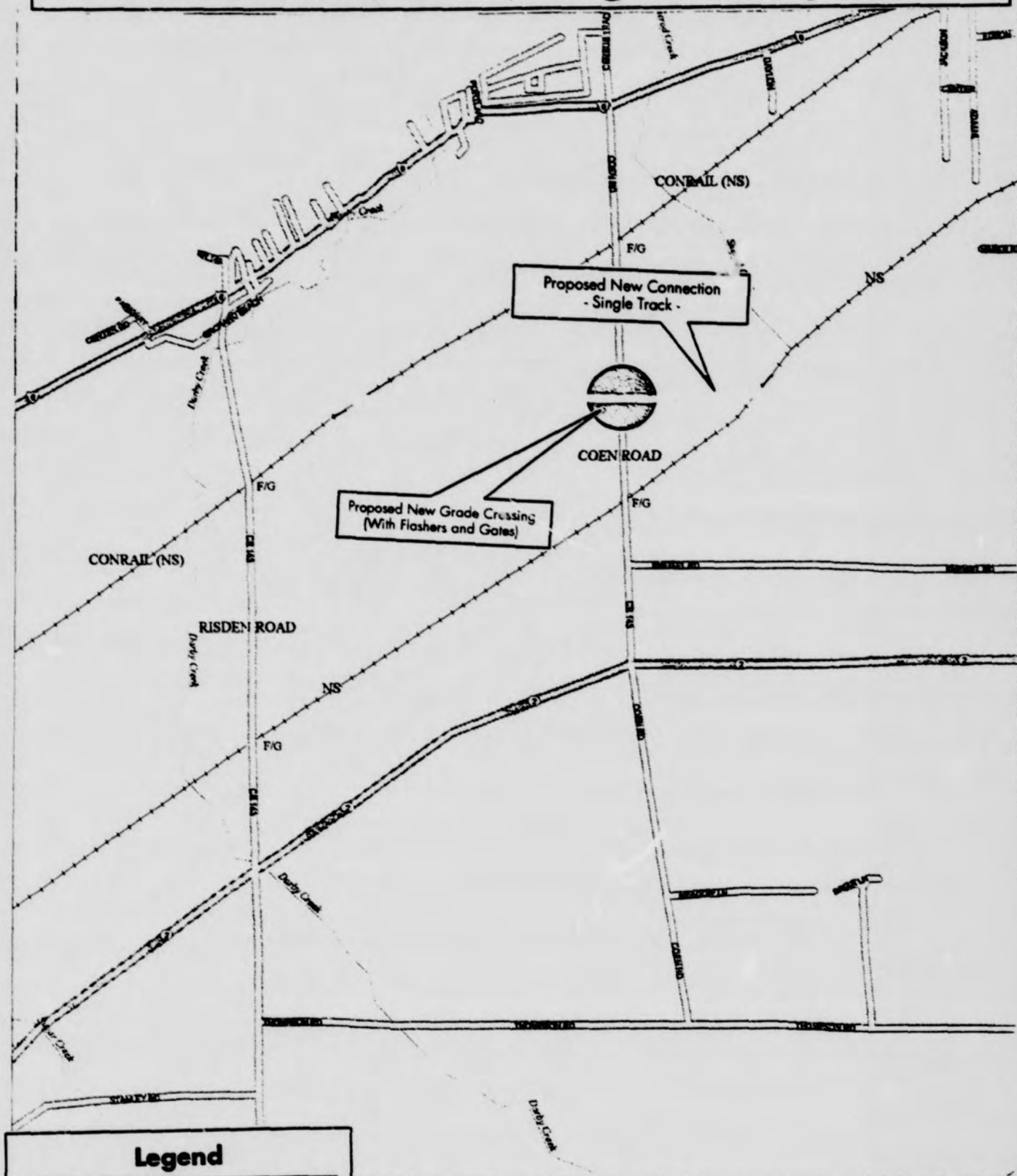
Proposed Grade Separation
Front Street & CR (NS)/(CSX)

Legend

— Proposed Grade Separations

Exhibit 4

VERMILION, OH - Original Proposal

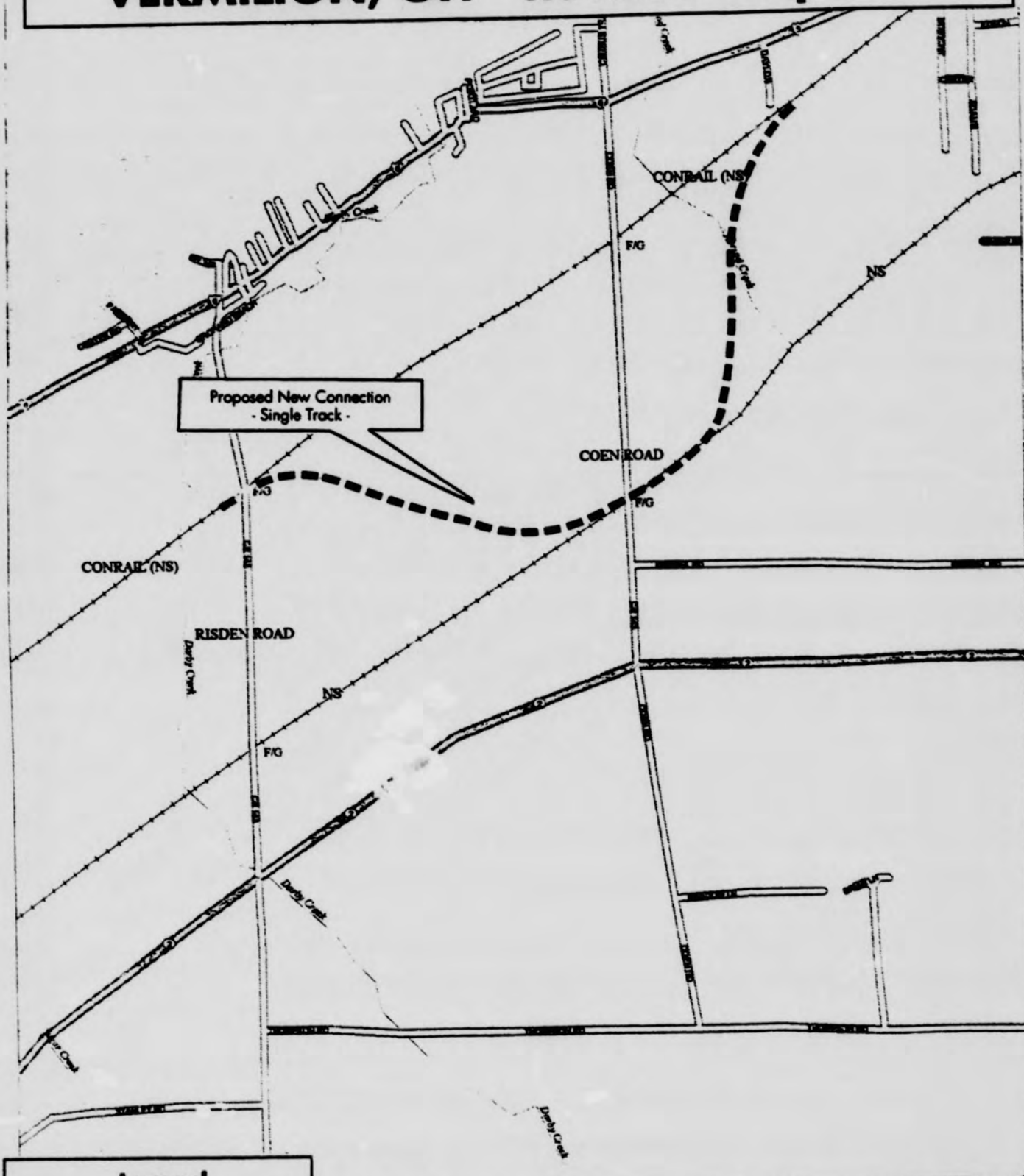


Legend

- Proposed New Connection - Single Track
- Proposed New Grade Crossing (with flashers and gates)

Exhibit 5

VERMILION, OH - Revised Proposal



Legend

- Proposed New Connection - Single Track —

Exhibit 6

**CSX Railroad Mitigation Plan for 59th Street Intermodal Facility in
Chicago, Illinois**



Carl A. Gerhardstein, P.E.
Director Environmental Engineering

1331 Pennsylvania Avenue, NW, Ste. 560
Washington, DC 20004-1703
(202) 783-8124
(FAX) (202) 783-2603

October 29, 1997

BY FAX DELIVERY

Elaine K. Kaiser, Chief
Surface Transportation Board
Section of Environmental Analysis
1925 K Street, NW
Washington, DC 20423-0001

FINANCE DOCKET NO. 33388: CSX AND NS
CONTROL AND ACQUISITION OF CONRAIL
CHICAGO 59TH STREET INTERMODAL FACILITY

Dear Ms. Kaiser:

CSX recognizes the concerns raised in your letter of October 22, 1997 to Peter J. Shultz and understands the risks associated with commencing construction prior to approval by the Board. There is no intention on the part of CSX to commence operations in advance of the Board's decision, and although we have gone to great lengths to satisfy any issues raised by the community and the City of Chicago (including increased truck traffic on public roadways), CSX is aware that the Board always reserves the right to address our proposed operations at the site. With respect to your specific questions, I provide the following information.

- 1. Status of all applications and permits pending with the City of Chicago or other regulatory agencies.** - CSX has filed two applications with respect to the 59th Street property; a request for rezoning and planned development approval as to that portion north of 63rd Street, and a request for a construction permit as to the portion south of 63rd Street.

The request for rezoning and planned development approval is proceeding smoothly. The City of Chicago Planning Commission approved the application on October 16. Reviews by the City's Finance and Zoning Committees are upcoming but have yet to be finally scheduled. The City Council's vote on the application is expected in mid December.

The construction permit covering that portion of the property south of 63rd Street has been approved and issued.

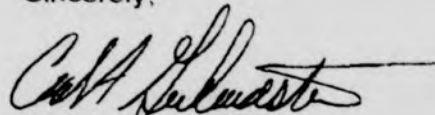
2. **Brief summary descriptions of all mitigation measures CSX plans to undertake or has agreed to with the City of Chicago, community organizations, or other agencies and organizations.** - CSX is currently working with the local community, organizations and officials on two specific programs which will benefit the local community. First, CSX has developed and presented to the City of Chicago a Neighborhood Investment Fund Agreement. This fund is designed to stimulate economic development in the 15th and 16th Wards, supporting job creation and training, housing development and other community goals. The conceptual agreement has been approved by the City Planning Commission and is being reviewed by the City's counsel in preparation for final review and approval by the City Finance Committee.

In addition to the above, CSX has developed a CSX Intermodal Jobs Covenant which is a voluntary good faith effort by CSX to provide construction and permanent employment opportunities within the community. The terms and conditions of the Covenant are being reviewed by the Aldermen in the 15th and 16th Wards at this time. CSX anticipates approval by November 1, 1997.

3. **Status of any agreement with Conrail regarding access to the property and construction of the facility.** - CSX's contractors were granted a right-of-entry to the 59th Street property by Conrail pending negotiation of a lease agreement. CSX and Conrail have agreed upon all significant terms of the lease. Circulation of the lease agreement for signature is expected by the end of this week or early next week.

If you have any questions concerning the above, I can be reached at (202) 783-8124.

Sincerely,



Carl A. Gerhardstein

Elaine K. Kaiser
October 29, 1997
Page 3

cc:

Mr. J. H. Morton
Mr. W. J. Novak
Mr. P. J. Shudtz
Mr. R. V. Allen
Ms. M. G. Sprague
Ms. C. D. Clayton
Mr. C. A. Gerhardstein
Mr. M. S. Hoffmann
Mr. C. K. Durden
Ms. P. E. Savage
Mr. S. L. Watson

"Environmentally on Track"

APPENDIX T

Board Decisions

CONTENTS OF APPENDIX T

STB Finance Docket No. 33388 -- Board Decision No. 6

STB Finance Docket No. 33388 -- Board Decision No. 9

STB Finance Docket No. 33388 -- Board Decision No. 12

STB Finance Docket No. 33388 -- Board Decision No. 52

STB Finance Docket No. 33388 -- Board Decision No. 54

STB Finance Docket No. 33388 (Sub-No.1)

STB Finance Docket No. 33388
Board Decision No. 6

27870
EB

SURFACE TRANSPORTATION BOARD

DECISION

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

AGENCY: Surface Transportation Board.

ACTION: Decision No. 6; Notice of Issuance of Procedural Schedule.

SUMMARY: Having received public comments on applicants' proposed procedural schedule and applicants' reply to those comments, the Board is issuing a final procedural schedule. This schedule provides for issuance of a final decision no later than 350 days after filing of the primary application.

EFFECTIVE DATE: The effective date of this decision is May 30, 1997. Notices of intent to participate in this proceeding will be due 45 days after the primary application is filed. All descriptions of inconsistent and responsive applications, as well as any petitions for waiver or clarification with respect thereto, will be due 60 days after the primary application is filed. All comments, protests, requests for conditions, inconsistent and responsive applications, and any other opposition evidence and argument will be due 120 days after the primary application is filed. For further information, see the procedural schedule set forth below.

ADDRESSES: An original and 25 copies¹ of all documents, referring to STB Finance Docket No. 33388, must be sent to the Office of the Secretary, Case Control Branch, ATTN: STB Finance Docket No. 33388, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001.² In addition, one copy of all documents in this proceeding must be sent to Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219-2538; FAX: (202) 219-3289] and to each of the applicants' representatives: (1) Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, DC 20004-1202; (2) Richard A. Allen, Esq., Zuckert Scoutt & Rasenberger, L.L.P., Suite 600, 888 Seventeenth Street, N.W., Washington, DC 20006-3939; and (3) Paul A. Cunningham, Esq., Harkins Cunningham, Suite 600, 1300 Nineteenth Street, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565-1613. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: On April 10, 1997, CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway

¹ In addition to submitting an original and 25 copies of all documents filed with the Board, parties are requested also to submit all pleadings and attachments as computer data contained on a 3.5-inch diskette formatted for WordPerfect 7.0 (or formatted so that it can be converted into WordPerfect 7.0) and clearly labeled with the identification acronym and number of the pleading contained on the diskette. See 49 CFR 1180.4(a)(2). The computer data contained on the computer diskettes submitted to the Board will be subject to the protective order granted in Decision No. 1, served on April 16, 1997 (as modified in Decision No. 4, served May 2, 1997), and is for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.

² In order for a document to be considered a formal filing, the Board must receive an original and 25 copies of the document, which must show that it has been properly served. Documents transmitted by facsimile (FAX), as in the past, will not be considered formal filings and thus are not encouraged because they will result in unnecessarily burdensome, duplicative processing in what we expect to become a voluminous record.

Applicants may file in bound volumes an original and 25 copies of related applications, petitions, and notices of exemption; however, to facilitate our processing of these related filings, we will require that applicants also file two unbound copies of each of these filings.

Company (NSR), Conrail Inc. (CRI), and Consolidated Rail Corporation (CRC)³ filed a notice of intent (CSX/NS-1) that they intend to file an application under 49 U.S.C. 11323-25 (referred to as the "primary application") seeking Board authorization for, among other things, (a) the acquisition by CSX and NS of control of Conrail, and (b) the division of the assets of Conrail by and between CSX and NS.⁴ Applicants expect to file their primary application, and any related applications, petitions, and notices, on or before July 10, 1997, but not before June 16, 1997.

In Decision No. 2, served April 21, 1997, and published that day in the *Federal Register* at 62 FR 19390, we determined that the transaction contemplated by applicants is a major transaction as defined at 49 CFR 1180.2(a), and we invited comments due May 1, 1997, on applicants' proposed procedural schedule. Comments were filed, and on May 8, 1997, applicants filed a consolidated reply to the comments (CSX/NS-11).

Over 25 comments were received in response to Decision No. 2. Comments were filed by shipper organizations, shippers (including electric utilities), ports, railroads, government parties, and rail labor unions. We have carefully reviewed all of the comments that we received on the proposed procedural schedule. Given the magnitude of applicants' proposed transaction concerning the restructuring of rail service within the entire Eastern United States, we have determined that a 350-day procedural schedule (which is more than applicants had proposed, but less than the statutory maximum) will ensure that all parties are accorded due process and allow

³ CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRI and CRC are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

⁴ By letter dated April 24, 1997, applicants submitted, pursuant to 49 CFR 1013.3(a), an Amended and Restated Voting Trust Agreement (hereinafter referred to as Joint-VTA-1) that NSC, CSXC, and Green Acquisition Corporation propose to enter into with an institutional trustee, Deposit Guaranty National Bank, and a limited liability company to be formed shortly. NSC and CSXC intend that the Trustee will hold, in the voting trust (hereinafter referred to as the Joint Voting Trust) to be established pursuant to Joint-VTA-1, all common shares of Conrail Inc. (CRI): (1) acquired previously, and separately, by NSC and CSXC and currently held in separate voting trusts; or (2) hereafter acquired by NSC and CSXC pursuant to the Third Supplement (dated April 10, 1997) to the Second Offer to Purchase (the Second Offer, dated December 6, 1996). NSC and CSXC intend that the Joint Voting Trust to be established pursuant to Joint-VTA-1 will be a single consolidated voting trust ultimately superseding and replacing the previously established separate voting trusts. An informal staff opinion letter with respect to the voting trust was issued on May 8, 1997.

us time to consider fully all of the issues in this proceeding, including environmental issues, and reach a timely resolution of this matter.

In particular, this schedule will permit us to take the hard look at environmental issues as required by the National Environmental Policy Act (NEPA) and the related regulations of the Council on Environmental Quality. The Board's Section of Environmental Analysis (SEA) has determined that the preparation of an Environmental Impact Statement (EIS) is warranted for this proceeding. This determination is based on the nature and scope of environmental issues (e.g., intercity passenger service and commuter rail service) that are likely to arise in this proceeding as well as SEA's evaluation of the information available to date, including the Preliminary Environmental Report filed on May 16, 1997. We agree with SEA that an EIS is warranted in this proceeding. The procedural schedule that we are adopting will provide the necessary time to enable us to undertake an EIS.

Within this procedural schedule, we will be able to consider fully all issues affecting the public interest, and will also be able to address cumulative impacts and crossover effects of prior mergers as appropriate. Further, we will consider the transaction in light of any settlement agreements that the applicants may reach with any parties.

We are not unmindful of the concerns parties have raised regarding the amount of time necessary to prepare their cases or of the concerns applicants have raised regarding employment uncertainty among Conrail management and possible deterioration in Conrail service during the pendency of this proceeding, and have crafted the attached procedural schedule with fairness to all parties in mind. While we are sensitive to applicants' concerns and their desire to have an expedited schedule, we believe that the 350-day schedule that we are adopting is not unduly long and will not result in lasting adverse effects on the Conrail system or properties. We believe that the longer schedule is necessary and appropriate for this case to allow sufficient time for participation by the public and consideration by the Board, including the preparation of an EIS. Accordingly, we have adjusted the procedural schedule proposed by applicants to give more time for the submission and review of evidence and arguments, and to provide adequate time for preparing an EIS.

Environmental reporting for primary applicants. As indicated above, applicants filed their joint Preliminary Environmental Report (PER) on May 16, 1997. CSX and NS will provide detailed and updated information (with supporting documentation) and environmental impact analyses in the Environmental Report (ER) they will file with their primary application and related applications, petitions, and notices. CSX and NS will provide a copy of the ER to all parties of record in this proceeding; appropriate federal, state, and local agencies; and affected parties according to the Board's environmental rules found in 49 CFR part 1105.

As discussed above, SEA has determined that the preparation of an EIS is warranted for this proceeding. A notice of intent to prepare an EIS will be published in the *Federal Register* shortly, which will explain in further detail the EIS process for this proceeding. SEA will initiate public scoping as soon as possible after the joint application and environmental report are filed to allow interested persons to participate in determining the scope of the EIS that will be prepared. SEA anticipates that the final scope of the EIS will be issued approximately 80 days after the filing of the joint application.

When, as here, the preparation of an environmental impact statement is contemplated for a railroad proceeding, the Board's environmental rules at 49 CFR 1105.10(a)(1) normally require the prospective applicants to submit to SEA a 6-month prefilng notice in advance of the application. However, where appropriate, 49 CFR 1105.10(c) allows the waiver of this 6-month prefilng notice. Here, SEA for some time has been engaged in on-going consultations with both CSX and NS about the proposed merger and the potential associated environmental impacts. Moreover, the applicants' joint PER provided detailed descriptive information about the project. In these circumstances, SEA believes that there is no need for the 6-month waiting period. Therefore, as indicated in Decision No. 7 (served concurrently herewith, but not published in the *Federal Register*), the 6-month prefilng notice requirement will be waived in this case.

Environmental reporting for inconsistent and responsive applicants. In order for us to fulfill our responsibilities under NEPA and other environmental laws, inconsistent and responsive applicants must submit certain environmental information. To facilitate the environmental review process, inconsistent and responsive applicants will be required to file by Day F + 100 either (1) a verified statement that the inconsistent or responsive application will have no significant environmental impact or (2) a responsive environmental report (RER) that contains detailed environmental information regarding the inconsistent or responsive application.

The RER. The RER should comply with all requirements for environmental reports contained in our environmental rules at 49 CFR 1105.7. Also, the RER should address the environmental issues identified in the final scope of the EIS for the entire merger, to the extent such issues are applicable to the particular inconsistent or responsive application. (For example, if, in the final scope of the EIS, SEA identified potential rail commuter service impacts as an issue to be addressed, we would expect the RER also to address that issue if commuter services were involved in the particular inconsistent or responsive application.)

The RER should be based on consultations with SEA and the various agencies set forth in 49 CFR 1105.7(b). In addition, the information in the RER should be organized as follows: Executive Summary; Purpose and Need for Agency Action; Description of the Inconsistent or Responsive Application and Related Operations; Description of the Affected Environment; Description of Alternatives; Analysis of the Potential Environmental Impacts; Proposed

Mitigation; and Appropriate Appendices that include correspondence and consultation responses, bibliography, and a list of preparers.

The purpose of an RER is to provide us the information we need to assess the potential environmental impacts of all inconsistent and responsive applications in the context of the overall merger proposal. After an RER is received, SEA will verify the information contained in the document. If the RER is acceptable, SEA will include the RER with the Draft EIS for the entire merger that will be served and made available for public comment.

In order to ensure timely, consistent, and appropriate environmental documentation, inconsistent and responsive applicants must consult with SEA as early as possible. If an RER is insufficient, we may require additional environmental information or reject the inconsistent or responsive application.

A verified statement of no significant impact. If an action proposed under an inconsistent or responsive transaction would typically fall within 49 CFR 1105.6(c)(2), an RER would not be required because such an action is generally exempt from environmental review. In such a case, the inconsistent or responsive applicant would be required to file only a verified statement. The verified statement must demonstrate that the inconsistent or responsive application meets the exemption criteria of 49 CFR 1105.6(c)(2). Again, anyone desiring to file an inconsistent application or responsive application must consult with SEA as early as possible regarding the appropriate environmental documentation.

SEA will review the verified statements. If a verified statement is insufficient, we may require additional environmental information or reject the inconsistent or responsive application. The verified statements, like the RERs, will be included in the Draft EIS, which will be available for public review and comment.

Notice of intent to participate. All documents received by the Board concerning this proceeding will become part of the public record and will be placed in the public docket for inspection and copying. Only those documents considered formal filings (i.e., those meeting the filing specifications discussed above in the ADDRESSES section) will be downloaded to the so-called pleading list. Moreover, persons who submit documents that are not considered formal filings will not be placed on the service list in this proceeding.

We will compile and issue an official service list at an early stage in this proceeding to facilitate the participation of those persons who will be actively participating as "parties of record" (POR). We are requiring these persons to notify the Board, in writing, within 45 days after the primary application is filed, of their intent to participate actively in this proceeding. In order to be designated a POR, a person must submit an original plus 25 copies of the notice along

with a certificate of service to the Secretary of the Board indicating that the notice has been properly served on applicants' representatives and Judge Leventhal.⁵ Every future filing by an POR must have its own certificate of service indicating that all PORs on the service list and Judge Leventhal have been served with a copy of the filing. Members of the United States Congress will be designated as **MOC** and Governors will be designated as **GOV** on the service list. They are *not* parties of record and need *not* be served with copies of filings, unless designated as a POR.

We will continue to follow our practice regarding the service of Board actions established in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company*, Finance Docket No. 32760 (UP/SP). See UP/SP, Decision No. 15 (STB served Feb. 16, 1996), at 2-3. Copies of decisions, orders, and notices will be served only on those persons who are designated as POR, MOC, or GOV on the official service list. All other interested parties are encouraged to make advance arrangements with the Board's copy contractor, DC News & Data, Inc. (DC News), to receive copies of Board decisions, orders, and notices served in this proceeding. DC News will handle the collection of charges and the mailing and/or faxing of decisions to persons who request this service. The telephone number for DC News is: (202) 289-4357.

Comments, protests, requests for conditions, and any other opposition evidence and argument. Most commenters support Day F + 120 as the minimum time necessary to prepare comments, protests, requests for conditions, and any other opposition evidence and argument. Applicants support giving persons at least 120 days to make such submissions. We will keep Day F + 120 as the due date for the filing of comments, protests, requests for conditions, and any other opposition evidence and argument. All inconsistent and responsive applications, including comments from the United States Department of Justice (DOJ) and the United States Department of Transportation (DOT), are also due on Day F + 120. Every party intending to file an inconsistent or responsive application must contact the Office of the Secretary at (202) 565-1681 to reserve an STB Finance Docket No. 33388 Sub-Number to use in filing the description of anticipated inconsistent or responsive application due on Day F + 60. Also, as set forth above in our discussion of environmental reporting, every party intending to file an inconsistent or

⁵ The Office of the Secretary will start compiling the official service list in this proceeding after service of this decision adopting a procedural schedule. Persons named on any earlier service list will not automatically be placed on the official service list for this proceeding. Therefore, any person who wishes to be a POR must file a notice of intent to participate after the date of service of the decision and on or before Day F + 45.

responsive application must file a Responsive Environmental Report or Environmental Verified Statement on Day F + 100.

Responses and rebuttals. Numerous commenters (including DOT) have requested additional time (ranging from 40-70 days) to digest and respond to comments, protests, requested conditions, and inconsistent and responsive applications. Given the complexity and magnitude of issues that potentially may arise in this proceeding, we will extend the due date proposed by applicants in their schedule by 25 days, thus providing the parties with a total of 55 days to file these responses. Responses to inconsistent and responsive applications, comments, protests, requested conditions, and opposition evidence and argument, as well as rebuttal in support of the primary application, will be due on Day F + 175.

We will not allow parties filing comments, protests, and requests for conditions to file rebuttal in support of those pleadings. Parties filing inconsistent and/or responsive applications have a right to file rebuttal evidence, while parties simply commenting, protesting, or requesting conditions do not. *UP/SP*, Decision No. 6 (ICC served Oct. 19, 1995, at 7-8, and published Oct. 23, 1995, at 60 FR 54384); *Burlington Northern Inc. and Burlington Northern Railroad Company--Control and Merger--Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 32549, Decision No. 16 (ICC served Apr. 20, 1995), at 11. Several commenters seek additional time for parties to prepare rebuttal filings. The National Industrial Transportation League (NITL) seeks 25 days for the preparation of rebuttal filings; Allied Rail Unions (ARU), the Port Authority of New York and New Jersey, and DOT seek 30 days; and three electric utilities seek 40 days. Rebuttal in support of inconsistent and responsive applications will be due on Day F + 205, which will allow inconsistent and responsive applicants 30 days instead of 15 days to prepare their rebuttals.

Briefs. Many commenters request more time to prepare their briefs. We will expand the schedule to allow parties 20 more days to prepare their briefs (not to exceed 50 pages), which will be due on Day F + 245. Applicants state that, while their proposed transaction involves a single, overall primary application and an agreed-upon division of Conrail, their proposed transaction also involves the extension of two separate and competing railroads into the territory now served by Conrail, and separate, competing operating and marketing plans for those two railroads. Applicants therefore request to file separate, 50-page briefs because, as applicants contend, there may be a considerable number of arguments made individually by CSX and NS, and many points of opposition to be responded to that are peculiar to one or the other. Some parties argue that applicants should file a single brief. Some parties argue that, if applicants are permitted to file separate briefs, then all other parties should be permitted to file longer briefs. We will allow CSX and NS to file separate, 50-page briefs. We are unpersuaded that other parties should be permitted to file longer briefs. Applicants will have only 50 pages to address arguments of dozens of parties. Other parties should easily be able to respond to several parties

in the same number of pages or less. We therefore will continue to restrict briefs to 50 pages, which we think will be more than adequate for the parties succinctly to present their arguments.

Other dates. A number of parties request additional time to prepare for oral argument (e.g., NITL requests to have 25 days to prepare for oral argument; and ARU requests to have 60 days to prepare for oral argument). Several parties urge that the Board should take more time (e.g., at least 45 days) to consider briefs before the voting conference and to take the time necessary to consider fully the overall record. We will extend the schedule to allow parties to have 45 days (Day F + 290), rather than 15 days, to prepare for oral argument (close of record). The voting conference (at the Board's discretion) is scheduled 5 days thereafter on Day F + 295, which will allow the Board 50 days, rather than 20 days, to consider the briefs. The date of service of the final decision is scheduled 55 days thereafter on Day F + 350.

Discovery. The Society of Plastics raises concern that applicants may burden parties with discovery requests before the filing of comments, and proposes revised language for the procedural schedule. We do not find it necessary to revise any language in the procedural schedule. We will clarify, however, that discovery on parties filing comments, protests, requests for conditions, and inconsistent and responsive applications may begin on Day F + 120, or earlier if parties mutually agree.

In accordance with our decision in STB Ex Parte No. 527 served on October 1, 1996, and published in the *Federal Register* on October 8, 1996 (61 FR 52710), parties should not file any discovery requests or materials with the Board unless they are attached as part of an evidentiary submission, motions to compel, or responses thereto. The Secretary's Office will otherwise reject them.

If the parties wish to engage in any discovery or establish any discovery guidelines, they are directed to consult with Administrative Law Judge Jacob Leventhal. Judge Leventhal is authorized to convene a discovery conference, if necessary and as appropriate, in Washington, DC, and to establish such discovery guidelines, if any, as he deems appropriate. However, Judge Leventhal is not authorized to make adjustments to, or to modify, the dates in the procedural schedule. We believe the schedule as adopted allows sufficient time for meaningful discovery. Any interlocutory appeal to a decision issued by Judge Leventhal will be governed by the stringent standard of 49 CFR 1115.1(c): "Such appeals are not favored; they will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice." See *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company--Control--Chicago and North Western Transportation Company and Chicago and North Western Railway Company*, Finance Docket No. 32133, Decision No. 17, at 9 (ICC served July 11, 1994) (applying the "stringent standard" of 49 CFR 1115.1(c) to an appeal of an interlocutory decision issued by former Chief Administrative Law Judge Paul S. Cross).

Deadlines applicable to appeals and replies. As in prior merger proceedings, we think it appropriate to tighten the deadlines provided by 49 CFR 1115.1(c). Accordingly, the provisions of the second sentence of 49 CFR 1115.1(c) to the contrary notwithstanding, an appeal to a decision issued by Judge Leventhal must be filed within 3 working days of the date of his decision, and any response to any such appeal must be filed within 3 working days thereafter. Likewise, any reply to any procedural motion filed with the Board itself in the first instance must also be filed within 3 working days of the date the motion is filed.

Errata filings. The procedural schedule that we are adopting should provide parties ample time to build a sufficient record for us to make a reasoned decision in this proceeding. We do not intend to permit this process to be marred by the filing of errata sheets significantly altering the evidence and conclusions contained in earlier submissions, as such filings may curtail the ability of parties to respond fully and adequately to the record within the time frames we have established.

Merger-related abandonments. As indicated in Decision No. 7, the procedural schedule applicable to merger-related abandonments will be as follows: (1) all merger-related abandonment proposals (which may be filed as applications, petitions, and/or notices) are to be filed, with any and all supporting documentation, simultaneously with the primary application; and (2) if the primary application is complete, we shall publish in the *Federal Register*, by Day F + 30, notice of the acceptance of the primary application as well as notice of any merger-related abandonment proposals. Thereafter, with respect to each merger-related abandonment proposal: (3) interested parties must file notifications of intent to participate in the proceeding by Day F + 45; (4) interested parties must file opposition submissions, requests for public use conditions, and/or Trails Act requests by Day F + 120; (5) applicants may file rebuttal in support of their abandonment proposals, and/or responses to any requests for public use conditions and Trails Act requests, by Day F + 175; (6) as with the primary application and all related matters, briefs shall be due by Day F + 245, oral argument will be held on Day F + 290, and a voting conference will be held, at the Board's discretion, on Day F + 295; and (7) if, in the final decision served on Day F + 350, we approve the primary application, we shall also address, in that final decision, each of the abandonment proposals, and all matters (including requests for public use conditions and Trails Act requests) relative thereto; and if we either approve or exempt any of the abandonment proposals, we shall allow interested parties to file, no later than 10 days after the date of service of the final decision, offers of financial assistance with respect to any approved or exempted abandonments.

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

Decided: May 22, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

FINAL PROCEDURAL SCHEDULE

- F - 30 Preliminary Environmental Report, including supporting documents due.
- F Primary application & related applications, petitions, and notices filed.
[Environmental Report, including all supporting documents due.]
- F + 30 *Federal Register* publication of: notice of acceptance of primary application and related applications, petitions, and notices; and notice(s) of any merger-related abandonment applications, petitions, and notices of exemption.
- F + 45 Notification of intent to participate in proceeding due.
- F + 60 Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification due with respect to such applications.
- F + 100 Responsive Environmental Report and Environmental Verified Statements for inconsistent and responsive applicants due.
- F + 120 Inconsistent and responsive applications due. All comments, protests, requests for conditions, and any other opposition evidence and argument due. Comments by U.S. Department of Justice and U.S. Department of Transportation due. With respect to all merger-related abandonments: opposition submission, requests for public use conditions, and Trails Act requests due.
- F + 150 Notice of acceptance (if required) of inconsistent and responsive applications published in the *Federal Register*.
- F + 175 Response to inconsistent and responsive applications due. Response to comments, protests, requested conditions, and other opposition arguments and evidence due. Rebuttal in support of primary application and related applications, petitions, and notices due. With respect to all merger-related abandonments: rebuttal due; and responses to requests for public use and Trails Act conditions due.
- F + 205 Rebuttal in support of inconsistent and responsive applications due.
- F + 245 Briefs due, all parties (not to exceed 50 pages).
- F + 290 Oral argument (close of record).

F + 295 Voting conference (at Board's discretion).

F + 350 Date of service of final decision.

With respect to any approved or exempted abandonments: offers of financial assistance may be filed no later than 10 days after the date of service of the final decision.

Notes: Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for discovery depositions. Access to documents, subject to protective order, will be appropriately restricted. Parties seeking discovery depositions may proceed by agreement. Discovery on responsive and inconsistent applications will begin immediately upon their filing. The Administrative Law Judge assigned to this proceeding will have the authority initially to resolve any discovery disputes.

STB Finance Docket No. 33388
Board Decision No. 9

SURFACE TRANSPORTATION BOARD

DECISION

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. 9¹

Decided: June 11, 1997

On April 10, 1997, CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRI), and Consolidated Rail Corporation (CRC)² filed their notice of intent to file an application seeking our authorization for: (a) the acquisition by CSX and NS of control of Conrail, and (b) the division of Conrail's assets by and between CSX and NS. In Decision No. 5, served and published in the *Federal Register* on May 13, 1997, at 62 FR 26352, we invited comments from

¹ This decision also embraces the following proceedings: STB Finance Docket No. 33388 (Sub-No. 1), *CSX Transportation, Inc., and Consolidated Rail Corporation--Construction--Crestline, OH*; STB Finance Docket No. 33388 (Sub-No. 2), *CSX Transportation, Inc., and Consolidated Rail Corporation--Construction--Willow Creek, IN*; STB Finance Docket No. 33388 (Sub-No. 3), *CSX Transportation, Inc., and Consolidated Rail Corporation--Construction--Greenwich, OH*; STB Finance Docket No. 33388 (Sub-No. 4), *CSX Transportation, Inc., and Consolidated Rail Corporation--Construction--Sidney Junction, OH*; STB Finance Docket No. 33388 (Sub-No. 5), *Norfolk Southern Railway Company and Consolidated Rail Corporation--Construction--Colson/Bucyrus, OH*; STB Finance Docket No. 33388 (Sub-No. 6), *Norfolk Southern Railway Company and Consolidated Rail Corporation--Construction--Alexandria, IN*; and STB Finance Docket No. 33388 (Sub-No. 7), *Norfolk Southern Railway Company--Construction--Sidney, IL*.

² CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRI and CRC are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

interested persons respecting the CSX-1 and NS-1 petitions filed May 2, 1997, by applicants CSX and NS, wherein applicants seek, for seven construction projects, waivers of our otherwise applicable "everything goes together" rule.³ The requested waivers, if granted, would allow CSX and NS to begin construction on the seven projects following the completion of our environmental review of the constructions, and our issuance of further decisions exempting or approving construction, but in advance of a final ruling on the primary application.

Seven construction projects, more fully detailed below, are the focus of the two petitions. Applicants contend that it is important that these projects (all of which involve relatively short connections between two rail carriers and which have a total length of fewer than 4 miles) be constructed prior to a decision on the primary application. Applicants claim that these connections must be in place prior to a decision on the primary application so that, if and when we approve the primary application, CSXT (with respect to four of the connections) and NSR (with respect to the other three) will be immediately able to provide efficient service in competition with each other. Applicants contend that, without early authorization to construct these connections, both CSXT and NSR would be severely limited in their ability to serve important (though different) customers. At the same time, applicants recognize that there can be no construction until we complete our environmental review of each of these construction projects and we issue a decision approving the construction, or an exemption from our otherwise applicable construction approval criteria, and impose whatever environmental conditions that we find appropriate.

The CSX Connections. If we grant its waiver request, CSXT will file, in four separate dockets,⁴ a notice of exemption pursuant to 49 CFR 1150.36 for construction of a connection at Crestline, OH, and petitions for exemption pursuant to 49 U.S.C. 10502 and 49 CFR 1121.1 and 1150.1(a) for the construction of connections at Greenwich and Sidney, OH, and Willow Creek, IN. CSXT indicates that it would consult with appropriate federal, state, and local agencies with respect to any potential environmental effects from the construction of these connections and would file environmental reports with our Section of Environmental Analysis (SEA) at the time that the notice and petitions are filed. The connections at issue are as follows:

³ Our regulations provide that applicants shall file, concurrently with their 49 U.S.C. 11323-25 primary application, all "directly related applications, e.g., those seeking authority to construct or abandon rail lines, * * *." 49 CFR 1180.4(c)(2)(vi). Our regulations also provide, however, that, for good cause shown, we can waive a portion, but not all, of the requirements otherwise imposed by our regulations. 49 CFR 1180.4(f)(1).

⁴ These dockets will be sub-dockets 1, 2, 3, and 4 under STB Finance Docket No. 33388.

- (1) Two main line CRC tracks cross at Crestline, and CSXT proposes to construct in the northwest quadrant a connection track between those two CRC main lines. The connection would extend approximately 1,507 feet⁵ between approximately MP 75.4 on CRC's North-South main line between Greenwich, OH, and Indianapolis, IN, and approximately MP 188.8 on CRC's East-West main line between Pittsburgh, PA, and Ft. Wayne, IN.
- (2) CSXT and CRC cross each other at Willow Creek, and CSXT proposes to construct a connection track in the southeast quadrant between the CSXT main line and the CRC main line. The connection would extend approximately 2,800 feet between approximately MP BI-236.5 on the CSXT main line between Garrett, IN, and Chicago, IL, and approximately MP 248.8 on the CRC main line between Porter, IN, and Gibson Yard, IN (outside Chicago).
- (3) The lines of CSXT and CRC cross each other at Greenwich, and CSXT proposes to construct connection tracks in the northwest and southeast quadrants between the CSXT main line and the CRC main line. The connection in the northwest quadrant would extend approximately 4,600 feet between approximately MP BG-193.1 on the CSXT main line between Chicago and Pittsburgh, and approximately MP 54.1 on the CRC main line between Cleveland and Cincinnati. A portion of this connection in the northwest quadrant would be constructed utilizing existing trackage and/or right-of-way of the Wheeling & Lake Erie Railway Company. The connection in the southeast quadrant would extend approximately 1,044 feet between approximately MP BG-192.5 on the CSXT main line and approximately MP 54.6 on the CRC main line.
- (4) CSXT and CRC lines cross each other at Sidney Junction, and CSXT proposes to construct a connection track in the southeast quadrant between the CSXT main line and the CRC main line. The connection would extend approximately 3,263 feet between approximately MP BE-96.5 on the CSXT main line between Cincinnati, OH, and Toledo, OH, and approximately MP 163.5 on the CRC main line between Cleveland, OH, and Indianapolis, IN.

CSXT argues that, if it cannot begin the early construction of these four connections, its ability to compete with NSR will be severely compromised. CSXT claims that, if it could not offer competitive rail service from New York to Chicago and New York to Cincinnati using lines

⁵ CSXT's correction, filed May 21, 1997, modified the length of this connection from 1,142 feet at MP 75.5 to 1,507 feet at MP 75.4.

that it proposes to acquire from CRC, the achievement of effective competition between CSXT and NSR would be delayed significantly. CSXT adds that, if it cannot compete effectively with NSR "out of the starting blocks," this initial competitive imbalance could have a deleterious and long-term effect on CSXT's future operations and its ability to compete effectively with NSR, even when the connections are ultimately built. CSXT claims that, if its waiver was not granted, the time needed for construction and signal work could delay competitive operations for as long as 6 months after we take final action on the primary application.

The NS Connections. If we grant its waiver request, NSR will file, in three separate dockets,⁶ petitions for exemption pursuant to 49 U.S.C. 10502 and 49 CFR 1121.1 and 1150.1(a) for the construction of connections at Alexandria, IN, Colson/Bucyrus, OH,⁷ and Sidney, IL. NSR indicates that it would consult with appropriate federal, state, and local agencies with respect to any potential environmental effects from the construction of these connections and would file environmental reports with SEA at the time that the petitions are filed. The connections at issue are as follows:

- (1) The Alexandria connection would be in the northeast quadrant between former CRC Marion district lines to be operated by NSR and NSR's existing Frankfort district line. The new connection would allow traffic flowing over the Cincinnati gateway to be routed via a CRC line to be acquired by NSR to CRC's Elkhart Yard, a major CRC classification yard for carload traffic. This handling would permit such traffic to bypass the congested Chicago gateway. NSR estimates that the Alexandria connection would take approximately 9.5 months to construct.
- (2) The Colson/Bucyrus connection would be in the southeast quadrant between NSR's existing Sandusky district line and the former CRC Ft. Wayne line. This new connection would permit NSR to preserve efficient traffic flows, which otherwise would be broken, between the Cincinnati gateway and former CRC northeastern points to be served by NSR. NSR estimates that the Colson/Bucyrus connection would take approximately 10.5 months to construct.
- (3) The Sidney connection would be between NSR and Union Pacific Railroad Company (UPRR) lines. NSR believes that a connection would be required in the southwest quadrant of the existing NSR/UPRR crossing to permit efficient

⁶ These dockets would be sub-dockets 5, 6, and 7 under STB Finance Docket No. 33388.

⁷ Although NSR in its petition describes this connection as Colson/Bucyrus, the correct designation is Colson/Bucyrus. See diagram attached to NS-1.

handling of traffic flows between UPRR points in the Gulf Coast/Southwest and NSR points in the Midwest and Northeast, particularly customers on CRC properties to be served by NSR. NSR estimates that the Sidney connection would take approximately 10 months to construct.

Comments. Four comments opposing applicants' waiver requests were filed. Steel Dynamics, Inc. (SDI) filed comments (SDI-3) on May 6, 1997; The Allied Rail Unions (ARU)⁸ filed comments (ARU-3) on May 15, 1997; American Trucking Associations, Inc. (ATA) filed comments on May 16, 1997; and The Council on Environmental Quality, Executive Office of the President (CEQ) late-filed comments on June 4, 1997.⁹ On June 4, 1997, CSX filed a reply (CSX-3) to the comments of ARU and ATA; and NS filed a reply (NS-3) to the comments of SDI, ARU, and ATA. On June 6, 1997, CSX and NS filed a joint reply (CSX/NS-16) to the comments of CEQ.

Steel Dynamics, Inc. SDI asks us to deny NSR's waiver petition and to require NSR to file any construction application or exemption with its primary application.¹⁰ SDI believes that NSR's three proposed construction connections are intertwined with the issues involved in the primary application. Creating separate dockets for these connections, according to SDI, will not be an efficient use of the Board's resources nor permit an adequate review of the issues involved in the Midwest region. SDI contends that the proposed transfer of NSR's Fort Wayne line to CRC, followed by CRC's transfer of the line, under a long-term operating agreement, to CSXT, *see* Decision No. 4, slip op. at 6-7, is intended to disguise the asserted fact that the acquisition of Conrail will create duplicate Chicago-bound lines only about 25 miles apart, running through Waterloo and Fort Wayne, IN. SDI maintains that our consideration of issues as complex as

⁸ ARU's membership includes American Train Dispatchers Department/BLE; Brotherhood of Locomotive Engineers; Brotherhood of Maintenance of Way Employees; Brotherhood of Railroad Signalmen; Hotel Employees and Restaurant Employees International Union; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; The National Conference of Firemen & Oilers/SEIU; and Sheet Metal Workers' International Association.

⁹ As indicated in Decision No. 5, the comments filed by CEQ were due no later than June 2, 1997. We have accepted and considered CEQ's comments, and have permitted applicants to reply to the comments by June 6, 1997.

¹⁰ SDI did not address the merits of CSXT's waiver petition.

NSR's proposed connections and the possible divestiture of duplicate lines should not precede our review of the primary application.¹¹

The Allied Rail Unions. ARU opposes the CSX-1 and NS-1 waiver petitions as inconsistent with our review of the primary application. ARU argues that, by requesting the waivers, CSXT and NSR seek leverage for our ultimate approval of the application, while allegedly evading public scrutiny and comment on the transaction as a whole. ARU maintains that the construction projects are directly related to, and are dependent on, our approval of the primary transaction, and that the construction projects should be authorized only if the transaction itself is authorized. ARU argues that our merger regulations already confer a significant advantage on the applicants because they may immediately file for related abandonments and line transfers, even though they do not currently own the affected lines. ARU avers that, as a consequence, CSXT and NSR have no basis to seek additional advantage through their waiver requests. ARU contends that applicants offered no evidence to support their "competitive disadvantage" or "delay of public benefits" arguments. According to the unions, the applicants' arguments on competitive disadvantage are inherently inconsistent because both carriers assert that they will be disadvantaged unless their respective petitions are granted. Accordingly, ARU believes that a reasonable competitive balance can be maintained by denying both waiver petitions.

American Trucking Associations, Inc. ATA asks us to reserve judgment on the seven construction projects until the primary application is filed and reviewed by the parties. ATA contends that our approval of the waivers, despite any disclaimer to the contrary, could be interpreted by the public as tacit support for the primary application and inadvertently stifle full debate on the relevant issues. According to ATA, early consideration of the construction projects will unreasonably burden the parties and the Board's staff by requiring incremental participation in the transaction approval process. ATA also maintains that the competitive impact of the seven construction projects could not be adequately determined in the absence of consideration of the primary application.

¹¹ SDI also asserts that NS has not sought waiver of our requirement that waiver petitions be filed at least 45 days prior to the filing of the primary application. See 49 CFR 1180.4(f)(2). SDI therefore asks us to clarify that NS may not file its application before June 16, 1997, regardless of whether NS-1 is granted. We note that, in accordance with the procedural schedule adopted in Decision No. 6 (served and published on May 30, 1997) applicants may not file their primary application until 30 days after the filing of applicants' Preliminary Environmental Report, which was filed on May 16, 1997. The primary application, therefore, may be filed only on or after June 16, 1997. SDI's request in this regard is moot.

The Council on Environmental Quality, Executive Office of the President. CEQ believes that the construction and operation aspects of applicants' track connection projects should be assessed at the same time so that the environmental impacts of operating these rail lines can be properly evaluated. CEQ cites its regulations at 40 CFR 1508.25(a)(1) that, when actions are "closely related," they "should be discussed in the same impact statement." CEQ also maintains that bifurcation of the related decisions appear to conflict with 40 CFR 1506.1(c)(3), which prohibits agencies from taking actions that will prejudice the ultimate decision in a programmatic environmental impact statement (EIS). In this regard, CEQ contends that, even though the proposed merger does not involve a programmatic EIS, if we grant the proposed waivers, the likelihood that we will subsequently deny the merger tends to decrease.

According to CEQ, courts have recognized the need to prepare a comprehensive EIS when actions are functionally or economically related in order to prevent projects from being improperly segmented. CEQ argues that the fact that applicants are willing to risk our eventual disapproval of the merger does not remove the interdependence of these individual decisions.

DISCUSSION AND CONCLUSIONS

Applicants' waiver petitions will be granted. It is understandable that applicants want to be prepared to engage in effective, vigorous competition immediately following consummation of the control authorization that they intend to seek in the primary application.¹² We are not

¹² In this regard, we note that ARU is simply wrong in its assertion that a reasonable competitive balance can be maintained by denying both waiver petitions, so that neither carrier would face unanswered competition from the other. In their original petitions requesting waiver, both CSX and NS separately explained that these connections would permit each carrier to be able, as soon as possible following any Board approval of the primary application, to link its expanded system and compete with the other carrier in areas in which the other carrier's infrastructure would already be in place. As CSX has further explained (CSX-3 at 8):

CSX and NS have requested permission to construct connections that largely address different markets. Three of CSX's connections are intended to allow it to provide competitive services on routes linking Chicago and New York and the fourth on Northeast-Southeast routes served via Cincinnati. These are routes that NS will be able to serve immediately upon any Board approval of the Acquisition. NS's proposed connections, on the other hand, are focused on allowing it to compete with CSX in

(continued...)

inclined to prevent applicants from beginning the construction process simply to protect them from the attendant risks. We emphasize what applicants acknowledge--that any resources they expend in the construction of these connections may prove to be of little benefit to them if we deny the primary application, or approve it subject to conditions unacceptable to applicants, or approve the primary application but deny applicants' request to operate over any or all of the seven connections. Nonetheless, given applicants' willingness to assume those risks, we will grant the waivers they seek in CSX-1 and NS-1.

ARU maintains in its comments that applicants have no basis for seeking the waivers. Our rules, however, specifically provide for such requests, and we have entertained numerous waiver and clarification petitions in previous rail merger cases, as well as this one. *See, e.g.* Decision No. 7 (STB served May 30, 1997). ATA and SDI argue that the competitive effect of the involved connections should be considered as part of the primary application. We agree. Applicants' *operations* over these connections are interdependent with the primary application, and we will consider the competitive impact of the projects and the environmental effects of those operations along with our consideration of the primary application. Without authority to operate over the seven track connections for which the waivers are sought, applicants' construction projects alone will have no effect on competition. We emphasize that the waiver petitions that we are granting here are restricted to the construction of, and not the operation over, the seven connection projects described above.

The commenters complain that granting the waivers constitutes a prejudicial "rush to judgment" with respect to the primary application. However, as we emphasized in our May 13, 1997 request for comments, our grant of these waivers will not, in any way, constitute approval of, or even indicate any consideration on our part respecting approval of, the primary application. We also found it appropriate to note that, if we granted the waivers sought in the CSX-1 and NS-1 petitions, applicants would not be allowed to argue that, because we had granted the waivers, we should approve the primary application. We affirm those statements here.

Environmental considerations. CEQ has advised us not to consider the proposed construction projects separately from the operations that will be conducted over them. CEQ's recommendation is based upon its regulations at 40 CFR 1508.25(a)(1)(i)-(iii), and upon various court decisions, indicating that "when a given project effectively commits decisionmakers to a

¹²(...continued)

serving southwestern markets and to make use of an important Chicago-area yard used for interchanging traffic with western carriers. Denying the waiver petitions will only assure that inequality in competition, and the potential long term problems created by such inequality, will occur.

future course of action [] this form of linkage argue[s] strongly for joint environmental evaluation." *Coalition of Sensible Transp. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987). We believe, however, that we have the authority to consider the proposed construction projects separately, and agree with the applicants that permitting the construction proceedings to go forward now would be in the public interest and would not foreclose our ability to take the requisite hard look at all potential environmental concerns.

After reviewing the matter, we do concur with CEQ that regulatory and environmental issues concerning both the construction and operating aspects of these seven small construction projects should be viewed together.¹³ Thus, in reviewing these projects separately, we will consider the regulatory and environmental aspects of these proposed constructions and applicants' proposed operations over these lines together in the context of whether to approve each individual physical construction project.¹⁴ The operational implications of the merger as a whole, including operations over the 4 or so miles embraced in the seven construction projects, will be examined in the context of the EIS that we are preparing for the overall merger. That EIS may result in further environmental mitigating conditions. No rail operations can begin over these seven segments until completion of the EIS process and issuance of a further decision.

We believe that CEQ may have misconstrued the merger project as consisting of just two roughly equivalent elements: construction and operation. In fact, these seven construction projects, including the operations over them, are but a tiny facet of an over \$10 billion merger project. To put matters in perspective, the construction projects together amount to fewer than 4 miles of connecting track for a 44,000-mile rail system covering the eastern half of the United States.¹⁵ Our approval of the construction exemptions will in no way predetermine the outcome

¹³ The applicable statute for both construction and operation of new rail lines is 49 U.S.C. 10901, which requires us to permit such actions unless they are shown to be inconsistent with the public convenience and necessity.

¹⁴ We will have the information we need to do this because applicants' environmental report that will accompany the application will address the environmental impacts of both the construction and proposed operation of these projects. In addition, as discussed below, applicants will be required to file a detailed preliminary draft environmental assessment (PDEA) for each of the seven projects.

¹⁵ Applicants point out that much of the construction on these short segments will take place within existing rights-of-way, suggesting that they will be unlikely to have significant environmental impacts. *Compare Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985)(*Thomas*)(where the Forest Service proposed to construct a road through a pristine

(continued...)

of our merger decision. As was the case in *North Carolina v. City of Virginia Beach*, 951 F.2d 596, 602 (4th Cir. 1991) (*North Carolina*), segmentation of one phase of a larger project prior to completion of environmental review will not have "direct and substantial probability of influencing [the agency's] decision" on the overall project. *Accord, South Carolina ex. rel. Campbell v. O'Leary*, 64 F.3d 892, 898-99 (4th Cir. 1995). Approval of the constructions will not make approval of the merger any more likely, and we have made that clear to the railroads in advance. *Compare Thomas* (where the Forest Service committed substantial *public* funds to a road project that could not be recovered absent its approval of related logging projects) *with North Carolina*, 951 F.2d at 602 (where, as here, the facts reflect that the city proposing the project accepted the risk that funds expended or constructed could be lost if the overall project were not approved).

Nor will separate consideration and approval of these small construction projects in any way undermine our ability to give meaningful and thorough consideration to all environmental issues surrounding the larger merger proposal. We have not, by segmenting these construction projects, broken down the environmental impacts of the merger into insignificant pieces escaping environmental review. *See Swain v. Brineger*, 542 F.2d 364 (7th Cir. 1976). Indeed, we are preparing an EIS for the overall merger, and we will undertake appropriate environmental documentation for each of the seven individual construction projects. Our approach is appropriate because the environmental impacts of these constructions tend to be localized, whereas the impacts of the merger will affect a much larger area (quite likely the Eastern United States).

In sum, separate consideration of the seven construction projects and their environmental impacts should not be precluded by 40 CFR 1508.25 because: (1) approval of the construction projects will not automatically trigger approval of the merger; moreover, we have already determined to do an EIS for the merger and separate approval of these construction projects will in no way affect that decision; and (2) these appear to be "garden-variety connection projects" that will proceed at the railroads' financial risk, independent of the much larger merger proposal.

Having decided to grant the petitions for waiver, we will now set out some details of how we plan to proceed. In order to fulfill our responsibilities under the National Environmental Policy Act (NEPA) and related environmental laws, we will require applicants to submit certain

¹⁵(...continued)

wilderness). Applicants also suggest that there are no alternative routings for these projects. That issue, however, has not yet been determined; it will be examined in the environmental assessments (EAs) or other environmental documents that will be prepared for each of these construction projects.

information on the environmental effects of the construction and operation of the seven proposed connections. As noted, the applicants will file an environmental report with the primary application that will address all of the construction projects associated with the proposed merger, including the seven connections discussed in this decision.

In addition, we will require that applicants provide a specific PDEA for each individual construction project covered by this decision. Each PDEA must comply with all of the requirements for environmental reports contained in our environmental rules at 49 CFR 1105.7. Also, the PDEA must be based on consultations with our Section of Environmental Analysis (SEA) and the federal, state, and local agencies set forth in 49 CFR 1105.7(b), as well as other appropriate parties. The information in the PDEA should be organized as follows: Executive Summary; Description of Each Construction Project Including Proposed Operations; Purpose and Need for Agency Action; Description of the Affected Environment; Description of Alternatives; Analysis of the Potential Environmental Impacts; Proposed Mitigation; and Appropriate Appendices that include correspondence and consultation responses. If a PDEA is insufficient, we may require additional environmental information or reject the document. We advise the applicants to consult with SEA as soon as possible concerning the preparation and content of each PDEA.

As part of the environmental review process, SEA will independently verify the information contained in each PDEA, conduct further independent analysis, as necessary, and develop appropriate environmental mitigation measures. For each project, SEA plans to prepare an EA, which will be served on the public for its review and comment. The public will have 20 days to comment on the EA, including the proposed environmental mitigation measures. After the close of the public comment period, SEA will prepare Post Environmental Assessments (Post EAs) containing SEA's final recommendations, including appropriate mitigation. In making our decision, we will consider the entire environmental record, including all public comments, the EAs, and the Post EAs.

Should we determine that any of the construction projects could potentially cause, or contribute to, significant environmental impacts, then the project will be incorporated into the EIS for the proposed merger and will not be separately considered. In order to provide SEA with adequate time to incorporate the proposed connections into the draft EIS, if warranted, applicants must file the PDEAs no later than Day F+75 under the procedural schedule established in Decision No. 6.

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

It is ordered:

1. The CSX-1 and NS-1 petitions for waiver are granted.

2. NSR and CSXT must serve copies of this decision on the Council on Environmental Quality, the Environmental Protection Agency's Office of Federal Activities, and the Federal Railway Administration, and certify that they have done so within 5 days from the date of service of this decision.

3. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

STB Finance Docket No. 33388
Board Decision No. 12

SERVICE DATE - JULY 23, 1997

SURFACE TRANSPORTATION BOARD

DECISION

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

AGENCY: Surface Transportation Board.

ACTION: Decision No. 12; Notice of Acceptance of Primary Application and Related Filings; Notice of Related Abandonments Proposed By Applicants.¹

SUMMARY: The Board is accepting for consideration the primary application and related filings filed June 23, 1997, by CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRR), and Consolidated Rail Corporation (CRC).² The primary application seeks Board approval and authorization under 49 U.S.C. 11321-25 for: (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of the assets of Conrail by and between CSX and NS. The related filings, which include (among other things) two abandonment petitions and three abandonment notices, seek related relief contingent upon approval of the primary application.

DATES: The effective date of this decision is July 23, 1997. Any person who wishes to participate in this proceeding as a party of record must file, no later than August 7, 1997, a notice of intent to participate. Descriptions of responsive (including inconsistent) applications, and petitions for waiver or clarification regarding those applications, must be filed by August 22, 1997. Responsive (including inconsistent) applications, written comments (including comments of the U.S. Secretary of Transportation and the U.S. Attorney General), protests, requests for conditions, and any other opposition evidence and argument must be filed by October 21, 1997. For further information respecting dates, see Appendix B.

ADDRESSES: An original and 25 copies of all documents must be sent to the Surface Transportation Board, Office of the Secretary, Case Control Unit, ATTN.: STB Finance Docket No. 33388, 1925 K Street, N.W., Washington, DC 20423-0001.³

¹ This decision covers: (i) the primary application, which was filed in the STB Finance Docket No. 33388 lead docket; and (ii) the 39 related filings (1 application, 16 petitions, and 22 notices), which were filed in the 40 embraced dockets listed in Appendix A (one related filing, respecting the proposed abandonment in Edgar and Vermilion Counties, IL, was filed in two dockets).

² CSXC and CSXT, and their wholly owned subsidiaries, are referred to collectively as CSX. NSC and NSR, and their wholly owned subsidiaries, are referred to collectively as NS. CRR and CRC, and their wholly owned subsidiaries, are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

³ In order for a document to be considered a formal filing, the Board must receive an original and 25
(continued...)

In addition to submitting an original and 25 paper copies of each document filed with the Board, parties are also requested to submit one electronic copy of each such document. Further details respecting such electronic submissions are provided below.

Furthermore, one copy of each document filed in this proceeding must be sent to Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219-2538; FAX: (202) 219-3289] and to each of applicants' representatives: (1) Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, DC 20004-1202; (2) Richard A. Allen, Esq., Zuckert, Scoutt & Rasenberger, L.L.P., Suite 600, 888 Seventeenth Street, N.W., Washington, DC 20006-3939; and (3) Paul A. Cunningham, Esq., Harkins Cunningham, Suite 600, 1300 Nineteenth Street, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565-1613. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: The transaction for which approval is sought in the primary application involves: the purchase by CSX and NS, by and through their subsidiaries, of all of the stock of CRR; the operation or use of some of Conrail's lines and assets by CSX and NS separately; and the operation or use of the remainder of Conrail's lines and assets by CSX and NS jointly.

THE APPLICANTS. CSX operates approximately 18,504 route miles and 31,961 track miles of railroad in 20 states east of the Mississippi River and in Ontario, Canada. Of that total, approximately 1,607 miles are operated under trackage rights while the remaining mileage is either owned by CSX or operated by CSX under contract or lease. CSX has principal routes to, and serves, virtually every major metropolitan area east of the Mississippi River, from Chicago, IL, St. Louis, MO, Memphis, TN, and New Orleans, LA, on the West to Miami, FL, Jacksonville, FL, Charleston, SC, Norfolk, VA, Washington, D.C., and Philadelphia, PA, on the East. Other major metropolitan areas served by CSX include Atlanta, GA, Nashville, TN, Cincinnati, OH, Detroit, MI, Pittsburgh, PA, Baltimore, MD, Charlotte, NC, Birmingham, AL, and Louisville, KY. CSX interchanges traffic with other railroads at virtually all of the aforementioned locations and at numerous other points on its railroad system.

NS operates approximately 14,282 route miles and 25,236 track miles of railroad in 20 states, primarily in the South and the Midwest, and in Ontario, Canada. Of that total, approximately 1,520 miles are operated under trackage rights while the remaining mileage is either owned by NS or operated by NS under contract or lease. NS has routes to, and serves, virtually every major market in an area that stretches from Kansas City, MO, in the Midwest to Norfolk, VA, in the East, to Chicago, IL, and Buffalo, NY, in the North, and to New Orleans, LA, and Jacksonville, FL, in the South. These markets include Memphis, Chattanooga and Knoxville, TN; St. Louis, MO; Fort Wayne, IN; Detroit, MI; Toledo, Cincinnati, Columbus, and Cleveland, OH; Louisville and Lexington, KY; Bluefield, WV; Alexandria, Roanoke, Lynchburg, and Richmond, VA; Winston-Salem, Raleigh, Durham, Charlotte, and Morehead City, NC; Greenville, Spartanburg, Columbia, and Charleston, SC; Atlanta, Macon, Valdosta, and Savannah, GA; Bessemer, Birmingham, Montgomery, and Mobile, AL; Des Moines, IA; and Peoria,

³(...continued)

copies of the document, which must show that it has been properly served. Documents transmitted by facsimile (FAX) will not be considered formal filings and are not encouraged because they will result in unnecessarily burdensome, duplicative processing in what we expect to become a voluminous record.

Springfield, and Decatur, IL. NS interchanges traffic with other railroads at virtually all of the locations mentioned above and at numerous other locations on its railroad system.

Conrail operates approximately 10,500 miles of railroad in the Northeast and Midwest, and its primary network forms an "X" connecting Chicago (via the Chicago Line) and East St. Louis (via the St. Louis and Indianapolis Lines) in the West, with Boston, MA, New York, NY, and Northern New Jersey (via the Chicago Line and other main lines), and with Pittsburgh, Harrisburg, PA, Philadelphia, Baltimore, and Washington, DC (via the Pittsburgh Line and other main lines) in the East. The "hub" of the "X" is located in, and about, Cleveland, OH.

Conrail's Chicago Line extends between Chicago and the Albany, NY, area and connects there (through the Selkirk Branch) with the River Line (serving North Jersey via the west shore of the Hudson River), the Hudson Line (through which Conrail reaches New York City and Long Island), and the Boston Line (which extends to Boston and via which Conrail serves New England). Other important routes contiguous to the Chicago Line include the Detroit Line (between Detroit and a connection with the Chicago Line at Toledo), the Michigan Line (the portion between Detroit and Kalamazoo), and the Kalamazoo Secondary and Branch (between Kalamazoo, MI, and Elkhart, IN, on the Chicago Line), the Montreal Secondary (between Syracuse, NY, and Adirondack Junction, Quebec), and the Southern Tier (between Buffalo, NY, and Croxton, NJ).

Conrail's St. Louis Line extends between East St. Louis, IL, and Indianapolis, IN, connecting there with the Indianapolis Line which, in turn, extends between Indianapolis and the Cleveland area (connection with the Chicago Line). Conrail's Cincinnati Line (between Cincinnati and Columbus, OH) and its Columbus Line (between Columbus and Galion, OH, on the Indianapolis Line) and the Scottslawn Secondary Track (between Columbus and Ridgeway, OH, on the Indianapolis Line) all accommodate traffic flows between other parts of the Conrail system and Cincinnati. Columbus and/or Conrail points served via the West Virginia Secondary Track between Columbus and the Kanawha Valley of West Virginia.

Conrail's principal interchange points are in Chicago, East St. Louis and Salem, IL, via Union Pacific Railroad Company (UPRR) trackage rights between Salem and St. Elmo on the St. Louis Line; Streator, IL; Cincinnati; Hagerstown, MD; and Washington, D.C. Other important interchange points include Effingham, IL; Fort Wayne, IN; Toledo and Columbus, OH; Buffalo and Niagara Falls, NY; Montreal, Quebec; Rotterdam Junction, NY; and Worcester (including Barbers), MA.

THE PROPOSED TRANSACTION. The transaction for which approval is sought in the primary application involves the joint acquisition of control by CSX and NS of CRR and its subsidiaries (the Control Transaction), and the division between CSX and NS of the operation and use of Conrail's assets (the Division). The Control Transaction and the Division are governed principally by an agreement (the Transaction Agreement) dated as of June 10, 1997, between CSXC, CSXT, NSC, NSR, CRR, CRC, and CRR Holdings LLC (CRR Holdings, a recently created limited liability company jointly owned by CSXC and NSC). See CSX/NS-25, Volumes 8B & 8C (the Transaction Agreement, including various schedules and exhibits). The Control Transaction and the Division are also governed by a letter agreement (the CSX/NS Letter Agreement) dated as of April 8, 1997, between CSXC and NSC, but only to the extent such CSX/NS Letter Agreement has not been superseded either by the Transaction Agreement or by the agreement (the CRR Holdings Agreement) that governs CRR Holdings. See CSX/NS-25, Volume 8A at 350-99 (the CSX/NS Letter Agreement) and at 400-36 (the CRR Holdings Agreement).

ACQUISITION OF CONTROL OF CONRAIL. CSX and NS have already acquired 100% of the common stock of CRR in a series of transactions that included a CSX tender offer that was consummated on November 20, 1996, a NS tender offer that was consummated on February 4, 1997, a joint CSX/NS tender offer

that was consummated on May 23, 1997, and a merger that was consummated on June 2, 1997. In the aftermath of this series of transactions: CRC remains a direct wholly owned subsidiary of CRR; CRR has become a direct wholly owned subsidiary of Green Acquisition Corp. (Tender Sub); Tender Sub is now a direct wholly owned subsidiary of CRR Holdings; and CRR Holdings is jointly owned by CSXC and NSC (CSXC holds a direct 50% voting interest and a 42% equity interest in CRR Holdings; NSC holds a direct 50% voting interest and a 58% equity interest in CRR Holdings). The merger that was consummated on June 2, 1997 (the Merger), involved the merger of Green Merger Corp. (Merger Sub, a direct wholly owned subsidiary of Tender Sub) into CRR, with CRR being the surviving corporation; and, in connection with the Merger: (i) each remaining outstanding share of CRR common stock not held by CSX, NS, or their affiliates was converted into the right to receive \$115 in cash, without interest; and (ii) the shares of Merger Sub, all of which were then owned by Tender Sub, were converted into 100 newly issued shares of CRR, all of which were placed into a voting trust (the CSX/NS Voting Trust) to prevent CSXC and NSC, and their respective affiliates, from exercising control of CRC and its carrier subsidiaries pending review by the Board of the primary application. See CSX/NS-25, Volume 8A at 323-49 (the agreement that governs the CSX/NS Voting Trust).

At the present time, the affairs of CRR and CRC are under the control of their independent boards of directors. The Transaction Agreement provides that, following the effective date of the Board's approval of the primary application (the Control Date), CRR and CRC will each be managed by a board of directors consisting of six directors divided into two classes, each class having three directors. On each board, CSXC will have the right to designate three directors and NSC will likewise have the right to designate three directors; and actions that require the approval of either board will require approval both by a majority of the directors on that board designated by CSX and by a majority of the directors on that board designated by NS.

DIVISION OF CONRAIL. The Transaction Agreement provides that, if the primary application is approved, the division of the operation and use of Conrail's assets will be effected on the Closing Date, which is defined as the third business day following the date on which certain conditions precedent (including the effectiveness of a final Board order and, where necessary, sufficient labor implementing agreements) shall have been satisfied or waived, or such other date as may be agreed upon. See CSX/NS-18 at 11; CSX/NS-25, Volume 8B at 45. It is anticipated that, during the period beginning on the Control Date and ending on the Closing Date, CSX and NS will exercise joint control of Conrail as a separately functioning rail system.

Formation of NYC and PRR. To effect the Division, CRC will form two wholly owned subsidiaries (referred to collectively as the Subsidiaries): New York Central Lines LLC (NYC) and Pennsylvania Lines LLC (PRR). CSXC will have exclusive authority to appoint the officers and directors of NYC; NSC will likewise have exclusive authority to appoint the officers and directors of PRR; and CRC, as the sole member of the Subsidiaries, will (with certain exceptions) follow CSXC's and NSC's directions with respect to the management and operation of NYC and PRR, respectively.

Allocation of Conrail Assets and Liabilities. On the date of the Division, CRC will assign to NYC and PRR certain of CRC's assets. NYC will be assigned those CRC assets designated to be operated as part of CSX's rail system (the NYC-Allocated Assets), and PRR will be assigned those CRC assets designated to be operated as part of NS's rail system (the PRR-Allocated Assets). These assets will include, among other things, certain lines and facilities currently operated by CRC, whether owned by CRC or operated by CRC under trackage rights. Certain additional assets (referred to as the Retained Assets) will continue to be held by CRR and CRC (or their subsidiaries other than NYC and PRR) and will be operated by them for the benefit of CSX and NS. In addition, on the date of the Division: the former Conrail line now owned by NS that runs from Fort Wayne, IN, to Chicago, IL (the Fort Wayne Line), will be transferred to CRC in a like-kind exchange for CRC's Chicago South/Illinois Lines

(the Streator Line); and CRC will assign the Fort Wayne line to NYC, to be operated together with the other Conrail lines to be assigned to NYC and used by CSX as part of CSX's rail system.

Assets Allocated to NYC. The NYC-Allocated Assets will include the following primary routes currently operated by Conrail (routes over which Conrail operates pursuant to trackage rights are designated "TR"):

(1) NY/NJ Area to Cleveland (New York Central Railroad route), including (a) line segments from North NJ Terminal to Albany (Selkirk), (b) Albany to Poughkeepsie, NY, (c) Poughkeepsie to New York City (TR), (d) New York City to White Plains (TR), (e) Albany to Cleveland via Syracuse, Buffalo and Ashtabula, OH, (f) Boston to Albany, (g) Syracuse to Adirondack Jct., PQ, (h) Adirondack Jct. to Montreal (TR), (i) Woodard, NY, to Oswego, NY, (j) Syracuse to Hawk, NY, (k) Hawk to Port of Oswego (TR), (l) Buffalo Terminal to Niagara Falls/Lockport, (m) Lockport to West Somerset (TR), (n) Syracuse to NYSW/FL connections, NY, (o) Albany/Boston Line to Massachusetts branch lines, (p) Albany/Boston Line to Massachusetts branch lines (TR), (q) New York City to Connecticut branch lines (TR), (r) Connecticut branch lines (TR), (s) Connecticut Branch lines, (t) Churchville, NY, to Wayneport, NY, (u) Mortimer, NY, to Avon, NY, and (v) Rochester Branch, NY;

(2) Crestline, OH, to Chicago (Pennsylvania Railroad route), including (a) Crestline to Dunkirk, OH, (b) Dunkirk to Ft. Wayne, IN, (c) Ft. Wayne to Warsaw, IN, (d) Warsaw to Chicago Terminal (Clarke Jct.), IN, and (e) Adams, IN, to Decatur, IN;

(3) Berea to E. St. Louis, including (a) Cleveland Terminal to Crestline, (b) Crestline to E. St. Louis via Galion, OH, Ridgeway, OH, Indianapolis, IN, Terre Haute, IN, Effingham, IL, and St. Elmo, IL, (c) Anderson, IN, to Emporia, IN, (d) Columbus to Galion, (e) Terre Haute to Danville, IL, (f) Danville to Olin, IN, (g) Indianapolis to Rock Island, IN, (h) Indianapolis to Crawfordsville, (i) Indianapolis to Shelbyville, IN, (j) HN Cabin, IL, to Valley Jct., IL, (k) St. Elmo to Salem, IL (TR), (l) Muncie (Walnut Street), IN, to New Castle RT, IN (TR), and (m) New Castle RT, IN;

(4) Columbus to Toledo, including (a) Columbus to Toledo via Ridgeway, (b) Toledo Terminal to Woodville, and (c) Toledo Terminal to Stonyridge, OH;

(5) Bowie to Woodzell, MD, including (a) Bowie to Morgantown, and (b) Brandywine to Chalk Point;

(6) NY/NJ to Philadelphia (West Trenton Line), including Philadelphia to North NJ Terminal;

(7) Washington, D.C., to Landover, MD;

(8) Quakertown Branch, line segment from Philadelphia Terminal to Quakertown, PA (TR), and

(9) Chicago Area, line segment from Porter, IN, to the westernmost point of Conrail ownership in Indiana.

Along with these lines, CSXT will operate certain yards and shops, as well as the Conrail Philadelphia Headquarters and Philadelphia area information technology facilities.

Assets Allocated to PRR. The PRR-Allocated Assets will include the following primary routes currently operated by Conrail (routes over which Conrail operates pursuant to trackage rights are designated "TR"):

(1) NJ Terminal to Crestline (Pennsylvania Railroad route), including (a) North NJ Terminal to Allentown, PA, via Somerville, NJ, (b) Little Falls, NJ, to Dover, NJ (TR), (c) Orange, NJ, to Denville, NJ (TR), (d) Dover to Rockport (TR), (e) Rockport to E. Stroudsburg via Phillipsburg, NJ, (f) Allentown Terminal, (g) Orange to NJ Terminal (TR), (h) NJ Terminal to Little Falls (TR), (i) Bound Brook to Ludlow, NJ (TR), (j) Allentown, PA, to Harrisburg via Reading, (k) Harrisburg Terminal, (l) Harrisburg to Pittsburgh, (m) Conemaugh Line via Saltsburg, PA, (n) Pittsburgh to W. Brownsville, PA, (o) Central City, PA, to South Fork, PA, (p) Pittsburgh Terminal, (q) Monongahela, PA, to Marianna, PA, (r) Pittsburgh to Alliance, OH, via Salem, (s) Beaver Falls, PA, to Wampum, PA, (t) Alliance to Cleveland Terminal, (u) Mantua, OH, to Cleveland Terminal, (v) Alliance to Crestline, (w) Alliance to Omal, OH, (x) Rochester, PA, to Yellow Creek, OH, (y) E. Steubenville, WV, to Weirton, WV, (z) Steubenville Branches Bridge, OH, (aa) Pittsburgh Branches, (bb) Ashtabula to Youngstown, OH, (cc) Ashtabula Harbor to Ashtabula, (dd) Niles, OH, to Latimer, OH, (ee) Alliance, OH, to Youngstown, (ff) Youngstown to Rochester, (gg) Allentown to Hazelton, PA, (hh) CP Harris, PA, to Cloe, PA (TR), (ii) Cloe to Shelocta, PA, (jj) Tyrone, PA, to Lock Haven, PA (TR), (kk) Creekside, PA, to Homer City, PA, (ll) Monongahela Railroad, (mm) portion of Kinsman Connection in Cleveland, (nn) portion of 44 Ind. Track including Dock 20 Lead, and (oo) Gem Ind. Track-Lordstown, OH;

(2) Cleveland to Chicago (New York Central Railroad route), including (a) Cleveland Terminal to Toledo Terminal, (b) Elyria, OH, to Lorain, OH, (c) Toledo Terminal to Sylvania, OH, (d) Toledo Terminal to Goshen, IN, (e) Elkhart, IN, to Goshen, and (f) Elkhart to Porter, IN;

(3) Philadelphia to Washington (Amtrak's Northeast Corridor, referred to as NEC), including (a) Philadelphia Terminal to Perryville, MD (TR), (b) Wilmington Terminal, DE, (c) Perryville to Baltimore (TR), (d) Baltimore Terminal, (e) Baltimore Bay View to Landover, MD (TR), (f) Baltimore to Cockeysville, MD, (g) Pocomoke, MD, to New Castle Jct., DE, (h) Harrington, DE, to Frankford/Indian River, DE, (i) Newark, DE, to Porter, DE, (j) Claremont R.T., (k) Loneys Lane Lead, and (l) Grays Yard (TR);

(4) Michigan Operations (excluding the Detroit Shared Assets Area), including (a) Toledo Terminal to Detroit Terminal, (b) Detroit Terminal to Jackson, MI, (c) Jackson to Kalamazoo, MI, (d) Kalamazoo to Elkhart, IN, (e) Jackson to Lansing, MI, (f) Kalamazoo to Grand Rapids, (g) Kalamazoo to Porter, IN (TR), (h) Kalamazoo Ind. Track, and (i) Comstock Ind. Track;

(5) Eastern Pennsylvania lines, including (a) Philadelphia Terminal to Reading, (b) Reading Terminal, (c) Thorndale, PA, to Woodbourne, PA, (d) Leola/Chesterbrook, PA, lines, (e) Philadelphia Terminal to Lancaster, PA (TR), (f) Lancaster to Royaltown, PA (TR), (g) Lancaster to Lititz/Columbia, PA, (h) portion of Stoney Creek Branch, (i) West Falls Yard, and (j) Venice Ind. Track;

(6) Indiana lines, including (a) Anderson to Goshen via Warsaw, (b) Marion to Red Key, IN, and (c) Lafayette Ind. Track;

(7) Buffalo to NY/NJ Terminal, including (a) NJ/NY Jct. to Suffern, NY (TR), (b) Suffern to Port Jervis, NY, (c) Port Jervis to Binghamton, (d) Binghamton to Waverly, (e) NJ/NY Jct. to Spring Valley, NY (TR), (f) Paterson Jct., NJ, to Ridgewood, NJ (TR), (g) Waverly to Buffalo, (h) Waverly to Mehoopany, PA, (i) Sayre, PA, to Ludlowville, NY, (j) Lyons, NY, to Himrods Jct., NY, (k) Corning, NY, to Himrods Jct., NY, (l) North Jersey Terminal to Paterson Jct., NJ (TR), (m) Paterson Jct. to North Newark, NJ, and (n) NJ/NY Jct. to North Jersey Terminal (TR);

(8) Buffalo to Harrisburg and South, including (a) Perryville, MD, to Harrisburg, PA, (b) Carlisle, PA, to Harrisburg, (c) Wago, PA, to York (area), PA, (d) Harrisburg to Shocks, PA, (e) Williamsport, MD, to Buffalo via Harrisburg, PA, (f) Watsontown, PA, to Strawberry Ridge, PA, (g) Ebenezer Jct., NY, to Lackawanna, NY, (h) Hornell, NY, to Corry, PA, (i) Corry to Erie, PA (TR), and (j) Youngstown to Oil City, PA;

(9) Cincinnati to Columbus to Charleston, WV, including (a) Columbus to Cincinnati, (b) Cincinnati Terminal, (c) Columbus Terminal to Truro, OH, (d) Truro to Charleston, WV, (e) Charleston to Cornelia, WV, and (f) Charleston to Morris Fork, WV;

(10) Chicago South/Illinois operations, including (a) Osborne, IN, to Chicago Heights, IL, via Hartsdale, (b) Hartsdale to Schneider, IN, (c) Schneider to Hennepin, IL, (d) Keensburg, IL, to Carol, IL, and (e) Schneider to Wheatfield, IN; and

(11) Chicago Market, including (a) Western Ave. Operations/Loop to Cicero/Elsdon, IL, (b) Chicago to Porter, IN, (c) Clarke Jct., IN, to CP 501, IN, (d) CP 509 to Calumet Park, IL, (e) Western Ave. Ind. Track, (f) Old Western Ave. Ind. Track, (g) North Joint Tracks, (h) Elevator Lead & Tri-River Dock, (i) CR&I Branch, (j) 49th Street Ind. Track, (k) 75th Street to 51st Street (TR), (l) Port of Indiana, IN, and (m) CP 502, IN, to Osborne, IN.

Along with these lines, the abandoned Conrail line from Danville to Schneider, IL, will also be a PRR-Allocated Asset.

Allocated Assets: Other Aspects. Certain equipment will be included in the NYC-Allocated Assets and the PRR-Allocated Assets and will be made available to CSXT and NSR pursuant to a CSXT Equipment Agreement and a NSR Equipment Agreement, respectively. Much of the locomotive equipment and rolling stock equipment, however, will not be included in the NYC- and PRR-Allocated Assets but will be included, instead, in the Retained Assets (discussed below), and will be leased by CRC or its affiliates to NYC or PRR pursuant to equipment agreements to be negotiated by the parties.

CRC currently holds certain trackage rights over CSXT and NSR. In general (though there are exceptions), CRC will assign the trackage rights that it holds over CSXT to PRR (to be operated by NSR), and it will assign the trackage rights that it holds over NSR to NYC (to be operated by CSXT).

The shares currently owned by Conrail in TTX Company (TTX, formerly known as Trailer Train) will be allocated to NYC and PRR. Applicants' current ownership interest in TTX is: CSX, 9.345%; NS, 7.788%; CRC, 21.807%. Following approval of the primary application, the ownership of TTX by applicants and their subsidiaries will be as follows: CSX, 9.345%; NYC, 10.125%; NS, 7.788%; PRR, 11.682%.

Conrail's 50% interest in Triple Crown Services Company will be allocated to PRR.

Certain additional special treatments are provided in particular areas within the allocated assets. A description of the areas in which special arrangements are made is set forth below under the caption "Other Areas with Special Treatments."⁴

⁴ The Transaction Agreement also contemplates that certain CRC facilities currently used for the benefit (continued...)

Applicants indicate that they have taken steps to ensure that all of the existing contractual commitments of Conrail to its shippers will be fulfilled. The Transaction Agreement provides that all transportation contracts of CRC in effect as of the Closing Date (referred to as Existing Transportation Contracts) will remain in effect through their respective stated terms and will be allocated as NYC-Allocated Assets and PRR-Allocated Assets, and that the obligations under them shall be carried out after the Closing Date by CSXT, utilizing NYC-Allocated Assets, and by NSR, using PRR-Allocated Assets, or pursuant to the Shared Assets Areas Agreements, as the case may be. The Transaction Agreement further provides, with respect to the Existing Transportation Contracts: that CSXT and NSR will allocate the responsibilities to serve customers under these contracts; and that CSXT and NSR shall cooperate as necessary to assure shippers under these contracts all benefits, such as volume pricing, volume refunds, and the like, to which they are contractually entitled.

Retained Assets. The Retained Assets include assets contained within three Shared Assets Areas (the Detroit Shared Assets Area, the North Jersey Shared Assets Area, and the South Jersey/Philadelphia Shared Assets Area) that are more fully described below.

The Retained Assets also include Conrail's System Support Operations (SSO) facilities, including equipment and other assets associated with such facilities, currently used by Conrail to provide support functions benefitting its system as a whole, including Conrail's: (1) customer service center in Pittsburgh, PA; (2) crew management facility in Dearborn, MI; (3) system maintenance-of-way equipment center in Canton, OH; (4) signal repair center in Columbus, OH; (5) system freight claims facility in Buffalo, NY; (6) system non-revenue billing facility at Bethlehem, PA; (7) system rail welding plant at Lucknow (Harrisburg), PA; (8) system road foreman/engineer training center at Philadelphia and Conway, PA; (9) police operations center at Mt. Laurel, NJ; (10) the Philadelphia Division headquarters building and offices located at Mount Laurel, NJ; and (11) other SSO facilities identified by CSX and NS prior to the Closing Date. Each SSO Facility will be operated by Conrail for the benefit of CSXT/NYC and NSR/PRR, and the costs of operating each SSO Facility will be retained by Conrail as "Corporate Level Liabilities" and will be shared between CSX and NS.⁵

Liabilities. In general: NYC will assume all liabilities arising on or after the Closing Date that relate predominantly to the NYC-Allocated Assets; PRR will assume all such liabilities that relate predominantly to the PRR-Allocated Assets; CRC will be responsible for all such liabilities that do not relate predominantly to the NYC- or PRR-Allocated Assets; and CRC will also be responsible for certain liabilities arising prior to the Closing Date.

Separation Costs (as defined in the Transaction Agreement, *see* CSX/NS-25, Volume 8B at 20) incurred following the Control Date in connection with Conrail agreement employees now working jobs at or in respect of NYC-Allocated Assets will be the sole responsibility of CSX, while Separation Costs incurred in connection with Conrail agreement employees now working jobs at or in respect of PRR-Allocated Assets will be the sole responsibility of NS. Separation Costs incurred in connection with Conrail agreement employees working jobs at or in respect of Retained Assets will be shared by CSX and NS. Separation Costs incurred following the Control

⁴(...continued)

of the entire Conrail system: will be operated, during a transition period following the Closing Date, for the joint benefit of CSX and NS; and will be operated, after such transition period, for the party to whom they have been allocated. *See* CSX/NS-18 at 11 (lines 14-18) and 12 (line 1 & n.3).

⁵ At least some of the SSO Facilities will apparently be operated for the joint benefit of CSX and NS "for a short period" only. *See* CSX/NS-18 at 12 (lines 2-5).

Date for Conrail agreement employees at Conrail's Altoona and Holidaysburg shops will be the responsibility of NS, and Separation Costs incurred following the Control Date in connection with agreement employees at Conrail's Philadelphia headquarters and technology center and Conrail's Pittsburgh customer service center will be the responsibility of CSX. Separation Costs for eligible Conrail non-agreement employees will be shared by CSX and NS.

After the Closing Date, compensation and other expenses (excluding Separation Costs) for agreement employees (other than certain Conrail employees performing general and administrative functions) working jobs at or in respect of NYC-Allocated Assets will be the sole responsibility of CSX, while such expenses for such agreement employees working jobs at or in respect of PRR-Allocated Assets will be the sole responsibility of NS.

Operation of Assets. Applicants indicate: that CSXT and NYC will enter into the CSXT Operating Agreement, which provides for CSXT's use and operation of the NYC-Allocated Assets; that NSR and PRR will enter into the NSR Operating Agreement, which provides for NSR's use and operation of the PRR-Allocated Assets; and that CRC, NYC, PRR, CSXT and/or NSR will enter into Shared Assets Areas Operating Agreements, which provide for the operation of certain Shared Assets Areas for the benefit of both CSXT and NSR.

CSXT and NSR Operating Agreements The CSXT Operating Agreement and the NSR Operating Agreement (collectively, the Allocated Assets Operating Agreements) provide that CSXT and NSR will each have the right, for an initial term of 25 years, to use and operate, as part of their respective systems, the NYC-Allocated Assets and the PRR-Allocated Assets. Those agreements will require CSXT and NSR each to bear the responsibility for and the cost of operating and maintaining their respective Allocated Assets. CSXT and NSR will each receive for its own benefit and in its own name all revenues and profits arising from or associated with the operation of its Allocated Assets.

CSXT will pay NYC an operating fee based on the fair market rental value of the NYC-Allocated Assets. NSR will similarly pay PRR an operating fee based on the fair market rental value of the PRR-Allocated Assets. CSXT and NSR will have the right to receive the benefits of NYC and PRR, respectively, under any contract or agreement included in the NYC-Allocated Assets or the PRR-Allocated Assets, respectively, and, with the consent of NYC and PRR, respectively, to modify or amend any such contract or agreement on behalf of NYC and PRR.

CSXT and NSR will each have the right to renew its Allocated Assets Operating Agreement for two additional terms of ten years each. The Allocated Assets Operating Agreements contemplate that, upon termination of the agreements, CSXT and NSR will be deemed to have returned their Allocated Assets to NYC or PRR, subject to any regulatory requirements.

Shared Assets Areas and Operating Agreements. Both CSXT and NSR will be permitted to serve shipper facilities located within the three Shared Assets Areas (North Jersey, South Jersey/Philadelphia, and Detroit), which will be owned, operated, and maintained by CRC for the exclusive benefit of CSX and NS. CSXT and NSR will enter into a Shared Assets Area Operating Agreement with CRC in connection with each of the Shared Assets Areas, and CRC will grant to CSXT and NSR the right to operate their respective trains, with their own crews and equipment and at their own expense, over any tracks included in the Shared Assets Areas. CSXT and NSR will each have exclusive and independent authority to establish all rates, charges, service terms, routes, and divisions, and to collect all freight revenues, relating to freight traffic transported for its account within the Shared Assets Areas. Other carriers that previously had access to points within the Shared Assets Areas will continue to have the same access as before.

(1) The North Jersey Shared Assets Area encompasses all northern New Jersey trackage east of and including the NEC, and also (a) certain line segments north of the NEC as it turns East to enter the tunnel under the Hudson River, (b) the CRC Lehigh line west to Port Reading Junction, (c) the rights of CRC on the New Jersey Transit Raritan line, (d) the CRC Port Reading Secondary line west to Bound Brook, (e) the CRC Perth Amboy Secondary line west to South Plainfield, and (f) the NEC local service south to the Trenton area.

(2) The South Jersey/Philadelphia Shared Assets Area encompasses all CRC "Philadelphia" stations and stations within the Philadelphia City limits, industries located on the CRC Chester Industrial and Chester Secondary tracks, all CRC trackage in Southern New Jersey, CRC's rights on the NEC north from Zoo Tower in Philadelphia to Trenton, NJ, and the Ameriport intermodal terminal and any replacement of such terminal built substantially through public funding.

(3) The Detroit Shared Assets Area encompasses all CRC trackage and access rights east of the CP-Townline (Michigan Line MP 7.4) and south to and including Trenton (Detroit Line MP 20).⁶

Other Areas with Special Treatments. A number of other areas, though not referred to as Shared Assets Areas, are nevertheless subject to special arrangements that provide for a sharing of routes or facilities to a certain extent.

(1) Monongahela Area: Although the CRC lines formerly a part of the Monongahela Railway will be operated by NSR, CSXT will have equal access for 25 years, subject to renewal, to all current and future facilities located on or accessed from the former Monongahela Railway, including the Waynesburg Southern.

(2) Chicago Area: Both CSXT and NSR will have access to CRC's rights concerning access to and use of the Willow Springs Yard of The Burlington Northern and Santa Fe Railway Company (BNSF); applicants will enter into an agreement concerning their respective rights as successors to Conrail and as parties controlling the controlling shareholder in the Indiana Harbor Belt Railway (IHB), a 51%-owned subsidiary of CRC (the stock of IHB will be a CRC-retained asset); certain trackage rights of CRC over IHB will be assigned or made available to NYC to be operated by CSXT or to PRR to be operated by NSR; CSXT and NSR will enter into an agreement to permit each of them to maintain current access and trackage rights enjoyed by them over terminal railroads in the Chicago area; and CSX will be granted an option, exercisable if CSXT and BNSF come under common control, to purchase the Streator Line from Osborne, IN, to Streator, IL.

(3) Ashtabula Harbor Area: NSR will have the right to operate and control CRC's Ashtabula Harbor facilities, with CSXT receiving use and access, up to a proportion of the total ground storage, throughput, and tonnage capacity of 42%.

(4) Buffalo Area: CSXT will operate Seneca Yard, and NSR will receive access to yard tracks in that yard.

(5) Cleveland Area: CRC's switching yard at Collinwood will be operated by CSXT and its Rockport Yard will be operated by NSR.

⁶ For a more complete description of the three Shared Assets Areas, see CSX/NS-18 at 46-49 (and references there cited).

(6) Columbus, OH: NSR will operate CRC's Buckeye Hump Yard, and CSXT will operate the former Local Yard and intermodal terminal at Buckeye.

(7) Erie, PA: Norfolk and Western Railway Company (NW, a wholly owned NSR subsidiary) will have a permanent easement and the right to build a track on the easement along the CRC right of way through Erie, PA, to be operated by CSXT. NW will have trackage rights in Erie to connect its route from Corry to its existing Buffalo-Cleveland line if such connection can be achieved without using the CRC Buffalo-Cleveland line to be operated by CSXT.

(8) Fort Wayne, IN: CSX will operate the line between Fort Wayne and Chicago, currently owned by NSR.

(9) Indianapolis, IN: NSR will have overhead trackage rights from Lafayette and Muncie to Hawthorne Yard to serve, via CSXT switch, shippers that presently receive service from two railroads.

(10) Toledo, OH: CRC's Stanley Yard will be operated by CSXT, and its Airline Junction Yard will be operated by NSR.

(11) Washington, D.C.: CRC's Landover Line from Washington, D.C., to Landover, MD, will be allocated to NYC, and NSR will be given overhead trackage rights.

(12) Allocation of Rights with Respect to Freight Operations Over Amtrak's NEC: CRC's NEC overhead trackage rights north of New York (Penn Station) will be assigned to NYC. Both NYC and PRR will have overhead rights to operate trains between Washington, D.C., and New York (Penn Station), subject to certain limitations. From Zoo Tower, Philadelphia, to Penn Station, NY, CRC's NEC rights to serve local customers will be part of the Retained Assets and CRC will assign those rights to NYC and PRR, with NYC and PRR having equal access to all local customers and facilities. Between Washington, D.C., and Zoo Tower, Philadelphia, CRC's NEC rights to serve local customers will be assigned to PRR. The right to serve local customers on the NEC north of New York (Penn Station) will be assigned to NYC.⁷

SUCCESSION TO CONRAIL ACTIVITIES. Applicants intend that the Allocated Assets conveyed to NYC and PRR will be operated for them by CSXT and NSR, respectively, and that both the Allocated Assets conveyed to NYC and PRR as well as the Retained Assets made available by CRC to CSXT or NSR or both will be enjoyed and used by CSXT and NSR (subject to the terms of the governing agreements) as if the carrier in question were itself CRC. Applicants similarly intend that the Shared Assets Areas will be used, enjoyed, and operated as fully by CSXT and NSR as if each of them were CRC.

THE CONTINUING CONRAIL ACTIVITIES. From the Closing Date forward, CSXT and NSR will be responsible for all of the operating expenses and new liabilities attributable to the assets which they are operating. It is expected, however, that most of the pre-Closing Date liabilities of CRC, CRR, and their subsidiaries will remain in place. It is contemplated that CRC will pay its pre-Closing Date liabilities, including its debt obligations, out of payments received, either directly or through NYC and PRR, from CSXT and NSR in connection with the Allocated Assets and the Shared Assets Areas. Applicants expect that such payments will be

⁷ For a more complete description of the areas addressed here under the heading "Other Areas with Special Treatments," see CSX/NS-18 at 49-54 (and references there cited).

sufficient to permit CRC and its subsidiaries (1) to cover their operating, maintenance, and other expenses, (2) to pay all of their obligations as they mature, (3) to provide dividends to CRR sufficient to permit it to discharge its debts and obligations as they mature, and (4) to receive a fair return for the operation, use, and enjoyment by CSXT and NSR of the Allocated Assets and Shared Assets Areas. Applicants add, however, that if for any reason these sources of funds to CRC and CRR prove insufficient to permit them to pay and discharge their obligations, CSX and NS have agreed that CRR Holdings shall provide the necessary funds, which it will obtain from CSXC and NSC.

Applicants anticipate that, following the Division of Conrail, approximately 350 employees will be employed by Conrail in the Philadelphia area (where the headquarters of CRR and CRC are now located). These employees will include Conrail employees managing and operating trains for CSX and NS, the employees in the local Shared Assets Area, and the management personnel for the continuing Conrail functions. In addition, each of CSX and NS anticipates establishing a regional headquarters-type function in Philadelphia at which an undetermined number of additional personnel will be employed.

It is intended that, following the Division: CRC will not hold itself out to the public as performing transportation services directly and for its own account; CRC will not enter into any contract (other than with CSXT or NSR) for the performance of transportation services; and all transportation services performed by CRC will be performed as agent or subcontractor of CSXT or NSR.

"2-to-1" SITUATIONS. Applicants claim: that the division of Conrail proposed in the primary application has enabled applicants to avoid, "wherever possible," situations where shippers will see their rail options decline from two carriers to one; and that in "virtually all of the few" 2-to-1 situations that the division proposed in the primary application would otherwise have entailed, CSX and NS have agreed to provide one another with trackage and/or haulage rights that will permit the continuation of two rail carrier service. *See CSX/NS-18 at 4. See also CSX/NS-18 at 74-75* (CSX will provide trackage or haulage rights that will allow for alternative rail service to facilities that otherwise would be, as a result of the transaction proposed in the primary application, rail-served solely by CSX) and 80 (NS will provide trackage or haulage rights that will allow for alternative rail service to facilities that otherwise would be, as a result of the transaction proposed in the primary application, rail-served solely by NS).

LABOR IMPACT. Applicants have provided three Labor Impact Exhibits, each using a different base line in calculating the impacts that the transactions proposed in the primary application and the related filings will have on rail carrier employees. *See CSX/NS-26* (filed July 7, 1997), which: (a) corrects the single Labor Impact Exhibit filed with the primary application itself on June 23, 1997, *see CSX/NS-18 at 24-25; CSX/NS-20, Volume 3A at 485-546; and CSX/NS-20, Volume 3B at 493-526; and* (b) adds two additional Labor Impact Exhibits. *See also Decision No. 7, served May 30, 1997, slip op. at 8-9* (we required applicants to use the year 1995 as the base line for setting forth the impacts the proposed transactions will have on rail carrier employees, but we added that applicants, if they were so inclined, would be allowed to supplement 1995 data with data demonstrating employment reductions in 1996 and/or 1997).

Applicants' 1996/97 Labor Impact Exhibit projects, with respect to both the CSX and NS expanded systems, that the proposed transactions will result in the abolition of 3,090 jobs and the creation of 1,109 jobs (for a net loss of 1,981 jobs), and will also result in the transfer of an additional 2,323 jobs. *See CSX/NS-26, 1996/97 Exhibit at 13.* The 1996/97 Exhibit is based on an April 1, 1997 nonagreement employee count and a November 1996 agreement employee count.

Applicants' 1996 Labor Impact Exhibit projects, with respect to both the CSX and NS expanded systems, that the proposed transactions will result in the abolition of 3,822 jobs and the creation of 1,152 jobs (for a net loss of 2,670 jobs), and will also result in the transfer of an additional 2,323 jobs. See CSX/NS-26, 1996 Exhibit at 16. The 1996 Exhibit is based on calendar year 1996 average monthly employment levels.⁸

Applicants' 1995 Labor Impact Exhibit projects, with respect to both the CSX and NS expanded systems, that the proposed transactions will result in the abolition of 6,654 jobs and the creation of 1,699 jobs (for a net loss of 4,955 jobs), and will also result in the transfer of an additional 2,288 jobs. See CSX/NS-26, 1995 Exhibit at 33. The 1995 Exhibit is based on calendar year 1995 average monthly employment levels. But see CSX/NS-26, Peifer/Spenski V.S. at 1 n.1 (1995 data is incomplete).

Applicants emphasize that the projections contained in their Labor Impact Exhibits are short term projections; applicants maintain that, in the long term, the transactions proposed in the primary application and the related filings will provide opportunities for rail transportation growth and, therefore, new jobs. Applicants anticipate that, if we approve the transactions proposed in the primary application and the related filings, we will impose on such transactions the standard labor protective conditions customarily imposed on similar such transactions. See CSX/NS-18 at 25.

RELIEF REQUESTED IN THE PRIMARY APPLICATION. In the STB Finance Docket No. 33388 lead docket, applicants seek: approval of the transaction proposed in the primary application (in paragraph 1 below); approval of certain "elements" of that transaction, referred to as Transaction Elements (in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 below); and a "fairness determination" respecting the terms under which CSX and NS have acquired all of the common stock of CRR (in paragraph 12 below).

(1) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, of the acquisition by CSXC and NSC (each a noncarrier corporation controlling one or more rail carriers) of joint control of, and the power to exercise joint control over, CRR (also a noncarrier corporation controlling one or more rail carriers). See 49 U.S.C. 11323(a)(5).⁹

(2) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, of the acquisition by NYC and PRR of, and of the operation by CSXT and NSR over, the CRC lines and other assets, including without limitation trackage and other rights, that will be allocated to NYC and PRR, respectively. Applicants also ask that we expressly provide that, pursuant to the sought approval and authorization under 49 U.S.C. 11323 and 11324, and notwithstanding any purported limitations on assignability, NYC and PRR each will have the same right, title, and interest in the CRC lines and other assets forming its part of the Allocated Assets as CRC itself now has, including the power to pass the use and enjoyment of those lines and other assets to CSXT and NSR.¹⁰

⁸ The 1996 Labor Impact Exhibit submitted with the CSX/NS-26 filing on July 7, 1997, is a slightly corrected version of the Labor Impact Exhibit submitted with the primary application itself on June 23, 1997.

⁹ As applicants note, although joint control by CSXC and NSC of Conrail as a separately functioning rail system will last only until the Division is effected, such joint control, even though transitory, requires approval and authorization under 49 U.S.C. 11323(a)(5). See CSX/NS-18 at 90 & n.14.

¹⁰ The CRC lines and other assets to be allocated to NYC and PRR include both: (i) those owned by

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(3) Applicants request a declaratory order that 49 U.S.C. 10901 does not apply to the transfer of the Allocated Assets to NYC and PRR.¹¹ Applicants concede that, because NYC and PRR are not now carriers, an argument can be made that authority under 49 U.S.C. 10901 is required for the transfer; applicants maintain, however, that the transfer should be viewed in context as simply a part of a larger transaction involving the operation by CSX and NS of the assets to be transferred to NYC and PRR, respectively; and applicants claim that the transfer, when viewed in context, requires authorization not under 49 U.S.C. 10901 but rather under 49 U.S.C. 11323 and 11324. In the event we do not issue the sought declaratory order, applicants seek authorization for the transfer of the CRC assets to NYC and PRR: under 49 U.S.C. 10901; and, in order to bring the transfer within the scope of the immunizing power of 49 U.S.C. 11321(a), also under 49 U.S.C. 11323 and 11324.

(4) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324: (i) for CSXT and NSR to enter into the Allocated Assets Operating Agreements and to operate the assets held by NYC and PRR, respectively; (ii) for CSXT, NSR, and CRC to enter into the three Shared Assets Areas Operating Agreements and to operate the assets in such areas; and (iii) for CSX and NS to use, operate, perform, and enjoy the Allocated Assets and the assets in the Shared Assets Areas consisting of assets other than routes (including, without limitation, the Existing Transportation Contracts). See 49 U.S.C. 11323(a)(2). See also 49 U.S.C. 11323(a)(6). Applicants also request a declaratory order, or a declaration to the same effect as a declaratory order: (a) that, by virtue of the immunizing power of 49 U.S.C. 11321(a), CSX and NS will have the authority to conduct operations over the routes of CRC covered by the Trackage Agreements as fully and to the same extent as CRC itself could, whether or not such routes are listed in CSX/NS-18, Appendix L (CSX/NS-18 at 216-24), and notwithstanding any clause in any such agreement purporting to limit or prohibit unilateral assignment by CRC of its rights thereunder; and (b) that, also by virtue of the immunizing power of 49 U.S.C. 11321(a), CSX and NS may use, operate, perform, and enjoy the Allocated Assets and the assets in the Shared Assets Areas consisting of assets other than routes (including, without limitation, the Existing Transportation Contracts) as fully and to the same extent as CRC itself could.

(5) For the period following the transfer of CRC assets to NYC and PRR, applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324: (a) for CSXC, NSC, and CRR to continue to control NYC and PRR; and (b) for the common control, by CSXC, CSXT, NSC, NSR, CRR, and CRC of (i) NYC and PRR, and (ii) the carriers currently controlled by CSXC, CSXT, NSC, NSR, CRR, and CRC. Such authorization and approval will be necessary because, as applicants note: CRC, NYC, and PRR will not be part of a "single system" of rail carriers, and therefore authorization to control CRC will not in and of itself imply authorization to control NYC and PRR; and, although CSX will exercise day-to-day control of NYC and NS will exercise day-to-day control of PRR, the fact that certain major actions concerning NYC and PRR will remain under the control of CRC

¹⁰(...continued)

CRC; and also (ii) those not owned by CRC but operated by CRC under leases, trackage rights, and similar arrangements (such arrangements are hereinafter referred to as "Trackage Agreements"). Because applicants are concerned that CRC's interests under some of these Trackage Agreements may be subject to limitations on assignability, approval and authorization under 49 U.S.C. 11323 and 11324 has been sought in order to bring these Trackage Agreements within the scope of the immunizing power of 49 U.S.C. 11321(a). See *Norfolk & Western Ry. Co. v. American Train Dispatchers' Ass'n*, 499 U.S. 117 (1991).

¹¹ As applicants note, the immunizing power of 49 U.S.C. 11321(a) does not extend to an authorization under 49 U.S.C. 10901.

will result in an ongoing common control relationship involving CSXC, NSC, and CRR, and the subsidiaries of each.

(6) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324: for the acquisition by CSXT of certain trackage rights over PRR; and for the acquisition by NSR of certain trackage rights over NYC. *See* 49 U.S.C. 11323(a)(6). The lines over which these trackage rights will run are listed in items 1.B and 1.A, respectively, of Schedule 4 to the Transaction Agreement. *See* CSX/NS-25, Volume 8B at 110-21.¹²

(7) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, of the trackage rights provided to CSXT, *see* CSX/NS-25, Volume 8C at 715-57, to access all current and future facilities located on or accessed from the former Monongahela Railway, including the Waynesburg Southern. *See* 49 U.S.C. 11323(a)(6).¹³

(8) The trackage rights covered by paragraph 6 include, among many other such trackage rights, certain trackage rights to be acquired by NSR over the NYC Bound Brook, NJ-Woodbourne, PA line. *See* CSX/NS-25, Volume 8B at 112 (item 20). These particular trackage rights, however, are intended to be temporary in duration, and will expire, by their terms, at the end of 3 years. Applicants therefore seek authorization, pursuant to 49 U.S.C. 10903, for NSR to discontinue the Bound Brook-Woodbourne trackage rights in accordance with the terms thereof.¹⁴

(9) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, of certain incidental trackage rights granted in connection with operations within the Shared Assets Areas. These trackage rights include: (i) trackage rights granted by CSXT to NSR and CRC; and (ii) trackage rights granted by NSR to CSXT and CRC. *See* CSX/NS-18 at 97-98. *See also* CSX/NS-25, Volume 8C at 76, 115-16, and 156.¹⁵

¹² The trackage rights identified in Schedule 4 to the Transaction Agreement, *see* CSX/NS-25, Volume 8B at 110-21, fall into three categories: existing trackage rights held by CRC over other carriers, which are covered in paragraph 4 above; new trackage rights to be held by CSXT over PRR and by NSR over NYC, which are covered in this paragraph 6; and certain additional new trackage rights provided for in the related filings in STB Finance Docket No. 33388 (Sub-Nos. 25, 27, 28, 29, 30, 32, 33, & 34), which are covered in the "Related Filings" discussion below. *See* CSX/NS-18 at 96 n.17.

¹³ Applicants indicate, *see* CSX/NS-18 at 96 (lines 9-10), that the rights referenced in paragraphs 6 and 7 fall under 49 U.S.C. 11323(a)(2) (approval and authorization required for a "purchase, lease, or contract to operate property of another rail carrier by any number of rail carriers"). The rights referenced in paragraphs 6 and 7, however, appear to be trackage rights, and we therefore believe that these rights fall under 49 U.S.C. 11323(a)(6) (approval and authorization required for the acquisition "by a rail carrier of trackage rights over, . . . or joint use of, a railroad line . . . owned or operated by another rail carrier").

¹⁴ Applicants indicate that, in due course, NSR will "abandon" its Bound Brook-Woodbourne trackage rights. *See* CSX/NS-18 at 96-97 (item e) and 103 (item e). We think it would be more accurate to say that NSR will "discontinue" these trackage rights.

¹⁵ Applicants indicate, *see* CSX/NS-18 at 98 (lines 1-2), that the rights referenced in paragraph 9 fall under 49 U.S.C. 11323(a)(2). The rights referenced in paragraph 9, however, appear to be trackage rights, and we
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(10) To the extent that any matter concerning either (i) the joint ownership by CSX and NS of CRR, CRC, NYC, and/or PRR, or (ii) the Transaction Agreement and the Ancillary Agreements referred to therein,¹⁶ including the provision for handling Existing Transportation Contracts, might be deemed to be a pooling or division by CSX and NS of traffic or services or of any part of their earnings, applicants request approval for such pooling or division under 49 U.S.C. 11322.¹⁷

(11) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, for the transfer of CRC's Streator Line from CRC to NSR/NW.¹⁸

(12) Applicants seek a determination that the terms under which CSX and NS, both individually and jointly, have acquired all of the common stock of CRR are fair and reasonable to the stockholders of CSXC, the stockholders of NSC, and the stockholders of CRR. See *Schwabacher v. United States*, 334 U.S. 192 (1948).

RELATED FILINGS. In STB Finance Docket No. 33388 (Sub-No. 1), CSXT has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Crestline, OH, a connection track in the northwest quadrant of the intersection of CRC's North-South line between Greenwich, OH, and Indianapolis, IN, and CRC's East-West line between Pittsburgh, PA, and Ft. Wayne, IN. The connection will extend approximately 1,507 feet between approximately MP 75.4 on the North-South line and approximately MP 188.8 on the East-West line.¹⁹

¹⁵(...continued)

therefore believe that these rights fall under 49 U.S.C. 11323(a)(6).

¹⁶ As used in the Transaction Agreement, the term "Ancillary Agreements" means the Equipment Agreements, the CSXT Operating Agreement, the NSR Operating Agreement, the NYC LLC Agreement, the PRR LLC Agreement, the CRR Holdings LLC Agreement, the Trackage Rights Agreements, the CSXT/NSR Haulage Agreements, the Tax Allocation Agreement, the Shared Assets Agreements, and the Other Operating Agreements. See CSX/NS-25, Volume 8B at 10.

¹⁷ Such approval under 49 U.S.C. 11322 is sought because, as applicants note, payments with respect to the rights granted in connection with both the Allocated Assets and the Shared Assets Areas, as well as payments for the services performed by CRC in connection with the Shared Assets Areas, are to be made by CSXT and NSR to entities (CRC or its subsidiaries) in which both CSX and NS will have economic interests.

¹⁸ See Decision No. 4 (served May 2, 1997), slip op. at 7 n.16: "The transfer of the Streator line from CRC to NSR will be considered in the lead docket because this transfer, like all aspects of the division of CRC assets between CSX and NS, is integral to, and an inseparable part of, the control transaction." See also CSX/NS-22 at 446, defining the Streator Line as the CRC line running: (i) between MP 6.3 at Osborn, IN, and MP 33.2 at Schneider, IN; and (ii) between MP 56.4 at Wheatfield, IN, and MP 186.0 at Moronts, IL.

¹⁹ In accordance with the waiver granted in Decision No. 9, served June 12, 1997, and as indicated in the notice published in the *Federal Register* on July 11, 1997 (62 FR 37331), we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Crestline connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 1) embraced docket; and (ii) operation thereover by CSXT. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Crestline connection track, if authorized, will be

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In STB Finance Docket No. 33388 (Sub-No. 2), CSXT has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, in Willow Creek, IN, a connection track in the southeast quadrant of the intersection between CSXT's line between Garrett, IN, and Chicago, IL, and CRC's line between Porter, IN, and Gibson Yard, IN (outside Chicago). The connection will extend approximately 2,800 feet between approximately MP BI-236.5 on the CSXT line and approximately MP 248.8²⁰ on the CRC line.²¹

In STB Finance Docket No. 33388 (Sub-No. 3), CSXT has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, in Greenwich, OH, connection tracks in the northwest and southeast quadrants of the intersection between the CSXT line between Chicago and Pittsburgh and the CRC line between Cleveland and Cincinnati. The connection in the northwest quadrant, a portion of which will be constructed utilizing existing trackage and/or right-of-way of the Wheeling & Lake Erie Railway Company, will extend approximately 4,600 feet between approximately MP BG-193.1 on the CSXT line and approximately MP 54.1 on the CRC line. The connection in the southeast quadrant will extend approximately 1,044 feet between approximately MP BG-192.5 on the CSXT line and approximately MP 54.6 on the CRC line.²²

In STB Finance Docket No. 33388 (Sub-No. 4), CSXT has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Sidney Junction, OH, a connection track in the southeast quadrant of the intersection between the CSXT line between Cincinnati, OH, and Toledo, OH,

¹⁹(...continued)

examined in the context of the environmental impact statement (EIS) that will be prepared by our Section of Environmental Analysis (SEA).

²⁰ We question the MP 248.8 designation, *see* CSX/NS-22 at 106 (line 1); our review of CRC's timetable for its Porter Branch suggests that the correct designation may be MP 246.8. We also question CSXT's assertion that the Sub-No. 2 connection track will provide a direct link between CRC and CSXT tracks "and the parallel IHB line at Willow Creek," *see* CSX/NS-22 at 106 (lines 16-17); our review of CRC's timetable for its Porter Branch suggests that the link with IHB may be at Ivanhoe, not at Willow Creek.

²¹ In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the *Federal Register* concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Willow Creek connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 2) embraced docket; and (ii) operation thereover by CSXT. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Willow Creek connection track, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

²² In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the *Federal Register* concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Greenwich connection tracks, as proposed in the STB Finance Docket No. 33388 (Sub-No. 3) embraced docket; and (ii) operation thereover by CSXT. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Greenwich connection tracks, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

and the CRC line between Cleveland, OH, and Indianapolis, IN. The connection will extend approximately 3,263 feet between approximately MP BE-96.5 on the CSXT line and approximately MP 163.5 on the CRC line.²³

In STB Finance Docket No. 33388 (Sub-No. 5), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Sidney, IL, a connection track between the UPRR north-south line between Chicago, IL, and St. Louis, MO, and the NW east-west line between Decatur, IL, and Tilton, IL. The connection, which will be in the southwest quadrant of the intersection of the two lines, will be approximately 3,256 feet in length.²⁴

In STB Finance Docket No. 33388 (Sub-No. 6), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Alexandria, IN, a connection track between the CRC line between Anderson, IN, and Goshen, IN, and the NW line between Muncie, IN, and Frankfort, IN. The connection, which will be in the northeast quadrant of the intersection of the two lines, will be approximately 970 feet in length.²⁵

In STB Finance Docket No. 33388 (Sub-No. 7), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Bucyrus, OH, a connection track between NW's Bellevue, OH-Columbus, OH line and CRC's Ft. Wayne, IN-Crestline, OH line. The connection,

²³ In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the *Federal Register* concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Sidney Junction connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 4) embraced docket; and (ii) operation thereover by CSXT. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Sidney Junction connection track, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

²⁴ In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the *Federal Register* concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Sidney connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 5) embraced docket; and (ii) operation thereover by NW. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Sidney connection track, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

²⁵ In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the *Federal Register* concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Alexandria connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 6) embraced docket; and (ii) operation thereover by NW. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Alexandria connection track, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

which will be in the southeast quadrant of the intersection of the two lines, will be approximately 2,467 feet in length.²⁶

In STB Finance Docket No. 33388 (Sub-No. 8), CSXT has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Little Ferry, NJ, two connection tracks between the CRC Selkirk-North Bergen line and the New York, Susquehanna and Western Railway (NYS&W) Paterson-Croton line. The first connection will extend approximately 480 feet between approximately MP 5.75 on the CRC line and approximately MP 5.65 on the NYS&W line. The second connection will extend approximately 600 feet between approximately MP 4.04 on the CRC line and approximately MP 4.15 on the NYS&W line.

In STB Finance Docket No. 33388 (Sub-No. 9), CSXT and The Baltimore and Ohio Chicago Terminal Railroad Company (B&OCT, a wholly owned CSXT subsidiary) have filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track in the vicinity of 75th Street SW, Chicago, IL, in the southwest quadrant of the intersection of the lines of B&OCT and The Belt Railway Company of Chicago (BRC). The connection will extend approximately 1,640 feet between approximately MP DC-22.43 on B&OCT's North-South line between Cleveland and Brighton Park, and approximately MP 12.95 on BRC's East-West line between Bedford Park Yard and South Chicago Yard.

In STB Finance Docket No. 33388 (Sub-No. 10), CSXT has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate a connection track in Exermont, IL, in the northwest quadrant of the intersection between CSXT's Cincinnati-East St. Louis line and CRC's Cleveland-East St. Louis line. The connection will extend approximately 3,590 feet between approximately MP BC-327.9 on the CSXT line and approximately MP 231.4 on the CRC line.

In STB Finance Docket No. 33388 (Sub-No. 11), CSXT and B&OCT have filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track in the vicinity of Lincoln Avenue in Chicago, IL, in the northeast quadrant of the intersection of the lines of B&OCT and IHB. The connection will extend approximately 840 feet between approximately MP DC-9.5 on B&OCT's line between Cleveland and Barr Yard, and approximately MP 10.43 on IHB's line between Gibson Yard and Blue Island Jct.

In STB Finance Docket No. 33388 (Sub-No. 12), NSR has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Kankakee, IL, a connection track between the Illinois Central Railroad Company (ICR) Chicago, IL-Gibson City, IL north-south line, over which NSR has trackage rights, and the CRC Streator, IL-Schneider, IN east-west line. The connection, which will be in the southeast quadrant of the intersection of the two lines, will be approximately 1,082 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 13), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track at Tolono, IL, in the southeast quadrant of the intersection of

²⁶ In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the *Federal Register* concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Bucyrus connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 7) embraced docket; and (ii) operation thereover by NW. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Bucyrus connection track, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

the ICR line between Chicago, IL, and Centralia, IL, and the NW line between Decatur, IL, and Tilton, IL. The connection will be about 1,600 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 14), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Butler, IN, a connection track between NW's Detroit, MI-Fort Wayne, IN line and CRC's Elkhart, IN-Toledo, OH line. The connection, which will be in the northwest quadrant of the intersection of the two lines, will be approximately 1,750 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 15), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track at Tolleston, IN. This track, which will connect a NW line and a CRC line, will be about 930 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 16), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate a double track connection at Hagerstown, MD. This track, which will connect a NW line and a CRC line, will be about 800 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 17), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track at Ecorse Junction (Detroit), MI. This track, which will connect a NW line and a CRC line, will be about 400 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 18), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Blasdell (Buffalo), NY, a connecting track approximately 2,500 feet in length between NW's Erie, PA-Buffalo, NY Line and CRC's Buffalo, NY-Harrisburg, PA Line.

In STB Finance Docket No. 33388 (Sub-No. 19), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Gardenville Junction (Buffalo), NY, a connecting track approximately 1,700 feet in length between CRC's Buffalo, NY-Harrisburg, PA Line and CRC's Ebenezer Secondary Track.

In STB Finance Docket No. 33388 (Sub-No. 20), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Columbus, OH, a NW-CRC connecting track approximately 1,423 feet in length. See CSX/NS-22 at 315 (map).

In STB Finance Docket No. 33388 (Sub-No. 21), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Oak Harbor, OH, a connecting track approximately 4,965 feet in length between, and in the northwest quadrant of the intersection of, NW's Toledo, OH-Bellevue, OH line and CRC's Toledo, OH-Cleveland, OH line.

In STB Finance Docket No. 33388 (Sub-No. 22), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Vermilion, OH, a connecting track approximately 5,398 feet in length between NW's Cleveland, OH-Bellevue, OH line and CRC's Toledo, OH-Cleveland, OH line.

In STB Finance Docket No. 33388 (Sub-No. 23), NW has filed a notice of exemption under 49 CFR 1180.2(d)(5) regarding a joint project involving relocation of NW's rail line running down 19th Street in Erie, PA (a distance of approximately 6.1 miles, between approximately MP B-85.10 near Downing Avenue and approximately

MP B-91.25 west of Pittsburgh Avenue) to a parallel railroad right-of-way currently owned and operated by CRC that will be allocated to CSXT in connection with the primary application.

In STB Finance Docket No. 33388 (Sub-No. 24), CRC and NW have filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 11323-25 regarding the acquisition by CRC (or by NYC) of the Fort Wayne Line, between MP 441.8 at Fort Wayne, IN, and MP 319.2 at Tolleston (Gary), IN. *See CSX/NS-22 at 446 and 449* (indicating that the mileposts are as stated in the preceding sentence). *But see CSX/NS-22 at 461-62* (indicating that the mileposts are MP 441.8 at Tolleston and MP 319.2 at Fort Wayne).

In STB Finance Docket No. 33388 (Sub-No. 25), NW and CSXT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of trackage rights over approximately 32.7 miles of a CSXT line between Lima, OH (Erie Junction), at or near CSXT MP BE-129.2, and Sidney, OH, at or near CSXT MP BE-96.5. The trackage rights to be acquired by NW include overhead trackage rights between Lima and Sidney and local trackage rights that will allow NW to serve 2-to-1 shippers at Sidney.

In STB Finance Docket No. 33388 (Sub-No. 26), CSXC, CSXT, and The Lakefront Dock and Railroad Terminal Company (LD&RT) have filed an application seeking approval and authorization under 49 U.S.C. 11323-25 for the acquisition and exercise by CSXC and CSXT of control of LD&RT, and the common control of LD&RT and CSXT and the other rail carriers controlled by CSXT and/or CSXC. LD&RT, a Class III railroad in which CSXT and CRC each currently owns a 50% voting stock interest, operates approximately 17 miles of yard tracks at Oregon, OH.

In STB Finance Docket No. 33388 (Sub-No. 27), NW and CSXT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of overhead trackage rights over approximately 5 to 6 miles of a CSXT line between Columbus, OH (Parsons Yard), at or near CSXT MP CJ 71.5, and Scioto, OH, at or near CSXT MP CK 2.5.

In STB Finance Docket No. 33388 (Sub-No. 28), CSXT and NW have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by CSXT of overhead trackage rights over approximately 2.02 miles of a NW line between Columbus, OH (Watkins Yard), at or near NW MP N-696.7, and Bannon, OH, at or near NW MP N-698.72.

In STB Finance Docket No. 33388 (Sub-No. 29), CSXT and NW have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by CSXT of overhead trackage rights over approximately 1.4 miles of a NW line between Erie Junction (Delray), MI, at or near MP D4.4, and Ecorse Junction, MI, at or near MP D5.8.

In STB Finance Docket No. 33388 (Sub-No. 30), NW and CSXT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of overhead trackage rights over approximately 1.7 miles of a CSXT line between the connection of two CSXT lines near Washington Street at or near MP 123.7, and the connection of two CSXT lines at Pine at or near MP 122.0, in Indianapolis, IN.

In STB Finance Docket No. 33388 (Sub-No. 31), CSXC and CSXT have filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 11323-25, to the extent those provisions may apply, regarding the acquisition by CSXC and CSXT of control of Albany Port Railroad Corporation (APR). APR, which operates approximately 16.5 miles of track at the Port of Albany, NY, is owned in equal 50% shares by CRC and

D&H Corporation (D&H, an affiliate of Canadian Pacific Limited); and, if the primary application is approved, CRC's 50% interest in APR will be allocated to CSXT in the Division.²⁷

In STB Finance Docket No. 33388 (Sub-No. 32), NW and B&OCT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of overhead trackage rights over approximately 9.8 miles of the IHB McCook Branch between the connection of IHB and B&OCT at McCook, IL, at or near MP 28.5, and the connection of IHB and Canadian Pacific Rail System at Franklin Park, IL, at MP 39.3.²⁸

In STB Finance Docket No. 33388 (Sub-No. 33), NW and B&OCT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of trackage rights over B&OCT's Barr Subdivision between the connection of the NSR Chicago Line and the B&OCT line at Pine Junction, IN (CP 497) and: (i) the connection with B&OCT's McCook Subdivision at Blue Island Junction, IL, at or near MP DC 14.9, a distance of approximately 14.9 miles; and beyond to (ii) the B&OCT/IHB connection at McCook, IL, at or near MP 28.5, a distance of approximately 13.6 miles.

In STB Finance Docket No. 33388 (Sub-No. 34), CSXT and NW have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by CSXT of overhead trackage rights over approximately 45.5 miles of a NW line between Bucyrus, OH, at or near NW MP S-63.0, and Sandusky, OH, at or near NW MP S-108.5. The trackage rights to be acquired by CSXT, although described as "overhead" trackage rights, will allow CSXT to access 2-to-1 shippers at Sandusky.

In STB Docket Nos. AB-167 (Sub-No. 1181X) and AB-55 (Sub-No. 551X), CRC and CSXT, respectively, have filed a notice of exemption under 49 CFR 1152.50 to abandon an approximately 29-mile portion of the Danville Secondary Track between MP 93.00± at Paris, IL, and MP 122.00± at Danville, IL, in Edgar and Vermilion Counties, IL. The line, which is presently owned and operated by CRC and which is proposed to be operated by CSXT pursuant to the authority sought in the primary application, traverses United States Postal Service Zip Codes 61846, 61870, 61883, 61924, and 61944.

In STB Docket No. AB-290 (Sub-No. 194X), NW has filed a notice of exemption under 49 CFR 1152.50 to abandon a line between MP SK-2.5 near South Bend, IN, and MP SK-24.0 near Dillon Junction, IN, a distance of approximately 21.5 miles in St. Joseph and La Porte Counties, IN. The line traverses or adjoins United States Postal Service Zip Codes 46613, 46614, 46619, 46536, 46554, and 46365.

In STB Docket No. AB-290 (Sub-No. 195X), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line between MP I-137.3 near Dillon Junction, IN, and MP I-158.8 near Michigan City, IN, a distance of approximately 21.5 miles in La Porte County, IN. The line traverses or adjoins United States Postal Service Zip Codes 46350 and 46360.

²⁷ Implicit in the Sub-No. 31 docket is a request for a determination that acquisition by CSXC and CSXT of a 50% interest in APR will not enable CSXC and CSXT to "control" APR within the meaning of 49 U.S.C. 11323.

²⁸ Applicants indicate that the Sub-No. 32 trackage rights run for approximately 9.8 miles. See CSX/NS-22 at 420 and 425. By our calculations, however, these trackage rights would appear to run for approximately 10.8 miles.

In STB Docket No. AB-290 (Sub-No. 196X), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line between MP TM-5.0 in Toledo, OH, and MP TM-12.5 near Maumee, OH, a distance of approximately 7.5 miles in Lucas County, OH. The line traverses or adjoins United States Postal Service Zip Codes 43612, 43613, 43606, 43607, 43609, and 43614.

In STB Docket No. AB-290 (Sub-No. 197X), NW has filed a notice of exemption under 49 CFR 1152.50 to abandon the Toledo Pivot Bridge extending between MP CS-2.8 and MP CS-3.0 near Toledo, OH, a distance of approximately 0.2 miles in Lucas County, OH. The line traverses or adjoins either United States Postal Service Zip Code 42611 or United States Postal Service Zip Code 43611 (*see* CSX/NS-22 at 84-86).

PRIMARY APPLICATION AND RELATED FILINGS ACCEPTED. We are accepting the primary application for consideration because it is in substantial compliance with the applicable regulations, waivers, and requirements. *See* 49 U.S.C. 11321-25; 49 CFR part 1180. We are also accepting for consideration all of the related filings, which are also in substantial compliance with the applicable regulations, waivers, and requirements.²⁹

PUBLIC INSPECTION. The primary application and all related filings, including the various accompanying exhibits, are available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, N.W., in Washington, DC.

PROCEDURAL SCHEDULE. In Decision No. 6, served May 30, 1997, and published that day in the *Federal Register* at 62 FR 29387, we adopted a procedural schedule.³⁰ To provide further notice to interested persons, we have attached that schedule to this decision as Appendix B and have filled in all of the dates.

NOTICE OF INTENT TO PARTICIPATE. Any person who wishes to participate in this proceeding as a party of record (POR) must file with the Secretary of the Board, no later than August 7, 1997, an original plus 25

²⁹ We reserve the right to require the filing of supplemental information from applicants or any other party or individual, if necessary to complete the record in this matter.

³⁰ In Decision No. 9, we added to the procedural schedule adopted in Decision No. 6 by requiring applicants to file, by September 5, 1997, Preliminary Draft Environmental Assessments for the construction projects referenced in the STB Finance Docket No. 33388 (Sub-Nos. 1, 2, 3, 4, 5, 6, and 7) embraced dockets. As indicated in the notice published in the *Federal Register* on July 11, 1997 (62 FR 37331), we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Crestline connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 1) embraced docket; and (ii) operation thereover by CSXT. As indicated in the notices published in the *Federal Register* concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Willow Creek, Greenwich, Sidney Junction, Sidney, Alexandria, and Bucyrus connection tracks, as proposed in the STB Finance Docket No. 33388 (Sub-Nos. 2, 3, 4, 5, 6, and 7) embraced dockets, respectively; and (ii) operation thereover by applicants. As further indicated in the notice published on July 11, 1997, and in the notices published concurrently herewith, the operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Crestline, Willow Creek, Greenwich, Sidney Junction, Sidney, Alexandria, and Bucyrus connection tracks, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

copies of a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on Judge Leventhal and on applicants' representatives.

We will serve, as soon as practicable after August 7, 1997, a notice containing the official service list (the service list notice). Each party of record will be required to serve upon all other parties of record, within 10 days of the service date of the service list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each party of record will also be required to file with the Secretary of the Board, within 10 days of the service date of the service list notice, an original plus five copies of a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a party of record after the service date of the service list notice must have its own certificate of service indicating that both Judge Leventhal and all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record (PORs) and therefore need not be served with copies of filings, unless any such Member or Governor is designated as a POR.

As noted in Decision No. 6, slip op. at 5, 62 FR at 29389, we will serve copies of our decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, or GOV. All other interested persons are encouraged to make advance arrangements with the Board's copy contractor, DC News & Data, Inc. (DC News), to receive copies of Board decisions, orders, and notices served in this proceeding. DC News will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service. The telephone number for DC News is: (202) 289-4357.³¹

DESCRIPTIONS OF, AND PETITIONS RESPECTING, RESPONSIVE (INCLUDING INCONSISTENT) APPLICATIONS. Because the transaction proposed by applicants constitutes a major transaction within the meaning of our rail consolidation rules (49 CFR part 1180),³² railroads intending to file responsive (including inconsistent) applications must submit descriptions of those applications by August 22, 1997. The description must state that the commenting railroad intends to file an application seeking affirmative relief that requires an application to be filed with the Board (e.g., divestiture, purchase, trackage rights, inclusion, construction, or abandonment) and must include a general statement of what that application is expected to include. This will be considered a prefiling notice without which the Board will not entertain applications for this type of relief.

Petitions for waiver or clarification by responsive (including inconsistent) applicants must be filed by August 22, 1997. Each responsive (including inconsistent) application filed and accepted will be consolidated with

³¹ An interested person does not need to be on the service list to obtain a copy of the primary application or any other filing made in this proceeding. Our Railroad Consolidation Procedures provide: "Any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order." See 49 CFR 1180.4(a)(3), as recently amended in *Railroad Consolidation Procedures--Modification of Fee Policy*, STB Ex Parte No. 556, 62 FR 9714, 9717 (Mar. 4, 1997) (interim rules), 62 FR 28375 (May 23, 1997) (final rules). Furthermore, DC News will provide, for a charge, copies of the primary application or any other filing made in this proceeding, except to the extent any such filing is subject to the protective order heretofore entered in this proceeding.

³² See Decision No. 2, served April 21, 1997, and published that day in the *Federal Register* at 62 FR 19390.

the primary application in this proceeding. Parties should contact the Office of the Secretary, Case Control Unit, at 202-565-1681 to obtain docket numbers for their responsive (including inconsistent) applications.

Any responsive (including inconsistent) applicant must file, by October 1, 1997, either: (1) a verified statement that the responsive (including inconsistent) application will have no significant environmental impact; or (2) a responsive environmental report (RER) that contains detailed environmental information regarding the responsive (including inconsistent) application. See Decision No. 6, slip op. at 3-4, 62 FR at 29388-89.

RESPONSIVE (INCLUDING INCONSISTENT) APPLICATIONS, COMMENTS, PROTESTS, REQUESTS FOR CONDITIONS, AND OTHER OPPOSITION EVIDENCE AND ARGUMENT. Any interested persons, including the U.S. Secretary of Transportation and the U.S. Attorney General, may file written comments, protests, requests for conditions, and any other opposition evidence and argument, and/or responsive (including inconsistent) applications, no later than October 21, 1997. This deadline applies to comments, etc., addressing either the primary application or any of the related filings submitted with the primary application. An original and 25 copies of such comments, etc., must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, ATTN.: STB Finance Docket No. 33388, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, as previously noted, parties are also requested to submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

Written comments, etc., must be concurrently served by first class mail on the U.S. Secretary of Transportation, the U.S. Attorney General, Judge Leventhal, applicants' representatives, and all other parties of record.

Written comments, etc., shall include: (1) the docket number and title of the proceeding; (2) the name, address, and telephone number of the commenting party and its representative upon whom service shall be made; (3) the commenting party's position, i.e., whether it supports or opposes the proposed transaction; (4) a list of any specific protective conditions sought; and (5) an analysis of the issues with particular attention to our general policy statement for the merger or control of at least two Class I railroads (49 CFR 1180.1), the statutory criteria (49 U.S.C. 11324), and antitrust policy.

Protesting parties are advised that, if they seek either the denial of the primary application or the imposition of conditions upon any approval thereof, on the theory that approval without imposition of conditions will harm either their ability to provide essential services and/or competition, they must present substantial evidence in support of their positions. See *Lamoille Valley R.R. Co. v. ICC*, 711 F.2d 295 (D.C. Cir. 1983).

OTHER DATES. The procedural schedule adopted in Decision No. 6 further provides: (1) that rebuttal in support of the primary application, or in support of any of the related filings, must be filed by December 15, 1997; (2) that responses to any responsive (including inconsistent) applications, as well as responses to all comments, protests, requests for conditions, and other opposition evidence and argument, must also be filed by December 15, 1997; (3) that rebuttal in support of any responsive (including inconsistent) applications must be filed by January 14, 1998; (4) that briefs may be filed by February 23, 1998; (5) that oral argument will be heard on April 9, 1998; (6) that, at the discretion of the Board, a voting conference will be held on April 14, 1998; and (7) that the final written decision, addressing the primary application and the related filings, and also addressing any responsive (including inconsistent) applications, will be served on June 8, 1998.

DATES RESPECTING ABANDONMENTS. We will process the abandonments proposed by applicants in accordance with the overall procedural schedule, rather than applying the procedural schedules

required by 49 U.S.C. 10904 and our 49 CFR part 1152 abandonment regulations.³³ Therefore, with respect to each related abandonment proposal: (1) in order to be designated a party of record (POR), a person must file with the Secretary of the Board, no later than August 7, 1997, an original plus 25 copies of a notice of intent to participate along with a certificate of service indicating that the notice has been properly served on Judge Leventhal and on applicants' representatives; (2) opposition submissions, requests for public use conditions,³⁴ and/or Trails Act requests³⁵ must be filed by October 21, 1997; (3) rebuttal in support of the abandonment proposals, and/or responses to any requests for public use conditions and Trails Act requests, must be filed by December 15, 1997; (4) as with the primary application and all related matters, briefs may be filed by February 23, 1998, oral argument will be held on April 9, 1998, and a voting conference will be held, at the Board's discretion, on April 14, 1998; and (5) if, in the final decision served on June 8, 1998, we approve the primary application, we shall also address, in that final decision, each of the abandonment proposals, and all matters (including requests for public use conditions and Trails Act requests) relative thereto; and if we exempt any of the abandonment proposals, we shall require interested persons to file, no later than 10 days after the date of service of the final decision, offers of financial assistance³⁶ with respect to any of the exempted abandonments.

DISCOVERY. In Decision No. 1, served April 16, 1997, this proceeding was assigned to Judge Leventhal for the handling of all discovery matters and the initial resolution of all discovery disputes. In Decision No. 10, served June 27, 1997, Judge Leventhal adopted discovery guidelines to govern the conduct of discovery in this proceeding.

DEADLINES APPLICABLE TO APPEALS AND REPLIES. As noted in Decision No. 6, slip op. at 7, 62 FR at 29390: any appeal to a decision issued by Judge Leventhal must be filed within 3 working days of the date of his decision; any response to any such appeal must be filed within 3 working days of the date of filing of the appeal; and any reply to any motion filed with the Board itself in the first instance must be filed within 3 working days of the date of filing of the motion.

ENVIRONMENTAL REVIEW PROCESS: SCOPE. By notice served July 3, 1997, and published in the *Federal Register* on July 7, 1997, at 62 FR 36332, the Board's Section of Environmental Analysis (SEA): (a) provided notice to interested persons that, to evaluate and consider the potential environmental impacts that may result from the transactions proposed in the primary application and in the related filings, SEA intends to prepare an environmental impact statement (EIS); (b) set out the draft scope of the EIS that SEA intends to prepare; (c) directed that written comments respecting the draft scope be filed by August 6, 1997; and (d) set forth projected time frames for conducting the EIS process.

³³ All references herein to our 49 CFR part 1152 abandonment regulations are to our new regulations, which took effect on January 23, 1997. See *Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903*, STB Ex Parte No. 537, 61 FR 67876 (Dec. 24, 1996), 62 FR 34669 (June 27, 1997).

³⁴ See 49 CFR 1152.28 (61 FR at 67894).

³⁵ See 49 CFR 1152.29 (61 FR at 67894-96).

³⁶ See 49 CFR 1152.27 (61 FR at 67891-94).

ELECTRONIC SUBMISSIONS. In addition to submitting an original and 25 paper copies of each document filed with the Board, parties are also requested to submit, on diskettes (3.5-inch IBM-compatible floppies) or compact discs, one electronic copy of each such document. Textual materials must be in, or convertible into, WordPerfect 7.0. Spreadsheets must be in, or convertible into, Lotus 1-2-3 Version 7.³⁷ Each diskette or compact disc should be clearly labeled with the identification acronym and number of the corresponding paper document, *see* 49 CFR 1180.4(a)(2), and a copy of such diskette or compact disc should be provided to any other party upon request. The data contained on the diskettes and compact discs submitted to the Board will be subject to the protective order granted in Decision No. 1, served April 16, 1997 (as modified in Decision No. 4, served May 2, 1997), and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.³⁸

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

It is ordered:

1. The primary application in STB Finance Docket No. 33388, and the related filings in the various embraced dockets listed in Appendix A, are accepted for consideration.
2. The parties shall comply with the procedural requirements described in this decision.
3. Any appeal to a decision issued by Judge Leventhal must be filed within 3 working days of the date of his decision, and any response to any such appeal must be filed within 3 working days of the date of filing of the appeal.
4. Any reply to any motion filed with the Board itself in the first instance must be filed within 3 working days of the date of filing of the motion.

³⁷ Parties intending to submit spreadsheets in formats other than Lotus 1-2-3 Version 7 may wish to consult with our staff regarding such submissions. Some (though not all) spreadsheets prepared in other formats, though perhaps not convertible into Lotus 1-2-3 Version 7, may nevertheless be useable by our staff. For further information, contact Julia M. Farr, (202) 565-1613.

³⁸ The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. *See* 49 CFR 1104.3(a), as amended in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, STB Ex Parte No. 527, 61 FR 52710, 52711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).

5. This decision is effective on July 23, 1997.

Decided: July 15, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,
Secretary

STB FD 33388 12-12-97 K 28629V5C 5/6

APPENDIX A: EMBRACED PROCEEDINGS

This decision covers both the STB Finance Docket No. 33388 lead proceeding and the following embraced proceedings:

STB Finance Docket No. 33388 (Sub-No. 1), *CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Crestline, OH;*

STB Finance Docket No. 33388 (Sub-No. 2), *CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Willow Creek, IN;*

STB Finance Docket No. 33388 (Sub-No. 3), *CSX Transportation, Inc.--Construction and Operation Exemption--Connection Tracks at Greenwich, OH;*

STB Finance Docket No. 33388 (Sub-No. 4), *CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Sidney Junction, OH;*

STB Finance Docket No. 33388 (Sub-No. 5), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Union Pacific Railroad Company at Sidney, IL;*

STB Finance Docket No. 33388 (Sub-No. 6), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Alexandria, IN;*

STB Finance Docket No. 33388 (Sub-No. 7), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Bucyrus, OH;*

STB Finance Docket No. 33388 (Sub-No. 8), *CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Little Ferry, NJ;*

STB Finance Docket No. 33388 (Sub-No. 9), *CSX Transportation, Inc. and The Baltimore and Ohio Chicago Terminal Railroad Company--Construction and Operation Exemption--Connection Track at 75th Street SW, Chicago, IL;*

STB Finance Docket No. 33388 (Sub-No. 10), *CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Exermont, IL;*

STB Finance Docket No. 33388 (Sub-No. 11), *CSX Transportation, Inc. and The Baltimore and Ohio Chicago Terminal Railroad Company--Construction and Operation Exemption--Connection Track at Lincoln Avenue, Chicago, IL;*

STB Finance Docket No. 33388 (Sub-No. 12), *Norfolk Southern Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Kankakee, IL;*

STB Finance Docket No. 33388 (Sub-No. 13), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Illinois Central Railroad Company at Tolono, IL;*

STB Finance Docket No. 33388 (Sub-No. 14), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Butler, IN;*

STB Finance Docket No. 33388 (Sub-No. 15), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Tolleston, IN;*

STB Finance Docket No. 33388 (Sub-No. 16), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Hagerstown, MD;*

STB Finance Docket No. 33388 (Sub-No. 17), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Ecorse Junction (Detroit), MI;*

STB Finance Docket No. 33388 (Sub-No. 18), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Blasdel (Buffalo), NY;*

STB Finance Docket No. 33388 (Sub-No. 19), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Gardenville Junction (Buffalo), NY;*

STB Finance Docket No. 33388 (Sub-No. 20), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Columbus, OH;*

STB Finance Docket No. 33388 (Sub-No. 21), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Oak Harbor, OH;*

STB Finance Docket No. 33388 (Sub-No. 22), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Vermilion, OH;*

STB Finance Docket No. 33388 (Sub-No. 23), *Norfolk and Western Railway Company--Joint Relocation Project Exemption--Over CSX Transportation, Inc. (Currently Consolidated Rail Corporation) at Erie, PA;*

STB Finance Docket No. 33388 (Sub-No. 24), *Consolidated Rail Corporation--Acquisition Exemption--Line Between Fort Wayne, IN, and Tolleston (Gary), IN;*

STB Finance Docket No. 33388 (Sub-No. 25), *Norfolk and Western Railway Company--Trackage Rights Exemption--CSX Transportation, Inc.;*

STB Finance Docket No. 33388 (Sub-No. 26), *CSX Corporation and CSX Transportation, Inc.--Control--The Lakefront Dock and Railroad Terminal Company;*

STB Finance Docket No. 33388 (Sub-No. 27), *Norfolk and Western Railway Company--Trackage Rights Exemption--CSX Transportation, Inc.;*

STB Finance Docket No. 33388 (Sub-No. 28), *CSX Transportation, Inc.--Trackage Rights Exemption--Norfolk and Western Railway Company;*

STB Finance Docket No. 33388 (Sub-No. 29), *CSX Transportation, Inc.--Trackage Rights Exemption--Norfolk and Western Railway Company*;

STB Finance Docket No. 33388 (Sub-No. 30), *Norfolk and Western Railway Company--Trackage Rights Exemption--CSX Transportation, Inc.*;

STB Finance Docket No. 33388 (Sub-No. 31), *CSX Corporation and CSX Transportation, Inc.--Control Exemption--Albany Port Railroad Corporation*;

STB Finance Docket No. 33388 (Sub-No. 32), *Norfolk and Western Railway Company--Trackage Rights Exemption--The Baltimore and Ohio Chicago Terminal Railroad Company*;

STB Finance Docket No. 33388 (Sub-No. 33), *Norfolk and Western Railway Company--Trackage Rights Exemption--The Baltimore and Ohio Chicago Terminal Railroad Company*;

STB Finance Docket No. 33388 (Sub-No. 34), *CSX Transportation, Inc.--Trackage Rights Exemption--Norfolk and Western Railway Company*;

STB Docket No. AB-167 (Sub-No. 1181X), *Consolidated Rail Corporation--Abandonment Exemption--In Edgar and Vermilion Counties, IL*;

STB Docket No. AB-55 (Sub-No. 551X), *CSX Transportation, Inc.--Abandonment Exemption--In Edgar and Vermilion Counties, IL*;

STB Docket No. AB-290 (Sub-No. 194X), *Norfolk and Western Railway Company--Abandonment Exemption--Between South Bend and Dillon Junction in St. Joseph and La Porte Counties, IN*;

STB Docket No. AB-290 (Sub-No. 195X), *Norfolk and Western Railway Company--Abandonment Exemption--Between Dillon Junction and Michigan City in La Porte County, IN*;

STB Docket No. AB-290 (Sub-No. 196X), *Norfolk and Western Railway Company--Abandonment Exemption--Between Toledo and Maumee in Lucas County, OH*; and

STB Docket No. AB-290 (Sub-No. 197X), *Norfolk and Western Railway Company--Abandonment Exemption--Toledo Pivot Bridge in Lucas County, OH*.

APPENDIX B: PROCEDURAL SCHEDULE

May 16, 1997	Preliminary Environmental Report filed.
June 23, 1997	Primary application and related filings filed. Environmental Report filed.
July 23, 1997	Publication in the <i>Federal Register</i> , by this date, of: notice of acceptance of primary application and related filings; and notice of the five related abandonment filings.
August 6, 1997	Comments on the draft scope of the Environmental Impact Statement due. ³⁹
August 7, 1997	Notice of intent to participate in proceeding due.
August 22, 1997	Description of anticipated responsive (including inconsistent) applications due; petitions for waiver or clarification due with respect to such applications.
September 5, 1997	Preliminary Draft Environmental Assessments for the construction projects referenced in Decision No. 9 due.
October 1, 1997	Responsive Environmental Report and Environmental Verified Statements of responsive (including inconsistent) applicants due.
October 21, 1997	Responsive (including inconsistent) applications due. All comments, protests, and requests for conditions, and any other opposition evidence and argument, due. ⁴⁰ Comments of the U.S. Secretary of Transportation and the U.S. Attorney General due. With respect to all related abandonments: opposition submissions, requests for public use conditions, and Trails Act requests due.
November 20, 1997	Notice of acceptance (if required) of responsive (including inconsistent) applications published in the <i>Federal Register</i> .
December 15, 1997	Response to responsive (including inconsistent) applications due. Response to comments, protests, requested conditions, and other opposition evidence and argument due. Rebuttal in support of primary application and related filings due. With respect to

³⁹ See the notice served July 3, 1997, and published in the *Federal Register* on July 7, 1997, at 62 FR 36332. As indicated in that notice, slip op. at 3, 62 FR at 36333, it is not necessary to be a party of record to file comments on the draft scope of the EIS and/or to participate in the environmental review process.

⁴⁰ As indicated in the notice published in the *Federal Register* on July 11, 1997 (62 FR 37331), petitions for reconsideration with respect to the physical construction of the Crestline connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 1) embraced docket, and/or operation thereover by CSXT, are due by July 31, 1997. As indicated in the notices published in the *Federal Register* concurrently herewith, comments respecting the physical construction of the Willow Creek, Greenwich, Sidney Junction, Sidney, Alexandria, and Bucyrus connection tracks, as proposed in the STB Finance Docket No. 33388 (Sub-Nos. 2, 3, 4, 5, 6, and 7) embraced dockets, respectively, and/or operation thereover by applicants, are due by August 22, 1997.

all related abandonments: rebuttal due; and responses to requests for public use and Trails Act conditions due.

January 14, 1998 Rebuttal in support of responsive (including inconsistent) applications due.

February 23, 1998 Briefs due, all parties (not to exceed 50 pages).

April 9, 1998 Oral argument (close of record).

April 14, 1998 Voting conference (at Board's discretion).

June 8, 1998 Date of service of final decision.

With respect to any exempted abandonments: offers of financial assistance may be filed no later than 10 days after the date of service of the final decision.

NOTES: Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for discovery depositions. Access to documents, subject to protective order, will be appropriately restricted. Parties seeking discovery depositions may proceed by agreement. Discovery on responsive (including inconsistent) applications will begin immediately upon their filing.

STB Finance Docket No. 33388
Board Decision No. 52

SERVICE DATE - LATE RELEASE NOVEMBER 3, 1997

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. 52

Decided: November 3, 1997

As requested by the United States Department of Transportation (DOT) in its filing on October 21, 1997, in this proceeding (DOT-3) at pages 4-6, we have decided to require Applicants¹ to prepare Safety Integration Plans (SIPs) that address the concerns set forth in the verified statement of Edward R. English included with DOT's submission. That verified statement and Applicants' SIPs will be made a part of the environmental record and dealt with through the environmental review process. This is consistent with the Board's practice of treating safety matters in its environmental review of the proposals that come before it. We anticipate that DOT, as well as other interested parties, will analyze the Applicants' SIPs and give us the benefit of their views on the adequacy of Applicants' plans.

Specifically, we will require Applicants to file these SIPs with the Board 30 days from the date of service of this decision. These SIPs will be incorporated as a separate section of the Draft Environmental Impact Statement (EIS) to facilitate participation by commenters desiring to address only the adequacy of Applicants' SIPs. To accommodate inclusion of this material in the Draft EIS, and because of the late receipt of information necessary to prepare a sufficiently complete Draft EIS (e.g., receipt of the Errata and Supplemental Environmental Report approximately 9 weeks after the filing of the Application and Environmental Report), service of

¹ CSX Corporation (CSXC) and CSX Transportation, Inc. (CSXT) are referred to collectively as CSX. Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NSR) are referred to collectively as NS. Conrail Inc. (CRI) and Consolidated Rail Corporation (CRC) are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as Applicants.

the Draft EIS, which had been scheduled for November, will not occur until the latter part of December. The 45 day period for comment on the Draft EIS will commence upon the service of the Draft EIS. We anticipate that the comment period will end in early February. Given the additional time required to issue the Draft EIS with the SIPs, we must extend the time accordingly for our Section of Environmental Analysis (SEA) to complete the EIS process and to ensure that the Board has adequate time to consider fully the environmental record in arriving at its decision in this proceeding. As a result, the Final EIS, which had been scheduled for service in early April 1998, will now be served in May of 1998.

These changes, in turn, will require the following modifications to our overall schedule for processing the applications as set forth in Decision Nos. 6 and 12 in this proceeding.^{*} Oral argument will now be held on June 4, 1998, to be followed by a voting conference on June 8, 1998. Our final written decision will be served on Thursday, July 23, 1998. The remainder of the current procedural schedule, including the date for filing the parties' briefs will not be affected.

We recognize that our decision today results in extending the previously established schedule by 45 days. However, we have concluded that this delay is necessary to permit us to give safety concerns full consideration as warranted by this proceeding.

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

It is ordered:

1. Applicants CSX and NS, and Conrail, to the extent it will be responsible for operation in the Shared Assets Areas, shall file Safety Integration Plans in conformity with the request of the United States Department of Transportation in DOT-3 in this proceeding, as more

^{*} Served on May 30, 1997, and on July 23, 1997, respectively.

specifically detailed in the verified statement of Edward R. English, within 30 days of the date of service of this order.

2. Responses to Applicants' SIPs shall be made as comments to the Draft EIS, which will be served by the end of the year. Comments on the Draft EIS will be due 45 days from the date of service of that document.

3. Oral Argument will be held on June 4, 1998.

4. The Board will hold a voting conference on June 8, 1998.

5. The final written decision will be served on July 23, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams

Secretary

STB Finance Docket No. 33388
Board Decision No. 54

28554
EB

SERVICE DATE - NOVEMBER 20, 1997

SURFACE TRANSPORTATION BOARD

DECISION

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

STB Finance Docket No. 33388 (Sub-No. 35)

RESPONSIVE APPLICATION--NEW YORK STATE ELECTRIC AND GAS CORPORATION

STB Finance Docket No. 33388 (Sub-No. 36)

RESPONSIVE APPLICATION--ELGIN, JOLIET & EASTERN RAILWAY COMPANY, TRANSTAR, INC., AND I & M RAIL LINK, LLC

STB Finance Docket No. 33388 (Sub-No. 39)

RESPONSIVE APPLICATION--LIVONIA, AVON & LAKEVILLE RAILROAD CORPORATION

STB Finance Docket No. 33388 (Sub-No. 59)

RESPONSIVE APPLICATION--WISCONSIN CENTRAL LTD.

STB Finance Docket No. 33388 (Sub-No. 61)

RESPONSIVE APPLICATION--BESSEMER AND LAKE ERIE RAILROAD COMPANY

STB Finance Docket No. 33388 (Sub-No. 62)

RESPONSIVE APPLICATION--ILLINOIS CENTRAL RAILROAD COMPANY

STB Finance Docket No. 33388 (Sub-No. 63)

RESPONSIVE APPLICATION--R.J. CORMAN RAILROAD COMPANY/WESTERN OHIO LINE

STB Finance Docket No. 33388

STB Finance Docket No. 33388 (Sub-No. 69)

RESPONSIVE APPLICATION--STATE OF NEW YORK, BY AND THROUGH ITS
DEPARTMENT OF TRANSPORTATION, AND THE NEW YORK CITY ECONOMIC
DEVELOPMENT CORPORATION

STB Finance Docket No. 33388 (Sub-No. 72)

RESPONSIVE APPLICATION--THE BELVIDERE & DELAWARE RIVER RAILWAY AND
THE BLACK RIVER & WESTERN RAILROAD

STB Finance Docket No. 33388 (Sub-No. 75)

RESPONSIVE APPLICATION--NEW ENGLAND CENTRAL RAILROAD, INC.

STB Finance Docket No. 33388 (Sub-No. 76)

RESPONSIVE APPLICATION--INDIANA SOUTHERN RAILROAD, INC.

STB Finance Docket No. 33388 (Sub-No. 77)

RESPONSIVE APPLICATION--INDIANA & OHIO RAILWAY COMPANY

STB Finance Docket No. 33388 (Sub-No. 78)

RESPONSIVE APPLICATION--ANN ARBOR ACQUISITION CORPORATION, D/B/A
ANN ARBOR RAILROAD

STB Finance Docket No. 33388 (Sub-No. 80)

RESPONSIVE APPLICATION--WHEELING & LAKE ERIE RAILWAY COMPANY

STB Finance Docket No. 33388 (Sub-No. 81)

RESPONSIVE APPLICATION--CANADIAN NATIONAL RAILWAY COMPANY AND
GRAND TRUNK WESTERN RAILROAD INCORPORATED

STB Finance Docket No. 33388 (Sub-No. 83)

GRAND TRUNK WESTERN RAILROAD INCORPORATED--CONSTRUCTION AND
OPERATION EXEMPTION--CONNECTING TRACKS AT TRENTON, MI

DECISION NO. 54

AGENCY: Surface Transportation Board.

ACTION: Decision No. 54; Notice of Acceptance of Responsive Applications and Related Filing.

SUMMARY: The Board is accepting for consideration the responsive applications filed: by New York State Electric and Gas Corporation (NYSEG) in STB Finance Docket No. 33388 (Sub-No. 35); jointly by Elgin, Joliet & Eastern Railway Company, Transtar, Inc., and I & M Rail Link, LLC, in STB Finance Docket No. 33388 (Sub-No. 36);¹ by Livonia, Avon & Lakeville Railroad Corporation (LAL) in STB Finance Docket No. 33388 (Sub-No. 39); by Wisconsin Central Ltd. (WCL) in STB Finance Docket No. 33388 (Sub-No. 59); by Bessemer and Lake Erie Railroad Company (BLE) in STB Finance Docket No. 33388 (Sub-No. 61); by Illinois Central Railroad Company (IC) in STB Finance Docket No. 33388 (Sub-No. 62); by R.J. Corman Railroad Company/Western Ohio Line (RJCW) in STB Finance Docket No. 33388 (Sub-No. 63); jointly by (i) the State of New York, acting by and through its Department of Transportation (NYDOT), and (ii) the New York City Economic Development Corporation (NYCEDC) in STB Finance Docket No. 33388 (Sub-No. 69);² jointly by the Belvidere & Delaware River Railway (BDRV) and the Black River & Western Railroad (BRW) in STB Finance Docket No. 33388 (Sub-No. 72); by New England Central Railroad, Inc. (NECR), in STB Finance Docket No. 33388 (Sub-No. 75); by Indiana Southern Railroad, Inc. (ISRR), in STB Finance Docket No. 33388 (Sub-No. 76); by Indiana & Ohio Railway Company (IORY) in STB Finance Docket No. 33388 (Sub-No. 77); by Ann Arbor Acquisition Corporation, d/b/a Ann Arbor Railroad (AA), in STB Finance Docket No. 33388 (Sub-No. 78); by Wheeling & Lake Erie Railway Company (W&LE) in STB Finance Docket No. 33388 (Sub-No. 80); and jointly by Canadian National Railway Company (CN) and Grand Trunk Western Railroad Incorporated (GTW) in STB Finance Docket No. 33388 (Sub-No. 81). The Board is also accepting for consideration the notice of exemption filed by GTW in STB Finance Docket No. 33388 (Sub-No. 83). The responsive applications filed in STB Finance Docket No. 33388 (Sub-

¹ Elgin, Joliet & Eastern Railway Company and Transtar, Inc. are referred to collectively as EJE. I & M Rail Link, LLC is referred to as IMRL.

² The responsive application filed jointly by NYDOT and NYCEDC purports to be filed both in STB Finance Docket No. 33388 (Sub-No. 69) (this being the sub-number docket reserved by NYDOT) and in STB Finance Docket No. 33388 (Sub-No. 54) (this being the sub-number docket reserved by NYCEDC). Although there are two responsive applicants there is only one responsive application, and we will treat this single application as if it had been filed in STB Finance Docket No. 33388 (Sub-No. 69) only.

Nos. 35, 36, 39, 59, 61, 62, 63, 69, 72, 75, 76, 77, 78, 80, and 81) are responsive to the primary application filed June 23, 1997, in STB Finance Docket No. 33388 by CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRR), and Consolidated Rail Corporation (CRC).³ The notice of exemption filed in STB Finance Docket No. 33388 (Sub-No. 83) is related to the responsive application filed in STB Finance Docket No. 33388 (Sub-No. 81).⁴

DATES: The effective date of this decision is November 20, 1997. Comments regarding the responsive filings must be filed with the Board by December 15, 1997. Rebuttal in support of these responsive filings must be filed with the Board by January 14, 1998. Briefs (not to exceed 50 pages) must be filed with the Board by February 23, 1998.

ADDRESSES: An original and 25 copies of all comments referring to STB Finance Docket No. 33388 (Sub-No. 35), STB Finance Docket No. 33388 (Sub-No. 36), STB Finance Docket No. 33388 (Sub-No. 39), STB Finance Docket No. 33388 (Sub-No. 59), STB Finance Docket No. 33388 (Sub-No. 61), STB Finance Docket No. 33388 (Sub-No. 62), STB Finance Docket No. 33388 (Sub-No. 63), STB Finance Docket No. 33388 (Sub-No. 69), STB Finance Docket No. 33388 (Sub-No. 72), STB Finance Docket No. 33388 (Sub-No. 75), STB Finance Docket No. 33388 (Sub-No. 76), STB Finance Docket No. 33388 (Sub-No. 77), STB Finance Docket No. 33388 (Sub-No. 78), STB Finance Docket No. 33388 (Sub-No. 80), STB Finance Docket No. 33388 (Sub-No. 81), and/or STB Finance Docket No. 33388 (Sub-No. 83) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, ATTN.: STB Finance Docket No. 33388, 1925 K Street, N.W., Washington, DC 20423-0001.⁵

³ CSXC and CSXT, and their wholly owned subsidiaries, are referred to collectively as CSX. NSC and NSR, and their wholly owned subsidiaries, are referred to collectively as NS. CRR and CRC, and their wholly owned subsidiaries, are referred to collectively as Conrail or CR. CSX, NS, and Conrail are referred to collectively as the primary applicants.

⁴ The responsive applications filed in STB Finance Docket No. 33388 (Sub-Nos. 35, 36, 39, 59, 61, 62, 63, 69, 72, 75, 76, 77, 78, 80, and 81) and the notice of exemption filed in STB Finance Docket No. 33388 (Sub-No. 83) are hereinafter referred to collectively as the "responsive filings."

⁵ In order for a document to be considered a formal filing, the Board must receive an original and 25 copies of the document, which must show that it has been properly served on all other parties of record. Documents transmitted by facsimile (FAX) will not be considered formal filings and are not encouraged because they will result in unnecessarily burdensome, duplicative processing in what has already become a voluminous record.

In addition to submitting an original and 25 paper copies of each document filed with the Board, parties are also requested to submit one electronic copy of each such document. Further details respecting such electronic submissions are provided below.

In addition, one copy of each document filed in these proceedings must be served on: the U.S. Secretary of Transportation; the U.S. Attorney General; Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426; Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, DC 20004-1202 (representing primary applicants CSXC and CSXT); Richard A. Allen, Esq., Zuckert, Scoutt & Rasenberger, LLP, Suite 600, 888 Seventeenth Street, N.W., Washington, DC 20006-3939 (representing primary applicants NSC and NSR); and Paul A. Cunningham, Esq., Harkins Cunningham, Suite 600, 1300 Nineteenth Street, N.W., Washington, DC 20036 (representing primary applicants CRR and CRC).

In addition, one copy of all comments filed in these proceedings must be served on the appropriate responsive applicant's representative: William A. Mullins, Esq., Troutman Sanders LLP, 1300 I Street, N.W., Suite 500 East, Washington, D.C. 20005-3314 (representing NYSEG); Thomas J. Litwiler, Esq., Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601-6710 (representing EJE, IMRL, BLE, IC, and WCL); Kevin M. Sheys, Esq., Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, N.W., Suite 400, Washington, DC 20036-6200 (representing LAL and RJCW); William L. Slover, Esq., Slover & Loftus, 1224 Seventeenth Street, NW, Washington, DC 20036-3003 (representing NYDOT); Charles A. Spitulnik, Esq., Hopkins & Sutter, 888 Sixteenth Street, NW, Washington, DC 20006 (representing NYCEDC); Peter A. Greene, Esq., Thompson Hine & Flory LLP, 1920 N Street, N.W., Suite 800, Washington, DC 20036 (representing BDRV and BRW); Karl Morell, Esq., Ball Janik LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005 (representing NECR, ISRR, IORY, and AA); Charles H. White, Jr., Esq., Galland, Kharasch & Garfinkle, P.C., 1054 Thirty-First Street, N.W., Washington, DC 20007-4492 (representing W&LE); and L. John Osborn, Sonnenschein Nath & Rosenthal, 1301 K Street, N.W., Suite 600 East, Washington, DC 20005 (representing CN and GTW).

In addition, one copy of all documents filed in these proceedings must be served on all other persons designated parties of record on the Board's service list in STB Finance Docket No. 33388. See the service list attached to Decision No. 21 (served August 19, 1997), as modified in Decision No. 27 (served September 8, 1997), and as further modified in Decision No. 43 (served October 7, 1997).⁶

⁶ Members of the United States Congress and Governors are not parties of record and therefore need not be served with copies of filings, unless any such Member or Governor is designated as a party of record. See Decision No. 12 (served July 23, 1997, and published that (continued...)

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565-1613. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: In the primary application filed with the Board on June 23, 1997, primary applicants CSXC, CSXT, NSC, NSR, CRR, and CRC seek approval and authorization under 49 U.S.C. 11321-25 for: (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of the assets of Conrail by and between CSX and NS. In various related filings also filed June 23, 1997, the primary applicants seek related relief contingent upon approval of the primary application. In Decision No. 12, the Board accepted for consideration the primary application and the various related filings, and directed that responsive applications be filed by October 21, 1997.

RESPONSIVE FILINGS: CONDITIONS REQUESTED. In STB Finance Docket No. 33388 (Sub-No. 35), NYSEG seeks: (1) on behalf of NSR,⁷ or a third-party carrier suitable to NYSEG, trackage rights over the CRC lines between Buffalo, NY, and NYSEG's Kintigh Station; specifically, from the Niagara Branch MP 19.0 (CP-21)⁸ to the Tuscarora Wye, for approximately 4,200 feet, to Lockport Branch MP 69.6 (CP-69) to the connection with Somerset Railroad Corporation at Lockport Branch MP 58.8 (CP-59) (a total distance of approximately 11.2 miles);⁹ or (2) on behalf of CSXT, or a third-party carrier suitable to NYSEG, trackage rights over the CRC lines between Buffalo, NY, and NYSEG's Milliken, Goudey, and Greenidge plants; specifically, from Chicago Line MP 1.7 (CP-DRAW) over the Bison Running

⁶(...continued)

day in the Federal Register at 62 FR 39577), slip op. at 19, 62 FR at 39588.

⁷ If exercised by NSR, modification of NSR's trackage rights over CSXT and New York Central Lines LLC (NYC), as shown on pp. 220-52 and 329-35 of Volume 8B of the primary application, would also be required to eliminate any restrictions contained therein that would prevent transportation to NYSEG's Kintigh Station, including, but not confined to, limitations against interchanging with, or operating over, property of Somerset Railroad Corporation.

⁸ Milepost is abbreviated MP. Control point is abbreviated CP.

⁹ If exercised by a third-party carrier, these rights would include full access over: The Chicago Line between CP-2 and FW Tower (CP-437) and the Belt Line Branch owned by NYC and operated by CSX between the connection at FW Tower (CP-437), Buffalo, NY, at or near MP 0.0, and the connection with the Niagara Branch (CP-1) at or near MP 7.2, and the Niagara Branch operated by CSX between the connection with the Belt Line Branch, at or near MP 7.5, "and to" Tuscarora Wye to CP-69 at MP 69.6 of the Lockport Branch to MP 58.8 (CP-59) and connection track to MP 0.0 of the Somerset Railroad Corporation. This would cover a total distance of approximately 33.2 miles.

Track to Southern Tier Line MP 419.8 to Binghamton MP 215.3 including Binghamton Running Track and #4 Yard Track with connections to: Vestal Industrial Track; on Vestal Industrial Track from MP 192.3 to MP 195.4; and connections to Lehigh Secondary at Southern Tier MP 255.2, Lehigh Secondary Track MP 269.5 to 271.6 and connection to Ithaca Secondary; Ithaca Secondary from MP 271.6 to the end of line at Milliken Station MP 321.0; connections to Corning Secondary at Southern Tier Line MP 290.1 and 290.8, Corning Secondary from MP 70.6 (CP-Glass) and MP 70.9 (GP - Gibson/CP-Corning) to MP 0 (CP-335), including sidings, runarounds, and passing tracks (a total distance of approximately 333.4 miles).

In STB Finance Docket No. 33388 (Sub-No. 36), EJE and IMRL seek to acquire, and thereafter to divide into two equal parts, CRC's 51% stock ownership of the Indiana Harbor Belt Railroad Company (IHB).

In STB Finance Docket No. 33388 (Sub-No. 39), LAL seeks to acquire ownership of or trackage rights on approximately 1.0 route mile of trackage constituting CRC's Genesee Junction yard in Chili, NY.

In STB Finance Docket No. 33388 (Sub-No. 59), WCL seeks to acquire from The Baltimore & Ohio Chicago Terminal Railroad Company (B&OCT, a wholly owned CSX subsidiary) a portion of B&OCT's Altenheim Subdivision, including rail line, side track, yard trackage, and associated right-of-way and appurtenances, beginning at a connection between WCL and B&OCT trackage at B&OCT MP 37.4 at Madison Street, Forest Park, IL, and extending to a point of connection with Union Pacific Railroad Company (UPRR) and Conrail's Panhandle Line in the vicinity of Rockwell Street, Chicago, IL.

In STB Finance Docket No. 33388 (Sub-No. 61), BLE seeks overhead trackage rights over: (1) CRC's Mon Line between the connection with BLE (Union Railroad Company, a BLE affiliate) at Pittsburgh (Duquesne), PA, and CRC's Shire Oaks Yard in Shire Oaks, PA (a distance of approximately 14 miles); and/or (2) CSXT's line (formerly the Pittsburgh & Lake Erie Railroad Company) between the connection with BLE (Union Railroad Company) at Bessemer (Pittsburgh), PA, and CSXT's Newell Interchange Yard near Brownsville, PA (a distance of approximately 40 miles). The overhead trackage rights sought by BLE would be restricted to the transportation of coal originating at current or future mines on the former Monongahela Railway Company lines and destined to the P&C Dock at Conneaut, OH, for movement beyond.

In STB Finance Docket No. 33388 (Sub-No. 62), IC seeks to acquire CSXT's Leewood-Aulon Line in Memphis, TN, which extends between CSXT MP F-371.4 (IC MP 387.9) at Leewood and CSXT MP F-373.4 (IC MP 390.0) at Aulon, a distance of approximately 2 miles.

In STB Finance Docket No. 33388 (Sub-No. 63), RJCW seeks to acquire ownership of or trackage rights on Conrail's line of railroad between approximately MP 54.4 and approximately MP 52.1 in Lima, OH.

In STB Finance Docket No. 33388 (Sub-No. 69), NYDOT and NYCEDC seek: (1) full service trackage rights in favor of a rail carrier other than Conrail or CSX, to be designated jointly by NYDOT and NYCEDC, over the lines of Conrail between points of connection with the Delaware & Hudson Railway (D&H) at CP-160 near Schenectady, NY, and Selkirk Yard near Selkirk, NY, on the one hand, and, on the other, CP-75 near Poughkeepsie, NY, together with sufficient rights on tracks within Selkirk Yard to permit the efficient interchange of freight with D&H; (2) full service trackage rights in favor of a rail carrier other than Conrail or CSX, to be designated jointly by NYDOT and NYCEDC, over the lines of Conrail between the point of Conrail ownership at Mott Haven Junction ("MO"), NY, and the point of connection with the lines of the Long Island Railroad near Fresh Pond ("MONT"), NY, via the Harlem River Yard; and (3) to the extent necessary to permit uninterrupted rail freight transportation between CP-160 and/or Selkirk Yard, on the one hand, and, on the other, Fresh Pond, a declaration that, pursuant to 49 U.S.C. 11321(a), Metro-North Commuter Railroad Company, a subsidiary of the Metropolitan Transportation Authority of the State of New York, may grant unrestricted trackage rights over the lines between CP-75 and Mott Haven Junction to a rail carrier other than Conrail or CSX, notwithstanding any provisions of any agreements which purport to limit or prohibit such a grant.

In STB Finance Docket No. 33388 (Sub-No. 72), BDRV and BRW seek: (1) removal of the restriction on certain D&H trackage rights that prevents interchange between D&H and BDRV at Phillipsburg, NJ, and between D&H and BRW at Three Bridges, NJ; (2) a grant of overhead trackage rights to BDRV over lines to be acquired by NS from Phillipsburg, NJ, to Manville, NJ (a distance of 40 miles), or to some other operationally feasible point at which BDRV and CSXT can interchange traffic; (3) a grant of overhead trackage rights to BRW over lines to be acquired by NS from Three Bridges, NJ, to Manville, NJ (a distance of 13 miles), or to some other operationally feasible point at which BRW and CSXT can interchange traffic; and (4) a grant of overhead trackage rights to BDRV and BRW over lines to be acquired by NS between the BDRV-NS connection at Phillipsburg, NJ, and the BRW-NS connection at Three Bridges, NJ (a distance of 29 miles).

In STB Finance Docket No. 33388 (Sub-No. 75), NECR seeks "limited trackage rights": (1) between Palmer, MA, and West Springfield, MA, a distance of 18 miles, over the CRC line to be acquired by CSXT; (2) between West Springfield, MA, on the one hand, and, on the other, Albany, Selkirk, and Mechanicville, NY, a distance of 98 miles, over the CRC line to be acquired by CSXT; and (3) between Albany, NY, and the New Jersey/New York Shared Assets

Area,¹⁰ a distance of 140 miles, over the CRC line located on the west side of the Hudson River that is to be acquired by CSXT.¹¹

In STB Finance Docket No. 33388 (Sub-No. 76), ISRR seeks: (1) overhead trackage rights in Indianapolis, IN, between MP 6.0 on ISRR's Petersburg Subdivision and Indianapolis Power & Light's Perry K facility, over the CRC line to be acquired by CSXT; (2) overhead trackage rights in Indianapolis, IN, between MP 6.0 on ISRR's Petersburg Subdivision and Indianapolis Power & Light's Stout facility located on the line of the Indiana Rail Road Company (INRD), over a segment of the CRC line to be acquired by CSXT and a segment of the INRD line; (3) local trackage rights over CRC's lines in Indianapolis, IN, including the Indianapolis Belt Line, to be acquired by CSXT (ISRR seeks trackage rights over all CRC lines in Indianapolis needed to access the 2-to-1 shippers located in Indianapolis); (4) local trackage rights between Indianapolis and Shelbyville, IN, a distance of 27 miles, over the CRC line to be acquired by CSXT; (5) local trackage rights between Indianapolis and Crawfordsville, IN, a distance of 44 miles, over the CRC line to be acquired by CSXT; and (6) local trackage rights between Indianapolis and Muncie, IN, a distance of 55 miles, over the CRC line to be acquired by CSXT.¹²

In STB Finance Docket No. 33388 (Sub-No. 77), IORY seeks: (1) overhead trackage rights over CSXT between East Norwood, OH, and Washington Court House, OH, a distance of 65 miles, with the right to connect at Midland City with IORY's Greenfield branch; (2) local trackage rights between Monroe, OH, and Middletown, OH, a distance of 5 miles, over the CRC line to be acquired by NSR (with the right to connect at Middletown with CSXT and IORY's existing trackage rights through Middletown over the CRC line between Springfield and Cincinnati); (3) local trackage rights between Sidney, OH, and Quincy, OH, a distance of 10 miles, over the CRC line to be acquired by CSXT; (4) local trackage rights between Sharronville, OH, and Columbus, OH, a distance of 125 miles, over the CRC line to be acquired by NSR; (5) local trackage rights between Quincy, OH, and Marion, OH, a distance of 52 miles, over the CRC line to be acquired by CSXT; (6) local trackage rights between Lima, OH, and

¹⁰ The "New Jersey/New York Shared Assets Area" is apparently the area that applicants refer to as the North Jersey Shared Assets Area.

¹¹ NECR's use of the term "limited trackage rights" is intended to include: (a) the right to operate trains over the lines described in the text; and (b) the right to interchange with all carriers, including shortlines, at all junctions on the lines thus described.

¹² ISRR's use of the term "local trackage rights" is intended to include: (a) the right to operate trains over the lines described in the text; (b) the right to interchange with all carriers, including shortlines, at all junctions on the lines thus described; and (c) the right to serve all shippers, sidings, and team tracks located on the lines thus described.

Fort Wayne, IN, a distance of 59 miles, over the CRC line to be acquired by CSXT; (7) local trackage rights over CRC's Erie track in Lima, OH; and (8) local trackage rights between Quincy, OH, and Marysville, OH, over the CRC line to be acquired by CSXT.¹³

In STB Finance Docket No. 33388 (Sub-No. 78), AA seeks: (1) "limited trackage rights" between Toledo, OH, and Chicago, IL, via Elkhart, IN, a distance of 230 miles, over the CRC line to be acquired by NS; and (2) a condition permitting AA to interchange traffic with CP Rail System at Ann Arbor, MI.¹⁴

In STB Finance Docket No. 33388 (Sub-No. 80), W&LE seeks: (1) haulage and trackage rights to Chicago, IL, including access to Belt Railway of Chicago and rights for interchange with all carriers, specifically including WCL;¹⁵ (2) haulage and trackage rights from Bellevue, OH, to Toledo, OH, a distance of 54 miles, for an interchange with the Ann Arbor Railroad, Canadian National, and the Indiana & Ohio Railroad (also including access to British Petroleum for movement of coke to Cressup, WV); (3) haulage and trackage rights to Erie, PA, with the right to interchange with other railroads; (4) the right "to lease to own" CRC's Randall Secondary from Cleveland, MP 2.5, to Mantua, MP 27.5; (5) the right "to lease to own" the Huron Branch (Shinrock to Huron) and Huron dock on Lake Erie; (6) haulage and trackage rights on CSX from Benwood to Brooklyn Junction and its yard facilities for commercial access to PPG and Bayer; (7) access on the Conrail Fort Wayne Line to the National Stone quarry near Bucyrus, via the Spore Industrial Track, a distance of 6.2 miles from CP Colsan, MP 200.5, on the Fort Wayne Line (access to the Fort Wayne line would be from the W&LE at CP Orr, MP 124, and from a point near Fairhope at MP 97.8); (8) trackage rights on the NS Sandusky District from Chatfield, OH, to Colsan, OH (for a junction with the Conrail Fort Wayne Line and access to the Spore Industrial Track); (9) access (apparently via trackage rights) to a stone quarry located on the Northern Ohio Railway at Maple Grove, via a junction on the NS Fostoria District at MP 269.4; (10) access (apparently via trackage rights over, among other lines, the former Conrail Akron Secondary) to the stone terminals in the Macedonia, Twinsburg, and Ravenna areas; (11) access, via haulage and trackage rights, to Wheeling Pittsburgh Steel at

¹³ IORY's use of the term "local trackage rights" is intended to include: (a) the right to operate trains over the lines described in the text; (b) the right to interchange with all carriers, including shortlines, at all junctions on the lines thus described; and (c) the right to serve all shippers, sidings, and team tracks located on the lines thus described.

¹⁴ AA's use of the term "limited trackage rights" is intended to include: (a) the right to operate trains over the line described in the text; and (b) the right to interchange with all carriers, including shortlines, at all junctions on the line thus described.

¹⁵ These rights would apparently run between Chicago, on the west, and Carey and/or Bellevue, OH, on the east.

Allenport, PA; and (12) access, via haulage and trackage rights on the CSX New Castle Subdivision, to the Ohio Edison Power plant at Niles, OH, and to Erie, PA, for interchange to the Buffalo & Pittsburgh. W&LE also requests that provision be made for an inclusion proceeding in the event that W&LE fails during a post-merger oversight period.¹⁶

In STB Finance Docket No. 33388 (Sub-No. 81), CN and GTW seek trackage rights over the Conrail northbound mainline between approximately MP 16.5 and MP 18.0 at Trenton, MI, a distance of approximately 1.5 miles, for the purpose of serving Detroit Edison's Trenton Channel power plant.

In STB Finance Docket No. 33388 (Sub-No. 83), GTW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Trenton, MI, a connection between the Conrail northbound mainline and the GTW Shoreline Subdivision.

RESPONSIVE FILINGS ACCEPTED. Because the responsive applications filed by NYSEG, EJE/IMRL, LAL, WCL, BLE, IC, RJCW, NYDOT/NYCEDC, BDRV/BRW, NECR, ISRR, IORY, AA, W&LE, and CN/GTW, and also the notice of exemption filed by GTW, are in substantial compliance with the applicable regulations, we are accepting for consideration such responsive applications and such notice of exemption.¹⁷

PUBLIC INSPECTION. The responsive filings are available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, N.W., in Washington, DC. The responsive filing made by any particular responsive applicant may also be obtained upon request from that applicant's representative named above.

PROCEEDINGS CONSOLIDATED. The responsive filings in STB Finance Docket No. 33388 (Sub-Nos. 35, 36, 39, 59, 61, 62, 63, 69, 72, 75, 76, 77, 78, 80, 81, and 83) are consolidated for disposition with the primary application in STB Finance Docket No. 33388 (and all embraced proceedings).

COMMENTS MAY BE SUBMITTED. Interested persons may participate formally by submitting written comments regarding any or all of these responsive filings, subject to the filing and service requirements specified above. Such comments (referred to as "Response[s]" in the procedural schedule, see Decision No. 12, slip op. at 26, 62 FR at 39591) must be filed with the

¹⁶ Various additional W&LE condition requests are scattered throughout the verified statements submitted by W&LE witnesses in the WLE-4 pleading filed October 21, 1997.

¹⁷ We reserve the right to require the filing of supplemental information from any responsive applicant or any other party or individual, if necessary to complete the record in this matter. See Decision No. 12, slip op. at 18 n.29, 62 FR at 39587 n.29.

Board by December 15, 1997. Comments must include the following: the commenter's position in support of or in opposition to the transaction proposed in the responsive filing; any and all evidence, including verified statements, in support of or in opposition to such proposed transaction; and specific reasons why approval of such proposed transaction would or would not be in the public interest.

REQUESTS FOR AFFIRMATIVE RELIEF WILL NOT BE ACCEPTED. Because the responsive applications accepted for consideration in this decision contain proposed conditions to approval of the primary application in STB Finance Docket No. 33388, the Board will entertain no requests for affirmative relief with respect to these responsive applications. Parties may only participate in direct support of or in direct opposition to these responsive applications as filed.

PLEADINGS NOT TREATED AS RESPONSIVE APPLICATIONS. A pleading styled as a "responsive application" was filed on October 21, 1997, in a sub-number docket (Sub-No. 74) under the STB Finance Docket No. 33388 lead docket by Congressman Dennis J. Kucinich. While titled as a responsive application, this pleading does not address the criteria for such applications as required under 49 CFR part 1180. Rather, this pleading constitutes a comment on, and a request for conditions with respect to, the CSX/NS/CR primary application, and we will treat it as such and will docket this pleading in the STB Finance Docket No. 33388 lead docket..

Certain additional pleadings styled as "responsive applications" were filed in the STB Finance Docket No. 33388 lead docket on or about October 21, 1997, by: Jacobs Industries Ltd.; the State of Delaware Department of Transportation; ASHTA Chemicals Inc.; Southern Tier West Regional Planning and Development Board; and Resources Warehousing & Consolidation Services, Inc. Because these pleadings also do not satisfy the 49 CFR part 1180 requirements applicable to responsive applications, we will treat these pleadings as comments on, and/or requests for conditions with respect to, the CSX/NS/CR primary application.

ADDITIONAL PLEADINGS TREATED AS FILED IN LEAD DOCKET. Certain additional pleadings filed on or about October 21, 1997, though not labeled "responsive applications," were filed in various sub-number dockets under the STB Finance Docket No. 33388 lead docket by: Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission (in Sub-No. 37); New Jersey Department of Transportation and New Jersey Transit Corporation (in Sub-No. 38); the Rhode Island Department of Transportation (in Sub-No. 42); Buffalo & Pittsburgh Railroad, Inc., Allegheny & Eastern Railroad, Inc., Rochester & Southern Railroad, Inc., and Pittsburgh & Shawmut Railroad, Inc. (in Sub-Nos. 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, and 56); the Eastern Shore Railroad, Inc. (in Sub-No. 57); Louisville & Indiana Railroad Company (in Sub-No. 64); Housatonic Railroad Company, Inc. (in Sub-No. 70); the Canadian Pacific Railway Company, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence

& Hudson Railway Company Limited (in Sub-No. 85); and the Commonwealth of Massachusetts (in Sub-No. 86). Because these pleadings contain comments on, and/or requests for conditions with respect to, the CSX/NS/CR primary application, they will be docketed in, and they will be treated as having been filed in, the STB Finance Docket No. 33388 lead docket.

ELECTRONIC SUBMISSIONS. In addition to submitting an original and 25 paper copies of each document filed with the Board, parties are also requested to submit, on diskettes (3.5-inch IBM-compatible floppies) or compact discs, one electronic copy of each such document. Textual materials must be in, or be convertible by and into, WordPerfect 7.0. Spreadsheets must be in, or be convertible by and into, Lotus 1-2-3 Version 7.¹⁸ Each diskette or compact disc should be clearly labeled with the identification acronym and number of the corresponding paper document, see 49 CFR 1180.4(a)(2), and a copy of such diskette or compact disc should be provided to any other party upon request. The data contained on the diskettes and compact discs submitted to the Board will be subject to the protective order applicable to this proceeding,¹⁹ and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.²⁰

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

It is ordered:

1. The responsive applications in STB Finance Docket No. 33388 (Sub-Nos. 35, 36, 39, 59, 61, 62, 63, 69, 72, 75, 76, 77, 78, 80, and 81), and the notice of exemption in STB Finance

¹⁸ Parties intending to submit spreadsheets in formats other than Lotus 1-2-3 Version 7 may wish to consult with our staff regarding such submissions. Some (though not all) spreadsheets prepared in other formats, though perhaps not convertible by and into Lotus 1-2-3 Version 7, may nevertheless be useable by our staff. For further information, contact Julia M. Farr, (202) 565-1613.

¹⁹ The protective order governing this proceeding was entered in Decision No. 1 (served April 16, 1997), and has been modified, in minor respects, in Decision Nos. 4, 15, 22, and 46 (served May 2, 1997, August 1, 1997, August 21, 1997, and October 17, 1997, respectively).

²⁰ The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. See 49 CFR 1104.3(a), as amended in Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings, STB Ex Parte No. 527, 61 FR 52710, 52711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).

Docket No. 33388 (Sub-No. 83), are accepted for consideration, and are consolidated for disposition with the primary application in STB Finance Docket No. 33388 (and all embraced proceedings).

2. The parties shall comply with all provisions as stated above.
3. This decision is effective on November 20, 1997.

Decided: November 12, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

**STB Finance Docket No. 33388
(Sub-No. 1)**

SERVICE DATE - LATE RELEASE NOVEMBER 25, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33388 (Sub-No. 1)¹

CSX TRANSPORTATION, INC.--CONSTRUCTION AND OPERATION
EXEMPTION--CONNECTION TRACK AT CRESTLINE, OH

Decided: November 25, 1997

By this decision, we are giving final approval, subject to certain environmental mitigation conditions, to build seven proposed construction projects. This proceeding is related to 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 (CSX/NS/CR). In CSX/NS/CR, Decision No. 9, served June 12, 1997, after seeking and fully considering public comments on the railroads' proposals, we granted the requests by applicants² for waivers, with

¹ This decision also embraces the following proceedings: STB Finance Docket No. 33388 (Sub-No. 2), CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Willow Creek, IN; STB Finance Docket No. 33388 (Sub-No. 3), CSX Transportation, Inc.--Construction and Operation Exemption--Connection Tracks at Greenwich, OH; STB Finance Docket No. 33388 (Sub-No. 4), CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Sidney Junction, OH; STB Finance Docket No. 33388 (Sub-No. 5), Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track with Union Pacific Railroad Company at Sidney, IL; STB Finance Docket No. 33388 (Sub-No. 6), Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track with Consolidated Rail Corporation at Alexandria, IN; and STB Finance Docket No. 33388 (Sub-No. 7), Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track with Consolidated Rail Corporation at Bucyrus, OH.

² CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT) (collectively with their wholly owned subsidiaries, CSX), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR) (collectively with their wholly owned subsidiaries, NS), Conrail Inc. (CRI), and Consolidated Rail Corporation (CRC) (collectively, Conrail) seek approval and
(continued...)

respect to four CSX construction projects and three NS construction projects, from our otherwise applicable "everything goes together rule" governing railroad consolidations. See 49 CFR 1180.4(c)(2)(vi). We established a process which would allow CSX and NS to begin construction of the proposed connection tracks following completion of our environmental review of each of these seven constructions, and our issuance of a further decision allowing the physical constructions, but prior to our decision on the primary application. In Decision No. 9, we emphasized that we would consider the competitive impacts of these projects, and the environmental effects of the operations, along with our consideration of the primary application. We made it clear that no operations can begin on the seven connections until a decision is rendered on the primary application that would allow these operations. We also stated that if we determined during the course of our environmental review that any of the seven construction projects could potentially cause, or contribute to, significant environmental impacts, then the project would be incorporated into the Environmental Impact Statement (EIS) for the primary application and would not be separately considered.

In the Sub-Nos. 2 through 7 dockets, we served on July 23, 1997, and published that day in the Federal Register (62 FR 39591-602), notices of the petitions for exemption to construct and operate these proposed constructions.³ Our notices provided for the filing of comments on

²(...continued)

authorization under 49 U.S.C. 11321-25 for: (1) the acquisition by CSX and NS of control of Conrail, and (2) the division of Conrail's assets by and between CSX and NS.

³ With regard to the remaining construction project at issue here, STB Finance Docket No. 33388 (Sub-No. 1), we served and published in the Federal Register (62 FR 37331) on July 11, 1997, a notice of exemption filed by CSX to construct a connection track between two Conrail lines crossing at Crestline, OH. By decision served September 18, 1997, the effective date of the notice of exemption in Sub-No. 1 was stayed by the Board's Chairman pending further agency action to allow completion of the environmental review process.

whether the proposed construction projects would meet the exemption criteria of 49 U.S.C. 10502, and on any other non-environmental concerns regarding the connections.

Comments regarding non-environmental concerns and the exemption criteria applicable to applicants' proposed construction projects were filed by Allied Rail Unions (ARU), the United Transportation Union--Illinois Legislative Board, and the Cities of East Chicago, Hammond, Gary, and Whiting, IN. ARU also filed a petition to stay the notice of exemption in Sub-No. 1, arguing that CSX did not qualify for the class exemption. After reviewing the comments and stay petition, in a decision served October 9, 1997, and published that day in the Federal Register (62 FR 52807), we: (1) conditionally exempted applicants' construction of the proposed connections in STB Finance Docket No. 33388 (Sub-Nos. 2 through 7) from the prior approval requirements of 49 U.S.C. 10901, subject to the completion of environmental review and the issuance of a further decision; and (2) denied ARU's petition to stay the notice of exemption in STB Finance Docket No. 33388 (Sub-No. 1).

The Environmental Report filed with the Board in STB Finance Docket No. 33388 included information covering the proposed seven construction projects. In addition, as required in Decision No. 9, CSX and NS submitted preliminary draft environmental assessments (PDEAs) on September 5, 1997, for each of these construction projects. We required CSX and NS in their respective PDEAs to comply with all of the requirements for environmental reports contained in our environmental rules at 49 CFR 1105.7. We also required that the PDEAs be based on consultations with our Section of Environmental Analysis (SEA) and the federal, state, and local agencies set forth in 49 CFR 1105.7(b), as well as other appropriate parties. See Decision No. 9, at 8.

In the environmental review process, SEA reviewed and verified the information contained in each PDEA, conducted further environmental analysis, as necessary, and developed

appropriate environmental mitigation measures for each construction project. On October 7, 1997, SEA issued, and invited comments on, separate Environmental Assessments (EAs) for each of the proposed constructions. The EAs concluded that, subject to the recommended mitigation for each individual project, construction of the proposed connection would not significantly affect the quality of the human environment.

SEA received comments from federal, state, and local agencies and other entities concerning some of these projects.⁴ Certain commenters requested specific measures to mitigate potential environmental concerns. However, no commenter argued that any of the seven constructions would have potentially significant environmental impacts that could not be adequately mitigated or contended that any of these constructions should not be considered separately and in advance of the primary application.

On November 12, 1997, in each of the seven constructions, SEA issued Post Environmental Assessments (Post EAs) containing SEA's final recommendations, including appropriate environmental mitigation to address the environmental concerns that had been raised. SEA's final recommendations were based on its further analysis of these projects and reflected its review of the comments received and appropriate consultations with various agencies. In each Post EA, SEA concluded that the EA had adequately identified and assessed potential environmental impacts. The Post EAs also concluded that, with the imposition of the recommended environmental mitigation, there would be no significant environmental impacts resulting from any of these constructions. Furthermore, SEA determined that applicants' proposed construction locations would be the environmentally preferable construction option.

⁴ In some cases, no comments were received.

Accordingly, SEA recommended that any Board decision approving the proposed constructions be subject to the environmental mitigation measures included in its Post EAs.⁵ The Post EAs, which have been placed in the public record, contain a detailed analysis of the individual projects, the environmental comments received, and SEA's final recommendations and conclusions. In addition, each of these seven construction projects is briefly described below.

The CSX Connections.

Sub-No. 1. CSX proposes to construct a 1,507-foot rail line connection in Crestline, Crawford County, OH, to permit traffic movements between the CSX and Conrail systems. The new connection would be built in the northeastern quadrant of the intersecting Conrail lines in the southern portion of Crestline. The connection would link the Conrail lines north of the intersection of Lincoln Avenue and Ohio State Route 61 (also known as Thoman Street).

CSX states that the new connection would create an alternative east-west route on the CSX system for slower moving freight. This connection would enable CSX to route less time-sensitive east/west traffic on the alternative Chicago-Cleveland service route linking Crestline and Ft. Wayne, IN, that CSX would operate if the CSX/NS/Conrail transaction is approved. This would permit use of CSX's parallel B&O line for high-speed traffic over its proposed Northeastern Gateway service route. CSX anticipates that an average of 5 trains per day (unit trains and intermodal trains with an average length of 6,200 feet) would operate over the new connection.

⁵ That mitigation is the same as the mitigation previously recommended in the EAs, except that SEA updated its initial recommendations, where appropriate, to reflect the comments and SEA's further analysis and consultations.

Sub-No. 2. CSX proposes a 2,800-foot connection located at Willow Creek in the City of Portage, Porter County, IN. The new connection would be built in the southern quadrant of the intersecting CSX and Conrail rail lines, just north of the intersection of Willow Creek Road and Portage Road. The connection would link CSX's Garrett Subdivision rail line (which generally runs northwest to southeast) and Conrail's Porter Branch rail line (which generally runs northeast to southwest). The new connection would allow progressive east-west movements between the CSX and Conrail lines, enhancing rail operations and traffic movements between Garrett, IN, and Chicago. CSX estimates that an average of 10 trains per day (primarily automotive and merchandise trains with an average length of 6,200 feet) would operate over the new connection.

Sub-No. 3. CSX's proposed connections are located in Greenwich, Huron County, OH. Greenwich is in north-central Ohio, approximately 50 miles southwest of Cleveland and 75 miles north of Columbus. The new connections would be built in the northwest and southeast quadrants of the intersecting CSX and Conrail lines, which together would form the proposed Northeastern Gateway service route, a major route for time-sensitive traffic moving between the northeastern United States and Chicago. At this location, an existing Conrail line runs southwest to northeast between Indianapolis and Cleveland and the existing CSX line runs west to east from Chicago to Akron, OH.

The proposed connection in the northwest quadrant would provide a 4,600-foot, 45-mph connection, which would enable eastbound CSX trains from Chicago to utilize the Conrail line to proceed northeast toward Cleveland. The proposed connection in the southeast quadrant would provide a 1,044-foot, 30-mph per hour connection between the existing CSX and Conrail rail lines. That connection would enable northeast bound trains from Indianapolis to access the eastbound CSX line toward Akron and would allow freight transportation from Indianapolis to Greenwich along the Conrail line, and from Greenwich to Baltimore, MD, along the CSX line. CSX estimates that an average of 31.7 trains per day (primarily automotive, merchandise,

intermodal, and unit trains with an average length of 6,200 feet) would operate over the new connection in the northwest quadrant, and that an average of 9.4 trains per day would use the new connection in the southeast quadrant.

Sub-No. 4. CSX proposes a 3,263-foot connection located in Sidney, Shelby County, OH. The new connection would be built in the southeastern quadrant of the intersecting CSX and Conrail lines in the southern portion of Sidney. The connection would link the CSX line (which runs southwest to northeast between Cincinnati and Toledo) and the Conrail line (which runs from west to east between Indianapolis and Cleveland). The new connection would allow northbound trains to proceed east on the Conrail line toward Cleveland and westbound trains to proceed south on the CSX line toward Cincinnati. CSX anticipates that an average of 9.3 trains per day (intermodal, automotive, and merchandise trains with an average length of 6,200 feet) would operate over the new connection.

The NS Connections.

Sub-No. 5. NS proposes to construct a rail line connection in Sidney, IL, to permit traffic movements between the NS and Union Pacific (UP) systems. The proposed 3,250-foot connection is located 0.5 miles east of Sidney, Champaign County, IL. The new connection would traverse cropland to the southeast of the existing UP line. The new connection would permit more efficient movement between UP points in the Gulf Coast/Southwest and NS points in the Midwest and particularly between Pine Bluff, AR, and Fort Wayne, IN, and allow the connection of a new operating gateway as a fully-competitive service for petrochemical traffic flows between the Northeast, the Southwest, and the Gulf Coast. NS anticipates that an average of 9 trains per day would operate over the new connection.

Sub-No. 6. NS proposes to construct a 1,052-foot connection at Alexandria, Madison County, IN, to permit traffic movements between the NS and Conrail systems. The new connection would be located 250 feet northeast of the existing NS and Conrail intersection. The proposed construction site is located in the south-central part of Alexandria, southwest of the intersection of Berry and Curve Streets.

The new connection would connect NS's current main line between Marion and Anderson, IN, to Conrail's main line between Muncie and Lafayette, IN. NS states that the connection would provide a new, more efficient route between points in the upper Midwest and points in the southeastern United States, increase rail traffic capacity, improve service to shippers, and reduce train delays in Chicago and rail traffic congestion in Fort Wayne, IN. NS anticipates that an average of 7 trains per day (single commodity, or unit trains and intermodal trains with an average length of 5,000 feet) would operate over the new connection.

Sub-No. 7. NS proposes to construct a 2,550-foot rail line connection at Bucyrus, Crawford County, OH, to permit traffic movements between the NS and Conrail systems. The new connection would be built in the southeastern quadrant of the intersecting NS and Conrail lines in the eastern portion of Bucyrus. The point of divergence from the NS rail line would be just south of the existing East Warren Street grade crossing. The point of divergence from the Conrail rail line would be approximately 200 feet west of the existing Whetstone Street grade crossing.

The new connection would connect the existing north/south NS main line between Bellevue and Columbus, OH, to the existing east/west Conrail main line between Crestline, OH, and Fort Wayne, IN. NS states that the connection would provide a new, more efficient route from Columbus to eastern Ohio and western Pennsylvania by increasing rail traffic capacity and

improving service to shippers. NS anticipates that an average of 8 trains per day (single commodity, or unit trains and intermodal trains with an average length of 5,000 feet) would operate over the new connection.

DISCUSSION AND CONCLUSIONS

We agree with SEA's conclusions that, based on its environmental review and the comments received, the physical construction of these seven connections will not have potentially significant environmental impacts if the mitigation measures recommended by SEA are imposed.⁶ Accordingly, we will adopt the mitigation measures recommended by SEA and impose the measures as conditions to applicants' proposed constructions in Sub-Nos. 1 through 7, as set forth in the Appendix to this decision. Because we have determined that these constructions, as mitigated, could neither cause nor contribute to significant environmental impacts, we find that these constructions can go forward at this point and that there is no reason to incorporate an environmental analysis of any of the constructions into the EIS currently being prepared for the primary application.⁷

⁶ As noted, we previously conditionally exempted six of these proposals from the prior approval requirements of 49 U.S.C. 10901, subject to completion of the environmental review and the issuance of a further decision. The effective date of the notice of exemption for the remaining construction project was stayed pending further agency action to allow completion of the environmental review process. Thus, there are only two issues before us at this time in these cases: whether we should deny any of these proposed constructions because of the potential environmental impacts, or fold one or more of these projects into the EIS for the primary application.

⁷ We note that the Council on Environmental Quality (CEQ) raised concerns about considering these seven construction projects separately prior to the issuance of Decision No. 9. We believe that we fully addressed CEQ's concerns in Decision No. 9, and we incorporate that analysis by reference here. Moreover, as discussed above, no commenters to the EAs contended that any of these constructions should not be considered separately and in advance of the primary
(continued...)

We again emphasize that our decision to allow these constructions to begin will not have any bearing on our determination of whether the transaction contemplated in the primary application is in the public interest. See Decision No. 9, at 6-8; STB Finance Docket No. 33388 (Sub-No. 1), served July 11, 1997; STB Finance Docket No. 33388 (Sub-Nos. 2-7), served July 23, 1997; and STB Finance Docket No. 33388 (Sub-Nos. 1-7), served October 1, 1997. Moreover, operations over these connections cannot commence unless and until we approve the primary application and authorize the operations, which SEA will analyze in the EIS.⁸

As we stated in Decision No. 9 at 6, any resources applicants expend in the construction of these connections may prove to be of little benefit to them if we deny the primary application or we authorize operations over one or more of the seven connections in a manner different from that which CSX and NS plan. In other words, although we are permitting the physical construction of these seven projects to go forward at this time, applicants will not be allowed to argue that, because they have expended resources to construct the connections, we should approve the primary application. Rather, applicants have willingly assumed the risk that we may deny the primary application, or approve it subject to conditions unacceptable to applicants, or approve the primary application but deny applicants' request to operate over any or all of the seven connections.

⁷(...continued)
application.

⁸ In order to fully consider the environmental impacts of the physical construction of the lines at issue here, SEA conducted a limited review of operations for these constructions in the EAs and Post EAs. For example, SEA examined whether each proposed construction would increase the potential for delays or accidents at grade crossings or affect the transportation of hazardous materials over these connections.

As conditioned, this action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt applicants' construction of the proposed connections in STB Finance Docket No. 33388 (Sub-Nos. 2 through 7), from the prior approval requirements of 49 U.S.C. 10901, subject to the condition that applicants comply with the mitigation measures applicable to the Sub-Nos. 2 through 7 proceedings set forth in the Appendix.

2. The stay of the proposed connection in Finance Docket No. 33388 (Sub-No. 1) is lifted subject to the condition that applicant comply with the mitigation measures applicable to the Sub-No. 1 proceeding set forth in the Appendix.

3. This decision is effective 10 days after its date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

APPENDIX

1. In STB Finance Docket No. 33388 (Sub-No. 1), the following mitigation measures regarding CSX's construction of the proposed rail line connection at Crestline, OH, are imposed:

Land Use

- CSX shall restore any adjacent properties that are disturbed during construction activities to their pre-construction conditions.
- CSX shall consult with the National Geodetic Survey to locate any geodetic survey marker and, if necessary, assist in the relocation of the marker.
- Prior to any construction activity, CSX shall consult with the local Natural Resources Conservation Service office in order to comply with the Farmland Policy Protection Act to ascertain whether Form AD 1006 should be completed.

Transportation and Safety

- CSX shall use appropriate signs and barricades to control and minimize traffic disruptions during construction.
- CSX shall restore roads disturbed during construction to conditions as required by state or local jurisdictions.
- CSX shall observe all applicable federal, state, and local regulations regarding handling and disposal of any waste materials, including hazardous waste, encountered or generated during construction of the proposed rail line connection.
- CSX shall dispose of all materials that cannot be reused in accordance with state and local solid waste management regulations.
- CSX shall consult with the appropriate federal, state and local agencies if hazardous waste and/or materials are discovered at the site.
- CSX shall transport all hazardous materials in compliance with U.S. Department of Transportation Hazardous Materials Regulations (49 CFR Parts 171 to 180). CSX shall provide, upon request, local emergency management organizations with copies of all applicable Emergency Response Plans and participate in the training of local emergency

staff (upon request) for coordinated responses to incidents. In the case of a hazardous material incident, CSX shall follow appropriate emergency response procedures contained in its Emergency Response Plans.

Water Resources

- CSX shall complete a detailed investigation to determine if any wetlands are located in the vicinity of the proposed rail line connection prior to initiating any construction activities at this location.
- CSX shall obtain all necessary federal, state, and local permits if construction activities require the alteration of wetlands, ponds, lakes, streams, or rivers, or if these activities would cause soil or other materials to wash into these water resources. CSX shall use appropriate techniques to minimize effects to water bodies and wetlands.
- CSX shall close the existing ground water monitoring well located within the project area if the well is affected by the project. The well shall be closed in accordance with local, state, and federal requirements.

Biological Resources

- CSX shall preserve trees which provide habitat for the Indiana bat (*Myotis sodalis*), including trees with cavities and exfoliating bark, to the maximum extent possible. If such trees cannot be avoided, they shall not be cut between April 15th and September 15th. If such trees are to be removed and the time of year restriction is prohibitive, CSX shall consult with the U.S. Fish and Wildlife Service and conduct a survey to determine if the Indiana bat is present in the proposed construction area.
- CSX shall use Best Management Practices to control erosion, runoff, and surface instability during construction, including seeding, fiber mats, straw mulch, plastic liners, slope drains, and other erosion control devices. Once the tracks are constructed, CSX shall establish vegetation on the embankment slopes to provide permanent cover and prevent potential erosion. If erosion develops, CSX shall take steps to develop other appropriate erosion control procedures.
- CSX shall use only EPA-approved herbicides and qualified contractors for application of right-of-way maintenance herbicides, and shall limit such application to the extent necessary for rail operations.

Air Quality

- CSX shall comply with all applicable federal, state, and local regulations regarding the control of fugitive dust. Fugitive dust emissions created during construction shall be minimized by using such control methods as water spraying, installation of wind barriers, and chemical treatment.

Noise

- CSX shall control temporary noise from construction equipment through the use of work hour controls and maintenance of muffler systems on machinery.

Cultural Resources

- If previously undiscovered archeological remains are found during construction, CSX shall cease work and immediately contact the Ohio State Historic Preservation Officer to initiate the appropriate section 106 process required by the National Historic Preservation Act (16 U.S.C. 470f, as amended).

2. In STB Finance Docket No. 33388 (Sub-No. 2), the following mitigation measures regarding CSX's construction of the proposed rail line connection at Willow Creek, IN, are imposed:

Land Use

- CSX shall restore any adjacent properties that are disturbed during construction activities to their pre-construction conditions.

Transportation and Safety

- CSX shall use appropriate signs and barricades to control and minimize traffic disruptions during construction.
- CSX shall restore roads disturbed during construction to conditions as required by state or local jurisdictions.
- CSX shall observe all applicable federal, state, and local regulations regarding handling and disposal of any waste materials, including hazardous waste, encountered or generated during construction of the proposed rail line connection.

- CSX shall dispose of all materials that cannot be reused in accordance with state and local solid waste management regulations.
- CSX shall consult with the appropriate federal, state and local agencies if hazardous waste and/or materials are discovered at the site.
- CSX shall transport all hazardous materials in compliance with U.S. Department of Transportation Hazardous Materials Regulations (49 CFR Parts 171 to 180). CSX shall provide, upon request, local emergency management organizations with copies of all applicable Emergency Response Plans and participate in the training of local emergency staff (upon request) for coordinated responses to incidents. In the case of a hazardous material incident, CSX shall follow appropriate emergency response procedures contained in its Emergency Response Plans.

Water Resources

- CSX shall obtain all necessary federal, state, and local permits if construction activities require the alteration of wetlands, ponds, lakes, streams, or rivers, or if these activities would cause soil or other materials to wash into these water resources. CSX shall use appropriate techniques to minimize effects to water bodies and wetlands.

Biological Resources

- CSX shall use Best Management Practices to control erosion, runoff, and surface instability during construction, including seeding, fiber mats, straw mulch, plastic liners, slope drains, and other erosion control devices. Once the tracks are constructed, CSX shall establish vegetation on the embankment slopes to provide permanent cover and prevent potential erosion. If erosion develops, CSX shall take steps to develop other appropriate erosion control procedures.
- CSX shall use only EPA-approved herbicides and qualified contractors for application of right-of-way maintenance herbicides, and shall limit such application to the extent necessary for rail operations.
- CSX shall revegetate all bare and disturbed areas in the vicinity of the proposed construction with a mixture of grasses (except tall fescue) and legumes following completion of construction activities.

Air Quality

- CSX shall comply with all applicable federal, state, and local regulations regarding the control of fugitive dust. Fugitive dust emissions created during construction shall be minimized by using such control methods as water spraying, installation of wind barriers, and chemical treatment.

Noise

- CSX shall control temporary noise from construction equipment through the use of work hour controls and maintenance of muffler systems on machinery.
- If wheel squeal occurs during operation of the connection, CSX shall use rail lubrication to minimize noise levels.

Cultural Resources

- If previously undiscovered archeological remains are found during construction, CSX shall cease work and immediately contact the Indiana State Historic Preservation Officer to initiate the appropriate section 106 process required by the National Historic Preservation Act (16 U.S.C. 470f, as amended).

3. In STB Finance Docket No. 33388 (Sub-No. 3), the following mitigation measures regarding CSX's construction of the proposed rail line connection at Greenwich, OH, are imposed:

Land Use

- CSX shall restore any adjacent properties that are disturbed during construction activities to their pre-construction conditions.
- Prior to any construction activity, CSX shall consult with the local Natural Resources Conservation Service office in order to comply with the Farmland Policy Protection Act to ascertain whether Form AD 1006 should be completed.

Transportation and Safety

- CSX shall use appropriate signs and barricades to control traffic disruptions during construction.

- CSX shall restore roads disturbed during construction to conditions as required by state or local jurisdictions.
- To minimize disruption to the flow of north-south traffic in the Village of Greenwich, CSX shall not have construction activities occurring at the Kniffen and Townsend Street at-grade crossings simultaneously.
- CSX shall observe all applicable federal, state, and local regulations regarding handling and disposal of any waste materials, including hazardous waste, encountered or generated during construction of the proposed rail line connections.
- CSX shall dispose of all materials that cannot be reused in accordance with state and local solid waste management regulations.
- CSX shall consult with the appropriate federal, state and local agencies if hazardous waste and/or materials are discovered at the sites.
- CSX shall transport all hazardous materials in compliance with U.S. Department of Transportation Hazardous Materials Regulations (49 CFR Parts 171 to 180). CSX shall provide, upon request, local emergency management organizations with copies of all applicable Emergency Response Plans and participate in the training of local emergency staff (upon request) for coordinated responses to incidents. In the case of a hazardous material incident, CSX shall follow appropriate emergency response procedures contained in their Emergency Response Plans.

Water Resources

- CSX shall obtain all necessary federal, state, and local permits if construction activities require the alteration of wetlands, ponds, lakes, streams, or rivers, or if these activities would cause soil or other materials to wash into these water resources. CSX shall use appropriate techniques to minimize effects to water bodies and wetlands.

Biological Resources

- CSX shall preserve trees which provide habitat for the Indiana bat (*Myotis sodalis*), including trees with cavities and exfoliating bark, to the maximum extent possible. If such trees cannot be avoided, they shall not be cut between April 15th and September 15th. If such trees are to be removed and the time of year restriction is prohibitive, CSX shall consult with the U.S. Fish and Wildlife Service and conduct a survey to determine if the Indiana bat is present in the proposed construction area.

- CSX shall use Best Management Practices to control erosion, runoff, and surface instability during construction, including seeding, fiber mats, straw mulch, plastic liners, slope drains, and other erosion control devices. Once the tracks are constructed, CSX shall establish vegetation on the embankment slopes to provide permanent cover and prevent potential erosion. If erosion develops, CSX shall take steps to develop other appropriate erosion control procedures.
- CSX shall use only EPA-approved herbicides and qualified contractors for application of right-of-way maintenance herbicides, and shall limit such application to the extent necessary for rail operations.

Air Quality

- CSX shall comply with all applicable federal, state, and local regulations regarding the control of fugitive dust. Fugitive dust emissions created during construction shall be minimized by using such control methods as water spraying, installation of wind barriers, and chemical treatment.

Noise

- CSX shall control temporary noise from construction equipment through the use of work hour controls and maintenance of muffler systems on machinery.
- If wheel squeal occurs during operation of the connection, CSX shall use rail lubrication to minimize noise levels.

Cultural Resources

- If previously undiscovered archeological remains are found during construction, CSX shall cease work and immediately contact the Ohio State Historic Preservation Officer to initiate the appropriate section 106 process required by the National Historic Preservation Act (16 U.S.C. 470f, as amended).

4. In STB Finance Docket No. 33388 (Sub-No. 4), the following mitigation measures regarding CSX's construction of the proposed rail line connection at Sidney, OH, are imposed:

Land Use

- CSX shall restore any adjacent properties that are disturbed during construction activities to their pre-construction conditions.
- Prior to any construction activity, CSX shall consult with the local Natural Resources Conservation Service office in order to comply with the Farmland Policy Protection Act to ascertain whether Form AD 1006 should be completed.

Transportation and Safety

- CSX shall use appropriate signs and barricades to control and minimize traffic disruptions during construction.
- CSX shall restore roads disturbed during construction to conditions as required by state or local jurisdictions.
- CSX shall observe all applicable federal, state, and local regulations regarding handling and disposal of any waste materials, including hazardous waste, encountered or generated during construction of the proposed rail line connection.
- CSX shall dispose of all materials that cannot be reused in accordance with state and local solid waste management regulations.
- CSX shall consult with the appropriate federal, state and local agencies if hazardous waste and/or materials are discovered at the site.
- CSX shall transport all hazardous materials in compliance with U.S. Department of Transportation Hazardous Materials Regulations (49 CFR Parts 171 to 180). CSX shall provide, upon request, local emergency management organizations with copies of all applicable Emergency Response Plans and participate in the training of local emergency staff (upon request) for coordinated responses to incidents. In the case of a hazardous material incident, CSX shall follow appropriate emergency response procedures contained in its Emergency Response Plans.

Water Resources

- CSX shall obtain all necessary federal, state, and local permits if construction activities require the alteration of wetlands, ponds, lakes, streams, or rivers, or if these activities

would cause soil or other materials to wash into these water resources. CSX shall use appropriate techniques to minimize effects to water bodies and wetlands.

Biological Resources

- CSX shall preserve trees which provide habitat for the Indiana bat (*Myotis sodalis*), including trees with cavities and exfoliating bark, to the maximum extent possible. If such trees cannot be avoided, they shall not be cut between April 15th and September 15th. If such trees are to be removed and the time of year restriction is prohibitive, CSX shall consult with the U.S. Fish and Wildlife Service and conduct a survey to determine if the Indiana bat is present in the proposed construction area.
- CSX shall use Best Management Practices to control erosion, runoff, and surface instability during construction, including seeding, fiber mats, straw mulch, plastic liners, slope drains, and other erosion control devices. Once the tracks are constructed, CSX shall establish vegetation on the embankment slopes to provide permanent cover and prevent potential erosion. If erosion develops, CSX shall take steps to develop other appropriate erosion control procedures.
- CSX shall use only EPA-approved herbicides and qualified contractors for application of right-of-way maintenance herbicides, and shall limit such application to the extent necessary for rail operations.

Air Quality

- CSX shall comply with all applicable federal, state, and local regulations regarding the control of fugitive dust. Fugitive dust emissions created during construction shall be minimized by using such control methods as water spraying, installation of wind barriers, and chemical treatment.

Noise

- CSX shall control temporary noise from construction equipment through the use of work hour controls and maintenance of muffler systems on machinery.

Cultural Resources

- If previously undiscovered archeological remains are found during construction, CSX shall cease work and immediately contact the Ohio State Historic Preservation Officer to

initiate the appropriate section 106 process required by the National Historic Preservation Act (16 U.S.C. 470f, as amended).

5. In STB Finance Docket No. 33388 (Sub-No. 5), the following mitigation measures regarding NS's construction of the proposed rail line connection at Sidney, IL, are imposed:

Land Use

- NS shall restore any adjacent properties that are disturbed during construction activities to their pre-construction conditions.
- Before undertaking any construction activities, NS shall consult with any potentially affected American Indian Tribes adjacent to, or having a potential interest in, the right-of-way.

Transportation Systems

- NS shall use appropriate signs and barricades to control traffic disruptions during construction.
- NS shall restore roads disturbed during construction to conditions as required by state or local jurisdictions.

Safety

- NS shall observe all applicable federal, state, and local regulations regarding handling and disposal of any waste materials, including hazardous waste, encountered or generated during construction of the proposed rail line connection.
- NS shall dispose of all materials that cannot be reused in accordance with state and local solid waste management regulations.
- NS shall consult with the appropriate federal, state, and local agencies if hazardous waste and/or materials are discovered at the site.
- NS shall transport all hazardous materials in compliance with U.S. Department of Transportation Hazardous Materials Regulations (49 CFR Parts 171 to 180). NS shall provide, upon request, local emergency management organizations with copies of all

applicable Emergency Response Plans and participate in the training of local emergency staff (upon request) for coordinated responses to incidents. In the case of a hazardous material incident, NS shall follow appropriate emergency response procedures contained in its Emergency Response Plans.

Water Resources

- NS shall obtain all necessary federal, state, and local permits if construction activities require the alteration of wetlands, ponds, lakes, streams, or rivers, or if these activities would cause soil or other materials to wash into these water resources. NS shall use appropriate techniques to minimize impacts to water bodies and wetlands.

Biological Resources

- NS shall use Best Management Practices (BMPs) to control erosion, runoff, and surface instability during construction, including seeding, fiber mats, straw mulch, plastic liners, slope drains, and other erosion control devices. Once the track is constructed, NS shall establish vegetation on the embankment slope to provide permanent cover and prevent potential erosion. If erosion develops, NS shall take steps to develop other appropriate erosion control procedures.
- NS shall use only EPA-approved herbicides and qualified contractors for application of right-of-way maintenance herbicides, and shall limit such application to the extent necessary for rail operations.

Air Quality

- NS shall comply with all applicable federal, state, and local regulations regarding the control of fugitive dust. Fugitive dust emissions created during construction shall be minimized by using such control methods as water spraying, installation of wind barriers, and chemical treatment.

Noise

- NS shall control temporary noise from construction equipment through the use of work hour controls and maintenance of muffler systems on machinery.

Cultural Resources

- If previously undiscovered archaeological remains are found during construction, NS shall cease work and immediately contact the Illinois State Historical Preservation Office to initiate the appropriate section 106 process pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f, as amended).

6. In STB Finance Docket No. 33388 (Sub-No. 6), the following mitigation measures regarding NS's construction of the proposed rail line connection at Alexandria, IN, are imposed:

Land Use

- NS shall restore any adjacent properties that are disturbed during construction activities to their pre-construction conditions.
- Before undertaking any construction activities, NS shall consult with any potentially affected American Indian Tribes adjacent to, or having a potential interest in, the right-of-way.

Transportation Systems

- NS shall use appropriate signs and barricades to control traffic disruptions during construction.
- NS shall restore roads disturbed during construction to conditions as required by state or local jurisdictions.

Safety

- NS shall observe all applicable federal, state, and local regulations regarding handling and disposal of any waste materials, including hazardous waste, encountered or generated during construction of the proposed rail line connection.
- NS shall dispose of all materials that cannot be reused in accordance with state and local solid waste management regulations.
- NS shall consult with the appropriate federal, state, and local agencies if hazardous waste and/or materials are discovered at the site.

- NS shall transport all hazardous materials in compliance with U.S. Department of Transportation Hazardous Materials Regulations (49 CFR Parts 171 to 180). NS shall provide, upon request, local emergency management organizations with copies of all applicable Emergency Response Plans and participate in the training of local emergency staff (upon request) for coordinated responses to incidents. In the case of a hazardous material incident, NS shall follow appropriate emergency response procedures contained in its Emergency Response Plans.

Water Resources

- NS shall obtain all necessary federal, state, and local permits if construction activities require the alteration of wetlands, ponds, lakes, streams, or rivers, or if these activities would cause soil or other materials to wash into these water resources. NS shall use appropriate techniques to minimize impacts to water bodies and wetlands.

Biological Resources

- NS shall use Best Management Practices (BMPs) to control erosion, runoff, and surface instability during construction, including seeding, fiber mats, straw mulch, plastic liners, slope drains, and other erosion control devices. Once the track is constructed, NS shall establish vegetation on the embankment slope to provide permanent cover and prevent potential erosion. If erosion develops, NS shall take steps to develop other appropriate erosion control procedures.
- NS shall use only EPA-approved herbicides and qualified contractors for application of right-of-way maintenance herbicides, and shall limit such application to the extent necessary for rail operations.

Air Quality

- NS shall comply with all applicable federal, state, and local regulations regarding the control of fugitive dust. Fugitive dust emissions created during construction shall be minimized by using such control methods as water spraying, installation of wind barriers, and chemical treatment.

Noise

- NS shall control temporary noise from construction equipment through the use of work hour controls and maintenance of muffler systems on machinery.

Cultural Resources

- If previously undiscovered archaeological remains are found during construction, NS shall cease work and immediately contact the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology within two business days to initiate the appropriate section 106 process pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f, as amended).

7. In STB Finance Docket No. 33388 (Sub-No. 7), the following mitigation measures regarding NS's construction of the proposed rail line connection at Bucyrus, OH, are imposed:

Land Use

- NS shall restore any adjacent properties that are disturbed during construction activities to their pre-construction conditions.
- Before undertaking any construction activities, NS shall consult with any potentially affected American Indian Tribes adjacent to, or having a potential interest in, the right-of-way.
- Prior to any construction activity, NS shall consult with the local Natural Resources Conservation Service office in order to comply with the Farmland Policy Protection Act to ascertain whether Form AD 1006 should be completed.

Transportation Systems

- NS shall use appropriate signs and barricades to control traffic disruptions during construction.
- NS shall restore roads disturbed during construction to conditions as required by state or local jurisdictions.

Safety

- NS shall observe all applicable federal, state, and local regulations regarding handling and disposal of any waste materials, including hazardous waste, encountered or generated during construction of the proposed rail line connection.

- NS shall dispose of all materials that cannot be reused in accordance with state and local solid waste management regulations.
- NS shall consult with the appropriate federal, state, and local agencies if hazardous waste and/or materials are discovered at the site.
- NS shall transport all hazardous materials in compliance with U.S. Department of Transportation Hazardous Materials Regulations (49 CFR Parts 171 to 180). NS shall provide, upon request, local emergency management organizations with copies of all applicable Emergency Response Plans and participate in the training of local emergency staff (upon request) for coordinated responses to incidents. In the case of a hazardous material incident, NS shall follow appropriate emergency response procedures contained in its Emergency Response Plans.
- NS shall upgrade existing flashing lights at East Warren Street and Rensselaer Street grade crossings to include both flashing lights and gates. NS shall also install flashing lights and gates at the new Rensselaer Street crossing.

Water Resources

- NS shall obtain all necessary federal, state, and local permits if construction activities require the alteration of wetlands, ponds, lakes, streams, or rivers, or if these activities would cause soil or other materials to wash into these water resources. NS shall use appropriate techniques to minimize impacts to water bodies and wetlands.

Biological Resources

- NS shall use Best Management Practices (BMPs) to control erosion, runoff, and surface instability during construction, including seeding, fiber mats, straw mulch, plastic liners, slope drains, and other erosion control devices. Once the track is constructed, NS shall establish vegetation on the embankment slope to provide permanent cover and prevent potential erosion. If erosion develops, NS shall take steps to develop other appropriate erosion control procedures.
- NS shall use only EPA-approved herbicides and qualified contractors for application of right-of-way maintenance herbicides, and shall limit such application to the extent necessary for rail operations.
- NS shall preserve trees which provide habitat for the Indiana bat (*Myotis sodalis*), including trees with cavities and exfoliating bark, if encountered prior to construction. If

such trees cannot be avoided, they shall not be cut between April 15th and September 15th. If such trees are to be removed and the time of year restriction is prohibitive, NS shall consult with the U.S. Fish and Wildlife Service and conduct a survey to determine if the Indiana bat is present in the proposed construction area.

Air Quality

- NS shall comply with all applicable federal, state, and local regulations regarding the control of fugitive dust. Fugitive dust emissions created during construction shall be minimized by using such control methods as water spraying, installation of wind barriers, and chemical treatment.

Noise

- NS shall control temporary noise from construction equipment through the use of work hour controls and maintenance of muffler systems on machinery.

Cultural Resources

- In those cases where historic resources would be adversely affected, NS shall not undertake construction activities until the section 106 review process of the National Historic Preservation Act (16 U.S.C. 470f, as amended) is completed. If previously undiscovered archaeological remains are found during construction, NS shall cease work and immediately contact the Ohio State Historical Preservation Office (SHPO) to initiate the appropriate section 106 process.
- NS shall adhere to the set of stipulations agreed to by NS and the Ohio State Historic Preservation Office designed to mitigate adverse effects to the T&OC freight depot. These stipulations are currently being incorporated in a Memorandum of Agreement.

APPENDIX U
List of Comments and
Petitions/Requests for Conditions

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List of Comments and Petitions/Requests for Conditions

Filer/Commenter	Title of Filing	Condition(s) Requested	State(s) Affected	Potential Environmental Effects
AK Steel Corp. Middletown, Ohio	Comments, Evidence and Request for Conditions	<ul style="list-style-type: none"> • Ensure NS has access to and use of the Toledo Docks and receives Conrail's 50% ownership and • Grant NS Conrail's rights in contracts related to the Docks 	Ohio	Could increase rail operations above thresholds on affected segments.
American Electric Power Service Corp.	Comments, Evidence and Request for Conditions	<ul style="list-style-type: none"> • Ensure that two railroads continue to serve the Cardinal Plant in Brilliant, OH if the acquisition causes W&LE to cease serving the plant by granting CSX trackage rights over the Conrail line 	Ohio	Could increase rail operations above thresholds on affected segments.
American Short Line Railroad Association (ASLRA) and Regional Railroads of America (RRA)	Comments (and Request for Conditions)	<ul style="list-style-type: none"> • Affirm inter-carrier agreements • Maintain existing gateways and rate relationships • Consider expanding short line and regional connections and access • Clarify interactive status of rail system • Retain jurisdiction over short line carrier relationships • Retain oversight for 5 years, and conduct an impact study after the oversight period 	System-wide	Unknown.

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Filer/Commenter	Title of Filing	Condition(s) Requested	State(s) Affected	Potential Environmental Effects
American Trucking Association	Comments (and Request for Conditions)	<ul style="list-style-type: none"> • Ensure roadworthiness of intermodal equipment • Require Applicants to upgrade highway grade crossings • Prohibit the back solicitation and other anti-competitive practices • Prohibit discrimination against motor carriers with respect to prices and service • Provide options to ensure competition and service 	System-wide	Unknown.
APL Limited	Response and Request for Conditions	<ul style="list-style-type: none"> • Disapprove the Applicants' request to carry out existing Conrail transportation contracts (Article II, Section 2.2(c) of the Acquisition agreement) in their entirety, or • Disapprove Section 2.2(c)'s application to intermodal facilities, or • Exclude APL transportation agreement with Conrail from Section 2.2(c) 	System-wide	Unknown.
Ashta Chemicals, Inc. Ashtabula, Ohio	Request for Conditions	<ul style="list-style-type: none"> • Impose reciprocal switching at plant to allow competitive access 	Ohio	Verified Statement submitted; no significant change in operations; thresholds not exceeded.
Atlantic City Electric Company and Indianapolis Power & Light Company	Joint Comments, Evidence and Request for Conditions	<ul style="list-style-type: none"> • Exclude the Acquisition premium and asset write-ups from revenue-adequacy calculations and rate making decisions • Provide commenters equal access destination service from CSX and NS 	Indiana New Jersey	Could increase rail operations above thresholds over affected segments.
A.T. Massey Coal Company, Inc.	Request for Conditions	<ul style="list-style-type: none"> • Retain oversight jurisdiction and hold annual hearings for 10 years to ensure competition is maintained 	System-wide	Unknown
Bessemer and Lake Erie	Comments and	<ul style="list-style-type: none"> • Grant haulage rights over the Monongahela lines 	Pennsylvania	Verified Statement submitted;

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Railroad Co.	Request for Conditions	<ul style="list-style-type: none"> for the transport of coal (if trackage rights requested in I/R are granted) Require that CSX and NS establish line haul rates for such coal shipments 		less than one added train per day; thresholds not exceeded.
Centerior Energy Corporation	Comments (and Request for Conditions)	<ul style="list-style-type: none"> Grant NS trackage rights over CSX's rail line between Lake Shore Generating Station and CP 124 located east of Ashtabula, OH, and Quantify the amount of the acquisition premium and direct the Applicants to exclude that amount from their net investment bases for rate-making purposes 	Ohio	Could increase rail operations above thresholds over affected segments.
Chemical Manufacturers Association and The Society of the Plastics Industry, Inc.	Joint Comments (and Request for Conditions)	<ul style="list-style-type: none"> Impose five pre-implementation conditions, four Shared Asset Areas conditions and four other competition and service conditions 	System-wide	Unknown
Chicago Metra-Commuter Rail Division	Position and Request for Conditions	<ul style="list-style-type: none"> Mitigate possible commuter delays at key junctions along the Southwest Service Corridor where applicants project increased trains. 	Illinois	Unknown.
Citizens Gas & Coke Utility	Comments and Supporting Evidence in Opposition	<ul style="list-style-type: none"> Provide equal, cost-neutral access to all parts of Indianapolis for CSX and NS 	Indiana	Could increase rail operations above thresholds on segments in the Indianapolis area.

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Filer/Commenter	Title of Filing	Condition(s) Requested	State(s) Affected	Potential Environmental Effects
City of Cleveland, Ohio	Comments in Opposition and Request for Conditions	<ul style="list-style-type: none"> Require Applicants to mitigate anticipated adverse effects on low-income neighborhoods (environmental justice), emergency response, and sensitive noise receptors potentially caused by increased rail traffic 	Ohio	Could increase rail operations above thresholds on segments to which increased traffic may be moved to provide mitigation.
Coalition of Northeastern Governors	Comments and Request for Conditions	<ul style="list-style-type: none"> Provide NS trackage rights in New England to ensure competitive access Retain jurisdiction over implementation to impose additional conditions if necessary 	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Penn., Rhode Island, and Vermont	Could increase rail operation above thresholds on affected segments.
Commuter Rail Division of the Regional Transportation Authority	Request for Conditions	<ul style="list-style-type: none"> Transfer control of the Forest Hill and Chicago Ridge Interlockers from CSX, or the CSX controlled Indiana Harbor Belt Railroad to METRA Require NS and CSX to obtain BRC's agreement to transfer control of the Belt Junction Interlocker to METRA Require NS to control CP 518 Interlocker so that no freight train is allowed to proceed if this will cause a delay to METRA Require the Board to submit quarterly reports about plans to mitigate adverse impacts of the Acquisition, and let these reports be reviewed by the Board and the public for a 5-year period 	Illinois	Unknown.

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Conservation Law Foundation, Boston, MA	Comments (and Request for Conditions)	<ul style="list-style-type: none"> • Require CSX to: <ol style="list-style-type: none"> (1) work with the Massachusetts Bay Transportation Authority improve passenger service and increase access to Boston, MA and Albany, NY, and (2) improve freight service east of the Hudson River 	Massachusetts, New York	Could increase rail operations above thresholds on affected segments.
Consumer Energy Company, Jackson, MI	Comments (and Request for Conditions)	<ul style="list-style-type: none"> • Grant trackage rights to Campbell Station over CSX • Exclude the Acquisition premium CSX will pay for Conrail from revenue adequacy calculations and rate-making decisions 	Michigan	Could increase rail operations above thresholds on affected segments.
State of Delaware Department of Transportation	Request for Condition	<ul style="list-style-type: none"> • Provide competitive access for the Port of Wilmington • Require information on impacts of rail operations through city of Newark, DE • Maintain and provide for passenger rail service • Provide trackage rights for short line operations 	Delaware	Could increase rail operations above thresholds on affected segments.
Delaware Valley Regional Planning Commission	Comments (and Request for Conditions)	<ul style="list-style-type: none"> • Require commitment to economic development to offset regional losses • Provide detailed environmental assessments regarding air quality and trucking changes • Maintain existing trackage rights and dispatching agreements for 10 years • Guarantee current levels of daily doublestack and conventional intermodal service to Ameriport and proposed Greenwich terminal • Allow public input in management of Shared Asset Areas • Limit rail operations impacts to Center City Philadelphia (Highline Branch) 	Delaware New Jersey Pennsylvania	Could increase rail operations above thresholds on affected segments.

Filer/Commenter	Title of Filing	Condition(s) Requested	State(s) Affected	Potential Environmental Effects
		<ul style="list-style-type: none"> • Allow trackage rights to NJ short lines for Pavonia Yard and interchange with CSX, NS, and CP Rail • Allow Winchester & Western Railroad and Southern Railroad of NJ interchange rights at Vineland 		
The Detroit Edison Company Detroit, MI	Comments and Request for Conditions	<ul style="list-style-type: none"> • Grant Canadian National trackage rights so CSX may provide competitive service to the Trenton Channel Plant and • Consider the impact of the Acquisition on movement of western low sulfur coal through the Chicago area 	Michigan Illinois	Could increase rail operations above thresholds on affected segments.
E.I. Du Pont de Nemours and Company (DuPont)	Comments (and Request for Conditions)	<ul style="list-style-type: none"> • Create and oversee a "Rail Service Committee" and a "Rail Safety Committee" • Allow for routing flexibility • Clarify responsibilities in the Shared Assets Area 	System-wide	Unknown.
Eighty-Four Mining Co. (Mine 84) Washington County, PA	Comments and Request for Conditions	<ul style="list-style-type: none"> • Trackage rights for CSX over the Ellsworth Secondary and the right to serve Mine 84 and associated rights of access along the Mon Branch line of the former Monongahela. 	Pennsylvania	Could increase rail operations above thresholds on affected segments.
The Elk River Railroad, Inc. (TERRI)	Comments and Request for Conditions	<ul style="list-style-type: none"> • Require NS to renegotiate trackage rights with TERRI between Falling Rock and Charleston with respect to interchange arrangements 	West Virginia	Could increase rail operations above thresholds on affected segments.

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Filer/Commenter	Title of Filing	Condition(s) Requested	State(s) Affected	Potential Environmental Effects
Empire State Passengers Association	Comments	<ul style="list-style-type: none"> Require a commitment for on-time Amtrak service (90% on-time) in accordance with an incentive agreement between Amtrak and Conrail which CSX will assume Work with a corporate commitment by CSX for Amtrak, NY State Department of Transportation, and the on-line communities to provide expanded passenger rail service, including higher rail speeds (90 mph) service, additional frequencies, and flexibility Retain oversight jurisdiction for at least a 5-year period 	New York	Could increase rail operations above thresholds on affected segments.
Environmental Law & Policy Center, Chicago, IL	Comments (and Request for Conditions)	<ul style="list-style-type: none"> Ensure CSX and NS: <ol style="list-style-type: none"> (1) preserve passenger access to their lines even if Amtrak is not able to use them by transferring them to state DOT's (2) are capable of effectively maintaining and operating Conrail's assets 	Illinois Indiana Michigan Minnesota Ohio Wisconsin	Unknown.
Erie-Niagara Rail Steering Committee	Comments, Evidence and Request for Conditions	<ul style="list-style-type: none"> Create the Niagara Shared Assets Area with reciprocal switching for competitors of CSX and NS or Require that CSX and NS grant each other terminal trackage rights or provide reciprocal switching 	New York	Could increase rail operations above thresholds on affected segments.
Fina Oil and Chemical Company	Comments (and Request for Conditions)	<ul style="list-style-type: none"> Recommend adoption of conditions in Chemical Manufacturers Association and Society of Plastics Institute 	System-wide, Canada Mexico	Unknown.
Former Employees of Consolidated Rail Corp.	Comments, Protests, and	<ul style="list-style-type: none"> Maintain benefits of Supplemental Pension Plan of Consolidated Rail Corp. 	System-wide	Unknown.

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Filer/Commenter	Title of Filing	Condition(s) Requested	State(s) Affected	Potential Environmental Effects
	Requests for Conditions			
Fort Orange Paper Company	Comments and Request for Protective Conditions	<ul style="list-style-type: none"> Grant the Responsive Application of either CP Rail or NY State Dept. of Transportation for trackage rights between Rensselaer and NY City, or In the event both responsive applications are denied, require CSX to maintain and establish routes and rates through Albany and NY City 	New York	Could increase rail operations above thresholds over affected segments.
The Four City Consortium (East Chicago, Hammond, Gary and Whiting, IN)	Comments and Request for Conditions	<ul style="list-style-type: none"> Require that CSX and NS amend their Operating Plans to incorporate the Four Cities' Alternative Routing Plan and adhere to the Plan after implementing the Conrail Acquisition 	Indiana	Could increase rail operations above thresholds on Alternative Plan segments while decreasing operations on segments in the original Operating Plans
Genesee Transportation Council	Comments (and Request for Conditions)	<ul style="list-style-type: none"> Separate ownership of the Conrail Main Line between Buffalo, NY City, and the Southern Tier Line Grant truck-competitive north-south routes to the Southeast via CSX at Potomac Yards, VA and via the NS connection at Hagerstown, MD, from Southern Tier junction Establish intermodal facilities to convert more traffic to rail intermodal to reduce the projected increase in truck traffic and the corresponding impact on the region's transportation infrastructure Grant a competitive access to the PA and WV coal fields that supply RG&E, Niagara Mohawk, NYSEG, Kodak, and others with coal Provide protection for the link between the Conrail Main Line and the Southern Tier Line between 	Maryland New York Pennsylvania Virginia West Virginia	Could increase rail operations above thresholds on affected segments.

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Filer/Commenter	Title of Filing	Condition(s) Requested	State(s) Affected	Potential Environmental Effects
		<ul style="list-style-type: none"> Rochester, NY and Silver Springs, NY Remove restrictions to allow short lines to be competitive Grant access by CSX and NS to the Port of New York and other North Atlantic ports 		
Housatonic Railroad Co, Inc.	Request for Protective Conditions and Comments	<ul style="list-style-type: none"> Grant haulage rights over Conrail between Pittsfield, MA and Albany, NY, and Pittsfield and Palmer, MA Preserve rate competition for limestone by imposing an NS switching charge for CSX at Gypsum, OH Impose commodity rate equalization for traffic to CT and western MA 	Massachusetts New York Ohio	Verified Statement submitted; two added trains per day on affected segments; thresholds not exceeded.
Illinois International Port District	Request for Conditions	<ul style="list-style-type: none"> Open service on the east side of Calumet Harbor at the Port of Chicago Allow trackage rights and access to Harbor customers by local switching carriers 	Illinois	Could increase rail operations above thresholds on affected segments.
Indiana Port Commission	Request for Conditions	<ul style="list-style-type: none"> Place all or a portion of Conrail's Indiana Harbor Belt Railroad (IHB) stock in perpetual voting trust Prescribe conditions to preserve and improve railroad service Develop timetable detailing sequential phasing of Acquisition Require at least daily IHB service to Burns Harbor and shippers Permit IHB to retain ownership of 500 gondola cars Require that IHB Blue Island Yard and IHB Michigan Ave. Yard and the operations of both 	Indiana Michigan	Could increase rail operations above thresholds on affected segments.

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Filer/Commenter	Title of Filing	Condition(s) Requested	State(s) Affected	Potential Environmental Effects
		<ul style="list-style-type: none"> remain under IHB control Monitor Acquisition for 5 years, requiring periodic reports 		
Indianapolis Power & Light Company	Supplemental Comments and Request for Conditions	<ul style="list-style-type: none"> Designate Indianapolis a Shared Assets Area to preserve competition or Grant NS trackage rights and cost-based switching fees for access to local shippers Ensure western railroads provide through rates to NS at Kansas City or grant NS trackage rights over CSX from St. Louis or Chicago to Indianapolis 	Indiana Illinois Missouri	Could increase rail operations above thresholds on affected segments.
Inland Steel Industries, Inc.	Comments and Request for Conditions	<ul style="list-style-type: none"> Require NS and CSXT to provide single-line or run-through service from I/N Teck, a cold-rolling mill near New Carlisle, IN to Inland Steel customers in Kenton, OH and Indianapolis Require NS to grant trackage rights to directly service ISC's Indiana Harbor Works 	Illinois Indiana Ohio	Could increase rail operations above thresholds on affected segments.
International Paper Co. Erie, PA	Comments (and Request for Conditions)	<ul style="list-style-type: none"> Maintain single-line unit train service between Lock Haven and Erie, PA by granting either NS or Allegheny and Eastern trackage rights Grant the Delaware and Hudson access to the Port of New York and the Shared Assets Area of New York and New Jersey 	New Jersey New York Pennsylvania	Could increase rail operations above thresholds on affected segments.
Joseph Smith & Sons	Comments and Request for Conditions	<ul style="list-style-type: none"> Grant NS competitive access to the scrap metal facility at Capital Heights, MD through the construction of connections 	Maryland	Construction could have environmental effects; could increase rail operations above thresholds on affected segments.
U.S. Rep. Dennis Kucinich (Ohio, 10th	Request for Conditions	<ul style="list-style-type: none"> Prevent interference with commuter rail service and safety as a result of reduced labor forces 	Ohio	Could increase rail operations above thresholds on affected

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Filer/Commenter	Title of Filing	Condition(s) Requested	State(s) Affected	Potential Environmental Effects
District)		<ul style="list-style-type: none"> • Include use by NS of Wheeling & Lake Erie track to reduce traffic through Cleveland • Establish a neutral terminal operating company to control rail operations in the Cleveland area 		segments.
State of Maine Department of Transportation	Comments, Protests and Request for Conditions	<ul style="list-style-type: none"> • Ensure competitive access to New England and Maine by CSX and NS will be provided with periodic review by STB and • Ensure passenger service is allowed to continue, develop and increase speeds 	Maine New England	Could increase rail operations above thresholds on affected segments.
Martin-Marietta Materials, Inc.	Comments and Request for Conditions	<ul style="list-style-type: none"> • Require CSX to cooperate with NS in the operation of run-through trains from Woodville to NS stations • Address other issues relating to run-through trains • Require Applicants to enter into 5-year joint-rate agreements with Martin-Marietta 	Ohio	Could increase rail operations above thresholds on affected segments.

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Members of U.S. House of Representatives from New York and Connecticut	Intervention Petition	<ul style="list-style-type: none"> • Inclusion in Acquisition of: <ul style="list-style-type: none"> (1) Car float operation across New York Harbor; (2) Bay Ridge line from Fresh Pond to Queens, NY; (3) New York Connecting Railroad from Fresh Pond Junction to Oak Point Yard; (4) Connecting tracks between Oak Point and Harlem River Yard and to the New York Terminal Produce Market, in operation of the North Jersey Shared Assets Area with equal access by other connecting carriers. 	Connecticut New York	Float operation could reduce congestion on some segments by cutting 300 miles off shipments from New York to New Jersey; access for other railroads could increase rail operations above thresholds.
Metro-North Commuter Railroad Co. (MNCR)	Comments and Request for Conditions	<ul style="list-style-type: none"> • Require that Conrail's line between Suffern and Port Jervis (NY) be conveyed to MNCR, or • Grant MNCR long-term trackage rights over the line 	New York	Could increase rail operations above thresholds on affected segments.
Millennium Petrochemicals Inc.	Comments (and Requests for Conditions)	<ul style="list-style-type: none"> • Expand the North Jersey Shared Assets Area to include Finderne and Manville Yard, NJ • Allow Conrail Shared Assets Operation to provide local switching 	New Jersey	Could increase rail operations above thresholds on segments in Shared Assets Area.
National Industrial Transportation League	Comments and Request for Conditions	<ul style="list-style-type: none"> • Impose four implementation conditions, three post-implementation conditions and four other conditions • Retain oversight jurisdiction 	System-wide	Unknown
National Lime and Stone Company (NLSC)	Protest and Request for Imposition of Conditions	<ul style="list-style-type: none"> • Require CSX to grant NS trackage rights from Crestline, OH to Spore, OH • Require CSX to grant NS trackage rights from Upper Sandusky to NLSC's Carey, OH plant • Require NS to grant CSX reciprocal trackage rights to enable CSX to compete to deliver single-line service to NLSC's existing and future markets east of Crestline, OH 	Ohio	Could increase rail operations above thresholds on affected segments.

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Filer/Commenter	Title of Filing	Condition(s) Requested	State(s) Affected	Potential Environmental Effects
		<ul style="list-style-type: none"> Grant trackage rights over Wheeling & Lake Erie Railroad's tracks to NLSC's markets now served by W&LE 		
National Mining Association	Comments and Request for Conditions	<ul style="list-style-type: none"> Require preparation of detailed plan of operations to avert service disruptions and to assure continued level of service 	System-wide	Unknown.
National Railroad Passenger Corp. (Amtrak)	Comments and Request for Conditions	<ul style="list-style-type: none"> Oversight of on-time performance of CSX-operated Amtrak trains related to proposed Acquisition CSX cooperation in development of high-speed passenger service between Albany-Buffalo (NY) and Detroit-Chicago 	Illinois Michigan New York	Could increase rail operations above thresholds on Northeast Corridor and other affected segments.
New Jersey Department of Transportation / New Jersey Transit Corp. (NJT)	Comments and Request for Conditions	Require: <ul style="list-style-type: none"> Coordination with NJT in Shared Assets Areas Installation of Automatic Train Control and Positive Train Stop on locomotives operating over NJT properties (safety) Adoption of Northeast Operating Rules Advisory Committee rules Sufficient capital investment in the Aldene to NK segment Adequate Dispatching and Maintenance Resources Cooperation in the development of the South Jersey Light Rail Transit project 	New Jersey	Could increase rail operations above thresholds on affected segments.

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New York Cross Harbor Railroad Terminal Corp. (NYCH)	Comments (and Request for Conditions)	<ul style="list-style-type: none"> Require CSX to honor shipper directions to route cars over NYCH from southern New England to the Mid- Atlantic area where its Greenville Gateway is best 	New Jersey New York New England Mid-Atlantic	Could increase rail operations above thresholds on affected segments.
State of New York Department of Transportation	Comments (and Request for Conditions)	<ul style="list-style-type: none"> Grant the Joint Responsive Application of New York and New York City Economic Development Corporation Grant the conditions proposed in the Comments of the Erie-Niagara Rail Steering Committee Protect commuter and inter-city passenger service Ensure that Conrail contracts assumed by the applicants will not interfere with operations and premium paid does not unreasonably increase rail rates Grant Metro-North's and South Tier West's requested conditions Establish Shared Assets Area in Buffalo, NY Oversee Acquisition for 10 years 	New York	Could increase rail operations above thresholds on affected segments; otherwise unknown.
Niagara Mohawk Power Corporation Syracuse, New York	Comments, Evidence and Request for Conditions	<ul style="list-style-type: none"> Create a Shared Assets Area with reciprocal switching for competitors of CSX and NS or Require that CSX and NS grant each other trackage rights in the same area 	New York	Could increase rail operations above thresholds on affected segments.
Northeast Ohio Areawide Coordinating Agency (5 county area)	Resolution and Request for Condition	<ul style="list-style-type: none"> Require Applicants to undertake additional study of the adverse effects on Northeast Ohio 	Ohio	Unknown

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Northeast Ohio Group of the Sierra Club	Comments (and Request for Condition)	<ul style="list-style-type: none"> Require Applicants to divert freight traffic to rail to relieve congestion and air pollution caused by trucks 	Ohio	Could increase rail operations above thresholds on affected segments.
Northeast Ohio Four County Regional Planning & Development Organization for Metro Regional Transit Authority	Request for Condition	<ul style="list-style-type: none"> Grant commuter operating rights on Conrail's mainline between Cleveland and Hudson, OH 	Ohio	Could increase rail operations above thresholds on affected segments.
Northern Virginia Transportation Comm. and Potomac & Rappahannock Transportation Comm. (Virginia Railway Express)	Comments and Request for Conditions	<ul style="list-style-type: none"> Grant operating rights over: (1) Conrail's line between Arlington, VA Interlocking and Virginia Ave. Interlocking, (2) CSX Spotsylvania, VA Interlocking and Arlington Interlocking and (3) NS So. Manassas Turnout and connection with CSX's AF Interlocking at Alexandria, VA Revise terms in Operating Agreements with CSX and NS 	District of Columbia Virginia	Responsive Environmental Report submitted; no significant changes in operations; thresholds not exceeded.
Northwest Pennsylvania Rail Authority (Authority), Richard M. Novotny, Chairman	Comments (and Request for Conditions)	<ul style="list-style-type: none"> Direct NS and Authority to grant reciprocal trackage rights for (1) NS connection and trackage rights in Corky, PA and (2) Authority trackage rights between mileposts 60.5 and 23.2 in Waterbury, NY 	New York Pennsylvania	Could increase rail operations above thresholds on affected segments.
Occidental Chemical Corporation	Comments (and Request for Conditions)	<ul style="list-style-type: none"> Require a plan for operations of the Shared Assets Areas Require continuing oversight for 5 years, and that Applicants conduct quarterly and annual reports Order various port-implementation rate conditions 	Texas	Unknown.

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Ohio Attorney General, Ohio Rail Development Commission and PUC of Ohio	Opposition, Comments and Request for Protective Conditions	<ul style="list-style-type: none"> Ensure protection of Wheeling & Lake Erie Railway, Port of Toledo, Stone and other shippers, the Stark County Neomodal facility, labor and public safety, particularly Fosteria, Cleveland, Lakewood, Rocky River and Bay Village, OH. 	Ohio	Unknown.
Orange & Rockland Utilities, Inc.	Comments and Request for Conditions	<ul style="list-style-type: none"> Retain jurisdiction over Acquisition implementation Assure competitive rates to the Lovett Plant, NY by granting interchange rates between railroads 	New York	Unknown.
Pennsylvania House of Representatives, Transportation Committee	Comments and Request for Conditions	<ul style="list-style-type: none"> Grant Canadian Pacific competitive access to Philadelphia and Southern New Jersey Grant competitive access to various short lines and regional railroads serving Pennsylvania 	Pennsylvania	Could increase rail operations above thresholds on affected segments.
Philadelphia Belt Line Railroad Co.(PBL)	Comments and Request for Conditions	<ul style="list-style-type: none"> Assure equal access to PBL's north lines by all carriers in Philadelphia Grant Canadian Pacific reciprocal switching rights in South Jersey Shared Assets Area 	Pennsylvania	Verified Statement submitted; no change in rail operations; thresholds not exceeded.
Port Authority of New York and New Jersey	Comments, Request for Conditions, Opposition	<ul style="list-style-type: none"> Require an independent terminal railroad be created to serve the New York/New Jersey Port area for efficient and effective service to the port 	New Jersey New York	Could increase rail operations above thresholds on affected segments.

Appendix U: List of Comments and Petitions/Requests for Conditions

Filer/Commenter	Title of Filing	Condition(s) Requested	State(s) Affected	Potential Environmental Effects
Potomac Electric Power Company (PEPCO) Washington, D.C.	Comments and Request for Conditions	<ul style="list-style-type: none"> Grant trackage rights to NS between Bowie, MD and PEPCO's plants near Herbert and Woodzell, MD Prohibit CSX from using the premium it will pay for Conrail in setting rates to PEPCO Require CSX and NS to provide dual service to "Rochester & Pittsburgh's Mine 84" in Pennsylvania 	District of Columbia Maryland Pennsylvania	Could increase rail operations above thresholds on affected segments.
Rail-Bridge Terminals Corporation, NJ	Comments and Request for Conditions	<ul style="list-style-type: none"> Either grant RBTC's E-Rail intermodal facility at Elizabeth, NJ equal access to CSX and NS or Prohibit competitors equal access to CSX and NS 	New Jersey	Could increase rail operations above thresholds on affected segments.
Reading Blue Mountain and Northern Railroad Company (RBMN)	Comments	<ul style="list-style-type: none"> Remove or modify the penalties imposed on RBMN for traffic interlined with carriers other than Conrail Permit access for existing trackage rights from the lines of RBMN in Reading, PA 	Pennsylvania	Could increase rail operations above thresholds on affected segments.
Redland Ohio, Inc., Woodville and Millersville, OH	Opposition, Comments and Requests for Conditions	<ul style="list-style-type: none"> Maintain competitive access to Redland facilities and ensure single-line service remains available by changing Conrail and CSX contract terms that set routes Grant W&LE trackage or haulage rights over NS from Bellevue to Maple Grove, OH 	Ohio	Could increase rail operations above thresholds on affected segments.
U.S. Sen. Jack Reed (RI)	Comments and Request for Conditions	<ul style="list-style-type: none"> Increase competition in Rhode Island and New England to same level as New York/New Jersey (to Class I Railroads) Supervise implementation of the Acquisition 	Rhode Island Other New England States	Could increase rail operations above thresholds on affected segments.

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Filer/Commenter	Title of Filing	Condition(s) Requested	State(s) Affected	Potential Environmental Effects
State of Rhode Island Department of Transportation	Comments and Request for Conditions	<ul style="list-style-type: none"> • Require competitive access by a second Class I railroad into New England • Enter into agreement with Rhode Island committing to reasonable rate structure • Commit to existing and planned passenger rail service and allow for continued access for growth of high speed rail and commuter rail service along Northeast corridor • Retain jurisdiction to monitor rail competition for a period of 3-5 years 	Rhode Island and Other New England States	Unknown.
Village of Ridgefield Park, NJ	Comments (and Request for Conditions)	<ul style="list-style-type: none"> • Prohibit the construction of the "cross-track" located in Ridgefield Park • Require removal of the rail refueling facility • Return the Conrail bridge over Overpeck Creek to a movable bridge 	New Jersey	Unknown.
Rochester Gas and Electric Corp., Rochester, NY	Protest and Request for Conditions	<ul style="list-style-type: none"> • Ensure two Class I railroads compete in the Rochester area and that CSX and NS implement reasonable switching charges 	New York	Could increase rail operations above thresholds on affected segments.
Southeastern Pennsylvania Transportation Authority (SEPTA)	Comments and Request for Conditions	<ul style="list-style-type: none"> • Grant SEPTA a 10-year extension of Trackage Rights Agreement with changes in dispatching provisions • Require that Applicants extend SEPTA's service on Harrisburg to Reading line 	Pennsylvania	Could increase rail operations above thresholds on affected segments.

Appendix U: List of Comments and Petitions/Requests for Conditions

Filer/Commenter	Title of Filing	Condition(s) Requested	State(s) Affected	Potential Environmental Effects
Southern Tier West Regional Planning and Development Board	Comments and Responsive Applications	<ul style="list-style-type: none"> Require NS to describe specifically its plans for the Southern Tier Extension Require Conrail to pay the \$2.136 million owed to the New York State Dept. of Transportation under the Southern Tier Agreement (STA), or Require NS to repair the washouts at Alfred, Scio, and Belmont, NY, and to otherwise restore the entire line to operable status Extend the service and maintenance commitments contained in the STA for 5 years 	New York	Could increase rail operations above thresholds on affected segments.
U.S. Sen. Arlen Specter (PA)	Comments (and Request for Conditions)	<ul style="list-style-type: none"> STB should ensure: <ol style="list-style-type: none"> (1) Price paid for Conrail is not going to increase rates (2) Conrail employees will be protected (3) Philadelphia retains headquarters (4) Competitors' and Port's comments are addressed (5) SEPTA agreement is extended 	Pennsylvania	Conditions impacting competitors and SEPTA could increase rail operations above thresholds on affected segments.
Stark Development Board, Inc.	Verified Statement	<ul style="list-style-type: none"> Require CSX and NS to: <ol style="list-style-type: none"> (1) provide competitive rates, schedules, market access to Neomodal facility, integrate it and enter into take or pay lift contracts with it, or (2) purchase the facility and continue its operation 	Ohio	Loss of environmental benefits like reduced highway congestion and air pollution if taxpayer financed Neomodal facility is closed.
U.S. Rep. Louis Stokes (Ohio — 11th District)	Comments (and Request for Conditions)	<ul style="list-style-type: none"> Mitigate the adverse impacts to Cleveland residents caused by increase in rail traffic, or deny the Application 	Ohio	Unknown

Filer/Commenter	Title of Filing	Condition(s) Requested	State(s) Affected	Potential Environmental Effects
Toledo-Lucas County Port Authority	Request for Conditions	<ul style="list-style-type: none"> • Ensure competitive access to the Toledo Docks by providing Wheeling & Lake Erie Railroad or another railroad access • Deny the Notice of Exemption for the abandonment of the Toledo Pivot Bridge 	Ohio	Could increase rail operations above thresholds on affected segments.
Toledo Metropolitan Area Council of Governments	Request for Conditions	<ul style="list-style-type: none"> • Ensure the Wheeling & Lake Erie Railroad access to Toledo, OH • Maintain multiple rail options for direct competitive rail access to the Toledo Docks • Improve the CSX-NS main line crossing at Vickers (Northwood, OH) with a grade separation 	Ohio	Could increase rail operations above thresholds on affected segments.
Transportation Intermediaries Association	Comments and Requests for Conditions	<ul style="list-style-type: none"> • Prohibit Applicants from imposing liquidated damages for volume shortfalls • Require plans for competitive intermodal line haul service over Conrail routes • Require plans to allocate intermodal equipment and interchange it with all other railroads 	System-wide	Unknown

Appendix U: List of Comments and Petitions/Requests for Conditions

Filer/Commenter	Title of Filing	Condition(s) Requested	State(s) Affected	Potential Environmental Effects
Tri-State Transportation Campaign (TSTC) / Rutgers Environmental Law Clinic Newark, NJ	Comments / Requests for Conditions	<ul style="list-style-type: none"> • Ensure the car float operation across the New York - New Jersey Harbor • Grant NS trackage rights from 65th St. to Bronx Oak Point and Hunts Point Market • Grant NS trackage rights on Northeast Corridor to Connecticut and Massachusetts • Transfer to NS residual Conrail freight rights through Pennsylvania tunnels • Require CSX to establish an intermodal terminal at Harlem River Yard 	New Jersey New York Pennsylvania	Could increase rail operations above thresholds on affected segments.
Union Camp Corp. Dover, Ohio	Comments and Request for Conditions	<ul style="list-style-type: none"> • Remove anti-competitive lease provision • Allow R.J. Corman to compete with CSX for business on the Warwick to Uhrichville, OH line. 	Ohio	Could increase rail operations above thresholds on affected segments.
U. S. Department of Justice	Comments (and Request for Conditions)	<ul style="list-style-type: none"> • For PSI Energy: Grant CSX Conrail's trackage rights over NS between Keensburg and Carol, IL to serve PSI Energy's Plant at Gibon, IN. • For Indianapolis Power & Light (IP&L): Impose conditions allowing NS the right to connect with Indiana Southern Railroad and any rail extension by IP&L from its Stout plant in Indianapolis. • For Potomac Electric Power Company (PEPCO): Grant NS trackage rights to the Morgantown and Chalk Point plants in MD. 	Illinois, Indiana, Maryland, Virginia	Could increase rail operations above thresholds for affected segments.
U.S. Department of Transportation	Preliminary Comments (and	<ul style="list-style-type: none"> • Ensure safety of combined rail systems by requiring detailed planning 	System-wide	Unknown.

Filer/Commenter	Title of Filing	Condition(s) Requested	State(s) Affected	Potential Environmental Effects
	Request for Conditions)	<ul style="list-style-type: none"> • Ensure competition will not be reduced without offsetting public benefits or mitigation • Ensure passenger service, employees, and the environment will be protected • CSX and NS should prepare individual safety integration plans that describe how they intend to safely integrate Conrail's operations with their own in compliance with Federal railroad safety laws 		
Vermont Railway, Inc. (VTR)	Comments and Request for Conditions	<ul style="list-style-type: none"> • Require CSX to arbitrate terms and rates for use of VTR trailers • Partially revoke the TOFC/COFC exemption to require mandatory interchange of VTR trailers 	Vermont New England	Unknown.
The West Virginia Association of Economic Development	Comments (and Request for Conditions)	<ul style="list-style-type: none"> • Insure competition and dual carrier service to shippers on the West Virginia secondary line 	West Virginia	Could increase rail operations above thresholds on affected segments.
The West Virginia State Rail Authority	Comments and Request for Conditions	<ul style="list-style-type: none"> • Grant trackage rights for: (1) W&LE into locations in West Virginia, (2) NS into the B&O coal fields, and (3) CSX on Conrail's West Virginia Secondary from Point Pleasant to Charleston, WV 	West Virginia	Could increase rail operations above thresholds on affected segments.
Wisconsin Central Ltd.	Comments (and Request for Conditions)	<ul style="list-style-type: none"> • Neutral dispatcher for Indiana Belt Terminal Railroad, of which 51% is owned by Conrail and would be transferred to CSX 	Illinois Indiana	Verified Statement submitted; no significant change in rail operations; thresholds not exceeded.

APPENDIX V

Site Visits

APPENDIX V

Site Visits

Following receipt of the Environmental Report (ER), SEA and its independent contractors initiated a series of field visits in July 1997 as part of the verification process. This verification process involved site visits at all intermodal facilities, rail yards, new constructions, and rail line abandonments. Following this initial impact analysis, SEA visited other selected sites and rail line segment locations, and highway/rail at-grade crossings where potential issues and concerns were identified. In addition, SEA examined some of the commuter rail and Amtrak service routes and operations that could be potentially affected by activities related to the proposed Conrail Acquisition. SEA also performed field observations at especially sensitive locations in cities such as Chicago, IL, Cleveland, OH, Erie, PA, and Newark, DE.

In all, SEA conducted over 170 site visits. These site visits were conducted by specialists in technical areas of railroad operations, air quality, noise, cultural resources, natural resources, hazardous materials, land use, and public outreach, as appropriate. SEA and its independent contractors are continuing to perform field observations during the Draft EIS public review period and preparation of the Final EIS. SEA will continue to conduct site visits as other sensitive environmental issues of a site-specific nature are raised by the public during the review process. Table V-1 lists the dates, location (site name and state) and pre- and post-Acquisition railroad operators for each location visited as part of the ER verification process and impact analysis.

Table V-1
Site Visits

Date	Current Operator	New Operator	Location (Site Name)	State
7/8/97	CR	SHARED	Elizabeth (E-Rail, Portside)	NJ
7/8/97	CR/NS	NS	Cleveland (Western Shore)	OH
7/8/97	CR	SHARED	Philadelphia (Greenwich)	PA
7/8/97	CR	NS	Philadelphia (Morrisville)	PA
7/9/97	CR	NS	Baltimore	MD
7/9/97	CR	CSX	South Kearny	NJ
7/9/97	CR	NS	Harrisburg (Harrisburg)	PA
7/9/97	CR	NS	Harrisburg (Rutherford)	PA
7/10/97 9/24/97	CR	NS	Allentown	PA
7/10/97 9/24/97	CR	NS	Pittsburgh(Pitcairn)	PA
7/15/97	CSX	CSX	Chicago (75th Street)	IL
7/15/97	NS	NS	Sidney ^a	IL
7/15/97	NS	NS	Tolono	IL
7/15/97	NS	NS	Danville	IL

**Table V-1
Site Visits**

Date	Current Operator	New Operator	Location (Site Name)	State
7/15/97	NS	NS	Michigan City (Dillon Jct.)	IN
7/15/97	NS	NS	South Bend (Dillon Jct.)	IN
7/16/97	CR	NS	Chicago (Colehour)	IL
7/16/97	CSX/IHB	CSX	Chicago (Lincoln Avenue)	IL
7/16/97	CSX/CR	CSX	Exermont	IL
7/16/97	CR	CSX	Paris - Danville	IL
7/16/97	NS	NS	Fort Wayne	IN
7/17/97	NS/CR	NS	Alexandria ^a	IN
7/17/97	CSX	CSX	Gary (Curtis)	IN
7/17/97	NS/CR	NS	Tolleston	IN
7/17/97	CSX/CR	CSX	Willow Creek ^a	IN
7/17/97	NS	NS	St. Louis (Luther)	MO
7/17/97	CSX/CR	CSX	Sidney ^a	OH
7/18/97	NS/CR	NS	Kankakee	IL
7/18/97	NS	NS	Louisville (Buechel)	KY
7/18/97	NS	NS	Kansas City (Voltz)	MO
7/22/97	CR	NS	Detroit (Ecorse Jct.)	MI
7/22/97	NS	NS	Detroit (Melvindale)	MI
7/22/97	CSX	CSX	Detroit (Rougemere)	MI
7/22/97	NS	NS	Columbus (Discovery Park)	OH
7/22/97	CR	CSX	Main Street, Crestline	OH
7/22/97	CR	NS	Reading Road, Sharonville	OH
7/23/97	NS/CR	NS	Columbus (Weber Street)	OH
7/23/97	NS	NS	Conneaut	OH
7/23/97	CSX/CR	CSX	Crestline ^a	OH
7/23/97	NS/CR	NS	Oak Harbor	OH
7/23/97	CR	NS	Toledo (Airline Jct.)	OH
7/23/97	CR	CSX	Toledo (Stanley)	OH
7/23/97	CR	NS	Tylersville Road, Maud	OH
7/24/97	CSX	CSX	Newark	DE
7/24/97	NS	NS	Buffalo (Bison Yard)	NY
7/24/97	NS/CR	NS	Buffalo (Blasdell)	NY
7/24/97	NS/CR	NS	Buffalo (Gardenville Jct.)	NY
7/24/97	NS/CR	NS	Bucyrus ^a	OH
7/24/97	CR	CSX	Engle Road, Cleveland	OH
7/24/97	CSX/CR	CSX	Greenwich ^a	OH
7/24/97	NS	NS	Toledo (Homestead)	OH

**Table V-1
Site Visits**

Date	Current Operator	New Operator	Location (Site Name)	State
7/24/97	NS	NS	Toledo - Maumee	OH
7/24/97	NS	NS	Toledo (Pivot Bridge)	OH
7/24/97	CSX	CSX	Willard	OH
7/24/97	CR	CSX	Amsted Falls, Berea, Lakewood Area	OH
7/25/97	NS	NS	Buffalo Area	NY
7/25/97	NS	NS	Bellevue	OH
7/25/97	NS	NS	Ashtabula	OH
7/25/97	NS	NS	Dunkirk	OH
7/26/97	CSX	CSX	Gaithersburg	MD
7/29/97	CSX	CSX	Atlanta (HusIEy)	GA
7/29/97	NS	NS	Atlanta (Inman)	GA
7/30/97	NS	NS	Memphis (Forrest)	TN
7/30/97	CSX	CSX	Memphis (Leewood)	TN
7/31/97	NS	NS	New Orleans (Oliver)	LA
8/21/97	MARC	MARC	Washington to Baltimore	DC/MD
9/15/97	VRE	VRE	Fredericksburg to Washington	DC/VA
9/15/97	VRE	VRE	Fredericksburg to Washington	DC/VA
9/19/97 9/20/97	Amtrak	Amtrak	Washington to Chicago - Amtrak	DC/IL
9/19/97	NS/CR	NS	Butler	IN
9/19/97	NS	NS	Columbia Road (Bay Village)	OH
9/19/97	NS	NS	Oberlin Avenue, Lorain	OH
9/19/97	CR	CSX	Poe Road, Weston (Toledo-Deshler)	OH
9/19/97	NS	NS	Fremont	OH
9/19/97	CSX	CSX	W. Boundary, Perrysburg	OH
9/19/97	CSX	CSX	Bridge Street, Etna	PA
9/19/97	CSX	CSX	Butler Street, Etna	PA
9/19/97	CSX	CSX	Main Street, Evans City	PA
9/19/97	CSX	CSX	SR 8 , Etna	PA
9/20/97	NS	NS	Doraville	GA
9/20/97	CR	SHARED	Allen Road, Taylor	MI
9/20/97	CR	NS	Central Street, Detroit	MI
9/20/97	CSX	CSX	Front Street, Monroe	MI
9/20/97	CR	NS	Leforge Street, Ypsilanti	MI
9/20/97	CR	NS	Lonyo Road, Detroit	MI
9/20/97	CR	NS	Merriman Road, Wayne	MI
9/20/97	CR	SHARED	Northline Road, Southgate	MI
9/20/97	CR	NS	SR M-52, Chelsea	MI

**Table V-1
Site Visits**

Date	Current Operator	New Operator	Location (Site Name)	State
9/20/97	CSX	CSX	Stewart Road, Monroe	MI
9/20/97	CR	NS	Baily Avenue, Buffalo	NY
9/20/97	CR	NS	Cleveland (Downtown-CP Draw)	OH
9/20/97	NS	NS	Cleveland (Lakewood Area)	OH
9/21/97	NS	NS	Cleveland (Kinsman Area)	OH
9/21/97	CR	NS	Linndale/Cloggsville (Cleveland)	OH
9/21/97	CR	NS	White (Harvard Tunnels)	OH
9/22/97	NS	NS	Anthony Blvd, Ardmore Avenue, Fort Wayne	IN
9/22/97	CSX/NS	CSX	Broadway, Princeton	IN
9/22/97	NS	NS	Kilgore, Tillotson, Muncie	IN
9/22/97	NS	NS	Beliefontaine, Marion	OH
9/22/97	CR	CSX	Cable Road, Lima	OH
9/22/97	CR	NS	Sellers, Moraine	OH
9/22/97	CR	NS	Central, Carrollton	OH
9/23/97	NS	NS	LaFayette area	IN
9/23/97	NS	NS	18th Street, LaFayette	IN
9/23/97	NS	NS	4th Street, LaFayette	IN
9/23/97	NS	NS	9th Street, LaFayette	IN
9/23/97	NS	NS	Broadway, Huntington	IN
9/23/97	NS	NS	Columbia Street, LaFayette	IN
9/23/97	NS	NS	Ferry Street, LaFayette	IN
9/23/97	NS	NS	Jefferson Street, Huntington	IN
9/23/97	NS	NS	Main Street, LaFayette	IN
9/23/97	NS	NS	South Street, LaFayette	IN
9/23/97	NS	NS	SR 9, Alexandria	IN
9/23/97	NS	NS	Underwood Street, LaFayette	IN
9/23/97	NS	NS	Union Street, LaFayette	IN
9/23/97	CR	NS	Alex Bell Road, Carrollton	OH
9/23/97	CR	NS	Alex Road, Carrollton	OH
9/23/97	CSX	CSX	Ottawa Avenue, Defiance	OH
9/25/97	CSX	CSX	Dixie Hwy, Blue Island	IL
9/25/97	CSX	CSX	E. 9th Street, Hopkinsville	IN
9/25/97	CSX	CSX	US 41, Henderson	IN
9/25/97	CSX	CSX	W. Franklin Street, Evansville	IN
10/1/97	CR	NS	Indian Church Road, Buffalo	NY
10/9/97	NS/CR	NS	Vermilion	OH
10/13/97	CSX	CSX	Toledo-Deshler	OH

Table V-1
Site Visits

Date	Current Operator	New Operator	Location (Site Name)	State
10/14/97	NS	NS	Muncie	IN
10/15/97	CR/CSX	NS/CSX	Chicago	IL
9/20/97	CR	CSX	Chicago (Bedford Park)	IL
7/11/97 7/26/97	NS/CR	NS	Hagerstown	MD
7/15/97 9/20/97	CR	NS	Chicago (47th Street)	IL
7/15/97 9/20/97	CR	CSX	Chicago (59th Street)	IL
7/15/97 9/20/97	CR	CSX/NS	Chicago (63rd Street/Park Manor/Englewood)	IL
7/16/97 9/20/97	NS	NS	Chicago (Landers)	IL
7/22/97 9/20/97	CR	Both	Pennsylvania Road, Taylor	MI
7/23/97 10/17/97	CSX/CR	CSX	Cleveland (Collinwood)	OH
7/24/97 9/19/97 9/21/97	NS	NS	West 117 Street, Cleveland	OH
8/11/97 9/21/97	NS/CR	NS	Vermillion	OH
7/24/97 9/18/97	NS	NS	Dille Road, Euclid	OH
7/24/97 9/19/97	CR	CSX	Bagely Road, Berea	OH
7/24/97 9/25/97	CSX	CSX	Chicago (71st Street)	IL
7/25/97 9/18/97	Both	Both	Erie	PA
7/25/97 9/18/97 10/29/97 10/31/97	NS	NS	Newell Road, Dunkirk	NY
7/25/97 9/18/97	NS	NS	Mentor Avenue, Painesville	OH
7/8/97 7/10/97	CR/CSX	CSX	Suburban Maryland	MD
7/8/97 7/9/97 9/25/97	CR/CSX	CSX	Little Ferry	NJ

**Table V-1
Site Visits**

Date	Current Operator	New Operator	Location (Site Name)	State
7/25/97 9/20/97 9/29/97 10/30/97	CR/NS	NS/CSX	Cleveland (Central/East)	OH

^a Pre-application sites.