

STB

FD-33388

ID-MOCH

6-23-97

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Office of the Chairman

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

179833

*File in
Docket
FD-33388*

July 31, 1997

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

Dear Congressman Stokes:

Thank you for your letter outlining the concerns of the Northeast Ohio Congressional delegation regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding is docketed at the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

The Board has adopted a 350-day procedural schedule for deciding the merits of the control application filed in this proceeding. A 350-day schedule, the Board concluded, will provide for both a full and fair opportunity for all interested parties to participate in the proceeding and a timely resolution of this case. Applicants filed their control application with the Board on June 23, 1997, and the Board published notice of its acceptance of the application on July 23, 1997. That notice provides due dates for public comments and other future filings in the proceeding. I have enclosed a copy of the Board's notice for your convenience.

In particular, you raise concerns about rail employees and local jobs that could be affected by the Conrail proposal. In deciding whether a control transaction such as the one being proposed here is in the public interest, the Board will give full consideration to the interest of affected rail employees, to the communities involved, and to all the other factors required by law, in deciding whether to approve the proposed transaction. Because this proceeding is pending before the Board, however, it would be inappropriate for me to comment on the specific aspects of the case.

As you requested, I will have your letter made a part of the public docket in this proceeding, and also will have your name added to the service list to ensure that you receive all future Board decisions in this case. I appreciate your interest in this matter, and if I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Linda J. Morgan
Linda J. Morgan

Enclosure

179834



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

Office of the Chairman

July 31, 1997

The Honorable Ralph Regula
U.S. House of Representatives
Washington, D.C. 20515-3516

Dear Congressman Regula:

Thank you for your letter outlining the concerns of the Northeast Ohio Congressional delegation regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding is docketed at the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

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Linda J. Morgan
Linda J. Morgan

Enclosure



Office of the Chairman

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

179445

July 31, 1997

The Honorable James A. Traficant, Jr.
U.S. House of Representatives
Washington, D.C. 20515-3517

Dear Congressman Traficant:

Thank you for your letter outlining the concerns of the Northeast Ohio Congressional delegation regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding is docketed at the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

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Enclosure



Office of the Chairman

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

11186

July 31, 1997

The Honorable Thomas C. Sawyer
U.S. House of Representatives
Washington, D.C. 20515-3514

Dear Congressman Sawyer:

Thank you for your letter outlining the concerns of the Northeast Ohio Congressional delegation regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding is docketed at the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

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Enclosure



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

179835

Office of the Chairman

July 31, 1997

The Honorable Sherrod Brown
U.S. House of Representatives
Washington, D.C. 20515-3513

Dear Congressman Brown:

Thank you for your letter outlining the concerns of the Northeast Ohio Congressional delegation regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding is docketed at the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

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Enclosure



Office of the Chairman

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

179836

July 31, 1997

The Honorable Steve LaTourette
U.S House of Representatives
Washington, D.C. 20515-3519

Dear Congressman Latourette:

Thank you for your letter outlining the concerns of the Northeast Ohio Congressional delegation regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding is docketed at the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

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Linda J. Morgan
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Enclosure

179837



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

Office of the Chairman

July 31, 1997

The Honorable Dennis J. Kucinich
U.S. House of Representatives
Washington, D.C. 20515-3510

Dear Congressman Kucinich:

Thank you for your letter outlining the concerns of the Northeast Ohio Congressional delegation regarding the proposal by CSX and Norfolk Southern (NS) to acquire control of Conrail and to divide certain assets of Conrail between the two acquiring railroads. The proceeding is docketed at the Surface Transportation Board (Board) as STB Finance Docket No. 33388.

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Linda J. Morgan
Linda J. Morgan

Enclosure

Congress of the United States
Washington, DC 20515

June 18, 1997

The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001

CHAIRMAN MORGAN

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RECEIVED
CORPORATE REGISTRATION

Re: CSX / Norfolk Southern - Control & Operating Leases
and Agreements - Conrail, Inc.

Dear Madam Chairman:

As members of the Northeast Ohio congressional delegation, we want to bring to your attention several concerns regarding the proposed sale of Conrail, Inc. to Norfolk Southern Corp. and CSX Corp. It is our understanding that a joint operating plan will be filed sometime this month. Therefore, we respectfully ask that our concerns be taken into consideration by the Surface Transportation Board as it begins to review the Conrail-Norfolk Southern-CSX proposal.

Section 11324(b) of the Interstate Commerce Commission Termination Act requires the Board to consider several factors before arriving at a decision. These include: the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction; the total fixed charges that result from the proposed transaction; the interest of rail carrier employees affected by the proposed transaction; and whether the proposed transaction will have an adverse effect on competition among rail carriers in the affected region or the national rail system.

We believe the proposed separation of Conrail by Norfolk Southern and CSX is unique and unprecedented. Never before in our nation's rail history have two rail competitors combined with the following outcome: the elimination of a financially stable competitor -- in this case, Conrail. The Surface Transportation Board is required in the public interest to conduct an investigation under Section 11324(b) and Section 11325(b) which is to be used to carefully analyze whether this transaction indeed is in the public's interest. The unique circumstances

of the Conrail deal certainly highlight the need for the board to make a fair and just decision based on a careful review of all facts.

This congressional delegation believes the following issues should be carefully reviewed by the Board during the upcoming months. Please note, this is not a complete list of our concerns, but merely a sample of the most important and far reaching issues.

(1) Impact on Conrail Employees -- The 3,000 Conrail employees who live and work in Northeast Ohio deserve the utmost consideration with respect to their future employment. They have every reason to believe that they should benefit from this proposed sale, yet they are understandably alarmed because so much about this deal is unknown. As you are keenly aware, it is the longstanding dedication of Conrail employees that has enabled the railroad to survive its turbulent past and become the thriving, \$10 billion business it is today. It is our belief that the Board should take the necessary steps to determine what impact this transaction will have on these employees' jobs, be it positive or negative. Furthermore, the Board should use its wide statutory discretion to ensure that terms of the deal benefit the employees beyond the doctrine of New York Dock, which has had questionable application in the past.

(2) Impact on Railroad Retirement -- Both current and retired Conrail employees are very concerned about their retirement and whether this acquisition will significantly alter the terms of their benefits. As you know, rail workers endure very long and unusual hours. They work under hazardous conditions, are subject to seasonal furloughs, and work most holidays and weekends. They do so with the hope that when they reach retirement age, their benefits will be there for them. An agreement that doesn't ensure this worker protection is one we cannot support.

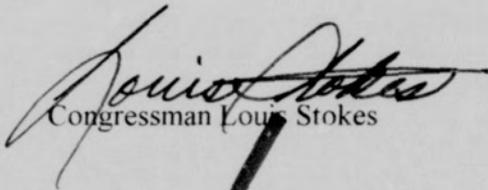
(3) Impact on Communities -- Conrail provides essential rail service to several hundred communities throughout the state of Ohio. These communities depend on sufficient rail service as a vital transportation link for their local economies. In addition, Conrail employees and their families have a tremendous impact on the economic well-being of their communities. We fear that if jobs are lost due to this sale, or if workers' hours are curtailed, many communities will experience economic hardship.

We implore you to conduct a fair and thorough investigation of the proposed Conrail sale, and we ask that you carefully take into account the aforementioned concerns. As we stated earlier, this sale will be unique and unprecedented. As such, a decision from the Board should not be made in haste because far more is at stake, in both human and economic terms, than the separation of several rail lines.

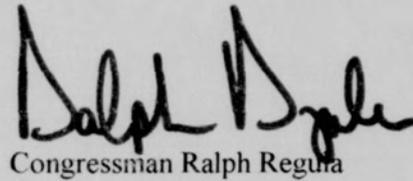
The Honorable Linda J. Morgan
Page 3

Madam Chairman, thank you for your time and consideration of this very important matter. Please include this letter in the official public docket.

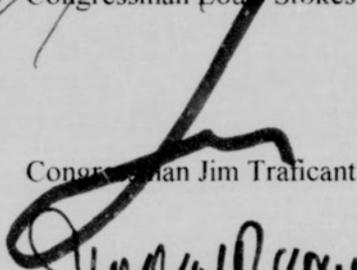
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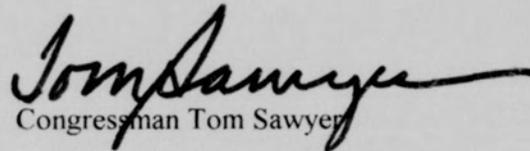
Congressman Louis Stokes



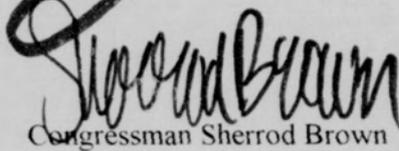
Congressman Ralph Regula



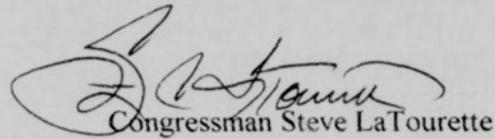
Congressman Jim Traficant



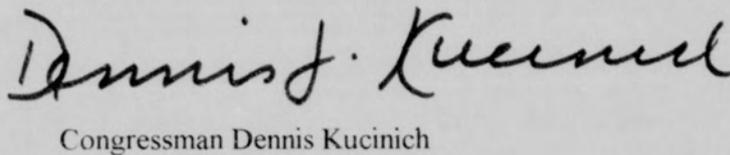
Congressman Tom Sawyer



Congressman Sherrod Brown



Congressman Steve LaTourette



Congressman Dennis Kucinich

Congress of the United States

House of Representatives

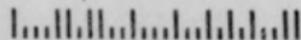
Washington, DC 20515-3519

OFFICIAL BUSINESS

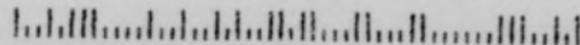
PRINTED ON RECYCLED PAPER

E. Costantino
M.C.

The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street NW
Washington, D.C. 20423-0001



20423+0001



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33388

6-4-98

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MOCH

Testimony of Rep. Ralph Regula
before the Surface Transportation Board
June 4, 1998
in the matter of Finance Docket No. 33388

Chairwoman Morgan and members of the Board, thank you for allowing me the opportunity to address you regarding the impact in Ohio of the proposed Conrail acquisition.

As you well know, Ohio is a transportation crossroad of the nation and presents some thorny issues vis a vis this transaction. Ohio ranks fourth in the nation in rail carloads originated and sixth in rail mileage.

Because virtually all Conrail east-west traffic now passes through Ohio and because of the way in which Norfolk Southern and CSX have chosen to divide Conrail lines, the proposed acquisition will have impacts on commercial activities including competitive access for shippers, the viability of regional and local railroads, as well publicly funded infrastructure. I believe other Members from Ohio will be testifying as to the safety, congestion, and environmental ramifications as well.

Let me state from the outset that I do not in theory oppose the proposed acquisition. I do however have concerns that it will have some very real and negative effects in Ohio which, unless the Board addresses them, will cause major disruptions for business, employment, and general issues of public interest.

These are issues which are not priorities for major railroads as they focus on their

bottom lines and market share, and which often neglect the public interest. They are, or should be, priorities for public officials, including the Surface Transportation Board. You have the complex task of weighing the benefits versus the potential disadvantages of this transaction; to promote the efficiency of our rail freight sector without creating anti-competitive situations which, by their very natures, would ill-serve their customers and the public. You must also examine its environmental and safety aspects. And I would also add that attention needs to be given to instances where public investments will be negatively affected.

I represent the 16th Congressional district of Ohio which is home to the corporate headquarters of the Wheeling & Lake Erie (W&LE) Railroad Company, as well as a number of high profile corporations who use it, such as the Timken Steel Company, Republic Engineered Steel, The Hoover Company, and Diebolds.

The Wheeling & Lake Erie is a Class II regional railroad operating over some 800 miles of track in Ohio, West Virginia, and Pennsylvania, and employing 350 people. At present, it connects with Conrail at 5 different locations, with CSX at 7 locations, and with Norfolk Southern at 3 locations.

The W&LE came into existence in 1990 from the sale of a portion of Norfolk Southern line. After a problematic start, the company has improved its position and grown its business. According to a State of Ohio briefing to the Ohio delegation, the Wheeling & Lake Erie provides "...critical rail service to important Ohio facilities in the steel, coal, aggregate, grain, plastics and chemical industries." Furthermore, the W&LE

serves the publicly funded Neomodal terminal, a state of the art intermodal facility with an ability to handle 150,000 containers and trailers annually, located in Massillon, Ohio.

The Wheeling & Lake Erie and the Neomodal are vital components of Ohio's transportation infrastructure. In the case of the Neomodal, a public (state and federal) investment of \$14 million is jeopardized by this transaction.

Let me first address the impact on the Wheeling & Lake Erie. With Norfolk Southern's acquisition of virtually all of the Conrail lines in eastern Ohio and western Pennsylvania, the W&LE's primary partner now becomes its principal competitor. (Since Wheeling & Lake Erie's inception, it and NS have been partners for purposes of traffic flows and market partnerships. Conrail has been the principal competing railroad.)

Some of the W&LE's most valuable customers are served now by Conrail. Currently, W&LE works with Norfolk Southern to compete with Conrail for a substantial amount of business. After the acquisition, Norfolk Southern will compete with the W&LE for that same business. For example, a steel company which now provides this partnership with \$3 million worth of business annually will after the acquisition be served by Norfolk Southern solely.

It is estimated that Norfolk Southern will have the ability to divert one third of Wheeling & Lake Erie's traffic and revenues resulting in an annual loss \$10 to \$13 million.

Shippers who rely on the Wheeling & Lake Erie share my concern. Many have written to the Board as well to confirm their opinion of the negative effects this

transaction could have on their business as a result of the loss of W&LE and their access to efficient and dependable rail access.

Shippers have elected to locate on the Wheeling & Lake Erie to have competitive access to all three eastern Class I railroads. These customers will face a loss of service or will lose access to both CSX and Norfolk Southern and become "2 to 1" shippers with a significant loss in competition. Limiting shippers options will drive up their costs which must either be absorbed or passed on to consumers. Neither is good for the Ohio economy. Companies which lose business or must close their doors represent lost jobs, and lost revenues to the State and municipalities posing a potential for local economic downturns. And many Ohio shippers who do gain two-line service will still be captive to a single railroad at origin and destination.

Regarding the Neomodal facility, claims by Norfolk Southern that the facility was never economically viable are unsubstantiated. Neomodal was designed by the Ohio Department of Transportation and won recognition by the US Department of Transportation as a technologically advanced facility meriting an opening ceremony attended by the US Secretary of Transportation, the Governor of Ohio, and the administrators of the Federal Railroad Administration and the Federal Highway Administration. Furthermore, this project was thoroughly reviewed by the US Department of Transportation for its economic viability in order to make it eligible to use federal funds for its construction.

Like any new endeavor, Neomodal needed time to grow - a process which has

been truncated by the proposed transaction as businesses who had considered relocating to its adjacent business park now fear to do so because of the possible demise of the facility and the railroad serving it. Neomodal began operations in July 1996 and this transaction was announced in April 1997. Any prediction of Neomodal's future business cannot be based on this short startup period of time.

The Neomodal was strategically located on the main line of the Wheeling & Lake Erie because it offered direct competitive connections to Conrail, Norfolk Southern, and CSX. It represents a public/private partnership in order to make Ohio business more competitive and to further the economic development of our region. These public entities were also aware of the contributions the facility would make to relieving interstate traffic congestion, degradation of roadways, and mitigation of air pollution. At the federal level, it received \$11.2 million in Congestion Mitigation and Air Quality program funding along with contributions from the State and a substantial investment from the private sector.

Neomodal is the only intermodal facility in Ohio which has multiple railroad access. W&LE acts as a neutral feeder railroad to provide container and flatcars business to NS, CSX, & Conrail. With NS and CSX plans to either build or expand intermodal sites in Cleveland, business will be diverted from Neomodal. Not only will this result in the demise of Neomodal, but benefits derived from reducing truck traffic, roadwear, and pollution will be lost. These were significant contributing factors in determining public sector support for Neomodal.

Since last summer, I have attempted to work with and encourage all the parties involved to have this matter resolved privately. Unfortunately it has now become clear that a private settlement is not achievable before the Board's ruling on the transaction. In fact, I do not believe Norfolk Southern has considered a settlement to be in their best interests.

The mitigation sought by Wheeling & Lake Erie is reasonable. They seek to be able to compete for business by having access to certain markets that will benefit both them and shippers. Further, Wheeling & Lake Erie's viability directly affects the viability of the Neomodal. And in fact, reasonable efforts to relieve congestion in the Cleveland area by diverting some traffic to the W&LE and using Neomodal would serve the public and private entities involved without jeopardizing the market position of either Norfolk Southern or CSX.

I urge the Board to give full consideration to the requests for protective relief.

Congress of the United States
House of Representatives
Washington, DC 20515-3514

June 3, 1998

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

Dear Mr. Williams:

I am writing in regard to Conrail succession issues involving Ohio. I thank you for allowing Congressman Regula to include my remarks in the record.

The Wheeling & Lake Erie Railway is headquartered in Mr. Regula's district, which is adjacent to mine. We share serious concerns about how the proposed acquisition of Conrail lines will affect the financial viability of the Wheeling & Lake Erie Railway.

The comments previously filed before the STB by the Akron Regional Development Board and by numerous important rail shippers in my district indicate how important this regional railroad is to the economic well being of the Akron area. Consumers in my district, like Congressman Regula's, will depend on the Board's vigilance and fairness to assure that we will not lose the services of the W&LE or the competitive flexibility and rate and route options that our rail shippers have come to depend upon.

There is no question that the presence of the W&LE assures competition in our area. Because of the presence of this regional line, shippers have multiple routes by which to link up with three Class I lines. Absent the regional line, it is easy to predict that prices, timeliness, and frequency of service will all suffer. But without the W&LE, not only will competition suffer, some W&LE's customers--especially smaller shippers--will be faced with the possible loss of service. As you may know, these shippers were threatened with abandonment of these lines by a previous owner early in the decade. Now, without the Board's scrutiny of, and intervention in, arrangements offered by Conrail's successors, competition and even service may be irrevocably lost.

Surface Transportation Board
STB Financial Docket No. 33388 (Sub. No. 80)
Page Two

In an era of mega-mergers and shipper complaints about Class I market dominance and about serious problems with rates and service, the W&LE has demonstrated that a regional railroad can make a difference. This is evidenced by strong shipper support for its service and competitiveness. The depth of shipper support results from a number of economic development factors:

-From 1989-1995, 57% of the employment growth in Northeast Ohio occurred in Medina, Portage and Summit Counties;

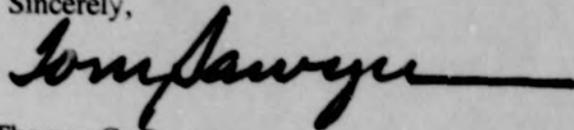
-From 1994-1997, industrial expansion activity in the tri-county region has averaged more than \$500 million; and

-In 1997, Akron was ranked 20th in the nation out of 320 cities by Site Selection Magazine for locating new manufacturing plants.

More than likely, every single decision that led to these impressive aggregated numbers was based on factors that included the presence of rail, the presence of a responsive carrier, and competition in pricing. Our communities are 35% more dependent on manufacturing than the national average. And these communities depend on the W&LE as an active and integral part of our regional manufacturing system. I urge the Board to protect our communities' interests as you craft your final ruling.

Thank you for your consideration of these vital consumer concerns.

Sincerely,



Thomas C. Sawyer
Member of Congress

TCS/bac

STB

FD

33388

6-4-98

J

MOCSS

**Testimony of Senator Jack Reed, RI
before the
Surface Transportation Board
on the
Proposed Acquisition of Conrail by CSX and NS
June 4, 1998**

Madam Chairman and Member Owens, thank you for the opportunity to appear today and offer a few comments on the proposed acquisition of Conrail by CSX and Norfolk-Southern.

As one who voted to create the Surface Transportation Board, I am hopeful that the Board will use its jurisdiction; mission to increase competition; and its duty to act in the public interest to carefully review this proposal and render a decision that is in the best interest of all.

I believe that the Board should consider conditioning any approval along the lines of the formal comments made by the Rhode Island Department of Transportation and by my testimony today.

The Conrail acquisition has such national, regional, and local implications that it could significantly affect Rhode Island, its businesses, and its ongoing economic development plans.

My overriding interest in this process is to protect the competitiveness of New England's businesses as well as Rhode Island and the federal government's sizable investments to improve its own freight rail service and develop a modern port facility at Quonset Point - Davisville. If my state and region are not assured of comparable freight service in terms of quality, scheduling, and cost, under an STB approved transaction, or problems develop at a later time, then I cannot and will not support the transaction and I will actively seek to compel the parties to operate in the best interests of my state and region.

Freight rail service is an essential component of our economy. My state recognizes this fact, and, in partnership with the Federal Railroad Administration, is investing \$120 million to modernize Rhode Island's freight rail system and develop the former Navy base at Quonset Point-Davisville as a world class port facility.

In an era of international trade, states need excellent infrastructure to transport products, and, Rhode Island recognizes this reality. However, the state's ability to capitalize on this substantial investment and attract major shippers to the port is contingent upon competitively priced freight service.

Price is particularly important in the automobile distribution market, which is an identified growth sector for Quonset Point-Davisville. Obviously, the state and federal government's investments qualify as the sort of significant public interest that the STB must consider and protect.

Since learning of the possible purchase of Conrail, I have met with the Chairmen of CSX and Norfolk-Southern to let them know of my serious concerns regarding the future level and cost of service provided on the Boston-Albany line. But, I also believe it is important for me to formally record my concerns about this transaction.

Today, the Providence & Worcester Railroad, a small Class III carrier, provides the only freight service in Rhode Island and is our connection to Conrail and other Class I railroads west of the Hudson River. Under the proposed transaction, CSX would become the new, monopoly carrier for the New England region.

Now, some could argue that the proposal does nothing to change Rhode Island or New England's competitive situation — CSX is simply replacing Conrail. However, they would overlook the dramatic changes the Conrail acquisition would bring to other markets and ports.

Indeed, the major motivation for both CSX and NS to purchase Conrail was Conrail's monopoly in the New York-New Jersey market, and, under the proposal, they will compete head-to-head for this huge market. Other areas on the East coast will also gain and become "shared-asset areas" with strong competition and hence lower prices. Yet, New England will not be a "shared-asset area".

While Conrail's monopoly was granted by the federal government to stave-off bankruptcy, there is no similar justification for CSX's monopoly.

It is my concern, which I have shared with CSX and NS officials, that fierce competition in "shared-asset areas" like New York-New Jersey could lead to higher prices in New England because the cost of competition might need to be subsidized in other areas. I believe the Board, in the name of competition, has a responsibility to review this discrepancy closely and consider establishing a mechanism to ensure that the Boston-Albany line does not subsidize competition in "shared-asset areas" and that costs in New England are comparable and fair.

The two most obvious conditions are competitive New England access for another Class I railroad or an agreement on a reasonable, guaranteed rate for service. At a minimum, the Board must maintain close oversight over prices in the New England region so it can effectively address future issues.

The price of rail service is only one factor here. Indeed, scheduling and the quality of rail service are important issues that must not be overlooked. One need look no further than the Midwest and South where the Union Pacific-Southern Pacific merger has led to delays, a lack of service, safety concerns, and a host of other problems with significant economic implications.

I am pleased that CSX officials have taken notice and will not rush this merger, but this is yet another reason for the STB to retain active, long-term oversight as a condition of its approval as well as conditions to ensure that the New England region's competitiveness is not adversely affected.

Madam Chairman, the proposal before you also involves national policy issues affecting thousands of working men and women, and I would like to briefly address two of them. First, the Board should weigh the findings of the FRA and the General Accounting Office regarding the possibility that the threat of discipline may cause injured railroad workers to avoid filing accident and injury reports. Second, numerous commentators have expressed valid concerns that past STB decisions have allowed railroad companies to abrogate current collective bargaining agreements. These are serious issues involving the lives and paychecks of hard working railroad employees. In that light, the STB should use its authority appropriately and judiciously when it comes to safety and collective bargaining issues.

The proposal before you is the largest of its kind; it will dramatically alter rail transportation on the East Coast; and, most importantly, it could make or break Rhode Island's plans to develop the port at Quonset Point-Davisville .

This is an important decision, and, in closing, I would urge you to closely review this proposal and consider my request to ensure competitive rail pricing in New England and maintain strong oversight over the transaction.

Thank you.

STB

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6-4-98

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MOCH

Congressman Christopher Shays (R-CT)

**Surface Transportation Board Hearing on the
Proposed CSX-Norfolk Southern Acquisition of Conrail
June 3, 1998**



Chairwoman Morgan: Thank you for providing me this opportunity to testify before the Surface Transportation Board (STB) regarding the proposed CSX-Norfolk Southern acquisition on Conrail.

When deciding railroad mergers and divisions, the STB needs to focus on more than just maintaining the status quo. America's transportation future lies in intermodalism. The transportation needs of shippers and consumers require a viable linking of railroads, highways and waterways.

The STB has a mandate to secure the public interest. The Board should take a proactive role to improve intermodal transportation while maintaining efficient, viable rail freight service. By increasing the efficiency and route schedule of railroads, companies currently shipping via rail will realize better service and those shipping long distances via trucks may be enticed to use rail travel.

Railroad merger decisions cannot occur in a vacuum. The needs of the railroads must be weighed against the needs of shippers, consumers and the general public. As evident by the many troubles of the Union Pacific-Southern Pacific merger, the STB needs to better examine all of the factors surrounding pending mergers.

During consideration of the agreement between CSX and Norfolk Southern rail companies to purchase and divide Conrail's assets, the STB should examine improvements to rail freight service east of the Hudson River and throughout New England. While Conrail did not previously provide this service, this merger allows the unique opportunity to improve rail service throughout the Northeast.

The use of rail freight in the Northeast is extremely low. Rail freight east of the Hudson River makes up only 3.8 percent of total freight moved. When compared to the national average of 40 percent rail freight traffic, the Northeast numbers are pathetic. A change needs to take place.

The low freight travel leads to high truck traffic. According to the Connecticut

Department of Transportation (ConnDOT), in 1996, daily trailer truck traffic on I-95 through the South Western region of Connecticut was more than 10,400 trucks per day -- or 8 percent of the total traffic level of 130,200 vehicles per day.

There should not be a reason for such a high percentage of long haul shipments to travel up and down the eastern coast via truck. This truck traffic leads to increased wear and tear on highways and bridges, as well as traffic congestion.

We need to find new ways to improve transportation and to alleviate gridlock -- and railroads can play a major part.

The division of Conrail offers a great opportunity to increase rail service, while decreasing traffic congestion. This is a win-win situation the STB should be examining.

Direct rail competition with trucks on I-95 is urgently needed. This can only happen if the most direct, high speed, high capacity rail route is used. That route is along the Amtrak Northeast Corridor rail line, directly through Penn Station in New York City during off-peak hours.

That is why I joined Congressman Jerry Nadler, and other Members of the Connecticut and New York delegations, in signing a petition urging freight access through New York's Penn Station during off-peak hours and shared access between CSX and Norfolk Southern in the crucial area east of the Hudson River. Because of the long, circuitous rail routings for travel between the south and New England via Albany -- 150 miles north of New York City -- the only way for the railroad to compete with trucks on I-95 is to run intermodal rail freight directly along the Northeast Corridor rail line.

This type of service was originally proposed by Norfolk Southern in early 1997. Norfolk Southern proposed the use of "Road Railers" and single-containers on flatcars directly through Penn Station.

Neither the proposed CSX route via Selkirk Yard in Albany, New York nor the Norfolk Southern/St. Lawrence and Hudson/Guilford Transportation route via Scranton, Pennsylvania and the Hoosac Tunnel in Western Massachusetts can effectively compete with trucks traveling on I-95. These two routes are longer by over 200 miles and slower than freight trains traveling the Northeast Corridor.

We urge you to allow Amtrak to negotiate with any willing rail operator to provide rail freight service in the Northeast. Road railer service will allow improved service to the Northeast, while decreasing truck traffic on our already crowded highways. If Norfolk Southern and CSX are not willing or able to provide such service, the Northeast should be able to achieve this direct service from another railroad.

The petition also included shared access for a cross-harbor freight car float service across New York Harbor. It is our hope these improvements will help improve rail freight service throughout the Northeast.

The serious gap existing in the national rail freight network, as demonstrated by the absence of trains across the Hudson River in New York City, would never be tolerated as part of our national highway system. Direct transportation connectivity is consistent with an efficient transportation system. Conversely, transporting freight east of the Hudson River via Albany is simply inefficient.

The STB is the only national instrument of the public interest to assure we have a national rail freight network which is as direct and complete as the national highway system. Therefore, the STB should not wait for the railroads to act where they have failed to do so. Specific conditions should be attached by the STB to the railroad control application to ensure the public interest is being served.

The STB has great potential to show proactive leadership in intermodal transportation. A strong rail structure helps improve our economy, moves needed goods from coast to coast, and helps reduce traffic congestion.

Madam Chairwoman, as you make a ruling on the Conrail acquisition, I hope you will address needed improvements to rail service east of the Hudson River.

Thank you for allowing me to testify. I am happy to answer any questions you may have.

STB

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ORAL ARGUMENTS OF SENATOR ALFONSE M. D'AMATO
BEFORE THE U.S. SURFACE TRANSPORTATION BOARD
ACQUISITION OF CONRAIL BY CSX & NORFOLK SOUTHERN
JUNE 4, 1998

Madam Chairwoman, I appreciate this opportunity to speak before you on an issue of great importance to New York State. This transaction will have profound effects on the movement of goods into and out of New York State, the maintenance and creation of jobs in my State and the overall quality of life for the citizens of my State. I am, therefore, vitally concerned that the interests of all New Yorkers are given due consideration.

Madam Chairwoman, my main focus in appearing today is to drive home the fact that the State of New York needs one key element from this proposed transaction that will help sustain the State's continued economic growth. That element is competition.

The bankruptcies of the Penn Central and other Northeast railroads gave rise to the creation of Conrail in 1976. Since then, New York has been a virtual captive to the vagaries of pricing and service enjoyed by this near monopoly. The result of this has been seen in increased prices to both shippers and consumers, a decrease in quality service and the departure from New York ports and industrial areas of shippers and businesses, most bound for areas where service and prices are more competitive.

Without effective rail competition, New York has not been able to utilize her ports and industrial areas to their fullest potential, add high quality-high paying jobs and provide relief to shippers and consumers alike.

The Surface Transportation Board (STB) has a unique opportunity to address this 22-year-long indifference to the needs of New York State. Norfolk Southern and CSX are poised to pay a huge premium for Conrail -- the small shippers should not be forced to pay inequitable rates to offset the price these two railroads are willing to spend. We have put up with enough and need to have more equity & more balance put into the rail-freight mix.

For instance, under the proposed acquisition, shippers will be denied service by two competitive carriers operating in the Buffalo/Niagara Falls area. The fact that both railroads (CSX & Norfolk Southern) will be operating in Western New York sounds positive, however, in reality this situation is anything but positive. It is shocking that CSX and Norfolk Southern would be allowed to serve the same area, but not allow shippers the opportunity to obtain the least expensive service through an open and competitive process. That is literally condemning businesses in Western New York to either pay whatever rate the railroad wants, or find another alternative.

Also, while some shippers have received negotiated switching rates of \$250 per car, such rates do not apply to all businesses across Western New York. Further, there is no guarantee that these rates won't escalate to Conrail's current switching fee of \$450 per car a few years from now. Open competition could very well see these rates drop to a more normal \$150 per car. To preclude shippers in Western New York from being able to get the best possible price is just wrong.

What is even more aggravating to Western New York businesses is the fact that the Detroit and Philadelphia areas will be declared shared asset areas, allowing Buffalo's competitors the

ability to negotiate a lower price for the shipment of their goods. Such treatment will put Buffalo/Niagara at an extremely unfair disadvantage and higher shipping prices will result.

Madam Chairwoman, we have seen this situation before. When Conrail was first introduced into Western New York, it was the intent of Congress that Conrail compete head-to-head with the predecessor of CSX, the Chessie System. Unfortunately, that competition never came to be (because a labor agreement couldn't be reached), a Conrail monopoly ensued, and the Buffalo area has not been the same since.

The same mistakes cannot be repeated. There is a golden opportunity to ensure the economic stability and growth of Western New York. The STB must grant competitive railroad service to Western New York in order to fulfill the original preference of the U.S. Railway Association in the wake of the railroad bankruptcies of the 1970s. If competition is not restored, I can virtually guarantee that the first business to leave Buffalo after the Board's decision will cite the inability to obtain a reasonable shipping rate as one of the reasons they are leaving. That must not be allowed to happen.

One other area of concern regards rail access to New York City and Long Island. According to the planned transaction, shippers on the east side of the Hudson River will have no competitive rail alternatives to CSX. If a shipper does not want to use CSX, he or she will have to transport their goods by truck across and into New Jersey's rail yards where, under the proposed acquisition, there will be rail competition. This sets up a terrible situation for shippers on the east side of the Hudson as well as the entire New York City region. As New Jersey gets the benefit of head-to-head rail competition, New York will experience more

trucks added to already crowded bridges, and as such, the air quality and the condition of roads and bridges deteriorates throughout New York. This is not a palatable trade-off.

New York City and Long Island need a direct competitive alternative to a single shipper; they cannot be held captive by CSX. Again, competition is the key. As increased competition leads to lower prices, volume will increase as rail transportation becomes a very real alternative for shippers. All the while the public interest is served -- competition is created, air pollution is reduced, and highway congestion decreases. Therefore, I request that the STB place a condition on the pending acquisition that rail competition must exist on the east side of the Hudson River.

Conrail is a unique railroad: it was created, capitalized, supported and subsidized by the public. It is the duty of the Surface Transportation Board to guarantee that the disposition of this asset is carried out in the manner that is most consistent with the public good -- not simply the interests of the railroads that would divide it. For New York, there are real consequences that will result from decisions made by the STB that will either enhance competition and economic growth or facilitate a loss of jobs and industry.

The STB has an obligation to ensure that the rights, interests and concerns of all parties are addressed and given fair consideration. It is imperative to the economic well-being of New York State to have this proposed acquisition given the utmost scrutiny before any final decision is made. I urge you to do so.

Thank you, Madam Chairwoman for allowing me the opportunity to appear here this morning.

STB

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MOCH

PETER J. VISCLOSKY
1ST DISTRICT, INDIANA

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Statement of Rep. Peter J. Visclosky (D-IN)
before the Surface Transportation Board

Regarding the proposed merger of Conrail, CSX, and Norfolk Southern

June 4, 1998

Thank you for the opportunity to appear before you today. I am here to share my concerns regarding the proposed acquisition of Conrail by CSX Corporation and Norfolk Southern Corporation, because of the negative impact it would have on Northwest Indiana. In its current configuration, the merger plan is totally unacceptable to me, Senator Lugar, Senator Coats, Indiana Governor Frank O'Bannon, Mayor King of Gary, Mayor Pastrick of East Chicago, Mayor Dedelow of Hammond, and Mayor Bercick of Whiting. It is my hope that several issues will be addressed before a final decision is made on this merger.

Four Northwest Indiana cities -- Gary, Hammond, Whiting, and East Chicago -- have joined together in an effort to develop an alternative routing plan that would minimize the increase in rail traffic in our region that will result from the Conrail acquisition. Specifically, the alternative routing plan would shift some of the applicants' proposed rail traffic from currently inactive lines, including lines with numerous at-grade crossings, to lines which are active and have fewer at-grade crossings. I have attached to my written statement a copy of the Four City Consortium's specific suggestions for mitigating the impact of the merger on our region. I am in absolute agreement with them and am here today to urge your adoption of their recommendations.

The issues I bring before you today concern safety as it relates to vehicle-train collisions. These issues also concern protection of our environment and the promotion of economic development in a struggling region.

Rail operations in our region are already at unparalleled levels because Northwest Indiana serves as a link for most of the rail transportation between Chicago and the East Coast. Under the plan submitted by CSX and Norfolk Southern, a barely manageable congestion problem would quickly become unmanageable. Over 150 trains pass through these four cities every day, over a total of 243 highway-rail grade crossings. The number of vehicles crossing these rail lines at-grade exceeds 450,000 per day. In addition, Indiana ranks fourth in the nation for the number of highway-rail grade crossings, and Indiana is annually among the top five states nationwide in terms of accidents and fatalities caused by vehicle-train crashes. In March, a man was killed when his vehicle was struck by a train at un-marked Conrail tracks in Lake Station, Indiana. Several years ago, my own mother, fortunately, survived a vehicle-train collision at a crossing where there were no warning devices. Recently, Hammond City Council member, Bob Golic, brought to my attention the fact that children have been crawling under stopped Norfolk Southern freight trains on their way home from school. This is clearly a tragedy waiting to happen.

Peter J. Visclsoky

Page 2

Currently, backups resulting from the four cities' numerous at-grade crossings cause severe vehicle congestion, impair the ability of emergency vehicles to get to their destinations, and exacerbate the problem of vehicles driving through closed crossing gates. This congestion also adds to the air pollution caused by emissions in our region, which has been designated by the U.S. Environmental Protection Agency as a severe non-attainment zone. The increase in rail traffic under the proposed merger will increase these problems and hinder several promising economic development initiatives in our region, including expansion of the Gary Regional Airport, construction of an affordable housing complex in Gary, and waterfront development in Gary and East Chicago.

Under the acquisition plan, certain local rail lines would experience incremental increases in both the number and size of trains. The Baltimore & Ohio Chicago Terminal Railroad (BOCT), which crosses through the business districts of Hammond and East Chicago, would experience an increase of 5.7 trains per day. This is not acceptable. In addition, this line has 20 at-grade crossings. The four cities' proposed alternative would shift the excess traffic to a parallel Indiana Harbor Belt (IHB) line, which is currently in use and has only 3 at-grade crossings because of significant federal, state, and city investment in this line.

The Conrail merger plan also calls for the use of a major rail line that crosses through the heart of Gary, Indiana. This line -- a former Pennsylvania Railroad (PRR) line, which has been inactive for the past 10 years -- has 23 at-grade crossings, and it would cost approximately \$13 million to rehabilitate it for regular use. This is not acceptable. The four cities' alternative would shift this traffic to existing Norfolk Southern and CSX lines, avoiding the reactivation of these crossings. To highlight one specific example of the costs to be incurred by local communities because of the merger, the City of Hobart, Indiana is being forced to spend approximately \$2 million to reconstruct a bridge over the inactive PRR line because of potential future activity on that line. The city would obviously prefer the less expensive alternative of building the road at-grade.

Finally, I would point out that although the Surface Transportation Board's (STB) Recommended Environmental Conditions acknowledge that there is an unusually high volume of rail traffic in Northwest Indiana, they do not provide sufficient solutions to the specific concerns raised by the four cities. To be frank, they are wholly inadequate and will change nothing. The STB's conditions require CSX and Norfolk Southern to provide notification of increased traffic, and to attend meetings with the four cities, but they do nothing to actually mitigate the increased traffic or ensure enforcement of the conditions.

Peter J. Visclosky

Page 3

For example, in the Environmental Impact Statement (EIS), Condition 24(a) states that CSX shall upgrade crossing signal warning devices in Hammond and East Chicago. However, railroad officials have indicated that they don't believe these upgrades are necessary and that they should not be forced to install them. Conditions 24 (e,f,g,&h) state that CSX shall make improvements in operations "to the extent practicable". The only other mandatory, non-discretionary condition requires CSX to make Operation Lifesaver programs available at schools. If they did not cause a problem, we would not even need Operation Lifesaver. In addition, I do not believe the applicants have negotiated in good faith with the four cities, and I believe they have disregarded the fact that congestion in our region is already disproportionately heavy.

The Four Cities Consortium has spent an enormous amount of time evaluating the impacts of the applicants' proposed operations on our region because of the fundamental problems that they will cause. It has devised a reasonable alternative routing plan that mitigates the significant environmental impacts, while accommodating the railroads' desire to expand operations through Northwest Indiana. I would reiterate that the four cities have the strong support of Indiana's U.S. Senators, Richard Lugar and Dan Coats, Indiana Governor Frank O'Bannon, the Indiana Department of Transportation, and many other regional and local officials.

In closing, I would urge you to please have CSX and Norfolk Southern take another look at the four cities' alternate routing proposal. Thank you.

STB

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MOCH

Statement of the Honorable Paul Gillmor
before the Surface Transportation Board
June 4, 1998

Concerning the Acquisition of Conrail by CSX and Norfolk Southern

I would like to thank you for the opportunity to appear before you today on behalf of the people and communities in my district. Also, I would like to express my appreciation for the cooperation of the Surface Transportation Board in sending representatives to my district at my request a few months ago for two public meetings I arranged for local officials across our district to express their concerns directly.

My district is a large one, running approximately 150 miles from the area west of Cleveland all the way to the Michigan and Indiana borders. Clearly this is a district with more rail lines than most. It is an area of small cities and farms.

We recognize the importance of a healthy rail system to our economy. However, we also recognize the paramount importance of safety to our citizens. The major increase in rail traffic proposed by this merger clearly will adversely affect public safety in many of these communities. Also, increased rail traffic, by causing tie-ups and inconvenience can have negative consequences for other economic activities. However, the paramount concern that has been expressed to

me is that of safety. I do not believe that a merger should be approved unless those legitimate safety concerns are adequately addressed. The merger should not damage the economy, or the quality of life in these communities.

Grade separations are expensive. However, I think serious consideration should be taken to order them where it is appropriate. It is my understanding that many of these communities have, or will submit more detailed recommendations. Beyond grade separations, there are a number of possible ways to help these communities.

Rail lines have been and are now an important part of the development of these Northwest Ohio towns. They are markers that split many of these towns, dividing them from the opportunities and access that folks in the big towns take for granted. The set of conditions as recommended by the Surface Transportations Board's Section of Environmental Analysis with respect to Community Mitigation have established an arbitrary standard, where some communities are receiving assistance to deal with the rail merger while others are not. This is particularly frustrating for those towns that are being left out.

I believe, considering the post-merger density involved, communities

experiencing a substantial increase in rail traffic should receive: first, Real Time Train Location Monitoring Systems. These systems are particularly important because they allow a dispatcher to check for oncoming train traffic that might tie up an emergency medical response team or fire department from responding to a serious life-threatening matter. In parts of my congressional district, people reside thirty (30) minutes or more from a hospital. Time is of the essence when an emergency occurs and being able to take the fastest and most direct route is important. Without these location systems, towns will be forced to endure delays for services that mean the difference between life and death.

Second, the Major Key Route and Key Routes for transportation of hazardous materials, consideration should be given to Operation Respond Software to notify us what chemicals are being moved. My district lies in an essential corridor for the movement of these materials. We believe that our safety should not be compromised in a train accident due to our lack of knowledge of what the trains cars are carrying. In fact, we had a particular incident last year in Ottawa County that brings this point home. A train derailed and some of the cars found themselves in feeder streams to Lake Erie. Fortunately, the cars containing hazardous substances did not fall into the water, but local officials were unaware of that fact until lengthy

testing had been done and many people had been frightened.

Third, and the last of my brief points, all the communities that will be affected by increased port-merger train activity should be given further HAZMAT training at the national center in Pueblo, Colorado. Many of these communities are completely unprepared on the meager budgets and mostly volunteer staffs to handle the crises that could present themselves.

On a side note, several of my constituents are rail line workers so let me point out the importance to them of the collective bargaining agreements that currently exists between the union and Conrail.

We all care about making sure that a sound railroad system exists for years to come, but safe and economically vibrant communities are crucial to ensuring that the railroad has customers to make its coexistence with other modes of transportation secure.

Thank you for your time.

Concerns of Counties in Ohio's Fifth Congressional District
regarding the
CSX & NS acquisition of Conrail

1. Erie County:
Concerns: The proposed acquisition will result in increased train traffic that will disrupt motor vehicle traffic. It will also cause the isolation of sections of Sandusky, Huron and Vermilion. This isolation will be detrimental to the response of safety and emergency services.
2. Seneca County:
Concerns: Without the construction of over/under passes, the City of Fostoria can not access significant portions of it's community as trains are passing. Therefore, the City Emergency services will be rendered useless.
Towns, Cities, or Villages Affected: Fostoria and Tiffin
3. Huron County:
Concerns: The Cities of Greenwich and Willard have expressed the need for under passes, proper signalization and access roads to eliminate any emergency vehicle delays caused by train traffic.
Towns, Cities, or Villages Affected: New London and Willard
4. Lorain County:
Concerns: Generally opposes the approval of the merger because of the adverse impact to the community. (i.e. increased train traffic and delays for emergency services).
Towns, Cities, or Villages Affected: Wellington and Vermilion.
5. Wood County:
Concerns: Perrysburg is opposed to the closure of railroad crossings in the city and the increase in train traffic. They are also very upset with the horn blowing as trains approach the crossings.
Towns, Cities, or Villages Affected: Perrysburg
6. Sandusky County:
Concerns: The City of Fremont has struck a deal with the railroad companies to address their safety concerns. As for the rest of the county, we are not aware of any additional issues other than the basic safety concerns.
Towns, Cities, or Villages Affected: Bellevue, Clyde, and Fremont.
7. Ottawa County:
Concerns: The City of Oak Harbor feels that the increase in train traffic through their community will cause delays in the response time of their emergency services.
Towns, Cities, or Villages Affected: Oak Harbor

8. Henry County:

Concerns: Napoleon and Somber City are concerned that the increase in high speed train traffic through there communities will endanger the children in the five schools in close proximity to the tracks.

(FYI: \$817,144 will be invested by CSX and the State of Ohio to upgrade the tracks in this area).

Towns, Cities, or Villages Affected: Napoleon

9. Putnam County:

Concerns: Increase in train traffic and safety response time.

10. Defiance County:

Concerns: Increase in train traffic, safety response time and the closing of crossings.

Towns, Cities, or Villages Affected: Defiance

In addition, all communities are concerned with the financial burdens associated with the construction of over/under passes and any other safety equipment. The local communities would like to know where the funds are going to come from to construct these items. It is their opinion that if the railroad is going to reap the benefits from smoother train travel, then they should shoulder the financial burdens.

STB

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**Testimony of Senator Daniel Patrick Moynihan
Before The Surface Transportation Board On the Proposed CSX/
Norfolk Southern Acquisition of Conrail (Finance Docket #33388)
June 4, 1998**

When Congress passed the Regional Rail Reorganization Act of 1973, setting the stage for the development of a single, government-subsidized Northeast freight rail carrier, it did so with the understanding that without major consolidation and restructuring, the freight rail industry would cease to exist in the region. At the time no one argued that there should be one carrier, or that the government should run the service. Rather, the concern was that the rail freight industry was in grave danger and the Federal government needed to act expeditiously.

It was only under those extraordinary economic circumstances that the Consolidated Rail Corporation, Conrail, was created -- conditions that, happily, do not exist today. To ensure the survival of freight rail, the State of New York pumped hundreds of millions of dollars -- and the Federal government billions more -- into Conrail. These were difficult decisions, expensive ones, and Conrail struggled until 1982 before turning a profit. Those unprofitable years were difficult for Conrail and especially for the tens of thousands of Conrail employees who lost their jobs.

And, ultimately, even though Conrail achieved solvency and later profitability, the Federal government failed to require that the railroad provide

the most important ingredient of private enterprise -- direct competition. This failure has had a long-lasting and harmful effect on the economy of New York.

The CSX/NS plan before the Board is ambitious and in many respects, promising. We in New York certainly welcome new service and this chance to have input into CSX/NS plan. But there are two key ways in which the CSX/NS proposal does not meet the needs of New York shippers and the public.

In New York City, approximately 5 percent of all freight is shipped by rail; nationwide, over 30 percent of freight moves by rail. New York City is the only major American city where goods are shipped almost exclusively by trucks, clogging roadways, straining bridges and tunnels, and polluting the air. The costs for moving so much of New York's freight by truck are staggering, both in terms of delays caused by congestion and in damage done to the City's infrastructure. The high cost of shipping goods in and out of New York has clearly hurt our ability to compete in the manufacturing sector and cost the City jobs.

Under its current proposal, CSX would be the sole railroad available to shippers east of the Hudson River in New York City, Long Island, and the eastern Hudson River Valley. This scenario would disadvantage New York rail users while their competitors in New Jersey would benefit from new rail competition as a result of the acquisition.

In Western New York, the effects of Conrail's monopoly are evident in the hemorrhaging of the manufacturing base. At a recent forum on Western New York industry, representatives from General Mills, the last remaining major mill in New York State, offered a sobering story. Due to the exorbitant freight costs in Western New York resulting from Conrail's monopoly, it costs the company nearly as much to ship its product to the East Coast from Buffalo as from Kansas City!

The CSX/NS proposal for the division of Conrail lines in the Buffalo-Niagara region will not sufficiently enhance competition in the region. While the applicants propose to create a "shared assets area" in Detroit and would compete against each other for that city's shipping business, the plan for the Buffalo-Niagara region proposes a division of lines that would leave most shippers served by only one railroad. Detroit, a major competitor to the Buffalo-Niagara region for US-Canada trade, would be virtually assured lower shipping rates than Western New York. To the citizens and industries of Western New York, struggling to weather a long economic downturn, such a proposal is simply unacceptable.

In light of the fact that the State of New York and its residents have contributed so greatly to the preservation of freight rail in the Northeast, I feel

. . .

strongly that our State now deserves the real rail competition we have been denied since the creation of Conrail over 20 years ago. I respectfully request that the Surface Transportation Board impose the conditions on CSX and Norfolk Southern that were requested by the State of New York, the New York City Economic Development Corporation, and the Erie-Niagara-Chautauqua Rail Steering Committee -- specifically, trackage rights east of the Hudson River and the establishment of a shared assets area or alternative reciprocal switching relief in and around Buffalo. These requests are reasonable. More important, they are fair.

The decisions you make on this acquisition will shape the course of economic development in New York State for at least the next quarter century and have tremendous impact on Conrail employees and their families. I ask you to consider the lessons of our experience with Conrail and take the opportunity to provide a very reasonable expansion of rail competition in my State. I thank the members of the Surface Transportation Board for the opportunity to present my views.

STB

FD

33388

6-4-98

J

MOCH

Congressman Sherrod Brown
Testimony Before the Surface Transportation Board
June 4, 1998

I would like to thank Linda Morgan, Chair, Gus Owen, Vice Chair, and the distinguished members of the Surface Transportation Board for holding this public forum to allow citizens to express their views on the multi-billion dollar CSX and Norfolk Southern acquisition of Conrail.

I am here today representing residents of northeast Ohio who are concerned that this proposed acquisition will increase freight train traffic through their neighborhoods, and does not adequately address continuing and longstanding public safety and environmental problems. While CSX and Norfolk Southern will clearly reap huge economic benefits, the quality of life for the citizens I represent in towns like North Ridgeville, Ohio will not improve and will perhaps deteriorate if this multi-billion dollar merger is approved.

Members of this Board need to consider the concerns of parents in North Ridgeville who are worried because the bus their son or daughter takes to school is constantly delayed by trains which spilt the City in half -- making them late for school.

Members of this Board need to consider the seniors who are concerned the long line of freight trains that routinely clog streets and block traffic in North Ridgeville will delay the arrival of the local EMS squad if they need emergency medical care.

Members of this Board need to consider working families and their school-age children who are awakened at all hours of the night to the loud blare of train horns.

While I am pleased that the concerns of neighboring communities have been addressed by CSX and Norfolk Southern, I hope the Board recognizes the needs of all the communities --large

and small -- which are affected by this proposal.

Although there is no certainty about the number of trains that will travel through the densely populated areas of North Ridgeville if this deal is approved, there is one certainty we should guarantee the residents of North Ridgeville -- safe grade crossings.

If Norfolk Southern commits to working with state and local transportation officials to build grade crossings, we could ensure that trains do not bisect the City for long periods of time. Police, fire, and ambulance crews must be able to respond to emergencies as quickly as possible.

With safe grade crossings, we would decrease the chances of heavy freight trains colliding with cars and school buses that cross these tracks daily.

With safe grade crossings, we would reduce the amount of vehicular traffic congestion which fouls our air.

The residents of North Ridgeville have long endured near constant disruptions, safety threats, and environmental problems caused by heavy freight trains ploughing through their neighborhoods. I urge the members of the Board to consider these concerns when deciding whether and in what form to approve this multi-billion dollar acquisition.

On a related matter, the citizens of Lorain, Ohio have embarked on a major economic development initiative to revitalize the downtown waterfront and encourage job creation. One of the key pieces of this project involves the development of abandoned rail tracks which would be used to establish a commuter rail network linking Lorain with Cleveland. Unfortunately, City officials have had difficulties in securing the tracks necessary to support the project. I would encourage the Board to consider the importance of this project, and help assist us in our efforts to negotiate a fair agreement with CSX on trackage rights.

Lastly, I am concerned about the fate of the many Conrail employees who will be absorbed by CSX and Norfolk Southern under this proposed acquisition. In 1997, the union representing these workers negotiated a labor agreement with Conrail. I hope that the Board would respect this agreement, and not permit the federal government through its actions on this proposal to render it null and void. These workers should be permitted to freely negotiate with CSX and Norfolk Southern on this matter.

Thank you again for the opportunity to testify. I look forward to working with the members of the Board and the rail companies to address the serious safety concerns of the residents of communities in northeast Ohio like North Ridgeville.

STB

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33388

6-4-98

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MOCSS

**Testimony of Senator Daniel Patrick Moynihan
Before The Surface Transportation Board On the Proposed CSX/
Norfolk Southern Acquisition of Conrail (Finance Docket #33388)
June 4, 1998**

When Congress passed the Regional Rail Reorganization Act of 1973, setting the stage for the development of a single, government-subsidized Northeast freight rail carrier, it did so with the understanding that without major consolidation and restructuring, the freight rail industry would cease to exist in the region. At the time no one argued that there should be one carrier, or that the government should run the service. Rather, the concern was that the rail freight industry was in grave danger and the Federal government needed to act expeditiously.

It was only under those extraordinary economic circumstances that the Consolidated Rail Corporation, Conrail, was created -- conditions that, happily, do not exist today. To ensure the survival of freight rail, the State of New York pumped hundreds of millions of dollars -- and the Federal government billions more -- into Conrail. These were difficult decisions, expensive ones, and Conrail struggled until 1982 before turning a profit. Those unprofitable years were difficult for Conrail and especially for the tens of thousands of Conrail employees who lost their jobs.

And, ultimately, even though Conrail achieved solvency and later profitability, the Federal government failed to require that the railroad provide

the most important ingredient of private enterprise -- direct competition. This failure has had a long-lasting and harmful effect on the economy of New York.

The CSX/NS plan before the Board is ambitious and in many respects, promising. We in New York certainly welcome new service and this chance to have input into CSX/NS plan. But there are two key ways in which the CSX/NS proposal does not meet the needs of New York shippers and the public.

In New York City, approximately 5 percent of all freight is shipped by rail; nationwide, over 30 percent of freight moves by rail. New York City is the only major American city where goods are shipped almost exclusively by trucks, clogging roadways, straining bridges and tunnels, and polluting the air. The costs for moving so much of New York's freight by truck are staggering, both in terms of delays caused by congestion and in damage done to the City's infrastructure. The high cost of shipping goods in and out of New York has clearly hurt our ability to compete in the manufacturing sector and cost the City jobs.

Under its current proposal, CSX would be the sole railroad available to shippers east of the Hudson River in New York City, Long Island, and the eastern Hudson River Valley. This scenario would disadvantage New York rail users while their competitors in New Jersey would benefit from new rail competition as a result of the acquisition.

In Western New York, the effects of Conrail's monopoly are evident in the hemorrhaging of the manufacturing base. At a recent forum on Western New York industry, representatives from General Mills, the last remaining major mill in New York State, offered a sobering story. Due to the exorbitant freight costs in Western New York resulting from Conrail's monopoly, it costs the company nearly as much to ship its product to the East Coast from Buffalo as from Kansas City!

The CSX/NS proposal for the division of Conrail lines in the Buffalo-Niagara region will not sufficiently enhance competition in the region. While the applicants propose to create a "shared assets area" in Detroit and would compete against each other for that city's shipping business, the plan for the Buffalo-Niagara region proposes a division of lines that would leave most shippers served by only one railroad. Detroit, a major competitor to the Buffalo-Niagara region for US-Canada trade, would be virtually assured lower shipping rates than Western New York. To the citizens and industries of Western New York, struggling to weather a long economic downturn, such a proposal is simply unacceptable.

In light of the fact that the State of New York and its residents have contributed so greatly to the preservation of freight rail in the Northeast, I feel

strongly that our State now deserves the real rail competition we have been denied since the creation of Conrail over 20 years ago. I respectfully request that the Surface Transportation Board impose the conditions on CSX and Norfolk Southern that were requested by the State of New York, the New York City Economic Development Corporation, and the Erie-Niagara-Chautauqua Rail Steering Committee -- specifically, trackage rights east of the Hudson River and the establishment of a shared assets area or alternative reciprocal switching relief in and around Buffalo. These requests are reasonable. More important, they are fair.

The decisions you make on this acquisition will shape the course of economic development in New York State for at least the next quarter century and have tremendous impact on Conrail employees and their families. I ask you to consider the lessons of our experience with Conrail and take the opportunity to provide a very reasonable expansion of rail competition in my State. I thank the members of the Surface Transportation Board for the opportunity to present my views.

STB

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33388

6-3-98

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MOCSS

CAPITOL BOND

STATEMENT BY SENATOR WARNER
BEFORE THE SURFACE TRANSPORTATION BOARD

JUNE 3, 1998

o Morgan's stand

Chairman Morgan, Vice Chairman Owen, I appreciate the opportunity to appear here today to express my support for the acquisition of Conrail by CSX and Norfolk Southern Corporations.

Let me begin with a few personal observations, if I may. I am proud to make this recommendation to you because I know firsthand the quality of the companies and individuals involved in this transaction. For years, I have worked alongside John Snow and David Goode and their teams to bring growth and productivity to Virginia. These are terrific corporate citizens of our Commonwealth, people dedicated to high-quality service at competitive prices, performed as safely as possible. Headquartered in the Commonwealth, these companies are major employers of Virginians; just as importantly,

McBresson's

their corporate officers are themselves residents of Virginia, and they care deeply about the welfare of Virginia and their fellow citizens.

But there are also very significant economic and business reasons for supporting this transaction, which offers such tremendous opportunities ^{not only} for Virginia, ^{but for} and the Nation. Rail customers in Virginia for the first time will have direct single-line service from Richmond to Boston, and from other cities in Virginia to points throughout New York State and other locations in the eastern United States. Whether shipping goods to or from Virginia, the availability of single-line service will reduce transport times and offer customers the efficiencies of an integrated rail network.

✓ The economic infrastructure of Virginia has been assisted already by their efforts. In the past

four years, CSX industrial development projects alone have created 836 new jobs in Virginia and generated nearly \$103 million in investment. Today, CSX employs approximately 1,600 Virginia residents and serves almost 1,500 customers in Virginia. So, the existing investment and benefits for Virginia are substantial.

This transaction will promote even further industrial development for our Commonwealth. Jobs will be created as rail service grows out of this acquisition. Job growth will produce other consumer spending, leading to overall improvement in our economy.

Shippers will have more, not fewer, choices among carriers, because railroads that have operated in different regions will now be combined into a network that has greater scope. This too will benefit consumers, because products will be delivered more efficiently and

within shorter time periods. I was pleased to learn that many Conrail employees are being retained and their experience with the rail system put to good use. This will help ensure that these benefits can be realized through a smooth transition.

There are environmental benefits, as well, to be derived from the transaction. Thousands of trucking miles will be transferred from Virginia's highways to the rails, improving air quality in many parts of our Commonwealth. I have always been particularly sensitive to the incredible demands placed on our highways by commuters and by the transit through Virginia of trucks bound for the South and the Northeast. This diversion of truck traffic to the rails will yield benefits in terms of reduced congestion and highway degradation.

~~On a cautionary note, I urge you not to impose~~

*The Board has it
imposed*

Should the Board consider ⁻⁵⁻ ~~to~~ review carefully how such conditions could

conditions, [^] ~~that~~ [^] impede the ability of the railroads to operate their systems efficiently, or ^{might} ~~which~~ weaken the railroads' financial posture. They have slowly begun to return to viability since we deregulated them in 1980 through the Staggers Act, and it would be extremely unwise now to undermine the progress that has been made to date.

You have been very thorough in your analysis of this transaction, and I think that review is entirely appropriate. As I have mentioned, I know firsthand that CSX and Norfolk Southern are reliable, dependable corporations. When their managers commit to providing rail service economically, safely and efficiently, you can count on their assurances, for they will carry them out.

I urge you to approve this acquisition, and appreciate the chance to come before you today

and express these views. Please permit me to answer any questions you may have.

Defense

one world market.

STB

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33388

6-3-98

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MOCH

Congressman John J. Pickens, Jr (TN)
From DAVID BALLEW

Good afternoon Chairman Morgan and Vice Chairman Owen. I want to thank you for letting me speak to you today.

The Staggers Act, the railroad deregulation legislation of 1980, saved the private railroad industry in this country.

One of the cornerstones of that legislation was the ability of the railroads and their customers to contract for price and service outside the jurisdiction of the ICC, and the Board---just as other suppliers and their customers contract.

For nearly eighteen years this contract provision has worked, and not once has the ICC or the Board been involved with a contract.

Now, I understand that CSX and Norfolk Southern are asking you to step in and get involved with these section 10709 contracts, for their convenience.

You have been asked to let CSX and Norfolk Southern allocate these contracts without the customer's input or concurrence.

You have also been asked to override clauses in these contracts that would prevent their assignment to CSX or Norfolk Southern, unless the shipper consents.

Before you begin modifying a key provision of the Staggers Act that is universally acclaimed as a success, you have to look to the future.

You have to look beyond this proceeding.

You should consider the precedent you would be setting and the impact on the future market decisions by shippers, the economic consequences to the railroad industry and the legislative decisions my colleagues and I will be making.

I think the Department of Transportation has developed a reasonable solution in their brief to this problem. I support the Department of Transportation's conclusion that a shipper should have the right to choose between CSX and Norfolk Southern in areas where either railroad could perform the contract services previously provided by Conrail.

I also realize that you need evidence before you can act. One of the parties to this proceeding that has given evidence of the dangers and inequities of the plan by CSX and Norfolk Southern to allocate contract traffic is APL.

I would hope that you would preserve the sanctity of contacts that have existed for nearly eighteen years and, as in any other commercial setting, let APL negotiate the appropriate modifications to its contract with CSX and Norfolk Southern.

**Again, I appreciate your allowing me the
opportunity to speak with you to day.**

Thank you....

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33388

6-3-98

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HEARING

BEFORE THE
Surface Transportation Board
WASHINGTON, D.C. 20423

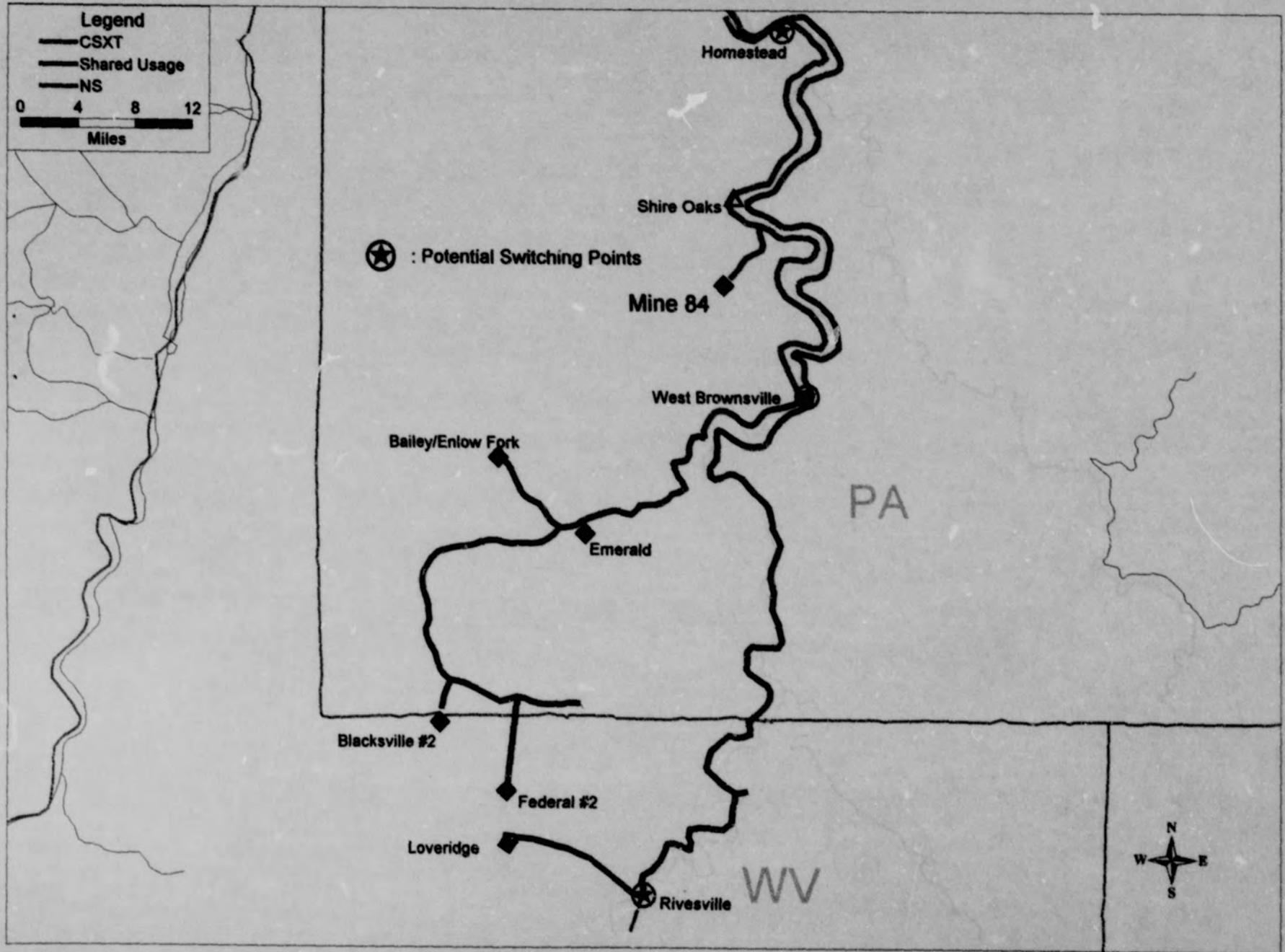
CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
— COMPANY AND OPERATING
LEASES/AGREEMENTS —
CONRAIL INC. AND
CONSOLIDATED RAIL CORPORATION

STB FINANCE DOCKET NO. 33388

**SLIDES UTILIZED AT ORAL ARGUMENT
JUNE 3, 1998
EIGHTY-FOUR MINING COMPANY**

MARTIN W. BERCOVICI
KELLER AND HECKMAN
1001 G STREET, NW
SUITE 500 WEST
WASHINGTON, DC 20001
(202) 434-4144

Exhibit MTM_2: MGA Coal Region



**“FAIR MARKET SHARE DIVISION IS A
SINE QUA NON OF ANY AGREEMENT.
NO ONE SHOULD BE EXPECTED TO
ACCEPT MARKET SHARE COMPLETELY
OUT OF WHACK WITH THE OTHER
FELLOW’S SHARE.”**

**David Goode, Chairman, Norfolk Southern Corporation
Traffic World, February 3, 1997, at page 50**

“IT IS BEYOND THE SCOPE
OF THE BOARD’S AUTHORITY
OR SOUND PUBLIC POLICY
IN A FREE MARKET ECONOMY
TO ATTEMPT TO EQUALIZE
THE TRANSPORTATION
ALTERNATIVES
OF ALL SHIPPERS.”

CSX/NS-176 AT 43

\$

IN RAILROADS WE TRUST

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CSX



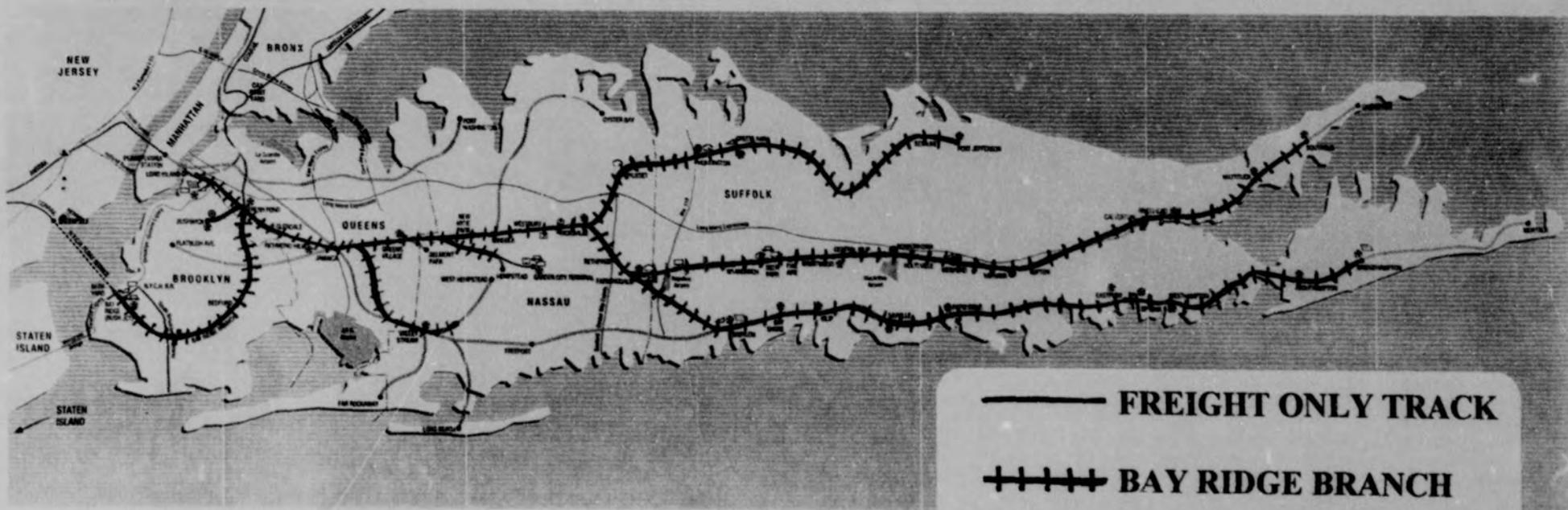
NS

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**LEGAL TENDER
GOOD FOR
MARKET ACCESS**

\$

NEW YORK & ATLANTIC RAILWAY



— FREIGHT ONLY TRACK

+ + + + BAY RIDGE BRANCH

+ + + + PASSENGER AND
FREIGHT TRACK

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33388

5-7-98

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MOCH



Office of the Chairman

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

FILE IN DOCKET

FD-33388

May 7, 1998

The Honorable William J. Coyne
U.S. House of Representatives
Washington, D.C. 20515-3814

Dear Congressman Coyne:

Thank you for your recent letter commenting on the request by CONSOL Inc. (CONSOL) to intervene in the Conrail acquisition proceeding currently pending before the Board in STB Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail, Inc. and Consolidated Rail Corporation. You state that CONSOL operates several mines in your district and that, although you do not take a position on the merits of its request, CONSOL has presented legitimate reason to be heard.

In its petition, CONSOL stated that it was seeking to intervene because of its concern that, despite assurances in the application that CSX and Norfolk Southern would have equal access to its coal producing area, progress toward an operating agreement has stalled. In a decision served April 24, 1998 (copy enclosed), the Board, after carefully reviewing CONSOL's petition and representations, denied the request to intervene. In the decision, the Board noted that CONSOL had not participated as a party, but a number of parties to the proceeding, including CONSOL's half owner E.I. DuPont de Nemours and Company, Inc., have addressed the interests of CONSOL in their submissions. The decision concluded that, although CONSOL had not shown extraordinary or compelling reasons for permitting it to intervene at such a late date, the Board will assess the proposed transaction in the light of representations made in the application, including the stated intention to afford equal access to all facilities in the Monongahela area.

On April 29, 1998, another coal producer in the same area, Cyprus Amax Coal Sales Corporation (Cyprus Amax), also filed a petition to intervene in the Conrail proceeding. A decision on Cyprus Amax's request will be made in the near future.

A copy of your letter and my response will be placed in the public docket for this proceeding. Also, your name has been placed on the service list so that you will receive copies of all future Board decisions in this proceeding.

The Honorable Frank Mascara

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

Sincerely,

Linda J. Morgan
Linda J. Morgan

Enclosure: April 24, 1998 Decision

WILLIAM J. COYNE
PENNSYLVANIA
14TH DISTRICT

COMMITTEE ON
WAYS AND MEANS

SUBCOMMITTEE:
TRADE

COMMITTEE ON
THE BUDGET

COLEMAN J. CONROY
ADMINISTRATIVE ASSISTANT



Congress of the United States
House of Representatives
Washington, DC 20515-3814
April 27, 1998

WASHINGTON OFFICE:
2455 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3814
(202) 225-2301

DISTRICT OFFICE:
2009 FEDERAL BUILDING
1000 LIBERTY AVENUE
PITTSBURGH, PA 15222
(412) 644-2870

FILE IN DOCKET

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

Attention: STB Finance Docket No. 33388

Dear Secretary Williams:

I am writing to urge the Surface Transportation Board to take into careful consideration the attached petition, comments, and statement of CONSOL Inc. regarding certain aspects of the proposed Norfolk Southern/CSX Conrail Acquisition.

I understand that the comment period on this docket has already closed, but as the attached material indicates, Norfolk Southern and CSX had, until recently, assured CONSOL Inc. that its facilities would continue to enjoy service by both Norfolk Southern and CSX under the Conrail acquisition agreement. It was only recently that CONSOL learned that such might not be the case and decided to file to intervene.

Given these circumstances, I would ask that CONSOL's petition for leave to intervene in this decision be considered and adequately addressed in the Conrail acquisition proceedings. Thank you for your attention to this request.

Sincerely,

William J. Coyne
Member of Congress

Enclosures
WJC:mcd

RECEIVED
SURFACE TRANSPORTATION
BOARD
MAY 1 4 16 PM '98
OFFICE OF
CHAIRMAN MORGAN

Stephen G. Young
Vice President - Government Affairs



CONSOL Inc.
Consol Plaza
1800 Washington Road
Pittsburgh, PA 15241-1421
412-831-4043
FAX: 412-831-4574

April 22, 1998

(Via Fax)

The Honorable Bill Coyne
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Coyne:

SUBJECT: CONSOL's Intervention in the Conrail Acquisition

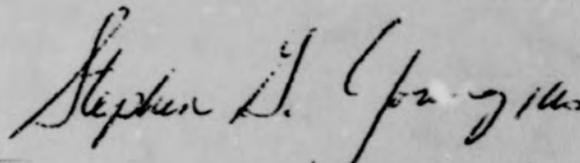
As Pennsylvania's largest shipper on Conrail you will not be surprised that we took a very keen interest in the CSX/NS bid to acquire Conrail. We were given strong representations by both railroads that we would have joint access to CSX and NS to ship our coal on the old Monongahela Railway Company (MGA) which serves several of our mines in Greene County. It is because of these representations that CONSOL did not intervene in the proceedings before the Surface Transportation Board.

During those discussions assurances were made by the CEOs of both companies that "CSX will have the right to serve all current and future customers [of the MGA] directly" You will find these matters spelled out in our petition for leave to intervene which will be delivered to Coleman Conroy today.

Because we were led to believe that we would have joint service we did not seek to intervene earlier - it now appears the railroads do not intend to keep their commitments.

Also, I believe it would be beneficial were you to urge the Surface Transportation Board to allow CONSOL's intervention. I hope you might be able to help us in this regard.

Sincerely,



LAW OFFICES
FRITZ R. KAHN, P.C.
SUITE 750 WEST
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934
(202) 371-8037
FAX (202) 371-0900

April 9, 1998

RECEIVED

APR 23 1009

WILLIAM J. COYNE
WASHINGTON, D.C. 20515

VIA HAND DELIVERY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, DC 20423

Dear Secretary Williams:

Enclosed for filing in STB Finance Docket No. 33388, CSX Corp., et al.--Control and Operating Leases/Agreements--Conrail, Inc., et al., are the original and 25 copies of the Petition of CONSOL Inc. (CONS-1), the Comments of CONSOL Inc. (CONS-2) and the Statement as to Oral Argument of CONSOL Inc. (CONS-3).

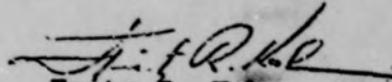
A dikette containing the text of these filings in WordPerfect 5.0 format is enclosed.

Extra copies of the filings and of this letter are enclosed for you to stamp to acknowledge your receipt of them and to return to me in the enclosed self-addressed, stamped envelope.

By copy of this letter, service is being effected upon counsel for each of the parties.

If you have any question concerning these filings or if I otherwise can be of assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

enc.
cc: Counsel for all parties

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

STB Finance Docket No. 33388

CSX CORPORATION, et al.,
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL, INC., et al.

PETITION
OF
CONSOL INC.

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Tel.: (202) 371-8037

Attorneys for
CONSOL Inc.

Dated: April 9, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

STB Finance Docket No. 33388

CSX CORPORATION, et al.,
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL, INC., et al.

PETITION
OF
CONSOL INC.

Petitioner, CONSOL Inc., of Pittsburgh, Pennsylvania ("CONSOL"), pursuant to 49 C.F.R. 1117.1, petitions for leave to intervene in the proceeding, file the attached Comments and Verified Statements and participate in the oral argument, and as grounds therefor CONSOL states, as follows:

1. CONSOL is the largest producer of coal at mines served by the former Monongahela Railway Company ("MGA"), acquired by Consolidated Rail Corporation ("Conrail"), pursuant to the decision of the Interstate Commerce Commission in Finance Docket No. 31875, Consolidated Rail Corp.--Merger--Monongahela Railway Co., served October 10, 1991. CONSOL's mines, principally the Bailey, Enlow Fork, Blacksville #2 and Loveridge mines, account for approximately 24 million of the 34 million tons of coal annually originated on the MGA lines.

2. The MGA lines have been identified as ones to be shared by the applicants, CSX Transportation, Inc. ("CSXT"), and Norfolk Southern Rail Company ("NS"). As NS' Operating Plan, p. 229 of vol. 3B of the Application, explained:

NS will be assigned control, and will operate and maintain the former Monongahela Railway, including the Waynesburg Southern, subject to a joint use agreement that will provide CSX equal, perpetual access to all current and future facilities located or accessed from the former Monongahela Railway [underscoring added for emphasis].

So, too the CSXT Operating Plan, p. 255 of vol. 3A of the Application, made clear:

NS will be allocated control, and will operate and maintain the former Monongahela Railway, including the Waynesburg Southern, subject to a joint use agreement which will provide CSX equal, perpetual access to all current and future facilities located or accessed from the former Monongahela Railway [underscoring added for emphasis].

The intent of the applicants was explained in the statement of Mr. David R. Goode, Chairman, President and C.E.O. of NS, at p. 331 of vol. 1 of the Application, "[A]lthough NS will be allocated operation of Conrail's Monongahela coal fields property, CSX will have the right to serve all current and future customers directly." The principal architect for NS of the break up of Conrail, Mr. James W. McClellan, Vice President - Strategic Planning of NS, testified at p. 514 of vol. 1 of the Application, that CSXT was to have a position of equality with NS, notwithstanding that NS was to have operational control of the MGA lines, saying, "Because virtually all Monongahela traffic is coal moving in full trainloads, under NS operation with full CSX access via trackage

rights, both will serve all customers directly, in a position of equality." Similarly, Dr. Barry C. Harris, Principal at Economists Incorporated, testifying on behalf of NS, stated, at p. 21 of vol. 2B of the Application, "After the restructuring, Norfolk Southern will operate, dispatch and maintain the former Monongahela Railway, while CSX will have full commercial and operating rights to serve all current and future facilities."

3. As is spelled out in greater detail in the attached Comments and Verified Statements, CONSOL only recently has learned that the applicants have been unable to negotiate the implementing operating plan called for by their Monongahela Usage Agreement, p. 715 of vol. 8C of the Application, assuring CSXT equal access and commercial rights to the MGA served facilities and that serious and seemingly insurmountable differences between the parties render it unlikely that an early and efficient transition can be effected, were the Board to approve the proposed transaction. The assurance that mine operators, such as CONSOL, and their customers must have that service on the MGA lines will be adequate may require that conditions be imposed.

4. CONSOL heretofore has not participated in this proceeding or proposed the imposition of conditions in the light of the applicants' representations that they would arrive at an implementing operating plan effectively giving CSXT equal access and commercial rights to the MGA served mines; they, of course, have not done so. As a potential protestant, CONSOL was entitled to rely on the applicants' representations. Mt. Hood Stages, Inc.

-Petition for Modification, 104 M.C.C. 449, 452, 463 (1968), aff'd, Grayhound Lines, Inc. v. United States, 308 F. Supp. 1033 (N.D. Ill. 1970).

5. Allowing CONSOL to intervene in this proceeding, file the attached Comments and Verified Statements and participate in the oral argument will not broaden the issues, delay the determination of this cause or in any way prejudice applicants, for applicants, pursuant to 49 C.F.R. 1104.13(a), will have ample time to reply.

WHEREFORE, petitioner, CONSOL Inc., asks that it be permitted to intervene in this proceeding, file the attached Comments and Verified Statements and participate in the oral argument.

Respectfully submitted,

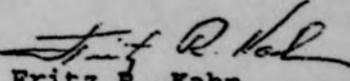
CONSOL INC.

By its attorneys,

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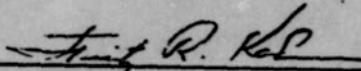

Fritz R. Kahn
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Dated: April 9, 1998

CERTIFICATE OF SERVICE

Copies of the foregoing Petition this day were served by me by mailing copies thereof, with first-class postage prepaid, to counsel for each of the parties.

Dated at Washington, DC, this 9th day of April 1998.



Fritz R. Kahn

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

STB Finance Docket No. 33388

CSX CORPORATION, et al.,
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL, INC., et al.

COMMENTS
OF
CONSOL INC.

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Attorneys for
CONSOL Inc.

Dated: April 9, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

STB Finance Docket No. 33388

CSX CORPORATION, et al.,
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL, INC., et al.

COMMENTS
OF
CONSOL INC.

CONSOL Inc., of Pittsburgh, Pennsylvania ("CONSOL"), pursuant to 49 C.F.R. 1112.6 and leave granted by decision of the Board, offers these Comments and the supporting Verified Statements of Mr. B. R. Brown, Chairman of the Board of CONSOL Inc., Mr. R. J. FlorJancic, Executive Vice President - Marketing, and Mr. William G. Rieland, Vice President for Transportation and Marketing Services and Mr. Gary E. Lapplander, Manager of Fuel Supply for Detroit Edison Company of Detroit, Michigan.

I.

Introduction

CONSOL, a corporate affiliate of E. I. duPont de Nemours and Company and Rheinbraun, a German mining company, is the largest producer of bituminous coal in the United States. It is the largest coal producer at the mines served by the former Monongahela

Railway Company ("MGA") acquired by Consolidated Rail Corporation ("Conrail"), pursuant to the decision of the Interstate Commerce Commission in Finance Docket No. 31875, Consolidated Rail Corp.-- Merger--Monongahela Railway Co., served October 10, 1991. CONSOL'S Bailey, Enlow Fork, Blacksville #2 and Loveridge mines account for approximately 24 million of the 34 million tons of coal annually originated on the lines of the MGA.

II.

Applicants had said CSXT was to be afforded equal access and commercial rights to the mines on the Monongahela Railway.

Although not shared assets, as are the New Jersey lines, the lines of the MGA, nevertheless, were identified in their Application as ones to be shared by the applicants, CSX Transportation, Inc. ("CSXT"), and Norfolk Southern Rail Company ("NS"). As NS' Operating Plan, p. 229 of vol. 3B of the Application, explained:

NS will be assigned control, and will operate and maintain the former Monongahela Railway, including the Waynesburg Southern, subject to a joint use agreement that will provide CSX equal, perpetual access to all current and future facilities located or accessed from the former Monongahela Railway [underscoring added for emphasis].

So, too the Operating Plan of CSXT, p. 255 of vol. 3A of the Application, made clear:

NS will be allocated control, and will operate and maintain the former Monongahela Railway, including the Waynesburg Southern, subject to a joint use agreement which will provide CSX equal, perpetual access to all current and future facilities located or accessed from the former Monongahela Railway [underscoring added for emphasis].

The applicants' intent as to the MGA lines was explained in the statement of Mr. David R. Goode, Chairman, President and C.E.O. of NS, at p. 331 of vol. 1 of the Application, "[A]lthough NS will be allocated operation of Conrail's Monongahela coal fields property, CSX will have the right to serve all current and future customers directly." Mr. James W. McClellan, Vice President - Strategic Planning of NS, who, more than any other person, designed the break up of Conrail, testified at p. 514 of vol. 1 of the Application, that CSXT was to have a position of equality with NS, notwithstanding that NS was to own and control the MGA lines, saying, "Because virtually all Monongahela traffic is coal moving in full trainloads, under NS operation with full CSX access via trackage rights, both will serve all customers directly, in a position of equality." Similarly, Dr. Barry C. Harris, Principal at Economists Incorporated, testifying on behalf of NS, stated, at p. 21 of vol. 2B of the Application, "After the restructuring, Norfolk Southern will operate, dispatch and maintain the former Monongahela Railway, while CSX will have full commercial and operating rights to serve all current and future facilities."

As explained by Messrs. FlorJancic and Rieland in their Verified Statements, CONSOL only recently has learned, however, that the applicants have been unable to negotiate the implementing operating agreement called for by their Monongahela Usage Agreement, p. 715 of vol. 8C of the Application, pursuant to which CSXT was to have equal access and commercial rights to the MGA served facilities, and that serious and seemingly insurmountable

differences between the parties render it unlikely that an early and efficient transition can be effected, were the Board to approve the proposed transaction.

III.

Applicants have failed to negotiate a mutually satisfactory operating plan for the Monongahela Railway.

The MGA was a well operated property, and CONSOL has been pleased with the service rendered by Conrail, as Mr William G. Rieland notes in his Verified Statement. Much of the MGA consists of single-track lines, with limited passing tracks, necessitating careful scheduling and dispatching of the inbound and outbound 110-car unit trains so as to permit orderly and timely loading at the mines commensurate with their customers' requirements.

The need for the efficient operation of the MGA, Mr. Rieland observes, will be exacerbated over the next few years. It is anticipated that coal production at the mines served by the MGA lines will increase by four to seven million tons annually. That means that the total production of these mines will come to about 40-41 million tons of coal annually. Mr. Rieland says that translates into 15 loaded trains, at an average of 11,000 tons per train, five days per week, 50 weeks per year. Since the MGA's capacity is limited to the daily movement of 15 empty unit trains to the mines and 15 loaded unit trains from the mines, MGA will be operating at its maximum capacity within two or three years' time.

The mines served by the MGA lines, Mr. Rieland observes, have very limited ability to store coal. Therefore, any disruptions in

the operations of the railroad will have devastating consequences. Trains must be placed for loading when ordered lest the mines' production be interrupted and the customers' demands not be met. Missed shipments simply cannot be made up, and customer service, accordingly, is impaired.

For these reasons, Mr. Rieland acknowledges, he entertained a good deal of skepticism about the applicants' planned break up of Conrail. He carefully reviewed their Application and met with representative of both CSXT and NS. Their filings with this Board and their statements to him and others at CONSOL gave the company a measure of comfort that the avowed goals of the applicants of efficient service on the MGA lines and effective competition between CSXT and NS could be met.

Although, under their Monongahela Usage Agreement, NS was slated to acquire the MGA lines and control their operations, CSXT was to be accorded equal access to the mines and to be on a commercial footing no less favorable than that of NS. The applicants assured Messrs. FlorJancic and Rieland and others at CONSOL, as they had this Board, that the MGA would be operated with no loss of efficiency, and, yet, the mines along its lines and the customers for their coal shipments would gain the vigorous competition between CSXT and NS.

Unfortunately, it appears that this certainly is not going to happen any time soon. Conversations which Mr. Rieland has had within the past few days with representatives of CSXT and NS, whose identities he felt he could not reveal, have CONSOL very disturbed.

From an operating standpoint, the critical element of the applicants' Monongahela Usage Agreement is the formulation of an implementing operating plan. See, p. 726, vol. 8C of the Application. The operating plan has not been negotiated, and serious and perhaps insurmountable differences between the parties render it unlikely that they will be able to arrive at an acceptable operating plan, certainly not in time for the consummation of the proposed transaction, assuming this Board were to approve it at the voting conference scheduled for June 8, 1998.

A.

NS is intent on retaining
the Conrail crews, leaving
CSXT to hire and train personnel.

The Monongahela Usage Agreement contemplates that the operating plan would provide that "all CSXT employees who shall operate its trains, locomotives, cars and equipment over the Monongahela [shall] be qualified for operation there over." See, p. 727, vol. 8C of the Application. The employees who are best qualified to operate on MGA's lines, of course, are the Conrail crews. NS, however, has determined that it would hire all of the Conrail crews; it will allow CSXT to have none, Mr. Rieland has learned.

NS, Mr. Rieland was told, has advised CSXT that it can hire crews, if it needs to, or reassign crews from elsewhere on its system. That simply is unacceptable, as far as CONSOL is concerned. To train an engineer or conductor takes from nine to twelve months. With an anticipated closing date of September 1,

1998, there simply is insufficient time for CSXT to hire and train personnel to be qualified to operate its trains on the MGA lines. Even if CSXT were to reassign crews, with the disruption and shortages that itself would cause, the engineers and conductors would be unfamiliar with the intricate operations required for moving 110-car unit trains to and from the mines on the MGA lines, and it would take several weeks before they would be able to satisfy NS that they were qualified to operate on the property.

Consistent with the avowed objective of affording CSXT equal access and commercial rights to the mines on the MGA lines, CSXT should be allowed to hire half of Conrail's crews which have operated trains on the property.

B.

NS is insistent on not sharing with CSXT the computerized dispatching data.

The Monongahela Usage Agreement declares that the NS dispatcher at the computerized facility in Brownsville will coordinate operations; the crews "shall ascertain that the trackage is clear and shall await confirmation from the dispatcher that such permission has been issued to allow NSR and/or CSXT movements on or over the Monongahela." See, p. 724, vol. 8C of Application. The NS dispatcher will be able to contact the NS and CSXT locomotives and crews via the radios with which they will be equipped.

As far as NS is concerned, Mr. Rieland has been advised, that suffices. CSXT, however, would like to and needs to tie into the computer NS uses for dispatching at the Brownsville facility; it

would like to and needs to be able to look at the dispatching board, just as NS' dispatcher does. If CSXT were able to spot an opening for the movement of one of its trains, it would like to be able to call that to the dispatcher's attention; it doesn't simply want to sit and wait for the dispatcher's call. Opportunities may be missed, and the promised competition between CSXT and NS will not be served.

CONSOL fully agrees with CSXT that CSXT must have knowledge of the train operations on the MGA lines coextensive with that of NS' dispatcher; anything less is detrimental to the marketing of CSXT's services. Mr. Rieland cites to the old adage that knowledge is power, noting that it is no less true in train operations than in anything else. For CSXT to be able to compete on an equal footing with NS and to be able to sell its services as effectively as NS can, CSXT must be known to have no less information of the operations on the MGA lines than NS has. No customer of CONSOL will want to receive coal via CSXT, CONSOL is persuaded, if the customer is apprehensive that CSXT cannot serve it as effectively as NS can; tying into NS' dispatching board is critical in that regard.

C.

NS is determined not to
include CSXT in the discussions
of train loading schedules.

The operating plan called for by the applicants' Monongahela Usage Agreement is to provide that "[t]he loading schedule will be the governing vehicle for sequencing trains on the Monongahela by

the dispatcher." See, p. 725, vol. 8C of the Application. It further is to provide that "[c]hanges in the train loading schedule or train ordering will be coordinated jointly between NSR and CSXT to assure demand is met for all Mines." Id. NS' idea of coordination appears to be dictation. In his recent conversations with CSXT and NS representatives, Mr. Rieland has learned to his dismay that NS has taken the position that, since it is charged with the responsibility for dispatching trains on the MGA lines, it will schedule the trains' operations and will give CSXT needed directions concerning changes in the loading of trains.

CSXT wants to be an active participant in the scheduling of the trains operated on the MGA lines and in the decision making process when changes are made in the pre-established operational schedules, and CONSOL totally agrees. While there can be no questions that NS must have the ultimate responsibility for the trains' dispatching, CSXT needs to be involved when, for one reason or another, trains cannot be loaded as the mine operators previously had planned. Without CSXT's full participation in scheduling the trains and in determining how the mine operators' changes are to be effected, NS would be able to disadvantage CSXT, with injury to CSXT and, more importantly, the shippers, such as CONSOL, and their customers which it serves.

D.

NS refuses to join with CSXT
in an arrangement for swapping
cars of coal to meet customers' needs.

Finally, there occasionally is need for reassigning trains,

Mr. Rieland explains, when the quality of the coal that's been loaded into its cars fails to meet the consignee's demands. Conrail heretofore worked with CONSOL to effect such changes, and Mr. Rieland and others at CONSOL were assured that the applicants would as well. Again, Mr. Rieland has learned to his great disappointment that NS is unwilling to cooperate with CSXT to permit such car swap arrangements.

From time to time, due primarily to coal quality upsets at the mines, the mine may be unable to ship a trainload of coal to the intended customer. The quality of the coal available at loading time simply fails to meet the intended customer's specifications. When that happens, the mine operator will attempt to find another customer for the coal, one who can use coal of that specification and has the mechanism for unloading cars of that design, and direct the loaded train to be delivered by the railroad to that other customer. Conrail has accommodated the mine operators in that regard and readily affected such car swaps.

CONSOL deems it important that such arrangements continue, and, when the representatives of CSXT and NS first spoke with Mr. Rieland and others at CONSOL about the break up of Conrail, they were given every assurance that the applicants would do so. Now, however, CONSOL finds that, although CSXT is willing to participate in such car swap arrangements, NS is not. CONSOL believes it to be imperative to the successful operation of the MGA properties that trains be reassigned when quality upsets occur. This benefits the railroads no less than it does CONSOL, and CONSOL considers it

essential that NS agree to provisions providing therefor in the operating plan.

IV.

Because applicants have failed to arrive at an operating plan, the Board will need to do so as conditions to any approval of the transaction.

As Mr. B. R. Brown makes clear in his Verified Statement, CONSOL favors marketplace decisions arrived at without Government interference. CONSOL, accordingly, with great reluctance has sought leave to intervene in this proceeding and to propose the imposition of conditions upon any approval by the Board of the proposed transaction; nevertheless, the circumstances, as laid out in the Verified Statement of Mr. Rieland, oblige CONSOL to do so.

In the view of CONSOL, if CSXT and NS have not been able to arrive at a mutually acceptable operating plan, one that satisfies the needs of CONSOL, as the principal coal producer on the MGA lines, no later than May 15, 1998, the Board must impose such an operating plan as conditions, if it were to approve the proposed transaction. The operating plan and, hence, the conditions to be imposed by the Board would provide:

1. NS shall operate all trains on the MGA lines, the trains of CSXT to be handled by NS pursuant to a haulage agreement, except between Rivesville and the Loveridge mine. The haulage agreement will provide for NS to handle CSXT's trains from and to CSXT's Newell Yard, where CSXT shall have available sufficient power and cars to accommodate the traffic. NS shall charge CSXT the same crew costs it incurs in moving its trains to and from its West

Brownsville Yard. CSXT itself will operate its trains between Rivesville and the Loveridge mine.

2. NS shall permit CSXT to access the computer facilities at Brownsville so that it will have the same information with respect to operations on the MGA as is available to NS.

3. NS and CSXT shall cooperate in the scheduling of trains, and NS shall permit CSXT to participate in the decision making process when predetermined loading plans must be changed to accommodate the shippers' needs.

4. NS shall participate with CSXT in a car swapping arrangement that will permit the reassignment of loaded trains to customers on one another's lines.

These requirements impose no additional burdens and are no greater than the applicants' filings with the Board and their verbal commitments to Conrail's shippers contemplated; they are no greater than what the effective marketing of coal from CONSOL's mines served by the MGA lines demands.

WHEREFORE, CONSOL Inc., asks that, unless the parties were to arrive at an acceptable and satisfactory operating plan by May 15, 1998, that the Board impose the foregoing conditions, if it were otherwise to approve the transaction herein.

Respectfully submitted,

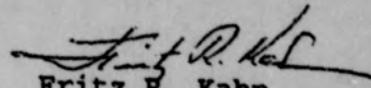
CONSOL INC.

By its attorneys,

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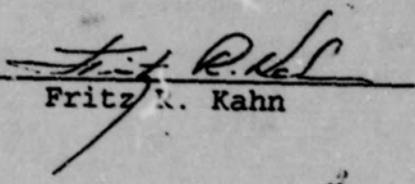

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Dated: April 9, 1998

CERTIFICATE OF SERVICE

Copies of the foregoing Comments this day were served by me by mailing copies thereof, with first-class postage prepaid, to counsel for each of the parties.

Dated at Washington, DC, this 9th day of April 1998.


Fritz R. Kahn

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

STB Finance Docket No. 33388

CSX CORPORATION, et al.,
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL, INC., et al.

VERIFIED STATEMENT
OF
B. R. BROWN

My name is B. R. Brown, and I am Chairman of the Board of CONSOL Inc., with offices at 1800 Washington Road, Pittsburgh, Pennsylvania 15241.

CONSOL is the largest shipper of bituminous coal in the United States, and coal, of course, is the single most important commodity transported by the Nation's railroads.

I have come to know Mr. John W. Snow, Chairman of the Board, President and C.E.O. of CSX Corporation, and Mr. David R. Goode, Chairman, President and C.E.O. of Norfolk Southern Corporation. Indeed, I have spoken with both of them from time to time about their proposal, pending before this Board, to acquire and divide between their two railroads the lines of Consolidated Rail Corporation.

CONSOL has an important stake in that transaction because several of its most productive mines, principally its Bailey, Enlow

Fork, Blacksville #2 and Loveridge mines, are on the lines of what used to be the Monongahela Railway Company and now are part of Conrail. CONSOL has been well satisfied with the service Conrail has rendered, and, in my conversations with Messrs. Snow and Good, I was assured that, not only would the level of service not be impaired as a result of their proposal, but effective competition between the two railroads would be introduced. Although NS was to have title to the MGA lines, CSXT was to be accorded equal access and commercial opportunities to serve the mine operators, such as CONSOL.

I have been apprised by CONSOL's Vice President for Transportation and Marketing Services, Mr. William G. Rieland, that no operating plan for the MGA has been negotiated, and deep divisions separate the applicants.

CONSOL very much favors marketplace decisions arrived at without Government interference. Accordingly, it is with great reluctance that I have authorized that CONSOL petition this Board for leave to participate in this proceeding, file its Comments and seek the promulgation of an operating plan for the MGA lines as conditions to any approval by this Board of the proposed transaction. I urge the Board to accept these filings and to grant the relief CONSOL has requested.

I declare under penalty of perjury that the factual assertions of this statement are true and correct to the best of my knowledge and belief. I further declare that I am authorized on behalf of CONSOL Inc., to make this statement.

Dated at Pittsburgh, PA, this 7th day of April 1998.


B. R. Brown

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

STB Finance Docket No. 33388

CSX CORPORATION, et al.,
-- CONTROL AND OPERATING LEASES/AGREEMENTS -- .
CONRAIL, INC., et al.

VERIFIED STATEMENT
OF
R. J. FLORJANCIC

My name is Ronald J. FlorJancic, and I am Executive Vice President - Marketing of CONSOL Inc., with offices at 1800 Washington Road, Pittsburgh, Pennsylvania 15241.

CONSOL is the single largest shipper of bituminous coal in the United States, and coal, of course, is the single most important commodity transported by the Nation's railroads.

As Executive Vice President - Marketing, I am responsible for all of the marketing and sales of CONSOL's coal production to all of its customers. I, accordingly, have followed closely the proposed acquisition of Consolidated Rail Corporation and the division of its lines between Norfolk Southern Railway Company and CSX Transportation. I have had monthly contacts with top level executives of both NS and CSXT.

The majority of CONSOL's northeastern sales tonnage is produced from mines on the lines of the former Monongahela Railway

Company, now part of Conrail. I, therefore, have a strong interest in the efficient and cost effective operation of the MGA and its effect on our production and sales. In numerous conversations that I had with NS and CSXT personnel, I was told that the "Operating Plan" for the MGA would ensure the efficient and effective operation of the property, such as has been our current experience with Conrail. Additionally, I was advised that NS and CSYT would be equal competitors for the existing and new business of the MGA lines. With over 24 million tons of coal out of a production base of 73 million tons, the management of the MGA is of extreme importance to both CONSOL's success and that of its customers.

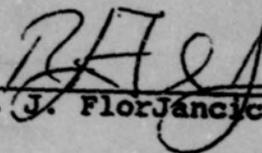
My involvement was not limited to my conversations with the railroads' personnel, but also included conversations with CONSOL's customers and with its Vice President - Transportation and Marketing Services, Mr. William G. Rieland. He has kept me informed of the numerous meetings which have been held to lay out the groundwork and plans for the takeover of Conrail by NS and CSXT. It is only recently that I have learned from Mr. Rieland, as well as directly from representatives of NS and CSXT, that the railroads have not yet arrived at an "Operating Plan" for the MGA and that serious divisions separate the two parties from agreement.

The above is why, if the railroads fail promptly to agree on an effective "Operating Plan," CONSOL asks the Board to impose the conditions enumerated in its Comments.

I declare under penalty of perjury that the factual assertions of this statement are true and correct to the best of my knowledge

and belief. I further declare that I am authorized to make this statement on behalf of CONSOL Inc.

Dated at Pittsburgh, Pennsylvania, this 7th day of April 1998.


R. J. Florjancic

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

STB Finance Docket No. 33388

CSX CORPORATION, et al.,
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL, INC., et al.

VERIFIED STATEMENT
OF
WILLIAM G. RIELAND

My name is William G. Rieland, and I am the Vice President for Transportation and Marketing Services of CONSOL Inc., with offices at 1800 Washington Road, Pittsburgh, Pennsylvania 15241.

CONSOL, a corporate affiliate of E. I. duPont de Nemours and Company and Rheinbraun, a German mining company, is the largest producer of bituminous coal in the United States.

Approximately a third of CONSOL's coal production comes from its Bailey, Enlow Fork, Blacksville #2 and Loveridge mines, on the lines of the former Mongongahela Railway Company, since 1991 owned and operated by Conrail. These four mines account for approximately 24 million tons of the 34 million tons of coal annually originated on the MGA lines.

The MGA was a well operated property, and CONSOL has been pleased with the service rendered by Conrail. Much of the MGA consists of single-track lines, with limited passing tracks,

necessitating careful scheduling and dispatching of the inbound and outbound 110-car unit trains so as to permit orderly and timely loading at the mines commensurate with their customers' requirements.

The need for the efficient operation of the MGA will be exacerbated over the next few years. It is anticipated that coal production at the mines served by the MGA lines will increase by from four to seven million tons annually. That means that the total production of these mines lines will increase to about 40-41 million tons of coal annually. That translates into 15 loaded trains, at an average of 11,000 tons per train, five days per week, 50 weeks per year. Since the MGA's capacity is limited to the daily movement of 15 empty unit trains to the mines and 15 loaded unit trains from the mines, MGA will be operating at its maximum capacity within two or three years' time.

The mines served by the MGA lines have very limited ability to store coal. Therefore, any disruptions in the operations of the railroad will have devastating consequences. Trains must be placed for loading when ordered lest the mines' production be interrupted and the customers' demands not be met. Missed shipments simply cannot be made up, and customer service, accordingly, is impaired.

For these reasons, I entertained a good deal of skepticism about the applicants' planned break up of Conrail. I carefully reviewed their Application and met with representative of both CSX Transportation and Norfolk Southern Railway Company. Their filings with this Board and their statements to me gave me a measure of

comfort.

Although, under their Monongahela Usage Agreement, NS was slated to acquire the MGA lines and control their operations, CSXT was to be accorded equal access to the mines and to be on a commercial footing no less favorable than that of NS in serving them. The applicants assured me, as they had this Board, that the MGA would be operated with no loss of efficiency, and, yet, the mines along its lines and the customers for their coal shipments would gain the benefits of vigorous competition between CSXT and NS.

This, unfortunately, is not going to happen. Conversations I have had within the past few days with representatives of CSXT and NS, whose identities I cannot reveal for perfectly obvious reasons, have me and CONSOL very disturbed.

From an operating standpoint, the critical element of the applicants' Monongahela Usage Agreement is the formulation of an implementing operating plan. The operating plan has not been negotiated, and serious and, I am afraid, insurmountable differences between the parties render it unlikely that they will be able to arrive at an acceptable operating plan, certainly not in time for the consummation of the proposed transaction, assuming this Board were to approve it at the time of its voting conference scheduled for June 8, 1998.

The Monongahela Usage Agreement contemplates that the operating plan would provide that "all CSXT employees who shall operate its trains, locomotives, cars and equipment over the

Monongahela [shall] be qualified for operation there over." The employees who are best qualified to operate on MGA's lines, of course, are the Conrail crews. NS, however, has determined that it would hire all of the Conrail crews; it will allow CSXT to have none.

NS, I am told, has advised CSXT that it can hire crews, if it needs to, or reassign crews from elsewhere on its system. That simply is unacceptable. To train an engineer or conductor takes from nine to twelve months. With an anticipated closing date of September 1, 1998, there simply is not enough time for CSXT to hire and train personnel to be qualified to operate its trains on the MGA lines. Even if CSXT were to reassign crews, with the disruption and shortages that itself would cause on that railroad's system, the engineers and conductors would be unfamiliar with the intricate operations required for moving 110-car unit trains to and from the mines on the MGA lines, and it would take several weeks before they would be able to satisfy NS that they were qualified to operate on the property.

If CSXT is to be afforded equal access and comparable commercial capabilities in serving the mines on the MGA lines, as I understood was the applicants' intent in arriving at their Monongahela Usage Agreement, CSX, if it so wishes, should be allowed to hire half of the employees of Conrail which heretofore have operated its trains on the MGA lines.

The Monongahela Usage Agreement declares that the NS dispatcher at the computerized facility in Brownsville will

coordinate operations; the crews "shall ascertain that the trackage is clear and shall await confirmation from the dispatcher that such permission has been issued to allow NSR and/or CSXT movements on or over the Monongahela." The NS dispatcher will be able to contact the NS and CSXT locomotives and crews via the radios with which they will be equipped.

As far as NS is concerned that suffices. CSXT, however, would like to and needs to tie into the computer NS uses for dispatching at the Brownsville facility; it would like to and needs to be able to look at the dispatching board, just as NS' dispatcher does. If CSXT were able to spot an opening for the movement of one of its trains, it would like to be able to call that to the dispatcher's attention; it doesn't simply want to sit and wait for the dispatcher's call. Unless CSXT were to have the timely information about operations on the MGA lines, opportunities may be missed, and the competition between CSXT and NS that was to occur will not be served.

CONSOL fully agrees with CSXT that CSXT must have knowledge of the train operations on the MGA lines coextensive with that of NS' dispatcher; anything less is detrimental to the marketing of CSXT's services. The old adage proclaims that knowledge is power, and it is no less true in train operations than in anything else. For CSXT to be able to compete on an equal footing with NS and to be able to sell its services as effectively as NS can, CSXT must be known to have no less information of the operations on the MGA lines than NS has. No customer of CONSOL that I am aware of will

want to receive coal via CSXT if it is apprehensive that CSXT cannot serve it as effectively as NS can; tying into NS' dispatching board is critical in that regard.

The implementing operating plan called for by the applicants' Monongahela Usage Agreement is to provide that "[t]he loading schedule will be the governing vehicle for sequencing trains on the Monongahela by the dispatcher." It further is to provide that "[c]hanges in the train loading schedule or train ordering will be coordinated joint between NSR and CSXT to assure demand is met for all Mines." NS' idea of coordination appears to be dictation. In my recent conversations with CSXT and NS representatives I have learned to my dismay that NS has taken the position that, since it is charged with the responsibility for dispatching trains on the MGA lines, it will schedule the trains' operations and will give CSXT needed directions concerning changes in the loading of trains.

CSXT wants to be an active participant in the scheduling of the trains operated on the MGA lines and in the decision making process when changes are made in the pre-established operational schedules, and CONSOL totally agrees. While there can be no question that NS must have the ultimate responsibility for the trains' dispatching, CSXT needs to be involved when, for one reason or another, trains cannot be loaded as the mine operators previously had planned. Without CSXT's full participation in scheduling the trains and in determining how the mine operators' changes are to be effected, NS would be able to disadvantage CSXT, with injury to CSXT and, more importantly, the shippers and their

customers which it serves.

Finally, there occasionally is need for reassigning trains when the quality of the coal that's been loaded into its cars fails to meet the consignee's demands. Conrail worked with CONSOL to effect such changes, and I was assured that the applicants would as well. Again, I have learned to my great disappointment that NS is unwilling to cooperate with CSXT to permit such car swap arrangements.

From time to time, due primarily to coal quality upsets at the mines, the mine may be unable to ship a trainload of coal to an intended customer, because the quality of the coal available at loading time fails to meet the customer's specifications. When that happens, the mine operator normally attempts to find another customer for the coal to be delivered by the railroad. Of course, the loaded coal would need to meet the other customer's own coal specifications, and the cars would need to match its unloading mechanisms. Conrail has cooperated fully in effecting such car swaps.

CONSOL deems it important that such arrangements continue, and, when they first spoke with me about the break up of Conrail, the representatives of CSXT and NS assured me that they would. Now, however, I find that, although CSXT is willing to participate in such car swap arrangements, NS is unwilling to do so. CONSOL believes it to be imperative to the successful operation of the MGA properties that trains be reassigned when quality upsets occur. This benefits the railroads no less than it does CONSOL, and we

consider it essential that NS agree to provisions providing therefor in the operating plan.

In my opinion, if CSXT and NS have not been able to arrive at a mutual acceptable operating plan, one that satisfies the needs of Consol as the principal coal producer on the MGA lines, no later than May 15, 1998, the Board must impose such an operating plan as conditions, if it were to approve the proposed transaction. The operating plan and, hence, the conditions to be imposed by the Board would provide:

1. NS shall operate all trains on the MGA lines, the trains of CSXT to be handled by NS pursuant to a haulage agreement, except between Rivesville and the Loveridge mine. The haulage agreement will provide for NS to handle CSXT's trains from and to CSXT's Newell Yard, where CSXT shall have available sufficient power and cars to accommodate the traffic. NS shall charge CSXT the same crew costs it incurs in moving its trains to and from its West Brownsville Yard. CSXT itself will operate its trains between Rivesville and the Loveridge mine.

2. NS shall permit CSXT to access the computer facilities at Brownsville so that it will have the same information with respect to operations on the MGA as is available to NS.

3. NS and CSXT shall cooperate in the scheduling of trains, and NS shall permit CSXT to participate in the decision making process when predetermined loading plans must be changed to accommodate the shipper's needs.

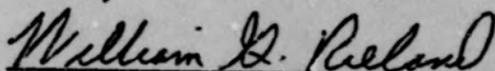
4. NS shall participate with CSXT in a car swapping

arrangement that will permit the reassignment of loaded trains to customers on one another's lines.

These requirements will impose no burdens and are not greater than the applicants' filings with the Board and their verbal commitments to Conrail's shippers contemplated; they are no greater than what the effective marketing of coal from CONSOL's mines served by the MGA lines demands.

I declare under penalty of perjury that the factual assertions of this statement are true and correct to the best of my knowledge and belief. I further declare that I am authorized on behalf of CONSOL Inc. to make this statement.

Dated at Pittsburgh, Pennsylvania, this 7th day of April 1998.


William G. Rieland
William G. Rieland

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

STB Finance Docket No. 33388

CSX CORPORATION, et al.,
—CONTROL AND OPERATING LEASE/AGREEMENTS—
CONRAIL, INC., et al.

VERIFIED STATEMENT
OF
GARY E. LAPPLANDER

My name is Gary E. Lapplander and I am the Manager of Fuel Supply for The Detroit Edison Company, with offices at 2000 Second Avenue, Detroit, Michigan 48226.

As Manager of Fuel Supply, I am responsible for fuel and transportation for Detroit Edison's fossil plants, including the Monroe, Trenton Channel and River Rouge plants, each of which is served by Consolidated Rail Corporation. Detroit Edison purchases over 23 million tons of coal per year consumed in the generation of electricity.

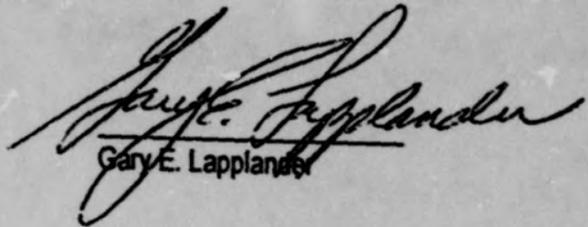
In 1997, Detroit Edison purchased over three million tons of coal from mines on the lines of the former Monongahela Railways Company, now part of Conrail. Accordingly, Detroit Edison is very interested in the successful conclusion of the acquisition of Conrail and the division of its lines between Norfolk Southern Railway Company and CSX Transportation. Our fuel purchases are dependent upon efficient and highly competitive origin coal sources.

Detroit Edison has supported the acquisition of Conrail (reference my letter to STB of 2/24/98) based on discussions with the Norfolk Southern Railway Company and CSX Transportation. However, since the submittal of my letter of support, I have become concerned

with the ability of the Norfolk Southern and CSX to operate an MGA in which each would have equal access and commercial rights. It is my understanding that no operating plan has been agreed to by the two railroads and I am apprehensive that, in the absence of an effective operating plan, there will be a loss of operating efficiency and economic injury to my company.

I declare under penalty of perjury that the foregoing factual assertions are true and correct to the best of my knowledge and belief. I further declare that I am authorized to make this statement on behalf of Detroit Edison Company.

Dated at Detroit, Michigan, this 8 day of April, 1998.


Gary E. Laplander

Notarized: Terrie A. Jones 4/8/98

TERRIE A. JONES
Notary Public, Wayne County, MI
My Commission Expires Nov. 15, 2000

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

STB Finance Docket No. 33388

CSX CORPORATION, et al.,
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL, INC., et al.

STATEMENT AS TO ORAL ARGUMENT
OF CONSOL INC.

In response to the Board's decision, Decision No. 70, served March 12, 1998, CONSOL Inc., respectfully asks that its counsel be permitted to present oral argument on its behalf.

Counsel will want to impress upon the Board that, if the applicants in the meantime have not negotiated an acceptable and satisfactory operating plan pursuant to their Monongahela Usage Agreement, there is urgent need for the Board to promulgate such an operating plan as conditions to any approval by the Board of the proposed transaction.

Consolidation and coordination of this presentation with that of any other party is impractical.

Counsel anticipates requiring no more than ten minutes' time to make CONSOL's case and asks for that much argument time.

Respectfully submitted,

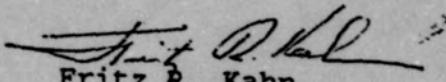
CONSOL INC.

By its attorneys,

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Dated: April 9, 1998

STB

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The National Assoc. of Reversionary Property Owners

50-505 Grand Traverse La Quinta, CA 92253

E-mail at: dick@halcyon.com Internet page at: http://www.halcyon.com/dick



Richard Welsh, Executive Director

December 7, 1997

Office of the Secretary
STB
Washington, DC 20423

Dear Mr. Williams:

The National Association of Reversionary Property Owners (NARPO) would like to be put on the Service List for the following abandonments:

- | | |
|----------------------|---------------------------|
| AB 497-1X | AB 497-1X * |
| AB 6-299X ✓ | AB 497-2X * |
| AB 6-341X ✓ | AB 535-0X ✓ |
| AB 32-65X ✓ | F.D. 333311 ✓ <i>to C</i> |
| AB 32-82 | F.D. 33388 ✓ |
| AB 33-105X ✓ | F.D. 33438 ✓ |
| AB 55-554X ✓ | F.D. 33467 ✓ |
| AB 57-43X | F.D. 33487 |
| AB 57-43X ✓ | F.D. 33493 ✓ |
| AB 167-1179X ✓ | F.D. 33500 ✓ |
| AB 290-169X * | F.D. 33497 ✓ |
| AB 290-190X ✓ | F.D. 33497 ✓ |
| Ab 290-191X ✓ | F.D. 33497 |
| AB 391-3X * | F.D. 33504 ✓ |
| AB 393-3X * | F.D. 33505 ✓ |
| AB 441-2X * | F.D. 33509 ✓ |
| AB 477-2X ✓ | F.D. 33525 ✓ |
| AB 487-1X ✓ | F.D. 30186 ✓ |
| AB 487-4X ✓ | |
| AB 493-6X ✓ | |

Thank you very much.

Sincerely yours,

Richard Welsh, Executive Director

HBS/RJW

done
R.S