



Thomas M. McDermott, Jr.
Mayor

03416, 012808, O'CONNOR, LOCL, 46320, O.N

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CITY OF HAMMOND LAW DEPARTMENT

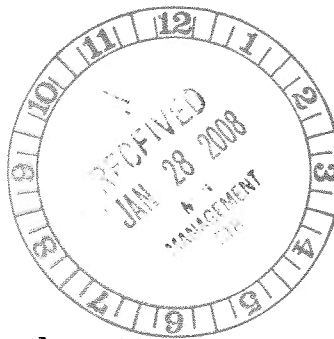
WILLIAM JOSEPH O'CONNOR
Corporation Counsel

KRISTINA C. KANTAR
City Attorney

ALAN R. FAULKNER
Assistant City Attorney

VIA OVERNIGHT EXPRESS

Hon. Vernon A. Williams
Surface Transportation Board
395 E Street SW
Washington DC 20423-0001



Re: Canadian National Railway Company
Company and Grand Trunk Corp.
Control-EJ&E West Company
STB Finance Docket No. 35087

Dear Mr. Williams:

Enclosed for filing are an original and ten
copies of the City of Hammond, Indiana's
comments concerning the pending acquisition
of the EJ&E Railroad.

Surface Transportation Board

CN-EJ&E EIS - FD-35087

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Date Recd: _____

File No. _____

Scanner (Initial): _____

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Very Truly Yours

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City of Hammond's Comments
STB Finance Docket No. 35807

The City of Hammond raises no issues related to the competitiveness aspect of the proposed acquisition. The City of Hammond understands that as a municipality, any Comments by the City would be anticipated to be filed in the environmental review aspect of the transaction. The City of Hammond shows the Surface Transportation Board the City intends to file Comments in the environmental portion, but wishes to bring the following Issue/Comment to the STB's attention as part of the STB's review of the operational aspects of the transaction.

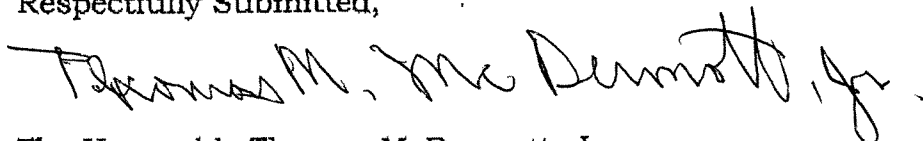
The Surface Transportation Board is aware there is heavily concentrated freight rail traffic at the southern end of Lake Michigan and that the Indiana Cities, of East Chicago, Gary, Hammond, and Whiting, organized as the Four Cities Consortium, objected to the Conrail Acquisition to the extent the acquisition was projected to worsen the already significant roadway congestion throughout the area. In the Conrail merger, a settlement agreement with CSX Railroad was reached to reroute freight train traffic off the heavily traveled Barr Subdivision to a grade separated line. The then Chairwoman of the STB, Linda Morgan, flew out to the Midwest and arrived by State Police motorcade to meet with then CSX Railroad Chairman, John Snow, to announce the historic agreement to the public. Since that time, the Four Cities have incurred significant taxpayer expense in completing the engineering work necessary to reroute the freight rail traffic. In January 2007, the Consortium Mayors publicly voted to commence Phase 1 of the construction at the cost of 6.5 million dollars, a copy of the Consortium Minutes is attached. The Consortium Mayors are in the process of attempting to resolve additional construction funding questions raised by the local metropolitan planning organization (MPO).

The City of Hammond brings to the attention of the STB the referenced agreement reached in the Conrail Proceedings because the Four Cities' agreement with CSX Railroad requires the rerouting of CSX freight rail traffic from the BOCT line to the rehabilitated grade separated route on an "as economically feasible" basis. CN's proposed acquisition of the EJ& E Railroad provides for increasing the freight trains operating on the EJ& E

line through the Ivanhoe interlock from 9.7 trains per day to 29.7 trains per day. The projected increase will cause it to be economically infeasible to reroute the trains from the Barr Subdivision to the grade separated route. Further, the City of Hammond shows the Surface Transportation Board that in the Conrail proceedings CSX Railroad projected the increase on the Barr Subdivision to be 27 trains per day to 32 trains per day. Throughout the year 2007, there was a reported average in excess of 56 trains operating per day on such route. The additional increase in trains on the Barr Subdivision of more than 20 freight trains per day since the approval of the Conrail acquisition simply heightens the communities need to complete the rerouting of such train traffic.

The City of Hammond urges the Surface Transportation Board not to allow the agreement to reroute freight rail traffic away from the heavily traveled at grade crossings reached in the Conrail proceedings to be ruined by the currently proposed acquisition. Instead, the City of Hammond respectfully requests that the Surface Transportation Board require the CN Railroad to construct a grade separation at such interlock in the event the pending acquisition is approved by the Board.

Respectfully Submitted,



The Honorable Thomas McDermott, Jr.
Mayor, City of Hammond

Enclosures:

Settlement Agreement between the Four City Consortium
and CSX Transportation, dated January 31, 2001

Four City Consortium Minutes, January 10, 2007

**Settlement Agreement Between
the Four City Consortium and CSX Transportation, Inc.**

The following is a Settlement Agreement between the Cities of East Chicago, Hammond, Gary, and Whiting, Indiana (the "Four City Consortium" or "Consortium") and CSX Transportation, Inc. ("CSX"), collectively referred to herein as the "Parties".

The purpose of this Settlement Agreement is to address certain outstanding operational and environmental impact issues resulting from CSX's operations in the Four Cities area, facilitate the upgrading of certain area rail lines to promote the maximum use of grade separated rail corridors, provide for additional investment for a grade crossing separation project in East Chicago, facilitate the purchase and transfer of certain CSX property to the City of Hammond, and address certain traffic violation citations issued by the Cities for railroad blockages of area at-grade highway/rail crossings.

This Settlement Agreement supplements environmental conditions impacting the Four City Consortium imposed by the Surface Transportation Board ("STB" or "Board") in Finance Docket No. 33388 in CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation, (Decision No. 89 served July 23, 1998), as modified by the Board in Decision No. 114 (served Feb. 5, 1999) adopting the October 26, 1998 Settlement Agreement between the Consortium and CSX. The parties agree to abide by all requirements outlined in Decision Nos. 89 and 114, except to the extent that they have or may agree to modify the requirements of those decisions. It is understood that by entering into this Agreement, the Four City Consortium does not waive its right to petition the Board for relief during the oversight period governing the proceeding, or its right to petition for reopening thereafter, should the Consortium determine that such action is necessary.

Promptly upon execution of this Agreement, the parties will notify the STB of the Settlement. The parties will provide the STB with a copy of this Agreement and will request that the Board adopt its terms as a condition to its approval of the Conrail control transaction.

I. IHB Corridor Improvements and Operations

The Parties recognize that mutual benefits can be derived from routing CSX trains from the Baltimore & Ohio Chicago Terminal Railroad Company ("BOCT") line to the parallel grade-separated route consisting of the CSX Porter Branch and the Indiana Harbor Belt ("IHB") via Toleston, IN and Calumet Park, IL. The Four Cities would benefit from reduced train traffic on the BOCT line and resulting safety and environmental improvements. CSX benefits from enhanced operating flexibility in the region. Both parties recognize that the enhanced capacity on the Porter Branch/IHB line would give CSX an increased opportunity to route even more trains over the line. The parties also recognize that other railroads operate trains over the IHB line and capacity can be impacted by the total number of trains operating over the line at any given time.

To these ends, the Parties agree as follows:

- A. CSX shall reroute trains from the BOCT line to the Porter Branch/IHB line consistent with sound economic and operating practices, as outlined below. This rerouting of trains shall occur as soon as practicable. The parties initial objective is for CSX to reroute a minimum of five (5) trains per day on a average daily basis over the Porter Branch/IHB line following the completion of double tracking of the Porter Branch between Lake Station and Virginia Street. The parties longer term objective is that additional trains above and beyond the five trains could also be rerouted by CSX to the extent economically and operationally feasible as further capital improvements are made to the Porter Branch and IHB line.
- B. The Parties recognize that to achieve optimal use of the Porter Branch/IHB line will require (i) certain necessary capital improvements to be made to the Porter Branch/IHB line including the double tracking of the Lake Station-Virginia Street segment of the Porter Branch which CSX is currently planning on constructing, and (ii) certain cooperative agreement(s) with IHB with respect to CSX's use of its facilities. CSX shall use reasonable discretion to undertake and complete any necessary operational and infrastructure improvements to CSX lines and any necessary trackage arrangements with IHB to meet the requirements and objectives of I.A. as economically and operationally practicable.
- C. CSX shall report to the Consortium in writing on a quarterly basis the specific actions it has and is taking to comply with I.A., at least until such time as CSX has completed all improvements/agreements necessary for complete compliance with the requirements and objectives of I.A.
- D. CSX and the Consortium will cooperate in seeking from state and federal sources all available public funding for any additional capital investments that may be necessary to achieve the rerouting of the maximum amount of rail traffic possible from the BOCT line to the Porter Branch and the IHB line. CSX and the Consortium will also cooperate and provide reasonable and appropriate expertise and assistance in conducting a review of the appropriate corridors to determine and implement any additional operational and/or structural improvements that may be necessary to improve traffic flow and further mitigate the safety and environmental impacts of CSX's operations in the Four Cities.
- E. The parties recognize that CSX is only a 25.5% owner of the IHB line, and that higher usage could result in higher payments to the other owners of the line. Therefore, the parties recognize that economic consequences of the higher usage will be one factor that CSX can consider in determining the number of trains to operate

over the line. The present intention of CSX, however, is that additional number of trains can operate over the IHB line and still provide a mutual benefit to both parties.

II. Railroad Avenue Grade Separation Project

CSX will continue its cooperation with the City of East Chicago in constructing a grade-separated truck route over the BOCT line at Railroad Avenue. CSX will contribute by 2002 an additional \$812,500 toward construction costs, above and beyond the \$187,500 already committed to the project, for a total of \$1 million toward project costs so long as the project has been approved and otherwise funded by the appropriate governmental authorities. The at-grade highway/rail crossing at Railroad Avenue will be closed upon completion of the grade separation project. In addition, the City of East Chicago shall earnestly consider the permanent closure of Todd Avenue following completion of the Railroad Avenue grade separation.

III. Monon Yard Sale

The parties agree to enter into a mutually agreeable process for the conveyance of the Monon Yard, a 40-acre tract of land in Hammond owned by CSX, to the City of Hammond. That process shall entail the following:

- A. The parties shall promptly establish an approach/ mechanism whereby the fair market value of the Monon Yard may be determined, through independent appraisal or otherwise.
- B. Once an appropriate valuation of the Monon Yard is made, the parties agree to negotiate in good faith toward mutually agreeable terms (price and other terms) for the conveyance of the Monon Yard from CSX to the City of Hammond and the parties agree to obtain promptly any appropriate judicial or other approval necessary to effectuate the conveyance of the property.

IV. Whiting Access Road

CSX will continue to cooperate and assist the City of Whiting with efforts to construct a public access road behind the Globe Roofing Materials building that will benefit the City by diverting truck traffic away from residential neighborhoods.

V. Citations for Blocked Crossings

- A. Each of the Four Cities agrees that it will immediately dismiss any and all pending citations issued to CSX trains for blocking at-grade highway/rail crossings. CSX and each of the Four Cities shall file any and all necessary joint stipulations or other motions with the appropriate courts to secure appropriate orders of dismissal, without costs assessed against CSX, for any and all pending citations issued to CSX trains. For the purposes of this agreement, "pending citations" includes all citations

CSX Transportation

By: John W. Snow
 John W. Snow
 Chairman, CEO, and President, CSX Corporation

The Four Cities Consortium

By: Robert Patrick
 The Honorable Robert Patrick
 Mayor, City of East Chicago

By: Scott King
 The Honorable Scott King
 Mayor, City of Gary

By: Duane Dedelow
 The Honorable Duane Dedelow
 Mayor, City of Hammond

By: Robert Bercik
 The Honorable Robert Bercik
 Mayor, City of Whiting

CERTIFICATION OF CLERK

As legal custodian I hereby certify that the above and foregoing is a true and complete copy of the original on file with this office in the cause stated hereon.

Witness my hand and the seal of the court this
 24th day of February, 2008.

Debra N. Wilson
 Clerk of the Lake Circuit and Superior Courts

By: Cynthia M. Mason
 Deputy Clerk

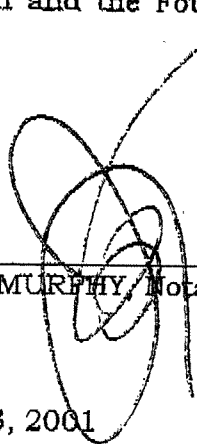
STATE OF INDIANA)

COUNTY OF LAKE)

VERIFICATION

I, J. Justin Murphy, a Notary Public in and for the above-mentioned state and county, hereby declare that on the 30th day of January, 2001, The Honorable Robert Pastrick, Mayor of the City of East Chicago, Indiana, The Honorable Duane Dedelow, Mayor of the City of Hammond, Indiana, and The Honorable Robert Bercik, Mayor of the City of Whiting, Indiana, personally appeared before me and executed the foregoing Settlement Agreement between CSX Corporation and the Four Cities Consortium.

I further verify that The Honorable Scott King, Mayor of the City of Gary, Indiana, did also appear before me and execute in my presence the Settlement Agreement between CSX Corporation and the Four Cities Consortium on the 26th day of February, 2001.



J. JUSTIN MURPHY, Notary Public

My Commission Expires: November 13, 2001

My County of Residence: Lake

January 10, 2007

**THE FOUR CITY CONSORTIUM
QUARTERLY MEETING OF CONSORTIUM MAYORS**

The January 10, 2007 working session meeting was called to order at 2:17 p.m. in the conference room of Mayor Clay.

ROLL CALL:

Mayor Rudolph Clay, Mayor Thomas McDermott, Jr., Mayor Joseph M. Stahura.

Others In Attendance: Gary Executive Member Paul Karas; Hammond Executive Member Marty Wielgos; Whiting Executive Member Rudy Wunder; Gary Deputy Mayor Geraldine Tousant; J. Justin Murphy, Chief of Staff; staff member and Gary City Planner Chris Meyers.

Guests: TranSystems Corporation: Marc Walbrun, Robert Nastal, David Hadley and John Reed.

MINUTES OF MEETING:

Deferred until next meeting.

OLD BUSINESS: Working Session.

The Chairman of Staff advised the Consortium Mayors that the TranSystems representatives had been requested to appear for the meeting to provide a detailed review of the project including a PowerPoint presentation depicting the bridges and track work. He advised the Mayors that following the presentation on the Four Cities freight reroute project, the engineers were prepared to discuss the manner in which rerouting the NS sugar train might be interwoven with the Four Cities freight reroute project. Hard copies of the PowerPoint presentation and cost line chart handouts were distributed to the Mayors.

TranSystems' Vice President Marc Walbrun advised the Mayors that the Gary Airport's efforts to relocate the EJ&E rail line at the end of the runway had until recently reached a "logger head" or stalemate. Marc Walbrun advised the Mayors that after extended negotiations an agreement had finally been reached with the railroads which would allow the rerouting of the EJ&E line to proceed. The manner in which the NS sugar train might be rerouted away from the airport to the sugar plant via a new connection under Hohman Avenue in conjunction with the Porter Branch and the Four Cities work was discussed in detail. Maps depicting the reroute of the sugar train were reviewed by the Mayors and concerns raised by the railroads were discussed.

In discussing the rerouting of the sugar train, the Mayors were advised that the approximate cost of the new connection under Hohman Avenue was \$3.4 million. The agreement provides for the construction of a second main track through Gibson to address CSX Railroad's capacity concerns for \$10.1 million. The sugar train will proceed eastward over the Porter Branch to just west of Madison Avenue in Gary. A new connection will be built from the Porter Branch to the grade separated right-of-way for an approximate cost of \$1.5 million. The bridge and track work at Madison, Adams, Washington, Broadway, and Massachusetts will be completed by the Four Cities. A new connection will be built from the elevated high line to the sugar plant for an estimated cost of \$0.5 million.

Gary Executive Member Paul Karas and Gary Airport Executive Director Chris Curry advised the Consortium Mayors that joining the two projects together in such manner appeared to resolve the stalemate reached. The Gary Airport has budgeted \$2.5 million towards rerouting the sugar train. Marc Walbrun advised the Mayors that the agreement had been executed by the railroads approving and adopting the joint conceptual plan presented to the Mayors. Upon specific question by the Chairman of the Staff, Marc Walbrun advised the Mayors that the agreement executed by the railroads included contractual provisions for additional bridge decks and right-of-way to be completed once funds became available without the necessity of the Four Cities requesting additional permission from the railroads to proceed.

After reviewing the manner in which the NS sugar train might be rerouted away from the airport and the two projects merged together as proposed in the agreement reached between the airport and the railroads, the Mayors directed their attention to the freight reroute. The Mayors reviewed a PowerPoint presentation depicting the bridge inspections performed at Chase Street, Taft Street, the CSXT Fort Wayne flyover, Grant Street, Harrison Street, Madison Street, Broadway Street, Massachusetts Avenue, and Virginia Street. The crossings at Buchanan and Adams were, also, discussed. Following the review of the bridges and crossings, TranSystems recommendations and cost estimates to repair and/or replace the bridges were discussed. It was noted that the cost to replace the Broadway bridge was currently \$4.6 million. The feasibility of obtaining a letter of no prejudice from INDOT was discussed. Due to the proximity of the Broadway and Massachusetts Avenue grade separations, Mayor Clay authorized the closing of the Massachusetts Avenue separation.

Following the presentation and further discussion, Mayor McDermott made a motion to support the joint conceptual plan presented as the Northern Indiana Rail Improvement Project. Seconded by Mayor Clay. No question on the Motion. The vote was called. Motion passed. Yes: Mayor Clay, Mayor McDermott, Mayor Stahura.

Motion made by Mayor Clay authorizing the final engineering work and construction recommended to Madison Street, Adams Street, Washington Street, Broadway Street, and Massachusetts Avenue along with accompanying embankment and track work. Seconded by Mayor McDermott. No question on the Motion. The vote was called. Yes: Mayor Clay, Mayor McDermott, Mayor Stahura. Motion passed.

Motion made by Mayor Stahura approving transfer of the track work CSX is contractually bound to perform on the east end of the project to the west end of the project where the railroads wants to double track between Hohman eastward through Gibson. Seconded by Mayor McDermott. No question on the Motion. The vote was called. Yes: Mayor Stahura, Mayor McDermott, Mayor Clay. Motion passed.

Motion made by Mayor McDermott to seek a letter of no prejudice from INDOT concerning the cost to replace the Broadway Street grade separation. Seconded by Mayor Stahura. No question on the Motion. The vote was called. Yes: Mayor McDermott, Mayor Stahura, Mayor Clay. Motion passed.

Motion made by Mayor McDermott to direct the Chairman of the Staff to work with the coalition formed by the Consortium and the Gary Airport to schedule a meeting with the Regional Development Authority (RDA) to present the joint conceptual plan and seek the approximately \$10 million in additional funding necessary to complete Phase I of the joint conceptual plan. Seconded by Mayor Clay. No question on the motion. The vote was called. Yes: Mayor McDermott, Mayor Clay, Mayor Stahura. Motion passed.

NEW BUSINESS: None.

PUBLIC COMMENT: None.

ADJOURNMENT:

There being no further business to come before the Board, Mayor McDermott made a motion to adjourn the meeting. Seconded by Mayor Stahura. No question on the motion. The vote was called. Yes: Mayor McDermott, Mayor Stahura, Mayor Clay. Motion passed.

Meeting adjourned.

Approved and adopted this _____ day of _____, 2007.

Honorable Rudolph Clay

Honorable Joseph Stahura

Honorable Thomas McDermott, Jr.

Honorable George Pabey