

202749

ZUCKERT SCOUTT & RASENBERGER, L.L.P.
ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-3309
Telephone [202] 298-8660 Fax [202] 342-0683
www.zsrlaw.com

RICHARD A. ALLEN

DIRECT DIAL (202) 973-7902
raallen@zsrlaw.com

June 25, 2001

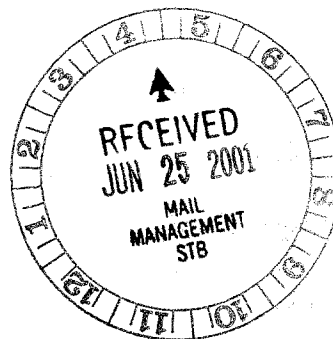
BY HAND

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

ENTERED
Office of the Secretary

JUN 26 2001

**Part of
Public Record**



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

Dear Secretary Williams:

I enclose herewith for filing in the above-referenced docket the original and 25 copies of NS-84, Norfolk Southern's Response to Decision No. 186 Regarding the Hollidaysburg Car Shops.

A 3-1/2" computer disk of containing the text of NS-84 together with the text of Exhibit 1 thereto in Wordperfect 5.1 format, which is capable of being read by Wordperfect for Windows 7.0 is also enclosed.

Sincerely,


Richard A. Allen

Enclosures

cc: Hon. Linda J. Morgan
Hon. Wayne O. Burkes
Hon. William Clyburn, Jr.
Julia Farr, Esq.
All parties of record in Finance Docket No. 33388

202749

NS-84

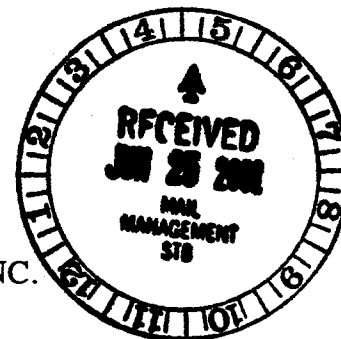
ENTERED
Office of the Secretary

JUN 26 2001

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388



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

**NORFOLK SOUTHERN'S RESPONSE
TO DECISION NO. 186 REGARDING
THE HOLLIDAYSBURG CAR SHOPS**

J. Gary Lane
Henry D. Light
Joseph C. Dimino
George A. Aspatore
Jeffrey H. Burton
John V. Edwards
**NORFOLK SOUTHERN
CORPORATION**
Three Commercial Place
Norfolk, Virginia 23510-2191
(757) 629-2838

Richard A. Allen
Scott M. Zimmerman
**ZUCKERT, SCOUTT &
RASENBERGER, LLP**
888 Seventeenth Street, NW
Suite 600
Washington, D.C. 20006
(202) 298-8660

Jeffrey S. Berlin
SIDLEY AUSTIN BROWN & WOOD
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8000

*Attorneys for Norfolk Southern Corporation
and Norfolk Southern Railway Company*

June 25, 2001

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

**NORFOLK SOUTHERN'S RESPONSE
TO DECISION NO. 186 REGARDING
THE HOLLIDAYSBURG CAR SHOPS**

Introduction and Summary of Argument

Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") hereby respond to the Board's May 21, 2001 decision directing NS to show "why the Board should not order NS to cancel" its announced closure of the Hollidaysburg, Pennsylvania car repair shops (the "Shops") and "to keep these shops open at least at present capacity for a significant period of time beyond September 1, 2001." Decision No. 186 at 1.¹

¹ This issue was first raised in a petition ("Joint Petition") filed on March 28, 2001 by a number of unions and the Commonwealth of Pennsylvania (together, "petitioners"). NS filed a reply to the Joint Petition on April 17, 2001 (NS-79). The petitioners submitted a reply to NS-79 (the "Response") on May 9, 2001, to which NS responded with a supplemental reply (NS-81) on May 21, 2001. On the same day NS filed NS-81, the Board issued Decision No. 186. The union petitioners are the Transport Workers Union of America ("TWU"), the National Council of Firemen and Oilers/SEIU ("NCFO"), the International Association of Machinists and Aerospace Workers ("IAM"), the International Brotherhood of Boilermakers and Blacksmiths ("IBB"), the International Brotherhood of Electrical Workers ("IBEW"), and the Sheet Metal Workers International Association

(continued on next page...)

On June 8, the Board granted NS' request for an extension of time, to June 25, 2001, in which to submit this response to the Board's order. Decision No. 188 (served June 8, 2001). In that decision, the Board noted that NS agreed not to close the Hollidaysburg Shops prior to October 1, 2001.

In response to the Board's order in Decision No. 186 that NS show "why the Board should not order NS to cancel its proposed shut-down of its Hollidaysburg Car Shops," we set forth in greater detail than in previous pleadings the background facts concerning NS' operation of the Shops since Split Date,² its substantial efforts to develop business for the Shops, and the current economic, business and operating conditions that led to the difficult decision to close the Shops this coming September (now October) as well as a number of other long-term actions NS has taken to restructure NS to move towards a sustainable capital structure.

We will demonstrate that the Operating Plan – including the discussions concerning the post-Split Date use of the Shops – was based upon several assumptions and expectations that have not been borne out by events since Split Date. We also will show that the decision to close the Shops is not "at the forefront" of NS' efforts to reduce costs but is instead one of many such actions taken since Split Date. Additionally, we will describe the substantial actions NS has taken and will continue to take to mitigate the effects of the closure of the

(...continued from previous page)

("SMWIA"). In a "response" served April 13, 2001, the Transportation-Communications International Union ("TCU") "support[ed]and join[ed]" the petition.

² "Split Date" is the common term referring to June 1, 1999, when NS and CSX first began their separate operations of their respective allocated portions of Conrail.

Shops on the local community and the employees. These facts demonstrate that NS made a good faith effort to keep the Shops open following Split Date and has acted reasonably and in good faith in its decision to close the Shops.

Following the discussion of these facts, NS will set forth additional reasons why it submits the Board should not issue the order contemplated in Decision No. 186 or direct in any way NS' disposition of the Shops.³ First, there is no evidence in the record of this proceeding that NS expressed or implied any undertaking to continue operating the Shops for any period of time after Split Date regardless of whether it made good business sense to do so. Rather, NS stated clearly during the proceeding that continued operation of any of its facilities would depend on factors that could not be predicted in advance. Second, there is no basis in the record for concluding that any of the petitioners did or could reasonably have based its support for the transaction on statements by NS implying an intention or agreement to continue operating Hollidaysburg for any specific period after Split Date. Third, a Board order directing that the Shops remain open would subvert the well-established labor implementing process based on implementing agreements privately negotiated between NS and various unions. Moreover, such an order would, NS submits, reflect an extremely poor policy decision, placing the Board in the position of micromanaging a railroad enterprise, a task for which the Board previously has recognized it is not well-suited. Such a decision would be

³ As noted, this is the third substantive pleading NS has filed in connection with the Joint Petition. Because NS-84 responds specifically to the concerns and issues expressed by the Board in Decision No. 186, we have endeavored to include here all of the main points made in NS-79 and NS-81. We ask the Board to review those pleadings as well, however, and to consider any points, authorities and evidence in them that we have not included here.

contrary to all existing Board precedent, and would open the door to further Board involvement in any number of other individual facility management decisions in the future. Finally, as NS' discussion of the facts will show, NS' decision to close the Shops is, in any event, justified on the merits.

**STATEMENT OF FACTS
SHOWING WHY THE BOARD SHOULD NOT ISSUE AN ORDER
CANCELING THE CLOSURE OF
THE HOLLIDAYSBURG CAR SHOPS**

In October 1996, CSX announced its intention to acquire Conrail. That announcement set off a battle between CSX and NS for control of Conrail that was waged in the press, in the stock market, before governmental officials, in the courts and before the Board. At that time, NS and CSX were competing for the opportunity to acquire sole control over Conrail.

On April 8, 1997, however, NS and CSX signed a letter agreement outlining their agreement to jointly acquire control over Conrail. The parties later negotiated the specifics of that agreement, and those negotiations resulted in a Transaction Agreement, dated June 10, 1997. NS and CSX filed their Application in June 1997 for the Board's approval of the joint acquisition of control of Conrail. The Board approved the Application in Decision No. 89, served July 23, 1998. NS and CSX exercised control over Conrail on August 23, 1998, but did not effectuate separate operational control over their respective allocated portions of Conrail's assets until June 1, 1999, Split Date.

Prior to Split Date, NS and Conrail each performed program car repairs and fabrications at a number of different shops on their respective systems. These included a number of shops on the NS system, including NS' large shops at Roanoke, VA. Of all the car

shops on the NS and Conrail systems, Conrail's shop complex at Hollidaysburg, PA, allocated to be operated by NS, was by far the largest.

Since Split Date, NS has operated the Hollidaysburg Shops. In addition to the work done on the NS fleet, NS made substantial efforts, which went beyond those of Conrail, to insource additional work from other railroads and car owners.⁴ These efforts included both active marketing and substantial price reductions, and these efforts have been ongoing since Split Date.⁵

The experience NS has gained in operating its system and the marketing and economic realities NS has faced subsequent to Split Date (such as the significant reduction in export coal volumes and the dramatic increase in the price of diesel fuel) have forced NS to take a very detailed look at all aspects of its operations and economics. Some of what we anticipated in our Operating Plan has not materialized. NS has had to fundamentally rethink its operations to right-size its physical plant to reflect the actual traffic and revenues on the expanded NS system since Split Date.

As a result, NS has taken several significant actions that have resulted in lowering expenditures, increasing profitability, and improving cash flow. With the assistance of Mercer Management, NS has embarked on numerous programs aimed at increasing efficiency, reducing costs, generally right-sizing the company's physical plant, and restructuring NS to

⁴ For example, NS had an office devoted to insourcing efforts at Hollidaysburg and other facilities on the expanded Norfolk Southern system.

⁵ Many of these efforts, such as the national advertising campaigns and direct customer contacts, are detailed in the verified statement of David L. Veron, which appears as Exhibit 2 hereto.

allow a return on its assets to meet or exceed its cost of capital. Among the efforts NS has undertaken since Split Date are the following:

- Reduced NS' dividend for the first time in NS' history (by 70 percent);
- Reduced NS' management workforce by 25 percent by second quarter 2001, including a reduction of approximately 40% in the number of management personnel in the Mechanical Department;
- Enhanced revenues from the disposal of non-rail assets, including the sale of extensive oil, gas and timber rights in the third and fourth quarter 2000;
- With the assistance of Multi-Modal Applied Systems analysis, undertook a major redesign of operations over its service network;
- Drastically reduced advertising expenses throughout 2000 and to date in 2001;
- Implemented in 2001 a line rationalization program targeting 3,000 to 4,000 underutilized or duplicate track miles;
- Curtailed the purchase of new freight cars;
- Curtailed operations at the 38th Street Car Shop in Norfolk, Virginia;
- Closed the Roanoke foundry and parts reclamation facility;
- Idled the Roanoke Car Shops;
- Announced the closure of the Birmingham, AL frog shop;
- Announced the closure of the Coster wheel shop in Knoxville, TN;
- Studying the consolidation or disposition of several other facilities;
- Disposed of surplus maintenance of way equipment;
- Continued the disposal of an additional 12,000 surplus rail cars;

- Reduced by 500 the number of work vehicles in the NS rubber tire vehicle fleet;
and
- Proceeded with Shared Asset Area initiatives, including implementation of a reduction in SAA agreement and non-agreement staffing levels and the consolidation of SAA office space.

None of the initiatives listed above was anticipated by the NS Operating Plan.

The foregoing points demonstrate that, far from being “at the forefront of [NS’] plans to cut costs or increase profitability” (Decision No. 186 at 7), the difficult decision to close the Shops is only one of many actions NS has taken, and will take, to respond to changing operational conditions and financial challenges. Indeed, Hollidaysburg was not the first facility affected, nor was it even the first large car shop affected.

As mentioned, as part of these efforts, NS began reviewing its facility utilization. Although the NS Operating Plan anticipated that NS would *expand* its car fleet,⁶ NS has found it necessary to *contract* its fleet. As previously noted, on January 23, 2001, NS announced its intention to dispose of 12,000 surplus rail cars as part of its comprehensive restructuring effort. To date, NS is on target as to this part of the restructuring effort, having disposed of 9,000 cars.

⁶ The NS Operating Plan states that to “accommodate traffic diverted from other carriers or developed through new marketing opportunities, NS Post-Acquisition will require an estimated 5,850 additional freight cars on line, of which 989 cars will be purchased by NS Post-Acquisition. The purchased cars will require a capital investment of \$57.7 million over three years. This addition to the car fleet is partially offset by retirement of 364 cars which will become surplus and which have an estimated net salvage value of \$4.3 million. * * * No retirements of Company equipment are planned as a result of the consolidation.” CSX/NS-20, Vol. 3B at 10. That contemplated acquisition would have expanded the NS fleet by over 5%.

NS closed the foundry (January 2001) and the parts reclamation facilities (May 2001) in Roanoke. Despite the fact that the NS Operating Plan anticipated continued operation of both of these facilities, NS made the hard decision to exit the business conducted at these facilities. NS has also idled the Roanoke car shops (August 2000). Again, this was contrary to assumptions made in the NS Operating Plan, but with the completion of a major coal car rebodding program and the significant reduction in export coal volumes, NS determined that there simply was not sufficient work at the present time to maintain employees at this facility.

Despite NS' substantial insourcing efforts,⁷ the Hollidaysburg Shops have continued to operate only at about one-third capacity since Split Date.⁸ Analyzed as a stand-alone facility, the Shops are losing a substantial amount of money.⁹ Because other car repair facilities on the NS system (not including the Roanoke shops that have been largely idled) have the physical capacity (with the transfer of existing employees) to perform the kinds and amounts of repair work on NS equipment now being performed at Hollidaysburg, the Shops are redundant.

⁷ The Application expressed NS' need and intention to "actively pursue 'insourcing' opportunities in order to utilize fully its car shop capacity, particularly in the Altoona/Hollidaysburg area." *Id.* at 62-63. *See also id.* at 320-321 ("Recognizing the shop capacity NS gains as a result of the addition of Conrail facilities, as well as the advantages of a stable work force, NS anticipates performing car and locomotive repairs and overhaul for other rail carriers and other prospective customers [at] Altoona, PA (including the nearby Hollidaysburg Car Shop) and Roanoke, VA.")

⁸ The NS insourcing effort was demonstrably successful at bringing work to the Shops. As a result of that effort, almost half of the approximately 4,000 cars worked on at the Shops in 2000 were non-NS cars. *See Veron V.S.*, Ex. 2 at 3. The fact remains, however, that even this success has not been nearly sufficient to justify continued operation of the Shops.

⁹ Contrary to the claims of TWU Local 2017 President Lutton, the verified statement of Robert H. Belvin, NS Manager – Budget Planning and Operations, demonstrates that the Hollidaysburg shops, considered as a stand-alone facility, do not even come close to generating a profit but, in fact, operated at a significant loss – almost \$ 7 million, as a conservative estimate, in the year 2000. *See Ex. 3, Belvin V.S.* at 2.

Further, because it is by far the largest facility on the NS system, operating at such a low level of capacity and, consequently with a higher overhead, the Hollidaysburg Car Shops are a prime candidate for closure, with the work transferred to other existing smaller, geographically dispersed facilities that have excess physical capacity. NS announced its decision to do so on February 21, 2001.

As discussed, NS recognized in its Operating Plan that to make use of the expanded car repair shop capacity it was acquiring in the Conrail Transaction, a substantial insourcing effort would be required. This vigorous insourcing effort – which petitioners readily acknowledge – did not prove sufficient, however, both because it had to cover more of the Shops' capacity than originally thought, and because the available work for insourcing, in a highly competitive environment, was less than originally anticipated.

The overall United States railroad-owned rail car fleet is shrinking. Moreover, as noted previously, NS is in the process of disposing of 12,000 rail cars – approximately 10% of its current fleet. NS anticipates that effort will be completed this year. Other Class I rail carriers apparently are planning similar downsizing as well this year. Union Pacific, for example, has indicated it may retire 20,000 cars this year; BNSF has said it may cut about 12,000 cars. *See* Laura J. Merisalo, *Fleet Stats 2001*, Progressive Railroading, May 2001 at 24.

Rail car production also is slowing. One of the largest rail car producers in North America, Trinity Industries, announced that it will continue to reduce production – from 16,000 rail cars in 2000 to 14,000 rail cars in 2001 to a projected 10,000 to 12,000 rail cars in

2002.¹⁰ Another major player in the rail car industry is Thrall North American Rail Car. Thrall late last year announced it would close its Winder, GA plant, affecting nearly 350 employees, and would close a production line and lay off 200 employees at its Chicago Heights facility.¹¹ Greenbrier Companies has so far laid off more than 1,500 manufacturing personnel – 40 percent of its workforce in three North American production facilities. Continued cuts and a factory shut down later this year continue to be possibilities for Greenbrier.¹²

Additionally, the proportion of the rail car fleet that is owned by Class I railroads is shrinking, while the proportion of the U.S. rail car fleet owned by shippers or third parties is growing. The proportion of the fleet owned by Class I's has dropped from about 61 % in 1985 to about 42 % in 1999, while during the same period, the percentage of the fleet owned by shippers and other third parties has grown from 31 % to 48%.¹³

¹⁰ News Release, *Trinity Declares Quarterly Dividend and Modifies Outlook*, March 8, 2001, available at <http://www.trin.net/investor/news/recent/20010308.htm>. Trinity also is seeing the need to rationalize its facilities in this period of economic downturn in the railcar industry: "We are beginning to see the benefits of our cost cutting initiatives at the operations levels within our rail related business. Over the past few years, we successfully transitioned the majority of our railcar manufacturing to our lower cost facilities, which is helping us remain marginally profitable at reduced production levels." *Id.* Trinity has said it anticipates that it will reduce its quarterly production levels 15-20% by the beginning of the second quarter of its current fiscal year (July 1, 2001); the company is "continuing to take steps to downsize their rail related operations as well as exit non-profitable railcar product lines." News Release, *Trinity Revises Outlook for Railcar Production*, March 27, 2001, available at <http://www.trin.net/investor/news/recent/20010327.htm>.

¹¹ John Schmeltzer, *From flush to flat: new government report shows economy slowing down*, Online Athens, Dec. 3, 2000, at http://www.onlineathens.com/stories/120300/bus_1203000012.shtml.

¹² Reuters, *Greenbrier sees H2 losses, more job cuts*, June 11, 2001, available at <http://biz.yahoo.com/rf/010611/n11684867.html>

¹³ See Association of American Railroads, *Railroad Facts*, October 2000 at 50.

Future growth in insourcing is not the answer. Car owners have a growing number of options for utilizing independent private car repair shops. These independent shops are characterized by their smaller size, geographical dispersion, specialization, favorable labor rates, and ability to more easily invest in the latest technologies, all of which make these shops highly competitive and able to adapt quickly to changing market conditions.¹⁴

Given this background, NS submits that it has acted reasonably and in good faith with regard to the Shops, both in making its original statements in the NS Operating Plan and in its actions following Split Date and continuing on to the announced closing of the Shops. Even the petitioners admit that NS' actions after Split Date were consistent with the statements NS made in the Application and elsewhere: "NSR's initial implementation of the Transaction with respect to the Hollidaysburg shops was consistent with the representations NSR made in the Application, before the Senate Appropriations Committee and in the *New York Dock* arbitration. . . ." Joint Petition at 11. The witnesses supporting the Joint Petition also acknowledge that following Split Date, NS has operated the Hollidaysburg shops, consolidated work at Hollidaysburg, and sought insourcing work for Hollidaysburg, as NS had expected to do. See Joint Petition, Exhibit 16, Lutton V.S. at ¶ 4; Exhibit 17, Francisco V.S. at ¶ 4.

Despite this fact, however, the petitioners question the bona fides of NS' actions. In his initial statement, attached to the Joint Petition, for example, petitioner witness Thomas Lutton sought to disparage NS' efforts by making a number of incorrect assertions about the

¹⁴ Other railroads and other rail car owners are consolidating shops. UP, for example, has closed various rail car shops. TTX has closed one car repair facility and reduced employment at others. See Marybeth Luczak, *All in the family?*, *Railway Age*, December 2000, p. 41.

actual and potential profitability of the Shops and about alleged commitments for work that NS supposedly had and gave up. NS' Director Insourcing, David Veron, refuted Mr. Lutton's erroneous claims point by point in his verified statement accompanying VS-79. *See* Ex. 2 hereto. In addition, Robert Belvin, NS' Manager – Budget Planning and Operations, refuted Mr. Lutton's claim that the Shops were profitable; he showed that, far from being profitable, the Shops, on a conservative basis, lost almost \$7 million in 2000. *See* Ex. 3. In his second verified statement, submitted with the petitioners' Response, Mr. Lutton made no attempt to dispute Mr. Veron's refutation of his earlier statements. *See* Response, Exhibit 29. Moreover, in their Response, petitioners admitted that they had no evidentiary basis for disputing Mr. Belvin's calculation of the Shops' losses in 2000. Response at 11, n. 2. Accordingly, although Decision No. 186 said there are "conflicting positions . . . as to whether [the Shops] can operate profitably" (Decision No. 186 at 7), there is in fact no conflict in the *evidence* on this point, nor is there any evidence in the record to refute the significant financial drain on NS from the Shops' operation.

Because the closure of the Hollidaysburg Shops will affect the local economy, NS has taken, and continues to take, significant steps to mitigate those effects. Among other things, NS has explored the possibility of selling the Shops to maintain employment in Blair County. To that end, NS has put together promotional materials, spent \$22,000 on a site appraisal, and had discussions with three national real estate brokers. Following receipt of the appraisal, NS will discuss with brokers how they would market the site, the costs involved, *etc.*

Also, NS has worked closely with the Altoona Blair County Development Corporation ("ABCD Corp.") regarding the future of the Shops complex. ABCD Corp. organized a tour

of the Shop facilities on April 25, 2001 for the purpose of exploring how the Shops complex could be marketed.¹⁵ NS has provided \$50,000 to ABCD Corp. to be used as part of the match for the Economic Development Administration federal funding grant to initiate an opportunity marketing program for the I-99 Corridor, with special emphasis on the Altoona/Blair County area and the Shop facilities.

NS' efforts no doubt will be enhanced by the designation in January 2001 of the Hollidaysburg Shops complex as a "Keystone Opportunity Expansion Zone" ("KOEZ"), pursuant to a state and local cooperative effort to take advantage of a recent Pennsylvania legislative enactment. The KOEZ designation is applied to a specific, defined parcel as to which the Commonwealth grants significant tax relief (exemption from state corporate net income tax, sales and use tax, and local real property tax, as well as exemptions from other state and local taxes) for a period of 10 years. This economic development tool is an initiative to designate areas for future economic expansion.

Although the focus to date has been on the possibility of selling the complex as a whole, NS would consider the possibility of subdividing it.¹⁶ Potential partnering opportunities also have been discussed. Another approach that NS has considered is to sublease the Shops

¹⁵ The tour group included ABCD Corp. President and CEO Martin Marasco and others from ABCD Corp.; Brian Ross from the Governor's Action Team; Norfolk Southern representatives; representatives from the Southern Alleghenies Planning & Development Commission; representatives from the Borough of Hollidaysburg; representatives from the offices of U.S. Senator Arlen Specter, State Senator Robert Jubelirer, State Representative Richard Geist, State Representative Jerry Stern, and State Representative Larry Sather; and (then-candidate, now Congressman) Bill Shuster and a representative of (then-candidate) Scott Conklin.

¹⁶ Each of the six large private rail car companies that have been contacted about acquiring the facility has declined.

after closure to a newly-created corporation owned by the Shops' employees, through the mechanism of an employee stock ownership plan.

Beyond efforts specifically targeted toward future use or redevelopment of the Shops complex, NS has devoted substantial resources since Split Date to develop its system in Pennsylvania, with significant results. For example:

- NS has made payments of \$6,000,000 to the City of Philadelphia to advance the redevelopment of the former U.S. Navy shipyard located there, and will pay an additional \$4,000,000. These funds are devoted to redevelopment aimed at bringing Kvaerner Shipping into the Philadelphia port. On Wednesday, June 20, 2001, Governor Ridge and Philadelphia Mayor Street announced the success of that effort, reviving shipbuilding in the City of Philadelphia with a preliminary \$240,000,000 deal. See Ex. 4.
- NS is close to finalizing an agreement with the City of Philadelphia and the Delaware River Port Authority concerning the development of the intermodal yard at the Navy Yard in Philadelphia (discussed in the settlement agreement NS reached with the Commonwealth of Pennsylvania and the City of Philadelphia.)¹⁷
- NS has spent several million dollars on track expansions for new and existing customers in the Commonwealth.
- NS invested \$31,000,000 to develop the Rutherford Yard Intermodal Hub in Harrisburg.
- NS will quadruple the switching capacity of Enola Yard outside of Harrisburg, which will enhance local and system-wide service, as well as create additional local jobs. The project will cost more than \$2,000,000.
- NS' Industrial Development department has assisted in the location and expansion of more than 25 industries in the Northeast, representing an investment of nearly

¹⁷ That same settlement agreement provides for the development of an auto distribution yard. NS understood that all of the property for the intermodal yard and the auto distribution yard were to be deeded to NS for its use. The size, configuration and nature of NS' interest in the facility and the underlying property is different today than NS anticipated, in large part to accommodate the City of Philadelphia. Given this, the remaining piece of the parcel originally targeted for the development of an automotive facility may be used for other rail transportation purposes.

one billion dollars by NS customers and the expected creation of 1,200 new jobs. Some of these projects located in the Commonwealth include the location of Filmtech Corporation, a plastic film manufacturing company in Allentown, PA, and Schmalbach Lubeca Plastic Containers USA, a plastic bottle manufacturer in Chapman. The railroad also assisted in the expansion of customers' facilities, such as the R.R. Donnelley & Sons Company's printing house in Lancaster.

- NS' current and in-process investment in the Commonwealth exceeds \$300,000,000 since Split Date – an investment larger than that in any other state in which NS operates. These expenditures enhance the Commonwealth's fiber optic network, the delivery systems for its power plants and the Commonwealth's infrastructure. Industrial development and port projects bring additional jobs to the Commonwealth. NS investments in track improvements and signaling make the Commonwealth a safer place to live and work.
- NS is exploring with ABCD Corp. suggested possibilities for the economic redevelopment or the creation of a reload center in the Rose Yard area of Altoona.
- NS will be meeting with the Governor's Action Team and ABCD Corp. on a possible rail expansion into the Ardie J. Dillen Industrial Park in Blair County.

Some of these efforts were anticipated in the NS Operating Plan. Some have their genesis in the NS Operating Plan, but have been implemented in ways more appropriate to the current and long-term business and operational climate. Others are new initiatives that go far beyond what NS originally anticipated for the Commonwealth.

Finally, as NS has previously stated, *each and every Hollidaysburg agreement employee* will have the opportunity for continued NS employment. The work at the facility is being transferred for consolidation at smaller shops with existing excess capacity, not eliminated. Previously negotiated agreements provide for relocation benefits in excess of those called for in *New York Dock*. Those agreements also provide for transferring employees represented by three of the labor organizations (IBB, NCFO and IBEW) to be automatically certified for *New York Dock* income protection for up to six years. If negotiated settlements are reached, NS would be willing to certify employees represented by the other shopcraft

unions who transfer as a result of the Hollidaysburg transaction. Further, NS is actively working with state and local officials to develop the Hollidaysburg Car Shops property into an employment center for the local community. NS has worked and will continue to work with state and local officials in Pennsylvania to target investments and development efforts that so far have resulted in the creation of new private sector jobs and development of the transportation network in the Commonwealth.

ARGUMENT OVERVIEW

Decision No. 186 is founded on the conclusion that NS made representations during the Conrail proceeding, either expressly or implicitly, that NS intended to operate the Shops for a significant period of time following Split Date, which apparently extends at least past the planned date of closure. NS will demonstrate why there is no basis for that conclusion.

There is no evidence in the record of this proceeding – much less substantial evidence – that NS expressed or implied any agreement, obligation or undertaking to continue operating the Shops for any period of time after Split Date. Nor is there any sound basis for inferring such an obligation. On the contrary, NS stated on numerous occasions during the proceeding that continued operation of any of its facilities would depend on factors that could not be predicted. This intention is set forth in substantial discovery conducted by some of the very petitioners in this matter – discovery that was submitted on the record by those petitioners to the Board.

This same evidence demonstrates that petitioners did not and could not reasonably have based their support for the transaction on statements by NS implying that it would continue

operating Hollidaysburg for any specific period after Split Date. In fact, most of the union petitioners *opposed* the transaction, vigorously, before Decision No. 89 was issued, and all of them entered into implementing agreements with NS that expressly recognized there would be future actions “not now contemplated” that would involve the dismissal, displacement or rearrangement of employees at NS’ shops. The Commonwealth of Pennsylvania based its support for the transaction on a written settlement agreement that it negotiated with NS over a period of months; this agreement, which the Commonwealth itself submitted to the Board, included a number of specific undertakings by NS, *but it made no mention whatsoever of the Hollidaysburg Shops.*

Furthermore, a Board order requiring NS to keep the Hollidaysburg Shops open for some additional period of time and at some defined level of capacity and employment would constitute bad policy and would set an extremely unfortunate precedent reaching far beyond Hollidaysburg. Such an order would necessarily require the Board to enter into day-to-day management of a railroad – to decide how long and at what capacity and levels of employment it is reasonable or appropriate to require NS to operate the Shops. Until now, the Board has consistently and correctly recognized that this is a role for which it is singularly unsuited. Moreover, because there is nothing unique or materially different about Hollidaysburg, or the statements NS made about Hollidaysburg, or the action NS now wishes to take there, such a decision would necessarily require the Board to entertain similar claims by any group of employees, or any other adversely affected party, whenever NS decides to close a facility that it previously had indicated, in the Application, an intent to operate.

Such an order would not only be contrary to all Board precedent, it would also be inherently arbitrary, requiring railroads to favor certain employees and localities over others for reasons unrelated to the best interests of the enterprise.

Such an order would also deprive railroads of the flexibility needed to react to changing conditions, contrary to the Rail Transportation Policy. It would also undermine the labor implementing agreement process the Board has put in place to resolve the coordination of work and the handling of employee relocations, and it would subject railroads to unascertainable standards of conduct, contrary to the Administrative Procedure Act.

I. NS NEVER STATED OR IMPLIED AN INTENTION OR AGREED TO RETAIN AND USE THE HOLLIDAYSBURG SHOPS FOR ANY SPECIFIC PERIOD OF TIME.

A. The Statements In The Operating Plan And Elsewhere In The Application Were Good-Faith Expressions Of How NS Intended To Operate The Shops.

The Application expressed NS' intention to continue use of the Hollidaysburg shops after Split Date, to transfer car program work to Hollidaysburg, to close three car repair facilities (one former Conrail facility and two former NS facilities), and to institute an expanded insourcing effort in order to sustain the expanded car repair capacity NS would gain from the Conrail transaction. CSX/NS-20, Vol. 3B at 62 (V.S. of D. Michael Mohan); CSX/NS-18 at 338 (V.S. of David Goode); CSX/NS-20, Vol. 3B at 287-288 (Operating Plan discussion of anticipated mechanical facilities) and 320-321 (Operating Plan discussion of anticipated insourcing).

No statement by NS in the Application or elsewhere on the record expressed or implied, however, an intention or representation to operate the Shops for any minimum or

maximum period of time – much less “a significant period of time beyond September 1, 2001.” Decision No. 186 at 1. The only reasonable inference that can be drawn from NS’ statements is that NS believed the Shops would prove useful to it and hoped and expected to use them, but for no definite period.¹⁸

That intention is consistent with the very plain statements found in the Joint Verified Statement of Kenneth R. Peifer and Robert S. Spenski with regard to the employment numbers in the Labor Exhibit – employment numbers that depended upon execution of the Operating Plan:

The arrangements described in each Appendix A [the Labor Exhibit] represent our best projections, based on the current information. However, experience teaches that additional coordinations and rearrangements and modifications of existing labor agreements will be necessary as circumstances change, as shipping patterns evolve, and as each carrier acquires experience in managing its new expanded system. Such necessary changes, like those explicitly described in the appendices, will undoubtedly provide greater long-term employment opportunities for our employees, while they give the carriers the flexibility to meet their customers’ needs.

CSX/NS-20, Vol. 3B at 500; *see also id.* at 501 (“After the initial implementation of the transaction, additional changes also may become evident based upon experiences with the expanded CSX and NS Systems and Shared Assets Areas.”) (both attached hereto as Exhibit 15). In other words, NS stated that it would operate the system consistent with the long-term health of the enterprise, and this is in the interest of everybody, including the employees and the public.

¹⁸ As we discuss in the following section, NS stated this point expressly in various ways in discovery during the proceeding.

B. NS' Intentions Regarding the Future Disposition of the Shops Were Clarified Through Extensive Use of the Discovery Process by Petitioners and Others.

Petitioners and others probed NS' intentions regarding the future disposition of the Shops, and all other locomotive and car repair shops and facilities on the expanded NS system, through a prolonged discovery process in which various unions participated in several depositions and served on the Applicants approximately 300 interrogatories and document requests (not including subparts). Throughout this discovery process, NS consistently and expressly informed parties, including the petitioners here, that NS was *not* making any guarantee to operate any shops for any fixed period of time or in perpetuity.

Throughout the discovery process, NS informed the parties that "It's the intention for us, Conrail work or otherwise, that if we can coordinate [equipment repair] work more efficiently, we certainly want to do that." Testimony of NS Vice President-Labor Relations Robert Spenski, Transcript of the Deposition of Robert Spenski and Kenneth Peifer, Sept. 2, 1997, at 86 (Ex. 8 hereto and Joint Pet. Ex. 15) (discussing the possibility of consolidating work done at two or more facilities to reduce redundant physical capacity). The joint petitioners cannot disclaim this message – it was delivered in response to a direct question by counsel for TCU and each of the counsel for the petitioners was there.¹⁹

¹⁹ Counsel for the Commonwealth of Pennsylvania was present at the deposition representing the Commonwealth, and counsel for the various union petitioners here was present at the deposition representing the ARU – a variety of unions some of which are also petitioners here.

NS delivered this message several times on the record of this proceeding. In addition to the very clear statement in the joint verified statement of Messrs. Spenski and Peifer quoted in Section II.A. above, NS further stated, for example:

- “After NS acquires its portion of Conrail, business conditions, revenue and traffic growth, efficiency of operations and similar factors will be evaluated to determine needs for car and locomotive shops. No timetable has been set for this determination.”²⁰ CSX/NS-84 at 17 (emphasis supplied). *See* Ex. 7.
- “The Operating Plans are best projections, which are not binding on the Applicants. Those Plans represent their best efforts to project, on the information available, how their allocated share of Conrail and the Shared Assets Areas will be operated post-STB approval of the control and related applications. These Plans, however, cannot anticipate all of the changes that may be necessary to operate Conrail’s assets in an efficient manner. In addition, as Applicants actually implement their Operating Plans, new and different ways of operation will become apparent. Applicants will also have to adjust their plans to the expectations and needs of shippers. Applicants will also have to take into account changes in shipper demands for their services which may occur between the time of the filing of the application and when STB approval is obtained. Finally, some changes to implement efficiencies from combined operations may not become apparent until after CSX and NS have been operating their allocated share of Conrail assets for some time.”²¹ CSX/NS-44 at 11-12. *See* Ex. 6.
- “Applicants have not determined whether any other locomotive or car shops or facilities, other than the ones specified in the Operating Plan, will be closed.”²² *See* Ex. 5, CSX/NS-69 at 12; Ex. 6, CSX/NS-44 at 78.

²⁰ Response to part (a) of ARU Interrogatory No. 180, which asked: “NS has stated that it has not determined whether it will close any locomotive or car repair shops or facilities on the present NS or combined NS/Conrail other than those identified in its operating plan. a. When does NS expect to make that determination? b. In the absence of such a determination, why should the STB be expected to rely on the labor impact exhibit as an accurate representation of the effect that this Transaction will have on shop craft employees?” The NS response to part (b) of that interrogatory was: “b. *See* response to Interrogatory No. 10.” The referenced response to Interrogatory No. 10 is reproduced in the text.

²¹ ARU Interrogatory No. 10 asked, “whether the Applicants consider themselves bound by the Operating Plans . . . if the STB approves the Application.”

²² In response to ARU Interrogatory No. 151, which sought to identify future closings of shops on the then-Conrail system, NS referred back to its response to another ARU Interrogatory, No. 127, which is quoted in the text.

- “I think you’ll find [efficient equipment repair] as a classic example where you may have two or more facilities doing the same kind of work and you coordinate the work in one facility so that you don’t have three facilities, for example, each working first shift with triple equipment and physical plant and you coordinate into one facility . . . where you can use two shifts or three shifts and use the same equipment.” Testimony of Robert Spenski, Transcript of Deposition of Robert Spenski and Kenneth Peifer, Sept. 2, 1997, at 85-86 (Ex. 8).
- “Full implementation of the transition to an expanded NS system will require flexibility throughout the process. This [Safety Integration] plan must and will change to address new information and changing circumstances. NS understands that this is a dynamic process which requires plans backed by contingency plans capable of meeting and safely addressing the changing business environment. * * * Accordingly, as more information is developed, both before and after Control Date, many of the safety plans set forth herein will require modification.” NS Safety Integration Plan, dated December 3, 1997, at 11 (which plan included discussions of the number and location of particular car repair shops). *See* Ex. 21

The foregoing statements by NS on the record of this proceeding show that the statements in NS’ Operating Plan and elsewhere regarding Hollidaysburg and other facilities were statements of NS’ good-faith expectation at the time about how it would operate following Split Date. They further show that whether and for how long NS would continue using particular facilities would depend entirely on future circumstances that could not be predicted with any degree of certainty.

Petitioners cannot deny, of course, that NS said these things on the record of this proceeding. In fact, counsel for the union petitioners drafted the interrogatories, propounded the deposition questions and filed various NS interrogatory responses and deposition excerpts with the Board. *See* ARU-25, Vol. III, filed October 21, 1997. Counsel for the petitioners were actively involved in the discovery process, a formal and integral part of the proceeding, and indeed used that process specifically to probe the statements in the NS Operating Plans and labor exhibits about car repair shops and other facilities. In response to all such questions, NS

repeatedly stated that the future of all of its facilities would depend upon business, operational and economic developments.

There also is no support for petitioners' argument, in their Response, that they "assume[d]" that NS' answers in response to interrogatories inquiring as to "all locomotive or car repair shops and facilities" were addressed to shops other than Hollidaysburg. Response at 16. The interrogatories – drafted by the union petitioners' own counsel – by their plain terms encompassed all of the shops on the combined NS/Conrail system other than those the Operating Plan specifically identified for expected closure, and so did NS' responses. For petitioners to argue that they did not think this included Hollidaysburg is absurd.

C. None of the Extra-Record Statements Cited by the Petitioners Demonstrates An NS Intention to Keep the Shops Open Without Regard to Business, Economic or Operating Conditions.

Petitioners have referred to various statements made in venues other than the record of this proceeding, by NS officials, third parties and the news media, and the Board has referenced others in Decision No. 186.

The key fact about all of the cited extra-record statements by NS officials is that they are fully consistent with and add nothing to the statements NS made about Hollidaysburg in the Application and elsewhere on the record: that NS believed the Shops would prove useful and expected to use them after Split Date. None of them stated or implied an intent or commitment that NS would operate the Shops regardless of business, economic and operating conditions.

All of the other cited statements were made by various third parties and the news media. Some were made before the Transaction Agreement was entered into and were made not with respect to the joint CSX/NS/Conrail transaction considered in Finance Docket No.

33388, but with respect to an earlier, different contemplated transaction in which NS would have acquired all of Conrail. Some were made after July 23, 1989, when Decision No. 89 was served. None could possibly have constituted a representation by NS on which the Board or anyone else could have relied in rendering its decision or formulating its position in the Conrail proceeding.²³

Furthermore, all of these cited statements were made outside the record in this proceeding leading up to Decision No. 89. Accordingly, none of them is an appropriate basis for concluding that NS breached the representation condition in Decision No. 89. In Decision No. 124 in this case (served May 20, 1999), the Board held that the representation condition applies only to “those representations that were made to us on the record,” and it held that a certain letter by a CSX official that was never submitted to the Board or made part of the record “is not subject to our condition.” Decision No. 124, *slip op.* at 7-8.

There are compelling reasons, which the Board has recognized, for disregarding extra-record statements as a basis for imposing legal obligations related to the proceeding on a party. First, the Administrative Procedure Act, 5 U.S.C. § 706, requires the Board’s decisions to be based on “substantial evidence,” which must be evidence in the administrative record itself. *See, e.g., James Madison Ltd. by Hecht v. Ludwig*, 82 F.3d 1085, 1095 (D.C. Cir. 1996), *cert. denied*, 519 U.S. 1077 (1997). This requirement ensures that all parties to a proceeding will have a full and fair opportunity to examine and contest the evidence on which the Board

²³ For the convenience of the Board, Exhibit 1 to this submission identifies all of the statements in Decision No. 186, the Joint Petition and the Response that cite statements about the Hollidaysburg Shops made by NS, NS officials and other persons in support of the contention that NS made representations during the Conrail proceeding that would be violated if NS closed the Shops on September 1 (now October 1), 2001.

makes its decisions and ensures that the reviewing court will have a meaningful framework by which to review the decision.²⁴ It also ensures that parties will be able to know what statements will and will not have legally binding significance, and further facilitates the ability of parties to make binding settlements.²⁵ Moreover, as the Board noted in Decision No. 124, “[w]hen representations are not made on the record, there is no opportunity for us, with the assistance of the parties, to iron out any ambiguities they may involve before we reach a final decision on what conditions to impose.” Decision No. 124, *slip op.* at 8.

These considerations are particularly pertinent to the extra-record materials cited in the response. Some most heavily relied on by petitioners consist of edited news media coverage of Split Date speeches and snippets of interviews with third parties. As we have noted, many of them occurred long *after* the Board’s Decision No. 89 was served, and others occurred before the Transaction Agreement – the subject of the proceeding – was ever signed. If statements of this kind can be used by parties as a basis for asserting binding legal obligations, the result will create enormous uncertainties and have a significant chilling effect on all public communications by railroad officials.

²⁴ Thus, when several of the union petitioners asked NS in discovery whether, and if so, when, NS would close any facilities other than those specifically identified for closure in the Application, NS answered that there was no timetable for that determination and that the future needs for car and locomotive repair shops would depend on future business conditions, revenue and traffic growth, operational efficiency, and other factors. *See* Ex. 7 (NS’ response to ARU Interrogatory No. 180).

²⁵ This point is especially pertinent to the written settlement NS reached with the Commonwealth of Pennsylvania, discussed in Part II, below, which did not include any reference whatsoever to the Hollidaysburg Car Shops.

II. THERE IS NO BASIS IN THE RECORD TO SUPPORT A CLAIM THAT ANY PETITIONER REASONABLY RELIED, IN TAKING A POSITION ON THE TRANSACTION, ON EITHER EXPLICIT OR IMPLICIT GUARANTEES ABOUT THE DURATION OF NS' OPERATION OF THE SHOPS.

Quite apart from the foregoing, there is clear and convincing evidence in the record that neither the union petitioners nor the Commonwealth of Pennsylvania relied or could reasonably have relied – when forming their positions regarding the Conrail control transaction – on any representation by NS regarding the duration of its operation of the Hollidaysburg Shops after Split Date.

First, as explained above, NS stated unequivocally and repeatedly that what the future held for each of its shops would depend upon how events and circumstances unfolded over time. Moreover, the facts demonstrate conclusively that the various petitioners here did not, in fact, rely on any representations concerning Hollidaysburg as a basis for supporting the transaction.

Five of the seven unions supporting the Joint Petition — IAM, TCU, TWU, SMWIA and IBEW (the last three as members of the so-called “Allied Rail Unions”) – cannot claim to have relied on any supposed representations about Hollidaysburg in supporting the transaction because they did not support the transaction at all; they opposed it throughout the proceeding. *See* Decision No. 89 at 341, 343, and 344.²⁶

²⁶ IBEW reversed its position after service of Decision No. 89: “In light of the position of NS, CSXT, and Conrail regarding the issues of New York Dock protection and the certification of employees, IBEW will support the NS/CSXT control of Conrail.” Side Letter No. 26, dated August 3, 1998 (appended to Ex. 11 hereto).

Additionally, although the other two union petitioners, NCFO and IBB, withdrew from ARU and withdrew their opposition to the transaction during the proceeding, those unions stated on the record their reasons for doing so, and neither referred to reliance on supposed representations about Hollidaysburg. In each case, the union explained that it was withdrawing from ARU and withdrawing its opposition to the transaction because it had reached a voluntary implementing agreement with the Applicants. *See* Exs. 16 and 17 hereto. Those implementing agreements expressly provide for “[f]uture coordinations of work, services or operations, in whole or in part, not now contemplated or specified in Section 1, which involve the dismissal or displacement of any employee(s) or rearrangement of forces” upon 30 days’ written notice. *E.g.*, Ex. 12, p. 6.²⁷

The record of this proceeding also demonstrates that, despite its present *post hoc* assertions to the contrary, the Commonwealth of Pennsylvania did not support the transaction in consideration of any supposed representations about Hollidaysburg. The Commonwealth’s own evidence submitted in the proceeding establishes that fact.

The Board in Decision No. 186 cites a submission filed by the Commonwealth on October 21, 1997, designated PA-8. There, the Commonwealth says that it “expect[s] the Applicants to adhere to all commitments made in the Control Application,” PA-8 at 4, and attaches what the Commonwealth describes as a “partial list” of NS and CSX “commitments.” One of the listed “commitments” is to “invest in Hollidaysburg car repair shop (\$4 million

²⁷ The NCFO’s implementing agreement is quoted. The IBB agreement contains a nearly identical provision. *See* Ex. 10 at 6. All the unions’ negotiated implementing agreements expressly contemplate future coordinations not then specified. *See* Exs 9-15.

capital improvement).” This is also alluded to in the text. *See* PA-8 at 4 (referring to “important expansions of Conrail’s . . . Hollidaysburg car repair shop.”)

The critical point about PA-8 is that *it does not comprise the settlement agreement between NS and the Commonwealth*. As PA-8 correctly notes, during the proceeding there were negotiations between NS and the Commonwealth over a period of months, and those negotiations did in fact ultimately result in a written settlement agreement in which the Commonwealth agreed to support the transaction in exchange for a number of specific undertakings on NS’ part. The specified undertakings, however, are not the laundry list of supposed “commitments” set out in PA-8. Rather, they are set forth in a letter from NS Chairman and CEO David Goode to Pennsylvania Governor Thomas Ridge and Philadelphia Mayor Edward Rendell dated October 21, 1997 (the same day PA-8 was filed). In a subsequent submission by the Commonwealth, the Governor of Pennsylvania, and the Pennsylvania Department of Transportation dated February 23, 1998 and designated PA-10, those Pennsylvania parties submitted for the record Chairman Goode’s October 21, 1997 letter, which the Pennsylvania parties acknowledge and describe as the “letter agreement” between Pennsylvania and NS. *See* Ex. 19.²⁸ That letter agreement describes a number of NS obligations and intentions under a variety of headings such as “Economic Development,” “Jobs,” “Capital Expenditures,” “Passenger Rail” and “Corporate Citizenship.” In exchange, the letter agreement further provides that on or before October 21, 1997 the Commonwealth

²⁸ PA-10 also included a letter agreement with CSX; that letter agreement is omitted from Exhibit 19.

(and the City of Philadelphia) “will file written statements of support for the Conrail Acquisition with the STB.” *Id.*

Significantly, however, *the letter agreement does not contain any provisions or representations by NS regarding the Hollidaysburg Shops. See id.* The Commonwealth’s own PA-10 submission demonstrates that keeping Hollidaysburg open for some period of time (whether definite or indefinite) was not part of the arms-length bargain struck between NS and the Commonwealth. The Commonwealth cannot now claim that it “relied” on the list of supposed “commitments” it unilaterally compiled in PA-8, which sweeps more broadly than the document the Commonwealth later admits is the actual “letter agreement” between the parties.²⁹

Decision No. 186 also quotes from the oral argument by Congressman Bud Shuster. *See* Decision No. 186 at 6. That testimony, however, does not demonstrate that Congressman Shuster understood or relied upon any understanding that NS had explicitly or implicitly guaranteed to keep the Shops open, or operating at any particular employment level, beyond the date now contemplated for closure. Congressman Shuster did note that he was “pleased” that the NS Operating Plan “includes a continued and expanded role” for the Hollidaysburg Shops. Ex. 20 (June 3, 1998 Oral Arg. Tr.) at 27. Congressman Shuster also recognized, however, that the transaction likely would produce employment uncertainties, and he noted

²⁹ In addition to the basic point that PA-8 did not constitute or reflect the settlement agreement between NS and the Commonwealth, we would also note that PA-8 does not refer to or rely upon any supposed representation or commitment as to how long NS would operate the Shops. It refers only to the \$4 million capital project contemplated for the Shops in the NS Operating Plan. That project, the Board has said, is not at issue here. *See* Decision No. 186 at 8, n. 25.

with approval the “well-established” procedure for handling those issues through the implementing agreement process: “Any change in corporate control inevitably produces some uncertainties that affect the employees. But I am confident that both the carriers and the unions can work out any differences in the context of well-established procedures for implementing the transaction, once approved by the STB.” *Id.* NS and the various unions representing Hollidaysburg employees did so, of course, with the result that each reached an implementing agreement that expressly recognizes that there will be “future coordinations” not specifically contemplated at the time that will result in the dismissal or displacement of employees. *See* Exs. 8-15.

III. ORDERING THE SHOPS TO REMAIN OPEN WOULD SUBVERT THE ESTABLISHED PROCESS FOR RESOLVING LABOR MATTERS IN RAILROAD ACQUISITIONS

The unions are seeking to obtain by Board decree a benefit to which they are not entitled under either the *New York Dock* conditions or their voluntarily negotiated implementing agreements. The protective conditions contemplate that work will be relocated by merged carriers and that employees may have to transfer with the work in order to remain eligible for monetary benefits, which include relocation allowances and certain wage protections for up to six years. The protective conditions also require that before taking action that may result in the displacement or dismissal of employees or the rearrangement of work forces, carriers must negotiate (or, if necessary, arbitrate) implementing agreements with their employees’ representatives. Here, NS did negotiate voluntary implementing agreements with the unions representing the employees who will be affected by the Hollidaysburg closure. Every one of those agreements explicitly reflects the understanding of the parties that there

would be “future coordinations of work, services or operations, in whole or in part, not now contemplated” that could result in relocations of employees. The agreements establish a process for carrying out future coordinations and provide for relocation benefits in excess of those required under *New York Dock*.

The unions do not want the employees they represent to have to relocate, which is a consequence of transferring work from the Hollidaysburg Shops. When one of the unions sought comparable relief in the main control proceeding, the Board denied it.³⁰ In asking the Board now to stop this transfer of work altogether, the unions are again pursuing a benefit that not only is *not* provided in the protective conditions and the negotiated implementing agreements, but also is contradicted by the premise of the conditions and agreements that such transfers will occur. If the Board were to take the action the unions request, the effect inevitably would be to subvert the established process that strongly favors the voluntary negotiation of agreements to cover such matters as transfers of work and procedures for the relocation of employees. Carriers will, in the future, have reduced incentive to negotiate

³⁰ The Transportation-Communications International Union (“TCU”), one of the unions here, asked that the Board provide that employees whose work is transferred as a result of the transaction would not be compelled to follow that work without being offered the alternative of receiving instead a separation allowance (which, under the protective conditions, is only available to “dismissed employees”). *See* Decision No. 89 at 345. The Board rejected this request, noting that TCU had not demonstrated that “the basic protections” of *New York Dock* “should be altered so that an employee does not have to accept a job that requires him or her to move, or else forfeit the monetary payments.” *Id.* at 128. The Board also noted that permitting rail carriers to move employees in order to achieve the benefits of the transaction in exchange for providing income protection and other benefits was “[a] basic part of the bargain embodied in the Washington Job Protection Agreement upon which the *New York Dock* conditions are based.” *Id.*

implementing agreements that include, as do those in this case, concessions that are not provided by *New York Dock* itself.

Actions taken since Split Date as part of the integration of NS' portion of Conrail have resulted in the relocation of the places of employment of more than 1,000 NS and Conrail agreement employees. All of these relocations have been governed by the parties' implementing agreements. The planned closing of the Hollidaysburg Shops and the attendant relocation of employees are not materially different from the other actions that have resulted in employee relocations -- unless, that is, the Board prohibits NS from closing the Shops, in which case the employees there will have received very different treatment, neither provided by law nor bargained for.

IV. AN ORDER TO KEEP THE SHOPS OPEN WOULD PLACE THE BOARD IN THE UNPRECEDENTED AND UNWARRANTED POSITION OF MICRO-MANAGING A RAILROAD ENTERPRISE

A Board order requiring NS to keep the Hollidaysburg Shops open for some period of time after October 1, 2001 would not only be unsupported by any evidence of record in this proceeding; it would also be bad policy and would establish an extremely unfortunate precedent reaching far beyond Hollidaysburg -- a precedent with the gravest implications for NS and all other railroads involved in consolidations. Such a decision would do so because, contrary to all previous Board precedent, it would necessarily require the Board to involve itself in the details of managing the day-to-day operations of a railroad enterprise.

A. Such An Order Would Require the Board to Assume An Unprecedented Management Role.

A decision by the Board requiring NS to operate the Shops for some period of time beyond October 1, 2001 would necessarily require the *Board*, not NS, to decide how long it is reasonable, or appropriate, to continue operating the Shops and at what capacity. Decision No. 186 indicates that the Board is considering “requir[ing] NS to keep the shops open at least at present capacity for a significant period of time beyond September 1, 2001,” but such an order would necessarily require the Board, not NS, to decide how long a period is “significant.” Deciding how long, and at what capacity, to operate particular facilities (or, in the case of car shops, what mix of several system-wide facilities, the mix and size of the relevant car fleet, current and future plans for program maintenance for that car fleet, and the proper trade-off of program maintenance vs. future car retirement and new car acquisition) is the very essence of the business of managing a railroad enterprise. These are difficult decisions that railroad managers make continuously, based on a host of business, economic and operational considerations. The Board has consistently recognized itself to be unsuited for that role. In the *UP/SP* oversight proceeding, for example, the Board noted that “government cannot operate private businesses as well as private businesses themselves.” *STB Service Order No. 1518, Joint Petition for Service Order*, Decision served February 17, 1998 at 2.³¹

³¹ Earlier in that proceeding the Board said: “[G]iven our view that we cannot run railroads as well as railroads can run themselves, we have promoted an environment in which railroads can provide improved service without seeking to micromanage railroad operations ourselves.” *Supplemental Order No. 1 to STB Service Order No. 1518*, served December 15, 1997 at 1.

For these reasons, the question the Board poses at p. 7 of Decision No. 186 — whether “the shops *can* be operated profitably *under any scenario*” — is, with all respect to the Board, not the correct inquiry for the Board. Although it was necessary for NS’ witness, Mr. Belvin, to develop a stand-alone profit and loss statement for the Shops for the purpose of demonstrating that petitioners’ assertions about the Shops’ profitability are not true (as discussed in the Statement of Facts), the fact of the matter is that facility rationalization decisions cannot be made, and must not be made, in an environment divorced from considerations of their impact across the system. For example, if the Board were to order Hollidaysburg to remain open “at present capacity” in the face of uncontroverted evidence of excess capacity and financial losses, the issues that it would be necessary for the Board to consider and decide would include, at a minimum, how the Board would:

- Identify other facilities on the NS system that should be idled or shut down in order to protect Hollidaysburg;
- Identify employees elsewhere on the NS system to be relocated instead of those at Hollidaysburg;
- Identify the communities to suffer employment losses to compensate for keeping Hollidaysburg open;
- Assess the kinds and quantity of work done elsewhere on the NS system that should or could be moved to Hollidaysburg;
- Undertake to analyze and project and plan for NS’ maintenance and repair needs into the future;
- Determine staffing levels necessary to accomplish that work;

- Assess the impact on the operation of NS' system that would result from physically reallocating car repair capabilities and capacity; and
- Decide what additional proceedings to initiate when complaints are raised by other communities and employees affected by relocations made necessary as a result of keeping Hollidaysburg open.

B. Such An Order Would Establish An Extraordinary and Far Reaching Precedent.

Furthermore, issuing a decision requiring NS to operate the Hollidaysburg Shops at some specified capacity for some period beyond October 1, 2001 would necessarily create a precedent reaching far beyond Hollidaysburg. Contrary to the efforts of petitioners to suggest otherwise, there is nothing unique about Hollidaysburg's situation or about the statements in the Application and NS' Operating Plan about that particular facility. The Board also seems to have assumed, incorrectly, that NS' statements about Hollidaysburg were somehow different, when it said: "We agree as a general matter with much of what NS says, but we think that, in the present circumstances, the customary flexibility that we accord the projections of merger applicants must give way to the representations by NS to keep the Hollidaysburg Car Shops open and operating – statements upon which people clearly relied in formulating positions of support for the Conrail transaction." Decision No. 186 at 7.

We have shown in the previous section that there is nothing in the record upon which parties reasonably could have relied as representing an explicit or implicit guarantee by NS that the Shops would remain open for any particular period of time, much less specifically beyond October 1, 2001. In addition, we have demonstrated that the conduct of the unions and the

Commonwealth belies any reliance by them on any supposed statements by NS of an intention to operate the Shops for any specific period.

The Board is also mistaken in assuming that what NS said about Hollidaysburg was materially different from statements made by NS and CSX about all the other facilities and lines that Applicants intended to operate on Split Date. With respect to car repair shops, the Joint Petition relies heavily on the statements in the Application regarding NS' intention to operate Hollidaysburg after Split Date (see Joint Petition at 6-9), but the very same pages cited by the Joint Petition also discuss, repeatedly, NS' intention to use other shops as well, including NS' century old shops at Roanoke, VA, which NS recently idled. *See* CSX/NS-18 at 338 (V.S. of David Goode), CSX/NS-20, Vol. 3B at 62-63 (V.S. of Michael Mohan) and 287-288, all cited in the Joint Petition at 6-9.

Beyond car repair shops, the Application described literally hundreds of specific facilities and lines that NS and CSX stated their intention to operate and, in many cases, to construct or expand after Split Date. *See, e.g.,* CSX/NS-20 at 69-288. Many of these were yards, terminal facilities and other rail facilities employing substantial numbers of employees. *Id.* at 186-221. The Application also described numerous track upgrades and new constructions NS and CSX expected to make, including, for example, new track connections in Buffalo, NY designed "[t]o permit efficient movement from NS Cleveland mainline to Conrail Buffalo line or Conrail Southern Tier avoiding CP-Draw." *Id.* at 284. The statements in the

Application about Hollidaysburg are not materially different from the statements about any of these other facilities.³²

Accordingly, because there is nothing unique about the statements made and actions taken with respect to Hollidaysburg, granting the relief sought by the Joint Petition would necessarily require the Board to entertain similar claims by any other group of employees, or any other adversely affected party whenever NS or CSX decide to close a facility that they had indicated, in the Application, an intent to operate. And it would require the Board similarly to determine whether those decisions were justified.

C. Such An Order Would Be Contrary to All Board Precedent.

Such a decision would also be squarely at odds with the Board's precedents. As we noted in NS-79, the Board's decisions have consistently held that statements by applicants in railroad consolidation cases about how they expect to operate the consolidated system after approval do not and cannot establish binding commitments from which the applicants cannot deviate after the transaction is approved. For example, in its decision on the first round of

³² Nor could there be any reasonable basis for the Board to rely on statements outside the record of this proceeding to conclude that NS' statements about Hollidaysburg were materially different from its statements about other facilities it intended to use. As discussed in the previous section and in Exhibit 1, none of the statements by NS officials cited by the petitioners or in Decision No. 186 did any more than express the same intention to use Hollidaysburg after Split Date reflected in the Application. They neither stated nor implied any undertaking to operate the Shops for any period of time after Split Date. Furthermore, as noted earlier, the Board has quite correctly ruled in this case, in Decision No. 124 (served May 20, 1999) that the catch-all condition of Decision No. 89 on which petitioners here rely applies only to "those representations that were made to us on the record." Decision No. 124 at 7-8. This ruling reflects the requirement of the Administrative Procedure Act, 5 U.S.C. § 706, that the Board's decisions be based on substantial evidence in the administrative record itself.

general oversight in this proceeding, the Board specifically distinguished between settlement agreements and supposed “representations” in the NS and CSX operating plans:

Although MDOT notes that many of the items that were included in its 1997 settlement agreements with CSX and NS have not yet been addressed, it expects that these commitments will be implemented as agreed. MDOT understands correctly that we will monitor implementation and other transactional impacts for 5 years, and will order remedial action as appropriate. MDOT, however, is not correct in its assessment that the operating plans filed by CSX and NS were “commitments” to achieve proposed service and infrastructure improvements within 3 years after the implementation date that must be enforced without variation. The plans cited by MDOT (CSX’s plan to implement intermodal service between Baltimore and Detroit, Indianapolis, Cleveland, Columbus, and St. Louis; and NS’ plan to develop regular high cube intermodal and domestic double stack train service between the Baltimore area and Chicago and other Midwest areas) are applicants’ best projections regarding what traffic they can profitably serve. Those operating plans do not provide a basis in and of themselves for relief at this time.

Decision No. 5 in Finance Docket No. 33388 (Sub-No. 91) (served February 2, 2001) at 24-25. Similarly, in the Buffalo Area Infrastructure proceeding in this case, the Board rejected the claim of the Erie-Niagara Rail Steering Committee that the Board should hold NS to the alleged “representations” in its Operating Plan, cited earlier, that it would construct certain track connections in Buffalo by requiring NS to spend an equivalent amount on other capital improvements designed to relieve congestion in Buffalo. The Board denied the request, stating:

Although we exempted NS’ construction proposals at Blasdell and Gardenville Junction, these exemptions . . . are permissive. We did not make those construction proposals conditions to our approval of the Conrail transaction. ENRSC has cited no Board or other precedent for its novel request that NS be forced to spend a comparable amount as it originally projected for those constructions.

Decision in Finance Docket No. 33388 (Sub-No. 93) (served Feb. 2, 2001), at 6. For other decisions holding that statements in applications reflecting the applicants’ intentions about what lines and facilities they intend to operate, construct, expand, etc., do not establish legally binding commitments, see Decision No. 96 in Finance Docket No. 33388 (served October 19,

1998) at 22; and *Union Pacific Corp. et al. – Control and Merger – Southern Pacific Rail Corp. et al.*, Finance Docket No. 32760 (Sub-No. 21) (“*UP/SP*”), Decision No. 16 (served December 15, 2000) at 13.³³

There is no basis for reaching a different result in this case. In their Response, petitioners made a strained attempt to distinguish these decisions on the basis of factual differences, but the differences cited are not material. The decisions establish the principle that statements in control applications regarding the applicants’ plans for operating the consolidated systems do not establish rigid obligations that the railroads are legally bound to follow after approval of the application. That principle is directly pertinent here, and petitioners have not cited a single decision departing from it or otherwise supporting the relief they request.

D. Such An Order Would Represent Bad Public Policy.

A decision requiring NS to operate Hollidaysburg for some period after October 1, 2001 would not only establish a precedent reaching far beyond Hollidaysburg, as we have shown; it would also represent extremely bad public policy. It would be bad policy not only because it would require the Board to assume an unwarranted management role, discussed

³³ Petitioners assert that “[t]he Board’s oversight decision relating to the Union Pacific-Southern Pacific transaction is inapposite because the Board’s decision regarding the transaction did not contain a specific order expressly binding the applicants to representations they made in connection with the STB proceedings, as was done in the CSX/NS--Conrail transaction.” Response at 29. To the contrary, the Board did expressly state, in the imperative, that applicants UP and SP “*must* adhere to all of their representations” made “during the course of this proceeding.” See *Union Pacific Corp. – Control and Merger – Southern Pacific Transportation Company*, Finance Docket No. 32760 (hereafter “*UP/SP*”), Decision No. 44 (served August 12, 1996) *slip op.* at 12, n. 14 (emphasis supplied).

earlier, but also for following reasons: it would be inherently arbitrary and capricious; it would deprive railroads of the flexibility to react to changing conditions, contrary to the Rail Transportation Policy; it would completely undermine the implementing agreement process the Board put in place to resolve the handling of relocations of employees; and it would subject railroads to unascertainable, and therefore arbitrary, standards of conduct.

Such a decision would be inherently arbitrary because privately-owned railroads must operate efficiently in order to provide the best possible service to their customers and, ultimately, to stay in business. Consequently, forcing a railroad to continue operating one facility against its best business judgment will necessarily have ripple effects elsewhere on the system. The railroad will either have to operate inefficiently (to the detriment of its customers and the public) or take other actions. The effect of a Board decision forcing NS to continue operating Hollidaysburg for some period and at some employment level dictated by the Board would be simply to favor one group of employees and one locality over other employees, localities and railroad customers, and thus would be inherently arbitrary and capricious.

Such a decision would also deprive railroads of the operating flexibility they critically need to respond to changing business and operating conditions. If statements in control applications describing the applicants' expectations about how they intend to operate after approval are elevated to rigid and binding obligations to continue operating in that fashion until the Board decides a "significant" period of time has elapsed, control applications would become straightjackets and blueprints for business failure. Such a result would conflict squarely with the Rail Transportation Policy's directives that the Board should regulate the railroad industry "to promote a safe and efficient rail transportation system by allowing rail

carriers to earn adequate revenues;” “to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;” and “to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes.” 49 U.S.C. § 10101(3), (4) and (5).

Finally, issuing a decision of the kind suggested by Decision No. 186 would leave NS (and CSX as well) subject to vague and unascertainable standards of conduct in contravention of basic requirements of administrative law. Decision No. 186 noted NS’ contention that the Board has never treated applicants’ statements about how they intend to operate the consolidated system as inflexible commitments from which applicants could not deviate, and that to do so would be “a certain recipe for business failure.” Decision No. 186 at 6. The Board then said: “We agree as a general matter with much of what NS says, but we think that, in the present circumstances, the customary flexibility that we accord the projections of merger applicants must give way to the representations by NS to keep the Hollidaysburg Car Shops open and operating -- statements upon which people clearly relied in formulating positions of support for the Conrail transaction.” *Id.*

Any decision based on this view would leave NS and CSX completely at sea as to what future actions will be permissible (that is, will be accorded “the customary flexibility”) and what will not (that is, “must give way”). Because any party could claim that it relied on any statement in the applicants’ operating plans (and/or off-the-record comments of the applicants or third parties), the railroads would have no way of knowing in advance (whether or not such claims were ultimately upheld) from which of those statements the Board will or will not

permit them to deviate.³⁴ Moreover, any Board order requiring an applicant to continue operating a facility for a “significant” period of time would compound the uncertainty, since the applicant would also have no way of knowing how long it must maintain a costly and inefficient facility, or what plans to make for other facilities (and the employees working at those facilities) elsewhere on its system. Rational and predicable business planning would be made extremely difficult, if not impossible.

For an agency to subject regulated entities to vague and unascertainable standards of conduct would contravene basic principles of administrative law. As the court stated in *Pearson v. Shalala*, 164 F.3d 650, 660-661 (D.C. Cir. 1999): “[I]t must be possible for the regulated class to perceive the principles which are guiding agency action.” *See also, e.g., Port Terminal Railroad Association v. United States*, 551 F.2d 1336, 1343 (5th Cir. 1977). Any order of the kind suggested by Decision No. 186 would not meet that requirement.

V. NS’ DECISION TO CLOSE THE SHOPS IS JUSTIFIED ON THE MERITS.

As discussed in the foregoing sections, NS submits that it is not appropriate for the Board to decide issues pertaining to the economic utility, necessary staffing level, and appropriate utilization of the Hollidaysburg Shops or any other specific individual rail facility. Those decisions require consideration of a multitude of economic, market, financial and

³⁴ As we discussed earlier, no party in this case could reasonably contend that it supported the transaction based on statements by NS, express or implied, that NS would continue operating the Shops for a “significant period of time beyond September 1, 2001.” If claims of such reliance were credited in this case, however, similar claims would be no less credible in other cases.

operational issues, each with system-wide and company-wide ramifications, which the Board is not in the best position to assess.

Decision No. 186, however, suggests that the business and economic merits of the decision are relevant issues for the Board to review, and the Joint Petition certainly takes the same position, contending, among other things, that the Shops have operated at a profit, that they have enough business to keep them busy until the end of 2001, and that NS had received assurances for projects sufficient to keep the Shops busy into 2002. Joint Pet. at 12, 18-19.

As we have noted, Mr. Veron and Mr. Belvin refuted the claims of petitioners' witnesses, and petitioners' Response failed utterly to rebut their showings. The facts set forth in the Statement of Facts and in the attached verified statements of Mr. Veron and Mr. Belvin show that there is no record evidence or other reasonable basis to support the Joint Petition's contentions or to question the business and economic merits of the decision to close the Shops.

CONCLUSION

For the reasons stated here and in NS-79 and NS-81, NS submits that the order contemplated in Decision No. 186 should not be issued. NS further respectfully requests that, consistent with the negotiated implementing agreements, uniform Board precedent and sound

public policy, the Board refrain from directing in any manner NS' disposition of the Hollidaysburg Shops.

Respectfully submitted,



Richard A. Allen
Scott M. Zimmerman
**ZUCKERT, SCOUTT &
 RASENBERGER, LLP**
888 Seventeenth Street, NW
Suite 600
Washington, D.C. 20006
(202) 298-8660

J. Gary Lane
Henry D. Light
Joseph C. Dimino
George A. Aspatore
Jeffrey H. Burton
John V. Edwards
**NORFOLK SOUTHERN
CORPORATION**
Three Commercial Place
Norfolk, Virginia 23510-2191
(757) 629-2838

Jeffrey S. Berlin
SIDLEY AUSTIN BROWN & WOOD
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8000

*Attorneys for Norfolk Southern Corporation
and Norfolk Southern Railway Company*

June 25, 2001

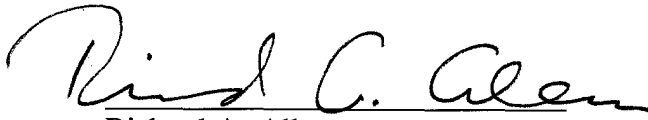
CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2001, a true copy of NS-84 was served by hand delivery upon the following:

Richard S. Edelman
O'Donnell, Schwartz & Anderson, P.C.
1900 L Street, N.W.
Suite 707
Washington, D.C. 20036

Scott N. Stone
Patton Boggs, LLP
2550 M Street, N.W.
Washington, D.C. 20037

I further certify that a copy of NS-84 has been served, by first class U.S. mail, postage prepaid, or by more expeditious means, on all other parties of record in Finance Docket No. 33388 on June 25, 2001, or will be so served on June 26, 2001.



Richard A. Allen

EXHIBIT LIST

- Exhibit 1** Analysis Of "Representations" Referenced In Decision No. 186, The Joint Petition, And Petitioners' Response.
- Exhibit 2** Verified Statement of David L. Veron.
- Exhibit 3** Verified Statement of Robert H. Belvin.
- Exhibit 4** *Philadelphia Inquirer* Article, June 21, 2001 regarding \$240 million shipbuilding contract for Kvaerner Shipping Co.'s Philadelphia Shipyard.
- Exhibit 5** CSX/NS-69, "Applicants' Responses To Allied Rail Unions' Second Set Of Interrogatories To Applicants (ARU-11)," pp. 1, 5-6, 12, 18-19.
- Exhibit 6** CSX/NS-44, "Applicants' Responses To Allied Rail Unions' First Set Of Interrogatories To Applicants (ARU-7)," pp. 1, 11-12, 78, 80-81, 86-87.
- Exhibit 7** CSX/NS-84, "Applicants' Responses To Allied Rail Unions' Third Set Of Interrogatories To Applicants (ARU-16)," pp. 1, 17, 31-32.
- Exhibit 8** Transcript of the Deposition of Robert Spenski and Kenneth Peifer, September 2, 1997, pp. 1-7, 80-81, 85-86.
- Exhibit 9** Implementing Agreement Between CSX Transportation, Inc., Norfolk Southern Railway Company, Consolidated Rail Corporation, and the Brotherhood Railway Carmen Division-TCU and Transport Workers Union of America (dated October 16, 1998), pp. 1-6, 15.
- Exhibit 10** Implementing Agreement Between CSX Transportation, Inc., Norfolk Southern Railway Company, Consolidated Rail Corporation, and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (dated March 25, 1998), pp. 1-7, 18.

- Exhibit 11** Implementing Agreement Between CSX Transportation, Inc., Norfolk Southern Railway Company, Consolidated Rail Corporation, and the International Brotherhood of Electrical Workers (dated August 3, 1998), pp. 1-6, 16, and Side Letter No. 26 thereto, dated August 3, 1998.
- Exhibit 12** Implementing Agreement Between CSX Transportation, Inc., Norfolk Southern Railway Company, Consolidated Rail Corporation, and the National Conference of Firemen and Oilers (dated June 3, 1998), pp. 1-7, 18.
- Exhibit 13** Implementing Agreement Between CSX Transportation, Inc., Norfolk Southern Railway Company, Consolidated Rail Corporation, and the Sheet Metal Workers International Association (dated September 17, 1998), pp. 1-4, 10; and Attachment B thereto (dated September 17, 1998), pp. 1-4, 10.
- Exhibit 14** Implementing Agreement Between CSX Transportation, Inc., Norfolk Southern Railway Company, Consolidated Rail Corporation, and the International Association of Machinists and Aerospace Workers (dated October 10, 1998), pp. 1-3, 7; and Attachment B thereto (dated October 10, 1998), pp. 1-3, 12.
- Exhibit 15** Implementing Agreement Between Norfolk Southern Corporation, Norfolk Southern Railway Company, Consolidated Rail Corporation, CSX Transportation, and the Transportation Communications International Union (dated November 2, 1998), pp. 1, 14-15, 27.
- Exhibit 16** Letter from George J. Francisco, Jr., President, National Conference of Firemen and Oilers, to STB Chairman Linda Morgan (undated).
- Exhibit 17** Letter from Joseph A. Stinger, Administrative Assistant to the International President Director – Railroad Division, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, to STB Chairman Linda Morgan, dated March 24, 1998.
- Exhibit 18** Joint Verified Statement of Kenneth R. Peifer and Robert S. Spenski, pp. 1, 8-11 (CSX/NS-20, Vol. 3, pp. 493, 500-503).

Exhibit 19 PA-10 (dated Feb. 23, 1998).

Exhibit 20 Transcript of Oral Argument, June 3, 1998, pp. 1, 24-27.

Exhibit 21 Norfolk Southern's Safety Integration Plan
(filed December 3, 1997) p. 11.

EXHIBIT 1

Analysis Of “Representations” Referenced In Decision
No. 186, The Joint Petition, And Petitioners’ Response.

EXHIBIT 1

ANALYSIS OF "REPRESENTATIONS" REFERENCED IN DECISION NO. 186, THE JOINT PETITION, AND PETITIONERS' RESPONSE.

In the Joint Petition and Response, the Petitioners have compiled various statements that they claim support the contention that NS made representations during the Conrail proceeding on which other persons relied in supporting the Application that would be violated if NS closed the Shops on October 1, 2001. For the convenience of the Board, these statements are catalogued below, together with those cited by the Board in Decision No. 186.

Although NS did make some statements on the record of this proceeding concerning NS' intentions regarding Hollidaysburg and other facilities (these appear below in Section A), the large majority of the statements cited by petitioners fall into one or more of the following categories: (1) statements not made by NS at all but by news media or other third parties; (2) statements concerning a proposed NS/Conrail transaction that was never consummated and was not the subject of Decision No. 89; (3) statements made after Decision No. 89 was served; (3) and (4) other statements made by NS but not on the record of this proceeding. These appear below in Section B.

A. STATEMENTS BY NORFOLK SOUTHERN ON THE RECORD OF THIS PROCEEDING CONCERNING NS' INTENTIONS REGARDING HOLLIDAYSBURG AND OTHER FACILITIES

Various statements cited or relied upon in Decision No. 186, the Joint Petition, or the petitioners' Response are statements attributed to NS itself concerning its intentions regarding Hollidaysburg or other facilities. Certain of these statements are ones that NS made on the record of this proceeding – in the NS Operating Plan, elsewhere in the Application, during discovery, *etc* – regarding how NS intended to use the Hollidaysburg Shops. Those are collected

below, followed by statements concerning NS' intended \$4 million material handling project for the Shops set forth in the Operating Plan. (The Board in Decision No. 186 said that the order contemplated there does not involve the material handling project issue.)

The significant fact about all such statements is that none of them speak, expressly or implicitly, to the duration of NS' operation of the Hollidaysburg Shops, and none suggest that NS was obligating itself to continue operating the Shops without regard to pertinent business, economic, or operational considerations as they developed.

- "The sworn statement of Mr. Goode characterized the Hollidaysburg shops as 'excellent', and stated that NSR would use the Hollidaysburg shop and that NSR would maximize utilization of the shop by 'in-sourcing'. Mr. Goode stated:

This transaction also will permit NS to look carefully at its existing shops and other facilities as well as those on the Conrail properties NS will operate and to use each facility for the maximum efficiency and advantage to the combined operation. For example, Conrail has excellent locomotive and car repair facilities at Altoona/Hollidaysburg, Pennsylvania, while NS's comparable facilities are in Roanoke, Virginia. As explained in the Operating Plan and the Verified Statement of D. Michael Mohan, important efficiencies can be gained by concentrating different types of mechanical work at each location. To facilitate this effort, the truck and wheel work now performed by NS at Pegram Shop in Atlanta and by Conrail at Altoona will be centralized at Altoona, with the transition to be completed by the end of Year 1 after the Closing Date. So-called 'insourcing' provides another opportunity to maximize utilization of the system shop at Altoona/Hollidaysburg and Roanoke. Fortunately for our insourcing plans, CSX plans to use NS's services at Altoona/Hollidaysburg for at least a portion of its Conrail car and locomotive fleets."

Joint Pet. at 6-7 (quoting the Verified Statement of David R. Goode, page 16, appearing at Unions' Ex. 7).

- "NSR's Operating Plan witness Michael D. Mohan's sworn statement also referred to the 'excellent facilities of Conrail' at Hollidaysburg, and stated that NSR would consolidate car program work at that shop. Mr. Mohan stated:

This transaction offers substantial opportunities to improve efficiency and fully utilize the excellent facilities of Conrail and NS in the Altoona/Hollidaysburg, PA and Roanoke, VA areas, respectively. Following the consolidation, NS intends to seek the efficiencies and other benefits of specialization at each of these facilities After the consolidation, the Conrail shop at Hollidaysburg will absorb most car program work, with Roanoke Shops - Car concentrating on new car construction and

rebodying. Program car repair operations at Macedonia, OH, Decatur, IL and Williamson, WV will be eliminated.”

Joint Pet. at 7 (quoting the Verified Statement of D. Michael Mohan, page 62, appearing at Unions’ Ex. 8).

- “With respect to NSR’s plans for the shop, the Operating plan stated that:

Recognizing the shop capacity NS gains as a result of the addition of Conrail facilities, as well as the advantages of a stable work force, NS anticipates performing car and locomotive repairs and overhaul for other rail carriers and other prospective customers. Because CSX will use approximately 42% of the former Conrail car and locomotive fleets, the transaction agreement provides for the terms under which CSX will be one of NS’ insourcing customers. Facilities which will provide these services are in Altoona, PA (including the nearby Hollidaysburg Car Shop) and Roanoke, VA. These facilities are known for their capabilities and the craftsmanship of their employees.”

Joint Pet. at 8 (quoting the NS Operating Plan at 320-321, appearing at Unions’ Ex. 9).

- “Elsewhere in its Operating Plan, NSR said:

Hollidaysburg will absorb most car program work with Roanoke Shop-Car concentrating on new car construction and rebuilding. Extensive fabrication equipment at Roanoke will be used in lieu of kits furnished to Hollidaysburg by car suppliers, thereby saving an average of \$3 million annually. Program car repairs at Macedonia, OH on Conrail and Decatur, IL, and Williamson, WV on NS will be eliminated.”

Joint Pet. at 8 (quoting the NS Operating Plan at 326, appearing at Unions’ Ex. 9).

- “In response to the ‘Allied Rail Unions’ Interrogatory No. 127 inquiring as to whether NSR planned any shop closing other than the Pegram, Ft. Wayne and Enola shops, NSR responded: ‘Applicants have not determined whether any other locomotive or car shops or facilities, other than the ones specified in the Operating Plan, will be closed’.” Joint Pet. at 9-10 (quoting CSX/NS-44, Applicants’ Responses to Allied Rail Unions’ First Set of Interrogatories to Applicants (ARU-7) at 78, appearing at Unions’ Ex. 13).
- “In response to the ‘Allied Rail Unions’ Interrogatory No. 151 which asked the Applicants to ‘identify all project shops on the present Conrail system which will be closed or consolidated with another shop as a result of the Transaction’, the Applicants answered ‘For NS: See the Application, including Applicants 1996/1997 Labor Impact Ex.; Volume 3B (p. 326); and the response to ARU Interrogatory No. 127.’” Joint Pet. at 10 (quoting CSX/NS-69, Applicants’ Responses to Allied Rail Unions’ Second Set of Interrogatories to Applicants (ARU-11) at 12, appearing at Unions’ Ex. 14, and referencing NS’ statement that Applicants

had not determined whether to close any other shops other than those set forth in the Operating Plan).

- “NSR’s [Safety Integration Plan (“SIP”)] stated:

NS will maintain a stable staff of MP&E employees within the facilities allocated to NS. Figure 4, following, details the current number of employees at each such location. In view of NS’ intent to maintain stable MP&E staffing, this figure also represents the currently projected Day 1 staffing. [Figure 4 indicated 436 carmen].”

Joint Pet. at 9 (quoting the NS SIP, dated December 3, 1997, appearing at Union Ex. 12).¹

- “NS indicated [in the Application]: that the transaction offered substantial opportunities to improve efficiency and fully utilize Conrail’s ‘excellent’ facilities in the Altoona/Hollidaysburg area which (NS acknowledged) were known for their capabilities and the craftsmanship of their employees and which had ‘unique’ repair/rebuild capabilities; that ‘insourcing’ opportunities, to include work for CSX for at least 24 months after the Split Date, would be actively pursued in order to fully utilize shop capacity, ‘particularly in the Altoona/Hollidaysburg area.’; that extensive capital improvement expenditures would be made, in particular \$4,000,000 at Hollidaysburg for car shop work; that the heavy repair shop at Hollidaysburg would continue to be utilized; and that success in marketing the services of the Altoona/Hollidaysburg and other shops would mean ‘expanded work opportunities for the employees of the expanded [Norfolk Southern].’” Decision No. 186 at 5 (citing CSX/NS-20 at 62-63, 287-88 and 321, 323-24, 326 and 373; CSX-NS-25 at 35-36 (Transaction Agreement § 2.4(b)).²

Statements Related Solely To The Anticipated \$4 Million Expenditure At The Shops.

- “The Operating Plan reported that:

In order to implement the mechanical plan, the following facility improvements will be undertaken. Capital expenditures required for these improvements are approximately \$102,000,000. . . .

¹ As discussed in the text, the NS Safety Integration Plan (“SIP”) stated that “Full implementation of the transition to an expanded NS system will require flexibility throughout the process. This plan must and will change to address new information and changing circumstances. NS understands that this is a dynamic process which requires plans backed by contingency plans capable of meeting and safely addressing the changing business environment. * * * Accordingly, as more information is developed, both before and after Control Date, many of the safety plans set forth herein will require modification.” SIP at 11.

² The referenced 24-month period expired on June 1, 2001.

- Hollidaysburg, PA
Material handling improvements at car shop.
Capital investment required \$4,000,000.”

Joint Pet. at 7-8 (quoting the NS Operating Plan at 287-288, appearing at Unions’ Ex. 9).

- “[A]n NSR ‘Fact Sheet’ for Pennsylvania, under the heading ‘Economic Development’, NSR cited ‘Estimated \$4 million in capital improvements at Hollidaysburg shop.’” Joint Pet. at 9 (quoting from an internet press release, appearing as Unions’ Ex. 11).

B. OTHER ASSERTED STATEMENTS

What remains of all of the asserted statements attributed to NS concerning Hollidaysburg, reproduced below, cannot form the basis for enforcement of the “representation condition.”

They suffer from one or more frailties. Many are not even statements by NS, but instead are those of third parties including the media (identified with a “**3rd**” after the quote). In some cases, such statements were made before Finance Docket No. 33388 had even been initiated and were made with respect not to the joint CSX/NS/Conrail transaction considered in Finance Docket No. 33388, but with respect to an earlier, different contemplated transaction in which NS alone would have acquired all of Conrail (identified with a “**NS/CR**” after the quote). Other statements were made *after* Decision No. 89 was issued (identified with a “**post-89**” after the quote). Other statements were not made on the record of this proceeding (identified with a “**OTR**” after the quote.) Other statements are broad characterizations of asserted NS statements plucking one or two words from a source (with specific explanation set forth in parentheticals after the quote).

- “On October 24, 1996, the *Philadelphia Inquirer*, reported that NS had ‘Launch[ed] a Hostile Bid For Conrail’ that was described as an effort to counter CSX’s attempt to acquire control of Conrail by making a ‘hostile takeover assault’ backed by a publicity campaign attacking the CSX transaction and promoting the alleged benefits of the NS transaction. The article referred to a letter to the Conrail Board by NSR CEO Goode which, among other things, stated that ‘Conrail’s locomotive and car repair shops which makeup the lion’s share of the economy of Altoona, Pa. would grow under Norfolk Southern.’” Joint Pet. at 4, citing

“Norfolk Southern Corp. Launches Hostile Bid for Conrail,” *The Philadelphia Inquirer*, October 24, 1996 (Internet version, reproduced at Unions’ Ex. 1). (3rd) (NS/CR)

- “Also on October 24, 1996, the *Washington Post* reported that Norfolk Southern had made it clear that ‘Conrail’s locomotive and car shops in and near Altoona, PA ‘would thrive after a Norfolk Southern merger.’” Joint Pet. 4, citing “Norfolk Southern Tops CSX’s Bid for Conrail; \$9.1 Billion Offer is Likely to Start a Messy Battle,” *The Washington Post*, October 24, 1996 (Internet version, reproduced at Unions’ Ex. 2). (3rd) (NS/CR)
- “On November 2, 1996 the *Pittsburgh Post Gazette* reported that NS officials had approached Congressman Bud Shuster of Pennsylvania, then Chairman of the House Transportation and Infrastructure Committee, generally assuring him that ‘they would keep the Altoona-area shops intact’; Congressman Shuster was quoted as saying that ‘There have been strong verbal assurances that the shops will remain... at least at the current level’.” Joint Pet. 5, citing “Bud Shuster Vows to Fight to Protect Railroad Jobs,” *Pittsburgh Post-Gazette*, November 2, 1996 (Internet version, reproduced at Unions’ Ex. 3). (3rd) (NS/CR)
- “An *Associated Press* report on December 6, 1996 described an advertisement placed by NS in the *Philadelphia Inquirer* and the *Pittsburgh Post Gazette* and in other papers that ran a headline ‘Where Will Conrail Employees Be If Competition Dies?’ NS Vice President-Public Relations Robert C. Fort was quoted as saying ‘We think we have a clear message to Conrail employees, that they have a much better future in the Norfolk Southern’. According to the *AP*, the advertisement stated that ‘Conrail’s major Hollidaysburg and Altoona shops are within just 70 miles of CSX’s facilities in Cumberland, Md. Redundancies like these could add up to lost jobs ...Norfolk Southern’s system extends and complements Conrail’s system, rather than duplicating it’.” Joint Pet. at 5-6, quoting “Norfolk Southern Appeals to Conrail Employees in Merger Fight,” *The Legal Intelligencer*, December 6, 1996 (internet version appearing at Unions’ Ex. 5). (3rd) (NS/CR)
- “On November 18, 1996, NS placed an advertisement in the *New York Times* addressed ‘To Conrail Constituencies’ and titled ‘You Don’t Have to Be a Conrail Shareholder to Benefit from Norfolk Southern’s Offer’, ‘A Norfolk Southern/Conrail Combination Will Be Better for All of Conrail’s Constituencies’. In that advertisement, NS asserted. [sic] ‘Norfolk Southern is committed to continuing to operate Conrail’s Hollidaysburg Car Shop and its Juniata Locomotive Shop at Altoona, and will promote employment thereWhat has CSX promised? Nothing. And, don’t forget that CSX’s locomotive shops at Cumberland, Maryland are less than 70 miles from Conrail’s Altoona and Hollidaysburg shops.’” Joint Pet. at 5 (quoting “You Don’t Have to Be a Conrail Shareholder to Benefit from Norfolk Southern’s Offer, A Norfolk Southern/Conrail Combination Will Be Better for All of Conrail’s Constituencies,” appearing in *The New York Times*, November 18, 1996, and appearing at Unions’ Ex. 4). (NS/CR).
- “Chairman Geist then referred to a newspaper advertisement that NS ran in eighteen newspapers in cities with ‘significant numbers of Conrail employees’ that urged them to support the NS acquisition over the CSX acquisition. *Id.* at 38 [an example of this ad was reproduced in the Joint Petition at Exhibit 4).” Response at 6 (quoting Chairman Richard A.

Geist, Hearing before the Pennsylvania House Transportation Committee, May 15, 1997 (appearing at Petitioners' Ex. 23 and referencing an ad appearing on November 14, 1996 in *The New York Times*, reproduced in Petitioners' Ex. 4, which did not concern the CSX/NS/Conrail transaction). (NS/CR)

- “Chairman Geist noted that ‘On November 18th ‘96, Norfolk Southern publicly announced that it was committed to operate Conrail's Hollidaysburg Car Shop and the Juniata Locomotive Shop and that it would promote-and I underline the word promote-employment there’....” Response at 6, quoting Chairman Richard A. Geist, Hearing before the Pennsylvania House Transportation Committee, May 15, 1997 (referring to the proposed NS/Conrail transaction, not the CSX/NS/Conrail transaction) (appearing at Petitioners' Ex. 23). (NS/CR)
- “In a statement filed in the Conrail proceeding on October 21, 1997, Thomas J. Ridge, the Governor of the Commonwealth of Pennsylvania, advised that the Commonwealth was supporting the Conrail application because, among other things, of the commitments that had been made regarding investments and other benefits to the Commonwealth. Prominent among these, Governor Ridge noted, were ‘important expansions of Conrail’s Juniata locomotive repair shop and Hollidaysburg car repair shop near Altoona.’ Governor Ridge noted, in particular, that NS had made commitments to ‘invest in [the] Hollidaysburg car repair shop (\$4 million capital improvement).’” Decision No. 186 at 6 (citing PA-8 and attachment 1 thereto, which was superseded by PA-10, which did not refer to Hollidaysburg). (3rd)
- “[W]hen U.S. Representative Bud Shuster (the then Chairman of the Transportation and Infrastructure Committee of the United States House of Representatives) testified at the oral argument held by the Board on June 3, 1998, and expressed his ‘strong support’ for the Conrail application, he indicated that he was ‘very pleased’ that the NS operating plan included ‘a continued and an expanded role’ for the ‘highly productive’ Altoona and Hollidaysburg shops, which he described as being among ‘the crown jewels’ of the Conrail system.” Decision No. 186 at 6 (citing transcript for June 3, 1998, at 25-27 (electronic version)). (3rd)
- “Congressman Bud Shuster . . . [noted] that he had been given personal assurances by NSR that the Hollidaysburg shops would be retained”. Joint Pet. at 12-13 (citing the Declaration of Thomas D. Lutton, who in turn cites a periodical article, “Angering Shuster,” *Traffic World*, November 27, 2000, not Congressman Shuster). (3rd) (post-89)
- “In his remarks Congressman Shuster stated that he had made a ‘deal’ with the CEOs of CSX and NS that Norfolk ‘Southern would do several things for our shops here’, including ‘Investments of \$67 million in capital improvements would be made to the Juniata and Sam-Ray [Hollidaysburg Shop]. Employment in the shops would be increased by at least 178 jobs’.” Response at 4 (quoting Transcripts of news clips airing on June 1, 1999 (“1999 News Clips”), page 2, appearing as Unions’ Ex. 22) (3rd) (post-89) (OTR)

- “Congressman Shuster also noted ‘And how important is Altoona going to be to Norfolk Southern? Well, in talking about Norfolk Southern being in 21 states, we’re talking about 21,600 miles of track, an awful lot of places to be; but the top man, the chairman of Norfolk Southern, David Goode, where is he today on this historic takeover? Of 21 different states where he could be, countless cities where he could be, he’s here in Altoona.’” Response at 4-5 (quoting 1999 News Clips, pages 3-4). **(3rd) (post-89) (OTR)**
- “When NS’ rebuttal to opponents of the transaction characterized Governor Ridge as supporting approval of the transaction without conditions, the Chairmen of the Pennsylvania Transportation Committees responded (Brief at 8-9) by noting that although the Governor did not specifically ask that conditions be imposed, he referred to NS’ representations about the Altoona shops and other Pennsylvania facilities as ‘commitments’ that he expected NS to ‘adhere to’.” Response at 23 (failing to note that Governor Ridge failed to take exception to the characterization). **(3rd)**
- “[T]he Comments filed by the Commonwealth and Governor Ridge in the CSX/NS-Conrail proceedings (at 4 and Attachment 1) referred to numerous meetings between the Applicants and identified NS’ statements regarding ‘expansions of Conrail’s Juniata locomotive repair shop and Hollidaysburg car repair shop near Altoona’ and its investment of \$4 million in the HCS as ‘commitments regarding investments and other benefits to the Commonwealth’, and then said that ‘[w]e expect the Applicants to adhere to all commitments made in the Control Application.’” Response at 23 (quoting PA-8, which was superceded by PA-10, a pleading and settlement agreement that did not refer to Hollidaysburg). **(3rd)**
- “Additionally, the Comments of the Transportation Committees’ Chairmen in the Conrail Transaction Oversight proceedings, noted that, NS ‘committed to undertake’ certain capital investments including the \$4 million in capital improvements at the HCS, but that NS had not reported on the status of those investments in its report for the Oversight proceedings. NS’ Reply in those proceedings (at 55), NS did not deny that it had committed to the investment, but merely asserted that its needs were such that it had ‘developed certain projects in the Commonwealth ahead of those cited by the Committee [sic]’.” Response at 24. **(3rd) (post-89) (OTR)**
- “On August 31, 1998 CSXT, NSR and Conrail served a *New York Dock* notice on TWU and the Brotherhood Railway Carmen/TCU (‘BRC’) pursuant to *Decision No. 89*. In their notice, the Carriers proposed to divide Conrail’s Carmen among CSXT, NSR and residual Conrail and place all acquired Conrail facilities and lines to be operated by NSR under an NSR collective bargaining agreement. Declaration of Thomas D. Lutton. Unions’ Ex. 16 ¶3. The Carriers’ proposal as to the Carmen craft, and the Carriers’ description of NSR’s plans for consolidation of heavy repair and program car work at Hollidaysburg under an NSR collective bargaining agreement were consistent with implementing agreements that were entered with others of the Unions covering the other Shop Crafts. *See e.g.* Declaration of

George J. Francisco, Jr. Unions' Ex. 17 ¶3." Joint Pet. at 10-11 (citing Unions' Exs. 16 and 17) (footnote omitted).³ (3rd) (post-89).

- "In one of the Carriers' pre-hearing submissions [in the post-Decision No. 89 implementing agreement arbitrations,] NSR stated:

NSR intends to change its heavy car repair operations to make the best use of its existing and allocated facilities. Conrail's Hollidaysburg car shop, which currently performs program repair, freight car reclamation, and new car fabrication for Conrail's fleet of 46,500 cars, will be operated exclusively by NSR. To maximize efficiency in the performance of heavy car repair after Day One, NSR will (i) consolidate most program car repair work for the integrated NSR car fleet at Hollidaysburg; (ii) consolidate freight car reclamation work at its car shop in Roanoke; and (iii) perform most rebodying, new car construction, and component fabrication work for the expanded system at Roanoke -including the fabrication of component parts to support the program car repair work at Hollidaysburg. Vittur Decl. ¶ 38."

Joint Pet. at 11 (quoting Unions' Ex. 18). (post-89).

- "Additionally, in the depositions of the Applicants' Labor Relations Vice Presidents, NS Vice President Labor Relations Robert Spenski repeatedly said that work would be 'consolidated into' Hollidaysburg." Joint Pet. at 10 (quoting Unions' Ex. 15, which consists of 12 pages excerpted from Mr. Spenski's deposition, in which Mr. Spenski discusses consolidation only 4 times, in each case in direct response to a question from TCU counsel about consolidation of work at Hollidaysburg).
- "NS CEO David Goode spoke after the remarks of Congressman Shuster. Mr. Goode stated that NS would not be where it was 'without the support not only of all of the people here but of the people standing on this podium with me today... that would not have happened without the support of the people surrounding me on this platform, and it wouldn't have happened without the support of all of you'. Tr. at 5. Mr. Goode then stated 'And Chairman Shuster has read off an impressive list of the commitments that Norfolk Southern has made. 'This is going to be the finest, the heart of the Norfolk Southern system in many ways.' The finest shops that we can create in railroading today.' Tr. at 6, emphasis added. Mr. Goode further said 'I want people to look back 100 years from now and say that is a tradition that has continued, and Altoona is still the heart of railroading in the world'. Tr. at 7, emphasis added." Response at 5 (quoting Transcripts of news clips airing on June 1, 1999, page 7, appearing as Unions' Ex. 22). (post-89) (OTR)

³ NS notes that both declarants, Messrs. Lutton and Francisco, in the same paragraphs cited by Petitioners, discuss the implementing agreements that provided for consolidation of facilities not contemplated at the time of the execution of the agreement.

- “In April 12, 2001 written testimony that was also read to the Pennsylvania House Transportation Committee, NS Resident Vice President Public Affairs Richard Timmons suggested that NS’ plans and commitments were predicated on expectations based on the ‘U.S. economy during 1998-1999’,⁴] that NSR has been taking retrenchment actions like the closing of the HCS because of the ‘U.S. economic downturn over the past eight months’ and that ‘we made forecasts that turned out to be exaggerated and that cannot now be sustained in this current economic environment’.” Response at 6-7 (quoting Petitioners’ Ex. 24). **(post-89) (OTR)**
- “Throughout the course of the Conrail proceeding, NS indicated on numerous occasions that it was committed to operating the Hollidaysburg Car Shops. See, e.g., the joint petition, Ex. 10 at 1 (in this NS press release, which was apparently issued at or about the time the Conrail application was filed in June 1997, NS indicated that it ‘is committed to operate Conrail’s Hollidaysburg car shop and Juniata locomotive shop, and will promote employment there’). See also the joint petition, Ex. 11 at 2 (in this NS ‘fact sheet,’ which also appears to have been issued at or about the time the Conrail application was filed, NS indicated that it intended to make an ‘[e]stimated \$4 million in capital improvements at [the] Hollidaysburg shop’).” Decision No. 186 at 5. **(OTR)**.
- “NSR CEO David Goode testified before a Subcommittee of the Senate Committee on Appropriations and gave assurances that NSR would keep the shop and in fact would need it.” Joint Pet. at 3 (citing Mr. Goode’s inquiry as to his “expectation” as to the Shops, S. Hrg. 105-514, Hearing before a Subcommittee of the Committee on Appropriations, United States Senate, Conrail Merger Implications, at 49, appearing at Unions’ Ex. 6). **(OTR)**.
- “On March 20, 1997, a Subcommittee of the Senate Committee on Appropriations held hearings on the then recently announced joint CSX/NS acquisition of control and division of Conrail. One witness at the hearing was NSR CEO David Goode who testified that NSR would retain the Hollidaysburg shop and indeed would expand it. An exchange between Mr. Goode and Senator Arlen Specter went as follows:

Senator Specter. OK. Moving east to the Altoona shops, the locomotive repair shops, and Hollidaysburg, again, Mr. Goode, what would your expectation be there as to the employment situation?

Mr. Goode. Well, we have looked, as you know, earlier this week at those shops, we had some knowledge of them earlier than that. John and I had a very good tour of the shops, they are excellent facilities.

⁴ Mr. Timmons stated that: “From the period 1997 through 1999, railroad analysts, our service design personnel, marketing teams, the transportation departments, and Wall Street were optimistic about the future growth and great economic potential of this new northeastern franchise. * * * No one to my knowledge had other than the highest expectations for our new system and our future prosperity as reflected by the U.S. economy during 1998 and 1999.” Timmons’ Statement, page 2, reproduced in Petitioners’ Exhibit 24.

Since Norfolk Southern will be the likely beneficiary of the lines and of those shops, we do not have nearby shop facilities, as CSX did in Cumberland, so we are in a position of not only being able to give assurances that we will keep those shops and keep them operating, we are going to need them.”

Joint Pet. at 6 (quoting S. Hrg. 105-514, Hearing before a Subcommittee of the Committee on Appropriations, United States Senate, Conrail Merger Implications, at 49, appearing at Unions’ Ex. 6). (OTR).

- “In a piece entitled ‘The New Norfolk Southern The Best Choice For Pennsylvania’, NSR stated: ‘Because Conrail and Norfolk Southern operations do not overlap in Pennsylvania, most Conrail operating employees can count on working for Norfolk Southern or CSXT. Norfolk Southern is committed to operate Conrail’s Hollidaysburg car shop and Juniata locomotive shop and will promote employment there’.” Joint Pet. at 9 (quoting an internet press release, appearing at Unions’ Ex. 10). (OTR).
- “On May 15, 1997, then NS Resident Vice President Public Affairs M. Patrick McCune testified before the Pennsylvania House Transportation Committee about the effects of the transaction on Conrail employees in Altoona. He stated that ‘We intend to operate these shops at the same level that Conrail utilizes them today. We then hope to grow the maintenance business at those shops to the maximum utilization possible.’ Transcript of McCune Testimony (Petitioners’ Ex. 23) at 16. Chairman Geist then asked about the Juniata Locomotive Shop and the HCS and Mr. McCune stated: ‘Mr. Chairman, I mean, I’m prepared to tell you that we will operate those shops at the same level that Conrail presently utilizes those shops and we think that the addition of Norfolk Southern as the new owner of those shops will bring additional opportunities for growth at both Juniata and the Hollidaysburg shops’. *Id.* at 25. Chairman Geist noted that ‘On November 18th ‘96, Norfolk Southern publicly announced that it was committed to operate Conrail’s Hollidaysburg Car Shop and the Juniata Locomotive Shop and that it would promote-and I underline the word promote-employment there’^[3] (*id.*) and he asked if development of the Operating Plan had indicated any ‘redundancies or duplication of facilities that would result in reduction of employment at Hollidaysburg or Juniata Shops. *Id.* at 36. Mr. McCune responded that there were far less duplications, far less redundant assets, far less redundant lines with our proposed merger and our proposed plan than there was in the proposed CSX/Conrail acquisition plans that was unveiled in October of 1996’.”^[6] Response at 5-6 (quoting NS

⁵ Following Chairman Geist’s display of the NS/Conrail advertisement, Geist actually asked whether there was any incentive for CSX to continue to send cars to Hollidaysburg, to which Mr. McCune responded: Mr. McCune: “Well, I don’t know if we can force CSX to take advantage of the incentives; but I think the economic incentives to CSXT are legitimate and real and offer them real incentives for them to use the shops.” Transcript at page 25.

⁶ Mr. McCune was actually responding to a different question than posed by petitioners in the text. Mr. McCune stated: “Commenting on the first part of your question, I believe you (continued...) ”

Resident Vice President of Public Affairs, M. Patric McCune, Hearing before the Pennsylvania House Transportation Committee, appearing at Petitioners' Ex. 23). (OTR)

- Chairman Geist then asked 'May we assume from the publication that Norfolk Southern does not believe that the Hollidaysburg and Juniata repair facilities duplicate or create redundancy with respect to the Roanoke and -facilities[sic]' and Mr. McCune answered: 'I hope I've answered that, Mr. Chairman. We see no duplications and no redundancy and no threat.' *Id.* at 39." Response at 5 (quoting NS Resident Vice President of Public Affairs, M. Patrick McCune, Hearing before the Pennsylvania House Transportation Committee, May 15, 1997, at 16 (referring to the need to grow insourcing and the size of the NS-owned rail fleet) appearing at Petitioners' Ex. 23). (OTR).
- "After NS and the Commonwealth entered the agreement described in the Comments, and after the Comments were filed, NS issued a press release trumpeting Pennsylvania's support for the Application, and noting that Pennsylvania's support was based on a number of factors, including 'construction, expansion or upgrading of repair shops, intermodal facilities and other facilities.'" Response at 23 (quoting an internet press release appearing at Petitioners' Exhibit 31 and referring to PA-8 (which discussed material handling improvements at Hollidaysburg and which was later superseded by PA-10, which did not refer to Hollidaysburg at all.)) (OTR).

(...continued)

asked why is Norfolk Southern a benefit for Conrail, its system and its employees than the CSX proposed merger. And I think the Chairman --" Chairman Geist said: "That's correct." Mr. McCune then completed his answer: "—answered it later on in his statement that if you overlap a map of the current Norfolk Southern System, the current Conrail System, that it's an end-to-end fit. And you will find that there were far less duplications, far less redundant assets, far less redundant lines with our proposed merger and our proposed plan than there was in the proposed CSX/Conrail acquisition plan that was unveiled in October of 1996." Transcript at 36-37.

EXHIBIT 2

Verified Statement of David L. Veron

VERIFIED STATEMENT OF DAVID L. VERON

My name is David L. Veron. I am Director Insourcing, of Norfolk Southern Corporation ("NS"). I am based in Altoona, PA. I am submitting this statement in support of Norfolk Southern's response to the Petition filed on March 28, 2001 in Finance Docket No. 33388 by certain unions and the Commonwealth of Pennsylvania.

Personal Background

In my position as Director Insourcing, I am in charge of all of efforts to obtain business from other railroads and other companies (known as "insourcing") for all NS mechanical facilities. I have held that position since July 1999, shortly after NS began operating its portion of Conrail. I have worked for NS and its predecessors since 1974, when I was hired by the Southern Railway as Storehouseman-Material Management in Southern's diesel shop in Chattanooga, TN. I have worked for Southern and NS continuously since that time.

I am very familiar with the history of the Hollidaysburg car repair shops (the "Shops") and particularly with NS's operation of those Shops after June 1, 1999 ("Day One" or "Split Date") and its substantial efforts to develop business for the Shops, which I will describe below. As I will also discuss, many of the assertions made by Mr. T.D. Lutton in support of the petition regarding supposed prospective business for the Shops are simply incorrect, including his claim that the Shops make a profit for NS. Far from making a profit, the Hollidaysburg Shops in the year 2000 operated at a loss of nearly \$7 million, as explained in the separate statement of Robert Belvin.

Description of Hollidaysburg Shops

The Pennsylvania Railroad built the Hollidaysburg Shops in 1954-1955, nearly fifty years ago. The Shops are among the largest railroad car facilities in the world. They consist of over

three-quarters of a million square feet of enclosed shop and car production space sitting on over 360 acres of land. The building housing the Shops is over one-half mile long and at points it is nearly 330 feet wide. The building contains four main tracks over 3,000 feet long, 12 overhead cranes, and three paint and blast facilities. Up to 3,500 rail cars can be stored at the Shops at any one time. There are over 65 miles of rail tracks in the main building and elsewhere throughout the property.

During the period that the Pennsylvania Railroad had control of the Shops – from construction to the February 1968 consolidation of the railroad with the old New York Central into Penn Central – it repaired over 61,000 existing cars and constructed nearly 40,000 new cars at the Shops. (This amounted to an average of over 8,300 cars for repair and/or construction per year, not counting 1955 – the year the Shops first came on line). The Shops served as the primary Pennsylvania Railroad new freight car construction, rebuild and heavy repair facility.

During the 8 years the Shops were under the control of the Penn Central, it repaired over 73,000 cars and constructed over 7,000 new cars at the Shops. (This amounted to an average of over 10,100 cars per year).

Conrail took over the Shops on April 1, 1976. From that time until “Split Date” – June 1, 1999 – when NS acquired the use of the Shops, over 132,000 cars were repaired and over 5,700 cars were constructed at the Shops. At first, Conrail’s use of the Shops rivaled that of its predecessors – over 13,000 car repairs in each of 1977 and 1978, for example – but over time Conrail’s use of the Shops dwindled.

NS acquired use of the Shops on June 1, 1999. It is a “Pennsylvania Lines LLC” asset that is operated by NS as a result of the approval granted by the Surface Transportation Board (“STB” or “Board”) of the planned acquisition of control of Conrail by NS and CSX.

NS performs several activities at the car shop at Hollidaysburg, including "Rule 88 rebuilds" (upgrades to AAR car construction standards), wreck work, heavy bad orders, painting, reclamation and fabrication. This type of work is also performed at one or more of the several other shop locations on the NS system that can handle program maintenance,¹ but since Split Date – June 1, 1999 – much of this work has been moved to Hollidaysburg from the other NS shops. Despite that fact, the Shops currently run at less than one-third of capacity, with only one shift working five days per week.

The Shops During Year 2000

As discussed above, the Shops were heavily used during the Pennsylvania and the Penn Central eras. All of the work done at the Shops during those periods was done for the Shop's owners; there was no work performed for others. Much has changed. During year 2000, NS worked on approximately 4,040 cars in the Shops for over a dozen railroads and rail car leasing companies. No new cars were fabricated at the Shops during 2000.

Of the 4,040 cars repaired at the Shops during 2000, 1,838 were repaired for NS itself. Most of these (1,222) were for "light repairs" which I define as a repair that requires 25 or fewer man-hours of work. Only 729 of the cars required "medium repairs" (requiring between 26 and 75 man-hours of work), and only 287 required "heavy repairs" (requiring 76 or more man-hours of work). No outside company sent more than 500 cars to the Shops. The following represents a breakdown of the work performed at the Shops for outside companies:

¹ NS locations capable of handling program repairs are: Bellevue, OH; Birmingham, AL; Columbus, OH; Conway, PA; Elkhart, IN; Macedonia, OH (idled); Decatur, IL; Knoxville, TN; Linwood, NC; Macon, GA; Norfolk, VA; Shaffers Crossing – Roanoke, VA (largely idled); Williamson, WV.

	Heavy Repairs	Medium Repairs	Light Repairs
GATX	33	184	0
First Union	162	0	0
Greenbrier	100	0	84
Reading Blue Mountain & Northern	0	238	0
Rail Trust	155	0	0
CSXT	350	0	77
Winchester Western	0	13	0
Helm Leasing	0	0	20
GE Capital	200	0	0
Various flood damaged cars	0	0	186

Insourcing Efforts at Hollidaysburg

NS obtained much of the "insourcing" work done for others as a result of the substantial efforts of a restructured insourcing team. This team, which I have led since July 1999, has been dedicated to bringing work to Hollidaysburg as well as other facilities.

Having an active marketing insourcing effort dedicated to bringing in work to the Shops was something new to Hollidaysburg. Neither the Pennsylvania Railroad nor the Penn Central performed insourcing work for others at the Shops. Conrail did not itself actively solicit insourcing work for Hollidaysburg. Instead, to the extent an effort was made, it was generally made through a manufacturer's representative, Karol & Associates, which brought in some work for Hollidaysburg. Most of Conrail's car shop insourcing work was largely due to direct contacts from the customers themselves.

When NS contemplated taking over operations at the Shops, it knew that it would have to work to develop insourcing to keep the Shops active. NS believed that it could do so, and to that

end NS devoted additional resources, including creating a position of Manager of Freight Car Sales and Marketing. That position was held by Sam Williams, who reported directly to me, whose sole job was to bring in work to the NS car shops. I think he did an outstanding job of bringing in work to the Shops. Mr. Williams developed and actively worked a contact list of about 100 actual and potential customers.

Additionally, NS created a new division – Thoroughbred Mechanical Services (“TMS”) – which brought together in one division all insourcing efforts and operations throughout the NS car and locomotive shops. TMS developed and ran, at a substantial cost, a series of ads for publication further aimed at developing insourcing. These ads ran for much of the latter half of year 2000 in Progressive Railroading, Railway Age and The Pocket List of Railroad Officials, three mainstay publications in the railroad and rail car industries.

All of the insourcing efforts made by NS and TMS brought in new business – Mr. Lutton discusses many of the resulting contracts in his verified statement -- but, unfortunately, not nearly enough to justify continued operation of the Shops economically. Part of the success of the insourcing efforts resulted from a corporate decision to cut dramatically the rates for work at the facility. At first, NS sought to cover both labor costs and all allocated overhead costs. In order to attract business, however, NS later reduced rates substantially, which helped to bring in additional insourcing work, but the additional revenues still fell far short of covering the fully allocated costs of operating the Shops.

Lutton Declaration

I have reviewed the Declaration of Thomas D. Lutton, submitted with the Petition. Many of his contentions are incorrect or misleading. I will address only a few of them here.

First, Mr. Lutton is misinformed as to work that “would have kept the shops fully operational well into 2002.” Lutton V.S. at 4. For example, he is mistaken that NS had a commitment from Bombardier for the conversion of 250 gondola cars at a cost of \$4.5 million. Lutton V.S. at 4. In fact, NS did have some initial discussions with Bombardier to build and apply a drop-in-trough to 225 gondolas, but Bombardier was willing to spend no more than \$1.9 million on the project, not the \$4.5 million Mr. Lutton claims.

Mr. Lutton also incorrectly claims that NS passed up work on 200 covered hopper cars for Johnstown America at an asserted cost of \$5 million. In fact, in November 2000, NS provided a quote to Johnstown America offering to work on these cars at a price of \$4.675 million. Although we were hopeful that we would bring that work to Hollidaysburg, Johnstown America informed us in February that they would do the work in their own shops.

Mr. Lutton is also mistaken in claiming that NS received a \$1 million commitment from Greenbrier for 1,000 container car covers. Lutton V.S. at 4. NS is not aware of any such proposal from Greenbrier. Nor have we received any proposal from First Union to provide warranty work on 400 gondolas, as Mr. Lutton claims on page 4 of his statement.

We did, however, have discussions with the Department of Defense. Those discussions concerned the possibility that NS would perform preventive maintenance on some of DoD’s car fleet, and we had in fact provided them with a per-hour quote. Unfortunately, the Department of Defense did not contact us again until February 20 of this year – the day before NS announced the closure of the Shops. Even if we had entered into an agreement with the Department of Defense, I seriously doubt that the work would have been worth even close to \$8 million per year. The contemplated arrangement would have been an agreement on price per hour for work done on cars – not an agreement for the repair of a set number of cars.

Mr. Lutton claims that the Finger Lakes Railroad committed to have NS refurbish 20 cars at a price of \$380,000. Lutton V.S. at 4. In fact, this railroad expressed an interest in acquiring from NS an assortment of old cabooses and ballast cars. It wanted Norfolk Southern to then rework them. When we informed the Finger Lakes that we had no such cars for sale, the discussions ended.

Mr. Lutton also complains that NS did not invest \$4 million the NS's operating plan said NS expected to make for various material handling improvements. It is true that NS did not make that investment, but doing so would not, in my judgment, have helped NS to attract any more insourcing work than we were able to attract, and it would not, in my judgment, have had any material affect on the ultimate decision to close the Shops.

Finally, Mr. Lutton claims that the insourcing contracts produced a "profit." This claim is incorrect and completely ignores overhead costs reasonably allocable to the facility. If the Shops were considered a stand-alone facility, then by any reasonable definition of profit and loss, they have not operated at a profit but in fact have operated at a substantial loss since Day One. As I have noted, the Hollidaysburg Shops complex is a huge facility, one of the largest in the world, and since Day One it has been operating at less than one third of its capacity. As explained more fully in the verified statement of Mr. Belvin, on a conservative basis, the Shops lost almost \$7 million last year taking into account overhead costs and the costs and value of the repairs performed on cars in NS' fleet as well as for the insourcing customers.

VERIFICATION

I, David L. Veron, verify under penalty of perjury that I am Director - Insourcing,
that I have read the foregoing document and know its contents, and that the same is true
and correct to the best of my knowledge and belief.

Executed on April 17, 2001.

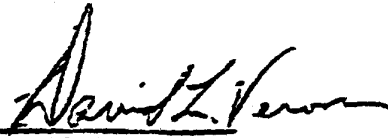

David L. Veron

EXHIBIT 3

Verified Statement of Robert H. Belvin

VERIFIED STATEMENT OF

ROBERT H. BELVIN

My name is Robert H. Belvin. I am submitting this verified statement in support of Norfolk Southern's response to the Petition several unions and the Commonwealth of Pennsylvania filed on March 28, 2001, in Finance Docket No. 33388. Specifically, I will address the claim found in the Declaration of TWU Local 2017 President T. D. Lutton, designated as "Union's Exhibit No. 16" to that Petition, that implies that the Hollidaysburg Shops are profitable. In my statement, I will demonstrate that this simply is not correct, and that the Shops, in fact, cost Norfolk Southern a significant amount to keep open.

I received my B.S. in Business Administration in 1974 from University of North Carolina – Chapel Hill, and my Masters of Business Administration from The College of William and Mary in Williamsburg, Virginia in 1976. I became a Certified Public Accountant in 1990. I began my career with Norfolk Southern nearly 25 years ago in the Engineering – Maintenance of Way – Budgeting and Planning section of the Financial Planning Department. I spent 12 years in the Cost Department. When I left that department, my title was Manager – Profit Analysis. I have held my current position of Manager – Budget Planning and Operations since March 1, 2000.

In his verified statement, Mr. Lutton discusses several contracts for work that Norfolk Southern performs for others at the Hollidaysburg Shops. (This work is commonly referred to as "insourcing" work.) He then makes the unsupported claim that this work "produced a net profit for NSR in an amount as high as \$1 million." If by this claim Mr. Lutton is implying that the Hollidaysburg Shops made a profit in calendar year

2000 as a result of the insourcing work Norfolk Southern was able to bring to the shops, then this is incorrect and completely ignores many of the costs reasonably allocable to the facility.

If the Hollidaysburg shops were considered a stand-alone facility, by any reasonable definition of profit and loss, they have not operated at a profit. In fact the shops have operated at a substantial loss since Day One. For year 2000, the only year for which I have complete numbers, they operated at a loss of at least \$6,824,211. (As I explain below, this is a very conservative figure.)

Mr. Lutton may have looked at whether the insourcing work netted for Norfolk Southern more than the marginal cost of producing that work. As can be seen in the attached statement, Exhibit 1, that clearly is the case. But from that fact no one can reasonably state or imply that the Hollidaysburg Shops are "profitable". One also must look at the cost of producing the work performed for Norfolk Southern at the Shops, at the general direct costs required to maintain the shops but not allocable to a particular project, and, on the revenue side, the value of the work done on the Norfolk Southern fleet.

I put together a profit/loss statement, which I attach hereto as Exhibit 1. I was very conservative in my calculations. For example, Pennsylvania Lines LLC ("PRR") actually owns the Hollidaysburg Shops, and Norfolk Southern only operates them. Norfolk Southern pays to PRR a fair market rental for the PRR lines and facilities it uses, including shops. The portion of this rental payment reasonably allocable to the Hollidaysburg Shops is over \$500,000. I did not include that expense in Exhibit 1. The bottom line in Exhibit 1 is \$6,824,211 in losses for calendar year 2000.

With only a few exceptions, Exhibit 1 is fairly self-explanatory. The first section sets forth revenues from insourcing sales together with the cost (labor, material and other expenses) required to produce these revenues.

The second section sets forth the labor costs for employees at the shops. (I note that this does not include all the wages for work associated with the shops – such as the wages and fringes for the Director Insourcing, David Veron, and those working for him.) In this section are two line items that should be noted: 1) “Capital programs” and 2) “Insourcing projects”. These two items are costs that produce a directly associated “revenue.”¹ As a result, they are also counted as revenues under “Billable, Insourcing and Capital Program Work in Process Credits.”

The next section sets forth the costs for materials used at the shops. Some of the material reflected in this section was used during year 2000 to produce components and other items that are in turn returned to inventory. Therefore, the value of that produced inventory (in labor, material and other expenses required to produce this inventory) is also included as revenue under “Inventory Credit.”

The next section sets forth the costs for other expenses directly associated with the Shops. The “other expenses” directly associated with insourcing projects is added back in under “Insourcing Work in Process Credits,” because eventually that will be recouped from others.

¹ The costs set forth in “Capital programs” will result in a corresponding increase in the value of the capital items produced. The costs set forth in “Insourcing projects” are costs for insourcing projects in process that will eventually be recouped from others.

In the line entitled "Work performed on NS fleet", I add back in the value of the work done at the Hollidaysburg Shops on the Norfolk Southern fleet. I understand that Hollidaysburg Shops employees spent 130,860.87 hours working on the Norfolk Southern fleet during year 2000. This produced a "value" of \$9,106,617, using the AAR billing rate (I am told that for 2000 the rate was \$69.59 per hour). I used the AAR billing rate in order to be conservative. This is higher than the per-hour rates that Norfolk Southern negotiated for all of the year 2000 insourcing contracts reflected in the Exhibit.

This means that the work performed on the Norfolk Southern fleet cost \$9,477,980 more to produce than the value received, when one assigns to that Norfolk Southern fleet work all of the costs of the shops not allocated to the insourcing effort. The insourcing work contributed \$2,653,769 to the bottom line. In sum, netting out all of the costs and all of the revenues, Norfolk Southern lost \$6,824,211 during year 2000 by operating the Hollidaysburg shops, despite the substantial insourcing efforts.

VERIFICATION

I, Robert H. Belvin, verify under penalty of perjury that I am Manager - Budget Planning and Operations, that I have read the foregoing document and know its contents, and that the same is true and correct to the best of my knowledge and belief.

Executed on April 17, 2001.


Robert H. Belvin

Hollidaysburg

Year 2000

Insourcing Sales	\$ 10,267,266
Insourcing Cost of Goods Sold	(7,613,497)
Insourcing Contribution	<u>2,653,769</u>
Labor:	
Car expense programs	(236,779)
Billable (including fringe allocation)	(3,595)
Shop expense	(3,431,020)
Shop machinery repair	(1,182,905)
Freight car repairs	(2,474,963)
Inventory production	(661,818)
Capital programs (including fringe allocation)	(1,890,163)
Insourcing projects (including fringe allocation)	(4,144,472)
All other labor	(3,321,660)
Fringe allocation (excl. Capital, Insourcing & Billable)	(6,785,339)
Subtotal	<u>(24,132,714)</u>
Billable, Insourcing and Capital Program Work in Process Credits	6,038,230
Total Expense Labor	<u>(18,094,484)</u>
Material:	
Car expense programs	(479,326)
Billable	-
Shop expense	(198,055)
Shop machinery repair	(408,094)
Freight car repairs	(1,786,802)
Inventory production	(3,747,816)
Capital programs (1)	-
Insourcing projects	(6,463,595)
All other material	(726,310)
Subtotal	<u>(13,809,998)</u>
Insourcing Work in Process Credits	6,463,595
Inventory credit	6,400,104
Total Expense Material	<u>(946,299)</u>
Other Expenses:	
Insourcing projects	(95,514)
Freight car repair	(21)
Shop expense	(80,242)
Shop machinery repair	(12,278)
All other expenses	(1,334,753)
Subtotal	<u>(1,522,808)</u>
Insourcing Work in Process Credits	95,514
Total Expense Other	<u>(1,427,294)</u>
Overhead expenses allocated to Insourcing Cost of Goods Sold	1,883,480
Work performed on NS fleet (2)	<u>9,106,617</u>
Total Pre-tax Income (Expense)	<u>\$ (6,824,211)</u>

(1) Capital material is not captured by shop location

(2) Valued at AAR billing rates for the year 2000

EXHIBIT 4

Philadelphia Inquirer Article, June 21, 2001 regarding
\$240 million shipbuilding contract for Kvaerner Shipping
Co.'s Philadelphia Shipyard.

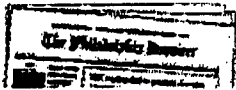


We Have Them All...

-- Select a Location --



Subscribe to the Inquirer



The Inquirer

Search Today >

Today's Inquirer

Home

Front Page >

Sports

Region

Philadelphia

Pennsylvania

South Jersey

US & World

Opinion

Business

Daily Magazine

Obituaries

Classifieds

Photo Frames

Previous 7 Days

of The Inquirer

Weekly Sections

Books

Travel

Arts

Real Estate

Sunday Review

Automotive

Health & Science

Food

Tech. Life

Home & Design

Weekend

Sunday Magazine

Special Sections

The 2000 Census

NEW | Reading,

Writing and Race

NEW | It's Making

Us Fat

Battered Cargo

How AIDS Changed

America

Their Own Acre

Six Hard Minutes

Killing Pablo

Report Card on the

Schools

The Price of Winning

Beyond the Flames

African Odyssey

Complete list

of special sections

Contacting

The Inquirer

Front Page

Thursday, June 21, 2001

E-mail the story | Plain-text for printing

Go to: SMTWTFS

Kvaerner yard's first deal near: Four tankers for \$240 million

'Now companies can see ... the shipyard is here to stay.'

RELATED LINKS

• From yesterday's Inquirer | Shipyard marks a milestone, but still has a few tests ahead

By Henry J. Holcomb
INQUIRER STAFF WRITER

The Kvaerner Philadelphia Shipyard signed a preliminary agreement yesterday to build four tanker ships for \$240 million, giving a long-awaited boost to the revival of shipbuilding in Philadelphia.



Kvaerner Philadelphia Shipyard employees celebrate news that four ships may be ordered in a \$240 million agreement. (AP)

The deal came together at the last minute, after intense transatlantic negotiations that concluded while Gov. Ridge was waiting to celebrate the recently completed shipyard's grand opening.

The purchaser is Keystone Shipping Co., of Bala Cynwyd, one of the region's oldest maritime enterprises.

Robert Kurz, president of Keystone Shipping, and Ron McAlear, president of the shipyard, said they were confident that the preliminary agreement would soon become a firm ship order.

If it does, it would be the first ship order placed with the Kvaerner Philadelphia Shipyard, built on the site of the 195-year-old Navy shipyard that closed in 1995. It would also be the largest civilian ship order at an American shipyard in recent years.

Declaring that "shipbuilding has been revived in Philadelphia," Ridge announced the pending ship order yesterday at the grand opening.

Mayor Street joined the governor in hailing the keel-laying and preliminary ship order as "a great day for Philadelphia."

Ridge said the pending Keystone order would make it easier to entice companies to move to the region and become long-term Kvaerner suppliers and subcontractors.

ENTER TO WIN

The
Grand
Prize

Click Here!

Summer sale

mart

The Newsroom
Subscribe Online
On Vacation?
Delivery Complaints
Inquirer Store

"Now companies can see that the shipyard is here to stay," Ridge said in an interview after the ceremony.

Suppliers and subcontractors are expected to create the lion's share of the jobs generated by the shipyard, which was launched in 1997 with \$400 million in public construction and worker-training funds.

The yard now employs 725 workers, and is building up to 1,000 by next spring. But Ridge said its overall impact, when fully operational, would be 7,000 to 8,000 jobs.

With its modern European technology and manufacturing processes, the yard "blends the new economy with the traditional economy," Ridge said.

The agreement signed yesterday allows Keystone to firm up the necessary loan guarantees for 87.5 percent of the ships' cost from the U.S. Maritime Administration, a unit of the Department of Transportation. Kurz said the ships would require no other direct government grants or subsidies.

The financial package could include a small investment from a public economic development fund, which would be paid back by revenues earned by the ships.

McAlear and Kurz declined to reveal financial details of the agreement, calling it proprietary business information. Both would say only that it was good for both Kvaerner and Keystone.

The shipyard's 50-person engineering and design staff will soon begin work on the Keystone tankers, and the first vessel could be under construction next spring.

Ridge presided at a keel-laying ceremony yesterday for the first ship built by the new yard. That container cargo vessel, the first ship being built in the city since 1972, is scheduled to go to sea trials in the fall of next year.

That ship is being built under the 1997 agreement as a training program to acquaint American workers with Kvaerner's European technology. The agreement requires Kvaerner ASA, the Anglo-Norwegian conglomerate that operates the yard, to buy the first two ships if they remain unsold when finished.

Keystone, which was founded more than 70 years ago by Kurz's grandfather, operates 26 American-flagged vessels. Most are tankers, but some are so-called "ro-ro ships," meaning they carry cargo such as trucks and vehicles that can be rolled on and rolled off.

Kurz said the new 46,000-dead-weight-ton tankers would have double hulls, and replace single-hull ships that do not comply with the Oil Pollution Act of 1990, which Congress enacted after the Exxon Valdez oil spill disaster in Alaska.

Keystone has operations on both coasts and in the Gulf of Mexico. It employs about 90 people shore-side plus an additional 50 people for each of its 26 ships, Kurz said.

The company once bought ships from the now-closed Sun Shipbuilding & Dry Dock Co. in Chester. "It is great to have a

viable shipyard in this area again," Kurz said.

Shortly before the Keystone deal was signed, the yard gained another boost to its credibility: It received its International Standards Organization 9001 certificate, which is critical to doing business globally.

Hugh Hutton of Houston, lead assessor for Lloyd's Register Quality Assurance Inc., headed the team that audited the yard's procedures, and recommended that it become the first U.S. shipyard certified under the latest ISO standards.

"We looked at the quality assurance policies, the organization, the lines of authority and responsibility . . . at everything related to assuring quality and making sure the ships built there are going to float right side up," Hutton said in an interview.

The Keystone deal had been the subject of intense negotiations for weeks. The talks stalled for a time, but were revived by Manuel N. Stamatakis, chairman of the Delaware River Port Authority and the governor's lead negotiator on shipyard matters.

Both sides thought they had a deal late Tuesday night. But officials in the London headquarters of the yard's parent corporation, Kvaerner ASA, objected to some provisions, which neither side would disclose.

Negotiations resumed early yesterday morning.

Stamatakis, McAlear and Kurz huddled in McAlear's office in a temporary building at the shipyard. Beard Bale, a London-based Kvaerner lawyer and executive, was in the nearby office of Brian Smith, the yard's vice president for sales development, talking on the phone to London.

Smith shuttled back and forth between the two conversations.

It appeared for a time that the deal - which the governor so badly wanted to announce at the keel-laying ceremony - had stalled again.

Then, minutes before everyone was to depart for the ceremony, where the governor and a crowd were waiting, Smith emerged from McAlear's office - smiling and holding up a pen.

Smith's wife, Ann, there to join him at the ceremony, explained that she gave him that pen last Christmas, soon after he took the job here, "to use for signing the yard's first ship order."

Henry J. Holcomb's e-mail address is hholcomb@phillynews.com.

EXHIBIT 5

CSX/NS-69, "Applicants' Responses To Allied Rail Unions' Second Set Of Interrogatories To Applicants (ARU-11)," pp. 1, 5-6, 12, 18-19.

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

STB FINANCE DOCKET NO. 33388

APPLICANTS' RESPONSES TO
ALLIED RAIL UNIONS'
SECOND SET OF INTERROGATORIES
TO APPLICANTS (ARU-11)

Applicants^{1/} hereby respond to the second set of discovery requests to
Applicants served by the Allied Rail Unions ("ARU" or "Requester").

GENERAL RESPONSES

The following general responses are made with respect to all of the requests
and interrogatories.

1. Applicants will conduct a reasonable search for documents responsive to the
requester's documents requests. Except as objections are noted herein,^{2/} all responsive

^{1/} "Applicants" refers collectively to CSX Corporation and CSX Transportation
(collectively "CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company
(collectively "NS"), and Consolidated Rail Corporation and Conrail Inc. (collectively
"Conrail").

^{2/} Thus, any responses that state that responsive documents are being produced is
subject to the General Objections, so that, for example, any documents subject to attorney-

INTERROGATORIES

Interrogatory No. 142

Identify any planned change as to the craft of the employees who, after consummation of the acquisition of control of Conrail by CSX and NS, will perform the work previously performed by TWU-represented carmen whose jobs will be abolished.

142. Applicants object to this interrogatory as vague and ambiguous. Without waiving that objection, and subject to the General Objections stated above, Applicants respond as follows:

Applicants note that this interrogatory appears to be based on a misconception that the work of abolished positions is somehow assigned to other employees. If the transaction is approved and consummated, there will be changes in the nature of the work to be done on the combined system. In addition, approval of the transaction will allow work to be performed more efficiently, with attendant impacts on the number and locations of jobs.

To the extent any work of the abolished positions remains, it will be performed by appropriate NS, CSX, or Conrail crafts pursuant to the terms of the applicable collective bargaining agreement. However, at this time, Applicants are unable to identify the specific positions to which the work will be assigned.

Interrogatory No. 143

Once CSX discontinues its practice of sending 333 cars per year to the Hollidaysburg shop, what do the Applicants anticipate will be the effect upon TWU-represented carmen at the Hollidaysburg shop?

143. Subject to the General Objections stated above, Applicants respond as follows:

The effect on carmen who will be working under the NS agreements as specified in Volume 3B, Appendix A is not known because it is not known when CSX will discontinue sending 333 cars to Hollidaysburg. Presently, it is anticipated that it will be after three years. Accordingly, NS cannot speculate on the volume of work that will exist if and when CSX discontinues sending these cars to Hollidaysburg. Furthermore, NS cannot speculate on the impact of insourcing or the rate of attrition. See Application, Volume 8C, p. 801-802.

Interrogatory No. 144

Explain the nature of the duties, if any, that Applicants plan for carmen in the SAA's, the number of TWU-represented carmen planned to be assigned to each SAA, the planned locations for their assignments, and the collective bargaining agreements that Applicants believe will be applicable to those employees.

144. Subject to the General Objections stated above, Applicants respond as follows:

Studies were not performed at a level of detail that would distinguish between carmen represented by ARU participants and carmen represented by other organizations. The duties of these employees in the SAA will be consistent with the applicable schedule agreement, recognizing that the Application has delineated changes that will be necessary since certain types of work will be outside the capability of SAA forces after the acquisition. The Conrail agreement will continue to apply to the SAA except as detailed in the Application. The exact locations for the assignments within the SAA's remains to be determined. Currently, the number of positions and planned locations for carmen in the SAA's are as follows:

Dearborn, MI	1
Detroit, MI (Jefferson Dk)	10
Detroit, MI (Livernois Yd)	4
Detroit, MI (North Yd)	22
Detroit, MI (Sterling Yd)	20
Detroit, MI - River Rouge	12
Camden, NJ	15

As to ARU Interrogatory Nos. 4 and 5: Applicants raised initial objections, which ARU did not contest before ALJ Leventhal.

See responses to ARU Interrogatory Nos. 7, 8, 9, 12(c) and 15. As to Interrogatory No. 14, the breakdown of abolishments by carrier is as follows: Conrail - 59; CSX - 0; NS - 148. Applicants anticipate two NS carmen positions will be transferred. These figures include both TCU and TWU represented carmen, inasmuch as the studies did not distinguish between organizations.

Interrogatory No. 151

Identify all project shops on the present Conrail system which will be closed or consolidated with another shop as a result of the Transaction. If the work will be consolidated, identify the location of the consolidated shop.

151. Subject to the General Objections stated above, Applicants respond as follows:

For NS: See the Application, including Applicants' 1996/1997 Labor Impact Exhibit; Volume 3B (p. 326); and the response to ARU Interrogatory No. 127.

For CSX: See response to TCU Interrogatory No. 4(a).

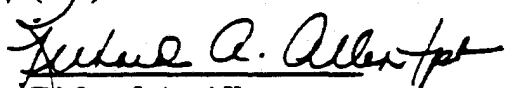
Interrogatory No. 152

CSX states that car inspection activities may be consolidated at Philadelphia, Toledo, East St. Louis, Indianapolis and Danville (Vol. 3A, p.303).

- a. Identify which of these locations will continue car inspection activities after the Transaction, any expansion anticipated at those locations, and which locations will no longer provide car inspection activities after the Transaction.
- b. Specify the effect of the consolidations upon any ARU crafts, identifying by craft and incumbent any positions that will be transferred or abolished.
- c. Identify any Transaction-related public transportation benefit that CSX believes will inure to the public as a result of consolidating the facilities.

James C. Bishop, Jr.
William C. Wooldridge
J. Gary Lane
James L. Howe III
Robert J. Cooney
George A. Aspatore
Roger A. Petersen
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-9241

(757) 629-2838



Richard A. Allen
John V. Edwards
Patricia E. Bruce
Zuckert, Scoutt & Rasenberger LLP
888 Seventeenth Street, N.W.
Suite 600
Washington, D.C. 20006-3939
(202) 298-8660

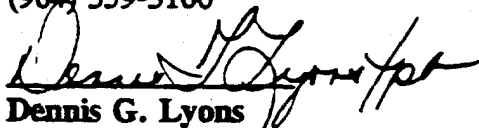
John M. Nannes
Scot B. Hutchins
Skadden, Arps, Slate, Meagher
& Flom LLP
1440 New York Ave., N.W.
Washington, D.C. 20005-2111
(202) 371-7400

Counsel for Norfolk Southern
Corporation and Norfolk Southern
Railway Company

Respectfully submitted,

Mark G. Aron
Peter J. Shudtz
CSX Corporation
One James Center
902 East Cary Street
Richmond, VA 23129
(804) 782-1400

P. Michael Giftos
Paul R. Hitchcock
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-3100

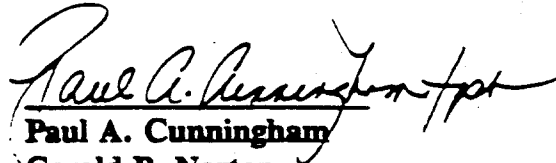


Dennis G. Lyons
Drew A. Harker
Jodi B. Danis
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004
(202) 942-5000

Samuel M. Sipe, Jr.
David H. Coburn
Steptoe & Johnson LLP
1330 Connecticut Avenue
Washington, D.C. 20036
(202) 429-3000

Counsel for CSX Corporation
and CSX Transportation, Inc.

Timothy T. O'Toole
Constance L. Abrams
Consolidated Rail Corporation
Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
(215) 209-4000


Paul A. Cunningham

Gerald P. Norton
Harkins Cunningham
1300 Nineteenth Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 973-7600

Counsel for Conrail Inc. and
Consolidated Rail Corporation

Dated: September 4, 1997

EXHIBIT 6

CSX/NS-44, “Applicants’ Responses To Allied Rail Unions’ First Set Of Interrogatories To Applicants (ARU-7),” pp. 1, 11-12, 78, 80-81, 86-87.

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

STB FINANCE DOCKET NO. 33388

APPLICANTS' RESPONSES TO
ALLIED RAIL UNIONS'
FIRST SET OF INTERROGATORIES
TO APPLICANTS (ARU-7)

Applicants^{1/} hereby respond to the first set of discovery requests to Applicants served by the Allied Rail Unions ("ARU" or "Requester").

GENERAL RESPONSES

The following general responses are made with respect to all of the requests and interrogatories.

1. Applicants will conduct a reasonable search for documents responsive to the requester's documents requests. Except as objections are noted herein,^{2/} all responsive

^{1/} "Applicants" refers to CSX Corporation and CSX Transportation (collectively "CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS"), and Consolidated Rail Corporation and Conrail Inc. (collectively "Conrail").

^{2/} Thus, any responses that state that responsive documents are being produced is subject to the General Objections, so that, for example, any documents subject to attorney-client privilege or the work product doctrine are not being produced.

Conrail agreements, the application of the NS and CSX agreements will, of course, not affect the rates of pay, rules, or working conditions which applied under the Conrail agreements.

Applicants have not analyzed the manner and extent to which each rate of pay, rule or working condition in the Conrail agreements applicable to each craft or class of employees represented by the ARU unions may be affected by applying CSX's agreements.

Furthermore, Applicants object to Interrogatory 8(a) in light of the fact that ARU already possesses the information sought in the interrogatory and it would be no more burdensome for the ARU to obtain the information from their own files than it would be for the Applicants to assemble the information.

8(b). Applicants intend to use the procedures in 49 U.S.C. § 11326 and the New York Dock conditions for the negotiation or arbitration of implementing agreements.

Interrogatory No. 9

Identify all plans of the Applicants to contract out work which is currently being performed by ARU-represented employees of any Applicant railroad.

See objections set forth in CSX/NS-38.

Interrogatory No. 10

State whether the Applicants consider themselves bound by the Operating Plans discussed in Volume 3A and 3B of the Application if the STB approves the Application. If they do not consider themselves to be so bound, explain the extent to which Applicants believe that they will be free to deviate from the proposed Operating Plan, and whether they contend that Section 11321(a) will be applicable to actions taken which are not disclosed in the proposed Operating Plan.

Subject to the General Objections stated above, Applicants respond as follows:

The Operating Plans are best projections which are not binding on the Applicants. Those Plans represent their best efforts to project, on the information available, how their

allocated share of Conrail and the Shared Assets Areas will be operated post-STB approval of the control and related applications. These Plans, however, cannot anticipate all of the changes that may be necessary to operate Conrail's assets in an efficient manner. In addition, as Applicants actually implement their Operating Plans, new and different ways of operation will become apparent. Applicants will also have to adjust their plans to the expectations and needs of shippers. Applicants will have to take into account changes in shipper demands for their services which may occur between the time of the filing of the application and when STB approval is obtained. Finally, some changes to implement efficiencies from combined operations may not become apparent until after CSX and NS have been operating their allocated share of Conrail assets for some time.

Section 11321(a) will be applicable to actions authorized by the STB's control authorization, which were not stated in the Operating Plans. The ICC and STB have never required that all changes be described in control applications or operating plans. The ICC has recognized that not all transactions authorized by control approvals are foreseeable at the time the Application was filed. Thus, the ICC, and now the STB, have broadly defined "transaction" for purposes of the New York Dock conditions to include coordinations which relate to or flow from control authorizations, even if the particular transaction was not described in the Application.

Interrogatory No. 11

Identify all changes on an annual basis in real wages, numbers of employees by crafts or classes identified in the Labor Impact Exhibit and fuels costs experienced by the Applicants since 1980.

See objections set forth in CSX/NS-38.

Interrogatory No. 126

Identify any locomotive or car repair shops or facilities on the present CSX system that CSX anticipates will be closed either as a result of this Transaction or of increasing its work force at Huntington, and explain the basis for closing the facility.

Subject to the General Objections stated above, CSX responds as follows:

None are contemplated at this time.

Interrogatory No. 127

Identify any locomotive or car repair shops or facilities, other than the Pegram, Ft. Wayne, and Enola shops, on the present NS system that NS anticipates will be closed as a result of this Transaction and explain the basis for closing the facility.

Subject to the General Objections stated above, NS responds as follows:

Applicants have not determined whether any other locomotive or car shops or facilities, other than the ones specified in the Operating Plan, will be closed.

Interrogatory No. 128

In connection with NS' assertion (Vol. 3B p. 322) that it will contract out air brake work:

- a. Explain the basis for contracting out air brake work.
- b. State whether NS believes that it would impede or interfere with the Transaction if the approval of the Transaction were conditioned on the requirement that no contractors may be utilized for boilermaker, electrical, laborer, or sheet metal work unless all NS and Conrail employees who are members of the respective craft are working on the NS system or for PRR. If the answer is yes, explain the basis for that belief.

Subject to the General Objections stated above, NS responds as follows:

- a. The current practice on NS is for the testing and cleaning of air brake valves to be performed at Chattanooga and by contractors. On Conrail, the testing and cleaning is performed at Altoona. NS also purchases rebuilt air brake equipment. The Operating Plan

Interrogatory No. 131

With respect to NS' plans to close a system wheelshop (Vol. 3B p. 63):

- a. Identify which wheelshop NS believes is more likely to be closed.
- b. Explain why NS believes a wheelshop must be closed.
- c. Identify the impact that closing a wheelshop will have upon boilermakers, electricians, laborers, or sheet metal workers, identifying the incumbent of any position that will be abolished or transferred.
- d. Identify any Transaction-related transportation benefits that NS believes will inure to the public as a result of closing a wheelshop.
- e. State whether NS believes that such action is necessary to the Transaction and state the basis for that belief.

Subject to the General Objections stated above, NS responds as follows:

- a. No determination has been made.
- b. The elimination of redundant facilities, excess inventory and the improved utilization of manpower lead to a more efficient transportation system.
- c. This information cannot be provided prior to the determination of which shop is to be closed .
- d. See response to Interrogatory No. 131(b).
- e. See response to Interrogatory No. 131(b) and (d).

Interrogatory No. 132

Once CSX discontinues its practice of sending 333 cars to the Hollidaysburg shop, what do the Applicants anticipate will be the effect upon employees who are boilermakers, laborers, electrical workers, and sheet metal workers at the Hollidaysburg shop?

Subject to the General Objections stated above, NS responds as follows:

It is not now known when CSX will discontinue sending 333 cars to Hollidaysburg. Presently it is anticipated that it will be after three years. Accordingly, NS cannot speculate on the volume of work that will exist if and when CSX discontinues sending these cars to Hollidaysburg. See Volume 8C, p. 801-802.

Interrogatory No. 134

Explain the nature of the duties, if any, that Applicants plan for boilermakers, electricians, laborers, and sheet metal workers in the SAA's, the number of employees in each of those crafts planned to be assigned to each SAA and the planned locations for their assignments, and the collective bargaining agreements that Applicants believe will be applicable to those employees.

Subject to the General Objections stated above, Applicants respond as follows:

The duties of these employees in the SAA will be consistent with the applicable schedule agreement, recognizing that the Application has delineated changes that will be necessary since certain types of work will be outside the capability of SAA forces after the acquisition. The Conrail agreement will continue to apply to the SAA except as detailed in the Application. The exact locations for the assignments within the SAA's remains to be determined. However, currently it is anticipated that the assignments will be as follows:

	<u>State</u>	<u>City (Yard)</u>	<u>JT Needs</u>
Boilermakers	New Jersey	Camden	1
Electricians	Michigan	Dearborn	1
Electricians	Michigan	Detroit	1
Electricians	Michigan	Detroit (Livernois YD)	5
Electricians	Michigan	Detroit (North YD)	1
Electricians	Michigan	Detroit (Sterling YD)	1
Electricians	Michigan	Detroit-River Rouge	3
Electricians	New Jersey	Camden	4
Electricians	New Jersey	Elizabeth	3
Electricians	New Jersey	Elizabethport	5

Respectfully submitted,

James C. Bishop, Jr.
William C. Wooldridge
J. Gary Lane
James L. Howe III
Robert J. Cooney
George A. Aspatore
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-9241
(757) 629-2838

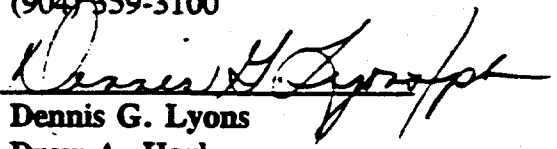

Richard A. Allen
John V. Edwards
Patricia E. Bruce
Zuckert, Scout & Rasenberger LLP
888 Seventeenth Street, N.W.
Suite 600
Washington, D.C. 20006-3939
(202) 298-8660

John M. Nannes
Scot B. Hutchins
Skadden, Arps, Slate, Meagher
& Flom LLP
1440 New York Ave., N.W.
Washington, D.C. 20005-2111
(202) 371-7400

Counsel for Norfolk Southern
Corporation and Norfolk Southern
Railway Company

Mark G. Aron
Peter J. Shudtz
CSX Corporation
One James Center
902 East Cary Street
Richmond, VA 23129
(804) 782-1400

P. Michael Giftos
Paul R. Hitchcock
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-3100


Dennis G. Lyons
Drew A. Harker
Jodi B. Danis
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004
(202) 942-5000

Samuel M. Sipe, Jr.
David H. Coburn
Steptoe & Johnson LLP
1330 Connecticut Avenue
Washington, D.C. 20036
(202) 429-3000

Ronald M. Johnson
Elizabeth Kandravy
Akin, Gump, Strauss, Hauer,
& Feld LLP
1333 New Hampshire Ave, N.W
Washington, D.C. 20036

Counsel for CSX Corporation
and CSX Transportation, Inc.

Timothy T. O'Toole

Constance L. Abrams

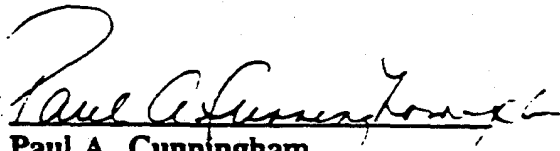
Consolidated Rail Corporation

Two Commerce Square

2001 Market Street

Philadelphia, PA 19103

(215) 209-4000



Paul A. Cunningham

Gerald P. Norton

Harkins Cunningham

1300 Nineteenth Street, N.W.

Suite 600

Washington, D.C. 20036

(202) 973-7600

Counsel for Conrail Inc. and
Consolidated Rail Corporation

Dated: August 20, 1997

EXHIBIT 7

CSX/NS-84, "Applicants' Responses To Allied Rail
Unions' Third Set Of Interrogatories To Applicants
(ARU-16)," pp. 1, 17, 31-32.

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

STB FINANCE DOCKET NO. 33388

APPLICANTS' RESPONSES TO
ALLIED RAIL UNIONS'
THIRD SET OF INTERROGATORIES
TO APPLICANTS (ARU-16)

Applicants^{1/} hereby respond to the third set of discovery requests to
Applicants served by the Allied Rail Unions ("ARU" or "Requester").

GENERAL RESPONSES

The following general responses are made with respect to all of the requests
and interrogatories.

1. Applicants will conduct a reasonable search for documents responsive to the
requester's document requests. Except as objections are noted herein,^{2/} all responsive

^{1/} "Applicants" refers collectively to CSX Corporation and CSX Transportation
(collectively "CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company
(collectively "NS"), and Consolidated Rail Corporation and Conrail Inc. (collectively
"Conrail").

^{2/} Thus, any responses that state that responsive documents are being produced is
subject to the General Objections, so that, for example, any documents subject to attorney-

179. Without waiving any objection, and subject to the General Objections stated above, NS responds as follows:

The Employee Impact Statement does not reflect any disposition of positions resulting from the coordination of wheel shop activities. NS cannot anticipate the impact of such a coordination on employees of any particular wheel shop. The affected positions may be transferred in whole or part to another facility, abolished in whole or part, or retained in whole or part to perform other work.

Interrogatory No. 180

NS has stated that it has not yet determined whether it will close any locomotive or car repair shops or facilities on the present NS or combined NS/Conrail other than those identified in its operating plan.

- a. When does NS expect to make that determination?
- b. In the absence of such a determination, why should the STB be expected to rely on the labor impact statement as an accurate representation of the effect that this Transaction will have on shop craft employees?

180. Without waiving any objection, and subject to the General Objections stated above, NS responds as follows:

- a. After NS acquires its portion of Conrail, business conditions, revenue and traffic growth, efficiency of operations and similar factors will be evaluated to determine future needs for car and locomotive shops. No timetable has been set for this determination.
- b. See response to Interrogatory No. 10.

Interrogatory No. 181

Explain in detail how the public benefits from NS and CSX having a more efficient business operation.

Respectfully submitted,

James C. Bishop, Jr.
William C. Wooldridge
J. Gary Lane
James L. Howe III
Robert J. Cooney
George A. Aspatore
Roger A. Petersen
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-9241
(757) 629-2838



Richard A. Allen
John V. Edwards
Patricia E. Bruce
Zuckert, Scoutt & Rasenberger LLP
888 Seventeenth Street, N.W.
Suite 600
Washington, D.C. 20006-3939
(202) 298-8660

John M. Nannes
Scot B. Hutchins
Skadden, Arps, Slate, Meagher
& Flom LLP
1440 New York Ave., N.W.
Washington, D.C. 20005-2111
(202) 371-7400

Counsel for Norfolk Southern
Corporation and Norfolk Southern
Railway Company

Mark G. Aron
Peter J. Shudtz
CSX Corporation
One James Center
902 East Cary Street
Richmond, VA 23129
(804) 782-1400

P. Michael Giftos
Paul R. Hitchcock
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-3100

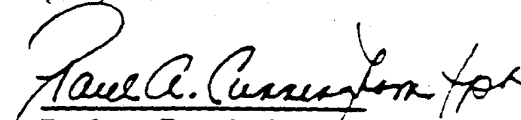


Dennis G. Lyons
Drew A. Harker
Michael Cagliotti
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004
(202) 942-5000

Samuel M. Sipe, Jr.
David H. Coburn
Steptoe & Johnson LLP
1330 Connecticut Avenue
Washington, D.C. 20036
(202) 429-3000

Counsel for CSX Corporation
and CSX Transportation, Inc.

Timothy T. O'Toole
Constance L. Abrams
Consolidated Rail Corporation
Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
(215) 209-4000


Paul A. Cunningham

Gerald P. Norton
Harkins Cunningham
1300 Nineteenth Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 973-7600

Counsel for Conrail Inc. and
Consolidated Rail Corporation

Dated: September 29, 1997

EXHIBIT 8

Transcript of the Deposition of Robert Spenski and
Kenneth Peifer, September 2, 1997,
pp. 1-7, 80-81, 85-86.

1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION
10 HIGHLY CONFIDENTIAL

11 Washington, D.C.

12 Tuesday, September 2, 1997

13 Deposition of ROBERT SPENSKI and
14 KENNETH PEIFER, witnesses herein, called for
15 examination by counsel for the Parties in the
16 above-entitled matter, pursuant to agreement, the
17 witness being duly sworn by MARY GRACE
18 CASTLEBERRY, a Notary Public in and for the
19 District of Columbia, taken at the offices of
20 Arnold & Porter, 555 Twelfth Street, N.W.,
21 Washington, D.C., 20004-1202, at 1:10 p.m.,
22 Tuesday, September 2, 1997, and the proceedings
23 being taken down by Stenotype by MARY GRACE
24 CASTLEBERRY, RPR, and transcribed under her
25 direction.

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO
1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

1 APPEARANCES:

2

3 On behalf of Norfolk Southern Corporation
4 and Norfolk Southern Railway Company:

5 RICHARD A. ALLEN, ESQ.

6 Zuckert, Scoutt & Rasenberger, L.L.P.

7 888 Seventeenth Street, N.W.

8 Washington, D.C. 20006-3959

9 (202) 298-8660

10 and

11 JEFFREY S. BERLIN, ESQ.

12 Sidley & Austin

13 1722 Eye Street, N.W.

14 Washington, D.C. 20006

15 (202) 736-8178

16 and

17 ROGER A. PETERSON, ESQ.

18 MARK D. PERREAULT, ESQ.

19 Norfolk Southern Corporation

20 Three Commercial Place

21 Norfolk, Virginia 23510-2191

22 (757) 629-2657

23

24

25

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO
1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

1 APPEARANCES (Continued):

2
3 On behalf of CSX Corporation and CSX
4 Transportation, Inc.:

5 JEFFREY A. BURT, ESQ.

6 JODI DAVIS, ESQ.

7 Arnold & Porter

8 555 Twelfth Street, N.W.

9 Washington, D.C. 20004-1202

10 (202) 942-5035

11 and

12 RONALD M. JOHNSON, ESQ.

13 Akin, Gump, Strauss, Hauer & Feld

14 1333 New Hampshire Avenue, N.W.

15 Suite 400

16 Washington, D.C. 20036

17 (202) 887-4114

18 and

19 JAMES D. TOMOLA, ESQ.

20 NICHOLAS S. YOVANOVIC, ESQ.

21 CSX Transportation, Inc.

22 500 Water Street, J150

23 Jacksonville, Florida 32202

24 (904) 359-1191

25
ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO
1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

1 APPEARANCES: (Continued)

2

3 On behalf of The Chemical Manufacturers
4 Association, The Commonwealth of
5 Pennsylvania, Governor Thomas J. Ridge, and
6 The Pennsylvania Department of
7 Transportation:

8 SCOTT NASON STONE, ESQ.

9 Patton Boggs, L.L.P.

10 2550 M Street, N.W.

11 Washington, D.C. 20037

12 (202) 457-6335

13

14 On behalf of the International Association
15 of Machinists and United Railway Supervisors
16 Association:

17 DEBRA L. WILLEN, ESQ.

18 PATRICK PLUMMER, ESQ.

19 Guerrieri, Edmond & Clayman, P.C.

20 1331 F Street, N.W.

21 Washington, D.C. 20004

22 (202) 624-7400

23

24

25

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO
1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

1 APPEARANCES (Continued):

2

3 On behalf of the International Brotherhood
4 of Locomotive Engineers:

5 RICHARD S. EDELMAN, ESQ.

6 Suite 210

7 1050 Seventeenth Street, N.W.

8 Washington, D.C. 20036

9 (202) 296-8500

10

11 On behalf of the Transportation
12 Communications Union:

13 MITCHELL KRAUS, ESQ.

14 Transportation Communications Union

15 3 Research Place

16 Rockville, Maryland 20854

17 (301) 948-4910

18

19

20

21

22

23

24

25

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO

1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

1 APPEARANCES (Continued):

2

3 On behalf of the United Transportation
4 Union:

5 DANIEL ELLIOTT, ESQ.

6 CHRISTOPHER TULLY, ESQ.

7 United Transportation Union

8 14600 Detroit Avenue

9 Cleveland, Ohio 44107

10 (210) 228-9400

11

12 ALSO PRESENT:

13 JOHN F. MURPHY

14 GAIL PAYNE

15 Federal Railroad Administration

16 U.S. Department of Transportation

17

18 DARWIN B. KUBASIEWICZ

19 Transportation Communications Union

20

21 EDWARD W. RODZWICZ

22

23 ROBERT W. GODWIN

24

25

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO
1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

C O N T E N T S

THE WITNESS	EXAMINATION BY COUNSEL FOR
ROBERT SPENSKI	TRANSPORTATION COMMUNICATIONS
KENNETH PEIFER	UNION
By Mr. Kraus	11
	UNITED TRANSPORTATION UNION
By Mr. Elliott	112
	INTERNATIONAL ASSOCIATION OF
	MACHINISTS AND UNITED RAILWAY
	SUPERVISORS ASSOCIATION
By Ms. Willen	128

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO
1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

1 A. (By Mr. Spenski) Yes.

2 Q. Where is the work of the 59 carmen
3 positions in Conrail -- what is going to happen
4 to it, if you know?

5 A. (By Mr. Spenski) Much of it will be
6 consolidated into other areas, into the shops in
7 Hollidaysburg.

8 Q. Are there other currently existing
9 Conrail shops that are going to be affected by
10 consolidations into Hollidaysburg?

11 A. (By Mr. Spenski) I don't recall.

12 Q. So you don't know whether any work is
13 being transferred from other Conrail facilities
14 to Hollidaysburg?

15 A. (By Mr. Spenski) I don't recall if any.

16 Q. Mr. Peifer and I discussed that there
17 is going to be a transition period when 333,
18 approximately, cars for CSX are going to be
19 repaired at Hollidaysburg and you're aware of
20 that, correct?

21 A. (By Mr. Spenski) Yes.

22 Q. Is it anticipated at the end of that
23 transition period, that is, when the work --
24 these 330 cars are being repaired at Raceland, is
25 there an anticipation that there will be job

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO
1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

1 abolishments at Hollidaysburg as a result of that
2 transfer work among carmen? I'm now specifically
3 asking about carmen.

4 A. (By Mr. Spenski) It's hard to tell
5 right now whether we'll be -- we'll have to wait
6 and see what happens but it's our anticipation
7 that through attrition and hopefully insourcing
8 from other companies, we might be able to offset.

9 Q. And similarly, would the same answer
10 hold for the transfer of certain locomotive
11 repairs from the Juniata facility, either 65
12 locomotives in a three-year transitional period?

13 A. (By Mr. Spenski) Yes.

14 Q. Is it anticipated that any carmen will
15 be transferring from Hollidaysburg or Juniata to
16 the CSX facilities where this work is going to be
17 transferred at the end of the transitional
18 period?

19 A. (By Mr. Spenski) I do not know that.

20 Q. Mr. Peifer, I may have asked you. I'm
21 sorry to go back and forth. I'll try to avoid
22 it. Is there any anticipation at the end of the
23 transitional period whether any employees will be
24 transferred from Hollidaysburg to Raceland or
25 from Juniata to Waycross or Huntington?

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO
1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

1 I'm not sure I understand, how would the existing
2 Conrail agreement prohibit the training at the
3 McDonough, if I'm pronouncing it correctly,
4 Georgia facility?

5 A. (By Mr. Spenski) They don't provide
6 that the training would be done at an off
7 location like McDonough. The Conrail agreements
8 do not provide that.

9 Q. Do they prohibit that kind of training?

10 A. (By Mr. Spenski) I don't recall.

11 Q. And again, that would be something that
12 the parties presumably could correct through
13 negotiations and agreement, correct?

14 A. (By Mr. Spenski) Hopefully more
15 successfully than we've been able to negotiate
16 assistant agreements, which we have not been able
17 to do for 10 years.

18 Q. Point C talks about efficient equipment
19 repair. I'm wondering if you could give me some
20 examples of what is intended, what those problems
21 are in point C.

22 A. (By Mr. Spenski) I think you'll find
23 one as a classic example where you may have two
24 or more facilities doing the same kind of work
25 and you coordinate the work in one facility so

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO
1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

1 that you don't have three facilities, for
2 example, each working first shift with triple
3 equipment and physical plant and you coordinate
4 into one facility where you have, like we do at
5 Roanoke, where you can use two shifts or three
6 shifts and use the same equipment.

7 Q. Is it the intent of Norfolk Southern to
8 coordinate carmen work, that is, is work being
9 transferred between Conrail facilities and
10 Norfolk Southern facilities?

11 A. (By Mr. Spenski) It's the intention for
12 us, Conrail work or otherwise, that if we can
13 coordinate work more efficiently, we certainly
14 want to do that.

15 Q. Are there plans currently to make
16 transfers of work between the Conrail facilities
17 and Norfolk Southern facilities?

18 A. (By Mr. Spenski) You'll find, for
19 example, there is certain carmen work going up to
20 Hollidaysburg.

21 Q. From Norfolk Southern?

22 A. (By Mr. Spenski) Right.

23 Q. And that's currently a Conrail
24 facility, correct?

25 A. (By Mr. Spenski) Hollidaysburg is, yes.

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO
1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

EXHIBIT 9

Implementing Agreement Between CSX Transportation,
Inc., Norfolk Southern Railway Company, Consolidated
Rail Corporation, and the Brotherhood Railway Carmen
Division-TCU and Transport Workers Union of America
(dated October 16, 1998),
pp. 1-6, 15.

IMPLEMENTING AGREEMENT

BETWEEN

CSX TRANSPORTATION, INC.
and its Railroad Subsidiaries

and

NORFOLK SOUTHERN RAILWAY COMPANY
and its Railroad Subsidiaries

and

CONSOLIDATED RAIL CORPORATION

and

their Employees Represented by

/BROTHERHOOD RAILWAY CARMEN DIVISION - TCU

and

TRANSPORT WORKERS UNION OF AMERICA

WHEREAS, Norfolk Southern Corporation ("NS"), Norfolk Southern Railway Company and its railroad subsidiaries ("NSR"); and CSX Corporation ("CSX") and CSX Transportation, Inc. and its railroad subsidiaries ("CSXT"); ~~and Conrail, Inc. ("CRR") and Consolidated Rail Corporation ("CRC")~~ have filed an application with the Surface Transportation Board ("STB") in Finance Docket No. 33388 seeking approval of acquisition of control by NS and CSX of CRR and CRC, and for the division of the use and operation of CRC's assets by NSR and CSXT (the "transaction");

WHEREAS, in its decision served July 23, 1998 in the proceeding captioned 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, and related proceedings, the STB has imposed the employee protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 360 I.C.C. 60 (1979) ("New York Dock conditions") (copy attached) on all aspects of the Primary Application; Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc., 354 I.C.C. 653 (1980), on related authorization of trackage rights; Oregon Short Line Railroad - Abandonment - Goshen, 360 I.C.C. 91 (1979), on related abandonment authorizations; and Mendocino Coast Railway, Inc. - Lease and Operate - California Western Railway, 360 I.C.C. 653 (1980), on the related authorization of the operations by CSXT or NSR of track leases with other rail carriers to which CRC is a party;

WHEREAS, the parties signatory hereto desire to reach an implementing agreement in satisfaction of Article I, Section 4 of the New York Dock conditions and other aforementioned labor protective conditions or any other protective conditions that have been imposed by the STB in this proceeding to the extent such conditions may be applicable to the transaction and related authorizations;

NOW, THEREFORE, IT IS AGREED:

ARTICLE I

Section 1

Upon seven (7) days' advance written notice by CSXT, NSR and CRC posted on appropriate bulletin boards, with copies to the Organization representatives signatory hereto, after the effective date of the STB's order approving the control transaction, CSXT, NSR and CRC may only effect the following coordinations or rearrangements of forces:

- (a) The allocated CRC locomotives and cars which respectively are to be operated by either CSXT or NSR and will be integrated into either CSXT's or NSR's existing fleets of locomotives and freight cars and the maintenance and repair work of the CSXT and NSR coordinated and integrated fleets will be performed, respectively, at any CSXT or NSR facility notwithstanding the prior railroad ownership of the equipment.
- (b) (1) At common locations on NSR, including those listed below, shop craft seniority will be integrated in accordance with the terms and provisions outlined in Article II and Side Letters attached to this Agreement:

NSR/CRC Points
Buffalo, New York
Chicago, Illinois
Cincinnati, Ohio
Cleveland/Lorain, Ohio
Columbus, Ohio
Fort Wayne, Indiana
Toledo, Ohio

- (2) For common locations on the territories of the former Baltimore and Ohio Railroad and Chesapeake and Ohio Railway, shopcraft seniority will be integrated in accordance with the terms and provisions in Article II and Side Letters attached to this Agreement: Walbridge, Ohio (C&O); Cleveland, Ohio, E. St.

Louis, Illinois, Lima, Ohio and Indianapolis, Indiana (B&O).

(c) The following work may be coordinated or rearranged, in whole or in part, on NSR and allocated CRC properties operated by NSR:

- (1) EMD locomotive overhaul and component rebuild from Roanoke to Juniata Locomotive Works at Altoona
- (2) GE locomotive overhaul and component rebuild from Juniata (Altoona) to Roanoke Shop - Locomotives
- (3) Atlanta (Pegram Shop) locomotive truck overhaul to Altoona
- (4) Rebuilding of air brake equipment from Chattanooga to Altoona
- (5) Wreck repair for heavily damaged locomotives from Roanoke Shop - Locomotives to Altoona
- (6) Painting of locomotives from Chattanooga to Altoona
- (7) All EMD and GE turbocharger work from Juniata (Altoona) to Roanoke Shop - Locomotives
- (8) Machine tool operations and associated fabrication from Altoona to Roanoke
- (9) 92-day inspection of locomotives from Elkhart, Pavonia, and Oak Island to Bellevue
- (10) 92-day inspection of locomotives from Enola to Conway
- (11) Program car repair work from Macedonia, OH, Decatur, IL, and Williamson, WV to Hollidaysburg
- (12) Freight car part reclamation from Hollidaysburg to Roanoke
- (13) Wheel shop consolidation to site selected by NSR
- (14) Office car work from Roanoke to Altoona

(d) The following work may be coordinated or rearranged, in whole or in part, on CSXT and allocated CRC properties operated by CSXT:

- (1) Heavy locomotive work from Selkirk, NY, to Huntington, WV
- (2) Heavy locomotive work from Juniata Locomotive Works at Altoona, PA, to Huntington, WV, and Waycross, GA.
- (3) Freight car work from Hollidaysburg, PA, to Raceland, KY and to _____

any of CSXT's project shops.

- (e) Because after the transaction CRC will have no locomotive heavy repair or periodic maintenance capability, nor the ability to perform substantial or program work on cars, such service will be provided by CSXT or NSR, in accordance with their respective collective bargaining agreements and/or practices, or as directed by the locomotive or car owner. Only fueling, servicing and light and running repairs on locomotives and cars will be provided by CRC consistent with its collective bargaining agreement or practices, when such work is performed in Shared Assets Areas.

Section 2

Future coordinations of work, services or operations, in whole or in part, not now contemplated and/or specified in Section 1, in which no employee is required to relocate and the work force is not reduced at the involved locations as a result of the coordination may be implemented upon fifteen (15) days' written notice by NSR and/or CRC, to the appropriate Organization representatives.

Future coordinations on CSXT will be governed by Side Letter No. 14.

Section 3

Future coordinations of work, services or operations, in whole or in part, not now contemplated and/or specified in Section 1, which involve the dismissal or displacement of any employee(s) or rearrangement of forces may be implemented by NSR and/or CRC, after providing employee(s) and their Organization representatives thirty (30) days' written notice.

Should the Organization desire a conference concerning the

rearrangement of forces that would occur as a result of the announced coordination, upon written request from the Organization prior to the expiration of the aforementioned 30-day notice period, the period of the notice will be extended up to but not exceeding an additional sixty (60) days. The parties shall promptly meet on the matter. If they do not resolve their differences, NSR and/or CRC may implement the announced coordination described in the notice after the expiration of the 60-day period. Either party may invoke arbitration procedures under Article I, Section 4 of the New York Dock conditions provided such action is taken within five (5) days of the termination of conference. There shall be no employees dismissed or transferred pending the agreement or arbitrator's award, nor shall there be a change in carrier's operations, services, facilities, or equipment.

Future coordinations on CSXT will be governed by Side Letter No. 14.

Section 4

Coordinations on NSR and/or CRC in which work is transferred under this agreement and one or more employees are offered the opportunity to follow that work will be effected in the following manner:

(a) By bulletins giving a minimum of fifteen (15) days' written notice, the positions that no longer will be needed at the location from which the work is being transferred (the "transferring location") will be abolished and concurrently therewith the positions that will be established at the location to which the work is being transferred (the "receiving location") will be advertised for a period of seven (7) days to all employees holding regular Carmen assignments at the transferring location.

EXHIBIT 10

Implementing Agreement Between CSX Transportation,
Inc., Norfolk Southern Railway Company, Consolidated
Rail Corporation, and the International Brotherhood of
Boilermakers, Iron Ship Builders, Blacksmiths, Forgers
and Helpers (dated March 25, 1998),
pp. 1-7, 18

IMPLEMENTING AGREEMENT

BETWEEN

CSX TRANSPORTATION, INC.
and its Railroad Subsidiaries

and

NORFOLK SOUTHERN RAILWAY COMPANY
and its Railroad Subsidiaries

and

CONSOLIDATED RAIL CORPORATION

and

their Employees Represented by

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS,
IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS

WHEREAS, Norfolk Southern Corporation ("NS"), Norfolk Southern Railway Company and its railroad subsidiaries ("NSR"); and CSX Corporation ("CSX") and CSX Transportation, Inc. and its railroad subsidiaries ("CSXT"); and Conrail, Inc. ("CRR") and Consolidated Rail Corporation ("CRC") have filed an application with the Surface Transportation Board ("STB") in Finance Docket No. 33388 seeking approval of acquisition of control by NS and CSX of CRR and CRC, and for the division of the use and operation of CRC's assets by NSR and CSXT (the "transaction");

WHEREAS, it is anticipated that the STB will impose the employee protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 360 I.C.C. 60 (1979) ("New York Dock conditions") on all aspects of the Primary Application; Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc., 354 I.C.C. 653 (1980), on related authorization of trackage rights; Oregon Short Line Railroad - Abandonment - Goshen, 360 I.C.C. 91 (1979), on related abandonment authorizations; and Mendocino Coast Railway, Inc., - Lease and Operate - California Western Railway, 360 I.C.C. 653 (1980), on the related authorization of the operations by CSXT or NSR of track leases with other rail carriers to which CRC is a party;

WHEREAS, the parties signatory hereto desire to reach an implementing agreement in satisfaction of Article I, Section 4 of the New York Dock conditions and other aforementioned labor protective conditions or any other protective conditions that may be imposed by the STB in this proceeding to the extent such conditions may be applicable to the transaction and related authorizations;

NOW, THEREFORE, IT IS AGREED:

ARTICLE I

Section 1

Upon seven (7) days' advance written notice by CSXT, NSR and CRC posted on appropriate bulletin boards, with copies to the International Representative signatory hereto, after the effective date of the STB's order approving the control transaction, CSXT, NSR and CRC may effect the following coordinations or rearrangements of forces:

(a) The allocated CRC locomotives and cars which respectively are to be operated by either CSXT or NSR and will be integrated into either CSXT's or NSR's existing fleets of locomotives and freight cars and the maintenance and repair work of the CSXT and NSR coordinated and integrated fleets may be performed, respectively, at any CSXT or NSR facility notwithstanding the prior railroad ownership of the equipment.

(b) (1) At common locations on NSR, including those listed below, shop craft seniority will be integrated in accordance with the terms and provisions outlined in Article II of this Agreement:

NSR/CRC Points

Buffalo, New York
Chicago, Illinois
Cincinnati, Ohio
Cleveland, Ohio
Columbus, Ohio
Elmore/Dickinson, West Virginia

Fort Wayne, Indiana
Lorain, Ohio
Toledo, Ohio

- (2) For common locations on the territories of the former Baltimore and Ohio Railroad and Chesapeake and Ohio Railway, shopcraft seniority will be integrated in accordance with the terms and provisions in Article II of this Agreement.

- (c) The following work may be coordinated or rearranged, in whole or in part, on NSR and allocated CRC properties operated by NSR:

- (1) EMD locomotive overhaul and component rebuild from Roanoke to Juniata Locomotive Works at Altoona
- (2) GE locomotive overhaul and component rebuild from Juniata (Altoona) to Roanoke Shop - Locomotives
- (3) Atlanta locomotive truck overhaul to Altoona
- (4) Rebuilding of air brake equipment from Chattanooga to Altoona
- (5) Wreck repair for heavily damaged locomotives from Roanoke Shop - Locomotives to Altoona
- (6) Painting of locomotives from Chattanooga to Altoona
- (7) All EMD and GE turbocharger work from Juniata (Altoona) to Roanoke Shop - Locomotives
- (8) Machine tool operations and associated fabrication from Altoona to Roanoke
- (9) 92-day inspection of locomotives from Elkhart, Pavonia, and Oak Island to Bellevue
- (10) 92-day inspection of locomotives from Enola to Conway

- (11) Program car repair work from Macedonia, OH, Decatur, IL, and Williamson, WV to Hollidaysburg
- (12) Freight car part reclamation from Hollidaysburg to Roanoke
- (13) Wheel shop consolidation to site selected by NSR
- (14) Office car work from Roanoke to Altoona
- (15) Car shops closed at Fort Wayne and Enola
- (16) Roadway equipment shop at Canton will be closed and the work from the allocated lines to be operated by NSR will be transferred to the NSR Roadway Shop at Charlotte, North Carolina

(d) The following work may be coordinated or rearranged, in whole or in part, on CSXT and allocated CRC properties operated by CSXT:

- (1) Heavy locomotive work from Selkirk, NY, to Huntington, WV
- (2) Heavy locomotive work from Juniata Locomotive Works at Altoona, PA, to Huntington, WV
- (3) Freight car work from Hollidaysburg, PA, to Raceland, KY and to any of CSXT's project shops
- (4) Roadway equipment shop at Canton will be closed and the work from the allocated lines to be operated by CSXT will be transferred to the CSXT Roadway Equipment Shop at Richmond, Virginia

(e) Because after the transaction CRC will have no locomotive heavy repair or periodic maintenance capability, nor the ability to perform substantial or program work on cars, such service will be provided by CSXT or NSR, in accordance with their respective collective bargaining agreements and/or

practices, or as directed by the locomotive or car owner. Only fueling, servicing and light and running repairs on locomotives and cars will be provided by CRC consistent with its collective bargaining agreement or practices, when such work is performed in Shared Assets Areas.

Section 2

Future coordinations of work, services or operations, in whole or in part, not now contemplated and/or specified in Section 1, in which no employee is required to relocate and the work force is not reduced at the involved locations as a result of the coordination may be implemented upon fifteen (15) days' written notice by NSR, CSXT and/or CRC, to the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers ("IBB") International Representative.

Section 3

Future coordinations of work, services or operations, in whole or in part, not now contemplated and/or specified in Section 1, which involve the dismissal or displacement of any employee(s) or rearrangement of forces may be implemented by NSR, CSXT and/or CRC, after providing employee(s) and their International Representative thirty (30) days' written notice.

Should the IBB desire a conference concerning the

rearrangement of forces that would occur as a result of the announced coordination, upon written request from the IBB prior to the expiration of the aforementioned 30-day notice period, the period of the notice will be extended up to but not exceeding an additional sixty (60) days. The parties shall promptly meet on the matter. If they do not resolve their differences, NSR and/or CSXT and/or CRC may implement the announced coordination described in the notice after the expiration of the 60-day period. Either party may invoke arbitration procedures under Article I, Section 4 of the New York Dock conditions provided such action is taken within five (5) days of the termination of conference. There shall be no employees dismissed or transferred pending the agreement or arbitrator's award.

Section 4

Coordinations in which work is transferred under this agreement and one or more employees are offered the opportunity to follow that work will be effected in the following manner:

(a) By bulletins giving a minimum of fifteen (15) days' written notice, the positions that no longer will be needed at the location from which the work is being transferred (the "transferring location") will be abolished and concurrently therewith the positions that will be established at the location to which the work is being transferred (the "receiving location")

CSXT, NSR and CRC of the initial seven (7) days advance written notice to the International Representative of IBB signatory hereto as specified in Article I, Section 1.

Signed at Lexington, Kentucky, this 25th day of March, 1998.

FOR INTERNATIONAL
BROTHERHOOD OF BOILERMAKERS,
IRON SHIP BUILDERS, BLACK-
SMITHS, FORGERS AND HELPERS

Alan M. Scheer
International Representative

FOR CSX TRANSPORTATION, INC.
And Its Railroad Subsidiaries

KK Pfeiffer
Vice President Labor Relations

FOR NORFOLK SOUTHERN RAILWAY COMPANY
And its Railroad Subsidiaries

R. S. Spenski
Vice President Labor Relations

FOR CONSOLIDATED RAIL CORPORATION

W.M. McClain Sor
D.A. Arouca
Vice President Labor Relations

EXHIBIT 11

Implementing Agreement Between CSX Transportation, Inc., Norfolk Southern Railway Company, Consolidated Rail Corporation, and the International Brotherhood of Electrical Workers (dated August 3, 1998), pp. 1-6, 16; and Side Letter No. 26 thereto, dated August 3, 1998.

IMPLEMENTING AGREEMENT

BETWEEN

CSX TRANSPORTATION, INC.
and its Railroad Subsidiaries

and

NORFOLK SOUTHERN RAILWAY COMPANY
and its Railroad Subsidiaries

and

CONSOLIDATED RAIL CORPORATION

and

their Employees Represented by

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

WHEREAS, Norfolk Southern Corporation ("NS"), Norfolk Southern Railway Company and its railroad subsidiaries ("NSR"); and CSX Corporation ("CSX") and CSX Transportation, Inc. and its railroad subsidiaries ("CSXT"); and Conrail, Inc. ("CRR") and Consolidated Rail Corporation ("CRC") have filed an application with the Surface Transportation Board ("STB") in Finance Docket No. 33388 seeking approval of acquisition of control by NS and CSX of CRR and CRC, and for the division of the use and operation of CRC's assets by NSR and CSXT (the "transaction");

WHEREAS, in its decision served July 23, 1998 in the proceeding captioned 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, and related proceedings, the STB has imposed the employee protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 360 I.C.C. 60 (1979) ("New York Dock conditions") (copy attached) on all aspects of the Primary Application; Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc., 354 I.C.C.

653 (1980), on related authorization of trackage rights; Oregon Short Line Railroad - Abandonment - Gospen, 360 I.C.C. 91 (1979), on related abandonment authorizations; and Mendocino Coast Railway, Inc. - Lease and Operate - California Western Railway, 360 I.C.C. 653 (1980), on the related authorization of the operations by CSXT or NSR of track leases with other rail carriers to which CRC is a party;

WHEREAS, the parties signatory hereto desire to reach an implementing agreement in satisfaction of Article I, Section 4 of the New York Dock conditions and other aforementioned labor protective conditions or any other protective conditions that have been imposed by the STB in this proceeding to the extent such conditions may be applicable to the transaction and related authorizations;

NOW, THEREFORE, IT IS AGREED:

ARTICLE I

Section 1

Upon seven (7) days' advance written notice by CSXT, NSR and CRC posted on appropriate bulletin boards, with copies to the General Chairmen signatory hereto, after the effective date of the STB's order approving the control transaction, CSXT, NSR and CRC may effect the following coordinations or rearrangements of forces:

- (a) The allocated CRC locomotives and cars which respectively are to be operated by either CSXT or NSR and will be integrated into either CSXT's or NSR's existing fleets of locomotives and freight cars and the maintenance and repair work of the CSXT and NSR coordinated and integrated fleets will be performed, respectively, at any CSXT or NSR facility notwithstanding the prior railroad ownership of the

equipment.

- (b) (1) At common locations on NSR, including those listed below, shop craft seniority will be integrated in accordance with the terms and provisions outlined in Article II of this Agreement:

NSR/CRC Points

Buffalo, New York
Chicago, Illinois
Cincinnati, Ohio
Cleveland, Ohio
Columbus, Ohio
Elmore/Dickinson, West Virginia
Fort Wayne, Indiana
Lorain, Ohio
Toledo, Ohio

- (2) For common locations on the territories of the former Baltimore and Ohio Railroad and Chesapeake and Ohio Railway, shopcraft seniority will be integrated in accordance with the terms and provisions in Article II of this Agreement.
- (c) The following work may be coordinated or rearranged, in whole or in part, on NSR and allocated CRC properties operated by NSR:
- (1) EMD locomotive overhaul and component rebuild from Roanoke to Juniata Locomotive Works at Altoona
 - (2) GE locomotive overhaul and component rebuild from Juniata (Altoona) to Roanoke Shop - Locomotives
 - (3) Atlanta (Pegram Shop) locomotive truck overhaul to Altoona
 - (4) Rebuilding of air brake equipment from Chattanooga to Altoona
 - (5) Wreck repair for heavily damaged locomotives from Roanoke Shop - Locomotives to Altoona
 - (6) Painting of locomotives from Chattanooga to Altoona
 - (7) All EMD and GE turbocharger work from Juniata (Altoona) to Roanoke Shop - Locomotives
 - (8) Machine tool operations and associated fabrication from Altoona to Roanoke
 - (9) 92-day inspection of locomotives from Elkhart, Pavonia, and Oak Island to Bellevue

- (10) 92-day inspection of locomotives from Enola to Conway
 - (11) Program car repair work from Macedonia, OH, Decatur, IL, and Williamson, WV to Hollidaysburg
 - (12) Freight car part reclamation from Hollidaysburg to Roanoke
 - (13) Wheel shop consolidation to site selected by NSR
 - (14) Office car work from Roanoke to Altoona
 - (15) Car shops closed at Fort Wayne and Enola
 - (16) The fourteen (14) small radio repair shops on the allocated lines to be operated by NSR will be closed and the work transferred into a single NSR location.
 - (17) Roadway equipment shop at Canton will be closed and the work from the allocated lines to be operated by NSR will be transferred to the NSR Roadway Shop at Charlotte, North Carolina.
- (d) The following work may be coordinated or rearranged, in whole or in part, on CSXT and allocated CRC properties operated by CSXT:
- (1) Heavy locomotive work from Selkirk, New York, to Huntington, West Virginia.
 - (2) Heavy locomotive work from Juniata Locomotive Works at Altoona, Pennsylvania, to Huntington, West Virginia, and Waycross, Georgia.
 - (3) Freight car work from Hollidaysburg, Pennsylvania, to Raceland, Kentucky and to any of CSXT's project shops.
 - (4) Radio repair work from the allocated lines to be operated by CSXT will be transferred to the CSXT Radio Service Center at Louisville, Kentucky.
 - (5) Roadway equipment shop at Canton will be closed and the work from the allocated lines to be operated by CSXT will be transferred to the CSXT Roadway Equipment Shop at Richmond, Virginia.
- (e) Because after the transaction CRC will have no locomotive heavy repair or periodic maintenance capability, nor the ability to perform substantial or program work on cars, such service will be provided by CSXT or NSR, in accordance with their respective collective bargaining agreements and/or practices, or as directed by the

locomotive or car owner. Only fueling, servicing and light and running repairs on locomotives and cars will be provided by CRC consistent with its collective bargaining agreement or practices, when such work is performed in Shared Assets Areas.

Section 2

Future coordinations of work, services or operations, in whole or in part, not now contemplated and/or specified in Section 1, in which no employee is required to relocate and the work force is not reduced at the involved locations as a result of the coordination may be implemented upon fifteen (15) days' written notice by NSR and/or CRC, to the International Brotherhood of Electrical Workers ("IBEW") General Chairmen.

Future coordinations on CSXT will be governed by Side Letter No. 14.

Section 3

Future coordinations of work, services or operations, in whole or in part, not now contemplated and/or specified in Section 1, which involve the dismissal or displacement of any employee(s) or rearrangement of forces may be implemented by NSR and/or CRC, after providing employee(s) and their General Chairmen thirty (30) days' written notice.

Should the IBEW desire a conference concerning the rearrangement of forces that would occur as a result of the announced coordination, upon written request from the IBEW prior to the expiration of the aforementioned 30-day notice period, the period of the notice will be extended up to but not exceeding an additional sixty (60) days. The parties shall promptly meet on the matter. If they do not resolve their differences, NSR and/or CRC may implement the announced coordination described in the notice after the expiration of the 60-day period. Either party may invoke arbitration

procedures under Article I, Section 4 of the New York Dock conditions provided such action is taken within five (5) days of the termination of conference. There shall be no employees furloughed, dismissed or transferred pending the agreement or arbitrator's award, nor shall there be a change in carrier's operations, services, facilities, or equipment.

Future coordinations on CSXT will be governed by Side Letter No. 14.

Section 4

• Coordinations on NSR and/or CRC in which work is transferred under this agreement and one or more employees are offered the opportunity to follow that work will be effected in the following manner:

(a) By bulletins giving a minimum of fifteen (15) days' written notice, the positions that no longer will be needed at the location from which the work is being transferred (the "transferring location") will be abolished and concurrently therewith the positions that will be established at the location to which the work is being transferred (the "receiving location") will be advertised under the provisions of the Collective Bargaining Agreement for a period of seven (7) days to all employees holding regular IBEW assignments at the transferring location.

(b) The positions advertised pursuant to paragraph (a) above will be awarded in seniority order and the successful bidders notified of the awards by posting same on the appropriate bulletin boards at the transferring location on the day after the bidding process closes. In addition, each successful bidder shall be notified in writing of the award together with the date and time to report to the officer in charge at the receiving location. The employees so notified shall report upon the date and at the time specified unless other arrangements are made with the proper authority or they are prevented from doing so due to circumstances

ARTICLE VII

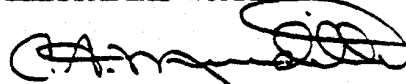
This Agreement shall fulfill the requirements of Article I, Section 4 of the New York Dock conditions or any other conditions which have been imposed in the Order by the STB in Finance Docket No. 33388. The terms of the New York Dock conditions shall apply to all transactions covered by this agreement, except as specifically provided herein.

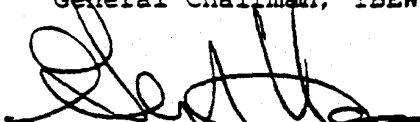
ARTICLE VIII

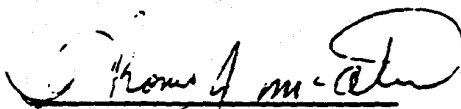
This Agreement shall be effective only after the effective date of the STB order approving the transaction and service by CSXT, NSR and CRC of the initial seven (7) days advance written notice to the General Chairmen of IBEW signatory hereto as specified in Article I, Section 1.

Signed at Norfolk, Virginia, this 3rd day of August, 1998.

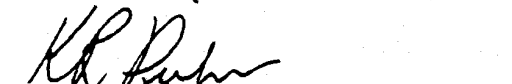
FOR INTERNATIONAL
BROTHERHOOD OF
ELECTRICAL WORKERS


General Chairman, IBEW

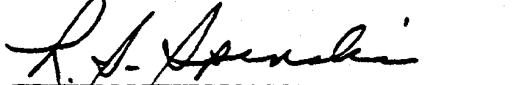

General Chairman, IBEW


General Chairman, IBEW

FOR CSX TRANSPORTATION, INC.
And its Railroad Subsidiaries


Vice President Labor Relations

FOR NORFOLK SOUTHERN RAILWAY COMPANY
And its Railroad Subsidiaries


Vice President Labor Relations

FOR CONSOLIDATED RAIL CORPORATION


Vice President Labor Relations JTC

August 3, 1998

Side Letter No. 26

Mr. Glen A. Heinz
General Chairman, IBEW
204-A River Bend Drive
London, KY 40744

Mr. T. J. McAteer
General Chairman, IBEW
1015 Chestnut Street, RM 515
Philadelphia, PA 19107

Mr. C. A. Meredith
General Chairman, IBEW
200 Meredith Lane
Ringgold, GA 30736

Gentlemen:

This refers to the implementing agreement reached with your Organization on August 3, 1998.

Norfolk Southern and CSXT anticipated in their application for control and operating leases/agreements of Conrail, Inc. and Consolidated Rail Corporation that eligible employees affected by the transaction will receive the employee protection established in New York Dock, for most aspects of the application, and protection under the Norfolk and Western, Oregon Short Line, and Mendocino Coast conditions for related trackage rights, abandonments and leases.

Section 11 of New York Dock addresses disputes and controversies regarding the interpretation, application and enforcement of the New York Dock conditions (except for Section 4 and 12). Under Section 11, the two most serious areas for potential disputes appear to involve whether an employee was adversely affected by a transaction and the protected rate of pay for such employees.

In consideration of your reaching an early voluntary implementing agreement, NS, CSX and Conrail make the following commitment regarding the issue of whether an employee was adversely affected by this transaction: NS, CSX and Conrail will grant automatic certification as adversely affected by the transaction to the number of employees who are dismissed or transferred as outlined in the Employee Impact Exhibit or as a result of any future notice served under the implementing agreement. Such certification will begin at the time that the employee is dismissed or transferred; each Carrier will supply IBEW with the names and TPA's as soon as possible thereafter. The failure of the carrier to certify an individual shall not be construed as meaning that the employee was not affected by the transaction or by any subsequent transaction.

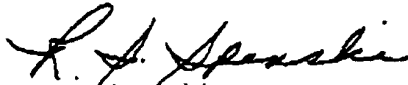
In order to ensure that any differences of opinion as to these commitments that may arise are dealt with promptly and fairly, NS, CSX and Conrail commit to the following procedure for their resolution: If at any time the IBEW General Chairman believes that a Carrier's application of New York Dock is inconsistent with the commitments contained in this letter, IBEW and the personnel on that Carrier who are responsible for the handling of protective benefits will meet, within five (5) days of notice from the General Chairman, to try to resolve the dispute. If the matter is not resolved, the parties agree to expedited arbitration with a written agreement within ten (10) days after the initial meeting; the arbitration agreement will contain, among other things, the full description for neutral selection, timing of hearing, and the time of issuance of Award(s).

In light of the position of NS, CSX, and Conrail regarding the issues of New York Dock protection and the certification of employees, IBEW will support the NS/CSXT control of Conrail.

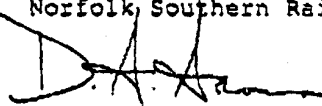
Very truly yours,



K. R. Peifer
Vice President Labor Relations
CSX Transportation, Inc.



R. S. Spenski
Vice President Labor Relations
Norfolk Southern Railway Company



D. A. Arouca
Vice President Labor Relations
Consolidated Rail Corporation JTG

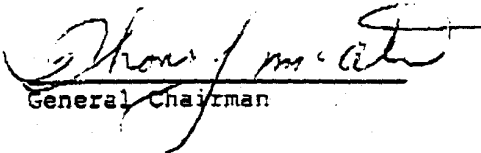
We Concur:



General Chairman



General Chairman



General Chairman

EXHIBIT 12

Implementing Agreement Between CSX Transportation,
Inc., Norfolk Southern Railway Company, Consolidated
Rail Corporation, and the National Conference of
Firemen and Oilers (dated June 3, 1998),
pp. 1-7, 18.

Copy Of Original
IMPLEMENTING AGREEMENT

BETWEEN

CSX TRANSPORTATION, INC.
and its Railroad Subsidiaries

and

NORFOLK SOUTHERN RAILWAY COMPANY
and its Railroad Subsidiaries

and

CONSOLIDATED RAIL CORPORATION

and

their Employees Represented by the
NATIONAL CONFERENCE OF FIREMEN & OILERS

WHEREAS, Norfolk Southern Corporation ("NS"), Norfolk Southern Railway Company and its railroad subsidiaries ("NSR"); and CSX Corporation ("CSX") and CSX Transportation, Inc. and its railroad subsidiaries ("CSXT"); and Conrail, Inc. ("CRR") and Consolidated Rail Corporation ("CRC") have filed an application with the Surface Transportation Board ("STB") in Finance Docket No. 33388 seeking approval of acquisition of control by NS and CSX of CRR and CRC, and for the division of the use and operation of CRC's assets by NSR and CSXT (the "transaction");

WHEREAS, it is anticipated that the STB will impose the employee protective conditions set forth in New York Dock Ry. -

Control - Brooklyn Eastern District, 360 I.C.C. 60 (1979) ("New York Dock conditions") on all aspects of the Primary Application; Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc., 354 I.C.C. 653 (1980), on related authorization of trackage rights; Oregon Short Line Railroad - Abandonment - Goshen, 360 I.C.C. 91 (1979), on related abandonment authorizations; and Mendocino Coast Railway, Inc. - Lease and Operate - California Western Railway, 360 I.C.C. 653 (1980), on the related authorization of the operations by CSXT or NSR of track leases with other rail carriers to which CRC is a party;

WHEREAS, the parties signatory hereto desire to reach an implementing agreement in satisfaction of Article I, Section 4 of the New York Dock conditions and other aforementioned labor protective conditions or any other protective conditions that may be imposed by the STB in this proceeding to the extent such conditions may be applicable to the transaction and related authorizations;

NOW, THEREFORE, IT IS AGREED:

ARTICLE I

Section 1

Upon seven (7) days' advance written notice by CSXT, NSR and CRC posted on appropriate bulletin boards, with copies to the

General Chairmen signatory hereto, after the effective date of the STB's order approving the control transaction, CSXT, NSR and CRC may effect the following coordinations or rearrangements of forces:

(a) The allocated CRC locomotives and cars which respectively are to be operated by either CSXT or NSR and will be integrated into either CSXT's or NSR's existing fleets of locomotives and freight cars and the maintenance and repair work of the CSXT and NSR coordinated and integrated fleets may be performed, respectively, at any CSXT or NSR facility notwithstanding the prior railroad ownership of the equipment.

(b) (1) At common locations on NSR, including those listed below, shop craft seniority will be integrated in accordance with the terms and provisions outlined in Article II of this Agreement:

NSR/CRC Points

Buffalo, New York
Chicago, Illinois
Cincinnati, Ohio
Cleveland, Ohio
Columbus, Ohio
Elmore/Dickinson, West Virginia
Fort Wayne, Indiana
Lorain, Ohio
Toledo, Ohio

(2) For common locations on the territories of the former Baltimore and Ohio Railroad and Chesapeake and Ohio Railway, shopcraft seniority will be integrated in

accordance with the terms and provisions in Article II of this Agreement.

(c) The following work may be coordinated or rearranged, in whole or in part, on NSR and allocated CRC properties operated by NSR:

- (1) EMD locomotive overhaul and component rebuild from Roanoke to Juniata Locomotive Works at Altoona
- (2) GE locomotive overhaul and component rebuild from Juniata (Altoona) to Roanoke Shop - Locomotives
- (3) Atlanta locomotive truck overhaul to Altoona
- (4) Rebuilding of air brake equipment from Chattanooga to Altoona
- (5) Wreck repair for heavily damaged locomotives from Roanoke Shop - Locomotives to Altoona
- (6) Painting of locomotives from Chattanooga to Altoona
- (7) All EMD and GE turbocharger work from Juniata (Altoona) to Roanoke Shop - Locomotives
- (8) Machine tool operations and associated fabrication from Altoona to Roanoke
- (9) 92-day inspection of locomotives from Elkhart, Pavonia, and Oak Island to Bellevue
- (10) 92-day inspection of locomotives from Enola to Conway
- (11) Program car repair work from Macedonia, OH, Decatur, IL, and Williamson, WV to Hollidaysburg
- (12) Freight car part reclamation from Hollidaysburg to Roanoke
- (13) Wheel shop consolidation to site selected by NSR
- (14) Office car work from Roanoke to Altoona

- (15) Car shops closed at Fort Wayne and Enola
 - (16) Roadway equipment shop at Canton will be closed and the work from the allocated lines to be operated by NSR will be transferred to the NSR Roadway Shop at Charlotte, North Carolina.
- (d) The following work may be coordinated or rearranged, in whole or in part, on CSXT and allocated CRC properties operated by CSXT:
- (1) Heavy locomotive work from Selkirk, NY, to Huntington, WV
 - (2) Heavy locomotive work from Juniata Locomotive Works at Altoona, PA, to Huntington, WV
 - (3) Freight car work from Hollidaysburg, PA, to Raceland, KY and to any of CSXT's project shops.
 - (4) Roadway equipment shop at Canton will be closed and the work from the allocated lines to be operated by CSXT will be transferred to the CSXT Roadway Equipment Shop at Richmond, Virginia.
- (e) Because after the transaction CRC will have no locomotive heavy repair or periodic maintenance capability, nor the ability to perform substantial or program work on cars, such service will be provided by CSXT or NSR, in accordance with their respective collective bargaining agreements and/or practices, or as directed by the locomotive or car owner. Only fueling, servicing and light and running repairs on locomotives and cars will be provided by CRC consistent with its collective bargaining agreement or practices, when such work is performed in Shared Assets Areas.

Section 2

Future coordinations of work, services or operations, in whole or in part, not now contemplated and/or specified in Section 1, in which no employee is required to relocate and the work force is not reduced at the involved locations as a result of the coordination may be implemented upon fifteen (15) days' written notice by NSR, CSXT and/or CRC, to the National Conference of Firemen and Oilers ("NCF&O") General Chairmen.

Section 3

Future coordinations of work, services or operations, in whole or in part, not now contemplated and/or specified in Section 1, which involve the dismissal or displacement of any employee(s) or rearrangement of forces may be implemented by NSR, CSXT and/or CRC, after providing employee(s) and their General Chairmen thirty (30) days' written notice.

Should the NCF&O desire a conference concerning the rearrangement of forces that would occur as a result of the announced coordination, upon written request from the NCF&O prior to the expiration of the aforementioned 30-day notice period, the period of the notice will be extended up to but not exceeding an additional sixty (60) days. The parties shall promptly meet on the matter. If they do not resolve their differences, NSR and/or CSXT and/or CRC may implement the announced coordination described in

the notice after the expiration of the 60-day period. Either party may invoke arbitration procedures under Article I, Section 4 of the New York Dock conditions provided such action is taken within five (5) days of the termination of conference. There shall be no employees dismissed or transferred pending the agreement or arbitrator's award.

Section 4

Coordinations in which work is transferred under this agreement and one or more employees are offered the opportunity to follow that work will be effected in the following manner:

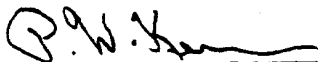
(a) By bulletins giving a minimum of fifteen (15) days' written notice, the positions that no longer will be needed at the location from which the work is being transferred (the "transferring location") will be abolished and concurrently therewith the positions that will be established at the location to which the work is being transferred (the "receiving location") will be advertised for a period of seven (7) days to all employees holding regular NCF&O assignments at the transferring location.

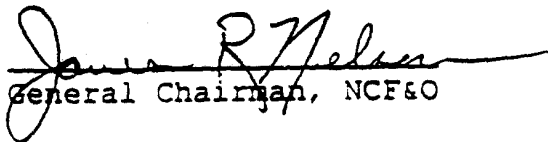
(b) The positions advertised pursuant to paragraph (a) above will be awarded in seniority order and the successful bidders notified of the awards by posting same on the appropriate bulletin boards at the transferring location on the day after the bidding process closes. In addition, each successful bidder shall be

This Agreement shall be effective only after the effective date of the STB order approving the transaction and service by CSXT, NSR and CRC of the initial seven (7) days advance written notice to the General Chairmen of NCF&O signatory hereto as specified in Article I, Section 1.

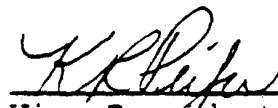
Signed at Washington, DC, this 3rd day of June, 1998.

FOR NATIONAL
CONFERENCE OF
FIREMEN & OILERS

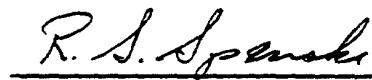

General Chairman, NCF&O


General Chairman, NCF&O

FOR CSX TRANSPORTATION, INC.
And its Railroad Subsidiaries


Vice President Labor Relations

FOR NORFOLK SOUTHERN RAILWAY COMPANY
And its Railroad Subsidiaries


Vice President Labor Relations

FOR CONSOLIDATED RAIL CORPORATION

Vice President Labor Relations

EXHIBIT 13

Implementing Agreement Between CSX Transportation, Inc., Norfolk Southern Railway Company, Consolidated Rail Corporation, and the Sheet Metal Workers International Association (dated September 17, 1998), pp. 1-4, 10; and Attachment B thereto (dated September 17, 1998), pp. 1-4, 10.

IMPLEMENTING AGREEMENT

BETWEEN

CSX TRANSPORTATION, INC.
and its Railroad Subsidiaries

and

NORFOLK SOUTHERN RAILWAY COMPANY
and its Railroad Subsidiaries

and

CONSOLIDATED RAIL CORPORATION

and

their Employees Represented by

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION

WHEREAS, Norfolk Southern Corporation ("NS"), Norfolk Southern Railway Company and its railroad subsidiaries ("NSR"); and CSX Corporation ("CSX") and CSX Transportation, Inc. and its railroad subsidiaries ("CSXT"); and Conrail, Inc. ("CRR") and Consolidated Rail Corporation ("CRC") have filed an application with the Surface Transportation Board ("STB") in Finance Docket No. 33388 seeking approval of acquisition of control by NS and CSX of CRR and CRC, and for the division of the use and operation of CRC's assets by NSR and CSXT (the "transaction");

WHEREAS, in its decision served July 23, 1998 in the proceeding captioned 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, and related proceedings, the STB has imposed the employee

protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 360 I.C.C. 60 (1979) ("New York Dock conditions") (copy attached) on all aspects of the Primary Application; Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc., 354 I.C.C. 653 (1980), on related authorization of trackage rights; Oregon Short Line Railroad - Abandonment - Goshen, 360 I.C.C. 91 (1979), on related abandonment authorizations; and Mendocino Coast Railway, Inc., - Lease and Operate - California Western Railway, 360 I.C.C. 653 (1980), on the related authorization of the operations by CSXT or NSR of track leases with other rail carriers to which CRC is a party;

WHEREAS, the parties signatory hereto desire to reach an implementing agreement in satisfaction of Article I, Section 4 of the New York Dock conditions and other aforementioned labor protective conditions or any other protective conditions that have been imposed by the STB in this proceeding to the extent such conditions may be applicable to the transaction and related authorizations;

NOW, THEREFORE, IT IS AGREED:

ARTICLE I

Section 1

Upon seven (7) days' advance written notice by CSXT, NSR and CRC posted on appropriate bulletin boards, with copies to the General Chairmen signatory hereto, after the effective date of the STB's order approving the control transaction, CSXT, NSR and CRC may effect the following coordinations or rearrangements of forces as described herein and in the

separate related agreements (Attachments A and B) between NSR and/or CSXT and the Sheet Metal Workers International Association ("SMWIA"):

- (a) The allocated CRC locomotives and cars which respectively are to be operated by either CSXT or NSR and will be integrated into either CSXT's or NSR's existing fleets of locomotives and freight cars and the maintenance and repair work of the CSXT and NSR coordinated and integrated fleets will be performed, respectively, at any CSXT or NSR facility notwithstanding the prior railroad ownership of the equipment.
- (b) Because after the transaction CRC will have no locomotive heavy repair or periodic maintenance capability, nor the ability to perform substantial or program work on cars, such service will be provided by CSXT or NSR, in accordance with their respective collective bargaining agreements and/or practices, or as directed by the locomotive or car owner. Only fueling, servicing and light and running repairs on locomotives and cars will be provided by CRC consistent with its collective bargaining agreement or practices, when such work is performed in Shared Assets Areas.

Section 2

Future coordinations of work, services or operations, in whole or in part, not now contemplated and/or specified in Section 1, in which no employee is required to relocate and the work force is not reduced at the involved locations as a result of the coordination may be implemented upon fifteen (15) days' written notice by CRC, to the SMWIA General Chairmen.

Section 3

Future coordinations of work, services or operations, in whole or in part, not now contemplated and/or specified in Section 1, which involve the dismissal or displacement of any employee(s) or rearrangement of forces may be implemented by CRC, after providing employee(s) and their General Chairmen thirty (30) days' written notice.

Should the SMWIA desire a conference concerning the rearrangement of forces that would occur as a result of the announced coordination, upon written request from the SMWIA prior to the expiration of the aforementioned 30-day notice period, the period of the notice will be extended up to but not exceeding an additional sixty (60) days. The parties shall promptly meet on the matter. If they do not resolve their differences, CRC may implement the announced coordination described in the notice after the expiration of the 60-day period. Either party may invoke arbitration procedures under Article I, Section 4 of the New York Dock conditions provided such action is taken within five (5) days of the termination of conference. There shall be no employees dismissed or transferred pending the agreement or arbitrator's award.

Section 4

Coordinations in which work is transferred under this agreement and one or more employees are offered the opportunity to follow that work will be effected in the following manner:

(a) By bulletins giving a minimum of fifteen (15) days' written notice, the positions that no longer will be needed at the location from which the work is being transferred (the "transferring location") will be abolished and concurrently therewith the positions that will be established at the location to which the work is being transferred (the "receiving

ARTICLE VII

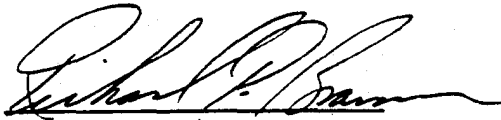
This Agreement shall fulfill the requirements of Article I, Section 4 of the New York Dock conditions or any other conditions which have been imposed in the Order by the STB in Finance Docket No. 33388. The terms of the New York Dock conditions shall apply to all transactions covered by this agreement, except as specifically provided herein.

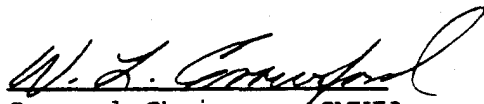
ARTICLE VIII

This Agreement shall be effective only after the effective date of the STB order approving the transaction and service by CSXT, NSR and CRC of the initial seven (7) days advance written notice to the General Chairmen of SMWIA signatory hereto as specified in Article I, Section 1.

Signed at Washington, DC this 17th day of September, 1998.

**FOR SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION**

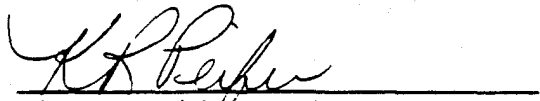

General Chairman, SMWIA


General Chairman, SMWIA

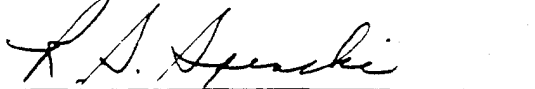

General Chairman, SMWIA


General Chairman, SMWIA

**FOR CSX TRANSPORTATION, INC.
And its Railroad Subsidiaries**


Vice President Labor Relations

**FOR NORFOLK SOUTHERN RAILWAY COMPANY
And its Railroad Subsidiaries**


Vice President Labor Relations

FOR CONSOLIDATED RAIL CORPORATION


Vice President Labor Relations

SMWIA-NSR AGREEMENT

Attachment B

This agreement is written in conjunction with the Implementing Agreement dated September 17, 1998 and incorporates all provisions contained therein. Nothing in this agreement is intended to supersede any provisions contained in the Implementing Agreement.

It is agreed:

ARTICLE I

Section 1

Upon seven (7) days' advance written notice by NSR posted on appropriate bulletin boards, with copies to the General Chairman signatory hereto, after the effective date of the STB's order approving the control transaction, NSR may effect the following coordinations or rearrangements of forces as described herein between NSR and the Sheet Metal Workers International Association ("SMWIA"):

- (a) The allocated CRC locomotives and cars which are to be operated by NSR will be integrated into NSR's existing fleets of locomotives and freight cars. The scheduled and unscheduled maintenance and repair work of the integrated fleet of locomotives will be assigned to and performed at NSR facilities, notwithstanding the prior railroad ownership of the equipment.
- (b) Upon seven (7) days advance written notice, at common locations on NSR, including those listed below, shop craft seniority will be integrated in accordance with the terms and provisions outlined in Article III of this Agreement:

NSR/CRC Points

Buffalo, New York
Chicago, Illinois
Cincinnati, Ohio
Cleveland, Ohio
Columbus, Ohio
Elmore/Dickinson, West Virginia
Fort Wayne, Indiana
Lorain, Ohio
Toledo, Ohio

- (c) Upon ninety (90) days advance written notice, the following work and/or involved employees may be coordinated or rearranged on NSR and allocated CRC properties operated by NSR:

- (1) EMD locomotive overhaul and component rebuild from Roanoke to Juniata Locomotive Works at Altoona
- (2) GE locomotive overhaul and component rebuild from Juniata (Altoona) to Roanoke Shop - Locomotives
- (3) Atlanta (Pegram Shop) locomotive truck overhaul to Juniata Locomotive Works, Altoona
- (4) Rebuilding of air brake equipment from Chattanooga to Juniata Locomotive Works, Altoona
- (5) Wreck repair for heavily damaged locomotives from Roanoke Shop - Locomotive to Juniata Locomotive Works, Altoona
- (6) Painting of locomotives from Chattanooga to Juniata Locomotive Works, Altoona
- (7) All EMD and GE turbocharger work from Juniata (Altoona) to Roanoke Shop - Locomotives
- (8) Machine tool operations and associated fabrication from Altoona to Roanoke (to be specified more fully in 90-day notice)
- (9) 92-day inspection of locomotives from Elkhart, Pavonia, and Oak Island to Bellevue
- (10) 92-day inspection of locomotives from Enola to Conway
- (11) Program car repair work from Macedonia, OH, Decatur, IL, and Williamson, WV to Hollidaysburg
- (12) Freight car part reclamation from Hollidaysburg to Roanoke
- (13) Wheel shop consolidation to site selected by NSR

- (14) Office car work from Roanoke to Altoona Shops
- (15) Car shops closed at Fort Wayne and Enola
- (16) Roadway equipment shop at Canton will be closed and the work from the allocated lines to be operated by NSR will be transferred to the NSR Roadway Shop at Charlotte, North Carolina.

Section 2

Future coordinations of work, services or operations not now contemplated and/or specified in Section 1, in which no employee is required to relocate and the work force is not reduced at the involved locations as a result of the coordination may be accomplished upon fifteen (15) days' written notice by NSR, to the SMWIA General Chairman.

Section 3

Future coordinations of work, services or operations, in whole or in part, not now contemplated and/or specified in Section 1, which involve the dismissal or displacement of any employee(s) or rearrangement of forces may be implemented by NSR, after providing employee(s) and their General Chairmen thirty (30) days' written notice.

Should the SMWIA desire a conference concerning the rearrangement of forces that would occur as a result of the announced coordination, upon written request from the SMWIA prior to the expiration of the aforementioned 30-day notice period, the period of the notice will be extended up to but not exceeding an additional sixty (60) days. The parties shall promptly meet on the matter. If they do not resolve their differences, NSR may implement the announced coordination described in the notice after the expiration of the 60-day period. Either party may invoke arbitration procedures under Article I, Section 4 of the New York Dock

conditions provided such action is taken within five (5) days of the termination of conference. There shall be no employees dismissed or transferred pending the agreement or arbitrator's award.

Section 4

Coordinations in which work is transferred under this agreement and one or more employees are offered the opportunity to follow that work will be effected in the following manner:

(a) By bulletins giving a minimum of fifteen (15) days' written notice, the positions that no longer will be needed at the location from which the work is being transferred (the "transferring location") will be abolished and concurrently therewith the positions that will be established at the location to which the work is being transferred (the "receiving location") will be advertised for a period of seven (7) days to all employees holding regular SMWIA assignments at the transferring location.

(b) The positions advertised pursuant to paragraph (a) above will be awarded in seniority order and the successful bidders notified of the awards by posting same on the appropriate bulletin boards at the transferring location on the day after the bidding process closes. In addition, each successful bidder shall be notified in writing of the award together with the date and time to report to the officer in charge at the receiving location. The employees so notified shall report upon the date and at the time specified unless other arrangements are made with the proper authority or they are prevented from doing so due to circumstances beyond their control.

(c) After fulfilling the requirements of Article I, Section 4(a) and 4(b) above, should there remain unfilled positions in the coordinated operation and surplus employees at the transferring location, those surplus

not affecting the other railroads, then only that railroad needs to be the party to the subsequent implementing agreement.

ARTICLE VII

This agreement shall become effective upon the effective date of the Implementing Agreement.

Signed at Washington, DC, this 17th day of September, 1998.

**FOR SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION**


General Chairman, SMWIA


General Chairman, SMWIA


General Chairman, SMWIA


General Chairman, SMWIA

**FOR NORFOLK SOUTHERN RAILWAY COMPANY
And its Railroad Subsidiaries**


Vice President Labor Relations

FOR CONSOLIDATED RAIL CORPORATION


Vice President Labor Relations

EXHIBIT 14

Implementing Agreement Between CSX Transportation, Inc., Norfolk Southern Railway Company, Consolidated Rail Corporation, and the International Association of Machinists and Aerospace Workers (dated October 10, 1998), pp. 1-3, 7; and Attachment B thereto (dated October 10, 1998), pp. 1-3, 12.

FILE COPY

IMPLEMENTING AGREEMENT

BETWEEN

CSX TRANSPORTATION, INC.
and its Railroad Subsidiaries

and

NORFOLK SOUTHERN RAILWAY COMPANY
and its Railroad Subsidiaries

and

CONSOLIDATED RAIL CORPORATION

and

their Employees Represented by

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS

WHEREAS, Norfolk Southern Corporation ("NS"), Norfolk Southern Railway Company and its railroad subsidiaries ("NSR"); and CSX Corporation ("CSX") and CSX Transportation, Inc. and its railroad subsidiaries ("CSXT"); and Conrail, Inc. ("CRR") and Consolidated Rail Corporation ("CRC") have filed an application with the Surface Transportation Board ("STB") in Finance Docket No. 33388 seeking approval of acquisition of control by NS and CSX of CRR and CRC, and for the division of the use and operation of CRC's assets by NSR and CSXT (the "transaction");

WHEREAS, in its decision served July 23, 1998 in the proceeding captioned 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, and related proceedings, the STB has imposed the employee protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 360 I.C.C. 60 (1979) ("New York Dock conditions") on all aspects of the Primary Application; Norfolk and Western Railway Company -

Trackage Rights - Burlington Northern, Inc., 354 I.C.C. 653 (1980), on related authorization of trackage rights; Oregon Short Line Railroad - Abandonment - Goshen, 360 I.C.C. 91 (1979), on related abandonment authorizations; and Mendocino Coast Railway, Inc., - Lease and Operate - California Western Railway, 360 I.C.C. 653 (1980), on the related authorization of the operations by CSXT or NSR of track leases with other rail carriers to which CRC is a party;

WHEREAS, the parties signatory hereto desire to reach an implementing agreement in satisfaction of Article I, Section 4 of the New York Dock conditions and other aforementioned labor protective conditions or any other protective conditions that have been imposed by the STB in this proceeding to the extent such conditions may be applicable to the transaction and related authorizations;

NOW, THEREFORE, IT IS AGREED:

ARTICLE I

Section 1

Upon seven (7) days' advance written notice by CSXT, NSR and CRC posted on appropriate bulletin boards, with copies to the General Chairmen signatory hereto, after the effective date of the STB's order approving the control transaction, CSXT, NSR and CRC may effect the following coordinations or rearrangements of forces as described herein and in the separate related agreements (Attachments A and B) between NSR and/or CSXT and the International Association of Machinists and Aerospace Workers ("IAMAW"):

- (a) The allocated CRC locomotives and cars which respectively are to be operated by either CSXT or NSR will be integrated into either CSXT's or NSR's existing fleets of locomotives and freight cars and the maintenance and repair work of the CSXT and NSR coordinated and integrated fleets will be performed in accordance with the applicable collective bargaining agreement, notwithstanding the prior railroad ownership of the equipment.
- (b) CRC employees will not perform any work on NS or CSXT locomotives or equipment except fueling, servicing and such light running repairs as may be necessary to insure the safe and dependable operation of same or to get the locomotive back to the appropriate owner's property.

Section 2

Future coordinations of work, services or operations not now contemplated which occur as a result of the acquisition of Conrail by CSXT and NSR and which involve the dismissal or displacement of any employee(s) or rearrangement of forces (transfer) may be accomplished by CRC, pursuant to the provisions of the New York Dock conditions.

ARTICLE II

Section 1

On the effective date of this Agreement, all employees who hold a regular assignment on the CRC territories to be allocated to CSXT will become employees exclusively of CSXT, all employees who hold a regular assignment on the CRC territories to be allocated to NSR will become employees exclusively of NSR, and all employees who hold a regular

ARTICLE V

This Agreement shall fulfill the requirements of Article I, Section 4 of the New York Dock conditions imposed in the Order by the STB in Finance Docket No. 33388.

ARTICLE VI

This Agreement shall be effective only after the effective date of the STB order approving the transaction and service by CSXT, NSR and CRC of the initial seven (7) days advance written notice to the General Chairmen of IAMAW signatory hereto as specified in Article I, Section 1.

Signed at Norfolk, Virginia, this 10th day of October, 1998.

FOR INTERNATIONAL
ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS

Robert L. Reynolds
President and Directing
General Chairman, IAMAW

Joe R. Duncan
General Chairman, IAMAW

R. L. Elmore
General Chairman, IAMAW

J. R. Cronk
General Chairman, IAMAW

D. J. McMullen
General Chairman, IAMAW

M. A. Hill
General Chairman, IAMAW

J. A. Cohen
General Chairman, IAMAW

FOR CSX TRANSPORTATION, INC.
And its Railroad Subsidiaries

K. R. Leigh
Vice President Labor Relations

FOR NORFOLK SOUTHERN RAILWAY COMPANY
And its Railroad Subsidiaries

R. S. Spenski
Vice President Labor Relations

FOR CONSOLIDATED RAIL CORPORATION

Dennis A. Arcusa (Wmm)
Vice President Labor Relations

IAMAW-NSR AGREEMENT

Attachment B

This agreement is written in conjunction with the Implementing Agreement dated October 10, 1998 and incorporates all provisions contained therein. Nothing in this agreement is intended to supersede any provisions contained in the Implementing Agreement.

It is agreed:

ARTICLE I

Section 1

Upon proper advance written notice by NSR posted on appropriate bulletin boards, with copies to the General Chairman signatory hereto, after the effective date of the STB's order approving the control transaction, NSR may effect the following coordinations or rearrangements of forces as described herein between NSR and the International Association of Machinists and Aerospace Workers ("IAMAW"):

- (a) Upon seven (7) days advance written notice, the allocated CRC locomotives and cars which are to be operated by NSR will be integrated into NSR's existing fleets of locomotives and freight cars. The scheduled and unscheduled maintenance and repair work of the integrated fleet of locomotives will be assigned to and performed at NSR facilities, notwithstanding the prior railroad ownership of the equipment.

- (b) Upon seven (7) days advance written notice, at common locations on NSR, including those listed below, shop craft seniority will be integrated in accordance with the terms and provisions outlined in Article III of this Agreement:

NSR/CRC Points

Buffalo, New York
Chicago, Illinois
Cincinnati, Ohio
Cleveland, Ohio
Columbus, Ohio
Elmore/Dickinson, West Virginia
Fort Wayne, Indiana
Lorain, Ohio
Toledo, Ohio

- (c) Upon ninety (90) days advance written notice, the following work and/or involved employees may be coordinated or rearranged on NSR and allocated CRC properties operated by NSR:

- (1) EMD locomotive overhaul and component rebuild from Roanoke to Juniata Locomotive Works at Altoona
- (2) GE locomotive overhaul and component rebuild from Juniata (Altoona) to Roanoke Shop - Locomotives
- (3) Atlanta (Pegram Shop) locomotive truck overhaul to Juniata Locomotive Works, Altoona
- (4) Rebuilding of air brake equipment from Chattanooga to Juniata Locomotive Works, Altoona
- (5) Wreck repair for heavily damaged locomotives from Roanoke Shop - Locomotive to Juniata Locomotive Works, Altoona
- (6) Painting of locomotives from Chattanooga to Juniata Locomotive Works, Altoona
- (7) All EMD and GE turbocharger work from Juniata (Altoona) to Roanoke Shop - Locomotives
- (8) Machine tool operations and associated fabrication from Altoona to Roanoke (to be specified more fully in 90-day notice)
- (9) 92-day inspection of locomotives from Elkhart, Pavonia, and Oak Island to Bellevue
- (10) 92-day inspection of locomotives from Enola to Conway

- (11) Program car repair work from Macedonia, OH, Decatur, IL, and Williamson, WV to Hollidaysburg
- (12) Freight car part reclamation from Hollidaysburg to Roanoke
- (13) Wheel shop consolidation to site selected by NSR
- (14) Office car work from Roanoke to Altoona Shops
- (15) Car shops closed at Fort Wayne and Enola

Section 2

Future coordinations of work, services or operations not now contemplated and/or specified in Section 1, in which no employee is required to relocate and the work force is not reduced at the involved locations as a result of the coordination may be accomplished upon fifteen (15) days' written notice by NSR, to the IAMAW General Chairman.

Section 3

Future coordinations of work, services or operations not now contemplated and/or specified in Section 1 of this Agreement or in the separate related agreements, which involve the dismissal or displacement of any employee(s) or rearrangement of forces (transfer) may be accomplished by NSR, pursuant to the provisions of the New York Dock conditions.

Section 4

Coordinations in which work is transferred under this Agreement and one or more employees are offered the opportunity to follow that work will be effected in the following manner:

- (a) By bulletins giving a minimum of fifteen (15) days' written

railroad needs to be the party to the subsequent implementing agreement.

ARTICLE VIII

This agreement shall become effective upon the effective date of the Implementing Agreement.

Signed at Norfolk, Virginia, this 10th day of October, 1998.

FOR INTERNATIONAL
ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS

Robert L. Reynolds
President and Directing
General Chairman, IAMAW

Joe R. Duncan
General Chairman, IAMAW

J.R. Croft
General Chairman, IAMAW

R.T. McMiller
General Chairman, IAMAW

FOR NORFOLK SOUTHERN RAILWAY COMPANY
And its Railroad Subsidiaries

R. Spenski
Vice President Labor Relations

FOR CONSOLIDATED RAIL CORPORATION

Dennis A. Aronca (wmm)
Vice President Labor Relations

EXHIBIT 15

Implementing Agreement Between Norfolk Southern Corporation, Norfolk Southern Railway Company, Consolidated Rail Corporation, CSX Transportation, and the Transportation Communications International Union (dated November 2, 1998), pp. 1, 14-15, 27.

IMPLEMENTING AGREEMENT

BETWEEN

**NORFOLK SOUTHERN CORPORATION
NORFOLK SOUTHERN RAILWAY COMPANY
CONSOLIDATED RAIL CORPORATION
CSX TRANSPORTATION**

AND THEIR EMPLOYEES REPRESENTED BY

**TRANSPORTATION COMMUNICATIONS INTERNATIONAL UNION
TRANSPORTATION COMMUNICATIONS INTERNATIONAL UNION-T/C DIVISION**

WHEREAS, Norfolk Southern Railway Company and its railroad subsidiaries and Norfolk Southern Corporation (collectively "NS"); and CSX Transportation, Inc. and its railroad subsidiaries ("CSXT"); and Conrail, Inc. ("CRR") and Consolidated Rail Corporation ("CRC") filed an application with the Surface Transportation Board ("STB") in Finance Docket No. 33388 seeking approval of acquisition of control by NS and CSX of CRR and CRC, and for the division of the use and operation of CRC's assets by NSR and CSXT (the "transaction");

WHEREAS, the STB, in its Decision 89, approved the transaction and imposed the employee protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 360 I.C.C. 60 (1979) ("New York Dock conditions") on all aspects of the Primary Application; Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc., 354 I.C.C. 653 (1980), on related authorization of trackage rights; Oregon Short Line Railroad - Abandonment - Goshen, 360 I.C.C. 91 (1979), on related abandonment authorizations; and Mendocino Coast Railway, Inc. - Lease and Operate - California Western Railway, 360 I.C.C. 653 (1980), on the related authorization of the operations by CSXT or NSR of track leases with other rail carriers to which CRC is a party;

WHEREAS, the parties signatory hereto desire to reach an implementing agreement in satisfaction of Article I, Section 4 of the New York Dock conditions and other aforementioned labor protective conditions.

Now, therefore, it is agreed:

applicable deductions and 35 months union dues and assessments; or b) an amount computed in accordance with Section 7 of the New York Dock conditions if they have less than five years service, less applicable deductions and 12 months of union dues and assessments. (Union dues and assessments will be at the prevailing rate in effect at the time that the severance allowance is paid.) Employees who are paid severance allowances will also i) be paid for any accrued vacation not taken, and ii) if they are eligible to receive an age annuity from the Railroad Retirement Board, be paid for 50% of their accumulated and unused sick leave at the rate of the position last occupied pursuant to Rule 38(m) of the Conrail-TCU agreement.

CHAPTER II-FUTURE COORDINATIONS

Article I

NS or CSXT may effect transfer(s) of work between CR (including SAA or the portions of Conrail to be operated by NS or CSXT) and NS or CSXT where no employee will be required to relocate and the size of the workforce will not be reduced at either point by providing written notice to the involved TCU General Chairmen not less than fifteen (15) days in advance of such transfer.

Article II

NS or CSXT may effect transfer(s) of positions and/or work between CR (including SAA or the portions of Conrail to be operated by NS or CSXT) and NS or CSXT which will result in a relocation or a reduction in the work force of not more than five (5) employees by providing written notice to the involved TCU General Chairmen not less than thirty (30) days in advance of such transfer(s).

Article III

NS or CSXT may effect transfer(s) of positions and/or work between CR (including SAA or the portions of Conrail to be operated by NS or CSXT) and NS or CSXT which will result in a relocation or a reduction in the work force of more than five (5) employees by providing written notice to the involved General Chairman not less than forty-five (45) days in advance of such transfer(s).

Article IV

Section 1

The notice(s) provided for under this Article III will list the names, seniority dates and rates of pay of the employees immediately affected and will identify the positions and work involved, the applicable NS or CSXT collective bargaining agreement(s), and the manner in which the work force will be rearranged to perform the work.

Section 2

The date on which the work is moved from one Carrier to the other will be the effective date of the transfer.

Article V-Bulletining and Assigning Positions

Section 1

Positions established at a new location as a result of a transfer of work will be bulletined to employees holding positions on the seniority district from which the involved work is being transferred. Application for such positions must be received by the officer issuing the bulletins within ten (10) days of the issuance of the bulletin. The successful applicants for such positions will by making application, indicate their acceptance of the transfer to the new location. Employees may bid on one or more position but, if they bid on more than one position, they must indicate their order of preference (i.e. first preference, second preference, etc.). Positions will be assigned in seniority order in the following order of preference:

- a. To employees holding positions being abolished as a result of the involved transfer of work.
- b. To employees holding positions on the seniority district where positions are being abolished as a result of the involved transfer of work.

Section 2

Positions not filled pursuant to Section 1 above will thereafter be assigned in accordance with the applicable agreement at the locations where the new positions are established.

Section 3

Employees whose positions are abolished and who could have transferred to the new work location but did not do so will, upon being released from their positions, exercise seniority in accordance with applicable rules and agreements. If such employees do not have sufficient seniority to exercise displacement rights, they will revert to furloughed status with a suspension of protective benefits during the furlough, subject to recall to subsequent vacancies. This Section 3 will not operate to permit SAA to furlough an employee in violation of the May 30, 1997 Agreement while that agreement is in effect.

CHAPTER III

Article I-Fitness and Ability

Positions will be assigned under this Implementing Agreement based on each applicant's seniority, fitness and ability. Fitness and ability being sufficient, seniority shall prevail. The term "fitness and ability" shall not be construed as meaning "eminently qualified"; however, it shall mean that the successful applicant must possess the basic skills required of the position and evidence the

CHAPTER XII

On the effective date of the Agreement, or as soon thereafter as practicable, all employees may be paid on a bi-weekly basis unless prohibited by law. In converting to bi-weekly the parties will follow their previous practices. On SAA the parties will follow the NS practices.

CHAPTER XIII

The parties agree that after the initial division of the use and operation of CRC's assets between CSXT and NSR pursuant to this agreement, if either CSXT or NSR serves a subsequent notice related to the transaction but limited to a coordination of its CRC allocated assets and not affecting the other railroads, then only that railroad needs to be the party to that notice.

CHAPTER XIV

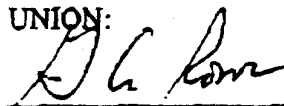
All Conrail pending notices and proposals, if any, served under Section 6 of the Railway Labor Act, as amended, on behalf of individuals who become employees of CSXT or NS under this agreement will no longer apply to such employees. Those employees will be covered by the current notices, if any, pending on the agreement applicable to the territory to which transferred as if they were on such territory when said notices were served.

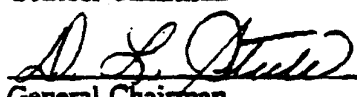
CHAPTER XV

This agreement shall fulfill the requirements of Article I, Section 4 of the New York Dock conditions, and other conditions imposed in the order of the STB in Finance Docket No. 33388.

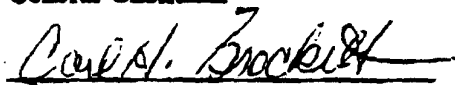
Signed this 2nd day of November, 1998.

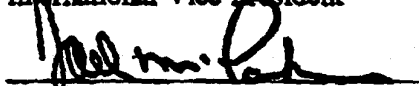
FOR THE TRANSPORTATION
COMMUNICATIONS INTERNATIONAL
UNION:


General Chairman


General Chairman

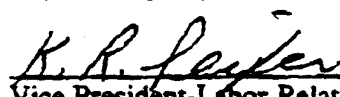

General Chairman


International Vice President


International Vice President

FOR THE CARRIERS:


Asst. Vice President-Labor Relations, CR


Vice President-Labor Relations, CSXT

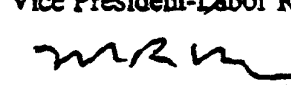
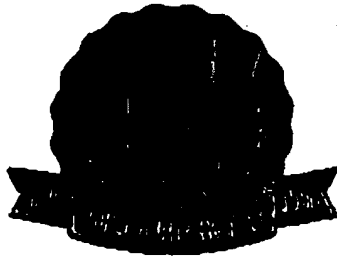

Asst. Vice President Labor Relations, NS

EXHIBIT 16

Letter from George J. Francisco, Jr., President, National
Conference of Firemen and Oilers, to STB Chairman
Linda Morgan (undated).

GEORGE J. FRANCISCO, JR.
PRESIDENT

DANIEL S. ANDERSON, JR.
SECRETARY-TREASURER



NATIONAL CONFERENCE OF FIREMEN & OILERS

SEIU, AFL-CIO, CLC

1100 CIRCLE 75 PARKWAY • SUITE 1585 • ATLANTA, GA 30339 • (770) 933-9104 • FAX: (770) 933-0361

The Honorable Linda Morgan, Chairman
Surface Transportation Board
1925 K Street, NW, Ste. 820
Washington, DC 20423

Dear Chairman Morgan:

This is to advise that the National Conference of Firemen and Oilers and the Applicants for Finance Docket No. 33388 have reached a voluntary Implementing Agreement. Therefore, NCF&O withdraws its opposition to the Applicants' Operating Plan and is no longer opposed to the approval of Finance Docket No. 33388.

Very truly yours,

EXHIBIT 17

Letter from Joseph A. Stinger, Administrative Assistant to the International President Director – Railroad Division, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, to STB Chairman Linda Morgan, dated March 24, 1998.

International Brotherhood of

BOILERMAKERS • IRON SHIP BUILDERS

755 State Avenue

CHARLES W. JONES
INTERNATIONAL PRESIDENT

SUITE 570
913-371-2640
FAX: 913-281-8101



BLACKSMITHS • FORGERS & HELPERS

Kansas City, Kansas 66101

JERRY WILLIAMS
INTERNATIONAL SECRETARY-TREASURER

SUITE 585
913-371-2640
FAX: 913-281-8102

March 24, 1998

The Honorable Linda Morgan
Chairman
Surface Transportation Board
1925 K Street, NW - Ste 820
Washington, DC 20423

Dear Chairman Morgan:

This is to advise that the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers and the Applicants for Finance Docket No. 33388 have reached an Implementing Agreement. In consideration for Applicants' commitment to certify that a number of positions represented by IBB will be adversely affected, IBB accepts the implementation of the Applicants' Operating Plan, is no longer opposed to the approval of Finance Docket No. 33388 and supports the approval of the Conrail transaction.

Sincerely,

Joseph A. Stinger
Administrative Assistant to the
International President
Director - Railroad Division

JAS/awf

cc: C. W. Jones, IP
A. M. Scheer, IR - RD
K. R. Peifer, CSX VP - LR
R. S. Spenski, NS VP - LR ✓

EXHIBIT 18

Joint Verified Statement of Kenneth R. Peifer and
Robert S. Spenski, pp. 1, 8-11 (CSX/NS-20, Vol. 3, pp.
493, 500-503).

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

RAILROAD CONTROL APPLICATION

VOLUME 3B OF 8

NS OPERATING PLAN, LABOR IMPACT EXHIBIT,
DENSITY CHARTS AND SUPPORTING STATEMENTS
(EXHIBITS 13 AND 14)

JAMES C. BISHOP, JR.
WILLIAM C. WOOLDRIDGE
J. GARY LANE
JAMES L. HOWE, III
ROBERT J. COONEY
A. GAYLE JORDAN
GEORGE A. ASPATORE
JAMES R. PASCHALL
ROGER A. PETERSEN
GREG E. SUMMY
JAMES A. SQUIRES
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191
(757) 629-2838

RICHARD A. ALLEN
JAMES A. CALDERWOOD
ANDREW R. PLUMP
JOHN V. EDWARDS
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Suite 600
Washington, DC 20006-3939
(202) 298-8660

JOHN M. NANNES
SCOT B. HUTCHINS
Skadden, Arps, Slate,
Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, DC 20005-2111
(202) 371-7400

*Counsel for Norfolk Southern
Corporation and Norfolk Southern
Railway Company*

MARK G. ARON
PETER J. SHUDTZ
ELLEN M. FITZSIMMONS
CSX Corporation
One James Center
901 East Cary Street
Richmond, VA 23129
(804) 782-1400

P. MICHAEL GIFTOS
DOUGLAS R. MAXWELL
PAUL R. HITCHCOCK
NICHOLAS S. YOVANOVIC
FRED R. BIRKHOLZ
JOHN W. HUMES, JR.
R. LYLE KEY, JR.
CHARLES M. ROSENBERGER
PAMELA E. SAVAGE
JAMES D. TOMOLA
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-3100

DENNIS G. LYONS
JEFFREY A. BURT
RICHARD L. ROSEN
MARY GABRIELLE SPRAGUE
PAUL T. DENIS
DREW A. HARKER
SUSAN T. MORITA
SUSAN B. CASSIDY
SHARON L. TAYLOR
JEFFREY R. DENMAN
JODI B. DANIS
CHRIS P. DATZ
AMANDA J. PARACUELLOS
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20004-1202
(202) 942-5000

SAMUEL M. SIPE, JR.
BETTY JO CHRISTIAN
TIMOTHY M. WALSH
DAVID H. COBURN
CAROLYN D. CLAYTON
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036-1795
(202) 429-3000

*Counsel for CSX Corporation and
CSX Transportation, Inc.*

TIMOTHY T. O'TOOLE
CONSTANCE L. ABRAMS
Consolidated Rail Corporation
Two Commerce Square
2001 Market Street
Philadelphia, PA 19101
(215) 209-4000

PAUL A. CUNNINGHAM
Harkins Cunningham
1300 Nineteenth Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 973-7600

*Counsel for Conrail Inc. and
Consolidated Rail Corporation*

JOINT VERIFIED STATEMENT
OF
KENNETH R. PEIFER
AND
ROBERT S. SPENSKI

Kenneth R. Peifer is Vice President Labor Relations at CSX Transportation, Inc. ("CSX"). He began his railroad career in 1965 in the Operating Department of The Baltimore and Ohio Railroad Company. In 1972 he joined the Labor Relations Department of the Chicago Rock Island & Pacific, and in 1973 he accepted a position in labor relations with the Western Pacific Railroad. In 1977 he joined the Labor Relations Department of the Southern Pacific Railroad and he served as Assistant Vice President-Labor Relations from 1985 to 1992. In this position Mr. Peifer directed all of the labor relations activities for the Southern Pacific rail companies. In March of 1992 Mr. Peifer joined the Labor Relations Department of CSX.

Mr. Peifer earned a Bachelor of Arts degree in English - Education from the City University of New York in 1969 and a Master of Arts degree in Public Administration from Golden Gate University in 1974. He also attended the University of San Francisco Labor Management School.

During his 25 years in labor relations in the rail industry, Mr. Peifer has had extensive experience with Interstate Commerce Commission ("ICC") and Surface Transportation Board ("STB") transactions including proposed mergers and acquisitions of control, and with the labor protective conditions imposed in such transactions. This experience includes the proposed Southern Pacific-Santa Fe merger in the mid-1980s and continuing

with the representatives for each class or craft on the three rail systems satisfying all labor conditions for this transaction.

The arrangements described in each Appendix A represent our best projections, based on the current information. However, experience teaches that additional coordinations and rearrangements and modifications of existing labor agreements will be necessary as circumstances change, as shipping patterns evolve, and as each carrier acquires experience in managing its new expanded system. Such necessary changes, like those explicitly described in the appendices, will undoubtedly provide greater long-term employment opportunities for our employees, while they give the carriers the flexibility to meet their customers' needs.

Conclusion

The position changes summarized in the Labor Impact Exhibit reflect the details of the Operating Plans as they are projected, including the necessary coordinations and changes in seniority districts, bargaining agreements, etc., set forth in the CSX and NS Operating Plans and each Appendix A. All of these changes are essential to achieve the transportation efficiencies of the transaction, as well as to allow the expanded CSX and NS Systems to provide to customers the service benefits described in the Operating Plans. They are also essential if the expanded CSX and NS Systems are to meet the needs of shippers for efficient transportation at attractive and competitive prices. These new arrangements and coordinations will lead to additional rail

traffic, which, in turn, will create new job opportunities and enhanced job security for our employees. After the initial implementation of the transaction, additional changes also may become evident based upon experiences with the expanded CSX and NS Systems and Shared Assets Areas.

As of the date of the Application, no employee protection agreements have been reached with authorized labor representatives. However, contacts will be made expeditiously with the necessary authorized labor representatives in order to initiate the process of obtaining these agreements.

1. *Journal of the American Medical Association*, 2000; 283: 2689-2694.

)
) SS.
)

Subscribed and sworn to before me by Robert S. Spenski
this 12th day of June, 1997.

Melissa B. Aspinet
Notary Public

My commission expires: January 31, 1998.

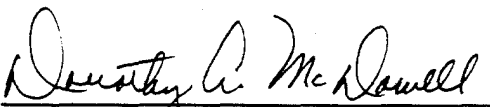
VERIFICATION

STATE OF FLORIDA)
) ss.
COUNTY OF DUVAL)

Kenneth R. Peifer, being duly sworn, deposes and says that he is Vice President Labor Relations of CSX Transportation, Inc., that he is qualified and authorized to submit this Verified Statement, and that he has read the foregoing statement, knows the contents thereof, and that the same is true and correct.


Kenneth R. Peifer

Subscribed and sworn to before me by Kenneth R. Peifer this 10th day of June, 1997.


Notary Public

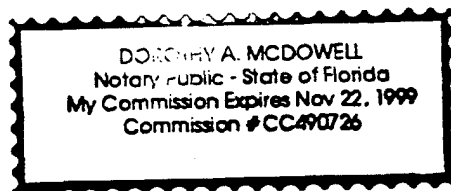


EXHIBIT 19

PA-10 (dated Feb. 23, 1998).

PATTON BOGGS, L.L.P.
2550 M STREET, N.W.
WASHINGTON, D.C. 20037-1350
(202) 457-6000
FACSIMILE (202) 457-6315

WRITER'S DIRECT DIAL
(202) 457-6424
PA-10

February 23, 1998

The Hon. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, NW
Suite 700
Washington, DC 20423-0001

Re: Finance Docket No. 33388, CSX and Norfolk Southern --
Control and Operating Lease/Agreements -- Conrail

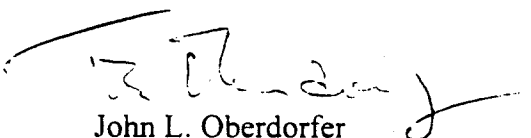
Dear Secretary Williams:

On behalf of the Commonwealth of Pennsylvania, Governor Thomas J. Ridge and the Pennsylvania Department of Transportation (collectively, "Pennsylvania"), I write in part to restate Pennsylvania's support for Applicants' proposed transaction.

Pennsylvania is also pleased to submit for the record two letter agreements dated October 21, 1997: one with Norfolk Southern and the other with CSX. The Mayor of the City of Philadelphia is also a party to both letter agreements.

Pennsylvania is furnishing these agreements to the Board because it would like the Board to be aware of their existence and terms. Pennsylvania understands that while the obligations stated in the agreements depend upon Board approval of the proposed transaction, the agreements do not require the imposition of any conditions by the Board. Nonetheless, the agreements may be considered by the Board as constituting representations that the Applicants will comply with their respective terms. See Union Pacific/Southern Pacific merger case, Finance Docket No. 32760, Decision No. 44 served August 12, 1996 at p. 12, n.14. Accordingly, Pennsylvania is pleased to submit these agreements for inclusion in the record in this proceeding.

Sincerely,


John L. Oberdorfer

cc: parties of record
(attachment to parties on confidential service list only)



Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191
804 629-2610

David R. Goode
Chairman, President and
Chief Executive Officer

October 21, 1997

The Honorable Thomas Ridge
Governor of Pennsylvania
225 Main Capitol
Harrisburg, PA. 17120

The Honorable Edward Rendell
Mayor of Philadelphia
City Hall
Philadelphia, PA. 19107

Dear Governor Ridge and Mayor Rendell:

I appreciate the commitment and cooperation you and your representatives have demonstrated during the past few months as we have worked toward a mutual understanding of the benefits and challenges for the Commonwealth and the City resulting from the proposed Conrail Acquisition. An agreement about the significant issues has been our objective. I believe the goal is achievable and offer the following proposals toward that end:

I. Economic Development

Norfolk Southern, the Commonwealth and the City will enter into an unprecedented public-private partnership to encourage rail-oriented industry to locate in Philadelphia and across Pennsylvania. Our respective commitments include:

- A. Norfolk Southern will provide \$10 million in cash investments to supplement the public effort to attract Kvaerner ASA to the Philadelphia Navy Yard. Our payments, which will be directed by the state and city, will be made in five (5) equal, annual installments, with the initial installment to be made on July 1, 1998.
- B. Norfolk Southern, working with the Department of Community and Economic Development, the Governor's Action Team and the Philadelphia Industrial Development Corporation ("PIDC"), will expend a minimum of \$15 million in the five (5) years after STB approval of the Conrail Acquisition for rail-served economic development programs in Philadelphia and across the Commonwealth. These programs will assist in land acquisition, facility construction and rail infrastructure installation with a focus on the Philadelphia Naval Business Center ("PNBC").
- C. To complement the prior efforts, Norfolk Southern will pursue additional economic development incentive programs to encourage rail-oriented industry to locate in Philadelphia and across the state. Working with the Department of

Community and Economic Development and the Governor's Action Team. Norfolk Southern will provide up front capital through these programs to assist potential rail customers in their costs of land acquisition, facility construction and rail infrastructure installation in exchange for contractual obligations for acceptable levels of rail business. After STB approval, Norfolk Southern will make available for such projects a maximum of \$5 million annually and will continue this program for a minimum of five (5) years, thus making an additional \$25 million available for rail-oriented economic development projects.

- D. The City of Philadelphia, through the PIDC, and Norfolk Southern plan to execute a Development and Marketing Agreement that is being developed for the PNBC.
- E. The Delaware River Port Authority and Norfolk Southern plan to execute an agreement that is being developed for the location and operation of Norfolk Southern's intermodal terminal, referenced in III.B., at the AmenPort Intermodal Terminal.
- F. The Commonwealth of Pennsylvania will approve the expenditure of ISTEA funds for signalization and track improvements on the Chambersburg line and such additional Pennsylvania projects as may subsequently be authorized by Congress involving lines owned or operated by Norfolk Southern, including the Erie track relocation project.

II. Jobs

Job creation is one of the principal goals of our combined economic development efforts. Additionally, Norfolk Southern's job creation efforts will include:

- A. A Mid-Atlantic Regional headquarters will be located in Philadelphia. Initially, there will be seventy-five (75) jobs, including a Regional Vice President, at this site.
- B. One-hundred-fifty (150) new rail-related jobs will be created as a result of Norfolk Southern commercial and operational activities in the Philadelphia area during the three years after STB approval of the Conrail Acquisition.
- C. CSX and Norfolk Southern will jointly own Conrail Inc. Philadelphia will remain as the headquarters of Conrail Inc. for the 350 positions involved with the operation of the "Shared Assets Areas" and other continuing Conrail activities.

III. Capital Expenditures

The operating plan filed with the STB identifies more than \$235 million in capital improvement expenditures by or on behalf of Norfolk Southern in Pennsylvania. This is the largest expenditure by Norfolk Southern in any single sum and includes an investment of more than \$30 million in Philadelphia for four major projects:

- A. Triple Crown facility (\$4 million);
- B. Intermodal facility (\$10 million);
- C. Automobile facility (\$16 million); and
- D. Track connection at Zoo interlocking (\$1.4 million).

IV. Passenger Rail

Freight and passenger rail operations share track in more than half of SEPTA's service territory. Norfolk Southern, the City and the Commonwealth will recommend to Conrail and SEPTA that the existing Trackage Rights Agreement be extended for five (5) years. Norfolk Southern agrees, subsequent to STB approval of the Conrail Acquisition, to negotiate seriously and in good faith the extension of SEPTA service on the Harrisburg and Morrisville lines, and such other issues as may be appropriate.

V. Corporate Citizenship

Norfolk Southern will be an active participant in civic and charitable affairs in Philadelphia and throughout Pennsylvania and, together with CSX, will encourage Conrail to fulfill its philanthropic commitments as of this date.

VI. Regulatory Review

On or before October 21, 1997, The Commonwealth of Pennsylvania and the City of Philadelphia will file written statements of support for the Conrail Acquisition with the STB. Additionally, you have agreed to encourage other elected officials and public agencies, including SEPTA and the DRPA, also to file timely statements of support.

Norfolk Southern's commitments in this letter are expressly conditioned upon STB approval of the Conrail Acquisition substantially as it was filed on June 23, 1997, and therefore, will take effect only upon closing of the Conrail Acquisition. Norfolk Southern's commitments

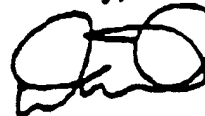
The Honorable Thomas Ridge
The Honorable Edward Rendell
October 21, 1997 - Page 4

also are conditioned upon fulfillment by Pennsylvania and Philadelphia of their reciprocal commitments, reflected in this letter and in the agreements under development.

Some of the issues I have addressed have common elements or involve mutual requirements with CSX. I believe that we and CSX are in agreement about the objectives and expect that you will memorialize your understandings with CSX in a similar fashion.

This unprecedented public-private partnership demonstrates Norfolk Southern's commitment to Pennsylvania and Philadelphia and to their future economic prosperity. We are excited about the opportunities that lie ahead and look forward to working closely with you.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Goode", with a stylized flourish at the end.

David R. Goode

EXHIBIT 20

Transcript of Oral Argument, June 3, 1998,
pp. 1, 24-27.

UNITED STATES OF AMERICA

+ + + + +

SURFACE TRANSPORTATION BOARD

+ + + + +

ORAL ARGUMENT

+ + + + +

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

STB FINANCE DOCKET NO. 33388

+ + + + +

WEDNESDAY

JUNE 3, 1998

+ + + + +

WASHINGTON, D.C.

+ + + + +

The Public Hearing convened at The Surface
Transportation Board, 1925 K Street, N.W., Room 760,
at 10:00 a.m.

BEFORE:

LINDA J. MORGAN, Chairman

GUS A. OWEN, Vice-Chairman

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 companies, commuter and inner-city passenger rail
2 service, rail safety and the environment.

3 He was greatly appreciative that you
4 allowed a staffer like me to come up and present them.

5 CHAIRMAN MORGAN: Well, you have presented
6 them well. Thank you.

7 VICE CHAIRMAN OWEN: Would you take the
8 Senator our best and hopes that he has a speedy
9 recovery?

10 MR. RENBERG: I will. Thank you.

11 CHAIRMAN MORGAN: We will now proceed with
12 the first group of Members of Congress.

13 I would like Senator Warner, Congressman
14 Shuster and Congressman Bliley to come up.

15 I think I would like to begin with you,
16 Chairman Shuster since you are the creator and
17 authorizer of the Board and our fate is in your hands.

18 And since we are so non-controversial
19 these days that is probably pretty easy to handle.

20 But we are honored to have you and I know
21 this is of great interest in the pending matter.

22 REPRESENTATIVE SHUSTER: Thank you very

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 much, Madam Chairman and Mister Vice Chairman. I
2 certainly appreciate the opportunity to be here.

3 I want to commend you on what I believe to
4 be an outstanding job of this Board, thus far.

5 I might comment, with regard to building
6 highways, one of the reasons that we want to build
7 these modern highways is so we can have better hookups
8 with rail terminals as well as seaports and airports
9 so that we can have a more productive and better
10 America in which to live.

11 I am here today to express my strong
12 support for the proposed acquisition of Conrail by
13 Norfolk Southern and CSX.

14 From both a national and a regional
15 perspective, this transaction is a significant net
16 plus. Conrail has done an excellent job with the
17 resources available to it. But it does not have the
18 capital resources so vital in an industry that is
19 beginning to experience a capacity crunch. And
20 indeed, Norfolk Southern and CSX can provide the
21 capital necessary to draw on to meet the future
22 infrastructure needs of the railroad.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Indeed, in my judgement, Conrail cannot
2 survive in the long run, standing alone.

3 Competitively, bringing two healthy rail
4 carriers into the Northeast is a major advance for the
5 region and the nation.

6 I first came to Congress as we were
7 struggling with the aftermath of the Penn Central and
8 other northeastern rail bankruptcies. Indeed, I was
9 deeply involved in the creation of Conrail.

10 Much of our effort was successful because
11 Conrail came out of this disaster and was able to
12 stand on its own feet as a private sector railroad.

13 But some of the potential competitive
14 options for northeastern rail shippers that we hoped
15 for just didn't materialize.

16 This left Conrail without a major regional
17 rail competitor. That is why bringing Norfolk
18 Southern and CSX into the region holds the potential
19 for greater competition between two large railroads
20 having the needed capital resources, as is already the
21 case in the West and Southeast.

22 This transaction, on a competitive basis,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is clearly in the public interest. Having Conrail
2 succeeded by NS and CSX is also good for Pennsylvania.
3 Many Conrail facilities, including the Altoona and the
4 Hollidaysburg shops, are among the crown jewels of the
5 system that was rebuilt after Penn Central.

6 And I am very pleased that the NS
7 operating plan includes a continued and an expanded
8 role for these highly productive facilities and their
9 highly skilled work forces.

10 As to the highly trained Conrail workers
11 in my district and elsewhere, I am very pleased that
12 NS and CSX are going forward with efforts to negotiate
13 implementing agreements as soon as possible.

14 Any change in corporate control inevitably
15 produces some uncertainties that affect the employees.
16 But I am confident that both the carriers and the
17 unions can work out any differences in the context of
18 well-established procedures for implementing the
19 transaction, once approved by the STB.

20 I would also note that I am perhaps the
21 only Member of Congress appearing today who has
22 actually worked as a laborer on the railroad,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

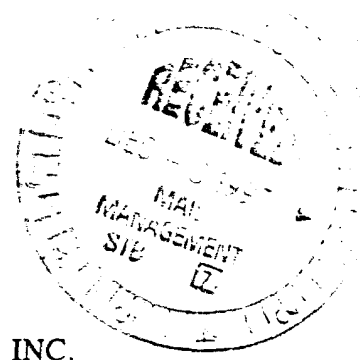
(202) 234-4433

www.nealrgross.com

EXHIBIT 21

Norfolk Southern's Safety Integration Plan
(filed December 3, 1997) p. 11

BEFORE THE
SURFACE TRANSPORTATION BOARD



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

STB FINANCE DOCKET NO. 33388

NORFOLK SOUTHERN'S
SAFETY INTEGRATION PLAN

SUBMITTED IN ACCORDANCE WITH
DECISION NO. 52

Dated: December 3, 1997

personal contacts between NS officers and their Conrail counterparts in every affected department. As a result, NS is better prepared to smoothly implement this transaction.

NS not only has been working with CSX and Conrail in the development of proper implementation plans, but also has been in direct consultation with the FRA and, in fact, has submitted drafts of its SIP to the FRA for its review, consultation and comment. This parallels the ongoing consultative process with FRA fostered in 1996 through NS' involvement in FRA's Safety Assurance and Compliance Program (SACP). In addition, NS has been drawing upon the expertise and experience of commuter agency authorities and Amtrak. Furthermore, as discussed more fully below, NS has obtained the benefit of review and comments concerning its ongoing safety program as well as this SIP from the safety leaders at DuPont. NS is committed to maintaining these lines of communication and benefitting from the knowledge and experience available from each of these organizations and their internal experts.

Full implementation of the transition to an expanded NS system will require flexibility throughout the process. This plan must and will change to address new information and changing circumstances. NS understands that this is a dynamic process which requires plans backed by contingency plans capable of meeting and safely addressing the changing business environment. In the discussion that follows, NS sets forth many of the decisions which have been made, or in the alternative, the process through which decisions will be made, to safely, smoothly and efficiently accomplish the proposed transaction. Accordingly, as more information is developed, both before and after Control Date, many of the safety plans set forth herein will require modification. NS will ensure that the STB, FRA and others are consulted and kept informed as NS' safety integration process continues to evolve.