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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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Public Record

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**STB Docket No. AB-167 (Sub-No. 1191-X)  
CONSOLIDATED RAIL CORPORATION  
-ABANDONMENT EXEMPTION-  
IN PHILADELPHIA, PA**

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**STB Docket No. AB-55 (Sub-No. 710-X)  
CSX TRANSPORTATION, INC.  
-DISCONTINUANCE OF SERVICE EXEMPTION-  
IN PHILADELPHIA, PA**

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**STB Docket No. AB-290 (Sub-No. 552-X)  
NORFOLK SOUTHERN RAILWAY COMPANY  
-DISCONTINUANCE OF SERVICE EXEMPTION-  
IN PHILADELPHIA, PA**

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**OFFER OF FINANCIAL ASSISTANCE**

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**Filed for**

**CNJ RAIL CORPORATION**

**- AND -**

**ERIC S. STROHMEYER (Individually)**

## TABLE OF CONTENTS

	<b>Page #</b>
<b>I. Introduction .....</b>	<b>1</b>
Introduction of Offerors .....	1
Summary of Offer .....	2
<b>II. Background .....</b>	<b>4</b>
<b>III. Offer of Financial Assistance (OFA) .....</b>	<b>5</b>
<b><u>A. Identification of the Rail line .....</u></b>	<b>6</b>
Trifurcated OFA .....	6
Segment 1 - "Fairhill Junction" Segment - Milepost 2.80 to Milepost 2.70 .....	6
Segment 2 - "1978 Agreement" Segment - Milepost 2.70 to Milepost 0.95 .....	7
Segment 3 - "Final System Plan" Segment - Milepost 0.95 to Milepost 0.00 .....	8
<b><u>B. Financial Responsibility of the Offerors .....</u></b>	<b>9</b>
CNJ Rail Corporation .....	9
Eric S. Strohmeyer .....	9
<b><u>C. Basis for Calculation of the Offer .....</u></b>	
Segment 1 - "Fairhill Junction" Segment - Milepost 2.80 to Milepost 2.70 .....	10
Segment 2 - "1978 Agreement" Segment - Milepost 2.70 to Milepost 0.95 .....	12
Segment 3 - "Final System Plan" Segment - Milepost 0.95 to Milepost 0.00 .....	12

**( Table of Contents - Continued )**

	<b>Page #</b>
<b>IV. Public Convenience and Necessity .....</b>	<b>16</b>
<b>A. <u>Overview by segment</u> .....</b>	<b>16</b>
Segment 1 - "Fairhill Junction" Segment - Milepost 2.80 to Milepost 2.70 .....	18
Segment 2 - "1978 Agreement" Segment - Milepost 2.70 to Milepost 0.95 .....	16
Segment 3 - "Final System Plan" Segment - Milepost 0.95 to Milepost 0.00 .....	17
<b>B. <u>National Transportation Policy</u> .....</b>	<b>18</b>
<b>C. <u>Bona Fide Offer</u> .....</b>	<b>20</b>
<b>V. Proposed Operations .....</b>	<b>20</b>
<b>VI. Conclusions .....</b>	<b>23</b>
<b>Exhibits</b>	

**In the matter of an**  
**OFFER OF FINANCIAL ASSISTANCE**  
**STB Docket # AB 167 (Sub No. # 1191 - X)**

**I. INTRODUCTION**

Now comes your Offerors, Mr. Eric S. Strohmeyer, a citizen of the State of New Jersey, whose address is 81 Century Lane, Watchung, NJ 07069 and CNJ Rail Corporation, a New Jersey corporation, whose mailing address is 191 North Avenue, Suite 238, Dunellen, NJ 08812, (herein after referred to as "Offerors"), who collectively now respectfully submit this Offer of Financial Assistance ("OFA"), pursuant to 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase a **portion** of a rail line owned and / or operated by the Consolidated Rail Corporation ("Conrail"), which rail line is the subject of the above-captioned abandonment proceeding.

Your Offerors, in support of their offer, state:

1. CNJ Rail Corporation ("CNJ") is a recently re-constituted New Jersey corporation. CNJ's principle business will be to function as a management and holding company for a number of railroad related businesses and rail properties it will either form, or acquire, over the next couple of years. In addition to its own holdings, CNJ may also manage a couple of other rail properties owned, or held by, other parties.

2. CNJ is owned by a number of different shareholders, including Mr. William B. Strohmeyer, and Mr. Eric S. Strohmeyer. Today's CNJ was created, held, and is managed by the same people who created and managed the original CNJ Rail Corporation (CNJ - 1). In *Consolidated Rail Corporation - Abandonment Exemption - In Jersey City, NJ - STB Docket # AB 167 - 1190 X*, there was some confusion over CNJ - 1's legal status. In its pleadings, Conrail correctly noted that CNJ - 1 was listed as "dissolved without assets". As was explained in that

proceeding, the original corporate shell was inadvertently dissolved.

3. Today's CNJ was re-incorporated specifically to pursue a number of projects, of which this OFA is one of those projects. CNJ plans to pursue a number of business opportunities this year. So there is no confusion in this proceeding as to CNJ's legal standing, please find hereto attached as Exhibit # 1, a certified true test copy of CNJ's certificate of incorporation filed with the Treasury Department of the State of New Jersey on November 7<sup>th</sup>, 2011.

4. While there may, or may not be, some confusion over CNJ's status, the Board should have no confusion with respect to whom the other Offeror is in this proceeding. Your Offeror has appeared personally before the Board in a large, and diverse, number of proceedings<sup>1</sup>. I have been involved in the railroad industry, in various capacities<sup>2</sup>, since the late 1980's. I am currently the Vice President, and Chief Operating Officer (COO) of CNJ.

5. In addition, Mr. James Riffin, of Cockeysville, MD, has requested to join in the Offerors' OFA. The Offerors have agreed to include him as an Offeror. The Offerors and Mr. Riffin have worked together for many years. Filed under seal, and included in the verified financial statement, is correspondence which outlines internally what roles the three offerors have with respect to this OFA.

6. According to Conrail's Notice of Exemption, the subject line is commonly known as the Berks St. Industrial Track (Line). The line begins at Milepost (MP) 0.00 and goes to MP

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<sup>1</sup> For Example - See: *Twenty Five Years of Railbanking: A Review and Look Ahead* - STB Docket No.# EP 690; *Competition in the Railroad Industry* - STB Docket No.# EP 705; *Montreal, Maine And Atlantic Railway Ltd. - Discontinuance of Service and Abandonment - In Aroostook and Penehscot Counties, Maine* - STB Docket No # AB 1043 (Sub No.1)

<sup>2</sup>See: *Verified Statement of Eric S. Strohmeyer : Union Pacific et. al. - Control and Merger - Southern Pacific Transportation et. al.* STB Docket # 32760 (1996); *Verified Statement of Eric S. Strohmeyer : CSX Transportation et. al., Control and Operating Leases/Agreements - Conrail Inc. et. al.* STB Docket # 33388 (1997); *Somerset Terminal Railroad Corporation - Operations Exemption - A Line of Railroad owned by Joseph C. Horner* STB Docket # 33999 (2001);

2.98, a distance of 2.98 miles. The line is entirely situated within the City of Philadelphia, PA.

7. The portion of the Line that the Offerors offer to buy, extends from MP 0.00 to MP 2.80, a distance of approximately 2.8 miles. However, the offerors have chosen to trifurcate their offer. The reason we have chosen to do this is because of the various ownership interests and other legal issues associated with the line. We provide a more detailed explanation in the Section III of this pleading below. We believe this approach will actually prove to be a very practical and logical approach in making this offer.

8. Your Offeror's are offering a total figure of \$30,261.00 for the entire line between MP 0.00 and MP 2.80, plus \$2.87 for every square ft of additional right of way needed to facilitate the construction of a rail siding in order to serve an industrial property near the junction of the line with Conrail's Port Richmond Secondary line.

9. The offer can be broken down into three Offers, one for each segment. The three segments are:

- Segment # 1 - "Fairhill Junction" Segment from MP 2.80 to MP 2.70
- Segment # 2 - "1978 Agreement" Segment from MP 2.70 to MP 0.95
- Segment # 3 - "Final System Plan" Segment from MP 0.95 to MP 0.00

10. A more detailed description of the line segments is provided in Sections III. For the three segments, the Offerors offer the following:

- Segment # 1 - We offer the amount of \$30,250.00, plus \$2.87 for every square ft of additional right of way we determine we need in order to provide rail service to an adjacent industrial property.
- Segment # 2 - We offer \$10.00 for Conrail's remaining operating rights in that

section of the line.

- Segment # 3 - We offer \$ 1.00 for whatever rights, title, and interest Conrail may have in this section of the line. (It should be noted, the offerors believe this section of the line may actually have a negative Net Liquidation Value (NLV)).

11. CNJ's offer includes all ancillary tracks and right of way which are inside the geographic area of the abandonment proceeding and are contiguous to the line. The offer also includes all the track material, and any and all other items on, appurtenant to, or associated with, the Line which are owned by Conrail, including any and all interests, legal or equitable, that Conrail may have in, or which is associated with, the Line, including all licensing and any other agreements associated with the Line, free of all liens and encumbrances, settlement costs to be split by the parties. The offerors acknowledge that for certain portions of the line, Conrail retains only an operating easement and agreement governing the use of the line.

## **II. BACKGROUND**

12. This proceeding began on October 18<sup>th</sup>, 2011, when Conrail filed a Notice of Intent to Initiate Case with the Board. On January 5<sup>th</sup>, 2012, Conrail filed its Verified Notice of Exemption in this proceeding. On January 25<sup>th</sup>, 2012, the notice was published in the Federal Register (See: *Federal Register* : FR - 4915 - 01 P, January 25<sup>th</sup>, 2012 ).

13. On January 30<sup>th</sup>, 2012, your offerors filled a formal Notice of Intent to File an OFA and requested from Conrail the information spelled out in 49 CFR 1152.27 (a), as well as some additional information. We also filed a request to Toll the Time Period for filing an OFA. Conrail respond to the information requested on February 7<sup>th</sup>, 2012.

14. After reviewing the information provided, and after conversing with Conrail's

outside counsel, your offerors requested some additional information from Conrail. On February 23<sup>rd</sup>, 2012, your offerors filed a second request to Toll the Time Period for Filing an OFA. It was requested that the Board toll the time period until March 9<sup>th</sup>, 2012. On February 27<sup>th</sup>, 2012, Conrail responded to our information request.

15. In a decision served on Friday March 2<sup>nd</sup>, 2012, the Board granted the Second Request to Toll the Time Period for Filing an OFA until March 9<sup>th</sup>, 2012. This OFA is being filed in conformity with the Board's March 2<sup>nd</sup>, 2012 decision.

### **III. OFFER OF FINANCIAL ASSISTANCE**

16. Your Offerors, pursuant to the applicable regulations of the Board, herein submits its formal Offer of Financial Assistance in the above captioned proceeding. Under 1152.27(c)(1)(ii), your Offerors must:

A. Identify the line in question, which the offerors previously did in ¶ 6, *supra*. A more detailed identification is provided herein below

B. Demonstrate that the offerors are financially responsible, that is, that they have, or within a reasonable time will have, the financial resources to fulfill its proposed contractual obligations. As stated in ¶ 31, 32 herein below, the Offerors filed with the Board separate filings containing their Financial Statements, which demonstrates the offerors have the financial resources to fulfill their contractual obligations.

C. Explain the disparity between the offeror's proposed purchase price, if less than the abandoning carrier's estimate, and explain how the offer of purchase is calculated. This is explained in the paragraphs below.

17. While an offeror must meet these criteria, an OFA need not be overly detailed. See *Illinois Central Railroad Co. – Abandonment – Between Aberdeen Junction and Kosciusko, in Holmes and Attala Counties*, STB Docket No. AB-43 (Sub-No. 163) STB served January 31, 1997.

#### **A. Identification of the Rail Line**

18. As was previously mentioned and discussed above at ¶ 6, *supra*, Conrail's Notice of Exemption refers to the subject line as the Berks St. Industrial Track (Line). The line begins at Milepost (MP) 0.00 and goes to MP 2.98, a distance of 2.98 miles. The line is entirely situated within the City of Philadelphia, PA.

19. The portion of the Line that the Offerors offer to buy, extends **from MP 0.00 to MP 2.80**, a distance of approximately **2.8 miles**. However, the offerors have chosen to trifurcate their offer. The reason we have chosen to do this is because of the various ownership interests and other legal issues associated with the line. As previously stated, we believe this approach will actually prove to be a very practical and logical approach in making this offer.

20. Once again, our offer is broken down into three Offers, one for each segment. The three segments are:

- Segment # 1 - "Fairhill Junction" Segment from MP 2.80 to MP 2.70
- Segment # 2 - "1978 Agreement" Segment from MP 2.70 to MP 0.95
- Segment # 3 - "Final System Plan" Segment from MP 0.95 to MP 0.00

21. Segment # 1 - The "Fairhill Junction" segment is the smallest segment at only 0.1 miles in length. It is the most straight forward segment of the line. The underlying property is

owned solely by Conrail. The tracks have been previously salvaged<sup>3</sup> from this segment. Conrail owns the right-of-way in fee. This segment appears to hold the greatest value for Conrail.

22. In our Notice of Intent to File an OFA, the offerors previously identified MP 2.80 as being "at the north end of bridge" over Conrail's Port Richmond secondary. On February 27<sup>th</sup>, 2012, Conrail responded to our request to precisely identify the location of MP 2.80. (See Conrail response at: 3, See also: Exhibit B). Conrail's exhibit showed MP 2.80 as being south of the bridge.

23. After careful review, we believe Conrail's description of the precise location of where MP 2.80 is located is fairly close to accurate. As was depicted in Exhibit B, the connecting track from the Port Richmond Secondary track ties into the line at MP 2.75. We therefore feel that an Offer to purchase the Line to MP 2.80 will in fact reach sufficiently far enough in order for the offerors to be able to reach the end of the connecting track right-of-way. Please note, Conrail indicated it intended to retain the connecting track, and the right of way for it. (See Conrail's February 27<sup>th</sup> response at 8.)

24. To the extent our original offer appeared to indicate we intended to acquire to the "north end of the bridge", your offerors herein modify our offer to reflect the true location of MP 2.80, as is depicted in Exhibit B of Conrail's Feb 27<sup>th</sup> response. We will not be acquiring any portion of the bridge across Conrail's Port Richmond Secondary Line. We will not acquire any portion of the line north of milepost 2.80.

25. Segment # 2 is being called the "1978 Agreement Segment". It runs from MP 2.70 to MP 0.95 at Thompson St. Like its name suggests, this segment encompasses the entirety of the segment which was subject of the 1978 agreement between the City of

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<sup>3</sup> CNJ has come to learn that the salvage of the track material was done by unauthorized persons intent on stealing the material for scrap metal. See: Verified statement of E. Fernando Quiles

Philadelphia and Conrail.

26. This segment's previous real estate transactions appeared to be fairly straight forward. What concerns your Offerors is the fact the Offerors have not been able to find out if this transaction was in fact, reviewed by the ICC or not. In one of the pleadings in this proceeding, there was mention that Conrail was unable to locate a record of as to whether or not the Commission had in fact reviewed this transaction. Given the time period involved, and the size of the project, your Offerors can't imagine this transaction went unreviewed.

27. Notwithstanding our concern over the issue of review, if one were to carefully review the operating agreement, it is fairly obvious that the agreement, as written back then, would certainly be consistent with what we now commonly refer to as the "State of Maine" series of cases. As such, your offerors would argue that it was clearly not the intent of the parties for the City of Philadelphia to become a "common carrier" as a result of the transaction. The common carrier obligation was clearly intended to remain solely with Conrail. As a result, however, all Conrail retained was an operating easement, and an operating agreement.

28. Segment # 3, which the offerors call the "Final System Plan" Segment, appears to have a number of issues which give your Offerors some cause for concern. Your offers herein clarify they previous statements with respect to this segment. Your offerors are only offering to purchase whatever rights, title, and interest Conrail has in the line from MP 0.00 to MP 0.95 at Thompson Street. Conrail has identified the location of MP 0.00 as being along the southernly edge of Front St. at the intersection with the former Reading Company Willow Street Branch.

29. Your offerors, after examining the material supplied by Conrail, agree that Conrail's Exhibit A in their February 27<sup>th</sup> pleading appears to accurately depict the exact location of MP 0.00. Your Offerors, upon receiving this information, herein modify our

Offer to eliminate any references to the line "connecting to the Philadelphia Belt Line Railroad (PBLR) at Milepost 0.00" The line clearly did not connect at MP 0.00 with the PBLR, but rather with the former Reading Company Willow Street Branch. However, Conrail did indicate that the remaining easements within in the public street right of way on Noble Street are included within the geographic limits of the area to be abandoned.

30. The easements within the Noble St. right of way, do appear to reach all the way to Christopher Columbus Blvd. Your Offerors will include in there OFA offer, all those easement within the Noble Street right-of-way (See Conrail February 27<sup>th</sup>, 2012 filing at 2). Conrail did clearly indicate the former side tracks, and the underlying property, which made up the Willow and Noble Street freight yards, were not part of the line of railroad We would agree with their conclusion.

#### **B. Financial Responsibility of the Offerors**

31. As mentioned in ¶ 2, *supra*, CNJ is a recently re-incorporated New Jersey corporation. By way of a separate pleading, filed under seal, CNJ is submitting for the Board's review its current financial statement, as well as personal financial statements of a number of CNJ's shareholders. Due to the short time period in which an OFA must be filed in an Notice of Exemption proceeding, CNJ's shareholders decided it is easier to submit personal financial statements in addition to the corporations financial statements, as opposed to trying to move funds into the corporation's possession before the Board renders a decision on the merits of the OFA.

32. Also being filed concurrently, and also under seal, is a verified statement and personal financial statement of Mr. Eric S. Strohmeyer. It should be noted, that a number of supporting exhibits which support the representations made in the verified financial statement are in fact public documents which are part of the record in a number of court proceedings. To

the extent that those documents are in fact public records, your offeror, in the joint motion for a protective order, respectfully requested that they be kept under seal with the exceptions contained therein.

33. The Offerors believe they met the Board's criteria for financial responsibility. However, if the Board feels that additional information is needed, the Offerors are prepared to proffer any additional information the Board may desire, or require.

**C. Price to be Paid for the Line / Explanation regarding the Calculation of the Offer**

34. As was stated previously at ¶ 9, *supra*, for the three segments, the Offerors offer the following:

- Segment # 1 - We offered the amount of \$30,250.00, plus \$2.87 for every square ft of additional right of way we determine we need in order to provide rail service to an adjacent industrial property.
- Segment # 2 - We offered \$10.00 for Conrail's remaining operating rights in that section of the line.
- Segment # 3 - We offered \$ 1.00 for whatever rights, title, and interest Conrail may have in this section of the line.

35. The Offerors herein below provide an explanation as to how they calculated their offer.

**Segment # 1**

36. The offer for Segment # 1 was calculated based on acquiring only a portion of the right-of-way that is available. Your offerors began by determining precisely what they needed in

order to facilitate a connection from the end of segment # 2 near MP 2.70, to the end of the Conrail-retained connecting track near MP 2.80. It was determined that we only need a right-of-way, 20 feet wide, by 0.1 miles long (528 ft). This would provide ample room for a single track connection between the north end of Segment # 2 and the junction with the connecting track..

37. A right-of-way 20' feet wide by 528' feet in length covers an area of 10,560 sq. ft. We then calculated that 10, 560 sq. ft. is 24.2 percent of one acre. We then took Conrail's per acre price of \$125,000.00 as the base price per acre. 24.2 percent of \$125,000.00 is \$30,250.00. That figure is what we offered to Conrail for a 20' wide, 528' long piece of the right of way, which makes up our initial offer.

38. We also realized that we will need additional square feet in order to build a side track to the industrial property adjacent to the line located along Segment # 1. Conrail has stated that the lot is an irregular size. In addition, your offerors have not been able to determine precisely where all the property lines are, since it appears a portion of the right of way was sold by the Reading Company before the advent of Conrail.

39. Instead of trying to "guess" how much additional square feet we might need, we decided we would simply offer a per square foot price for the additional number of square feet we need. The price of \$2.87 per sq ft is, once again, based on Conrail's asking price of \$125,000.00 per acre. In short, we matched their asking price. However, we will not take any more square feet than what we need to facilitate our connection, and to be able to reach and serve the industrial property adjacent to the line.

40. Whatever land we do not take, Conrail can retain and dispose of as it sees fit. As an aside, the Offerors have learned that the adjacent property owners have an interest in possibly acquiring the remaining property from Conrail. Therefore, it is likely that Conrail will be able to dispose of all the land which does not get transferred pursuant to the OFA process.

41. It should be noted that all of the track material in Section # 1 has already been salvaged. Therefore, we need not calculate the price for any track material in our offer for Segment # 1.

Segment # 2

42. The price for Segment # 2 is actually an arbitrary number. Your Offerors actually believe Conrail's NLV for segment # 2 is zero. Because we must give some consideration, we simply chose to offer \$10.00 dollars as a nominal consideration for Conrail's freight easement and operating agreement.

43. Careful review of the Agreement between the City of Philadelphia and Conrail actually confirms the Offerors belief that the NLV for this segment is zero. The agreement clearly indicates that the City acquired all the physical fixed assets of the line. Conrail can not salvage any of the track material. They simply don't own it. There is no right-of-way to liquidate, the City has already acquired it. In short, what asset can Conrail claim to own after they consummate their abandonment authority? The act of consummating abandonment authority appears to have the effect of permanently extinguishing the retained easement. There is simply nothing left to liquidate. Therefore, the NLV can only be zero.

44. Since something with no NLV is worthless, a nominal offer of \$10.00 is appropriate for Conrail's retained freight easement and operating agreement.

Segment # 3

45. Our offer for this segment actually has the offerors a little worried. The only reason we included this segment in our OFA was the fact that retention of Segment 3 would make a future connection to the Philadelphia Belt Line possible. Without preserving this corridor, there would be no way possible to economically "build out" to reach additional rail carriers.

46. The Philadelphia Belt Line is unique in that it is one of the few places in the country where it is possible to get service from 3 Class 1 carriers. CSX, NS, and the Canadian Pacific Railway (through the Canadian carrier's D&H subsidiary) all have rights to serve customers along the Philadelphia waterfront on the southern portion of the PBLR . Therefore, your offerors have an interest in attempting to preserve this corridor for the purpose of retaining the ability to reach the third Class 1 carrier at some point in the future.

47. That said, this segment poses a significant number of challenges to overcome. Also compounding the problems with this segment is the fact that this segment was conveyed to Conrail pursuant to 45 US Code, Chapter 16. The conveyances of rail lines to the Conrail was made pursuant to the "Final System Plan", as outline in the Regional Railroad Reorganization Act. Your offerors' believe the appropriate statutory language which governs conveyances to Conrail appears to be located at 45 U.S.C., Chapter 16, Sub-Chapter 3, Section 743 (b) (2). That section states:

**"(2) All rail properties conveyed to the Corporation or any subsidiary thereof the respective profitable railroads operating in the region, States, and responsible persons under this section shall be conveyed free and clear of any liens or encumbrances, but subject to such leases and agreements as shall have previously burdened such properties or bound the owner or operator thereof in pursuance of an arrangement with any State, or local or regional transportation authority under which financial support from such State, or local or regional transportation authority was being provided on January 2, 1974, for the for the continuance of rail passenger service or any lien or encumbrance of no greater than five years' duration which is necessary for the contractual performance by any person of duties related to public health or sanitation. Such conveyances shall not be restrained or enjoined by any court." (emphasis added)**

The question we first posed to Conrail was : Did the line come to you via the "Final

System Plan”? Conrail responded in the affirmative in their February 27<sup>th</sup> response. (See: response at 10). Conrail also averred its belief was that it operated on the line via an 1871 agreement with the City. (See Conrail’s response at 9).

48. The question that has arisen is: What effect did the Final System Plan conveyance have on the 1871 agreement? As noted above, **all rail properties went to Conrail free and clear of all liens and encumbrances.** The right of way for the line was clearly the City’s streets. The City’s streets are clearly an encumbrance. What exact interest does Conrail have in that section of the line? An argument could be made that Conrail could possibly have a very “color-able claim” in the street. Just what the claim might be, is very hard to see. Your offerors have not been able to find any previous case law which could help resolve the dispute.

49. In addition, Conrail might be required to remove the rails, and restore the street if service is terminated. Conrail has been unable to locate the original agreement, so it is currently unknown what that agreement might contain. In addition, the “Final System Plan” conveyance could have preempted the 1871 agreement, in whole or in part. Your offerors simply can not tell what exactly we are acquiring, or what liabilities we might incur if we purchase segment # 3.

50. In our discussions with Conrail, we had suggested to them they might own more of Segment # 3 than they believed. Conrail seemed to scoff at the idea. Your offerors would like to point out, there is evidence in the record already that supports the claim that Conrail may have a greater interest than it first believed to have had in the line. The evidence is none other than the 1978 agreement with the City, and the deed contained therein.

51. As part of its consideration to rebuilding American St., and the tracks located thereon, the City **insisted on Conrail giving them a quit claim deed to what is in essence, a city street.** If the city owned the street, why would it need, or want, a quit claim deed? One possible answer to that question is : The City wanted title to its street back because its claim to street was extinguished because of the conveyance to Conrail of the right of way, which was

made pursuant to the Final System Plan! It provides a logical answer as to why that unusual request was so intricate to the rebuilding effort. Otherwise, why would you want someone to give you a deed to something you already own in the first place? Any City would certainly ask for a quit claim deed if its title and interest under state law was lost due to a preemptive federal action. In this case, the federal action was the effects of the Regional Rail Reorganization Act.

52. As was previously mentioned, a significant portion of Segment # 3 still exists. Hereto attached as Exhibit # 2 is the verified statement of Mr. Vladimir Ushakov. It contains photographic evidence of what remains today on the line. More than ½ half of the line remains intact. However, a portion has been removed.

53. Your offerors have yet to discover the identity of the parties responsible for removing the tracks from Milepost 0.95 to Milepost 0.60. What we reasonably can deduce is that someone would have had to have had at least the City's permission to have removed the tracks. Removing street trackage would have required closing the street for a period of time. We fully expect to find records to indicate precisely who did it, and when. Once the Offerors have identified the responsible parties, and assuming this OFA is permitted to go forward and we acquire the segment # 3 portion of the line, we will pursue whatever appropriate remedies may be available for seeking restitution for the removal of the track material, if Conrail's representations are indeed accurate. However, recovering losses might prove to be impossible.

54. As mentioned above, there are lots of issues with regards to this segment. Since this line segment is filled with such uncertainty at this time, we are only offering \$1.00 for this segment. We simply have no clue as to what we may be acquiring. It should be pointed out, if there is still an ongoing dispute over exactly what legal interest Conrail retains in segment # 3, and the parties need to ask the Board to set terms and conditions, the Board will have to send the parties to the Special Court first in order to determine what Conrail received pursuant to the Final System Plan before setting terms and conditions. There is no way for the Board to set the terms without the Board itself knowing what Conrail received. The Board can not address the

issue of what Conrail received pursuant to the Final System Plan.

#### **IV. PUBLIC CONVENIENCE AND NECESSITY**

55. While OFA's are not required to be "overly detailed", the Offerors have decided to provide some brief comments addressing Public Convenience and Necessity (PC&N) simply because the line has not seen any service for better than 20 years. The extended length of time that the line has been out of service could possibly be viewed as evidence of a lack of public need. Therefore, some comments addressing the issue of PC&N would appear to be appropriate.

56. Before filing this OFA, your Offerors made a concerted effort to identify existing potential rail traffic that could move over the line. We did not need to look far in order to find it. Your Offerors made contact with officials from Morris Iron and Steel Co., Inc., (Morris Iron) a local scrap metal processing company. They have a facility located at 271 W. Berks Street, in Philadelphia. Their facility is located directly along the line in Segment # 2. We discovered that their siding remained mostly intact. In meeting with senior management officials from the company, it was learned that Morris Iron had, in fact, made numerous inquiries into the availability of rail service along the line.

57. Your Offerors have discussed this OFA with Morris Iron management. It is expected that Morris Iron will soon be filing with the Board a verified statement in which they themselves will tell you about their company, and their own need for rail service, which is significant, and more importantly, needed immediately. Morris Iron is also willing to make an immediate commitment to using the line once the tracks are put back into service. They are the only shipper currently located along the line with the capability of diverting truck traffic to rail at the onset of rail operations.

58. It was Morris Iron's commitment to return to using rail service that led directly to the filing of this OFA. But it was not a reach for Morris Iron to make such a commitment. Morris Iron

has three locations in southeastern PA. The main facility, located a few miles away on Milnor St., is where Morris Iron currently loads railcars five days per week. They are already an active rail shipper. Their main facility is located at the end of Conrail's Bleigh Street Industrial track in northeast Philadelphia. They have wanted rail service at their Berks St. facility as well for some time. It turns out, **Conrail refused to provide the service when it was requested!**

59. Without the support of Morris Iron, we might not have begun this proceeding. But interest in the return of rail service is high along the line. It is not just Morris Iron that has a significant interest in using and seeing rail service return to the line. We also spoke with the management of the Philadelphia Warehousing and Cold Storage Co. (PWCS). They are located at 500 N. Christopher Columbus Blvd. Like Morris Iron, their sidings remain mostly intact, albeit paved over in a few spots. PWCS is located on the line near Milepost 0.1. They are one of two formerly active rail shippers in segment # 3 still located on the line today, and still conducting their business today in the same manner they did before Conrail improperly cut off their service

60. PWCS was stunned and surprised to have learned that Conrail was still obligated to provide service to their facility. Back in the mid 1980's when Conrail terminated service along the Delaware Avenue line (today's Christopher Columbus Blvd.), they cut off PWCS's rail service when Conrail received ICC permission to abandon service on Delaware Ave. At no time did Conrail ever even allude to the fact they still retained the obligation to service the facility from the Front St trackage.

61. You can't imagine the reaction, 25+ years later, when PWCS found out it still had access to rail service! However, PWCS's enthusiasm for seeing rail service return was quickly tempered when they realized there are serious obstacles that must be overcome. They knew direct rail service would take some time to restore to their facility. In addition, today's railcars have grown larger than early generations of railcars. Restoration of direct rail service to their facility is going to take a lot of work and effort to accomplish. They know it will not happen

overnight. However, they did want to learn more about the trans-load capabilities we are planning to build up in segment # 1. Those facilities may give PWCS an opportunity to begin to re-market their facility as a "rail-served" facility once again.

62. The proposed trans-load facilities brings us to our next party who has an interest in preserving rail service in the American St corridor. Your Offerors met with Mr. E Fernando Quiles. Mr. Quiles is a local businessman and real estate owner located along the line. Mr. Quiles has lived in the immediate area of the line for over 35 years. He vividly remembers when trains routinely traveled down the American St. trackage.

63. As spelled out in his verified statement of support, Mr. Quiles owns an industrial property located at 235 West Indiana Ave. This property was once a meat packing plant. The plant was subsequently closed, the building fell into disrepair, and changed hands a number of times before Mr. Quiles purchased the property a number of years ago. He subsequently demolished the building, and has been preparing the site for new uses:

64. Your offerors approached Mr. Quiles about working together to develop a trans-load facility on the site of the old plant. Mr. Quiles is very interested in working together to develop the site. Therefore, the preservation of rail service becomes critical to the joint effort of redeveloping the site as a new trans-load facility. What makes the trans-load site unique is its ability to give the offerors the capability to provide rail service to shippers in segment # 3 much sooner than we could with direct service.

*National Rail Transportation Policy*

65. This offer is consistent with many aspects of the national rail transportation policy. This OFA is certainly consistent with the following provisions 49 U.S.C. 10101, which are:

(1) to allow, to the maximum extent possible, competition and the demand for

service to establish reasonable rates for transportation by rail:

(2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;

(3) to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board;

(4) 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 national defense;

(5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes;

(7) to reduce regulatory barriers to entry into and exit from the industry;

(8) to operate transportation facilities and equipment without detriment to the public health and safety;

(9) to encourage honest and efficient management of railroads;

(11) to encourage fair wages and safe and suitable working conditions in the railroad industry;

(12) to prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination;

(14) to encourage and promote energy conservation;

(15) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part.

### *Bona Fide Offer*

66. Your Offerors respectively submit that this OFA is a genuine offer to acquire the line for continued rail service. Prior to submitting the offer, the Offerors clearly made a concerted effort to ascertain what the shipping needs are of businesses located along the line. The result is that shippers do have a need for continued rail service. Thus, this OFA is a bonafide offer.

## **V. PROPOSED RESTORATION AND INITIAL OPERATIONS**

67. Once again, while OFA's are not required to be "overly detailed", the Offerors feel compelled to provide at least some limited explanation with regards to how service is to be restored, and what realistic levels of service can be expected for shippers using the line.

68. CNJ expects to restore service over Segments # 1 and # 2 relatively quickly. The amount of track that must be restored is extremely short. All in all, about 800 linear feet of railroad track, in total, is needed to reconnect the remaining tracks in Segment # 2 to the Conrail-retained connecting track in the southwest quadrant of the junction with Conrail's Port Richmond Secondary located at the end of segment # 1. CNJ expects that track reconstruction on our portions will not take more than 30 days to complete restoration of the missing infrastructure. Very minimal repairs are needed to the remaining tracks in segment #2 in order to make them serviceable once again. CNJ feels very comfortable that it will be able to restore the line, from MP 2.80 to MP 0.95, to serviceable condition within 90 days, or less, of closing.

69. As mentioned in our discussion of PC&N in Section IV above, the first initial customer is expected to be Morris Iron. They are the only shipper on the line that can convert truck traffic to rail concurrent with the start up of rail operations. Given the traditional lead time necessary to develop new rail customers, it is not expected that other customers will come online within the first 6 months to one year. Based on that assumption, CNJ does not expect to operate more than 75 trains in total (1 to 2 per week) on the line within the first 12 months of restoration of rail service along the line.

70. In the second year of restored rail operations, CNJ reasonably believes it should be able to increase service on the line to 150 trains per year (roughly 3 trains per week service). CNJ believes Morris Iron will still be the main shipper on the line, but other customers should be procured by then. We would expect them to start shipping by rail as well, justifying the additional service levels.

71. Restoration of rail service over Segment # 3, however, poses some significant challenges and has a number of major obstacles that must be overcome. Since CNJ will be required to provide service over the line upon a reasonable demand, we feel it necessary to explain how that service might be provided to shippers located in Segment # 3.

72. As mentioned in the PC&N discussion in Section IV, CNJ negotiated with Mr. Quiles to develop a Trans-load facility in Segment # 1. That trans-load facility is, in part, being built specifically in case a shipper in Segment # 3 levels a demand for service before service can be restored over that segment. Therefore, shippers in Segment # 3 will have at least trans-load-service available to them at the start up of operations on Segments #1 and #2.

73. CNJ does not expect to be able to restore direct rail service over Segment # 3 within the first 24 months of closing on the transaction with Conrail. Notwithstanding the issues mentioned in Sections III and IV of this OFA, one of the biggest challenges will be restoring rail service over the one block segment of 2<sup>nd</sup> Street, from Germantown Ave. to Cadwalder St.

74. While putting the tracks back in the street is certainly possible, the problem is that 2<sup>nd</sup> Street has been converted into a one-way street. While train movements will have no problem going in a southbound direction, there are significant safety issues that must be worked out with the Federal Railroad Administration (FRA) and the Pennsylvania Public Utilities Commission (PA PUC) with regards to how to safely protect vehicular traffic along that segment of the line from northbound train movements.

75. CNJ expects that it could easily take 2 years, or more, just to design and engineer the appropriate safety systems, submit those plans for review, seek whatever additional approvals which maybe necessary to move the project forward, find and put into place appropriate financing to fund the restoration of that segment, etc. That does not take into consideration delays which could be brought on by litigation which might be generated by third parties opposing the restoration effort.

76. In crafting our OFA, we took into account the many likely obstacles to restoring rail service over Segment # 3. In short, we view the restoration of direct rail service over this segment as a long term goal. There are lots of other items which we must worry about first before committing serious time and energy into restoration of this segment. But for the fact that it makes a "build-out" to an additional Class I carrier possible, we would have likely excluded this segment from our OFA.

77. Of greater significance to the Board, and the general public, is that actual restoration of service over this line does not rests solely with the Offerors, but rather a number of other parties. CNJ does not, and can not control, when service will actually be restored. Conrail has decided to retain the connecting track right of way, and the tracks thereon. Conrail has also removed the switch at the bottom of the connecting track ramp. Since the ramp is not part of the OFA process, negotiating an interchange agreement, and restoring the connecting track will not, and can not, be a part of this proceeding.

78. If the Conrail and CNJ can not work out a mutually acceptable agreement on their own regarding an interchange agreement, and address the issue of the restoration of the connecting track, then CNJ will have to bring a new proceeding before the Board to compel a resolution to the new dispute. Should that scenario occur, it will be the Board that will ultimately control when service will actually be restored.

## **VI. Conclusion**

79. Your Offerors have made a genuine offer to acquire the line for continued rail service. After ascertaining the needs of local shippers and property owners, a plan to put the line back into service was conceived that is reasonable, and appropriate. Your offerors are financially responsible parties that can, and will, return rail service to the American St. rail corridor in a responsible and professional manner. This offer is consistent with many of the policies set forth in the National Rail Transportation Policy. It is consistent with the Board's mandate to preserve rail service where ever possible.

Therefore, Your Offerors request this Board:

1. Find the Offerors are financially responsible parties;
2. Find that a bona fide offer of financial assistance has been made;
3. Postpone the effective date of the Notice of Exemption so that the parties may negotiate to acquire the line.
4. And provide what ever additional relief that is necessary and just in order to fulfill the requested relief.

On Behalf of CNJ Rail Corporation  
and Myself, Individually,

Respectfully Submitted,

*E S Strohmeyer /s/*

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Eric S. Strohmeyer  
Vice President, COO  
CNJ Rail Corporation  
908 361 2435

March 9<sup>th</sup>, 2012

**VERIFICATION**

I, Eric S. Strohmeyer, declare under the penalty of perjury that the information contained in the foregoing Offer of Financial Assistance, is true and correct to the best of my knowledge, information, and belief. Further, I certify that I am qualified and authorized to file this Offer on behalf of CNJ Rail Corporation, and myself.

Respectfully submitted,

*Eric S. Strohmeyer* /s/

Eric S. Strohmeyer

Dated: March 9<sup>th</sup>, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>th</sup> day of March, 2012, a copy of the foregoing Offer of Financial Assistance, was served by first class mail, postage prepaid, upon:

Mr. Benjamin C. Dunlap, Jr. Esq.,

Nauman, Smith, Shissler & Hall, LLP,  
200 North Third Street,  
18<sup>th</sup> Floor, Harrisburg, PA 17101  
(717) 236 - 3010, Ext. 21

Counsel for Consolidated Rail Corporation, et. al.

Mr. John K. Enright, Esq.,  
Associate General Counsel,  
Consolidated Rail Corporation,  
1717 Arch Street, 32nd Floor,  
Philadelphia. PA 19103.

Respectfully Submitted

*Eric S. Strohmeyer* /s/

Eric S. Strohmeyer

# **Exhibit # 1**

C N J RAIL CORPORATION

0101018707

*I, the Treasurer of the State of New Jersey,  
do hereby certify, that the above named business  
did file and record in this department a  
Certificate of Incorporation on November 7th, 2011  
and that the attached is a true copy of this  
document as the same is taken from and compared  
with the original(s) filed in this office and now  
remaining on file and of record.*



*Certificate Number: 122061156*

*Verify this certificate online at*

*[https://www1.state.nj.us/TYTR\\_StandingCer/JSP/Verify\\_Cert.jsp](https://www1.state.nj.us/TYTR_StandingCer/JSP/Verify_Cert.jsp)*

*IN TESTIMONY WHEREOF, I have  
hereunto set my hand and affixed  
my Official Seal at Trenton, this  
7th day of November, 2011*

*Andrew P Sidamon-Eristoff  
State Treasurer*

0101018700

1. Business Name: CNJ Rail Corporation

2. Type of Business Entity: DP Domestic - For Profit

3. Business Purpose: All purposes lawfully conducted

4. Stock (Domestic Corporations only; LLCs and Non-Profit leave blank): 1,000,000 Shares

5. Duration (If Indefinite or Perpetual, leave blank):

6. State of Formation/Incorporation (Foreign Entities Only):

7. Date of Formation/Incorporation (Foreign Entities Only):

8. Contact Information: Registered Agent Name: Eric S. Strohmeyer

Registered Office: (Must be a New Jersey street address)

Main Business or Principal Business Address:

Street 81 Century Lane City Watchung Zip 07069

Street City Punellen State NJ Zip 08962

- 9. Management (Domestic Corporations and Limited Partnerships Only)
• For-Profit and Professional Corporations list initial Board of Directors, minimum of 1;
• Domestic Non-Profits list Board of Trustees, minimum of 3;
• Limited Partnerships list all General Partners.

Name Eric S. Strohmeyer Street Address 81 Century Lane City Watchung State NJ Zip 07069

The signatures below certify that the business entity has complied with all applicable filing requirements pursuant to the laws of the State of New Jersey.

10. Incorporators (Domestic Corporations Only, minimum of 1)

Name Eric S. Strohmeyer Street Address 81 Century Lane City Watchung State NJ Zip 07069

Signature(s) for the Public Record (See instructions for Information on Signature Requirements)

Signature Eric S. Strohmeyer Name Eric S. Strohmeyer Title Director Date 07069