

SLOVER & LOFTUS
ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036-3003

218649

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PETER A. PFOHL
DANIEL M. JAFFE
STEPHANIE M. PISANELLI

OF COUNSEL
DONALD G. AVERY

TELEPHONE:
(202) 347-7170

FAX:
(202) 347-3619

February 20, 2007

WRITER'S E-MAIL:

cam@sloverandloftus.com

BY HAND DELIVERY

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



Re: Finance Docket No. 33388 (Sub-No. 100)
CSX Corporation, et al. - Control and Operating Leases/Agreements -
Conrail Inc., et al. (Petition for Supplemental Order)

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are the original and ten copies of Bridgewater Resources, Inc.'s and ECDC Environmental, L.L.C.'s Reply to the Motion of Norfolk Southern Corporation and Norfolk Southern Railway Company for Leave to File Reply to Reply of Bridgewater Resources, Inc. and ECDC Environmental, L.L.C.

Kindly acknowledge receipt of this filing by date-stamping and returning the enclosed extra copy of this letter to our messenger.

Sincerely,

Christopher A. Mills

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Supplement thereto, due in large measure to the Board's denial of their motion to compel certain discovery responses by NS. If NS is to be accorded the opportunity to reply to BRI/ECDC's February 6 Reply, fairness (and the Board's interest in assuring a complete record, which NS cites in its Motion) requires that BRI/ECDC be permitted to make the final substantive filing as contemplated by the Board's scheduling orders.

NS has requested that, if the Board grants its Motion, it be allowed to file its reply approximately 30 days after the date of the Motion, or on March 15, 2007. BRI/ECDC have no objection to that date, provided they are granted 14 days (or until March 29, 2007) to file a reply to NS's reply filing.

ARGUMENT

The Board's original scheduling order in this proceeding provided for BRI/ECDC to undertake discovery against NS and the other Conrail control applicants, after which BRI/ECDC were afforded the opportunity to file a supplement to their petition, other interested persons were permitted to file comments on the petition, and BRI/ECDC were given the right to file a reply to the comments by other parties.¹ BRI/ECDC subsequently submitted discovery requests to NS, CSX and Conrail. The

¹ The Board's decision served July 31, 2006, established the following initial due dates: BRI/ECDC's Supplement to Petition was due September 29, 2006, Comments of interested persons on the Petition as supplemented were due October 19, 2006, and petitioners' Reply was due October 30, 2006. Several of these due dates were subsequently extended (in part to facilitate settlement discussions, which were unfruitful), most recently by the Board's decision served January 12, 2007. Under that decision, BRI/ECDC's Reply to the Comments of other interested persons (including NS) was due and filed on February 6, 2007.

railroads objected to requests designed to elicit information concerning the former “Reading Connector” line, which Conrail had removed before the Transaction Agreement was negotiated. On September 5, 2006, BRI/ECDC filed a motion to compel responses to these requests, which the Board denied in a decision served November 30, 2006.

Most of the information BRI/ECDC sought in the discovery requests which were the subject of their unsuccessful motion to compel was subsequently provided by NS in connection with another proceeding.² It was also placed in the record in this proceeding by other parties in their Comments on BRI/ECDC’s petition.³ Thus BRI/ECDC did not have a chance to use this information in the Supplement to their Petition which was filed on November 3, 2006. Had the information been available prior to that date (*i.e.*, had the Board timely granted BRI/ECDC’s motion to compel discovery responses), BRI/ECDC would have been able to incorporate it into their Supplement to Petition. This is the reason why BRI/ECDC first referred to that information as grounds for granting the relief sought in their petition in their February 6, 2006 Reply to Comments by other parties.

By separate motion filed February 6, 2007, NS has also requested leave to file a reply to the Comments of CNJ Rail and Riffin (NS’s February 6 motion was

² Finance Docket No. 34963, *James Riffin, d/b/a The Raritan Valley Connecting Railroad– Acquisition and Operation Exemption– On Raritan Valley Connecting Track*, Petition for Stay by NS filed November 27, 2006.

³ See Comments of James Riffin dba The Raritan Valley Connecting Railroad (“Riffin”) and Comments of CNJ Rail Corporation (“CNJ Rail”), both filed herein on December 1, 2006.

accompanied by NS's reply itself). BRI/ECDC did not oppose that motion in the interest of a complete record, although they believe that NS's reply to Riffin's and CNJ Rail's comments has misrepresented certain facts concerning the former Reading Connector and its relationship to other rail lines and property that is within the North Jersey Shared Assets Area. Given 49 C.F.R. § 1100.3, which (as NS notes) provides that the Board's rules are to be "construed liberally to secure . . . just determination of the issues presented," and in the interest of insuring a complete record on all of the issues raised, if the Board decides to grant the NS Motion for leave to file a reply to BRI/ECDC's February 6, 2007 Reply it should also permit BRI/ECDC to file a reply thereto within 14 days.⁴ This will enable the record to be fully developed with minimal delay.

CONCLUSION

For the foregoing reasons, BRI/ECDC do not oppose NS's Motion for leave to file a reply to their February 6, 2007 Reply, *provided* they are given the opportunity to file a reply to NS's reply consistent with their right to open and close the record under the Board's scheduling orders in this case and in the interest of a complete record. If the

⁴ Additionally, as the petitioners with the burden of proof, due process requires that BRI/ECDC have the right to open and close the record. *See e.g. Bituminous Coal - Hiawatha, Utah to Moapa, Nevada*, ICC Docket No. 37038 (ICC decided March 16, 1991) 1991 WL 47120 at *3 (explaining that "[i]n any proceeding before us, the party with the burden of proof opens, and closes if rebuttal evidence is allowed"); *See also Duke Energy Corp. v. Norfolk Southern Ry.*, STB Docket No. 42069 (STB served Jan. 6, 2005) (deciding that the shippers with the burden of proof had the right to open and close the evidence); *See also AEP Texas North Co. v. BNSF Ry. Co.*, STB Docket No. 41191 (Sub-No. 1) (STB decided November 22, 2006).

Board is not inclined to permit BRI/ECDC to file a reply to NS's proposed reply, then
BRI/ECDC oppose NS's Motion.

Respectfully submitted,

BRIDGEWATER RESOURCES, INC.
and ECDC ENVIRONMENTAL, L.L.C.

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

By: Christopher A. Mills
Stephanie M. Pisanelli
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170



Dated: February 20, 2007

Their Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of February, 2007 I served copies of the foregoing Reply upon all parties of record in this proceeding, as follows:

By Hand and E-mail:

Richard A. Allen, Esq.
David M. Endersbee, Esq.
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W., Suite 600
Washington, D.C. 20006-3939

By E-mail and Overnight Delivery Service:

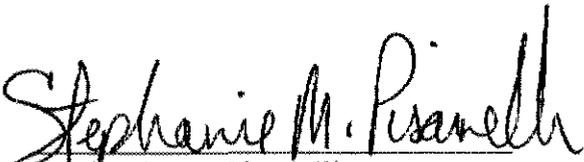
John V. Edwards, Esq.
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191

Stephen C. Armbrust, Esq.
Counsel
CSX Transportation, Inc.
500 Water Street, J-150
Jacksonville, FL 32202

James Riffin dba The Raritan Valley
Connecting Railroad
1941 Greenspring Drive
Timonium, MD 21093

John K. Enright, Esq.
Assistant General Counsel
Consolidated Rail Corporation
1000 Howard Boulevard
Mt. Laurel, NJ 08054-2355

Eric Strohmeyer
CNJ Rail Corporation
833 Carnoustie Drive
Bridgewater, NJ 09907


Stephanie M. Pisanelli