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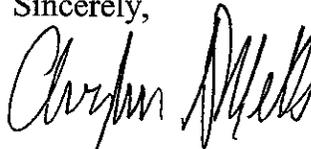
The Honorable Vernon A. Williams
Secretary
Surface Transportation Board - Case Control Unit
1925 K Street, N.W.
Washington, D. C. 20423

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 pursuant to the Board's electronic filing procedure is the Reply of Bridgewater Resources, Inc. to March 15, 2007 Replies of Other parties with respect to the Petition in the above-referenced proceeding. The enclosed reply to replies is authorized by the Board's Decision in this proceeding served February 27, 2007.

Sincerely,



Christopher A. Mills

CAM:lad
Enclosures

cc: Service List per Certificate of Service

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

CSX CORPORATION AND CSX)	
TRANSPORTATION, INC., NORFOLK)	
SOUTHERN CORPORATION AND)	
NORFOLK SOUTHERN RAILWAY)	Finance Docket No. 33388
COMPANY – CONTROL AND)	(Sub-No. 100)
OPERATING LEASES/AGREEMENTS –)	
CONRAIL INC. AND CONSOLIDATED)	
RAIL CORPORATION)	(Petition for Supplemental Order)

**REPLY OF BRIDGEWATER RESOURCES, INC. TO
MARCH 15, 2007 REPLIES OF OTHER PARTIES**

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

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Due Date: March 29, 2007

Their Attorneys

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

CSX CORPORATION AND CSX)	
TRANSPORTATION, INC., NORFOLK)	
SOUTHERN CORPORATION AND)	
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OPERATING LEASES/AGREEMENTS –)	
CONRAIL INC. AND CONSOLIDATED)	
RAIL CORPORATION)	(Petition for Supplemental Order)

**REPLY OF BRIDGEWATER RESOURCES, INC. TO
MARCH 15, 2007 REPLIES OF OTHER PARTIES**

Petitioner Bridgewater Resources, Inc. (“BRI”) hereby replies to the Reply filings by several parties on March 15, 2007,¹ with respect to BRI’s and ECDC Environmental, L.L.C.’s (“ECDC”) Petition in this proceeding. The March 15 Replies, and this Reply thereto, were authorized by the Board’s decision herein served February 27, 2007.

In their March 15 Replies, NS and CSX responded to the material in BRI/ECDC’s February 6, 2007 Reply to Comments (“February 6 Reply”) related to the abandonment and removal of the Reading Connector and why such action entitles the BRI waste transfer facility to switch service from Conrail on rail movements of municipal

¹ Reply filings were made by (1) Norfolk Southern Corporation and Norfolk Southern Railway Company (“NS”), and (2) CSX Corporation and CSX Transportation, Inc. (“CSX”). These filings are referred to herein as “NS March 15 Reply” and “CSX March 15 Reply” or, collectively, as “March 15 Replies.”

("MSW") to destinations served by CSX.² The March 15 Replies contain factual errors, and fail to rebut BRI's contention that the abandonment of the Reading Connector (and its non-existence at the time the Conrail Transaction Agreement was executed) prevented BRI access to Conrail which requires remedial action by the Board. The railroads' argument that because the Reading Connector no longer exists the BRI facility can be served only by NS is wrong, if (as BRI contends) that line was improperly abandoned and removed without receiving the required authority from the Board's predecessor.

Given these circumstances, the Board must either order the Reading Connector restored to service in a manner that enables the BRI facility to be served by Conrail or CSX, or, for purposes of this proceeding, treat it as if it still existed. BRI believes the latter is preferable to the former, because under the Transaction Agreement and related documents, this means that the BRI facility is entitled to service from Conrail (or CSX). This enables the Board to provide a solution to BRI's improper present captivity to NS switching service without having to delve into the merits of the "unlawful abandonment" issue (and the resulting consequences for both the railroads and BRI) or require the construction of any new trackage, crossing diamonds or switch connections.

² Both railroads assert that BRI/ECDC have "abandoned" their original claim that the point of connection between the Lehigh Line and BRI's Royce Spur is located within the NJSAA. Based on the evidence in the railroads' December 1, 2006 Comments in response to BRI/ECDC's Petition (evidence that BRI/ECDC had requested in discovery but which the railroads refused to provide, with the Board's concurrence in denying BRI/ECDC's motion to compel responses to several of their discovery requests), BRI agrees that this point is located just outside the NJSAA. However, as set forth herein and in BRI/ECDC's February 6 Reply (which cited evidence not available to BRI/ECDC when they filed their Petition and Supplement thereto), the Board can grant the relief requested in their Petition on other grounds.

A. Several of the Railroads' Fact Statements Are Erroneous

The Reading Connector. All parties agree that the Reading Connector was abandoned and the tracks (including the switch connections with the Raritan Valley Line on the north and the Trenton Line on the south and the Lehigh Line crossing diamond) were removed in the 1980's, *i.e.*, before the Transaction Agreement was negotiated. However, NS erroneously claims that the abandonment and removal of the Reading Connector did not affect rail service to any shipper (and the BRI facility in particular) because it connected with the former Conrail Lehigh Line at a point on the "Royce Running Track" (a siding on the Lehigh Line) that is presently owned by NS and thus outside the limits of the NJCAA. *See* NS March 15 Reply at 2 and 6.³

In fact, the record indicates that there was no connection between the Reading Connector and the Royce Running Track when the former was abandoned. *See* Gay V.S. included with BRI/ ECDC's February 6 Reply, at 2. This is confirmed by the 1998 Sidetrack Agreement between Conrail and BRI's predecessor attached as Exhibit C to the Verified Statement of Ralph A. Shelhamer ("Shelhamer V.S.") submitted with NS's March 15 Reply. The "WHEREAS" clause of that agreement refers to a "new industrial sidetrack consisting of about 10,700 feet with a point of switch located in

³ "[T]he Royce Spur does not now, nor at the time of the Conrail Transaction, connect to the Raritan Valley Line—instead it connect[ed] only to NS's Lehigh Valley Line via the Royce Running Track" (p. 2). "At some point after 1982, Conrail removed the diamond over which the Trenton Line crossed the Lehigh Line. Conrail, however, retained the ability to provide rail service to locations along the Reading Connector from the Royce Spur, connected to a siding of the Lehigh Line known as the Royce Running Track" (p. 6).

Conrail's Lehigh Line (Royce Running Track)," and Section 2.2(1) provides that "Conrail shall. . . [c]onstruct and maintain that portion of the Sidetrack [*i.e.*, the Royce Spur] located between the point of switch and the Conrail property line. . . ."⁴

Thus, at the time the Reading Connector was removed, the only way Conrail could serve any shipper located on the Reading Connector was either from the south (Trenton Line/Manville Yard) or the north (Raritan Valley Line). When the Reading Connector was removed, the BRI waste transfer facility had no means of obtaining rail service from Conrail at all and apparently it *never* could obtain service via a connection with the Royce Running Track (Lehigh Line).

The Raritan Valley Line. NS and CSX acknowledge that the Reading Connector connected on the north with the former Conrail (now New Jersey Transit) Raritan Valley Line at Bound Brook Junction (approximately Milepost 31.9 on the Raritan Valley Line). NS March 15 Reply at 5; CSX March 15 Reply at 5. However, they assert that this point is west of the westerly limit of the NJSAA on the Raritan Valley Line, not east thereof as BRI/ECDC contended in their February 6 Reply.

Based on the color-coded maps that are part of the Transaction Agreement and the deed by which Conrail conveyed its freight operating rights on part of the Raritan Valley Line to Pennsylvania Lines LLC (NS), BRI/ECDC contended in their February 6

⁴ Section 4.2 of the Sidetrack Agreement prohibits either party from permitting or authorizing the use of the sidetrack by any other person or entity without the prior written consent of the other party. BRI presumes that NS would consent to Conrail's operations over the Royce Spur if the Board so authorizes, but if not, Section 1.1 permits BRI to terminate the Sidetrack Agreement unilaterally, on 30 days' notice to NS.

Reply that Conrail's freight operating rights extend west to a point denominated as "Brook," located at Milepost 32.4 and thus west of the point of connection between the Raritan Valley Line and the Reading Connector at Bound Brook Junction (and also west of BRI's property where it abuts the Raritan Valley Line right-of-way). NS responds that this is wrong, and that in fact Conrail's operating rights on the Raritan Valley Line extend only to the west end of Bound Brook Yard (Bound Brook Station), at Milepost 30.2. See NS March 15 Reply at 10-11 and *Shelhamer V.S.* at 4.

The map referenced in BRI/ECDC's February 6 Reply shows one Raritan Valley Line track in blue color (designating Conrail ownership or operating rights) extending west as far as "Brook" (Milepost 32.4). NS now contends that the track involved is actually a siding known as Calco Siding that extended from Bound Brook Yard to Bound Brook Junction, which was removed prior to the Transaction Agreement and did not exist when that Agreement was executed. *Shelhamer V.S.* at 5. However, this is inconsistent with the inclusion of this track in the map that accompanied the Transaction Agreement and its delineation in blue color as a track assigned to Conrail.⁵ The apparent removal of this track without provision for continued Conrail service to Bound Brook Junction appears to have contravened the intent of the parties to the

⁵ The map is also inconsistent with the underlying deed by which Conrail conveyed its interest in part of the Raritan Valley Line to NS (*see* Exhibit 5 to the *Friedmann V.S.* submitted with NS's Comments on BRI/ECDC's Petition). The deed conveys the Middle Brook Branch "[a]lso, INCLUDING Grantor's remaining rights, title and interest in the line or railroad known as the Raritan Valley Railroad that lies west of Middle Brook Branch including Somerville Yard." The clear implication of this language is that Conrail retained its interest in the Raritan Valley Line *east* of Middle Brook Branch, which includes Bound Brook Junction.

Transaction Agreement that Conrail could operate freight service as far as Bound Brook Junction.⁶

Even if, in fact, Conrail does not presently have freight operating rights on the Raritan Valley Line as far west as Bound Brook Junction (the northerly terminus of the Reading Connector), this is not dispositive with respect to whether the BRI facility can obtain rail service from Conrail. The Reading Connector also connected with Conrail's Trenton Line. Thus, had the Reading Connector not been improperly abandoned, BRI's waste transfer facility could have received service from Conrail or CSXT, depending on how the Reading Connector would have been allocated under the Transaction Agreement, from the south rather than from the north.

NS erroneously asserts that in any event BRI/ECDC do not actually want Conrail service via the Raritan Valley Line, but instead want Conrail service via NS's Lehigh Line trackage and the Royce Spur. NS March 15 Reply at 2 and 13. This is incorrect. BRI is indifferent to whether Conrail provides switching service to its waste transfer facility via the Lehigh Line or via the Raritan Valley Line – and in fact, its first preference would be to have CSXT serve the facility directly from Manville Yard, either via a restored Reading Connector or via the Lehigh Line. This would eliminate the need

⁶ NS and Conrail refused to provide requested information concerning the limits of Conrail's operating rights (and thus the NJSAA) in discovery, and this refusal was upheld by the Board in denying BRI/ECDC's motion to compel (*see* Decision served November 30, 2006). Had the Board granted the motion to compel, the information that NS voluntarily put into the record in its March 15 Reply would have been available to BRI/ ECDC much earlier and could have helped shaped their February 6 Reply – thus saving time and expense for all concerned.

for the present two-carrier haul for movements of MSW to CSXT-served destinations.⁷ BRI asks the Board to permit Conrail (or, alternatively, CSX) to serve its facility via the Lehigh Line only because this avoids the need for construction or restoration of any trackage or other facilities and thus is the least intrusive and least expensive – for all concerned – of the possible remedies.

B. The Railroads' Legal Conclusions are Erroneous

The predicate for NS's and CSX's position that the BRI waste transfer facility is not entitled to switching service from Conrail is that the Reading Connector does not exist and has not existed since prior to the negotiation of the Transaction Agreement. They argue that because the Reading Connector is a defunct line and the BRI facility is now served via the Royce Spur from the NS-owned portion of the Lehigh Line, it was not covered by the Transaction Agreement and BRI/ECDC do not have a right to rail service over another line or from another carrier. CSX March 15 Reply at 6-7; NS March 15 Reply at 2. However, these arguments are wrong if (as BRI contends) authority from the Board or its predecessor was required for the abandonment and removal of the Reading Connector.

NS and Conrail have acknowledged that the Reading Connector was a line of railroad, and that it was abandoned. *See the Comments in this proceeding submitted by*

⁷ The Board cited the benefits of single-line service in approving control of Conrail by NS and CSX: “[W]e have acknowledged that, as a general matter, single-line service is superior to joint-line service.” *CSX Corporation, et al. – Control and Operating Leases/ Agreements – Conrail Inc. et al.*, Decision No. 89, 3 S.T.B. 196, 258 (1998).

CNJ Rail and James Riffin dba The Raritan Valley Connecting Railroad; *see also* NS's Petition for Housekeeping Stay filed November 27, 2006, in Finance Docket No. 34963, *James Riffin, d/b/a The Raritan Valley Connecting Railroad—Acquisition and Operating Exemption—On Raritan Valley Connecting Track*. However, NS argues that regulatory authority for the abandonment of the Reading Connector was not required because, at the time, Conrail owned or had freight operating rights over all of the relevant trackage, and “the actions merely constituted a rearrangement of tracks that did not impair Conrail’s ability to provide rail service to any shipper.” NS March 15 Reply at 12-13.

The facts, as described earlier in this Reply, show that the abandonment of the Reading Connector did, in fact, impair Conrail’s ability to provide service to BRI’s waste transfer facility because there was then no switch connection to the Royce Running Track (Lehigh Line). In other words, the only way that the BRI facility could obtain rail service at the time of the abandonment was via the Reading Connector. It thus appears that regulatory authority was required for the abandonment.⁸ For this reason the abandonment of the Reading Connector cannot now be used by NS to bootstrap its argument that the BRI facility is entitled to service only from NS, via a line with which

⁸ As NS points out at page 12 of its March 15 Rely, if regulatory authority for the abandonment of the Reading Connector was required, this would also call into question the validity of the conveyance of the right-of-way to Mr. Horner and his lease of the property to the present BRI. This is one of the reasons why BRI is willing to accept alternative service from Conrail via the Lehigh Line and Royce Spur, rather than asking the Board *at this time* to delve further into the unlawful abandonment issue and associated remedies (such as rebuilding the Reading Connector in its entirety).

the Reading Connector never connected.⁹

The Transaction Agreement (which was negotiated after both the abandonment/removal of the Reading Connector and the subsequent construction of the Royce Spur including its switch connection to the Royce Running Track) assigned the portion of the Lehigh Line with which the Royce Spur now connects to NS. Of course, it is impossible to know for certain how the Reading Connector would have been treated under the Transaction Agreement if it still existed – it may have been assigned to Conrail as a Retained Asset given its connection with the Raritan Valley Line to the north, or it may have been assigned to CSX given its connection with what is now the CSX-owned portion of the Trenton Line to the south. It is highly unlikely that the Reading Connector would have been assigned to NS, as NS suggests, because it did not connect with the Lehigh Line when it was abandoned. It merely crossed that line by means of an at-grade crossing diamond – at a location that clearly is within the NJSAA.¹⁰

For purposes of this proceeding, it is unnecessary to determine how the Reading Connector would have been allocated under the Transaction Agreement. The fact is that its improper abandonment deprived the BRI facility of the ability to receive

⁹ The Board cannot simply approve the abandonment on a retroactive basis, because the labor protection provisions applicable to line abandonments and sales were changed by the ICC Termination Act of 1995. The abandonment of the Reading Connector occurred in the 1980's.

¹⁰ As BRI/ECDC indicated in the Supplement to their Petition filed November 3, 2006, and in their February 6 Reply, the former Reading Connector right-of-way lies entirely east of the demarcation between Conrail and NS ownership of the Lehigh Line (at Milepost 35.92) where it crossed the Lehigh Line. The Reading Connector clearly would have been within what is now the NJSAA at this location.

switching service from Conrail. The Board could order the Reading Connector restored to its configuration at the time of its improper abandonment. Alternatively, it can simply treat the Reading Connector as if it still existed. Regardless of whether Conrail presently has the ability to provide freight service to Bound Brook Junction (the point of connection between the Raritan Valley Line and the Reading Connector), this would still entitle BRI/ECDC to service from either Conrail or CSX from the south – where the Reading Connector connected with the Trenton Line.¹¹

Treatment of the Reading Connector as though it still existed for purposes of determining whether the BRI waste transfer facility is entitled to switching service from Conrail is the preferable course as far as BRI is concerned. If the Board authorizes Conrail to serve the BRI facility via the Lehigh Line and Royce Spur, which would be consistent with the provisions of the NJSAA Operating Agreement cited at p. 7 of BRI/ECDC's February 6 Reply, there is no need to order restoration of the Reading Connector or any new switch connections.

NS also argues that the BRI facility is not entitled to service from Conrail because of disclaimer provisions in the deed by which BRI's predecessor, Mr. Horner, acquired the Reading Connector right-of-way from Conrail (NS March 15 Reply at 13-

¹¹ CSX service would appear to be appropriate under one of the provisions of the Transaction Agreement cited by NS at page 14 of its March 15 Reply (the preamble to Attachment 1 of Schedule 1) because the Reading Connector was not specifically listed as an asset allocated to one of the three railroads involved and "[l]ines not specifically listed are to be acquired by the owner/acquirer of the CRC route/line to which they connect." The Reading Connector connected with what is now the CSX-owned portion of the Trenton Line.

14). This argument is a red herring. If the abandonment of the Reading Connector was improper, sale of the right-of-way to Mr. Horner was also improper because the Reading Connector was a line of railroad whose sale also required approval from the Board or its predecessor. If the abandonment is null and void, so is the deed – including the covenants described by NS.

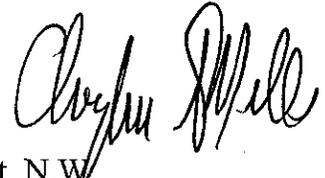
Conclusion

The matters raised in the March 15 Replies do not prevent the Board from authorizing Conrail's operation over a short segment of the Lehigh Line that is owned by NS to reach the connection with BRI's rail spur in order to switch cars between the BRI waste transfer facility and CSX's Manville Yard. The Board should find that the unique circumstances of this case warrant such authorization.

Respectfully submitted,

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Dated: March 29, 2007

Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of March, 2007 I caused copies of the foregoing Reply to be served upon all parties of record in this proceeding electronically and by U.S. Mail, as follows:

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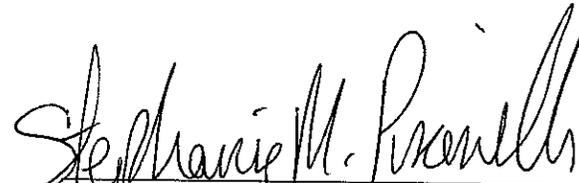
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