

STB FD 33388 (Sub 69) 12-10-98 D 192580

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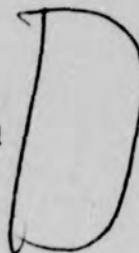
DEC 10 1998

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December 10, 1998

By U.P.S. Overnight Delivery

The Honorable Vernon A. Williams
Secretary, Surface Transportation Board
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001



Re: 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

Finance Docket No. 33388 (Sub No. 69), Responsive
Application -- State of New York, By and Through Its
Department of Transportation, and The New York City
Economic Development Corporation

Dear Secretary Williams:

Enclosed for filing in the above-referenced dockets are an
original and twenty-five copies of "Comments of Housatonic Railroad
Company, Inc. Relating to Scope of Proposed CP Trackage Rights on
the Hudson Line". Also enclosed is a 3.5-inch diskettes, formatted
for Wordperfect, containing the filing.

Thank you for your assistance.

Very truly yours, ~

Edward J. Rodriguez
Attorney for
Housatonic Railroad Company,
Inc.

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HRRC-14

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388
Sub. No. 69



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

RESPONSIVE APPLICATION - STATE OF NEW YORK, BY AND THROUGH ITS
DEPARTMENT OF TRANSPORTATION, AND
THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

COMMENTS OF HOUSATONIC RAILROAD COMPANY, INC.
RELATING TO SCOPE OF PROPOSED CP TRACKAGE RIGHTS
ON HUDSON LINE

DECEMBER 10, 1998

Edward J. Rodriguez, Esq.
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Attorney for:
Housatonic Railroad Company, Inc.

I. Introduction.

In Decision No. 89, the Surface Transportation Board imposed a condition requiring CSX to negotiate an agreement with CP to permit either unrestricted haulage rights or unrestricted trackage rights over the east-of-the-Hudson Line ("Hudson Line") from Fresh Pond to Selkirk, under terms agreeable to the parties. ("CP Condition"). Subsequently, in filings by CSX and CP, it was disclosed that those parties were unable to successfully negotiate implementing agreements relating to the trackage or haulage rights. In Decision No. 102, the S.T.B. set forth a procedural schedule for submission by CSX and CP of statements supporting their respective positions and for later submission of responses.

On November 30, 1998, pursuant to the provisions of Decision No. 102, CSX and CP submitted their arguments and positions, respectively CSX-167 and CP-24. Upon reviewing those filings, HRRC became informed, for the first time, of the areas of disagreement between CSX and CP. One of the areas of disagreement involves the extent to which CP's trackage rights will be restricted.¹

¹ CP and CSX both agreed that trackage rights were more appropriate than a haulage arrangement and these comments therefore proceed upon the assumption that CP will acquire trackage rights.

CP claims the right to provide local service to customers between Selkirk and New York City and to interchange with other carriers on that route. CSX claims that CP should have overhead rights only, and no right to provide local service north of New York City. CSX does not discuss interchange with intermediate carriers north of New York City. Thus, it is unclear whether CSX seeks to prohibit CP from interchanging with other carriers on the Hudson Line.

Housatonic Railroad connects with the Hudson Line at Beacon, New York and is the only railroad having a connection with the Hudson Line between Selkirk and New York City. Accordingly, Housatonic Railroad has a substantial economic interest in the outcome of this proceeding. Housatonic Railroad has been an active participant in these proceedings and, if there is disagreement about CP's rights to interchange with intermediate connecting carriers, Housatonic Railroad has a right to present its views. HRRC believes that Decision No. 89 grants CP the right to interchange with intermediate carriers on the Hudson Line and that CP should have that right.

II. Description of Proposed CP/HRRC Interchange.

HRRC is the freight operator on the Maybrook Line between Beacon, New York and Derby, Connecticut.² The Maybrook Line crosses the Hudson Line and connects with the west side of the Hudson Line in Beacon. HRRC now has the right to interchange traffic with all freight carriers on the Hudson Line.³

The interchange would take place either on an existing Maybrook Line sidetrack or on a new sidetrack to be constructed. Any future interchange with CP would not take place on CSX property or facilities nor on the Hudson Line itself. Rather, the interchange would occur on the HRRC operated Maybrook Line. Accordingly, a CP/HRRC interchange would not interfere with Hudson Line traffic nor burden CSX facilities. CP would need only to use the Hudson Line for access to and from the HRRC Maybrook Line for the purpose of interchange on HRRC.

² HRRC refers to the entire line which runs between Beacon, New York and Derby, Connecticut as the Maybrook Line, and has referred to it in that way in previous S.T.B. filings in this proceeding. The New York portion of the Maybrook Line is owned by Metro North Commuter Railroad and is referred to by MNCR as the Beacon Line. It is not used for passenger service.

³ HRRC's operation on the Maybrook Line in New York is governed by a trackage rights agreement between MNCR and HRRC. The trackage rights agreement between HRRC and MNCR provides in part "[HRRC], upon qualification, if necessary, of [HRRC] crews and equipment, shall have the right to interchange with freight carriers on the Hudson Line by means of the existing Maybrook Line sidetrack at approximately Milepost 12.5 at Beacon or, at [HRRC's] request, a new sidetrack to be installed at [HRRC's] expense at an area to be designated by MNCR and located west of the Hudson Line tracks at property now constituting a portion of the Beacon terminal of the Maybrook Line."

The portion of the Hudson Line which includes Beacon is owned by The New York Metropolitan Transportation Authority and controlled and dispatched by MNCR, an M.T.A. subsidiary. Conrail has trackage rights which CSX will acquire. We believe that if CP is granted trackage rights on the Hudson Line, it will be MNCR which has the authority to permit access to the HRRRC Maybrook Line for the purpose of interchange.⁴ NYDOT and NYCEDC, in their Joint Responsive Application note the MNCR position that MNCR is not prohibited or otherwise restricted from granting trackage rights on its portion of the Hudson Line to other freight carriers. However, NYDOT and NYCEDC also state that others have raised a question as to MNCR's authority in that regard.⁵ Accordingly, to avoid any future dispute on this point, HRRRC requests that the S.T.B. confirm that the trackage rights which it has ordered in favor of CP permit access by CP to the Maybrook Line for the purpose of interchange with HRRRC.

⁴ As indicated in footnote 3 supra, the trackage rights agreement between MNCR and HRRRC provides HRRRC the right to interchange at Beacon with all freight carriers on the Hudson Line.

⁵ In the Appendices to Decision No. 89, the S.T.B. summarized the NYDOT & NYCEDC Joint Responsive Application in which it said "It should be noted, however, that Conrail and CSX have not challenged the claim that MNCR is not prohibited or otherwise restricted, by the terms of any agreements now in effect, from granting the necessary rights. See CSX/NS-176 at 124 n.11." Decision No. 89 at 318, n.526.

III. Rights Ordered by S.T.B. in Decision No. 89

In Decision No. 89, the Surface Transportation Board described the rights which CP would acquire on the Hudson Line as:

"either haulage rights unrestricted as to commodity and geographic scope, or trackage rights unrestricted as to commodity and geographic scope, over the east-of-the-Hudson Conrail Line that runs between Selkirk (near Albany) and Fresh Pond, (in Queens) . . . "

It seemed clear to HRRRC then, as it does now, that "unrestricted trackage rights" would enable CP to exit the Hudson line at Beacon, N.Y. for interchange with HRRRC or the Maybrook Line. Trackage rights which did not permit such interchange would be restricted not unrestricted.

The CSX filing (CSX - 167) argues that the unrestricted trackage rights granted to CP should be limited to overhead rights north of New York City. The right to interchange with other carriers is not inconsistent with overhead trackage rights. Indeed, it is characteristic of them. Even if the condition imposed by the S.T.B. were revised to confer "unrestricted overhead trackage rights", such a revision would still confer upon CP the right to connect with HRRRC at Beacon. Indeed, the absence of such a right would change the trackage rights to restricted overhead rights.

However, it is clear that the S.T.B. did not intend to confer only overhead rights. The CP Condition was ordered in response to the NYDOT and NYCEDC Joint Responsive Application. That application clearly requested the "grant of unrestricted (full service) rights in favor of a rail carrier other than Conrail or CSX...."⁶ In response, the S.T.B. granted "trackage rights unrestricted as to commodity and geographic scope".

IV. CP/HRRC Interchange Advances Purpose of the CP Condition

The CP Condition was imposed in response to the concerns expressed by the New York Department of Transportation, the New York City Economic Development Corporation, Congressman Nadler and others. Those parties urged the S.T.B. to grant trackage rights on the Hudson Line to a second carrier to restore the opportunity for rail competition east of the Hudson River for the benefit of rail shippers in the entire New York Metropolitan Area and Hudson River Valley; and to enable such shippers to more effectively compete with shippers located west of the Hudson River, particularly with those shippers in the North Jersey Shared Asset Area. The concerns of NYDOT and NYCEDC are set

⁶ See, summary of NYDOT & NYCEDC Joint Responsive Application, Appendices to Decision No. 89 at 317.

forth in detail in their Joint Responsive Application and are similar to the concerns expressed by Housatonic Railroad in its filings with the Board.⁷

Housatonic Railroad serves a substantial portion of the east-of-the-Hudson market which the CP Condition was designed to benefit. HRRC's direct service area encompasses the eastern Hudson counties of Putnam and Dutchess in the State of New York and the western portions of Connecticut and Massachusetts. In addition, HRRC has contract carrier rights on the Harlem Line extending south to White Plains, New York.⁸ A large portion of the New York City Metropolitan Area is situated north of New York City, in Putnam, Dutchess and Westchester Counties as well as in Fairfield County, Connecticut. All of these areas are served by Housatonic Railroad. If the CP Condition is not applied to benefit this HRRC service area, it will have failed to accomplish much of its intended purpose. A map showing the location of HRRC's lines is attached as Exhibit A.

⁷ Housatonic Railroad's Request for Protective Conditions and Comments, HRRC-10, especially pp. 10-12, 23-25; Housatonic Railroad's Response to New England Central Railroad, Inc Responsive Application - Trackage Rights, HRRC-12, especially at pp. 7-9; Housatonic Railroad Company, Inc. Brief in Support of Requests for Conditions, HRRC-13, especially at pp.15-19.

⁸ HRRC discontinued its common carrier rights and obligations on the Harlem Line because there was no freight business. However, HRRC maintained contract rights to serve that line or to revive common carrier status on the line if warranted by future business opportunities. It is possible that increased rail competition east of the Hudson could justify the resumption of rail service on the Harlem Line.

The HFRRC market area is even broader than the direct service area. It encompasses the area in which HRRRC and its customers compete and it includes all of Connecticut and eastern New York including New York City and the southeastern counties of Westchester, Putnam, Dutchess, Orange and Ulster. The HRRRC market area includes virtually all of the Hudson River Valley and the New York City Metropolitan Area except Long Island.⁹

HRRRC's customers include those which are direct rail served and those which receive rail service at railroad operated transfer and public delivery tracks and include firms within the New York City Metropolitan Area. In addition, HRRRC owns and operates a lumber reloading facility in Hawleyville, Connecticut.¹⁰ From that location, HRRRC arranges trucking for reload customers to many areas, including to lumber retailers in the targeted east-of-the-Hudson market.¹¹

A future interchange with CP is not likely to cause a significant diversion of existing HRRRC traffic from existing routes. Rather, it will create the opportunity to divert truck traffic to rail and to enable east-of-the-Hudson shippers to more

⁹ The extent of the HRRRC market area is considered in detail and documented in HRRRC-13, Housatonic Railroad Company, Inc. Brief in Support of Requests for Conditions at p. 14.

¹⁰ Hawleyville is situated on interstate Route 84 just east of Danbury and approximately 10 miles from the New York/Connecticut state line.

¹¹ Housatonic estimates that approximately 36% of rail to truck deliveries are to New York destinations within the targeted area.

successfully continue to compete with shippers in the North Jersey shared asset area.

Currently, large volumes of forest product traffic, including paper, lumber and wood pulp, move by truck from Canadian and other northern origins to the New York east-of-the-Hudson market as well as to Connecticut and Massachusetts. With Conrail in the routing, HRRC has been unable to successfully compete with trucks for much of this traffic and with CSX the situation is unlikely to improve. A direct connection with CP can eliminate an intermediate carrier on certain truck competitive traffic movements and cause a portion of this truck traffic to reach the east-of-the-Hudson market by rail.

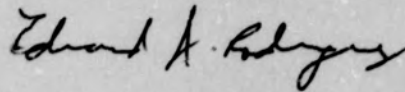
Opportunities exist with many commodities. Forest products are an obvious example. However, sand, stone and other aggregates currently moving into the market by truck could be transported by rail if competitive alternatives exist. Consumer goods and other traffic landing at Canadian ports can also be transported to the New York metropolitan market by rail with a direct CP connection.

Allowing for the possibility of a CP/HRRC interchange on the Maybrook Line in Beacon, New York will advance the purposes for imposing the condition in the first place and is necessary in order to accomplish the objectives sought to be achieved.

V. Conclusion - Request for Relief.

HRRC requests that the S.T.B. require that the agreements between CSX and CP for operation by CP on the Hudson Line expressly permit interchange between CP and HRRC at Beacon, N.Y.

Respectfully Submitted,



Edward J. Rodriguez, Esq.
P.O. Box 298
Centerbrook, Connecticut 06409
(860) 767-9629
Attorney for
Housatonic Railroad Company, Inc.

Certificate of Service

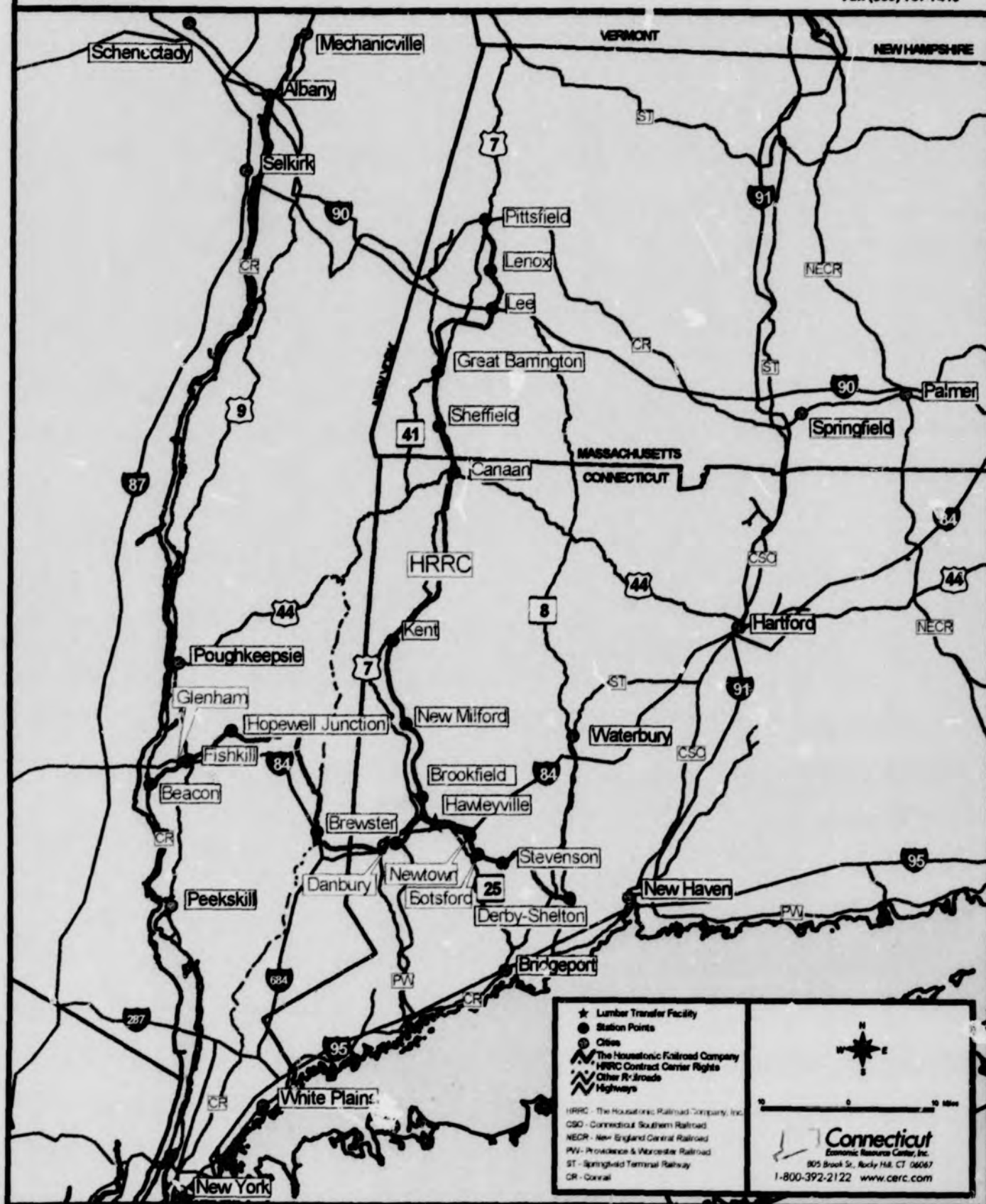
I hereby certify that a copy of the foregoing Comments has been served upon the parties designated in Decision No. 102, including those parties requesting to be served, by first class mail, postage prepaid, this 10th day of December, 1998:


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STB FD 33388 (Sub 69) 12-1-98 D 192454

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December 1, 1998

BY HAND

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



Re: STB Finance Docket No. 33388 (Sub-No. 69), 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; Responsive Application -- State of New York, by and through its Department of Transportation, and the New York City Economic Development Corporation

Dear Secretary Williams:

On November 23, 1998, New York & Atlantic Railway filed with the Surface Transportation Board its request to be placed on the service list in the above-referenced proceeding (the "Request"). Enclosed for filing in this proceeding are an original and 10 copies of the Certificate of Service, certifying that the Request has been sent to appropriate parties.

Very truly yours,

Rose-Michele Weinryb
Rose-Michele Weinryb

Enclosure

RICHARD J. ANDREANO, JR.
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HARVEY E. WEINER
ROSE-MICHELE WEINRYB
JOSEPH F. YENOUSKAS

*NOT ADMITTED IN D.C.

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 1998, a copy of the foregoing request of New York & Atlantic Railway to be placed on the service list in STB Finance Docket No. 33388 (Sub-No. 69) was served by first-class mail, postage pre-paid on:

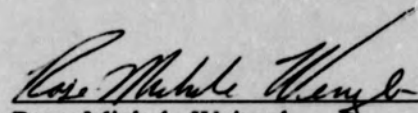
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STB FD 33388 (Sub 69) 11-30-98 D 192436 1/3

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November 30, 1998

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LONDON**VIA HAND DELIVERY**The Honorable Vernon A. Williams
Secretary, Surface Transportation Board
Mercury Building, Room 700
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Washington, D.C. 20423**ENTERED**
Office of the Secretary

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Re: 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 – Sub-No. 69, Responsive Application – State of New York, et al.

Sub 69

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of CSX-167, "Submission of CSX Corporation and CSX Transportation, Inc., As to the Rights to Be Granted to Canadian Pacific Railway Company and Affiliates With Respect to Line of Railroad Between Selkirk (Near Albany), NY, and Fresh Pond Jct. (in Queens)," with its Attachments, for filing in the above-referenced docket. Please note that a facsimile copy of Attachment 2 to the Submission, Verified Statement of R.R. Downing, is being filed today. The original, manually executed version of Mr. Downing's Verified Statement will be forwarded to you tomorrow.

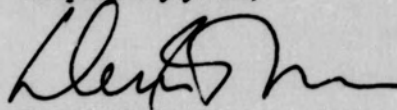
Please note that a 3.5-inch diskette containing a WordPerfect 5.1 formatted copy of this filing and its Attachments is enclosed.

ARNOLD & PORTER

The Hon. Vernon A. Williams
November 30, 1998
Page 2

Thank you for your assistance in this matter. Please contact me if you have any questions.

Respectfully yours,

A handwritten signature in dark ink, appearing to read "Dennis G. Lyons", with a stylized flourish at the end.

Dennis G. Lyons
*Counsel for CSX Corporation
and CSX Transportation, Inc.*

cc: All Parties to the Service List
for Sub-No. 69

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



STB Finance Docket No. 33388 (Sub-No. 69)

RESPONSIVE APPLICATION — STATE OF NEW YORK, BY AND THROUGH ITS
DEPARTMENT OF TRANSPORTATION, AND
THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

Submission of CSX Corporation and CSX Transportation, Inc.
As to the Rights to Be Granted to Canadian Pacific Railway Company
and Affiliates With Respect to Line of Railroad Between Selkirk
(Near Albany), NY, and Fresh Pond Jct. (in Queens)

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*Counsel for CSX Corporation and
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November 30, 1998

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ATTACHMENTS:

Attachment 1.... Verified Statement of Steven A. Potter

- Exhibit 1 Proposed Form of Terminal Joint Facilities Agreement**
- Exhibit 2 Proposed Form of Trackage Rights Agreement**
- Exhibit 3 Settlement Agreement of October 20, 1997**
- Exhibit 4 January 8, 1998 Letter from CSXT to CP**
- Exhibit 5 Proffer of June 6, 1998 by CSX, including text of
Supplemental Rate Making Agreement dated as of
May 29, 1998**

Attachment 2.... Verified Statement of R.R. Downing

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**

STB Finance Docket No. 33388 (Sub-No. 69)

**RESPONSIVE APPLICATION – STATE OF NEW YORK, BY AND THROUGH ITS
DEPARTMENT OF TRANSPORTATION, AND
THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**

**Submission of CSX Corporation and CSX Transportation, Inc.
As to the Rights to Be Granted to Canadian Pacific Railway Company
and Affiliates With Respect to Line of Railroad Between Selkirk
(Near Albany), NY, and Fresh Pond Jct. (in Queens)**

Pursuant to Decision No. 102, served November 20, 1998, CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") submit this statement concerning their offer of rights to Canadian Pacific Railway Company and its affiliate, Delaware and Hudson Railway Company, Inc. (collectively, "CP"), required by that Decision No. 102 and pursuant to Decision No. 89, served July 23, 1998, Condition No. 28, at 177.

BACKGROUND

In Decision No. 89, the Board considered the contentions of the "New York Parties" (New York Department of Transportation and New York City Economic Development Corporation)¹ that a second freight rail operator be permitted to operate on the Conrail line allocated for operation by CSX between Selkirk (near Albany), NY and Fresh Pond Jct. (in Queens).² The Board noted that it had a "general policy of not attempting to significantly enhance parties' pre-merger competitive alternatives" — which the New York Parties' proposal clearly did — but that in this case "we are inclined to make an exception to our general policy." Decision No. 89 at 79. The Board noted that there had been settlement agreements by CSX both with Canadian National Railway Company ("CN") and with CP which "will increase rail transport options for shippers" East of the Hudson and bring about "new competition." *Id.* at 82. However, the Board held as follows:

Nonetheless, NYDOT and NYCEDC have cogently explained why the separate and confidential settlement agreements reached by CSX with CP/D&H and CN are, as presently configured, not sufficient to satisfy the needs of east-of-the-Hudson shippers. See NYS-24, confidential version. One deficiency in the CSX-CP haulage agreement may be the revenue factor CSX is to receive for this service, which the New York parties assert is considerably above their calculations of Conrail's URCS variable cost or fully allocated cost for existing movements along the Hudson Line. More importantly, numerous other restrictions significantly limit the movements to which this privately negotiated haulage agreement would apply.

¹ NYDOT and NYEDC, respectively.

² Sometimes called the "Hudson Line."

We have carefully balanced the needs of the competing parties here, and strongly believe that we must forcefully use this opportunity to restore a modicum of the competition that was lost in the financial crisis that led to the formation of Conrail. It appears that there will soon be sufficient capacity on the Hudson Line for safe service from a second freight operator.

Therefore, we will impose a condition requiring CSX to negotiate an agreement with CP to permit either haulage rights, not restricted as to commodity or geographic scope, or similarly unrestricted trackage rights, over the east-of-the-Hudson line from Fresh Pond to Selkirk (near Albany), under terms agreeable to the parties, taking into account the investment that continues to be required for the line.

Id. at 82-83 (footnote omitted).³

The Board's formal order, set forth in Ordering Paragraph No. 28 of Decision No. 89 at page 177 and repeated in Decision No. 102, was as follows:

CSX must attempt to negotiate, with CP, an agreement pursuant to which CSX will grant CP either haulage rights unrestricted as to commodity and geographic scope, or trackage rights unrestricted as to commodity and geographic scope, over the east-of-the-Hudson Conrail line that runs between Selkirk (near Albany) and Fresh Pond (in Queens), under terms agreeable to CSX and CP, taking into account the investment that needs to continue to be made to the line.

While CSX and NS opposed this outcome, it is the order of the Board, and the Board has in effect held that the grant of the rights in question is feasible and would be in

³ The Board provided that if an agreement was not reached within 60 days of the effective date of the Decision, a proceeding would be initiated by the Board. *Id.* at 83. The 60 days allotted and an extension of 20 days did not produce an agreement, the parties reporting an impasse. The present proceeding was then instituted by Decision No. 102.

the public interest. The Board has held that there is sufficient capacity on the line for safe service "from a second freight operator." *Id.* at 83. We accordingly start from that point.

CSX'S PROPOSAL

CSX proposes to satisfy the Board's order that it grant CP "either haulage rights unrestricted as to commodity and geographic scope, or trackage rights unrestricted as to commodity and geographic scope" over the line in question through the grant of trackage rights meeting that description. Since CP has no presence in New York City and obviously will need terminal facilities there, CSX proposes to provide CP with access rights to all of the Conrail facilities in the Bronx and Queens so that full and equal access to all shippers and facilities there will be granted to CP.

The trackage rights and terminal access rights to be granted, in accordance with the Responsive Application of the New York Parties, will provide CP with a level of independence and freedom of action on the line, in fulfilling its position as a "second freight operator" East of the Hudson, that was not provided for in any of the negotiations previously had between CSX and CP. No such independence was provided in the independent ratemaking arrangements, with required revenue factor, that were the technique used for providing access to CP in the October 1997 settlement agreement discussed in Decision No. 89,⁴ or in the rate-making/haulage agreements that were

⁴ Copies of the agreements are set forth as exhibits to the Potter Verified Statement. That Statement also provides a brief history of the negotiations.

contained in the terminable "Supplemental Rate Making Agreement" dated May 29, 1998, between CSX and CP.⁵ This latter Agreement was submitted to the Board with a letter of June 6, 1998, as part of a (later rejected) proffer made by CSX to the Board. Likewise, this level of independence and freedom of action cannot be provided by the alternative "haulage rights" approach referred to in Decision No. 89.

CSX's proposal will give CP the rights: (a) to run its own trains with its own crews and equipment on the line in question; (b) to have access to all of the Conrail facilities in the Bronx and Queens being allocated to CSX on a basis of equality with CSX and to access all shippers served by such facilities equally with CSX; and (c) to interchange with the New York & Atlantic Railroad at Fresh Pond Jct. CP will not be dependent on moving its trains through a joint line or haulage move with CSX, as the earlier agreements contemplated; nor will CP be restricted to having its cars carried in CSX trains.⁶

This degree of freedom — for CP to set its own schedules and run its own operations, subject to the rights of CSX and of the passenger movements on the line⁷ — will best serve the purposes sought by the Board in providing for the insertion of CP as a

⁵ In other circumstances, such arrangements can be of considerable benefit to the parties and to the public interest.

⁶ Two forms of Agreement are proposed to implement the proposal: a Terminal Joint Facilities Agreement and a Trackage Rights Agreement. See Potter V.S., Exhibits 1 and 2.

⁷ Included are those of the passenger authorities owning major portions of the line. CSX's proposal is, of course, subject to their rights. See Potter V.S. at 16-17.

strong "second freight operator" on the line in question.⁸ No arbitrary limitations on the number of train movements will be imposed and in the event that the demands of CSX and CP to transit the line exceed the line's freight capacity, CSX and CP will operate on a 50-50 basis. See Potter V.S. at 13 and Exhibit 2 at Article 2.

Clearly, a carrier of the size and strength of CP is competent and financially able to run an independent service using trackage rights over a line of about 140 miles (as perhaps a Class III carrier might not be). CP is a transcontinental carrier, a status enjoyed by no U.S.-based freight rail carrier. Its lines in Canada extend from Montreal in the East to Vancouver in the West. Its Delaware & Hudson subsidiary has extensive operations in the Eastern United States, and particularly in New York State, serving the Albany, NY region, and providing service over trackage rights on the Southern Tier Line from Buffalo throughout the western part of New York State to northern New Jersey, and through other trackage rights routes to Philadelphia and Washington, D.C. In the Western United States, its Soo Line serves the grain-producing states of North Dakota, Minnesota, Wisconsin and Illinois on a line reaching Chicago. The Soo Line connects with the Western Canada lines of CP and in addition serves Duluth. Service eastward from Chicago to the major Eastern Canadian metropolises of Toronto and Montreal is also

⁸ The Board noted that the president of Metro-North had testified that that company's portion of the line could easily and safely accommodate a second freight operator moving an additional six to eight scheduled trains each day, and that completion of the state-funded Oak Point Link, recently opened, will eliminate the most serious freight/passenger conflicts elsewhere on the line. Decision No. 89 at 83 n.130.

provided by CP's St. Lawrence & Hudson affiliate. Total freight revenues for CP and affiliates in 1997, according to its Form 40-F SEC filing, were \$3,717 million (Canadian); net income was \$469 million (Canadian).

Given the Board's order that access to New York City East of the Hudson must be granted either by trackage rights or haulage, the grant of trackage rights with full access to all shippers and facilities in the Bronx and Queens is a superior solution for each of the two companies. CP is a long haul carrier, not a short line; it presently competes with CSX and will compete with CSX's expanded system between a number of origination and destination pairs. The Board's order adds another aspect to that competition. Under CSX's proposal, not only will CP be free of dependence on CSX to carry or haul its trains or cars, but CSX will be freed from the awkward situation of moving its designated competitor's traffic. Each will have full freedom, without restraint as to commodities and as to the ultimate geographic origin or destination of the shipments, to serve the Bronx and Queens and, through interchange with the NY&A, elsewhere on Long Island.

The grant of trackage rights substantially accepts the operating principles proposed by NYDOT and NYCEDC in their joint Responsive Application, NYS-11/NYC-10, filed October 21, 1997. That filing recognized the principles of autonomy of operation between CSX and the "trackage rights carrier," then unidentified, proposed by those New York Parties. The use of trackage rights, and nothing less, remained the position of the New York Parties throughout the case. See their briefs,

NYC-12 at 2, and NYS-27 at 16-18, the latter under the subcaption "Trackage Rights Over the Hudson Line Is the Proper and Effective Remedy."

The target of the parties' operations over the Hudson Line is to provide rail freight service to New York City directly and not through Northern New Jersey. In recognition of this, CSX's proposal is to treat the entirety of the Bronx and Queens that is accessible on or from the line in question as a terminal joint facility area, accessible to CSX and CP alike. While CSX will, under the Transaction Agreement, be the operator of the facility, equal access will be granted to CP. And CP will be permitted to run its line haul trains to and from Oak Point Yard, the major Conrail/CSX yard in the area, to and from the Harlem River Trailvan Terminal, and to and from the interchange point with NY&A at Fresh Pond Jct.⁹ See Potter V.S. at 10. A conventional joint facility agreement, of a sort which the Board might under appropriate circumstances independently order under 49 U.S.C. § 11102(a), will afford CP the use of all of CSX's facilities and services in the Bronx and Queens. But there will be no continuing obligation on CP's part to use those facilities if it wishes to construct its own, and when that occurs, its financial obligations as to the joint facilities will be terminated. See Potter V.S. at 12, Ex. 1 § 10(b). Full interchange rights with the New York and Atlantic Railroad ("NY&A") at Fresh Pond Jct. will be provided, as will access to the intermodal facilities provided at the Harlem River Trailvan Terminal in the Bronx. See Potter V.S. at 10-11. Access to all shippers

⁹ The last movement is subject to any necessary approval of Amtrak, which is owner of the Hell Gate Bridge.

on the Conrail lines in the Bronx and Queens is furnished. The Board's goal of injecting competition here can be most effectively met through the CSX proposal without any unusual constraints or dependencies of one carrier upon the other.

As discussed below under "Bases of Compensation," the appropriate compensation to be paid to CSX for the rights to be granted involves both (a) a fixed component, an annual interest rental, (b) a variable element, based on usage. These are the standard components of compensation imposed where the Board and its predecessor have sought to bring about new competition by rail in an area or to a point, as opposed to situations where the parties to a transaction that would otherwise reduce competition are required to provide competitive access to make up for the competition that their transaction will diminish, and (c) a requirement fully to fund any capital improvement deemed necessary by CP for its own operations. The requirement of a fixed annual interest rental will give CP a stake in the facilities it will be using and will thus give it an incentive to make full use of them.

FREEDOM FROM GEOGRAPHIC CONSTRAINTS

The earlier settlement agreements with CP contained geographic constraints on the traffic which could be moved to New York City, designed to restrict CP to, in essence, "Canadian" origins and destinations. Those restrictions prevented CP from providing service between Chicago on the one hand and New York City East of the Hudson on the other, via its route through Michigan and the Ontario Peninsula. The

October 1997 Agreement¹⁰ restricted the originations/destinations of the movements to New York City East of the Hudson to points not served by CSX, thus eliminating movements to and from Chicago. See Potter V.S., Exhibit 3, ¶ 5A(vii). The January 8, 1998 letter¹¹ broadening the arrangements to include intermodal service was restricted to intermodal movements to and from Montreal. Both were restricted to truck-competitive commodities. Those restrictions were a bone of contention for the New York Parties. New York State complained that the October 1997 settlement agreement with CP contained "numerous exclusions and exceptions on the number of commodities, shippers and geographic area." NYS-27 at 23. The Board ruled in Decision No. 89 that such "geographic scope" restrictions were not to be imposed on the rights to be granted to CP under the Board's order. The trackage rights now proposed, of course, have no such restrictions in them. Moreover, CSX will not be "in the route" on CP's movements, giving further assurance as to customer confidentiality and independent competition between the two carriers.

While the CSX proposal does not give local access to CP on the line between the Albany area and the New York City limits, it amply fulfills the essential purpose of the Board's condition. It is CSX's understanding that the preexisting state of competition, prior to the 1968 creation of the Penn Central Railroad and the later inclusion of the New York, New Haven and Hartford in it, did not provide direct access to shippers on the

¹⁰ Potter V.S., Exhibit 3.

¹¹ Potter V.S., Exhibit 4.

Hudson Line north of the immediate New York metropolitan area. The overwhelming bulk of the anticipated traffic on the East of the Hudson line will have origination and destination points within the Bronx, Queens or elsewhere on Long Island (by interchange with NY&A) and going to or coming from Selkirk and points beyond; as the Verified Statement of R.R. Downing indicates; about 80% of the carloadings now so originate or terminate from New York City, and the percentage will go higher as the number of trains carrying municipal solid waste increases as is projected by Conrail. Downing V.S. at 3. Because capacity remains an issue on the Hudson Line,¹² it would be preferable to minimize the use of the line by local trains and accordingly confine the second carrier to overhead rights with full access to the Bronx and Queens.

SUMMARY DESCRIPTION OF TERMINAL JOINT FACILITIES AGREEMENT

A description of the Terminal Joint Facilities Agreement is set forth in Potter V.S. at 10-12, and the proposed text of that Agreement is appended as Exhibit 1 to that Verified Statement. The parties to the Agreement are, besides CP and CSX Transportation, Inc. ("CSXT"), New York Central Lines, LLC ("NYC"), which will be the owner of the facilities in question and will make them available to CSXT under the Operating Agreement presented in the Application. CSX/NS-25, Vol. 8B, at 122-59. The subject of the Agreement is "The Terminal," which is defined as "all of Conrail's

¹² See Downing V.S. at 2, 4.

railroad operating properties, including track, right-of-way, structures, buildings and associated assets, located in the Boroughs of Bronx and Queens, New York City."

(Recitals) Conventional provisions for industrial and interchange switching are contained in Section 1 of the form of Agreement, as are conventional provisions as to delivery and receipt of cars (Section 2), inspection (Section 3) and interruptions or delays (Section 4). The basis of compensation to CSXT under the Agreement is described in Section 5 and is explained further under "Bases of Compensation" below. Standard provisions are also made for additions, retirements and alterations (Section 6), liability (Section 7) and employee claims (Section 8). An arbitration clause, conventional in joint facilities agreements, is provided in Section 9. The term of the Agreement is for the full 25 years of the Operating Agreement between NYC and CSXT referred to above, plus any extensions thereof. However, CPR may terminate the Agreement at any time upon six-months' advance written notice to the other parties. (Section 10) Presumably, such right would be exercised by CP if it constructed its own terminal facilities. If CSXT abandons all or substantially all of the "Subject Trackage" referred to in the Trackage Rights Agreement, and CP acquires such Subject Trackage and is still a party to the Joint Facilities Agreement, CP is entitled to acquire all of CSXT's interests in The Terminal at fair market value (Section 11). Certain other conventional clauses are included. The foregoing summary, and that in the Potter Verified Statement, are qualified by the text of the form of Agreement in question.

SUMMARY DESCRIPTION OF TRACKAGE RIGHTS AGREEMENT

The Trackage Rights Agreement is described at Potter V.S. at 12-15, and the text of it is appended as Exhibit 2 to the Potter V.S. Parties to the Agreement are CP, CSXT and NYC. The trackage rights extend to the entirety of the line from Selkirk Yard to Fresh Pond Jct., plus rights over the present interchange connection between CP and Conrail on the Albany Secondary Track to Selkirk, and thence to the connection with the portion of the line owned by Metro North to the end of that ownership and continuing over the Oak Point Link (owned by New York) into Oak Point Yard, thence over the Freemont Industrial Branch from Oak Point Yard across the Hell Gate Bridge owned by Amtrak continuing to the point of interchange with the NY&A at Fresh Pond Jct.

(Article 1) While the rights granted by the Agreement are overhead, under the Agreement and under the Terminal Joint Facilities Agreement, as noted above, CP has the right to serve the Harlem River Trailvan Terminal directly (Article 3) and the remainder of the Terminal Area in the Bronx and Queens via switching. Use of the Subject Trackage is in common with CSX, and CSX has the exclusive right to grant other persons rights in the Subject Trackage. CSX retains control of the dispatching, management and operation of the trackage. There are no limitations on the number of trains run over the track by CP, except that if the combined demands of the parties exceed the freight capacity of the line, CP and CSX shall each have the right to use 50% of the freight capacity of the line. (Article 2) Standard operating provisions are provided in Articles 4, 6, 7, 8, 9, 10, 11, 12, 13 and 14. These cover operating provisions, payment of

bills, maintenance, benefits and alterations, management and operations, mileage and car hire, clearing of wrecks, liability and claims. Article 5 covers the compensation to be paid to CSXT and is discussed in "Bases of Compensation" below. Articles 15 and 18 cover the term of the Agreement and its termination. The term of the Agreement is co-extensive with the 25-year term of the Operating Agreement between NYC and CSXT, plus any extensions thereof. As in the case of the Terminal Joint Facilities Agreement, CP may terminate it at any time upon six months' notice. CSXT may terminate the Agreement upon a substantial continuing default, and following notice thereof, on the part of CP to perform its obligations. Any regulatory approval or ownership approval required by CP to perform the Agreement shall be the responsibility of CP. Pursuant to the Board's order, CSX consents to the grant of the rights contemplated by the Agreement, subject to no liability, cost or expense on CSX for the operations of CP. Article 16. A standard provision for abandonment by CSX, with specified rights of purchase on the part of CP in such a case, is contained in Article 17. An arbitration clause similar to that contained in the Terminal Joint Facilities Agreement is provided in Article 19. Certain other conventional clauses are included. The foregoing summary, and that in the Potter Verified Statement, are qualified by the text of the form of Agreement in question.

BASES OF COMPENSATION

A central feature of CSX's proposal is the creation of the Bronx and the portion of Queens served by the present Conrail line as a joint facility, completely open to access by

CP both in terms of the Conrail facilities allocated to CSX and in terms of access to customers and third-party facilities. CP will thus have the status of an owner with respect to the joint facility area. All of the yards and local services allocated to CSX will be made available to CP, as will access to customers. Accordingly, full compensation is necessary in order to adequately compensate CSX/NYC as owner for their facilities and services. The custom and practice -- and the governing statute and the Board's and its predecessor's rulings -- in terminal areas is to require the user to fully share in the costs of operation, maintenance, administration of the facilities and also to participate in the capital process by providing a return on a portion of the capital dedicated to the facilities. The compensation proposed accordingly has two parts -- a variable part based on usage, corresponding with operating, maintenance and administrative costs; and a fixed component covering access to the facilities, based on a share of the interest on the capital involved. See Potter V.S. at 8-10, 13-15. The agreements provide for a 10% factor as the annual cost of capital as to the interest rental, which is somewhat below the figure produced by the Board's annual report on the subject. This is in an effort to avoid controversy and provide a fair, if somewhat understated, figure. *Id.* at 15. The guiding principle is that of "condemnation" of the capital dedicated to the facility (or a portion thereof) with its Fifth Amendment "takings" basis and implications: When the Board has ordered a joint use of facilities, failing agreement of the parties, compensation is to be awarded "under the principle controlling compensation in condemnation proceedings."

49 U.S.C. § 11102(a).¹³ See Union Pac. Corp. – Control – Missouri Pac. Corp., 366 I.C.C. 459, 576 n.114 (1982), aff'd in part sub nom. Southern Pac. Transport. Co. v. ICC, 736 F.2d 708, 723-24 (D.C. Cir. 1984), cert. denied, 469 U.S. 1208 (1985); Missouri-Kansas-Texas R.R. Co. v. Kansas City Terminal Ry. Co., 198 I.C.C. 4 (1933); St. Louis Southwestern Ry. Co. – Trackage Rights Over Missouri Pac. R.R. Co., 8 I.C.C.2d 213 (1991).¹⁴

To be sure, other measures of compensation to applicants are applied where competitive access is mandated to cure a reduction of competition that is caused by a rail combination passed on by the Board. Neither the text, the philosophy nor the constitutional imperative of the “condemnation” principle in Section 11102(a) is applicable in those situations. The Board’s conditioning powers under Section 11324(c) are pertinent there. Thus, in the UP/SP case, where extensive trackage rights were granted by agreement to BNSF in order to cure massive 2-to-1 situations caused by the combination of UP and SP, relatively nominal switching charges for handling between the landlord and tenant railroads were agreed to by the parties and their application

¹³ That has been the standard for over 70 years. See § 3(4) (later Section 3(5)) of the Interstate Commerce Act, as added by the Transportation Act, 1920, c.91, § 405, 41 Stat. 479-80. The compensation is generally paid by way of “interest rental” rather than in a lump sum (see the next footnote), but the economics are the same except that the original owner finances the party awarded the rights, who need not find his own lender.

¹⁴ The Kansas City Terminal case established the concept of “interest rental” and the two-factor compensation system (part fixed interest rental, part variable usage charge) used under Section 3(4) (later Section 3(5)) of the old Interstate Commerce Act and its successors, Section 11103(a) and later Section 11102(a) of title 49 U.S.C. thereafter. See 198 I.C.C. at 31-32.

broadened by the Board; and trackage rights fees of less than the Board would have imposed were agreed to.¹⁵ And in the present case, to the extent 2-to-1 situations were created, such as in the Indianapolis area, a nominal 29¢ a car mile trackage rights charge and cost-based switching were provided by agreement of the parties and held by the Board to be appropriate. Decision No. 89 at 94.

While nominally the Board's conditioning power is being used here in connection with the competitive access to be granted CP, that power is not being used to rectify a transaction-related diminution of competition. Rather, the Board's condition is in substance a condemnation, not a rectification of a competitive harm done by the Transaction. The Board's order here seeks to "use this opportunity to restore a modicum of the competition that was lost in the financial crisis that led to the formation of Conrail." Decision No. 89 at 83. Conrail commenced operations in 1976. That financial crisis involved the deteriorated condition of the Eastern railroads at the end of the 1960s and in the early 1970s; the inflation and economic stagnation caused by the Middle East

¹⁵ The trackage rights and the related compensation terms in UP/SP were prophylactic to the transaction; they were intended to "allow BNSF to replace the competition that will be lost when SP is absorbed into UP." Union Pacific Corp. - Control and Merger - Southern Pac. Transp. Co., F.D. No. 32760, Decision No. 44, served Aug. 12, 1996, at 124. For the level and structure of the trackage rights payments, set by agreement of the parties and "lower than we [the Board] would set," see id. at 140-44. All charges were variable with use. The lines generally were not heavily burdened by passenger operations (unlike the Hudson Line), and accordingly there was little prospect that BNSF would have a frequency of movements approximating UPSP. Here, the extensive passenger constraints on the line and the 50-50 agreement indicate parity of opportunity and operations between the two carriers, making a fixed annual interest rental for the rights in The Terminal, and also in the trackage rights over the Hudson Line.

oil crisis; and the disastrous merger of the Pennsylvania Railroad and the New York Central in 1968, which led to the Penn Central bankruptcy in 1970. As to those events, CSX is an "innocent third party"¹⁶ requiring condemnation-style compensation. The financial crisis had nothing to do with the present Transaction. CSX, as a party to the present Transaction, should not be made to pay for the consequences of history as part of the price of the present Transaction, as it would have to pay if the Transaction itself had lessened competition East of the Hudson. The position of CSX and NYC here is that of conscripts, not that of parties who have reduced competition and must fix that which they have broken. The "condemnation" standard of compensation is appropriate and required by law and the Constitution here.¹⁷

To put the matter another way, it makes no difference that the terminal trackage rights in question are being awarded as part of a proceeding involving a rail carrier combination. Since the Applicants here were not responsible for the diminution in competition in the 1960s or 1970s, which the Board's order is attempting to restore, they should be treated as if they were non-applicants. The Board has made it plain that a non-applicant in a rail combination proceeding that is the subject of an order of terminal trackage rights is entitled to have compensation on the basis of the statutory and constitutional standard in Section 11102(a) (then Section 11103(a)). See Decision

¹⁶ See Union Pac. Corp. - Control and Merger - Southern Pac. Rail Corp., F.D. No. 32760, Decision No. 47, served Sept. 10, 1996 ("UP/SP No. 47") at 15.

¹⁷ This is the case regardless of what form of access the Board prescribes.

No. 44, UP/SP, F.D. No. 32760, served Aug. 12, 1996, at 150-51, discussing Tex-Mex's terminal trackage rights application in Sub-No. 14 in that docket over Houston Belt Terminal Railroad ("HBT"), a non-applicant. While the Board later concluded that HBT was not entirely an "innocent" party — Tex-Mex pointed out that HBT's two owners were UP/SP, the applicants whose combination caused massive two-to-one situations, and BNSF, the beneficiary of major trackage rights to cure those competitive impacts (UP/SP No. 47 at 15) — the Board made it plain that a true "innocent" party on which there was an imposition of trackage rights would be entitled to condemnation-style compensation. *Id.*¹⁸

Clearly, a condemnation form of compensation is warranted as to the joint facilities in the Bronx and Queens. Because the two carriers, CSX and CP, will have equal use of the terminal facilities, a fixed interest rental will be most appropriate and will encourage CP to make full use of the terminal facilities and to develop service to shippers in New York City.¹⁹ And the compensation that ought to be awarded CSX for

¹⁸ The principle of condemnation-style compensation has been, however, followed where terminal trackage rights are awarded, in a rail combination, over a facility jointly owned by an applicant and a non-applicant, even though the application caused the competitive harm being redressed through the terminal trackage rights. See Union Pac. Corp. — Control — Missouri Pac. Corp., 366 I.C.C. at 572, 576 n.114 (1982) (DRGW terminal trackage rights over facility jointly owned by MP (applicant) and ATSF (non-applicant)).

¹⁹ In certain cases, the Board has provided for the interest rental, which is "calculated by multiplying the valuation basis by the pre-tax railroad cost of capital" and then put on a monthly basis by dividing it by twelve, to be allocated to the party receiving the rights on the basis of its percentage usage of the lines on a month-by-month basis, rather than on a fixed-share basis. See St. Louis Southwestern Ry. Co. — Trackage Rights Over Missouri Pac. R.R. Co., 8 I.C.C.2d 213 (1991) (variable month-by-month allocation of interest

Footnote continued on next page

CP's rights to use the Hudson Line between Selkirk/Albany and the New York City line is quite similar. While there is not proposed any CP access to the local shippers on the line from Selkirk/Albany to the New York City line, in economic terms the predominant use of the line will be to access the shippers in the City, including access to the municipal waste movements, the Hunts Point market, and the Harlem River Trailvan Terminal. No arbitrary limits will be imposed on the amount of use which CP can make of the line, although, in case the demands of CP and CSX exceed the freight capacity of the line, the two will share it 50-50, an obviously fair arrangement. Thus, CP's position as to the Hudson Line itself will be substantially that of a co-owner, and compensation on a co-owner basis will be appropriate for it, just as it is for the joint facilities in the Bronx and Queens. Here again the trackage rights are not being awarded to rectify a competitive harm caused by the Transaction but to rectify the consequences of historic events of a generation ago, for which CSX had no responsibility.

**SUPERSESSION OF OCTOBER 20, 1997
SETTLEMENT AGREEMENT**

In November 1998, CSX terminated the May 29, 1998 Agreement with CP pursuant to its terms²⁰ since the Board had not accepted CSX's June 6, 1998 proffer as

Footnote continued from previous page

rental effected with respect to trackage rights between Kansas City and St. Louis). Where terminal facilities are shared equally and access to those facilities is over a single line from a single direction over which the two parties have equal freight rights in the event of capacity constraints, the variable allocation method appears to be inappropriate.

²⁰ May 29, 1998 Agreement, ¶ 4; Exhibit 5 to Potter V.S.

the only condition on CSX's East of the Hudson rights. The October 20, 1997 Agreement and the related intermodal letter of January 1998²¹ remain in full force and effect. They are, however, inconsistent with and superfluous to the grant to CP of trackage rights unrestricted as to commodities and geographic scope proposed herein. They were entered into as part of a settlement agreement under which CP was to seek no further relief in the case.²² CSX, in its filing with the Board on November 12, 1998, attempted to preserve freedom to negotiate with an "East of the Hudson" carrier other than CP, but the Board rejected that approach in its Decision No. 102 and thus ordained that CP would be the "second freight operator" to New York City East of the Hudson. While the Board, in its discretion and wisdom, has decided to make CP the vessel for the bringing of a second freight operator competitor into the New York "East of the Hudson" market, a result inconsistent with the CP October 1997 settlement agreement has been reached. While it appears that this happened through no affirmative action by CP, it would be inequitable to require CSX to continue to perform its part of the bargain made with CP in October 1997.²³ Moreover, the possibility of CP's use of its independent rate-

²¹ Respectively, Exhibit 3 and Exhibit 4 to Potter V.S.

²² The now terminated May 29, 1998 Agreement also so provided.

²³ The Board's policy of encouraging voluntary settlements should also be considered. Future applicants before the Board will be reluctant to enter into voluntary settlements if, when the Board finds it necessary to use the counter-party in the settlement to fulfill an objective of the Board, by awarding the counter-party relief that it forewent in the settlement, the counter-party will still keep what it got in the settlement. The relief requested herein, while obviously leaving the Board's policy favoring settlements somewhat weakened — inevitably because of the Board's desire to provide a second rail

Footnote continued on next page

making authority under that agreement should not be permitted to distract CP from the fullest possible competitive use of its trackage rights. Thus, as part of CSX's proposal, CSX asks that the Board terminate the rights granted to CP under the October 20, 1997 Agreement (and any rights attaching to the January 1998 letter), either by the use of its overriding authority under 49 U.S.C. § 11321 or as a condition upon the Board's grant to CP of the trackage rights, and CP'S acceptance thereof, as proposed herein.²⁴

CONCLUSION

The Board's action in imposing the condition in Ordering Paragraph No. 28 in this case was a conscious departure from precedent, since it created a situation in which the East of the Hudson shippers in the New York area would be served directly by two rail carriers, rather than the single carrier serving them prior to the Transaction before the Board. While the price that CSX paid for its 42% interest in Conrail and the allocation of the Conrail NYC facilities and routes (owned and trackage rights) to it was not an excessive price, it was a full price, determined in competitive bidding and competitive negotiations involving CSX and NS. Now, by order of the Board, new competition is to be created East of the Hudson. CSX has bowed to that, but fundamental fairness and

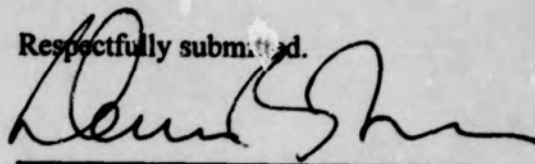
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operator in the form of CP — will maintain the settlement policy as much as possible under the circumstances.

²⁴ This would include the rights granted under the related Marine Intermodal Agreement between CSX Intermodal, Inc. and CP, which was part of the settlement and was attached as an exhibit to the October 20, 1998 Agreement. See Exhibit A to Exhibit 3 to the Potter V.S.

Fifth Amendment considerations dictate that a price based on full return, interest rental "condemnation" principles be paid for the rights that CSX is giving up in sharing its property with CP.

In an effort to create a situation which meets the substance of the New York Parties' Responsive Application and the Board's order and affords CP a very high level of autonomy on the Hudson Line and in the New York metropolitan area, CSX proposes to give up a major portion of the value that it obtained with respect to the Hudson Line, to its East of the Hudson access, and to the Conrail facilities and rights in the Bronx and Queens. Under the Transaction Agreement, it cannot be compensated for the effects of the Board's Ordering Paragraph No. 28 otherwise than by the compensation to be ordered by the Board to be paid by CP; no adjustment in Conrail's purchase price as between CSX and NS is permitted. § 8.4(b)(v), CSX/NS-25, Vol. 8B at 59. In exchange for this proposal and for CSX's in effect sharing its ownership of these assets and rights with CP — not as a remedy for a condition caused by the Transaction — CSX must depend on the Board's fairness and precedents for its just compensation.

Respectfully submitted.



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November 30, 1998

INDEX TO ATTACHMENTS

Attachment 1 Verified Statement of Steven A. Potter

Exhibit 1 Proposed Form of Terminal Joint Facilities Agreement

Exhibit 2 Proposed Form of Trackage Rights Agreement

**Exhibit 3 Settlement Agreement (Rate Making Agreement) of
October 20, 1997 between CSX Transportation, Inc. and
Canadian Pacific Railway Company and its affiliates**

**Exhibit 4 Letter from CSX Transportation, Inc. to Canadian
Pacific Railway Company dated January 8, 1998**

**Exhibit 5 Proffer of June 6, 1998 by CSX, including text of
Supplemental Rate Making Agreement dated as of
May 29, 1998 between CSX Transportation, Inc. and
CSX Intermodal, Inc. on the one hand and Canadian
Pacific Railway Company and affiliates on the other.**

Attachment 2 Verified Statement of R.R. Downing

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

VERIFIED STATEMENT
OF
STEVEN A. POTTER

My name is Steven A. Potter. I am Assistant Vice President-Intercarrier Agreements for CSX Transportation, Inc. in Jacksonville, Florida. I have held this position for five years. In my 17-year career with CSXT and predecessor companies I have held a variety of positions in the Marketing, Finance and Strategic Planning Departments including heading the fertilizer marketing group and a district sales office. In addition to my intercarrier agreements duties, I am also responsible for planning for the Shared Assets Areas created by the Conrail Transaction.

The Intercarrier Agreements group, which I head, is responsible for joint facility contracts and their administration,

interline switching arrangements and administration, and audit and field financial control functions. Included within joint facility contracts are trackage rights agreements, haulage agreements and terminal operating agreements.

I am familiar with the various types of trackage rights arrangements which CSXT enters into with other railroads and with the typical joint facilities arrangements customarily entered into between railroads sharing terminal facilities.

I was one of the members of the team responsible for negotiations with Canadian Pacific Railway Company and affiliates ("CP") over issues raised by that company in the CSX-NS-Conrail proceeding, which resulted in two settlement agreements I will describe below. I was involved in formulating CSX's position throughout, and participated in many of the face-to-face negotiations.

I have organized this Verified Statement as follows:

A. History of Negotiations with CP.

1. The settlement agreements with CP in which CP agreed to support the Application.
2. CSXT's efforts to negotiate an arrangement with CP in compliance with the STB's Condition No. 28.

B. Description of CSXT's Proposal to the Board
in Response to the Board's Decision No. 102.

1. A Terminal Joint Facilities Agreement under which CP would have access to yard facilities and, by CSXT switch, to customers in the Bronx-Queens Terminal area and interchange to New York and Atlantic Railroad ("NY&A").¹
2. A Trackage Rights Agreement granting CP trackage rights between its point of access to Selkirk and New York City.²
3. General comments on the proposed agreements.

In my opinion, the Terminal Joint Facilities Agreement offered by CSXT in this submission to the Board reflects a standard approach to joint facilities operation and compensation, of a sort traditionally used between large carriers. The Trackage Rights Agreement is commonplace in its operating terms and follows the same principles of compensation as does the Terminal Joint Facilities Agreement. Each meets the Board's objectives of giving CP access to the New York City rail market.³

¹ Attached as Exhibit 1.

² Attached as Exhibit 2.

³ I do not mean to suggest that it is usual or customary for any railroad to make its investment in capital assets available to competitors on the terms in these agreements. Quite the contrary; CSXT would not voluntarily make its investment available to a competitor for purposes of serving customers on anything nearly as favorable as the terms in these agreements. Overhead

footnote continued on next page

A. The Settlement Agreements with CP.

CSXT and CP (including its subsidiaries Delaware & Hudson Railway Company and St. Lawrence & Hudson Railway Company Limited) entered into a voluntary settlement agreement effective October 27, 1997. That agreement is attached as Exhibit 3.⁴ In that agreement, CP agreed to support the joint acquisition of Conrail by NS and CSXT and not to seek conditions against CSXT. In exchange, CSXT granted CP a set of favorable commercial arrangements allowing CP to unilaterally market certain traffic to and from New York and Philadelphia. These generous rate-making authorities granted CSX a fixed revenue factor, and granted CP authority to negotiate prices directly with customers without prior negotiation, concurrence, or even knowledge of CSXT. In effect, CSXT agreed to "wholesale" to CP the service between

footnote continued from previous page

trackage rights are almost always granted to another railroad as an operating convenience -- not to reach shippers. Terminal operating agreements are usually designed to address situations where the terminal facilities are to be jointly owned at the start of their construction, or where one (or both) railroad(s) has perceived great operational/financial advantage in closing its facility and entering into a joint facility arrangement with the other. I have attempted to structure the two agreements offered to the Board as customary arrangements to eliminate controversy over their terms. Nonetheless, neither the Board nor any third party should misunderstand -- these arrangements are being compelled; they are not voluntary.

⁴ Confidential rate information not relevant to this proceeding has been redacted from all attached existing agreements.

Albany and New York (and Philadelphia) leaving CP free to compete at the "retail" level directly to customers. .

The authority granted was limited to new, truck competitive traffic that CP could promote to and from customers located in Canada, CP's home service territory where CP has strong commercial relationships with Canadian manufacturers and producers.

As part of the October 20, 1997 Agreement, and annexed as Exhibit A to it, there was an agreement between CP and CSX Intermodal, Inc. ("CSXI") providing, similarly, required revenue factors for CSXI and rate-making authority to CP on joint movements of marine intermodal containers between the New York area and the Montreal/Toronto corridor. See Exhibit A to Exhibit 3 to this Statement (the "Marine Intermodal Agreement").

On January 8, 1998, CSX and CP entered into an informal letter understanding of their intent to extend the East of the Hudson arrangements made in the October 1997 Agreement to intermodal traffic. See Exhibit 4 hereto.

On May 29, 1998, CSX and CP entered into a Supplemental Rate Making Agreement, the purpose of which was to grant CP additional commercial rights to New York in the hope that once those rights were demonstrated to certain New York governmental interests, those governmental interests might agree to support the Control Transaction. CSX reserved the right to terminate that agreement

in the event that the arrangements it had worked out with CP did not result in approval of the Transaction without other material conditions involving "East of the Hudson."⁵

Neither the original settlement agreement, with the generous commercial access which it granted, nor the proffered Supplemental Agreement, which went even further, was deemed acceptable to the Board as addressing the demands of various parties relating to competitive access in New York City itself.

The Board therefore imposed condition No. 28 in which it directed CSXT to attempt to negotiate either a trackage rights agreement or a haulage agreement meeting certain specifications with CP. I was given primary responsibility for that negotiating effort. CSXT made a number of proposals to CP, but these were all deemed unacceptable to CP. In the course of these negotiations, we considered several alternatives, most of which involved haulage arrangements. I led the CSXT negotiating group and, in my opinion, the main reason we were unable to reach an agreement was

⁵ At the close of the Oral Argument in this case on June 3, 1998, the Board requested that CSX proffer to it those settlement agreements or other arrangements that CSX would accept as conditions to Board approval of the Transaction. CSX complied and proffered a condition which would have, in effect, imposed the rate making authority provisions of the May 29, 1998 agreement as an STB condition of approval of the Transaction. That condition was not imposed; Ordering Paragraph No. 28, among other conditions, was imposed.

the fundamental nature of haulage arrangements: they are always individually tailored to meet the goals of each of the parties. Inherent in haulage arrangements is a strong element of cooperation, where each party sees advantages to itself in the creation and continuance of the arrangement and where each prefers the contractual relationship to all other alternatives. There is little history of haulage being imposed on transactions by the Board or its predecessor. The cases where trackage rights are imposed are much more numerous. I believe that the reason for this is: By their nature, all haulage arrangements are unique. There is no set of standard terms, generally recognized in the industry as "haulage." Rather, the expression embraces a large number of individually crafted negotiated arrangements to meet mutually agreed objectives with a few basic common elements. In the present situation, as a result of the Board imposing a condition on this Transaction granting CP access to customers in New York City, CP will be a major competitor with CSXT in a market which CSXT has spent a great deal of money to reach and which CSXT hopes to develop. Perhaps the Board will understand why it proved impossible for CSXT and CP to reach mutually acceptable terms of a non-standard contract requiring close cooperation, in these circumstances.

On November 10, 1998, CP advised the Board by letter that it felt an impasse in the negotiations had been reached. CSX confirmed this by letter on November 12, 1998. The Board then commenced this proceeding. That has led CSXT to this submission of proposed contracts. The proposed contracts would give CP equal use opportunities of all the Conrail assets allocated for operation by CSXT in the Bronx and Queens, NY. Although CSX has paid over \$4 billion for the rights in Conrail's assets, CP will have rights to use the prescribed portions of those Conrail assets under customary industry terms for joint facilities operations and trackage rights. CP will have absolutely no obligation to put its own capital at risk, except to the extent necessary to accommodate its own operations.

B. Description of the Proposed Contracts.

We have structured the two contracts in a manner that will give equal rights to CP to transport traffic over Selkirk to and from the City of New York via Conrail's Hudson Line on the east side of the Hudson River. We assume that CP will be unwilling to purchase an equal interest in the assets which it will be using, so we have taken as our guide past industry agreements and STB/ICC decisions granting similar rights. These industry and legal precedents recognize that a party can acquire rights and

compensate an owner for those rights without actually investing capital in the assets to be used. This is accomplished by an arrangement known as "interest rental" which calls for a percentage sharing of the cost of capital the owner has invested in the assets. Instead of "buying in" to the asset by paying the owner the new entrant's share of the fair market value of the facility (an amount of cash which the new entrant would have to raise in the capital markets or use capital funds of its own), the new entrant simply pays the owner a "cost of capital"-type return on the new entrant's share of the facility. Thus, the owner in real economic terms provides financing to the new entrant through the "interest rental" mechanism, and reduces the risk of the financed party. This approach affords the user, here CP, the opportunity to avoid an up-front capital expenditure for the asset, while still compensating the owner for its investment.

Some examples of industry agreements applying this principle, with which the Board may have some familiarity, are the Richmond Fredericksburg & Potomac's Potomac Yard agreement and the Indiana Harbor Belt Railroad's arrangements under which non-stockholders pay a surcharge in respect of their access to the company's facilities. In each of these cases, long-standing and productive relationships were built on the principle.

We have structured the two contracts in a manner that will give as close to equal rights to CP as possible recognizing that neither CP nor the New York Parties backing it are likely to be willing to invest a sufficient sum out-of-pocket to acquire a 50% ownership of the NYC-owned line, the freight operating rights on the portions of the line owned by the passenger authorities, or the terminal assets.

1. **Terminal Joint Facilities Agreement Under Which CP Gains Access to Yard Facilities; by CSXT Switch, to Customers in the Bronx-Queens Terminal; and to Interchange With the NY&A**

This first proposed agreement establishes a joint facility for the terminal operations, defined as all Conrail rail operating properties in the Bronx and Queens. Exhibit 1 at 1. CP will have equal access with CSX to all shippers and facilities in those Boroughs. I have structured the proposed contract as separate from the Albany area to New York trackage rights contract primarily due to the difference in operations. On the line from Albany to New York City, CP will operate trains on its own behalf. Within the Bronx-Queens Terminal, it is efficient to have only one carrier operating, so CSXT will perform all operations, except that CP's trackage rights will extend within the Terminal to enable CP to operate its own trains into and out of Oak Point Yard, the major Conrail yard in the area, to and from the Harlem

River Trailvan Terminal (where CP will be able to pick up and deliver traffic directly) and to and from the interchange with the NY&A at Fresh Pond Junction.

It is customary for a single carrier to perform all the operations within a congested Terminal. That will be done here. Oak Point Yard is not among Conrail's larger yards. Cars moving for the account of CP will be picked up from, and delivered to, industry sidetracks for the account of CP. See Exhibit 1, § 1. This will give CP access to every customer within the terminal with no need whatsoever to maintain switch crews or local yard operations. This substantially reduces CP's day to day financial risk. Under the Trackage Rights Agreement, CP will have the right to operate its trains to and from the Oak Point Yard, to and from the Harlem River Trailvan Terminal, and to and from the Fresh Pond NY&A interchange. Exhibit 2, Articles 1 & 3. Locker and related facilities will be provided for the CP line-haul crews at Oak Point Yard. CSXT will perform all train make-up and break-up within the Oak Point Yard. Having a single operator is more efficient than having two carriers try to operate a classification yard.

This arrangement also reduces CP's financial risks associated with East of the Hudson operations. CP will be required to pay a usage-based proportion of all direct and associated expenses

related to the operation and maintenance of the Bronx-Queens Terminal, including the pick-up and delivery functions to the extent performed by the Terminal operator. Exhibit 1, § 5. However, it will not have to hire, train and compensate switching crews or station switching locomotives.

In addition, if CP elects not to exercise its rights under this agreement to operate its own trains to reach the NY&A, CSXT will perform switching to and from the NY&A. Id., § 1(b).

CSXT recognizes that CP may ultimately want to build its own facilities in connection with its service to this area. Accordingly, the proposed agreement leaves CP free to construct its own facilities, at its own expense. CP is not required to allow CSXT to use these facilities, even if CSXT offers to share in their cost. This is a traditional Joint Facility approach. It may be contrasted with the Shared Assets Areas Agreements involving CSXT and Norfolk Southern ("NS") where either party has the right under certain conditions to take advantage of a capital investment made solely by the other by offering to "buy in." The primary difference, of course, is that CSX and NS paid for the Conrail assets, whereas CP has not. If CP constructs its own terminal facilities, it may terminate the Terminal Joint Facilities Agreement on six-months' notice. Id., § 10.

2. **Trackage Rights Agreement Granting CP
Rights Between Selkirk/Albany and New York City**

This complementary agreement proposed by CSX would govern overhead operations by CP from Albany to Conrail facilities in New York City.⁶ This document is structured as a customary joint facility type of trackage rights operation. Under it, CP has the right to run as many overhead trains over the line as it cares to, up to the point where the capacity constraints preclude more trains. Exhibit 2, Article 2. At that point, unless capacity is increased, CP and CSX would be entitled to use 50% of the freight capacity of the line. Id. CSXT's commercial contracts with customers will need to address this contingency, of course.

As with any typical joint facility, each party will share -- on a proportionate usage basis -- in the cost of operating and maintaining the joint facility. Id., Article 5. If CP desires to make capital improvements to accommodate its new access, it may make them at its sole expense. Id., Article 9(b). Other capital improvements made to the facilities will be the responsibility of CSXT and will be added to the interest rental base value of the joint use assets. Id., Article 9(a).

⁶ Access to the Selkirk Yard from a point to the northwest of Selkirk currently used in connection with Selkirk interchange between CP and Conrail is provided in this Agreement. Article 1.

As indicated above, however, CSX is not proposing that CP make any initial capital investment. The cost of capital invested (as defined as the fair market value of the joint facility assets, in this case, the owned portion of the Hudson Line and the freight rights on the portion owned by the passenger authorities) will be shared on a 50-50 basis through interest rental, as is the custom in the industry for joint-use properties. See id., Article 5.

As the Downing Verified Statement points out, there are capacity constraints on the Hudson Line and an eight-hour window of operations (at night) is applicable to a major segment of the line. For these reasons, CSX proposes not to extend local access rights to CP north of the New York City city limits, and access to the relatively few shippers on that portion of the line will be limited to CSX. Currently, according to that statement, about 80% of the traffic relates to movements generated from or to the Bronx, Queens or elsewhere on Long Island (by interchange with NY&A) to and from Selkirk and beyond and with increasing demand for movements of the City's solid waste by rail on the line from points in the Terminal Area, that percentage will increase. The overhead feature will not, accordingly, materially affect the capital value of the Hudson Line to CP since its primary value is its access to the in-City rail facilities and shippers in the Bronx and Queens and its access to Long Island via the NY&A.

As is the case in both Agreements, interest rental is to be calculated based on fair market "across the fence" valuation for the land, and reproduction cost new less depreciation for the track, structures, etc. The rate of return is based on the industry cost of capital, and the "interest rental" factor so calculated is then shared on a 50-50 basis for property dedicated to the joint advantage of the two interests. The agreements provide for a 10% factor as the annual cost of capital (Exhibit 1, § 5; Exhibit 2, Article 5), which is somewhat below the figure produced by the Board's annual report on the subject. This is in an effort to avoid controversy and provide a fair, if somewhat understated, figure.

This arrangement will give CP a substantial financial advantage over CSXT as it goes about marketing services into and out of New York City. CSXT has invested huge sums of capital in acquiring its 42% of Conrail. By contrast, CP will be required to pay only an annual interest rental fee plus a variable usage charge based on expenses incurred in the operation.

3. Other Comments on the Terms of the Proposed Agreements

The agreements place no limitations on CSXT's right to sell, lease or abandon the lines or any part of them. This is an essential provision in the offered agreements. While CSXT intends

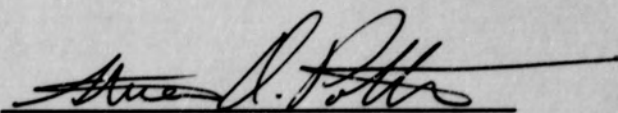
to develop the market potential of every Conrail line it will be operating, this particular part of Conrail has not in recent years seen much, if any, traffic growth. Signs of possible growth are present, and CSX is cautiously optimistic. The Board's decision to permit a second carrier to share the rights to use rail assets which CSXT has paid to have will nonetheless add a very considerable risk factor to any investment CSXT might have the opportunity to make -- be it investment in plant, marketing efforts or otherwise. With the cautionary effect of a competitor waiting in the wings to take advantage of capital improvements or new marketing developments, it is essential that CSXT have the rights, unencumbered by any compulsory obligation under a contract, to cut its losses if its optimism proves misplaced. Conventional provisions protecting CP in such a contingency are included.

Finally, it is very important to make clear that the operating rights CP would have to exercise under the Trackage Rights Agreement would require it to operate its overhead trains on lines owned by Metro-North from MP 75.8, near Poughkeepsie to MP 7, where CP trains would then operate over the "Oak Point Link" between MP 7 and the Oak Point Yard. The Oak Point Link is owned by the State of New York. CSXT does not represent to the Board or CP that it can grant CP these operating rights unilaterally, and

the proposed contracts deal with this limitation by requiring CP to make its arrangements with the owning authorities. Exhibit 2, Article 16. Similarly, if CP chooses to operate its trains over Conrail's Fremont Industrial Branch to the point of interchange with the NY&A at Fresh Pond Jct., it will be required to operate over the Amtrak-owned Hell Gate Bridge, which links the Bronx and Long Island. Again, CSXT does not represent that it has the authority to grant such rights to CP and the proposed agreement recognizes that CP is obligated to obtain those rights itself, unless imposed on Amtrak by the Board. However, CSXT does consent, in pursuance of the Board's order, to the grant by such authorities of the rights contemplated by the Trackage Rights Agreement, subject to such grant imposing no liability, cost or expense on CSXT for the operations of CP.

VERIFICATION

I, Steven A. Potter, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on November 30, 1998.


Steven A. Potter

[EXHIBIT 1]

[FORM OF TERMINAL JOINT FACILITIES AGREEMENT]

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[FORM OF TERMINAL JOINT FACILITIES AGREEMENT]

THIS AGREEMENT, made this _____ day of _____, 19__, by and between CSX TRANSPORTATION, INC., hereinafter referred to as "CSXT", NEW YORK CENTRAL LINES LLC (hereinafter referred to as "NYC"), a wholly owned subsidiary of Consolidated Rail Corporation ("Conrail") and CANADIAN PACIFIC RAILWAY COMPANY (hereinafter referred to as "CPR").

WITNESSETH:

WHEREAS, the Surface Transportation Board ("STB") under STB Finance Docket No. 33388 approved, with certain conditions, (1) the acquisition of control of Conrail by CSX Corporation ("CSX") and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NSR") and the division of assets of Conrail by and between CSXT and NSR; and

WHEREAS, the division of assets of Conrail between CSX and NSR provides that all of Conrail's railroad operating properties, including track, right of way, structures, buildings, and associated assets, located in the Boroughs of Bronx and Queens, New York City ("The Terminal"), will be allocated to New York Central LLC ("NYC"), which is a wholly owned subsidiary of Conrail, and which will be operated by CSXT

under the terms of an Allocated Assets Operating Agreement (the "CSXT Operating Agreement") between NYC and CSXT; and

WHEREAS, CSXT, as required by an order of the STB, is agreeable to granting CPR access to customers in The Terminal with CSXT to perform switching services to and from the customers; and

WHEREAS, in the interest of efficiency of operations CSXT is likewise agreeable to CPR's use of The Terminal for the purpose of yard switching services, including picking up/setting off cars for delivery to and from customers in the Boroughs of Queens and Bronx in the City of New York or interchanging cars to or from the New York & Atlantic Railroad (NY&A); and

WHEREAS, in consideration of the joint use of The Terminal, CPR agrees to share all costs related to operations, maintenance, and capital/facility ownership; and

WHEREAS, CSXT is agreeable to CPR's joint use of The Terminal under the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties intending to be legally bound, agree as follows.

SECTION 1. INDUSTRY & INTERCHANGE SWITCHING

- (a) CSXT, acting as agent for CPR, will switch cars in CPR's account and provide services as necessary to and from industries within the physical borders of The Terminal. CSXT will use its own crews and locomotives to perform said services.
- (b) At the request of CPR, CSXT will handle cars in the account of CPR for interchange with NY&A at Fresh Pond Junction.
- (c) CPR will have use of sufficient trackage within Oak Point Yard for the arrival and departure of trains and will have reasonable access to and from tracks designated by CSXT's representative at the time of movement. CPR's use of Oak Point Yard shall at all times be governed by the instructions of the designated CSXT officer in charge.
- (d) For revenue purposes CPR cars switched under this Agreement shall remain in the account of CPR, and CSXT shall not be entitled to any line haul revenue for the handling of such cars, nor appear in any rates, routes or divisions pertaining to any cars in the account of CPR.
- (e) CPR shall assume its own car hire expenses, and CSXT shall assess and collect all related demurrage charges.

- (f) CPR shall assume liability for all loss and damage to cars in its account and lading however arising.

SECTION 2. DELIVERY AND RECEIPT OF CARS

- (a) Cars handled under this Agreement shall be considered as having been delivered by one party for the account of the other party when placed upon mutually agreed upon trackage designated for such deliveries, accompanied or preceded by the necessary data for forwarding and to insure delivery and acceptance by the designated representative of the receiving road.
- (b) CPR shall provide CSXT with suitable information (which may be transferred by paper documents, facsimiles, or electronic means, or by other means, as mutually agreed) necessary for the handling of cars switched under this Agreement, which will identify for each car:
- (1) Car initial and number.
 - (2) Loaded or empty.
 - (3) Destination station and consignee on inbound movements.
 - (4) Origin and shipper as supplied by the shipper on outbound movements.
 - (5) All required hazardous materials information.
 - (6) Any information as agreed between the parties to be necessary or convenient for the safe, efficient movement of cars switched under the terms of this Agreement.

- (c) CSXT may make repairs to cars switched under terms of this Agreement as may be necessary for safe transit, and CSXT may make adjustments to or transfers of lading from crippled, defective or overloaded cars, as in its determination may be necessary to safely move said cars. CPR shall reimburse CSXT its full cost for repairs, adjustments and lading transfers promptly upon receipt of billing therefor.

SECTION 3. INSPECTION

CSXT shall not be responsible for making any mechanical inspection of cars in the account of CPR switched to and from an industry or interchange.

SECTION 4. INTERRUPTION, DELAY

In the event the use of trackage in performing the referenced switching services shall be interrupted or traffic delayed at any time from any cause, CPR shall not have any claim against CSXT for liability of any kind from such interruption or delay.

SECTION 5. COMPENSATION

- (a) For its joint use of The Terminal, CPR shall pay CSXT monthly on a proportionate usage basis for all direct and associated expenses, including

but not limited to operating, maintenance, supervisory and administrative costs. CPR shall also pay CSXT an annual interest rental fee for access to and joint use of The Terminal. The annual interest rental fee shall be one-half of ten percent (10 %) of the fair market value of The Terminal, such value to be determined by an independent appraiser jointly selected by the parties. The annual interest rental fee shall be paid in twelve (12) equal monthly installments in advance on the first of the month.

- (b) For the joint use of CSXT's transportation services within The Terminal, which include switching to/from customers and interchange access to the New York & Atlantic Railroad ("NY&A") at Fresh Pond Junction, CPR shall pay CSXT on a proportionate usage basis for all direct and associated expenses, including but not limited to, all operating, maintenance, supervisory and administrative costs.
- (c) CSXT shall keep and maintain an accurate account of all loaded cars handled for the account of CPR, and shall at the end of each month, render an itemized bill, which will include terminal expenses as identified in (b) above, computed in accordance with the provisions herein, to CPR for payment.
- (d) All payments called for under this Agreement shall be made by CPR 15 days from the billing date and payment will be made in accordance with standard Electronic Funds Transfer Authorization Agreement. Payment is to

be made in United States dollars. Bills may be rendered monthly. No payments shall be withheld because of any dispute as to correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month.

SECTION 6. ADDITIONS, RETIREMENTS AND ALTERATIONS

- (a) CSXT, from time to time and at its sole cost and expense, may make changes in, additions and betterments to or retirements from The Terminal as shall, in its sole and absolute judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of The Terminal and such retirements shall be excluded from The Terminal. Additions, betterments and retirements will modify the annual interest rental basis, which shall be adjusted per agreement of the parties or by arbitration hereunder.
- (b) If changes in or additions and betterments to The Terminal, including changes in communication or signal facilities, are required to accommodate CPR's operations beyond that required by CSXT to accommodate its operations, CSXT shall construct or have constructed the

additional or altered facilities and CPR shall pay to CSXT the cost thereof as incurred, and shall pay on a periodic basis the expense of maintaining, repairing and renewing such additional or altered facilities.

SECTION 7. LIABILITY

Notwithstanding the terms of any other agreement between CPR and CSXT, the responsibility between the parties hereto for loss of, damage to, and destruction of any property whatsoever and injury to and death of any person or persons whomsoever, resulting from, arising out of, incidental to or occurring in connection with this Agreement, hereinafter referred to as a "Loss", shall be apportioned as follows without regard to consideration of fault or negligence except as provided in Sections 7(e) and 7(j):

- (a) Whenever a Loss occurs with only one train operated by CSXT being involved and such train is switching only CPR cars or CPR cars as well as cars in CSXT's account; then each party hereto agrees to assume and bear all liability, cost and expense for all cars, both empty and loaded, including lading, in its own account in such train, and the parties hereto further agree that injury to or death of any person or persons whomsoever and loss, damage or destruction of all other property, including without limitation, the train, locomotive(s), equipment or trackage, so occurring shall be either (1) borne solely by CPR if the train is switching only CPR cars, or (2) borne by

each party hereto in proportion to the number of cars, both empty and loaded, which each party hereto has in its own account in such train, if the train contains cars in the accounts of both parties hereto.

- (b) Whenever a Loss occurs with more than one train operated by CSXT being involved and any or all of such trains are switching only CPR cars or CPR cars as well as cars in CSXT's account; then each party hereto agrees to assume and bear all liability, cost and expense for all cars, both empty and loaded, including lading, in its own account in such trains, and the parties hereto further agree that injury to or death of any person or persons whomsoever and loss, damage or destruction of all other property, including without limitation, the trains, locomotives, equipment or trackage, so occurring shall be borne as follows: total liability, cost and expense arising not otherwise borne separately by the parties as provided above shall be first equally divided by the number of trains involved and then (1) that portion of said liability, cost and expense apportioned to any train(s) which is (are) moving cars, both empty and loaded, only in the account of CSXT shall be borne solely by CSXT, (2) that portion of said liability, cost and expense apportioned to any trains(s) which is (are) switching only CPR cars shall be borne solely by CPR, and (3) that portion of said liability, cost and expense which is apportioned to any trains(s) moving cars, both empty and loaded, in the accounts of both parties shall be shared and borne by each party hereto in

proportion to the number of cars, both empty and loaded, which each party has in its own account in such train(s).

- (c) Whenever a Loss occurs with the trains of CSXT and another railroad or other company, not a party to this Agreement, being involved and any of such CSXT trains is switching only CPR cars and/or CPR cars and cars in the account of CSXT; then each party hereto agrees to assume and bear all liability, cost and expense for all cars, both empty and loaded, including lading, in its own account hauled in the CSXT train(s), and the parties hereto further agree as between themselves that all other liability, cost and expense incurred by CSXT as a result thereof shall be shared by both parties hereto in proportion to the total number of cars, both empty and loaded, which each party has in its own account in the CSXT train(s) so involved, excluding any cost and expense paid by the other railroad.
- (d) Notwithstanding any of the foregoing provisions of this Section, when any damage to or destruction of the environment whatsoever, including without limitation, land, air, water, wildlife, and vegetation, occurs with one or more than one train of CSXT being involved, and any or all such trains are switching only CPR cars or CPR cars as well as cars in CSXT's account, then, as between themselves, (1) CSXT shall be solely responsible for any such damage or destruction to the environment which results solely from a substance which was being transported in the car or cars of, or in the account

of, CSXT and from which there was a release, (2) CPR shall be solely responsible for any such damage or destruction to the environment which results solely from a substance which is being transported in the car or cars of, or in the account of, CPR and from which there was a release, and (3) responsibility for any such damage or destruction to the environment which results from a substance which was being transported in the cars of, or in cars in the account of, both CSXT and CPR from which there was a release shall be shared by both parties hereto in proportion to the total number of cars which each party had in its account, containing the same substance and from which there was a release.

- (e) In every case of death or injury suffered by an employee of CSXT or CPR, when compensation to such employee or employee's dependents is required to be paid under any present or future state or federal workmen's compensation, occupational disease, employers liability or other law, and CPR under provisions of this Agreement, is required to pay same or a portion of same in installments over a period of time, CPR shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

- (f) CSXT agrees that it will, upon request from CPR, institute or defend, in CPR's name, any action relating to a claim for loss, damage, destruction,

injury or death. CPR agrees to indemnify CSXT and save it harmless from any loss, costs, expenses and legal fees incurred by CSXT instituting or defending any such action in its name, or on behalf of CPR.

- (g) Each party agrees to indemnify and save harmless the other parties hereto from and against all liabilities, costs and expenses which it has agreed to assume under this Section. Furthermore, each party agrees to indemnify and save harmless the other parties for any legal fees, arbitration expenses and awards or expenses incurred by the indemnifying party in connection with any liability, cost and expense assumed by the other parties in this Section.

- (h) CSXT shall notify CPR of any accident, or incident which results in or could result in an action, claim, suit or demand against CPR by CSXT or any third party or which results in or could result in any indemnification or claim for indemnification by CSXT against CPR. Such notice shall include all available details with respect to time, place and circumstances and details of all investigations made.

- (i) Locomotives shall be considered as performing switching service on behalf of CPR when such locomotives are coupled to a train containing CPR cars.

- (j) Whenever circumstances require wrecking service or wrecking train service in connection with the switching which is the subject of this Agreement, CSXT shall perform such service as promptly as possible, and the cost thereof shall be borne as provided in this Section.

- (k) Each party will investigate, adjust and defend all cargo related claim liability filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709.
- (l) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of any party engaged directly or indirectly in such work shall be borne by such party.
- (m) Excluding cargo related claim liability filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, no party shall settle or compromise any claim, demand, suit or cause of action for which the other parties have any liability under this Agreement without the concurrence of such other parties if the consideration for such settlement or compromise exceeds Thirty Five Thousand Dollars (\$35,000).

SECTION 8. EMPLOYEE CLAIMS

Subject to the provisions of the Trackage Rights Agreement among the parties hereto of even date herewith, each party shall assume and hold the other party harmless

from all employee claims by its own employees predicated on loss of, or adverse impact on, compensation, benefits, or working conditions arising from this Agreement or the activities of the parties thereunder, whether such claims are based on conditions imposed by any regulatory agency with jurisdiction or are predicated on the Railway Labor Act or labor agreements.

SECTION 9. ARBITRATION

Any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the parties hereto. The arbitration shall be held in the City of New York before a single arbitrator. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws.

SECTION 10. TERM AND TERMINATION

- (a) This Agreement shall be effective on the date ("Effective Date") that CSXT begins its operations of NYC, and shall remain in full force and effect

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concurrently with said CSXT Operating Agreement governing CSXT's operations of NYC that is limited to 25 years from the effective date of CSXT assuming operations for NYC using NYC's properties, plus any extensions obtained for CSXT operations.

- (b) This Agreement may be terminated at any time by CPR upon six (6) months advance written notice to the other parties.
- (c) Termination of this Agreement shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

SECTION 11. ABANDONMENT OF RELATED TRACKAGE

The parties hereto have entered into on this date a "Trackage Rights Agreement" providing CP with trackage right to reach The Terminal. If pursuant to Article 17 of such Trackage Rights Agreement, (a) CSXT shall abandon all or substantially all of the "Subject Trackage" referred to in that certain Trackage Rights Agreement among the parties hereto of even date herewith, and (b) CP shall acquire such Subject Trackage so abandoned, and (c) this Agreement shall then be in full force and effect, then, on notice given to CSXT within thirty (30) days of the fulfillment of conditions (a) and (b) foregoing, CP shall be

entitled to acquire all of CSXT's interests in The Terminal, at fair market value, as agreed upon among CSXT, NYC and CP, or as determined by arbitration hereunder.

SECTION 12. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Neither party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, to any person, firm or corporation without obtaining the prior written consent of the other party.

SECTION 13. NOTICE

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

(a) If to CSXT or NYC: Assistant Vice President - Joint Facilities
CSXT Transportation, Inc. J200
500 Water Street
Jacksonville, Florida 32202

(b) If to CPR:

Any party may provide changes in the above addresses to the other parties by notice as aforesaid.

SECTION 14. GENERAL PROVISIONS

- (a) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party.

Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.
- (b) All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- (c) This Agreement contains the entire agreement of the parties hereto and supersedes any and all oral understandings between the parties with respect to the subject matter hereof.
- (d) No term or provisions of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.
- (e) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

SECTION 15. CONFIDENTIALITY

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or appropriate for a party hereto to enforce its rights under this Agreement, during the term of this Agreement and during three years after termination of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by either CSXT or CPR to any party other than each party's respective parent corporation, subsidiaries and affiliates, and their respective directors, officers, agents, employees and attorneys, without the prior written approval of the other party.

SECTION 16. INDEMNITY COVERAGE

As part of the consideration hereof, each party hereby agrees that all of its indemnity commitments in this Agreement in favor of the other party shall also extend to and indemnify the parent corporation, the subsidiaries and affiliates of such other party, and all of their respective directors, officers, agents and employees.

SECTION 17. FORCE MAJEURE

CSXT shall not be responsible to CPR for delays or failure to perform under this Agreement if such delays or failure to perform are covered by circumstances beyond its

control, including, but not limited to, Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the parties hereto, embargoes or AAR service orders, Federal Railroad Administration (FRA) orders, or governmental laws, orders or regulations.

end of page
[signatures appear on next page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of
the date first above written.

WITNESS

CSX TRANSPORTATION, INC.

By: _____
AVP-Joint Facilities

WITNESS

NEW YORK CENTRAL LINES LLC

By: _____
(Title)

WITNESS

CANADIAN PACIFIC RAILWAY COMPANY

By: _____
(Title)

[EXHIBIT 2]

[FORM OF TRACKAGE RIGHTS AGREEMENT]

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[FORM OF TRACKAGE RIGHTS AGREEMENT]

A G R E E M E N T

THIS AGREEMENT, made this _____ day of _____, 19__, by and between CSX TRANSPORTATION, INC., hereinafter referred to as "CSXT", NEW YORK CENTRAL LINES LLC (hereinafter referred to as "NYC"), a wholly owned subsidiary of Consolidated Rail Corporation ("Conrail"), and CANADIAN PACIFIC RAILWAY COMPANY (hereinafter referred to as "CPR").

WITNESSETH:

WHEREAS, the Surface Transportation Board ("STB") under STB Finance Docket No. 33388 approved, with certain conditions, (1) the acquisition of control of Conrail by CSX Corporation ("CSX") and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NSR") and the division of assets of Conrail by and between CSXT and NSR; and

WHEREAS, the division of assets of Conrail between CSX and NSR provides that Conrail's line between Selkirk and Fresh Pond Junction, in the Borough of Queens, City of New York will be allocated to New York Central LLC ("NYC"), which is a wholly owned subsidiary

of Conrail, and which will be operated by CSXT under the terms of an Allocated Assets Operating Agreement (the "CSXT Operating Agreement") between NYC and CSXT; and

WHEREAS, the STB's decision approving the acquisition of control of Conrail by CSX and NSR imposed conditions under Ordering Paragraph No. 28 of Decision No. 89, which required CSX to negotiate either haulage rights or trackage rights, over the Conrail line East of the Hudson between Selkirk and Fresh Pond Junction, and

WHEREAS, currently Conrail's lines between Selkirk and Fresh Pond Junction are not contiguous and Conrail moves over portions of the route under the provisions of existing trackage rights between Conrail and Metro-North Commuter Railway, hereinafter referred to as "MNCR", and between Conrail and the State and/or City of New York, and between Conrail and Amtrak; and

WHEREAS, any grant of trackage to CPR rights over those portions of track referred to in the preceding recital are subject to appropriate action of MNCR, the State and/or City of New York, and Amtrak, respectively; and

WHEREAS, CSXT, as operator of NYC, as required by an order of the STB, is agreeable to granting overhead trackage rights to enable CPR to effect interchange with the New York & Atlantic Railroad ("NY&A"), including access for pick up/set off of intermodal traffic

only at Harlem River Trailvan Terminal, and pick up/set off of other traffic at Oak Point Yard; provided that, if CPR shall establish its own terminal facilities in the Borough of Bronx or the Borough of Queens, City of New York, and shall terminate that certain other agreement of even date herewith among the parties hereto, providing for the use of certain properties in such Boroughs described as "The Terminal" referred to therein, then CPR shall have the full right to use such trackage rights to reach its connection with such terminal facilities constructed by CPR;

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, CSXT hereby grants to CPR the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segments of CSXT's railroad shown on the plan attached hereto, made a part hereof and marked Exhibit "I" (hereinafter referred to as the "Subject Trackage"), subject to the provisions of this Agreement, including the recitals hereof:

From the connection of CPR with NYC at NYC's Albany Secondary Track at or near CSXT's Selkirk Yard, milepost CP 142.8, over NYC's Selkirk Branch, thence over Track

* [Not provided in this Submission.]

No. 1, to Conrail milepost 75.8, where CSXT connects with the MNCR, then continuing over MNCR to the end of MNCR's ownership and continuing via trackage rights over Oak Point Link, owned by the State and/or City of New York, at milepost CP 7 to Oak Point Yard at milepost CP 0.0, thence traversing the Freemont Industrial Branch from Oak Point Yard, across the Amtrak owned Hell Gate Bridge and continuing on approximately 7.6 miles to the end of CSXT track to point of interchange with New York & Atlantic Railroad ("NY&A").

ARTICLE 2. USE OF SUBJECT TRACKAGE

- (a) CPR's use of the Subject Trackage shall be in common with CSXT and any other user of the Subject Trackage, and CSXT's right to use the Subject Trackage shall not be diminished by this Agreement, except as provided in subsection (d) of this Article 2. CSXT shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.
- (b) Except as may otherwise be provided by this Agreement or other agreement among the parties, CPR shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or equipment, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of CSXT, preclude the emergency use by CPR of such auxiliary tracks as may be designated by CSXT for such purposes.

- (c) CSXT shall have exclusive control of the dispatching, management and operation of the Subject Trackage. CPR shall not have any claim against CSXT for liability account of loss or damage of any kind in the event the use of the Subject Trackage by CPR is interrupted or delayed at any time from any cause.
- (d) CPR's rights to use the Subject Trackage shall not be limited as to the number of trains until the combined demands of CPR and CSXT exceed the freight capacity of the line. In that case, CPR and CSXT shall each have the right to use 50 percent of the freight capacity of the line.

ARTICLE 3. RESTRICTION ON USE

The Trackage Rights herein granted are granted for the sole purpose of CPR using same for bridge traffic only between the terminals of Subject Trackage (both Oak Point Yard and Fresh Pond Junction shall be considered terminals at the southern end) and CPR shall not perform any local freight service whatsoever at any point located on Subject Trackage, except as may be provided for in separate arrangements between the parties. However, CPR shall have the right to an intermediate stop at Harlem River Trailvan Terminal, as well as the right to interchange with the NY&A at Fresh Pond Junction. The parties note that under arrangements with the owner of the segment in question, the use of these Trackage Rights between milepost CP 75.8 and milepost CP 0.0 is currently restricted to the eight hour window between 8:30 p.m. and 4:30 a.m.

ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS

- (a) When operating over the Subject Trackage, CPR's locomotives and crews will be equipped to communicate with CSXT on radio frequencies normally used by CSXT in directing train movements on the Subject Trackage.
- (b) Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of CSXT's representative or his designee.
- (c) Before its locomotives enter onto CSXT's trackage, CPR shall request permission from CSXT's dispatcher or other designated representative at such other location as CSXT may designate. Further, CPR shall ascertain that said trackage is clear and shall await confirmation from said representative that such permission has been issued to allow CPR's movements on or over CSXT's trackage. Upon completing its operations and clearing CSXT's trackage, CPR will notify CSXT's designated representative that it has completed its operations and that its equipment has cleared CSXT's trackage. Once CPR has notified CSXT's representatives that it has cleared CSXT's trackage, CPR shall not reenter CSXT's trackage without again obtaining permission from CSXT's representative. CPR shall provide and maintain at its expense all communication facilities needed and as may be required by CSXT to permit CPR to use CSXT's trackage.

- (d) CPR will furnish CSXT all loaded and empty cars in Electronic Data Interchange (EDI) transmission between the carriers. This procedure will be required at the time the Association of American Railroads (AAR) defines the standard reporting procedures for trackage rights carriers. The minimal data requirements will be determined by the carriers.

ARTICLE 5. COMPENSATION

- (a) For the joint use of CSXT's Subject Trackage as provided in this Agreement, CPR shall pay CSXT on a proportionate usage basis for all direct and associated expenses, including but not limited to maintenance, operating, supervisory and administrative costs. CPR shall also pay CSXT an annual interest rental fee for the access to and joint use of CSXT's Subject Trackage. Such annual interest rental fee shall be payable in monthly installments in advance. The annual interest rental fee shall be one-half of ten percent (10 %) of the value of the Subject Trackage, such value to be determined by an independent appraiser jointly selected by the parties.

ARTICLE 6. PAYMENT OF BILLS

- (a) All payments called for under this Agreement shall be made by CPR 15 days from the billing date and payment will be made in accordance with standard Electronic Funds Transfer Authorization Agreement. Payment is to be made in United States dollars. Bills

may be rendered monthly. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.

- (b) Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Article 5, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by CSXT at the time any work is performed by CSXT for CPR.

ARTICLE 7. MAINTENANCE OF SUBJECT TRACKAGE

- (a) CSXT shall maintain, repair and renew the Subject Trackage with its own supervision and labor. CSXT shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but CSXT does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. CSXT shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Article 14, CPR shall not by reason of failure or neglect on the part of CSXT to maintain, repair or renew the Subject Trackage, have or make any claim or demand against CSXT or its parent corporation,

subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by CPR resulting from any such failure or neglect.

- (b) CSXT shall perform, at the expense of CPR, such additional maintenance as CPR may reasonably require or request.

ARTICLE 8. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS

- (a) Existing connections or facilities which are jointly used by the parties hereto under existing agreements shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.
- (b) Any additional connections to the Subject Trackage which may be required will be subject to the CSXT's approval (including design) and shall be constructed, maintained, repaired and renewed as follows:
 - (i) CPR or others shall furnish all labor and material and shall construct, maintain, repair and renew at its sole cost and expense such portions of the tracks located on the right-of-way of CPR or others which connect the respective lines of the parties hereto.

- (ii) CSXT shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of CPR such portions of the tracks located on the right-of-way of CSXT which connect the respective lines of the parties hereto. Upon termination of this Agreement, CSXT may at its option remove such portions of trackage and appurtenances located on property of CSXT, at the sole cost and expense of CPR. The salvage material removed shall be released to CPR or, as otherwise agreed upon, CSXT will credit CPR the current fair market value for said salvage.

ARTICLE 9. ADDITIONS, RETIREMENTS AND ALTERATIONS

- (a) CSXT, from time to time and at its sole cost and expense, may make changes in, additions and betterments to or retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage. Additions, betterments and retirements will modify the annual interest rental basis, which shall be adjusted per agreement of the parties or by arbitration hereunder.
- (b) If changes in or additions and betterments to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate CPR's operations

beyond that required by CSXT to accommodate its operations, CSXT shall construct or have constructed the additional or altered facilities and CPR shall pay to CSXT the cost thereof, as incurred and shall pay on a periodic basis the expense of maintaining, repairing and renewing such additional or altered facilities.

ARTICLE 10. MANAGEMENT AND OPERATIONS

- (a) CPR shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. CPR shall indemnify, protect, defend, and save harmless CSXT and CSXT and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon CSXT and CSXT or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of CPR to comply with its obligations in this regard.
- (b) CPR in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of CSXT, and the movement of CPR's trains,

locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of CSXT. CPR's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by CSXT's operating rules and regulations without the prior consent of CSXT.

- (c) CPR shall make such arrangements with CSXT as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover, and CPR shall pay to CSXT, upon receipt of bills therefor, any cost incurred by CSXT in connection with the qualification of such employees of CPR, as well as the cost of pilots furnished by CSXT, until such time as such employees are deemed by the appropriate examining officer of CSXT to be properly qualified for operation as herein contemplated.
- (d) In the event of any investigation or hearing concerning the violation of any operating rule or practice by CPR's employees while on CSXT trackage, CPR shall be notified in advance of any such investigation or hearing, and such investigation or hearing may be attended by any official designated by CPR, and any such investigation or hearing shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to CPR's employee or employees required to attend such hearings.

- (e) CSXT shall have the right to exclude from its trackage any employee of CPR determined by above, to be in violation of CSXT's rules, regulations, orders, practices, or instructions issued by CSXT's Timetable or otherwise. CPR shall release, indemnify, defend, and save harmless CSXT and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.
- (f) The trains, locomotives, cars and equipment of CPR, CSXT, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as will afford the most economical and efficient manner of movement of all traffic.
- (g) In the event that a train of CPR shall be forced to stop on the Subject Trackage, and such stoppage is due to insufficient hours of service remaining among CPR's crew, or due to mechanical failure of CPR's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of CPR fails to maintain the speed required by CSXT on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of CPR's trains on the Subject Trackage, CSXT shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew CPR's train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and CPR shall reimburse CSXT for the cost of rendering any such assistance.

- (h) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by CSXT, and CPR shall reimburse CSXT for the cost thereof.
- (i) In the event CSXT and CPR agree that CSXT should retain employees or provide additional employees for the sole benefit of CPR, the parties hereto shall enter into a separate agreement under which CPR shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by CSXT and which would not have been incurred had the retained or additional employees not been provided.

ARTICLE 11. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in CPR's trains on the Subject Trackage shall be assumed by CPR and reported and paid by it directly to the owner of such cars.

ARTICLE 12. CLEARING OF WRECKS

Whenever CPR's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, CSXT shall perform or provide such service, including the repair and restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and

injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Article 14 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by CPR at the time of such wreck, shall be promptly delivered to it.

ARTICLE 13. LIABILITY

The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third persons), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by either party as described herein, all of which are collectively referred to as a "Loss", will be divided as follows:

- (a) If a Loss occurs while the Subject Trackage is being used solely by the trains and locomotives of either CSXT or CPR, then the using party is solely responsible for the Loss, even if caused partially or completely by the other party.
- (b) If a Loss occurs while the Subject Trackage is being used by the trains and locomotives of both CSXT and CPR, then: (i) each is solely responsible for any Loss to its own

employees, locomotives and equipment in its own account including lading and (ii) the parties are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss, unless the Loss was caused solely by one party. In that event, the party causing the loss is solely responsible.

- (c) For purposes of assigning responsibility of a Loss under this Article as between the parties hereto, a Loss involving one of the parties to this Agreement and a third party or parties shall be construed as being the sole responsibility of that one party to this Agreement.
- (d) Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against that liability, cost and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers agents, or employees.
- (e) In every case of death or injury suffered by an employee of either CPR or CSXT, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay said

compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

- (f) For purposes of determining liability, pilots furnished by CSXT, pursuant to this Agreement shall be considered as the employees of CPR while such pilots are on board or getting on or off trains of CPR.
- (g) For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Article 9 (b) (ii), all work performed by CSXT shall be deemed performed for the sole benefit of CPR and, CPR shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of CSXT.
- (h) CPR shall protect, indemnify, and save harmless CSXT and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which CPR is responsible.
- (i) If any suit or action shall be brought against either party for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified

shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.

- (j) In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.

ARTICLE 14. CLAIMS

- (a) Except as provided in Subarticle (b) below, all claims, injuries, death, property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.
- (b) Each party will investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706.
- (c) In the event a claim or suit is asserted against CSXT or CPR which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.
- (d) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in

applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.

- (e) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706, neither party shall settle or compromise any claim, demand, suit or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds Thirty-Five Thousand Dollars (\$35,000).
- (f) Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees pursuant to a collective bargaining agreement. It is the intention of the parties that each party shall bear the full costs of grievances filed by its own employees arising under its collective bargaining agreements with its employees.
- (g) It is understood that nothing in this Article 14 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 13.

ARTICLE 15. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of CPR to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from CSXT, CSXT shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by CSXT of any prior breach thereof, to terminate the Trackage Rights and CPR's use of the Subject Trackage. The exercise of such right by CSXT shall not impair its rights under this Agreement or any cause or causes of action it may have against CPR for the recovery of damages.

ARTICLE 16. REGULATORY AND OWNER APPROVAL

- (a) Should this Agreement or its performance require any prior approval of the Surface Transportation Board (STB), or of any owner (other than a party hereto) of any portion of the Subject Trackage, CPR at its own cost and expense will initiate and thereafter diligently pursue an appropriate application or petition to secure such approval. CSXT will assist and support efforts of CPR to secure any necessary STB approval of this Agreement. As required by order of the STB, CSXT hereby consents to the grant by any such owner of the rights contemplated by this Agreement, subject to those rights imposing no liability, cost or expense on CSXT for the CPR operations on the line of such owner.

- (b) Should the STB at any time prior to or during the term of this Agreement impose any labor protective conditions upon the arrangement contemplated hereby or by the Terminal Joint Facilities Agreement of even date herewith, CPR, solely, shall be responsible for any and all payments in satisfaction of such conditions.

ARTICLE 17. ABANDONMENT OF SUBJECT TRACKAGE

- (a) Notwithstanding the provisions of Article 18, CSXT shall have the right, subject to securing any necessary regulatory approval, to abandon the Subject Trackage or any portion thereof. Before filing an application for regulatory approval of such abandonment, CSXT shall give CPR ninety 90 days' advance notice in writing of its intention to do so in order that CPR may determine whether it desires to purchase the Subject Trackage (or portion thereof) or to discontinue its use thereof.
- (b) If CPR desires to purchase the Subject Trackage, it shall submit an offer of financial assistance under 49 U.S.C. Section 10904. In the event the offer meets the requirements of the aforesaid section and CSXT receives more than one such offer, CSXT will exercise its statutory right to negotiate with CPR rather than with the other offeror(s). Thereafter, the rights and obligations of the parties in respect to CPR's acquisition of the Subject Trackage shall be governed by applicable provisions of the law.

(c) In any one of the circumstances listed below CPR shall be deemed to have determined that it does not desire to purchase the Subject Trackage and that it desires to discontinue its use thereof:

- (i) CPR fails to submit an offer of financial assistance to purchase the Subject Trackage within the time prescribed by statute and applicable regulations, or
- (ii) CPR, having made an offer of financial assistance to purchase the Subject Trackage, but being unable to reach agreement with CSXT as to the sale price, fails within the statutory period to request the proper regulatory authority to establish the terms and conditions of the sale, or
- (iii) CPR, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial assistance, or
- (iv) CPR, having requested the proper regulatory authority to establish the terms of the sale, rejects the authority's order establishing said terms or fails to accept said terms within the time prescribed by said order.

In such event CPR shall promptly file an application with the proper regulatory authority seeking approval of the discontinuance of its operations over the Subject Trackage. If CPR does not promptly file an application seeking approval of the discontinuance of CPR's operations over the Subject Trackage, CSXT shall be deemed to have been given CPR's power of attorney to take such action on CPR's behalf.

(d) In the event any application filed by CSXT is granted but an application filed by CPR under Part (c) above is denied by the proper regulatory authority, the parties shall

cooperate in taking such action as is reasonably necessary to effect a sale of the Subject Trackage to CPR (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10904.

- (e) In the event CSXT abandons any portion (or all) of the Subject Trackage under circumstances which (because of changes in the law or otherwise) are not susceptible of handling under the procedures outlined above, the parties shall cooperate and take such action as is necessary to assure that CPR either promptly terminates its operations over the segment to be abandoned or purchases said segment at a price consistent with the principles of 49 U.S.C. Section 10904 as interpreted on the date of this Agreement.
- (f) In the event CSXT's application for authority to abandon is denied, CPR will withdraw any application it has filed under Subarticle (c) above.
- (g) Except as otherwise expressly agreed in writing, in the event any actions taken by the parties under this Article 18 result in an obligation imposed by any competent authority on either or both parties hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

ARTICLE 18. TERM

- (a) This Agreement shall be effective on the date ("Effective Date") that CSXT begins its operations of NYC, and shall remain in full force and effect concurrently with said CSXT Operating Agreement governing CSXT's operations of NYC that is limited to 25 years from the effective date of CSXT assuming operations for the NYC, plus any extensions obtained for CSXT operations.
- (b) This Agreement may be terminated at any time by CPR upon six (6) months advance written notice to the other parties.
- (c) Termination of this Agreement shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

ARTICLE 19. ARBITRATION

Any irreconcilable dispute arising between the parties with respect to this Agreement shall be jointly submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the parties hereto. The arbitration shall be held in the

City of New York before a single arbitrator. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws.

ARTICLE 20. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Neither party hereto shall transfer or assign this Agreement, or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other party to this Agreement.

ARTICLE 21. NOTICE

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

If to CSX or to NYC: Assistant Vice President-Joint Facilities
CSX Transportation, Inc. J200
500 Water Street
Jacksonville, FL 32202

If to CPR:

Any party may provide changes in the above addresses to the other parties by notice as aforesaid.

ARTICLE 22. GENERAL PROVISIONS

- (a) This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the parties hereto.
- (b) This Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings between the parties.
- (c) No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both parties to this Agreement.
- (d) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.
- (e) All Article heading are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- (f) As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the

trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.

- (g) This Agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

end of page
[signatures appear on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly
executed as of the date first above written.

WITNESS

CSX TRANSPORTATION, INC.

_____ By _____
Title

WITNESS

NEW YORK CENTRAL LINES LLC

_____ By _____
Title

WITNESS

CANADIAN PACIFIC RAILWAY COMPANY

_____ By _____
Title

RATE MAKING AGREEMENT

This Rate Making Agreement (the "Agreement"), dated and effective as of October 20, 1997 is by and between CSX Transportation, Inc. ("CSXT") and CSX Intermodal, Inc. ("CSXI") on the one hand and Canadian Pacific Railway Company ("CPR"), Soo Line Railroad Company ("SOO"), Delaware and Hudson Railway Company ("DH") and St. Lawrence & Hudson Railway Company Limited ("STLH") on the other. CPR, SOO, STLH and DH are referred to jointly herein as "CPR".

WHEREAS, CSXT, in conjunction with other parties, has filed an application with the Surface Transportation Board (the "Board") in Finance Docket No. 33388 (the "Application") to acquire and/or control certain rail lines of Consolidated Rail Corporation ("Conrail"), as more specifically described in the aforementioned Application; and

WHEREAS, CPR has agreed to support the Application in exchange for the agreement of CPR, CSXT and CSXI to establish or to negotiate the establishment of revenue factors for certain joint line shipments as described herein; and

WHEREAS, the parties now desire to specify the terms of their agreement.

NOW THEREFORE, in view of the foregoing statements which form the factual basis of this Agreement and in view of other good and valuable consideration, the parties agree as follows:

1. EFFECTIVE DATE AND TERM.

A. This Agreement shall take effect on the date shown above, but, except for the SUPPORT OF APPLICATION paragraph, the rights and obligations of the parties shall remain dormant until the first date (the "Initial Operating Date") that CSXT begins its own operations over the current Conrail lines that CSXT acquired pursuant to the Application. If the Initial Operating Date has not occurred on or before December 31, 1999, however, this Agreement shall automatically terminate.

B. Otherwise, this Agreement shall have an initial term of five (5) years after the Initial Operating Date provided that CPR may renew the Agreement for up to five (5) additional terms of five (5) years each, by giving CSXT/CSXI written notice of such renewal not less than ninety (90) days prior to the end of the existing term. This Agreement may be extended for additional term(s), if mutually agreeable to the parties, as specified in a written amendment to this Agreement.

2. **SUPPORT OF APPLICATION.** CPR agrees to support by October 21, 1997 the acquisition of Conrail by NS and CSXT. CPR will not seek conditions against CSXT as described in CPR's Description of Anticipated Responsive Application, dated August 22, 1997 and filed with the Surface Transportation Board in Finance Docket No. 33388.

3. **PURPOSE OF AGREEMENT.** The purpose of this Agreement is to provide a framework for quickly establishing joint line rates between: (a) CSXT and/or CSXI, and (b) CPR, SCO, STLH and/or DH and is applicable only to shipments that are currently transported by truck, unless otherwise specified herein.

4. **ESTABLISHMENT OF JOINT RATES.**

A. The joint rates will be established by the railroad that originates the shipment and will be contained in a confidential railroad transportation contract.

B. The Minimum Revenue Factor(s), as defined herein, of the other railroads that participate in the joint line shipments are contained in this Agreement. The originating railroad may use the Minimum Revenue Factor(s) to establish the joint line rates without the necessity of further contact or concurrence of the other railroads unless special features such as guaranteed transit times, guaranteed car supply or assignment pools or other commitments over and above common carriage obligations are involved. In that event, the specific concurrence of each participating railroad is required.

C. All participating railroads will be included in the routing on each Bill of Lading. Each car, for car accounting purposes, shall be in the account of the railroad having possession of the car.

D. No railroad transportation contract established pursuant to this Agreement shall have a term that extends past the termination date of this Agreement.

E. All joint rates and Minimum Revenue Factors are stated in United States dollars.

F. The normal interchange point for shipments transported between the northeastern United States and eastern Canada shall be Albany, New York unless otherwise designated herein.

5. **MINIMUM REVENUE FACTORS.**

A. **MERCHANDISE SHIPMENTS**

The following minimum revenue factors ("Minimum Revenue Factors") are established:

- (i) For purposes of this Agreement, Merchandise Shipments are defined to include all rail carload shipments except the following: intermodal, coal, coke made from coal, iron ore and "set up" motor vehicles.
- (ii) CSXT establishes an initial Minimum Revenue Factor of \$ per carload on Merchandise Shipments that are interchanged by CPR/DH to CSXT at Albany, New York for delivery to or from New York City points in the Bronx or Queens or for points on Long Island that are interchanged to the New York & Atlantic at Fresh Pond Junction. Interchange between CSXT and CPR/DH is Albany, New York.
- (iii) CPR/DH establishes an initial Minimum Revenue Factor of \$ per carload for all Merchandise Shipments that are interchanged from CSXT to DH at Albany, New York for delivery to points in the Montreal metropolitan area that are directly served by CPR or that are open to interswitching in Zone 1 and an initial Minimum Revenue Factor of \$ for otherwise identical shipments that are open to interswitching in Zones 2, 3 and 4.
- (iv) CSXT establishes an initial Minimum Revenue Factor of \$ per carload for all Merchandise Shipments that are interchanged between CPR/DH and CSXT at Albany, New York and which originate or terminate on points on the Philadelphia Belt Line Railroad Company (the "PBL") in Philadelphia, Pennsylvania via a shared asset company ("SAC"), as defined in the Application, if the SAC is the lessee/operator of PBL. If the SAC is not the lessee/operator of PBL, the shipment will be interchanged between CSXT and PBL at Philadelphia.
- (v) CSXT establishes an initial Minimum Revenue Factor that is identical to the Minimum Revenue Factor established in subsection (iv) above, except that the amount is \$ per carload and the interchange point between CSXT (or the SAC) and DH is Philadelphia, Pennsylvania.

(vi) CSXT establishes an initial Minimum Revenue Factor of \$ per carload for Merchandise Shipments that are interchanged between CSXT and CPR/DH at Niagara Falls, New York or Buffalo, New York for transportation to and from all points on the CSXT lines acquired from Conrail in the Buffalo, New York metropolitan area that are open to reciprocal switching pursuant to CR Tariff 8001 on the day prior to the Initial Operating Date and which comply with all conditions of this subparagraph. Such Merchandise Shipments must also originate or terminate: (a) on CPR points in Canada that are not directly served by CSXT, as constituted on the effective date of this Agreement, or open to CSXT via interswitching, or (b) on SOO or DH points in the United States that are not directly served by CSXT, as constituted on the effective date of this Agreement, or open to CSXT via reciprocal switching. In addition, if in the immediately preceding calendar year, CPR/DH pays CSXT for not less than switch movements in the Buffalo, New York area pursuant to CR Tariff 8001, or its successor, as implemented by CSXT, then in the following calendar year, the aforementioned Minimum Revenue factor of \$ per carload will apply for CPR Merchandise Shipments that are totally new or currently transported by rail, truck or water, so long as CSXT does not participate in the routing as a linehaul carrier. CPR must contact CSXT, and obtain CSXT's concurrence that CSXT does not currently participate as a linehaul carrier in such shipments, prior to implementing the Minimum Revenue Factor.

3. INTERNAL SHIPMENTS

The Minimum Revenue Factors and other provisions for CSXT in transporting import/export marine containers between the Express Rail facility in New Jersey and Selkirk Yard, New York for transportation by CPR/DH to or from the Montreal/Toronto corridor are contained in the October 17, 1997 letter from Mr. Brian Purdy of CPR to Mr. Peter Rutaki of CSXT, a copy of which is attached as Exhibit A. Notwithstanding the foregoing, references in Exhibit A to "CSX" are construed to mean "CSXT".

6. INCREASES TO MINIMUM REVENUE FACTOR(S).

A. The Minimum Revenue Factor(s) shall be increased once each year on each anniversary of the Initial Operating Date by the percentage increase, if any, in

immediately preceding year? If there is a decrease or no increase in the , the Minimum Revenue Factor(s) will remain the same. during the

B. If the is discontinued CSXT and CPR shall negotiate in good faith for a period of not less than thirty (30) days in an attempt to agree upon a substitute index that would most substantially contain the criteria used by the . If no agreement is reached, either party may refer the issue to the American Arbitration Association (the "AAA") for resolution pursuant to its commercial Arbitration Rules. Venue will be in Washington, DC unless otherwise mutually agreed. Each party will bear its own expenses and all fees and expenses of the AAA will be equally shared by the parties.

C. If any party's costs in providing transportation pursuant to this Agreement are increased by more than a total of twenty percent (20%) computed from the Initial Operating Date due to federal, state, provincial or local statutes, regulations or ordinances, excluding any such increases that are reflected in the , then notwithstanding the other provisions of this Agreement, that party is entitled to increases in the Minimum Revenue Factor(s) to reflect such increases. The parties shall negotiate in good faith for a period of not less than thirty (30) days in an attempt to agree upon an appropriate increase to the Minimum Revenue Factor(s). If no agreement is reached, either party may refer the issue to the AAA for resolution pursuant to the same procedures outlined in this paragraph.

D. If anytime after five (5) years the fixed divisions become unsatisfactory to either party and resolution cannot be reached, then either party may seek arbitration pursuant to Item 11 of this Agreement. The arbitrators will select a rate that puts both parties in a position most similar to the position each enjoyed when this Agreement was made and such rate shall remain in effect for the next five (5) year period. This Agreement cannot be arbitrated except on the five (5) year renewal anniversaries.

7. CONFIDENTIALITY. The provisions of this Agreement shall not be disclosed by either party, except to parent, subsidiary or affiliated companies or pursuant to an applicable court or regulatory order during the term of this Agreement. During the confidentiality period, any party may disclose the existence of this Agreement without disclosing the specific provisions.

8. **DEFAULT.** Each party will provide written notice to the other parties in the event of an alleged default, specifying the nature of such default. The party against whom the alleged default is claimed shall have sixty (60) days within which to correct the default. If the default has not been corrected, or if the appropriate party has not acted with due diligence to correct a default that may still be continuing within that time, the non-defaulting party may take all legal steps (including but not limited to injunctive relief) to protect its interests.

9. **ASSIGNMENT AND SUCCESSORS.** This Agreement may not be assigned without the written consent of the other parties, except that the rights and obligations of CSXI may be assigned to CSXT upon notice. Notwithstanding the foregoing, this Agreement shall inure to the successors by merger of any of the parties.

10. **MISCELLANEOUS.**

A. This Agreement is the result of the mutual negotiation of the parties and shall not be construed against any party as the drafter.

B. If any provision of this Agreement is found to be void, illegal or otherwise unenforceable, the remaining provisions shall continue in full force and effect.

C. All notices issued between the parties must be in writing and sent via either: (i) 1st Class Mail; (ii) overnight express carriers; (iii) confirmed telefax, or (iv) other mutually agreeable method and sent to the other party at the addresses shown below or subsequent address supplied from time to time.

To CPR

To CSXT

CSX Transportation, Inc.
500 Water Street, J-880
Jacksonville, Florida 32202
Attn: Vice President-
Chemical Marketing

To CSXI

Vice President-Business
Planning
CSX Intermodal, Inc.
301 West Bay Street
Ball South Tower
Jacksonville, Florida 32202

11. **ARBITRATION.** CPR and CSXT and CSXI agree to submit to arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, any dispute, controversy, claim (except for matters left to the sole discretion of a party) arising out of this Agreement or the Exhibits to it. The

arbitrator(s) shall not have jurisdiction to award antitrust, punitive or any other damages other than actual damages and the arbitrator's decision shall be given in accordance with any restrictions set out in this Agreement and the Exhibits to it. The decision of the arbitrator(s) shall be final and enforceable in any court having jurisdiction. Each party shall bear its own expenses of arbitration and fees or costs of arbitration shall be shared equally between CSXT/CSXI and CPR.

12. **ENTIRE UNDERSTANDING.** This Agreement represents the entire understanding of the parties and may not be waived except in writing or modified except by a written amendment. It has been executed by the duly authorized official of each party and shall be construed pursuant to the laws of the State of Florida.

CANADIAN PACIFIC RAILWAY COMPANY
SOO LINE RAILROAD COMPANY
DELAWARE AND HUDSON
RAILWAY COMPANY
ST. LAWRENCE & HUDSON RAILWAY
COMPANY LIMITED

CSX TRANSPORTATION, INC.

By: H. L. L. L.

Title: FVP, Commercial

By: W. M. A. D. S. T.

Title: V.P. Corporate Development

CSX INTERMODAL, INC.

By: Peter A. Roubini

Title: VP Business Planning

904 633-1020

EXHIBIT A

CANADIAN PACIFIC RAILWAY

Oct. 17, 1997

Page 1 of 3

From: Brian Purdy, CPR, Monroe, CT

To: Mr. Peter A. Rutaki
Vice President - Business Planning
CEX
301 West Bay Street
Bell South Tower
Jacksonville, FL 32202
(Fax: 904-633-1020)

Dear Pete,

This refers to our phone conversations today concerning a joint CEX/CPR agreement covering import/export marine containers in the ExpressRail - Montreal/Toronto corridor.

This will confirm that CPR is agreeable to the compromise proposal for division of revenues that we discussed on the phone. The outline is as follows:

	LOADED CONTAINER	EMPTY CONTAINER
BASE VOLUME (Note 1)	\$	\$
OVER BASE VOLUME (Note 2)	\$	\$

Note 1: The "base" volume will be finalized once 1997 full year statistics are available. Currently we estimate this will be approximately 40,000 TEU's or 27,000 containers (22,000 loads and 5,000 empties).

CPR agrees to guarantee that CEX will receive \$ /LOADED container on base volumes during the first year of our joint service. The \$ includes the ExpressRail lift.

Note 2: For traffic levels over and above base volumes, CEX agrees to accept a loaded division of \$ /LOADED container (including the ExpressRail lift).

For the purposes of volumes diverted from Halifax, CEX agrees that its applicable division will be \$ /LOADED container from the first effective day of any formal agreement with a steamship line. However, CPR agrees that CEX will still receive \$ /LOADED container as the agreed to base volume.

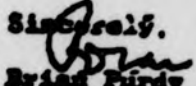
SUPPORTING INFORMATION

- 1) As stated in our fax message of Oct. 15, if at the end of the first year of the joint CSX/CPR service, should CSX determine that the cost of operation exceeds the agreed upon divisions, CPR would agree to negotiate in good faith increased divisions for CSX. The intent would be to have the revised division be higher than CSX's cost, but lower than current Conrail divisions.
- 2) CSX's empty factor will be 3 /EMPTY CONTAINER on all empty containers moved.
- 3) For reduced rate levels agreed to with various steamship lines, CSX will always receive its fixed divisions per the above outline. CPR will reduce its divisions on a case by case basis to get to the necessary rate levels.
- 4) Rate agreements (contract and exempt quotes), including divisions, will apply in both northbound and southbound directions.
- 5) Contracts with steamship lines will be signed by both CSX and CPR. Exempt quotes will have authorizations from both CSX and CPR.
- 6) CPR and CSX agree that transit times/service levels, to the extent that each can control, will not be less than current levels. Both railroads agree to work together to improve service, which includes the consideration of run through power and a dedicated equipment pool.
- 7) CSX operation will be on the "West Hudson" route between Express-Rail and Selkirk. CPR will handle between Selkirk and Montreal/Toronto, via the Rouses Point, NY border crossing.

Pete, I trust the above is an accurate listing of the salient points of our agreement covering the movement of marine containers in the ExpressRail - Montreal/Toronto corridor. You can rest assured that we will do our part to ensure this is a mutually beneficial arrangement. Our agreement will be incorporated into the master agreement between CSX and CPR (which I understand Steve Potter is now working on with our officials).

Please let us know if you have any questions. As discussed, we would appreciate your confirmation and acceptance this afternoon.

Sincerely,

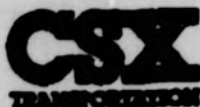

Brian Purdy

Mgr. Mktg. - U.S. East Coast

(Phone: 203-458-4435 Fax: 203-458-4437 Cellular: 201-408-8354)

cc: S.E. Rand, CSXI, Jacksonville, FL
P. McManamon, CSXI, Jacksonville, FL
S.A. Potter, CSXT, Jacksonville, FL
G. Jenkins, CSXT, Jacksonville, FL
H.D. Collins, CSXI, Jacksonville, FL
R.J. Girardot, CSXI, Jacksonville, FL
L.N. Roberts, CSXI, Jacksonville, FL

cc: W.D. McEwen, CPM Montreal
L.I. Larson, CPM, Minneapolis, MN
D.E. Welch, CPM, Calgary, AB
J.C. Cote, CPM, Montreal, PQ
P.D. Gilmore, CPM, Montreal, PQ
J.R. Stauch, CPM, Clifton Park, NY
S. Fisk, CPM, Clifton Park, NY



John Q. Arklerson
Executive Vice President -
Sales & Marketing

500 Water Street - J120
Jacksonville, FL 32202
(904) 359-1450
Fax (904) 359-7674

January 8, 1998

Mr. Hugh MacDiarmid
EVP-Commercial
Canadian Pacific Railway
401 9th Avenue, S.W., Suite 500
Calgary, Alberta
TTP4Z4

Dear Hugh:

Assuming that the STB approves our pending Application regarding Conrail without substantial changes or conditions, this will confirm that we are prepared to negotiate an agreement with you for joint-line intermodal service between Montreal and New York City, under terms and conditions to be determined once direct intermodal service to New York City has been established.

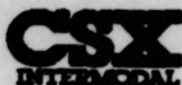
As you know, the State and City are anxious to introduce competitive rail service to New York City and have proposed the development of a new intermodal terminal at Harlem River Yard in the Bronx. We have been in discussions with the developer of that site and other interested parties about possible market opportunities for new rail freight business east of the Hudson. We believe that CP would be our natural partner in establishing service between New York City and Montreal, a lane which is truck dominated today.

Naturally, we would need to ensure that any arrangement would be financially viable and operationally feasible, but I am confident that we could reach a mutually agreeable resolution of such matters.

We appreciate your interest in developing such a commercial partnership, and look forward to being able to progress such an agreement.

Best regards,

CC: Mr. Lee Larson
- Mr. Jacques Cote/
~~Mr. Dick Paine~~



PETER A. RUTSKI
VICE PRESIDENT
BUSINESS PLANNING

SELLEWORTH TOWER
301 WEST BAY STREET
JACKSONVILLE, FLORIDA 32202-4404
(904) 622-1000
FAX (904) 622-1000

June 3, 1998

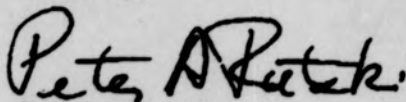
Mr. Lee I. Larson
Assistant Vice President
Marketing and Sales
Canadian Pacific Railway
Suite 800, Soo Line Building
105 South Fifth Street
Minneapolis, Minnesota 55402

Dear Lee:

I appreciate all of your effort in working through all of the issues necessary to finalize our East of Hudson agreement. I am forwarding a copy of the agreement, dated May 29, 1998, with a copy of the multi-faxed signature page executed by Chris Jenkins and myself for CSX and by Paul Gilmore for CP. I am also sending a signed copy of the June 2 letter agreement on Selkirk/Montreal intermodal service.

As you know, we are still working with the various governmental entities to secure support of our STB application and I will keep you posted on our progress.

Sincerely,


Peter A. Rutski

Attachments

cc w/attchs: Paul Gilmore
Chris Jenkins
Les Passa
Steve Potter
Pete Shudtz

May 29, 1998

SUPPLEMENTAL RATE MAKING AGREEMENT

This Supplemental Rate Making Agreement (the "Supplemental Agreement") dated and effective as of May 29, 1998 is by and between CSX Transportation, Inc. ("CSXT") and CSX Intermodal, Inc. ("CSXI"), on the one hand (jointly "CSX"), and Canadian Pacific Railway Company ("CPR"), Soo Line Railroad Company ("SOO"), Delaware and Hudson Railway Company ("DH") and St. Lawrence and Hudson Railway Company ("STLH") on the other. CPR, SOO, STLH, and DH are jointly referred to as CPR.

WHEREAS, CSXT, CSXI, and CP entered into a Rate Making Agreement dated as of October 20, 1997 (the "Agreement") establishing revenue factors for certain Merchandise Shipments and Intermodal Shipments to be operated in joint line service between CP and CSX in the event of approval of the Application involving Conrail, and, in conjunction therewith, CP agreed to support the Application, all as described in said Agreement;

WHEREAS, CSX has been negotiating a settlement with the City of New York ("NYC") and the State of New York ("NYS") involving their opposition to the Application, and, as part of that settlement, CSX has agreed to provide certain additional, competitive access to CP on the lines of Conrail east of the Hudson, all upon terms and conditions mutually agreeable to CSX and CP;

WHEREAS, CSX has previously discussed with CP the NYS and NYC desire to introduce competitive intermodal rail service and CSXT has also proposed that CP join with CSXI in the provision of intermodal rail service between Montreal and New York City, a lane that is currently truck dominated; and

WHEREAS, the parties now desire to supplement their earlier agreement by the following terms and conditions.

NOW THEREFORE, in view of the foregoing statements that form the factual basis of this Agreement and in view of other good and valuable consideration, the parties agree as follows:

1. **Intermodal Shipments:** In addition to the provisions governing intermodal shipments on the "West Hudson" route as specified in Exhibit A to the Agreement, CSX and CP hereby establish the following terms and conditions for intermodal movements on the "East Hudson" route which is between Montreal and Harlem River Yard, Bronx, New York, via Selkirk, NY or other mutually agreeable location. These "East Hudson" terms and conditions shall apply to and take effect upon the commencement of operations at an intermodal facility in such

Yard, which the parties understand is planned to be constructed under arrangements governing the lease of the Yard by third parties.

- A. **Haulage Blocks:** CSXT shall haul in its trains blocks of CP intermodal cars upon the terms and conditions set forth in Exhibit 1 hereto. It is contemplated that such blocks of CP intermodal cars will be hauled by CSXT in regular train movements handling blocks of CP Merchandise Shipments and CSX merchandise and intermodal cars.
- B. **Joint CSXT/CP Intermodal Trains:** In the event CSXI and CP intermodal shipments enlarge so that economical and efficient joint dedicated intermodal train operations may be commenced by CSXI and CP, the parties will negotiate arrangements upon mutually agreeable terms and conditions for CSXT's operation of such Joint Intermodal Trains which shall provide for the equitable sharing of the cost of such operation on a usage basis and for a per car charge applicable to CP cars established per subparagraph (C) hereof.
- C. **Exclusive CP Intermodal Haulage Trains:** In the event CP desires to establish exclusive CP Intermodal Haulage Trains, the parties will negotiate arrangements for CSXT's operation of such Exclusive Trains which shall provide for CP's provision of locomotives and equipment for such trains and for CSXT's haulage of same with CSXT's crews upon terms and conditions which reflect the industry normal track and haulage charges and minimums and CP will pay any excessive charges over and above our agreed upon rate for trackage costs on Metra North and Amtrak. In addition CP would be responsible for all crews and other associated direct costs for operation of the train, and other customary terms and conditions comparable to the parties' Chicago-Detroit agreement.
- D. **With respect to Joint CSXT/CP Intermodal Trains and Exclusive CP Intermodal Trains the following additional provisions apply:** first, the arrangements to be negotiated for such trains will include provisions for the interchange of such trains to the New York and Atlantic Railroad (or any other successor rail carrier conducting freight operations on Long Island Railroad freight territory) at Fresh Pond and any other mutually agreeable facilities, all with reasonable additional compensation to CSXT for movement beyond Harlem River Yard; second, as part of the negotiation with respect to such trains CSXT agrees to provide for the use of non-conventional equipment on such trains so long as such equipment can be operated safely and in accordance with the operating rules and practices established by the AAR, CSXT and Metro North and that the CP bears any cost and expense necessary to accommodate such equipment on such trains and on the East Hudson Route, however, such consideration will give due regard to the limited train capacity and limited terminal facilities on this East Hudson Route, as well as the customary dealings, tradings and negotiations of the parties for the

handling of each other's intermodal shipments; and third, the parties understand that the restriction on Intermodal Shipments that limits the East Hudson Route to origin and destination locations in Canada at or east of Toronto, Canada may be modified from time to time by mutual agreement of the parties which the parties will undertake to negotiate in good faith, but that such modification will be considered in the context of the limited train capacity and limited terminal facilities on this East Hudson Route, as well as the customary dealings, tradings and negotiations of the parties for the handling of each other's intermodal shipments.

2. **Merchandise Shipments:** Section 5.A.(ii) of the Agreement establishes Minimum Revenue Factors for certain Merchandise Shipments between Albany, NY and specified points in New York City and Long Island. As provided under Section 3 thereof, such Factors apply only to Merchandise Shipments, including waste, that are currently transported by truck. The parties hereby agree to modify those provisions as follows: The Minimum Revenue Factor per car specified in Section 5.A.(ii) shall apply to cars containing waste or containers of waste (maximum 2 containers per car) regardless of whether such Merchandise Shipments are currently transported by truck, provided however, that such Merchandise Shipments involving waste shall otherwise be governed by the provisions of the Agreement pertaining to Merchandise Shipments and shall not be governed the provisions of the Agreement or this Supplemental Agreement pertaining to Intermodal Shipments.
3. CP reaffirms its full and unconditional Support of the Application and will indicate to NYS and NYC this Supplemental Agreement's acceptability to CP. CP will join with CSX in discussions and communications with NYS and NYC that support this Settlement over earlier proposals by CP, NYS, NYC and others.
4. The parties understand that this Supplemental Agreement will become effective and have the same term as provided in the Agreement, except that in the event that certain governmental entities do not support CSX's proposed acquisition of the East of the Hudson lines in a manner reasonably satisfactory to CSX or if the STB imposes any condition unacceptable to CSX with respect to its acquisition of such lines, then CSX may terminate this Supplemental Agreement by giving five (5) days' written notice of such termination to CP.
5. Except as otherwise provided herein, the Agreement remains in full force and effect. The term of this Supplemental Agreement shall be the same as the Agreement.

IN WITNESS WHEREOF, the parties have executed this Supplemental Agreement as of the date first above written.

CANADIAN PACIFIC RAILWAY
COMPANY
SOO LINE RAILROAD COMPANY
DELAWARE AND HUDSON
RAILWAY COMPANY
ST. LAWRENCE & HUDSON
RAILWAY COMPANY LIMITED

By: Paul A. Hillman
Title: Vice President CPR
President / CEO Del. Ry

CSX TRANSPORTATION, INC.

By: CH P. [Signature]
Title: VP Chemicals

CSX INTERNATIONAL, INC.

By: Peter A. Rutski
Title: VP Business Planning

Exhibit 1 Schedule of Charges

Haulage Blocks

Intermodal haulage service of trailers and/or containers on intermodal flatcars or empty flatcars between Selkirk, New York (CSXT/CP Interchange on CP trains to or from locations in Eastern Canada at or East of Toronto, Canada) and the interchange to Harlem River Yard Intermodal Terminal.

Southbound: \$150.00 per Loaded and \$130 per Empty Conventional Railcar
Northbound: \$150.00 per Loaded and \$130 per Empty Conventional Railcar

Notes:

1. Railcar and trailer per diem will remain in Canadian Pacific's account.
2. No Terminal Services, Lift Services or Ancillary Services at Harlem River Yard Intermodal Terminal are included in the haulage service.
3. Haulage block charges apply on a minimum tender of five conventional railcars and a maximum tender of 20 railcars. On tenders of more than ten cars, CP must obtain CSXI's prior approval which shall not be unreasonably withheld in the event of adequate capacity and the non-interference with train operations.
4. Haulage blocks shall be handled in regularly scheduled CSXT trains. Haulage will be performed in accordance with operating rules and clearance restrictions of CSXT and Metro North.
5. Charges between Selkirk, New York and Harlem River Yard Terminal shall apply only on traffic having its origin or destination location in Canada at or east of Toronto, Canada.
6. If at the end of the first year of service CSXI determines that the cost of operation exceeds the agreed upon haulage charge, CPR would agree to negotiate increased haulage charges.
7. Charges shall be adjusted per the terms of Section 6 of the main agreement.
8. CP shall be liable for and hold CSXT and CSXI harmless from and against any and all liability, cost or expense arising out of loss, damage or destruction to equipment and lading in CP's account, regardless of considerations of fault or negligence by CSXT or CSXI with respect thereto.

9. CP and CSX may agree from time to time to locations other than Selkirk, New York for interchange of Haulage Blocks.
10. In the event that single platform or multiple platform articulated railcars are handled, every two platforms, each capable of handling one trailer or container, will count as one conventional railcar for purposes of charges and car counts.
11. In the event that the proposed Harlem River Yard Terminal is not open by January 1, 1999, CP and CSX will seek to establish another mutually acceptable location for handling the Haulage Blocks, upon terms and conditions comparable to those provided in this Agreement and Exhibit 1.
12. Haulage charges apply upon freight all kinds, with the exception of those shipments containing any of the following commodities which CSX will not accept for haulage.
 - a) Newly assembled complete automobiles by auto manufacturers; (unless provided for in a specific rate quotation);
 - b) Living animals;
 - c) Articles described under Rule 3 of the Uniform Freight Classification (UFC);
 - d) Bulk commodities or products which are loosely put into container without any packaging material and are unable to be properly braced and blocked, including but not limited to, logs, lumbers, or other forest products, bulk liquid bladders, and scrap metals; (unless provided for in a specific rate quotation);
 - e) Chemicals derived from vanadium ore;
 - f) Hazardous commodities not listed in BOE 6000 IM Tank Table;
 - g) Materials designated Class 1.1, 1.2 or 1.3, explosives or poisonous gas, in regulations of the U.S. Department of Transportation;
 - h) Missiles, guided, or Rockets, guided; guidance systems or electronic guidance control apparatus for installation in missiles or in missile sections; missile or rocket assemblies containing electronic apparatus, or mobile missile guidance control systems, as described in Items 80761 to 80768 of the UFC;
 - i) Polychlorinated biphenyl's (PCB);
 - j) Radioactive Materials, hazardous, having no reclamation value, as described in part 251 of Title 40, code of Federal Regulations;

- k) Vanadium Acid;
- l) Waste materials, hazardous (See part 261, Title 40, code of Federal Regulations, STCC-48);
- m) Municipal and industrial solid waste or garbage;
- n) Waste etiologic agent, NOS (i.e., surgical , pathological, and laboratory waste, waste hospital needles, syringes and IV tubing).



CANADIAN
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June 2, 1998

Mr. Peter A. Rutaki
Vice President Business Planning
CSX Intermodal
301 West Bay Street
20th Floor
Jacksonville, FL 32202

Dear Pete;

This is to memorialize our understanding with regard to CSX's request that CP entertain a proposal from CSX to establish intermodal train service from CSX points to a location in or near Montreal.

Please be advised that CP is prepared to entertain such a proposal from CSX under the following terms and conditions:

1. The service would operate between Salkirk, N.Y. and a location in Montreal area subject to agreement by both CP and CSX.
2. The service would be limited to intermodal equipment only.

Nothing herein shall be construed as containing a binding or enforceable contract between the parties. This letter is intended solely to reflect CP's willingness to enter into negotiations with CSX for the implementation of such service.

Very truly yours,

P. D. Gilmore
P. D. Gilmore
Chief Operating Officer
St. Lawrence / Hudson Bay
VICE PRESIDENT CPR

CSX INTERMODAL, INC.

By: *Peter A. Rutaki*
Title: VP Business Planning
CSX Intermodal

**PROFFER OF CONDITIONS WITH RESPECT TO
EFFECTIVENESS OF SUPPLEMENTAL
RATEMAKING AGREEMENT WITH CANADIAN
PACIFIC RAILWAY COMPANY (CP) AND ITS
AFFILIATES FOR CP INTERMODAL SERVICE
EAST OF THE HUDSON AND FOR OTHER
ENHANCEMENTS REGARDING THE PROVISION
OF RAIL SERVICE EAST OF THE HUDSON**

CSX and CSXT (collectively "CSX") proffer the following conditions:

1. That certain "Supplemental Ratemaking Agreement" dated May 29, 1998, between and among CSXT, CSXI and CP and its affiliates shall be permitted to come into effect by CSX and shall not be terminated by CSX pursuant to the power reserved to CSX under Section 4 of such Supplemental Agreement, notwithstanding the failure of any governmental entity referred to therein to support CSX's proposed acquisition of the East of the Hudson lines.

Explanation: Under an Agreement ("Agreement") dated October 27, 1997, and a Supplemental Agreement ("Supplemental Agreement") dated May 29, 1998,¹ CSX has agreed to provide Canadian Pacific (CP) with competitive access by means of minimum revenue factors and haulage to specified points in New York City and Long Island to be served by CSX or for interchange with New York & Atlantic at rates mutually agreed to by CP and CSX for specified intermodal and carload traffic. CSX and CP have agreed to negotiate in good faith and, from time to time, make modifications to the Supplemental Agreement and/or enter into new agreements to increase overall rail freight traffic to and from these markets. CSX intends to use reasonable commercial efforts to operate trains moving CP traffic in an efficient manner in accordance with its agreements with CP involving the aforesaid service. The effectiveness of the Supplemental Agreement could be terminated by CSX, under Section 4 of the Supplemental Agreement, if certain State and/or local authorities did not support the Transaction. Although that support was not forthcoming, CSX is willing to permit the Supplemental Agreement to remain in force despite the failure of those authorities to give their support, if the Board approves the Transaction without further relevant conditions. Condition No. 1 accordingly would waive CSX's right to terminate the

¹ A copy of the Supplemental Agreement is attached hereto. Certain rate information has been redacted as confidential.

Supplemental Agreement set forth in Section 4 of the Supplemental Agreement.

2. **CSX shall offer to support New York City's Cross Harbor Freight Movement Major Investment Study, at CSX's expense. This support will include the provision of technical analysis and railroad operational and marketing information and such other advice and support as may be reasonably requested by the City from time to time. The purpose of this support will be to provide the City with railroad perspective and expertise relative to the project and to assist the City in its analysis of alternatives. CSX's support will not preclude the City from seeking any additional input from any other source, nor will CSX's participation be construed as any commitment by any party to a recommended action.**

Explanation: For a discussion of this important and extensive Study, see Applicants' Rebuttal, CSX/NS-176 at VIII 24. CSX believes it can make a substantial contribution to the Study which has received considerable publicity and has been federally funded through efforts of the New York Congressional Delegation.

3. **Within ninety (90) days of approval of the Joint Application, CSX shall offer to the City of New York to establish a committee ("Committee") which will be comprised of representatives of the parties and such other entities as may be agreed upon by the parties. The goals of the Committee will be to develop ways to promote the development of rail traffic to and from the City, with particular emphasis on the Hudson Line, as well as ways to address the City's goals of industrial development and the reduction of truck traffic that is divertible to rail movement, and CSX's goals to provide safe, efficient and profitable rail freight service. The parties may agree to share economic development information and marketing plans for the growth of rail traffic to and from the City, provided, however, that any such information or plans that may contain sensitive or competitive market information shall not be disclosed.**

Explanation: CSX is enthusiastic about the potential for rail freight development East of the Hudson River, and the results of its initial marketing analyses have been quite favorable. CSX believes that the Committee will afford an opportunity to promote rail oriented economics development east of the Hudson.

This proffer of conditions will not be effective if any condition not consented to by CSX or CSXT is imposed in this Docket with respect to the handling of traffic, assignment or allocation of routes, or provision of trackage rights, with respect to the lines of railroad of Conrail to be allocated for operation by CSXT in the area East of the Hudson River.

May 29, 1998

SUPPLEMENTAL RATE MAKING AGREEMENT

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NOW THEREFORE, in view of the foregoing statements that form the factual basis of this Agreement and in view of other good and valuable consideration, the parties agree as follows:

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Yard, which the parties understand is planned to be constructed under arrangements governing the lease of the Yard by third parties.

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handling of each other's intermodal shipments; and third, the parties understand that the restriction on Intermodal Shipments that limits the East Hudson Route to origin and destination locations in Canada at or east of Toronto, Canada may be modified from time to time by mutual agreement of the parties which the parties will undertake to negotiate in good faith, but that such modification will be considered in the context of the limited train capacity and limited terminal facilities on this East Hudson Route, as well as the customary dealings, tradings and negotiations of the parties for the handling of each other's intermodal shipments.

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STB FD 33388 (Sub 69) 11-30-98 D 192436 3/3

IN WITNESS WHEREOF, the parties have executed this Supplemental Agreement as of the date first above written.

CANADIAN PACIFIC RAILWAY
COMPANY
SOO LINE RAILROAD COMPANY
DELAWARE AND HUDSON
RAILWAY COMPANY
ST. LAWRENCE & HUDSON
RAILWAY COMPANY LIMITED

By: Paul A. Malone
VICE PRESIDENT CPR
PRESIDENT/COO OUR RLY

CEX TRANSPORTATION, INC.

By: CH P. [Signature]
Title: VP Chemicals

CEX ENTERSODAL, INC.

By: Pete A. Rutski
Title: VP Business Planning

Exhibit 1
Schedule of Charges

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Intermodal haulage service of trailers and/or containers on intermodal flatcars or empty flatcars between Sellkirk, New York (CSXT/CP Interchange on CP trains to or from locations in Eastern Canada at or East of Toronto, Canada) and the interchange to Harlem River Yard Intermodal Terminal.

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Notes:

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 - g) Materials designated Class 1.1, 1.2 or 1.3, explosives or poisonous gas, in regulations of the U.S. Department of Transportation;
 - h) Missiles, guided, or Rockets, guided; guidance systems or electronic guidance control apparatus for installation in missiles or in missile sections; missile or rocket assemblies containing electronic apparatus, or mobile missile guidance control systems, as described in Items 80761 to 80768 of the UFC;
 - i) Polychlorinated biphenyl's (PCB);
 - j) Radioactive Materials, hazardous, having no reclamation value, as described in part 261 of Title 40, code of Federal Regulations;

- k) Vanadium Acid;
- l) Waste materials, hazardous (See part 261, Title 40, code of Federal Regulations, STCC-48);
- m) Municipal and industrial solid waste or garbage;
- n) Waste etiologic agent, NOS (i.e., surgical, pathological, and laboratory waste, waste hospital needles, syringes and IV tubing).



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June 2, 1992

Mr. Peter A. Rutski
Vice President Business Planning
CSX Intermodal
301 West Bay Street
20th Floor
Jacksonville, FL 32202

Dear Pete;

This is to memorialize our understanding with regard to CSX's request that CP entertain a proposal from CSX to establish intermodal train service from CSX points to a location in or near Montreal.

Please be advised that CP is prepared to entertain such a proposal from CSX under the following terms and conditions:

1. The service would operate between Salkirk, N.Y. and a location in Montreal area subject to agreement by both CP and CSX.
2. The service would be limited to intermodal equipment only.

Nothing herein shall be construed as containing a binding or enforceable contract between the parties. This letter is intended solely to reflect CP's willingness to enter into negotiations with CSX for the implementation of such service.

Very truly yours,

P. D. Gilmore
P. D. Gilmore
Chief Operating Officer
St. Lawrence & Hudson Bay
Vice President CPR

CSX INTERMODAL, INC.

By: *Peter A. Rutski*
Title: *VP Business Planning*
CSX Intermodal

**VERIFIED STATEMENT OF
R.R. DOWNING**

My name is R. R. Downing and I am General Manager-Service Delivery for Conrail's Albany Division, a position that I assumed in June, 1996. I began my railroad career with Conrail in 1977 in Philadelphia and since that time have held a variety of positions in Conrail's Transportation Department. In my current position, I have responsibility for transportation matters on Conrail's Albany Division which includes the line between Selkirk Yard and Oak Point Yard and Fresh Pond Junction in New York City.

The purpose of my statement is to describe the trackage between Selkirk and Fresh Pond Junction and to explain the train operations over that trackage today. I will also detail what I perceive CP's operations over this trackage to be following the split of Conrail's property.

It is approximately 125 miles between Oak Point Yard in the Bronx and Conrail's Selkirk Yard in Albany. The trackage north of Milepost 75.8 between Poughkeepsie and Albany is owned by Conrail. Currently, Conrail has two main line tracks between Poughkeepsie and Albany. Conrail operates over Track No. 1 and Amtrak operates over both Track No. 1 and Track No. 2.

The trackage south of Milepost 75.8 to the Oak Point Link Running Track in the Bronx is owned by Metro North Commuter Railway ("Metro North"). The Oak Point Link Running Track is owned by the State of New York and connects Metro North's trackage to Oak Point Yard in the Bronx. The Harlem River Train Terminal is an intermodal facility that is located approximately one (1) mile from Oak Point Yard. The trackage owned by Metro North between Mileposts 75.8 and 7 is comprised of no less than double track the entire distance. At some points along the trackage there are three (3) tracks and closer to New York City there are four (4) main line tracks.

At approximately Milepost 33, Conrail owns and maintains its Croton West Yard. There are no passing sidings on this stretch of railroad between Oak Point Yard and Albany although Conrail may use its Track No. 2 between Mileposts 94 and 89 to meet and pass trains, but only if absolutely necessary and at considerable expense to Conrail.

The trackage described above is extremely congested today. Metro North operates 47 commuter trains northbound and 55 commuter trains southbound on a daily basis between Harmon and Grand Central Terminal. Metro North operates 26 commuter trains northbound and 25 commuter trains southbound on a daily basis between Poughkeepsie and Grand Central Terminal. Amtrak operates 13 trains northbound and 12 trains southbound on a daily basis between Poughkeepsie and Albany on Conrail's Hudson Line and on Metro North's portion of the Hudson Line.

Conrail operates one (1) merchandise train per day in each direction between Oak Point Yard and Selkirk Yard. In addition, Conrail operates approximately two (2) trash trains a week in each direction between Oak Point Yard and Selkirk Yard. Conrail has been advised that the number of trash trains in the future is expected to increase to seven day a week service with as many as two (2) trash trains per day in each direction.

Finally, today Conrail provides local service between Oak Point Yard and Selkirk Yard through the use of three (3) local trains. One (1) local operates daily between Oak Point Yard and Croton West Yard. A second local operates daily from Poughkeepsie to Croton West Yard. The third local operates 5 to 6 days a week from Selkirk to the ADM plant at Hudson.

With respect to the volume of traffic handled by Conrail on its Hudson Line between Selkirk Yard and Oak Point Yard, I estimate that approximately 80 percent of that traffic originates or terminates in the Bronx, Queens, or by interchange with the New York and Atlantic. Almost all of this is going to or coming from Selkirk and beyond. Obviously, if the number of trash trains dramatically increases as I have been led to believe, this percentage will become even higher.

The two (2) merchandise through trains which are operated daily by Conrail switch crews just south of Poughkeepsie. In other words, the crew that starts out at Oak Point Yard on the northbound train returns to Oak Point Yard on the southbound train. The crew that starts out on the southbound train from Selkirk Yard returns to Selkirk on the northbound train.

Conrail interchanges traffic in New York City's Borough of Queens with the New York and Atlantic Railroad ("NY&A") at Fresh Pond Junction. In order to accomplish this interchange, Conrail traverses its 7.6 mile Fresh Pond Industrial Branch out of Oak Point Yard to Fresh Pond Junction, which includes crossing the Amtrak-owned Hell Gate Bridge.

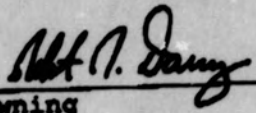
Because of the heavy congestion on Metro North's trackage between Milepost 7 and Milepost 75.8 at Poughkeepsie, Conrail has only an eight (8) hour window in which it can operate on that segment of trackage. That operating window of opportunity is between 8:30 p.m. and 4:30 a.m. Even during that eight (8) hour period Conrail trains are frequently delayed because of the commuter traffic, and ongoing maintenance on Metro North's trackage.

With respect to CP operating on the trackage between Albany and Oak Point Yard, I would suggest that CP enter Conrail property at its connection with Conrail's Albany Secondary Track and proceed approximately 7.1 miles to Selkirk. CP already operates over

this segment of trackage today to interchange with Conrail. At Selkirk, the preferred handling will be over a progressive switch connection to be constructed by CP from the Albany Secondary Track to Conrail's Selkirk Branch at CP SK. Thereafter, the movement will traverse Conrail's Selkirk Branch which is approximately 12.7 miles long. The Selkirk Branch will take CP to Conrail's Hudson Line at approximately Milepost 125 where CP will use Conrail's Track No. 1 to Poughkeepsie. At Poughkeepsie, CP will enter Metro North's trackage to the Oak Point Link Running Track in New York City. The Oak Point Link Running Track will take CP to Oak Point Yard. When operating over Metro North's trackage south of Poughkeepsie, CP will be subject to the same eight (8) hour window that Conrail operates under today.

VERIFICATION

I, R.R. Downing, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on November 30, 1998.



R.R. Downing

CERTIFICATE OF SERVICE

I, Dennis G. Lyons, certify that on November 30, 1998, I have caused to be served a true and correct copy of the foregoing CSX-167, "Statement of CSX Corporation and CSX Transportation, Inc. As to the Rights to Be Granted to Canadian Pacific Railway Company and Affiliates With Respect to Line of Railroad Between Selkirk (Near Albany), NY, and Fresh Pond 'ct. (in Queens)," and its accompanying Verified Statements and Exhibits, to the following parties, by first-class mail, postage prepaid, or by more expeditious means:

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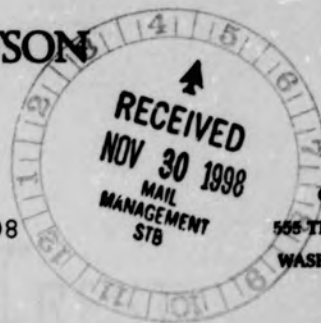
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November 30, 1998

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary, Surface Transportation Board
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

D

Re: 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

Finance Docket No. 33388 (Sub No. 69), Responsive Application -- State of New York, By and Through Its Department of Transportation, and The New York City Economic Development Corporation

Dear Secretary Williams:

Enclosed for filing in the above-referenced dockets are an original and twenty-five copies of Canadian Pacific Parties' Opening Evidence and Argument. Also enclosed is a 3.5-inch diskette, formatted for WordPerfect 7.0, containing the pleading.

Thank you for your assistance.

Sincerely,

George W. Mayo, Jr.
Attorney for Canadian Pacific Railway Company, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited

ENTERED
Office of the Secretary

DEC - 1 1998

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Public Record

GWM:jms
Enclosures
cc: Counsel for Parties
Required To Be Served

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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

STB Finance Docket No. 33388 (Sub-No. 69)

RESPONSIVE APPLICATION--STATE OF NEW YORK,
BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION,
AND THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

CANADIAN PACIFIC PARTIES'
OPENING EVIDENCE AND ARGUMENT

ENTERED
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November 30, 1998

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ATTACHMENT A (TRACKAGE RIGHTS AGREEMENT)

VERIFIED STATEMENTS

Paul D. Gilmore (Operating Plan)

Paul D. Gilmore (Environmental)

SHIPPER STATEMENTS

Daniel D. Luizzi (Fort Orange Paper Company)

J. R. Wollery (ADM Milling Co.)

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB 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

STB Finance Docket No. 33388 (Sub-No. 69)

RESPONSIVE APPLICATION--STATE OF NEW YORK,
BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION,
AND THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

**CANADIAN PACIFIC PARTIES'
OPENING EVIDENCE AND ARGUMENT**

INTRODUCTION

Pursuant to the Board's Decision No. 102, Canadian Pacific Railway Company ("CPR"), Delaware and Hudson Railway Company Inc. ("D&H"), Soo Line Railroad Company ("Soo") and St. Lawrence & Hudson Railway Company Limited ("StL&H") (collectively "Canadian Pacific Parties" or "CP") hereby submit their opening evidence and argument in support of Board establishment of terms and conditions to govern CP full-service trackage rights over the so-called "east-of-the-Hudson" line between Schenectady/Albany, NY, and Fresh Pond Junction, NY, which CSX Corporation and CSX Transportation, Inc. (collectively "CSX") will operate under an operating agreement with New York

Central Lines LLC ("NYC") (and which in turn NYC will acquire from Consolidated Rail Corporation ("Conrail")). 1/

As a condition of its approval of the primary application in this proceeding, the Board required

CSX to negotiate an agreement with CP to permit either haulage rights, not restricted as to commodity or geographic scope, or similarly unrestricted trackage rights, over the east-of-the Hudson line from Fresh Pond to Selkirk (near Albany), under terms agreeable to the parties, taking into account the investment that continues to be required for the line.

Decision No. 89 at 83. As the parties have advised the Board, these negotiations were unsuccessful, and the parties have

1/ CP is not here seeking any trackage rights authority with regard to that part of the east-of-the-Hudson line between Poughkeepsie, NY and High Bridge, NY, which is owned by Metro-North Railroad ("Metro-North"). CP is separately negotiating with Metro-North in regard to trackage rights over this line. These negotiations are proceeding favorably, and CP anticipates obtaining trackage rights over the Metro-North line segment on terms comparable to those governing CSX's operations over the line segment. CP is also separately negotiating with the State of New York regarding full service trackage rights on the Oak Point Link from High Bridge to Harlem River Yard to the point of connection with CSX ownership. Although CP believes that there would be no substance to such a claim, it is possible that CSX will argue that it has an exclusive right to provide freight service over either or both of the Metro-North segment and the Oak Point Link segment; accordingly, CP requests the Board to use its authority under 49 U.S.C. § 11321 to override any such rights to the extent that they exist and might interfere with the award of trackage rights to CP over those segments.

accordingly turned to the Board to set the terms and conditions that will govern CP's east-of-the-Hudson operations.

Although CP and CSX made progress on many matters during the course of their negotiations, they ultimately disagreed with one another on the fundamental issue of the scope of the rights awarded by the Board: CP understands the Board's condition -- "not restricted as to commodity or geographic scope" (id.) -- to impose full-service rights, including the right of access to all current and future shippers on the east-of-the-Hudson line, the right to interchange with all carriers on the line, and the right to use all yards and facilities on the line; by contrast, CSX takes the position that the Board intended its condition to extend overhead rights only, not full-service rights.

CSX's position on this basic issue made agreement impossible. In this submission, CP asks the Board to resolve the impasse by (1) reaffirming that CSX is to grant CP full-service rights on the east-of-the-Hudson line, (2) ruling that those rights should be trackage rights, not haulage rights, to assure that CP's service can be fully competitive with that provided by CSX, and (3) adopting the terms and conditions, including the compensation terms, proposed by CP in the draft trackage rights agreement being submitted herewith (see Attachment A).

In the discussion below, we explain why CP is entitled to the relief requested. In Part I, we briefly recapitulate the record before the Board that led to imposition of the east-of-the-Hudson condition, and show that the Board was entirely correct to require that the rights granted to CP be full-service in nature; we also explain why those rights should be trackage, rather than haulage, rights so as to better serve the competitive objectives the Board identified in Decision No. 89. In Part II, we summarize the manner in which CP proposes to conduct operations pursuant to a grant of full-service trackage rights. Finally, in Part III, we highlight particular terms and conditions (including the compensation terms) sought in our draft trackage rights agreement, and explain why they are appropriate for imposition here.

I. CP SHOULD BE GRANTED FULL-SERVICE TRACKAGE RIGHTS

A. The Board Appropriately Imposed Full-Service Rights

In ruling that the rights accorded CP should be "not restricted as to commodity or geographic scope" (Decision No. 89 at 83), the Board appropriately responded to the evidentiary record developed by the New York State Department of Transportation ("NYDOT"), the New York City Economic Development Corporation ("NYCEDC"), and others. It is undisputed that NYDOT/NYCEDC requested award of full service trackage rights, and

that their clearly stated objective was "to enable a second rail carrier to compete directly with CSX in the provision of freight transportation to shippers and receivers east of the Hudson in New York," so as "to serve all shippers and distribution centers located between the NY&A interchange at Fresh Pond, NY, and the CP/D&H interchanges at Selkirk and Schenectady, NY."

NYS-24/NYC-17 at 3, 37. The Board found their submission to be compelling.

The Board agreed with NYDOT/NYCEDC that the settlement agreements reached by CSX with CP and Canadian National Railway Company were "not sufficient to satisfy the needs of east-of-the-Hudson shippers." Decision No. 89 at 82. The Board also agreed that it must "use this opportunity to restore a modicum of the competition that was lost in the financial crisis that led to the formation of Conrail" (*id.* at 83), acknowledging NYDOT/NYCEDC evidence that at the time of Conrail's creation "[t]here were nine line-haul railroad rate and service options available individually or in combination to shippers east of the Hudson River, with numerous interline connections to the west side" (NYS-24/NYC-17 at 15 & n.11).

The Board also agreed with NYDOT/NYCEDC that "there will soon be sufficient capacity on the Hudson Line for safe service from a second freight operator." Decision No. 89 at 83. In arriving at this conclusion, the Board relied on testimony by

Metro-North's President that "the Hudson Line could easily and safely accommodate a second freight operator moving an additional 6-8 scheduled trains each day, and that completion of the state-funded Oak Point Link by early 1999 will eliminate the most serious conflict between freight and passenger operations on the remainder of the Hudson Line;" it also found significant the CSX concession "that freight traffic on the Hudson Line could be increased significantly." Id. at 83 n.130.

The Board further gave weight to shippers located on the east-of-the-Hudson line, who spoke out strongly in regard to their pressing need for competitive rail access. 2/ Certain of these shippers (Fort Orange Paper Company and ADM Milling Co.) reiterate this need in verified statements accompanying this submission.

In sum, the Board's award of full-service rights on the east-of-the-Hudson line was appropriately based on the record, which demonstrated conclusively that competitive considerations and other public interest concerns dictated that CP should have

2/ These shippers included the Fort Orange Paper Company (FEPC-5); D'Arrigo Bros. Co. of New York and the Hunts Point Market Board (NYS-10); Firestone Plywood Corp. (NYS-10); USA Waste Services Co. (NYS-10); and Harlem River Yard Ventures (on behalf of shippers served by the yard) (NYC-9). For example, the Board specifically noted that its east-of-the-Hudson condition would be responsive to the competitive concerns raised by the Fort Orange Paper Company. Decision No. 89 at 116.

unrestricted access to all shippers, all carriers, and all yards and facilities on the line.

B. Full Service Trackage Rights, Not Haulage Rights, Should Be Imposed

In announcing the east-of-the-Hudson condition, the Board suggested that the condition might be satisfied by negotiation of either unrestricted haulage rights or unrestricted trackage rights. Decision No. 89 at 83. In the particular circumstances of the east-of-the-Hudson line, trackage rights will permit CP to compete more effectively with CSX than would haulage rights alone. Accordingly, for reasons explained below, CP urges that trackage rights be imposed in lieu of haulage rights.

Trackage rights and haulage rights are both mechanisms through which one railroad can compete for customers located on a line owned by another railroad. However, trackage rights afford the grantee a wider range of operating rights, and greater control over the transportation service, than do haulage rights. In one case, the Board 3/ defined trackage rights as:

The right or combination of rights of one railroad to operate over the designated trackage of another railroad including the right to operate trains over the designated trackage; the right to interchange with all carriers at all

3/ References to the Board include the Board's predecessor, the Interstate Commerce Commission.

junctions; the right to serve all shippers, sidings, and team tracks; and the right to build connections or additional tracks in order to access other shippers or carriers.

Burlington Northern, Inc. -- Control and Merger --

Santa Fe Pacific Corp., Finance Docket No. 32549, 1995

WL 337217, at *7 (I.C.C. served June 6, 1995).

In contrast, the Board called "[c]ar haulage . . . merely a private arrangement whereby one carrier moves cars for another." Burlington Northern R.R. -- Notice of Exemption -- Joint Project Involving Relocation of a Line of Railroad between Tulsa and Muskogee, OK, Finance Docket No. 31293, 1988 WL 224496, at *1 (I.C.C. served July 14, 1988). Under haulage rights, the non-owning railroad has no "right to enter on [the other] carrier's track to perform the rail service;" the track-owning carrier handles and controls the cars, and the non-owner pays "a charge for the haulage service provided by" the owning carrier. KNRECO, Inc. -- Exemption -- Atchison, Topeka & Santa Fe Ry., Finance Docket No. 30918, 1988 WL 224410, at *2 (I.C.C. served Apr. 2, 1988), aff'd, Simmons v. KNRECO, Inc., 871 F.2d 702 (7th Cir. 1989). See also, Indiana & Ohio Ry. -- Acquisition Exemption -- Lines of The Grand Trunk Western R.R., Finance Docket No. 33180, 1997 WL 578357, at *6 (I.C.C. served Sept. 19, 1997).

The carrier receiving haulage rights on a particular route is significantly limited in its ability to engage in cost-based competition with the carrier providing it with haulage on the route. This is because the haulage rate paid by the carrier receiving haulage services reflects an allocation of the "above-the-rail" costs -- crew costs, locomotive costs, and fuel costs, for example -- of the carrier providing those services, and in that sense the costs of the two carriers for movements over the route are the same. This is much less the case with trackage rights, where the trackage rights charge reflects only "below-the-rail" costs, and the trackage rights tenant therefore has a much better ability to manage its own costs and to compete with the trackage rights landlord on the basis of cost.

Similarly, a carrier with haulage rights is materially restricted in its ability to compete on a service basis with the carrier providing it with haulage movements. Essentially, the carrier providing haulage decides the kind of service it wants to provide to its customers, and the carrier receiving haulage must conform its own car movements to that service. By contrast, with trackage rights a carrier can compete fully on service terms, setting its own schedules and customizing service to fit the needs of its particular customers.

In sum, the competition that can be provided through trackage rights is likely to be more effective than with haulage

rights. Cf, e.g., Union Pacific Corp. -- Control & Merger -- Southern Pacific Rail Corp., Finance Docket No. 32760, 1996 WL 467636, at *235 (I.C.C. served Aug. 12, 1996).

Here, trackage rights would give CP a physical presence on the east-of-the-Hudson line. CP would thus be able to control the quality of service provided to shippers in a way that it never could with only haulage rights, which would be dependent on CSX train operations to move CP's cars.

Moreover, trackage rights would permit CP to operate with greater efficiency (for example, managing train size, blocking, and routing requirements so as to minimize costs), which would lead to the most competitive rates to shippers. By contrast, haulage rights would limit CP's ability to achieve such efficiencies, in that cars would typically move at a set per-car charge on trains most convenient for CSX. 4/

For these reasons, CP requests that the full-service rights awarded it be trackage rights rather than haulage rights.

4/ CP would favor an award of interim haulage rights that would allow CP to build a traffic base while using CSX haulage services, with the right to convert (at CP's sole option and without need for CSX consent) to full-service trackage rights once that base was developed. This interim step, which would provide for CP and CSX to make their haulage connection at CSX's Selkirk Yard (using what is described below as Route 3), would appear to serve the interests of both CP and CSX. But if CSX objects to such interim haulage rights, CP is prepared to conduct trackage rights operations from the outset.

CP is committed to utilizing these trackage rights so as to be a strong and effective competitor with CSX on the east-of-the-Hudson line.

II. CP'S FULL-SERVICE TRACKAGE RIGHTS ARE DESIGNED OPERATIONALLY TO MAKE CP AN EFFECTIVE COMPETITOR WITH CSX

The full-service trackage rights being sought by CP over the east-of-the-Hudson line conform to those requested by NYDOT/NYCEDC. 5/ They are designed operationally to make CP an effective competitor with CSX. The trackage rights are described in detail in the accompanying verified statement of Paul Gilmore, CP's Vice President Eastern Operations. 6/ As explained by Mr. Gilmore, there are three sets of rights CP will require on the

5/ NYDOT/NYCEDC requested Board imposition of the following:

1. Full service trackage rights . . . over the lines of Conrail between points of connection with the Canadian Pacific Railway/Delaware & Hudson Railroad at CP-160 near Schenectady, NY and Selkirk Yard near Selkirk, NY, and [the beginning of Metro-North ownership of the east-of-the-Hudson line], together with sufficient rights on tracks within the Selkirk Yard to permit the efficient interchange of freight with CP/D&H.

2. Full service trackage rights over the lines of Conrail between the point of Conrail ownership at Mott Haven Junction ("MO"), NY and the point of connection with the lines of the Long Island Railroad near Fresh Pond ("MONT"), NY, via the Harlem River Yard.

NYS-24/NYC-17 at 3-4.

6/ Mr. Gilmore is also sponsoring a separate verified statement dealing with environmental matters that is being submitted herewith.

north end of the east-of-the-Hudson line, and one set of rights on the south end.

On the north end, CP first needs trackage rights on the line segments -- termed Route 1 in Mr. Gilmore's statement (Exhibit 2) -- through Rensselaer and Schenectady that will give CP the most efficient routing for movement of traffic between Canadian markets and New York City/Long Island markets. Second, CP needs trackage rights on line segments through Selkirk Yard (but which will not require use of the yard), to give it the most efficient routing for movement of traffic between southern U.S. markets and New York City/Long Island markets -- termed Route 2 in Mr. Gilmore's statement (Exhibit 3). 7/ Third, CP needs trackage rights on line segments that CP would employ in handling Albany/Rensselaer area traffic utilizing CP's Kenwood Yard at Albany -- termed Route 3 in Mr. Gilmore's statement (Exhibit 4). CP will use each route as dictated by the traffic it develops, directing each train over the route that most efficiently serves the movements on the train.

As for the south end of the east-of-the-Hudson line (depicted in Exhibit 5 of Mr. Gilmore's statement), CP seeks rights that will assure its interchange at Fresh Pond Junction

7/ Effective use of this route will require improvement of an existing connecting track at CP-VO on the NYC Chicago Line.

(or other appropriate locations), as well as full access to the Harlem River Yard, Oak Point Yard, Hunts Point Terminal and all customers served by those facilities.

Mr. Gilmore provides illustrations of schedules CP could operate using Routes 1 through 3, noting that final schedules would be coordinated with CSX, Metro-North, and the State of New York (in regard to the newly completed Oak Point Link). He also discusses in summary the local service CP would expect to conduct in support of its east-of-the-Hudson operations.

As Mr. Gilmore notes, if CP is awarded the full-service trackage rights it seeks, CP will compete vigorously with CSX and will generate for the shipping public all the benefits that flow from service and price competition.

**III. THE TERMS AND CONDITIONS SET FORTH IN THE
ACCOMPANYING TRackage RIGHTS AGREEMENT SHOULD BE
IMPOSED BY THE BOARD**

CP has drafted its proposed trackage rights agreement based on the Master Trackage Rights Agreement submitted by the applicants to govern their awards of trackage rights to one another as contemplated in the primary application. See CSX/NS-25 at 220-60. Modifications have been made where necessary to set forth the full-service nature of the CP trackage rights, to ensure neutral operation of the east-of-the-Hudson line, and to incorporate necessary switching provisions.

By adopting terms and conditions employed by applicants in their Master Trackage Rights Agreement, CP ensures that its proposed trackage rights agreement is reflective of a contractual arrangement familiar to CSX, and indeed agreed to by CSX for purposes of governing both its grants of trackage rights to, and its receipt of trackage rights from, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS"). Moreover, by incorporating the compensation terms set forth in the Master Trackage Rights Agreement, CP seeks to ensure that its service can be provided on an equal competitive footing with the service provided by CSX.

Specifically, CP proposes that it pay CSX the same 29 cents per car mile rate that CSX and NS pay each other pursuant to the trackage rights grants provided for in the primary application. This charge, which CSX has determined to be suitably compensable both in circumstances where it is a trackage rights tenant and a trackage rights landlord, affords an appropriate benchmark for the trackage rights fee CP should pay CSX. Just as the 29 cents per car mile charge allows CSX and NS to be effective competitors with one another over those lines where they will operate under trackage rights, so also the charge will allow CP to be an effective competitor with CSX on the east-of-the-Hudson line.

As regards switching, it will be more efficient and less disruptive of CSX's operations for CSX to provide switching services to CP at particular locations. Specifically, CP proposes that CSX afford it switching services for all shippers served through the Oak Point Yard or any other rail facility in the Bronx Borough of New York City. At the outset, CP is prepared to pay a switching charge of up to \$250 per car, ^{8/} in conformity with the charge negotiated as part of the December 12, 1997 "Agreement Between the National Industrial Transportation League, Norfolk Southern, and CSX" (NITL-11) ("NITL Agreement"). ^{9/} Borrowing a concept reflected in the switching

^{8/} This \$250 per car charge is the rate CSX and NS generally charged each other for switching services prior to the primary application transaction. See RVS Jenkins at 10-11.

^{9/} Expanding upon the NITL Agreement, the Board held that the \$250 per car maximum switching charge would apply not just to switching that had been provided by Conrail to CSX and NS, but also to switching that had been provided by CSX and NS to Conrail, where feasible. See Decision No. 89 at 18 n.30, 54, 57, 176 n.264 and 250-51. The Board also endorsed the \$250 per car charge for (1) Class III railroads that pay switching charges to Conrail, and to the shippers served by those shortlines, and (2) certain traffic in the Niagara Falls area. See Decision No. 89 at 18 n.30, 19, 54, 57-58, 85 n.135, 90, 176 n.264 and 178. In addition, the Board ordered CSX to adhere to its agreements with CN and CP that provide for lower switching fees in the Buffalo area (which have some of the highest reciprocal switching rates in the country.) Id. at 85 n.136, 178. In accord with the NITL Agreement, switching charges at other points and with other railroads are to be frozen at their existing rate or at the rate achieved through settlement, not to exceed the existing rate. Id. at 250-51.

[Footnote continued]

agreements CSX and NS entered into with one another, CP proposes that after six months of experience and at the request of either party, CP and CSX will jointly conduct a study to determine CSX's actual cost of switching cars for CP and retroactively adjust the switching charge based on such study; 10/ provided, however, that the charge shall not be greater than that permitted under the NITL Agreement.

* * * *

By adopting CP's proposed trackage rights agreement, the Board will allow CP to compete effectively with CSX on terms consistent with those that govern the various applicant trackage rights agreements approved in this proceeding. Similarly, by basing CSX's switching charges to CP on a blend of the standard switching arrangement between CSX and NS and the NITL Agreement,

[Footnote continued]

The \$250 maximum per car charge established under the NITL Agreement is well above the \$130 maximum charge agreed to by Union Pacific Railroad Company ("UP") in a settlement agreement with Burlington Northern Santa Fe Railroad Company ("BNSF"), adopted by the Board as a condition to the UP/SP merger. See Union Pacific Corp. -- Control & Merger -- Southern Pacific Rail Corp., Finance Docket No. 32760, Decision No. 44, 1996 WL 467636, at *89, *103, *113 (I.C.C. served Aug. 12, 1996) ("UP/SP"); see Decision No 89 at 58. (This \$130 charge represented a significant drop from the \$495 rate UP charged ENSF prior to the merger. UP/SP, 1996 WL 467636, at *235 n.170.) The maximum \$250 per car charge also far exceeds the \$150 per car maximum UP/SP agreed to charge railroads other than BNSF. Id. at *235 n.116.

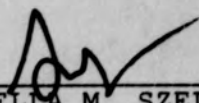
10/ See, e.g., CSX/NS-25 at 458, 481, 505-06, 530.

the Board can assure that the switching arrangement will be fair to both CP and CSX.

CONCLUSION

For the reasons set forth above, the Board should grant CP full-service trackage rights over the east-of-the-Hudson line governed by the trackage rights agreement proposed by CP.

Respectfully submitted,



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Company Limited

November 30, 1998

ATTACHMENT A

CP PROPOSED
TRACKAGE RIGHTS
AGREEMENT

THIS AGREEMENT, entered into as of this ____ day of _____ 19__, by and among NEW YORK CENTRAL LLC, a Delaware limited liability company (hereinafter referred to as "NYC"), CSX TRANSPORTATION, INC., a Virginia corporation (hereinafter referred to as "CSXT"), and DELAWARE AND HUDSON RAILWAY COMPANY, a Delaware corporation, an indirect wholly owned subsidiary of Canadian Pacific Railway Company (hereinafter referred to as "CPR");

WITNESSETH:

WHEREAS, CSX Corporation ("CSX"), parent to CSXT, and Norfolk Southern Corporation ("NSC"), parent to NSR, entered into a Transaction Agreement (the "Transaction Agreement") between themselves; CSXT, a wholly-owned subsidiary of CSX; NSR; Conrail, Inc. ("CRR"); Consolidated Railroad Corporation ("CRC"), a wholly-owned subsidiary of CRR; and CRR Holdings LLC; and

WHEREAS, CSX and NSC have indirectly acquired all the outstanding capital stock of CRR; and

WHEREAS, pursuant to the Transaction Agreement, certain assets of CRC have been allocated to NYC, which is a wholly-owned subsidiary of CRC, to be operated by CSXT under the terms of an

Allocated Assets Operating Agreement (the "CSXT Operating Agreement") between NYC and CSXT; and

WHEREAS, pursuant to the Decision No. 89 entered in STB 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 (served July 23, 1998) ("STB Finance Docket No. 33388"), the Surface Transportation Board ("STB") conditioned its approval of the primary application in that proceeding upon grant by CSXT of full service trackage rights to CPR free of "geographic and commodity" restrictions on the so-called "east-of-the-Hudson line" between Schenectady/Albany, NY and Fresh Pond Junction, NY, to be operated by CSXT under the CSXT Operating Agreement;

WHEREAS, after due consideration of evidence and argument related to these trackage rights, the STB imposed the terms and conditions set forth in this agreement to govern CP's operations on the east-of-the-Hudson line; and

WHEREAS, there is a separate addendum to this Agreement, also imposed by the STB, identifying respective segments, specific condition and/or restrictions; and

NOW, THEREFORE, the parties hereto are legally bound as follows:

ARTICLE 1. GRANT OF TRACKAGE RIGHTS; OPERATING AGREEMENT

Subject to the terms and conditions herein provided, NYC, as owner, and CSXT, as operator, hereby grant to CPR the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the lines of railroad owned by NYC and operated by CSXT, under the CSXT Operating Agreement hereinafter referred to as "Subject Trackage", upon execution of the "Form A - Trackage Rights Addendum" identifying specific trackage rights arrangements and relevant provisions to be attached hereto and made a part hereof.

ARTICLE 2. USE OF SUBJECT TRACKAGE

- (a) CPR's use of the Subject Trackage shall be in common with CSXT and any other user of the Subject Trackage, and CSXT's right to use the Subject Trackage shall not be diminished by this Agreement. NYC and CSXT, with the consent of NYC, shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.
- (b) As provided by this Agreement and under terms of Form A - Trackage Rights Addendum to this Agreement, CPR may use any part of the Subject Trackage for the purpose of switching, storage or servicing of cars or equipment, or the making or breaking up of trains, or service to an industry. Nothing contained herein shall

preclude the emergency use by CPR of the Subject Trackage.

- (c) As provided in this Agreement and under the terms of Form A - Trackage Rights Addendum to this Agreement, CPR shall have the right to enter on and exit from the Subject Trackage at (i) the endpoints of the Subject Trackage, and (ii) points other than the endpoints where CPR may make a connection with its existing railroad line and/or any other railroad lines (any of the foregoing points being hereinafter referred to as a "Point of Permitted Entry or Exit").
- (d) CSXT shall have exclusive control of the management and operation of the Subject Trackage. CPR shall not have any claim against CSXT for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by CPR is interrupted or delayed at any time from any cause.

ARTICLE 3. MISCELLANEOUS SPECIAL PROVISIONS

- (a) When operating over the Subject Trackage, CPR's locomotives and crews will be equipped to communicate with CSXT on radio frequencies normally used by CSXT in directing train movements on the Subject Trackage.
- (b) Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local

supervision of each carrier. All control and usage will be subject to the approval of CSXT's representative or his designee.

- (c) Before its locomotives enter onto CSXT's trackage, CPR shall request permission from CSXT's dispatcher (or other designated representative) at Selkirk, NY, or such other location as CSXT may designate. Further, CPR shall ascertain that said trackage is clear and shall await confirmation from said representative that such permission has been issued to allow CPR's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, CPR will notify CSXT's designated representative that it has completed its operations and that its equipment has cleared CSXT's trackage. Once CPR has notified CSXT's representative that it has cleared the Subject Trackage, CPR shall not reenter the Subject Trackage without again obtaining permission from CSXT's representative. CPR shall provide and maintain at its expense all communication facilities needed and as may be required by CSXT to permit CPR to use the Subject Trackage.

ARTICLE 4. PAYMENT OF BILLS

- (a) All payments called for under this Agreement shall be made by CPR within thirty (30) days after the date of the bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of three (3) years from the date of billing.
- (b) Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 3 of Form A - Trackage Rights Addendum, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by CSXT at the time any work is performed by CSXT for CPR or shall include actual costs and expense, upon mutual agreement of the parties.

ARTICLE 5. MAINTENANCE OF SUBJECT TRACKAGE

- (a) CSXT shall maintain, repair and renew the Subject Trackage with its own supervision and labor. CSXT shall keep and maintain the Subject Trackage in

reasonably good condition for the use herein contemplated, but CSXT does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted; provided, however, that CSXT shall maintain the Subject Trackage to a minimum standard of FRA Class III. CSXT shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Article 11, CPR shall not by reason of failure or neglect on the part of CSXT to maintain, repair or renew the Subject Trackage, have or make any claim or demand against CSXT or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by CPR resulting from any such failure or neglect.

- (b) CSXT shall perform, at the expense of CPR, such additional maintenance as CPR may reasonably require or request.

ARTICLE 6. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

- (a) Existing connections or facilities which are jointly used by the parties hereto under existing agreements shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.
- (b) If, in the opinion of CPR, a new or upgraded connection is required at an existing terminal ("Point of Permitted Entry or Exit") other than the endpoints, or, if in the opinion of CPR, other upgrading, including but not limited to switches, power switches, signals, communications, etc., is required for operational efficiency, then CSXT will cooperate and CPR will be responsible for funding that construction/upgrading at actual cost or a cost mutually agreed to by CSXT and CPR. Such construction/upgrading shall be progressed as follows:
 - (i) CPR or others shall furnish all labor and material and shall construct such portions of the tracks located on the right-of-way of CPR or others which connect the respective lines of the parties hereto.

(ii) CSXT shall furnish all labor and material and shall construct such portions of the tracks located on the right-of-way operated by CSXT which connect the respective lines of the parties hereto.

(iii) CSXT will maintain, repair and renew the constructed/ upgraded portions of the tracks located on the right-of-way operated by CSXT which connect the respective lines of the parties hereto at the sole cost and expense of CPR.

ARTICLE 7. ADDITIONS, RETIREMENTS AND ALTERATIONS

(a) CSXT, from time to time and at its sole cost and expense, may make changes in, additions and betterments to or retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

(b) If the parties agree that changes in or additions and betterments to the Subject Trackage, including changes

in communication or signal facilities, are required to accommodate CPR's operations beyond that required by CSXT to accommodate its operations, CSXT shall construct the additional or altered facilities and CPR shall pay to CSXT the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

ARTICLE 8. MANAGEMENT AND OPERATIONS

- (a) The parties shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of their trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. Each party shall indemnify, protect, defend, and save harmless the other party as well as the latter's subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed by any public authority or court having jurisdiction in the premises, when attributable

solely to the failure of the other party to comply with its obligations in this regard.

- (b) CPR in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of CSXT, and the movement of CPR's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of CSXT. CPR's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by CSXT's operating rules and regulations without the prior consent of CSXT.
- (c) CPR shall make such arrangements with CSXT as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover, and CPR shall pay to CSXT, upon receipt of bills therefor, any cost incurred by CSXT in connection with the qualification of such employees of CPR, as well as the

cost of pilots furnished by CSXT, until such time as such employees are deemed by the appropriate examining officer of CSXT to be properly qualified for operation as herein contemplated.

- (d) In the event of any investigation or hearing concerning the violation of any operating rule or practice by CPR's employees while on the Subject Trackage, CPR shall be notified in advance of any such investigation or hearing, and such investigation or hearing may be attended by any official designated by CPR, and any such investigation or hearing shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to CPR's employee or employees required to attend such hearings.
- (e) CSXT shall have the right to exclude from the Subject Trackage any employee of CPR determined by the above, to be violation of CSXT's rules, regulations, orders, practices, or instructions issued by CSXT's Timetable or otherwise. CPR shall release, indemnify, defend, and save harmless CSXT and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

(f) The trains, locomotives, cars and equipment of CPR, CSXT, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as will afford the most economical and efficient movement of all traffic. CSXT will cooperate with CPR and promptly inform CPR as to operating, maintenance, and construction plans which might in any way affect CPR's operations on the Subject Trackage; and in scheduling operations, maintenance, and construction on the Subject Trackage, CSXT shall consider the effect upon the operations of both parties and shall avoid any disproportionate interference with the operations of CPR. CSXT shall indemnify CPR against all costs or expenses incurred by CPR by reason of any breach by CSXT of its obligations under this Section.

(g) In the event that a train of any party to this Agreement shall be forced to stop on the Subject Trackage, due to mechanical failure or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train fails to maintain the speed required by that party's published schedule for that section of the Subject Trackage, or

if in emergencies, crippled or otherwise defective cars are set out of trains on the Subject Trackage, either party shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and the party receiving the assistance shall reimburse the party providing the assistance for the cost of rendering any such assistance.

- (h) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars owned or in the account of CPR in order to move them off the Subject Trackage, such work shall be done by CSXT, and CPR shall reimburse CSXT for the cost thereof.
- (i) In the event CSXT and CPR agree that CSXT should retain employees or provide additional employees for the sole benefit of CPR, the parties hereto shall enter into a separate agreement under which CPR shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by CSXT and which would not

have been incurred had the retained or additional employees not been provided.

- (j) Each party shall be entitled to fix the schedules of its trains on the Subject Trackage; provided, however, before setting or changing a schedule, the party so acting shall consult with the other party so as to minimize any conflicts.
- (k) CPR police shall have complete access to, and shall have police powers in regard to, the Subject Trackage so as to be able to protect CPR equipment, freight, and other property located thereon, and to perform the other duties railroad police normally perform.

ARTICLE 9. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in CPR's trains on the Subject Trackage shall be assumed by CPR and reported and paid by it directly to the owner of such cars.

ARTICLE 10. CLEARING OF WRECKS

Whenever CPR's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, CSXT shall perform or provide such service, including the repair and restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property

whatsoever and injury to and death of any person or persons whomever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Article 11 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by CPR at the time of such wreck, shall be promptly delivered to CPR.

ARTICLE 11. LIABILITY

For the purpose of this Article 11, the term "Damage" means all assessments, losses, damages, liabilities, costs and expenses, including without limitation interest, penalties and attorneys' and consultants' fees. For the purpose of this Article 11, the term "Railroad Consequential Damages" means consequential, indirect, incidental or other similar damage, injury or loss to either CPR or CSXT. The responsibility between among CSXT and CPR for all Damage arising out of, incidental to or occurring in connection with this Agreement shall be apportioned as follows:

- (a) Sole Responsibility: Subject to Article 11(e), each party shall assume and bear all responsibility for Damage to or resulting from its own trains, locomotives and equipment, including but not limited to Railcars

and lading in its possession or being handled for its account, and for the death of or injury to its own employees. For purposes of this Agreement, CSXT Trains shall include Amtrak trains operating on the Subject Trackage as well as trains operated by any other third party admitted to the Subject Trackage by CSXT.

(b) CPR and CSXT Responsibility: Subject to Article 11(e), the parties shall jointly and equally (50% CPR and 50% CSXT) assume and bear all responsibility for all Damage, other than Damage which is subject to Article 11(a).

(c) Process: Each party shall be responsible for the payment, handling, administration and disposition of all Damage for which it bears exclusive responsibility under Article 11(a), and both parties shall have joint responsibility for the payment, handling, administration and disposition of all Damage for which they are jointly responsible under Article 11(b). In assigning joint responsibility to both parties, it is not the intent of this Agreement that the parties will actually act jointly, but rather that the parties will agree between themselves on the most practical and efficient arrangements for handling, administering, and disposing of Damage for which they bear joint

responsibility, with the objective of eliminating unnecessary duplication of effort and minimizing overall costs.

- (d) Indemnification: Each party to this Agreement covenants and agrees to (i) fully indemnify and save harmless the other parties to this Agreement from and against any payments which are the responsibility of such party under this Agreement, and all expenses, including attorney's fees and expenses, and other expenses of any court or regulatory proceeding, incurred by such other parties in defending any claim for which they are liable, and (ii) defend such other parties against such claims with counsel selected by such party and reasonably acceptable to such other parties.
- (e) Limitation: Articles 11(a) and (b) shall apply only to the amount of Damage resulting from a single incident which is \$25 million or less. Responsibility for Damages resulting from a single incident which exceeds \$25 million shall be allocated to the extent of such excess to CSXT and CPR in proportion to their respective fault or negligence in causing such Damage, subject to the following rules: (1) the total amount of Damage for which each party would otherwise be

responsible under Article 11(a) and (b) shall be determined, on a comparative percentage basis; (2) for each party, multiply \$25 million by the comparative percentage determined for that party in Article 11(e) (1); (3) the Damage for which each party is responsible in excess of the amount determined in Article 11(e) (2) shall be allocated between or among CSXT and CPR in proportion to their respective fault or negligence in causing the Damage. As used in this Article 11(e) only, the term "Damage" shall exclude Railroad Consequential Damages (which are always borne by the railroad which sustained them) and claims for exemplary and punitive Damages by any party hereto on its own behalf against another party hereto. By way of example, if Damage from a single incident were \$100 million, of which CSXT would be responsible for \$80 million under Article (11) (a) and (b) and CPR would be responsible for \$20 million under Article 11(a) and (b), CSXT would be responsible for \$20 million and CPR would be responsible for \$5 million of such Damage under Article 11(e) (1), and the remaining \$75 million of Damage would be apportioned between or among CSXT and CPR in proportion to their respective fault or negligence in causing the Damage. Any dispute between

or among the parties hereto in computing the comparative percentage, in determining their respective fault or negligence in causing the Damage or otherwise relating to their respective responsibilities for Damage arising out of, incidental to or occurring in connection with any such incident, including any Damage exceeding \$25 million, shall be submitted for resolution by binding arbitration pursuant to Article 16. The \$25 million amount referred to in this Article 11(e) may be adjusted every five years following the date of this Agreement with the prior approval of all parties, which approval may be given or refused at the sole discretion of each party.

- (f) Exceptions: Each party shall assume and bear all responsibility for Damage caused by acts or omissions of any its employees while under the influence of drugs or alcohol and Article 11(b) and (e) shall not apply to any such Damage.

ARTICLE 12. CLAIMS

- (a) The parties shall agree between themselves on the most fair, practical and efficient arrangements for handling and administering freight loss and damage claims with the intent that (i) each party shall be responsible for losses occurring to lading in its possession for the

account of such party and (ii) the parties shall follow relevant AAR rules and formulas in providing for the allocation of losses which are either of undetermined origin or in Railcars handled in interline service by or for the account of both parties.

- (b) Each party shall indemnify and hold harmless the other party against any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or pursuant to a collective bargaining agreement. It is the parties' intention that each party shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees.

ARTICLE 13. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of either party to perform its obligations provided under the terms

of Form A - Trackage Rights Addendum to this Agreement and its continuance in default for a period of sixty (60) days after written notice thereof by certified mail from the other party, such other party shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by the party of any prior breach thereof, to terminate the Agreement. The exercise of such right by a party shall not impair its rights under this Agreement or any cause or causes of action it may have against the other party for the recovery of damages.

ARTICLE 14. REGULATORY APPROVAL

This Agreement has been submitted to the STB for approval, has received approval by the STB, and has been imposed as a condition of the Joint Application in STB Finance Docket No. 33388.

ARTICLE 15. ABANDONMENT OF SUBJECT TRACKAGE

- (a) Notwithstanding the provisions of Section 5 of Form A - Trackage Rights Addendum, CSXT shall have the right, subject to securing any necessary regulatory approval, to abandon the Subject Trackage or any portion thereof. Before filing an application for regulatory approval of such abandonment, CSXT shall give CPR ninety (90) days' advance notice in writing of its intention to do so in

order that CPR may determine whether it desires to purchase the Subject Trackage (or portion thereof) or to discontinue its use thereof.

- (b) If CPR desires to purchase the Subject Trackage, it shall submit an offer of financial assistance under 49 U.S.C. Section 10904. In the event CSXT receives more than one such offer, CSXT will exercise its statutory right to negotiate with CPR rather than with the other offeror(s). Thereafter, the rights and obligations of the parties in respect to CPR's acquisition of the Subject Trackage shall be governed by applicable provisions of the law.
- (c) In any one of the circumstances listed below CPR shall be deemed to have determined that it does not desire to purchase the Subject Trackage and that it desires to discontinue its use thereof:
 - (i) CPR fails to submit an offer of financial assistance to purchase the Subject Trackage within the time prescribed by statute and applicable regulations, or
 - (ii) CPR, having made an offer of financial assistance to purchase the Subject Trackage, but being unable to reach agreement with CSXT as to the sale price, fails within the statutory period to request the

proper regulatory authority to establish the terms and conditions of the sale, or

(iii) CPR, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial assistance, or

(iv) CPR, having requested the proper regulatory authority to establish the terms of the sale, rejects the authority's order establishing said terms or fails to accept said terms within the time prescribed by said order.

(d) In the event any application filed by CSXT is granted but an application filed by CPR under Subarticle (c) above is ended by the proper regulatory authority, the parties shall cooperate in taking such action as is reasonably necessary to effect a sale of the Subject Trackage to CPR (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10904.

(e) In the event CSXT abandons the Subject Trackage (or portion thereof) under circumstances which (because of changes in the law or otherwise) are not susceptible of handling under the procedures outlined above, the parties shall cooperate and take such action as is

necessary to assure that CPR either promptly terminates its operations over the segment to be abandoned or purchases said segment at a price consistent with the principles of 49 U.S.C. Section 10904 as interpreted on the date of this Agreement.

- (f) Except as otherwise expressly agreed in writing, in the event any actions taken by the parties under this Article 15 result in an obligation imposed by any competent authority on either or both parties hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

ARTICLE 16. ARBITRATION

Any dispute, controversy or claim (or any failure by the parties to agree on a matter as to which this Agreement expressly or implicitly contemplates subsequent agreement by the parties, except for matters left to the sole discretion of a party) arising out of or relating to this Agreement, or the breach, termination or validity hereof, shall be finally settled through binding arbitration by a sole, disinterested arbitrator in accordance with the Commercial Arbitration Rules of the American

Arbitration Association. The arbitrator shall be jointly selected by the parties but, if the parties do not agree on an arbitrator within 30 days after demand for arbitration is made by a party, they shall request that the arbitrator be designated by the American Arbitration Association. The award of the arbitrator shall be final and conclusive upon the parties. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation and any costs and expenses of the arbitrator shall be borne equally by the parties. The arbitrator shall have the power to require the performance of acts found to be required by this Agreement, and to require the cessation or nonperformance of acts found to be prohibited by this Agreement. The arbitrator shall not have the power to award consequential or punitive damages. The arbitrator's award shall be binding and conclusive upon the parties to the fullest extent permitted by law.

Judgment upon the award rendered may be entered in any court having jurisdiction thereof, which court may award appropriate relief at law or in equity. All proceedings relating to any such arbitration, and all testimony, written submissions and award, of the arbitrator therein, shall be private and confidential as among the parties, and shall not be disclosed to any third party, except as required by law and except as reasonably necessary to

prosecute or defend any judicial action to enforce, vacate or modify such arbitration award.

ARTICLE 17. SUCCESSORS AND ASSIGNS

- (a) Except as provided herein, neither this Agreement (including the documents and instruments referred to herein) nor any of the rights, interests or obligations hereunder, shall be assigned by any party, including by operation of law, without the prior written consent of the other parties, except to a parent, controlled subsidiary or affiliate in the same corporate family, or in the case of NYC, to CSXT or any affiliate of CSXT; provided, however, that CPR shall have the right to enter into interchange and other agreements, in its sole discretion, for the purpose of interchanging rail traffic with the New York and Atlantic Railway and to grant the New York and Atlantic Railway incidental trackage rights over CSXT from Fresh Pond Junction to Oak Point Yard, Harlem River Yard, and Hunts Point Terminal for such purpose.
- (b) Any party without the consent of the other party may assign all of its rights and obligations under this Agreement only to any successor in the event of a merger, consolidation, sale of all or substantially all its assets, if such assignee executes and delivers to

the other party hereto an agreement reasonably satisfactory in form and substance to such other party under which such assignee, which is reasonably satisfactory to the other party, assumes and agrees to perform and discharge all the obligations and liabilities of the assigning party; provided that any such assignment shall not relieve the assigning party from the performance and discharge of such obligations and liabilities.

ARTICLE 18. NOTICE

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

If to NYC:	(To be furnished)
If to CSXT:	Assistant Vice President-Joint Facilities CSX Transportation, Inc. J200 500 Water Street Jacksonville, FL 32202
If to CPR:	Vice President, Eastern Operations Canadian Pacific Railway Company 200 Clifton Corporate Park P.O. Box 8002 Clifton Park, NY 12065

Either party may provide changes in the above addresses to the other party by personal service or U.S. mail.

ARTICLE 19. GENERAL PROVISIONS

- (a) This Agreement and each and every provision hereof is for exclusive benefit of the parties hereto and not for the benefit of any third party; provided, however, that this provision does not address any rights the State of New York and the New York City Economic Development Corporation may have by virtue of STB imposition of the regulatory condition resulting in imposition of this Agreement. Nothing herein contained shall taken as creating or increasing any right of any third party to recover by way of damages or otherwise against any the parties hereto.
- (b) This Agreement contains the entire understanding of the parties hereto and supersedes any and all oral misunderstandings between the parties.
- (c) No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by all parties to this Agreement.
- (d) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning or such words, terms and phrases in the railroad industry.

- (e) All Article headings are inserted for convenience only and shall not affect any interpretation of this Agreement.
- (f) As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.
- (g) This Agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.
- (h) Neither party hereto may disclose the provisions of this Agreement to a third party, excluding a parent, subsidiary affiliate company, without the written consent of the other party, except as otherwise required by law, regulation or ruling.

ARTICLE 20. INDEMNITY COVERAGE

As part of the consideration hereof, each party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other party shall also extend to and indemnify the parent corporation, its subsidiaries and affiliates of such other party, and all of their respective directors, officers, agents and employees.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

WITNESS

NEW YORK CENTRAL LLC

By _____
Title

WITNESS

CSX TRANSPORTATION, INC.

By _____
Title

WITNESS

DELAWARE AND HUDSON RAILWAY
COMPANY, INC.

By _____
Title

FORM A
TRACKAGE RIGHTS ADDENDUM

This Form A - Trackage Rights Addendum entered into this ____ day of _____, 19____ by and among NEW YORK CENTRAL LLC, a Delaware limited liability company (hereinafter referred to as "NYC"); CSX TRANSPORTATION, INC., a Virginia corporation (hereinafter referred to as "CSXT"), and DELAWARE AND HUDSON RAILWAY COMPANY, INC., a Delaware corporation and subsidiary of Canadian Railway Company (hereinafter referred to as "CPR"), hereby incorporate by reference an addendum to the Trackage Rights Agreement among NYC, CSXT and CPR dated _____, 19____ governing trackage rights between the parties.

SECTION 1. DESCRIPTION:

NYC, as owner, and CSXT, as operator, hereby grant to CPR, subject to the terms and conditions of the referenced Trackage Rights Agreement, and as further governed hereinbelow, right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as "Trackage Rights") over the following segment of NYC's railroad (hereinafter referred to as "Subject Trackage"):

NYC's railroad, (1) between connection of CPR and NYC at CP 485 (approximately mileage 484.74) of CPR's freight main line and CP 160 (approximately mileage 159.9) of NYC's Chicago Line, along the said Chicago Line and onto NYC's Hudson Line at CP 142 to the

connection with the Metro-North Railroad's ("Metro-North") ownership of the Hudson Line at Poughkeepsie (approximately mileage 73.6); (2) between connection of CPR's Voorheesville Running Track (approximately mileage 10.94) and NYC's Selkirk Branch at CP VO (approximately mileage 22.2), through Selkirk Yard, to CP 125 (approximately mileage 1.3) (where the Selkirk Branch meets NYC's Hudson Line) and between CP 125 (approximately mileage 125.6) on said Hudson Line to the connection with Metro-North's ownership of the Hudson Line at Poughkeepsie (approximately mileage 73.6); (3) between CP's Kenwood Yard (approximately mileage 7.1) on NYC's Albany Secondary Track to CP SK (approximately mileage 0.0) and through NYC's Selkirk Yard, including without limitation sufficient trackage within Selkirk Yard to permit efficient movement of freight as well as use of a "run-around track" at Selkirk Yard, and between CP SK (approximately mileage 11.5) on NYC's Selkirk Branch and CP 125 (approximately mileage 1.3) where the Selkirk Branch meets the Hudson Line and onto NYC's Hudson Line to the connection with Metro-North's ownership of the Hudson Line at Poughkeepsie (approximately mileage 73.6); and (4) between connection of Metro-North's ownership of the Hudson Line near High Bridge and the Oak Point Link then on the Oak Point Link to Harlem River Yard, through Harlem River Yard, then from Harlem River Yard over the Harlem River Lead connecting to the Fremont

Secondary/Industrial Track then on the Fremont
Secondary/Industrial Track from Oak to Mont and for connection to
the Long Island Rail Road at Fresh Pond Junction and from Oak
over the Old Bay Ridge Industrial Track to the end of the track
including the Hunts Point Market Lead, including without
limitation the right to use all track providing access to all
existing and future customers at or served by Harlem River Yard,
Oak Point Yard, and Hunts Point Terminal as well as the tracks in
such yards and terminal. The rights granted herein shall include
the right to service all existing and future customers in the New
York Metropolitan area including without limitation customers
near Oak Point Yard and Hunts Point Terminal as well as the right
to service all existing and future customers located along NYC's
Chicago Line and Hudson Line between the points referred to
above. CPR shall also have the right to use any branch line,
spur track, industrial track and industrial siding connecting to
these lines, including without limitation the Claverak/Hudson
Upper Industrial Track. CPR shall also have the right to
interchange traffic with any rail carriers connecting to these
lines now or in the future and the right to enter into any
necessary interchange agreements with such carriers, including
without limitation right to interchange traffic with the New York
and Atlantic Railway or any other rail carrier at Fresh Pond
Junction and shall have the right to enter into necessary

interchange agreements with such carriers, and further including the right to grant incidental trackage rights between Fresh Pond Junction, on the one hand, and Oak Point Yard, Harlem River Yard, and Hunts Point Terminal, on the other, to facilitate such interchange.

SECTION 2. SCOPE OF USE:

(a) The Trackage Rights herein granted are granted for the purpose of CPR using same to operate such rail service over the Subject Trackage as it may deem necessary or advisable to provide efficient and economical transportation consistent with the Interstate Commerce Act, including without limitation pick-up and set-out of bad order cars, necessary repair and servicing of equipment, and the operation of trains, cars or vehicles for inspection and management purposes. CPR shall have the right to serve all shippers on or served directly by the Subject Trackage, including without limitation the right to perform local freight service thereon; the right to switch and classify its cars at intermediate points on the Subject Trackage; the right to interchange cars with other carriers, directly or through switching tariffs or haulage arrangements and to operate onto or off of other carriers from points on the Subject Trackage; and the right to utilize all yards and facilities located on the Subject Trackage.

(b) Should the parties agree during the term of this Agreement, that CPR's single main track between the terminals of Subject Trackage is insufficient to accommodate the combined volume of the parties, then a second main track shall be constructed on the north (or other appropriate) side of the existing main track between the terminals of Subject Trackage, and CPR and CSXT shall share equally in the cost of such construction. At the conclusion of construction, NYC shall assume ownership of the north track and CPR shall assume ownership of the south track. This Agreement shall thereupon be terminated and superseded by a mutually acceptable joint facility agreement.

SECTION 3. COMPENSATION:

(a) The factor to be used in calculating payments to be made by CPR for the Trackage Rights governed by this Addendum shall be 29 cents (\$0.29) per car mile (hereinafter referred to as the "Current Charge").

(b) CPR will pay CSXT a sum computed by multiplying (i) the Current Charge, as may be revised in Section 4 of this Addendum (ii) the number of cars (loaded and empty), locomotive and caboose units moved by CPR with its own crews and power over the Subject Trackage by (iii) the miles of Subject Trackage used. Each locomotive unit and caboose, for the purpose of this Addendum, shall be counted as one (1) car. With respect to

articulated units, the number of cars shall be determined by calculating the average number of axels where four axels will count as one car.

(c) CSXT shall on or about the tenth (10th) day of each month render billing to CPR for CPR's previous month's use of the Subject Trackage computed in accordance with the terms and conditions of this Addendum.

SECTION 4. REVISION OF CURRENT CHARGE:

(a) The Current Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs as hereinafter provided.

(b) The Current Charge shall be revised upward or downward each year, beginning with the bill rendered for the month of July first following the "Effective Date" of this Addendum, to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads ("AAR"). In making such determination, the Final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Current Charge shall be revised by calculating the percent of increase or decrease in the index for

the latest calendar year as related to the index for the previous calendar year and applying that percentage to the Current Charge.

(c) In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977 appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration under terms of Article 16 of the Master Trackage Rights Agreement.

(d) At the option of either party hereto, the compensation provided for in this Addendum shall be open for renegotiation every five (5) years from the Effective Date, as hereinafter refined. In the event the parties fail to reach agreement upon such renegotiation, such failure shall not constitute a breach of this Addendum, and the parties shall continue to be bound by the terms of compensation provided in this Addendum until the matter is settled or submitted to binding arbitration.

SECTION 5. SWITCHING:

(a) As requested by CPR, CSXT, acting as agent for CPR, will perform switching of cars to and from all shippers and receivers (collectively, "Industry") served through the Oak Point

Yard, NY or any other rail facility in the Bronx Borough of New York City , for the account of CPR, and provide services as necessary to handle such traffic between such shippers and the yard. CSXT will use its own crews and locomotives to perform said services.

(b) For revenue purposes, cars switched hereunder shall remain in the account of CPR, and CSXT shall not be entitled to any line haul revenue for the handling of such cars, nor appear in any rates, routes or divisions pertaining to any cars in the account of CPR.

(c) CPR shall assume its own car hire expenses, and CSXT shall assess and collect all related demurrage charges.

(d) Cars handled hereunder shall be considered as having been delivered by one party to the other when placed on mutually agreed upon trackage designated for such deliveries, accompanied or preceded by the necessary data for forwarding and to insure delivery and acceptance by the designated representative of the receiving road.

(e) CSXT and CPR shall provide each other with suitable information (which may be transferred by paper documents, facsimile, or electronic means, or by other means, as mutually agreed) necessary for the handling of cars switched hereunder, which will identify for each car: (1) car initial and number; (2) loaded or empty; (3) destination station and consignee on

inbound movements; (4) origin and shipper as supplied by the shipper on outbound movements; (5) all required hazardous materials information; (6) any other information as agreed between the parties to be necessary or convenient for the safe, efficient movements of cars switched hereunder.

(f) CPR shall pay CSXT a rate of 250 dollars (\$250.00) for each loaded car handled by CSXT for the account of CPR to and from the Industry for the first six months of this Agreement. After said six months, at the request of either party, CSXT and CPR will jointly conduct a study to determine CSXT's actual cost of handling cars in the account of CPR to and from the Industry, and the agreed upon rate, hereinafter referred to as the "Current Switching Charge," will be retroactive to the effective date of this Agreement; provided, however, that such rate shall not exceed the switching rate CSX is permitted to charge under the December 12, 1997 "Agreement Between the National Industrial Transportation League, Norfolk Southern, and CSX" (NITL-11). The Current Switching Charge shall be subject to the same annual adjustment and renegotiation provisions as are set forth in Section 4 above.

SECTION 6. TERM AND TERMINATION:

(a) This Addendum shall become effective the latter of the date first above written, or when regulatory approval is received, the date of such approval and following the expiration

of any time periods required by the issuance of labor notices by CSXT ("Effective Date") and shall remain in effect until the 25th anniversary of such date, and shall continue in effect thereafter unless and until terminated by CPR upon six (6) months written notice, or until termination of the Trackage Rights Agreement.

(b) The rights, benefits, duties and obligations running from or to CPR under this Agreement shall in all events expire (except liabilities incurred prior to termination) upon the termination of this Agreement and the rights, benefits, duties and obligations running from or to CSXT under this Agreement shall in all events expire (except liabilities incurred prior to termination) upon the earlier of (i) termination of this Agreement or (ii) termination of the CSXT Operating Agreement including any renewals thereof); provided, however, that upon termination of the CSXT Operating Agreement, the rights, benefits, duties and obligations running from or to CSXT under this Agreement shall run from or to NYC.

(c) Termination of this Addendum shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Addendum prior to termination hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to the Master Agreement between the parties dated _____

_____, 19____ to be duly executed as of the date first above written.

WITNESS:

NEW YORK CENTRAL LLC

By: _____
(Title)

WITNESS

CSX TRANSPORTATION, INC.

By: _____
(Title)

WITNESS

DELAWARE AND HUDSON RAILWAY
COMPANY, INC.

By: _____
(Title)

**VERIFIED STATEMENT OF
PAUL D. GILMORE
CONCERNING OPERATING MATTERS**

**VERIFIED STATEMENT OF
PAUL D. GILMORE
CONCERNING OPERATING MATTERS**

My name is Paul D. Gilmore. I am Vice President Eastern Operations of the Canadian Pacific Railway Company ("CPR"). 1/ I also serve as Chief Operating Officer of the StL & H, and President of the D&H. Since my graduation from college in 1970 (Bachelor of Applied Science, University of Toronto), I have worked in various capacities for CPR and its railroad affiliates. As my career has progressed, I have served as an Engineer, Roadmaster, Trainmaster, Assistant Superintendent, Deputy Superintendent, Superintendent, and Assistant General Manager. I was appointed Senior Vice President Operations, Soo, 1989; Vice President Marketing & Sales, Intermodal Freight Systems, CPR, in 1990; and President of D&H in 1994, a title I still hold along with having been appointed Chief Operating Officer of StL&H in 1996.

In this statement, I describe the full-service trackage rights CP is seeking in this proceeding, and the nature of the operations CP proposes to conduct pursuant those rights, over the so-called "east-of-the-Hudson" line between Schenectady/Albany, NY, and Fresh Pond Junction, NY, which CSX Corporation and CSX Transportation, Inc. (collectively "CSX") will operate under an

1/ This statement is being submitted on behalf of CPR, Delaware and Hudson Railway Company, Inc. ("D&H"), Soo Line Railroad Company ("Soo"), and St. Lawrence & Hudson Railway Company Limited ("StL&H") (collectively, including CPR, referred to as "Canadian Pacific Parties" or "CP").