STB FD-33388 (SUB 91) 05/20/04 D 210992

210992

BEFORE THE UNITED STATES
SURFACE TRANSPORTATION BOARD

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY -- CONTROL AND OPERATING LEASES/AGREEMENTS CONRAIL INC.AND CONSOLIDATED RAIL CORPORATION	)	Finance No. 33388 (Sub- No. 91) (General Oversight)

Supplemental Submission by the Commonwealth of Pennsylvania Acting by and Through its Department of Community and Economic Development

The Pennsylvania Department of Community and Economic Development ("DCED"), by and through the undersigned counsel, and further to its appearance at the hearing on May 3, 2004 in this matter, is pleased to supplement the record of this case with the following information:

1. Correspondence between DCED and CSX regarding certain of the commitments undertaken by CSX in connection with the Conrail transaction, and

2. Further information relating to (a) the Board's question whether continued oversight is necessary and (b) the US Department of Transportation's suggestion that the Board conduct a proceeding to undertake some type of "final resolution" of the remaining issues regarding the commitments of NS and CSX.

I. Recent Correspondence Between CSX and the Commonwealth of Pennsylvania

At the May 3, 2004 hearing, the undersigned was approached by counsel for CSX, who suggested submitting to the Board the attached correspondence -- a letter from CSX to DCED dated. We agree with CSX that these letters will assist the Board in understanding CSX's progress to date in meeting the commitments it made to Pennsylvania in the letter agreement dated October 21, 1997 attached as Exhibit B to its comments submitted April 26, 2004. These December 22, 2003 and March 10, 2004 letters are attached as Exhibits A and B hereto respectively and incorporated by reference herein.

As a further supplement to this correspondence, and to put this correspondence in context, we have prepared a table showing CSX's commitments under its October 21, 1997 letter agreement and the progress to date in meeting them. Numerical headings correspond to those in the October 21, 1997 letter.

CSX Commitments in 10/2/97 letter	CSX Performance
1A. $10 mm investment in Kvaerner Philadelphia Shipyard	Completed
1B In cooperation with DCED and Philadelphia, $5 mil investment in land acquisition, facility construction in Philadelphia and throughout Commonwealth over five years	As described in Exhibits A and B hereto, CSX will be deemed to have fully performed its obligation under this paragraph upon completion of a complex land sale transaction under an agreement between CSX and the Philadelphia Regional Port Authority ("PRPA"). This agreement provides for the sale or lease to PRPA at prices based on appraisals of several parcels of land owned either by CSX or Conrail. However, as of the current date, this transaction has not closed, due to breaches of the agreement by CSX. Among other things, the agreement required CSX to deliver to PRPA an appraisal for the properties in question by January 15, 2003, and further required CSX "to cooperate with PRPA and use commercially reasonable efforts to support the acquisition or lease of the Conrail Parcels." CSX did not deliver the required appraisals until March 2004. More fundamentally, Conrail has refused to act in accordance with the agreement in several respects and CSX, although equal partners with Norfolk Southern in the ownership and control of Conrail, has failed to

	demand that Conrail comply with the Agreement. In addition, in 2001-02, CSX refused to fund its share of a $900,000 clearance upgrade to Conrail's Bustleton Branch needed to serve a frozen food distributor and other occupants of the Willits Road industrial park, Philadelphia, PA. CSX has actually funded only $40,500 in costs under this paragraph.
1C In cooperation with DCED and Philadelphia, establish new economic development incentive program to encourage rail-oriented economic development by assisting potential customers with land acquisition, facility construction, installation of sidings, etc.; $2 mm per year for five years.	Funded a total of $550,000 of such costs; refused to fund at least $2.2 mm of eligible costs after initially making verbal commitment to such funding. Failed to respond on timely basis to other funding requests.
1D Establish marketing agreement for Philadelphia between CSX and Philadelphia	No formal agreement entered into; however, joint marketing efforts have gone forward
1E Execute agreement for development of intermodal facility at Greenwich.	Completed; CSX developed intermodal facility at Greenwich
2A Philadelphia will remain headquarters of Conrail; Conrail to have 350 jobs in shared assets area	Conrail is currently seeking proposals from governments outside Pennsylvania for economic development assistance in connection with the possible relocation of its headquarters; Conrail currently has 33 jobs.
2B CSX to have 185 jobs in Philadelphia area	Substantially met; 167 jobs
2C CSX anticipates establishing regional office in Philadelphia to include governmental relations, industrial development, sales and operations	No such office established.
3 Facilities investment: $15 million in intermodal; :$4 million in Eastwick track connection; $3 million at Belmont siding	Obligations fully met.

As noted at the hearing, CSX has made better progress than Norfolk Southern in meeting the commitments in its October 1997 letter agreement, but substantial commitments remain uncompleted.

II. Further Information Regarding the Need for Oversight

As the undersigned explained to the Board at the hearing, the type of economic development projects that are coordinated and supported by the DCED, and as to which NS and CSX pledged assistance, typically involve the need to assemble financing from a variety of sources in a limited time frame. If financing cannot be assembled during that time, the project will not come to fruition.

Repeatedly over the past five years, NS and/or CSX have been approached to provide such assistance during the window of time in which such financing will make a difference to the project. In numerous cases, NS and CSX have either refused to provide financing in amounts that would have any material effect on the overall project, failed to respond to DCED's request to provide a commitment within the necessary time frame, or most egregiously, committed verbally to provide the financing and then failed to follow up on their commitments.

By way of illustration only, we can cite the following examples:

A. **U.S Gypsum Beaver County Project.** DCED, through the Governor's Action Team, reached a verbal agreement with CSX to participate but when the final numbers were put together the railroad greatly reduced their participation, which required the Commonwealth to assume the balanc of funding for the rail portion of this project in the amount of $2,200,208 to avoid losing this $100 mil project.

B. **Willits Road Industrial Park/Conrail Bustleton Branch Project.** Beginning in 2001, the Philadelphia Industrial Development Corporation requested Norfolk Southern and CSX to share the cost of a $900,000 clearance upgrade project to the Conrail Bustleton Branch, within the shared assets area. This clearance upgrade was urgently needed to permit food processing and distribution tenants in the PIDC Willits Road Industrial Park to receive modern cryogenically cooled oversize boxcars. Citing the failure of the tenants to generate sufficient *existing* rail business, neither Norfolk Southern nor CSX was willing to pay any portion of the cost of the upgrade.

The Board could best provide assistance by requiring, as suggested in DECD's oral presentation at the May 3 hearing, that NS and CSX provide quarterly reports concerning their progress in meeting the commitments contained in their October 1997 letter agreements with Pennsylvania. DCED would be pleased to submit reports on the same schedule. DCED believes that if it appeared that the Board were paying close attention, there would likely be significantly greater progress towards meeting the railroads' commitments.

With due respect to the undoubtedly well-intentioned suggestion of the US Department of Transportation that the Board could terminate its oversight after having an adjudication in the immediate future to determine precisely how NS and CSX should meet their obligations going forward, we do not believe that such an adjudication could substitute for further oversight by the Board.

Economic development projects arise intermittently and irregularly on schedules determined by the needs of the underlying businesses involved in these projects and entirely beyond the control of DCED. For the railroads' commitments to be meaningful, it is essential that that their general commitments be translated into approval of specific project expenditures during the limited period when DCED is able to bring a specific project to fruition in Pennsylvania. The board has already ordered the railroads to comply with their representations, which they made in substantial detail in their October 21, 1997 letters.

We note that Norfolk Southern's and CSX's commitments did not contain any time limitation. It is certainly not to Norfolk Southern's or CSX's disadvantage to pay their obligations in 2004 or 2005 or 2006 dollars rather than in 1997 dollars. But DCED does fully expect that Norfolk Southern and CSX will eventually meet their commitments fully. DCED respectfully urges the Board to continue oversight of their compliance until such compliance is complete or until the parties have resolved this issue through a negotiated settlement.

Respectfully submitted this 20th day of May 2004

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By: /s/ JOHN M. WHITLOCK
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EXHIBIT A

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CSX
REAL PROPERTY

D. Kevin Hurley
Assistant Vice President

December 22, 2003

RECEIVED
DEC 29 2003

Mr. David Yeager
Director –Governor's Action Team
100 Pine Street, Suite 100
Harrisburg, PA 17101

Dear ~~Mr. Yeager~~ David:

This will respond to your recent request for an update on commitments made by CSX to the State of Pennsylvania and City of Philadelphia in correspondence dated October 21, 1997 from then Chairman, John Snow.

The letter addressed several areas and, for consistency sake, I will follow the same format.

Economic Development

A. CSX has provided $10 million in investment to supplement the public effort to attract Kvaerner ASA to the Philadelphia Navy Yard.

B. CSX has committed to invest a minimum of $1 million per year over five years for rail served economic development programs. To date, the following expenditure has been made with the approval of the State:

PIDC: $40, 000 for upgrade and maintenance of PIDC trackage in its Northeast Philadelphia Industrial Park.

It is the balance of this fund that is requested be applied as credit to certain railroad land purchases in South Philadelphia by the Philadelphia Regional Port Authority. The credits would be applied only to land owned by CSX or Conrail and if these transactions are consummated, the committed funds would be exhausted.

C. CSX committed to establish a customer incentive program making $2 million available for each year for five years for land acquisition, facility construction and installation of rail sidings in exchange for contractual obligations for certain levels of rail business. The following funds have been expended under this program:

U. S. Gypsum: $349,254 for the construction of two yard tracks in the CSX Aliquippa Yard to support industry.
U. S. Gypsum: $200,538 for the installation of two sidetrack turnouts to serve the plant.

The U. S. Gypsum expenditure was instrumental in locating this industry in Western Pennsylvania with $140 million in new investment and 250 new jobs.

D. CSX and the City of Philadelphia through the Philadelphia Industrial Development Authority have developed a joint marketing plan, a copy of which is attached.

E. CSX and the Delaware River Port Authority have entered into a lease agreement providing for DRPA's Intermodal terminal on CSX property in Greenwich Yard.

F. The Commonwealth and CSX were successful in receiving federal funds for clearance improvements on the West Trenton line from Philadelphia to the New Jersey border.

Jobs

After the merger of Conrail into CSX and Norfolk Southern Railway, the remaining Conrail operations remained headquartered in Philadelphia. CSX did establish a new regional office presence in Philadelphia with law department, corporate communications and facilities management personnel.

Capital Expenditures

The new Intermodal facility at Greenwich Yard was constructed and is in operation at an estimated cost of $20 million.

The track connection at Eastwick Interlocking was completed.

The proposed siding known as Belmont Siding was constructed.

Passenger Rail

CSX and Conrail continue to work with SEPTA to ensure on-time passenger and freight operations. The SEPTA Trackage Rights Agreement was extended on a renewable basis.

Civic and Charitable Giving

All of Conrail's pre-merger philanthropic commitments were met and CSX and Conrail continue to be active members of the communities in Pennsylvania in which they locate.

I enjoyed meeting you today and hope that this information gives you a better understanding of CSX's commitment to Pennsylvania and the City of Philadelphia.

Sincerely,

Kevin

D. Kevin Hurley

EXHIBIT B

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
HARRISBURG, PA 17120

OFFICE OF SECRETARY

March 10, 2004

Mr. D. Kevin Hurley
Assistant Vice President
CSX Real Property
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RE: Letter Agreement between the Commonwealth of Pennsylvania, City of Philadelphia and CSX Corporation dated October 21, 1997

Dear Mr. Hurley:

I am writing in response to your request that the Commonwealth of Pennsylvania, in partnership with CSX Corporation, accept the funding of the remaining balance of the Economic Development Fund as described in the above referenced agreement.

Accordingly, we understand based on your correspondence to David Yeager dated October 29, 2003 and December 22, 2003 that CSX would like to apply the remaining balance of funds in the amount of $4,960,000 toward the acquisition of land purchases in South Philadelphia by the Philadelphia Regional Port Authority. This amount would be applied only to land owned by CSX or Conrail and if these transactions are consummated, the committed funds by CSX would be fully funded. Therefore, I accept this expenditure under the terms of our letter agreement.

Sincerely,

Dennis Yablonsky

Dennis Yablonsky
Secretary

Cc: David Yeager
Terry Newburger
Brian Ross
James T. McDermott, Jr.
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Roy Kienitz

BEFORE THE
SURFACE TRANSPORTATION BOARD

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY -- CONTROL AND OPERATING LEASES/AGREEMENTS -- CONRAIL INC. AND CONSOLIDATION RAIL CORPORATION	**) Finance No. 33388 (Sub- No. 91)** **) (General Oversight)**

CERTIFICATE OF SERVICE

This is to certify that on the 20th day of May, 2004, the undersigned caused the Supplemental Submission of the Commonwealth of Pennsylvania Acting by and Through its Department of Community and Economic Development to be served on the parties in the above-captioned proceeding, by electronic mail on those parties for whom a valid electronic mail address is listed in the service list for this matter, and by United States Mail, first class postage pre-paid, on the remaining parties:

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Date: May 20, 2004

/s/John M. Whitlock
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Formal Filing

Docket #: FD -33311 -91 -

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STB FD-33388 (SUB 91) 05/03/04 D 210782

210782

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May 3, 2004

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BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board - Case Control Unit
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Re: Finance Docket No. 33388 (Sub-No. 91)
CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company, et al. – Control and Operating Leases/Agreements – Conrail Inc., et al.

Dear Secretary Williams:

Enclosed for filing in the above matter are ten additional copies of the two handouts referenced by Gary, Indiana Mayor Scott King during his oral presentation on behalf of the Four City Consortium at this morning's Conrail Oversight hearing. These handouts include:

1. A letter from CSX dated April 28, 2004, concerning CSX's continued cooperation with the Four City Consortium after the end of the formal Conrail oversight period; and

2. A schematic showing the principal rail lines in the Four Cities area, including the Four Cities' proposed Alternative Freight Corridor between Willow Creek, IN and State Line Tower (Hammond) via Tolleston, Ivanhoe and Gibson, IN.

Please date-stamp the enclosed extra copy of this letter and return it to our messenger. Thank you for your attention to this matter.

Sincerely,

Christopher A. Mills
Attorney for the Four City Consortium

CAM:dmb
Enclosures

cc: Dennis G. Lyons, Esq.
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CSX CORPORATION

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April 28, 2004

J. Justin Murphy, Chief of Staff
Four City Consortium
6949 Kennedy Avenue, Suite E
Hammond, IN 46323

Re: Surface Transportation Board Conrail Proceeding

Dear Mr. Murphy:

I thank you for your letter of April 21, 2004 concerning the scheduled termination of the Surface Transportation Board's five-year oversight period for the Conrail Transaction. CSX believes that the Conrail Transaction has benefited the four cities of East Chicago, Gary, Hammond and Whiting, Indiana, and we are very pleased that you concur with that assessment.

In connection with the Conrail Transaction, CSX made a substantial capital investment within the Chicago terminal area, including the Four Cities, to facilitate the smooth and expeditious movement of freight rail traffic. This investment has accomplished this goal, and has also reduced blockage of the many rail/highway grade crossings in the Four Cities area. In addition, pursuant to our October 26, 1998 and January 3, 2001 Settlement Agreements, CSX made additional investments in the Four Cities area to upgrade highway/rail at-grade crossing signal warning systems at specified important crossings, committed funds for other safety improvements, contributed to the Railroad Avenue grade separation project, and implemented a number of operational improvements that have further reduced grade crossing blockage and improved safety in the Four Cities area. Moreover, CSX representatives have met and consulted with representatives of the Four Cities on a regular basis regarding rail operations, real property and economic development issues, and a proposed major infrastructure project (the reconstruction of the elevated IHB/Conrail Dunes Park Branch).

We look forward to continuing our meetings and discussions, which have been productive for many years without the need for any intervention by the Board. With the passage of time, our reporting and meetings may have become less formal, but they have been no less beneficial. Even with the end of formal oversight, we will continue to meet with the Four Cities to discuss matters affecting our rail operations and facilities in your area. Continuing cooperation will serve the interests of both CSX and the Four Cities.

CSX
CORPORATION

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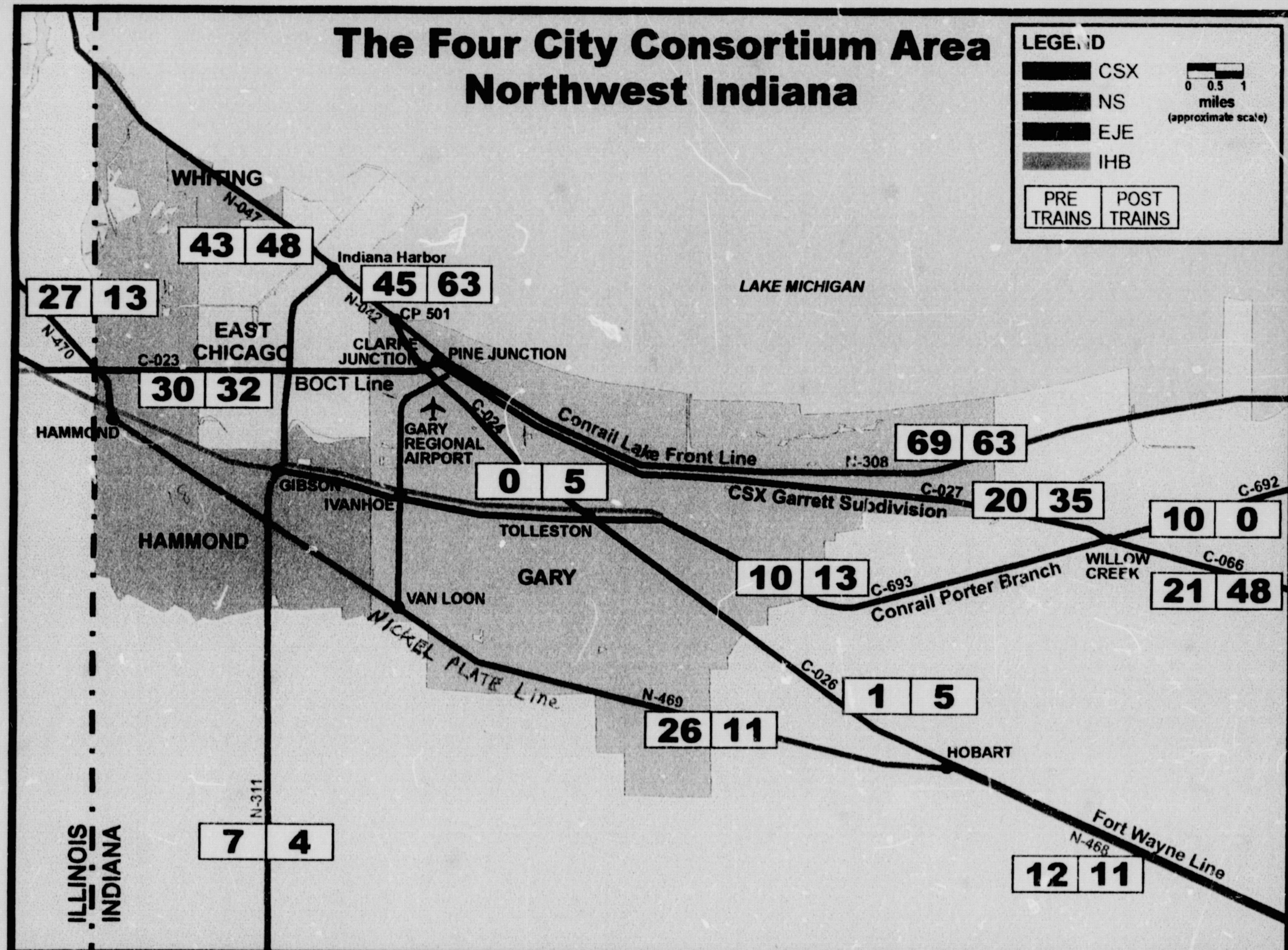
We will contact you shortly to discuss how we can best work together during the next several years.

We appreciate your efforts over the last seven years as Chief of Staff, and the efforts of representatives of each of the Four Cities, to ensure that the Conrail Transaction benefited the citizens of northwest Indiana while providing the basis for a sound rail transportation network in the eastern United States.

With best regards.

Sincerely,

Peter J. Shudtz
Vice President-Regulatory Affairs and
Washington Counsel



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June 1, 1998

STB FD-33388 (SUB 91) 05/03/04 D 210786

210786

Michael J. Ward
Chairman, President and CEO
CSX Corporation

Testimony before the Surface Transportation Board

May 3, 2004

Thank you Mr. Chairman. I am delighted to be here this morning to share with you the CSX view on the Conrail transaction and the oversight period that is now drawing to a close.

My testimony this morning won't read like one of those old O. Henry short stories – always in doubt, right up to the surprise ending. I will tell you right at the outset today the three points that make up my message:

We believe the Conrail transaction to be a success…We believe the Board's 5-year oversight period that followed the transaction has achieved its objectives; and that we are now at a time when additional oversight is unnecessary – and the ordinary authority of the STB is more than sufficient to ensure that the public good continues to be served.

Our success is a credit to the Board – both for your oversight role and for your role in the development of the Safety Integration Plan. And, it's a credit to my colleagues on the CSX team, and at Conrail and NS as well – who, despite our otherwise fierce competitive relationship, made sure this transaction was a success for all concerned, especially rail customers and the American consumer.

From the outset, we saw the Conrail Transaction as a tremendous strategic opportunity. The challenge was to achieve something that had never been done before – divide a Class I railroad, integrate it effectively and create a competitively balanced eastern railroad system. I believe that working with the STB, and with NS, we have risen to the challenge.

When you look at what has been achieved over the past five years – on behalf of our customers, short line partners, employees, and the public -- as well as our own long-term growth – and then compare it to the objectives, it is clear the Transaction has been a success.

- We set out to extend market reach into the northeast and within the Midwest, growing traffic and replacing exclusivity with competition.

- We set out to provide customers with two balanced rail competitors in the East.

- We set out to improve efficiency.

- We set out to make significant capital investments to improve the infrastructure.

- We set out to shift traffic from other modes to our railroad, easing the burden on U.S. highways, with all the benefits that entails for the environment and transportation safety.

By any one of those measures, the transaction was a positive – by all of those measures, taken together, a success that strengthens transportation in the United States.

Without question, this Transaction has done what we said it would do: It has brought balanced rail competition to the major markets of the Mid-Atlantic and Northeast -- areas formerly served solely by Conrail.

Mr. Chairman, CSX also takes enormous pride that we executed this complex transaction safely – the most important task faced by any railroad. That was something that was drilled into me from my first day on the Chessie System 27 years ago, and it is fundamental at CSX today.

In the rail business, you can't talk about service without taking about safety. Good operations are safe operations – period. I believe we set the pattern on Split Date – a direct result of more than a year of intense planning and preparation. I managed the integration effort for CSXT, and it was a major challenge. We had trains on new routes, and crews on new territories. We had to face overnight changeovers in information systems with tremendous potential for error. All of this had to be accomplished in the unforgiving railroad environment. We came through the split safely. That achievement speaks not just to the commitment of our managers, but also to the dedication of our crews, dispatchers, yardmasters, and indeed all of the 34,000 employees of CSX. And, it demonstrates the extraordinary level of cooperation between Norfolk Southern and CSX.

Mr. Chairman, you know me – I always tell it like it is. The fact is, after two years of hard-won improvements in 2001 and 2002, our safety record slipped in 2003. There are no excuses for this. Just as we have with our operational changes, we have put renewed accountability on our managers to restore the safety levels we have achieved before, and set our sights on taking home the Harriman Award – the rail industry's award for the nation's safest railroad.

What I want to do for the next few minutes is take a deeper look at the five objectives I outlined and describe how the Transaction has worked to the overall benefit of all stakeholders.

Opening New Markets

First, Mr. Chairman, is the goal of opening new markets. It was strategically vital for CSX to extend its market reach into the Northeast. The largest consumer market in the country, and the largest port on the east coast, was just out of reach. We knew we had to be there. The Conrail acquisition gave us the opportunity.

Our ability to compete in northeastern markets – and our enhanced capacity in the Midwest – has been pivotal to an important element in our competitive strategy: Increased modal conversions – moving traffic from trucks and barges over to rail.

Mr. Chairman, you've heard a lot about truck-to-rail conversions, but we're wining business from water carriers too. Here's a quick snapshot of the kinds of moves we've been able to make since the Conrail transaction:

- With USX in the first quarter, we moved more than 1,200 cars of coking coal from Bessemer, PA to Gary, Indiana. This movement displaced four 25,000-ton vessels.
- Working with General Mills, we are moving an anticipated 1500 carloads of wheat from two Great Lakes locations to Buffalo, displacing 20 barges a year.

On the truck side of modal conversions, intermodal traffic will continue to be our biggest growth market for the foreseeable future. As more goods are produced overseas and shipped to the United States in containers, CSX Intermodal is in an excellent position to move them. For CSX, intermodal traffic is up 11% since the Transaction was completed. This is the result of strong increases in east-west traffic and the infrastructure investments we made to ensure our physical plant could provide the capacity necessary to meet new customer demand.

As an example, we invested $2.3 million last year to expand our Bedford Park Intermodal Terminal to address increasing customer demand and operating constraints.
In addition, to complement our B&O capacity project, which I will discuss later, we constructed the 59th Street Intermodal Terminal in Chicago, to meet the market growth of the Conrail transaction.

In addition to growing our business through modal shifts, CSXT is reaching new markets with new services.

Take the new market we're making as we move municipal solid waste – from the Northeast, which is home to the greatest concentration of consumption in the country, to underutilized landfills in the southern U.S. This is a market that didn't exist for us four years ago. Now, building on the economies and efficiency of rail – it's grown to $120 million last year, a new record.

There's also TRANSFLO, our integrated provider of logistics management, distribution services, and bulk transloading. We have a TRANSFLO terminal within 50 miles of every major metropolitan city on our 23-state system. By enabling customers to reach buyers who don't have rail sidings, TRANSFLO has enabled us to grow our market position in the northeast.

Another example is ExpressLane, a CSXT/UP service that moves perishable goods quickly across the country in temperature-controlled boxcars that preserve fruits, vegetables, and other time-sensitive products – and get them to their intended markets while consumers still have plenty of time to enjoy them.

We're proud of this kind of innovation. And we recognize that the STB's Conrail decision helped make its success possible.

Balanced Rail Competition in the East

The second objective of the Transaction that I mentioned, Mr. Chairman, was to bring balanced rail competition to the East. This has yielded significant benefits, according to many who feel the impact every day – including port authorities such as the Port Authority of New York and New Jersey, and NIT League members and shippers.

When you look at the competitive service the East now enjoys, it's important to keep in mind that it benefits the region as a whole, not just those areas that see direct rail-to-rail competition. If a major retailer, for example, is looking to locate a warehouse in the region, the fact that it has two Class I railroads competing to provide service widens the options. This is exactly what balanced competition in the East means.

I think all of us involved recognized from the outset that the Transaction would present unique challenges. As you know, Mr. Chairman, we spent a great deal of time in Trenton last month talking about operations in the Shared Asset Areas – a true success story, as two fierce competitors have proven that they can work together. Three carriers operating in the Shared Asset Areas – on infrastructure designed for only <u>one</u> -- is an example of the difficulties we faced – and how successfully we have followed through.

Mr. Chairman, we've seen the operating cooperation in the Shared Asset Areas replicated in other areas on our system. Consider the rail service for shippers in the Monongahela Coal Area. Christopher Marsh of Consol Energy is here today, and I know he will be speaking about our success there. As you know, Conrail's former Monongahela Railroad properties were conveyed to Norfolk Southern, but CSX paid to have full and equal access to the mines served on the line. Obviously, this presented challenging operational issues – two operators sharing what is mostly single-track railroad, with relatively few passing sidings. In addition, it is often complicated to load at a mine, and MGA lines are often blocked.

The solution? CSXT agreed to an operating arrangement under which NS conducts all operations on the line, using CSXT locomotives to position our coal cars for our customers. It was not an easy decision – giving our competitor sole control over service to a number of our customers. Ultimately, this required trust in our competitor, the NS…but the success of this operation demonstrates that that trust was well founded.

Increased Efficiency

Mr. Chairman, we have pursued another of our goals – increased efficiency – in several ways.

First and foremost, consider the benefits afforded many shippers through new, single-line service. By eliminating interchange between CSXT and Conrail, we reduced costs and reduced transit times…and the development of more direct routes resulted in increased commercial opportunities for shippers. In addition, our expanded network and development of more direct routes have made CSX competitive with trucks in the intermodal business, TRANSFLO, waste products, produce, and many other markets.

We've also improved car handling – reducing handlings between CSXT and CN, BN, and UP between 5 and 12 per cent -- due to Gateway Optimization, largely made possible by the Conrail Transaction. The increased volumes help us move more "run-through" trains, without interchanges that add an average 24-hour delay. We've also been able to expand our "pre-blocking" capability -- where blocks of cars can be handed off between carriers as single units. Our customers have benefited by reduced handling damage, improved transit times, and the introduction of new competitive products made possible by improved utilization of assets.

Infrastructure Investments

Another of our objectives was to make significant capital investments in infrastructure. We proposed about 50 capital projects in our Transaction Application -- and we've completed almost all of them, from the construction and upgrading of mainline tracks, connection tracks, and sidings; to the installation of new signaling systems, control systems and the expansion and upgrade of many yards and intermodal facilities.

Overall, we have invested almost $800 million to integrate the Conrail assets into the CSXT system. That includes our B&O double track project: CSXT's $220 million dollar centerpiece capital project to fully exploit the opportunities of acquiring our share of Conrail. This new double-track rail superhighway connects CSXT's former B&O mainline to Chicago with Conrail's Water Level Route to New York. The B&O double track -- which took 18 months to complete -- added 101 miles of new second main line, making it one of the most ambitious rail building projects undertaken anytime in the last 25 years.

In addition to the capital projects described in our June 2000, 2001 and 2002 filings, we also invested in our infrastructure and in the communities through which we operate in connection with the Board's environmental conditions and our settlement agreements. In the Shared Assets Areas in particular, CSX and NS have also invested $75 million from 2000 through 2003 to maintain, enhance and upgrade our shared infrastructure.

Mr. Chairman, we were together at the announcement of the CREATE project in Chicago last year – and I know the personal interest you take in this kind of collaborative, cooperative project, in which the federal government, cities, states, and railroads are investing $1.5 billion in essential infrastructure – eliminating commuter delays both by rail and on the highway, and opening commercial development of a key downtown Chicago corridor. Of that $1.5 billion, railroads are putting up more than $200 million. To my mind, the Conrail transaction facilitated CREATE by making it simpler to reach a unified rail position on the project. Without the Transaction, we would have had one more Eastern railroad at the table, with one more point of view, making it just that much more difficult to achieve the consensus essential to CREATE.

Reducing Truck Traffic

Of course, the true test of this or any Transaction is whether it improves competitiveness – and thereby serves the consumer. That's the beauty of our market system – and it's the basis of the gains we see from the Conrail transaction.

Strip away the complexities and CSX's goal is simple: Grow revenues profitably. But in doing so, we contribute significantly to reducing highway freight traffic. Our goal is bottom-line driven, of course, but it also contributes significantly to the relief of congested highways and diminished air pollution emissions.

And, as the Board's environmental analysis concluded, modal conversion reduces energy consumption significantly.

As we forecast seven years ago in our original application, the Transaction has indeed converted traffic from the highways to our railroads. We've developed some innovative ways to achieve that.

One example is our Load Board initiative, which allows CSX Intermodal to provide capacity in the spot market for brokered freight. Here's how it works: First we inventory our excess train capacity, then we get online and bid to carry freight otherwise destined for truck transport. It's a door-to-door solution. This was non-existent business for us two years ago and today we're moving 1,500 truckloads per week through the Load Board – and we don't think we're anywhere near this program's potential.

Building for the Future

Mr. Chairman, a moment ago I described the hundreds of millions of dollars we have invested in capital infrastructure, improved efficiency, and new products. The competitive market we're in guarantees that the investments we're making won't stop even when your oversight ends. When you look at the investments we've made, it is not surprising that public benefits have come faster than private benefits – and that the benefits have reached our customers even before they've reached our shareholders.

Here's what we're doing going forward:

We've launched a management restructuring and organizational effectiveness initiative to better focus on the highest value work, give our managers clear roles and increased responsibility, and -- as a catalyst for superior performance – give additional emphasis to that critical ingredient: Accountability. We've already reduced the number of management layers from 11 to a maximum of eight. For many managers, we increased the number of direct reports. And across the company, we've got a team in place that is a terrific mix of professionals: Experienced railroaders, plus accomplished people from outside the industry who are enriching CSX with their fresh insights and new energy.

I mentioned our ONE Plan initiative earlier this morning -- our major network redesign.

At the heart of our ONE Plan is the opportunity to make our routings and handlings more efficient. And in doing so, we'll reduce dwell time…creating new locomotive capacity. We'll eliminate terminal handlings…and for every handling we eliminate, we take approximately 24 hours off delivery time. And we'll save on car-miles too…Each car-mile we save is worth more than 40 cents per car. Last year we moved over three billion car miles in our merchandise markets alone…so the potential cost savings are obvious.

ONE Plan is our way to deliver on our operating and financial improvement goals -- the only way to effectively compete in the marketplace, and provide the service our customers have come to expect.

Beyond our ONE Plan, we're focused on the sale or lease of between 800 and 1200 miles of railroad across our system. Our assessment suggests that short lines are better positioned to manage some parts of the network, and the sale or lease of this track will better enable us to maintain the right-sized system, better manage capital requirements and expenses, while still generating new, quality revenue.

These are just a few of the ways we're positioning ourselves for progress in the years ahead.

We have invested in improved capacity – –locomotives, terminals, and line of road.

We have invested in the development of Internet-based customer service tools, in keeping with our philosophy that CSX wants to be easy to do business with. We have invested in new products that allow us to reach beyond our track network – such as TRANSFLO and Intermodal.

We have invested in the environment. That includes our development of an innovative system that cuts down locomotive idling time, improving our fuel efficiency and reducing air pollution. With fuel prices now over $1 per gallon, this is also an increasingly significant aspect of cost controls.

In short, we have invested in the future. We are building a stronger tomorrow for CSX, by improving our ability to meet our customers' needs today.

In the next few years, we expect our shareholders to see the benefits of continued growth and operating efficiencies. The Conrail Transaction has positioned CSX to reap the operating efficiencies of an expanded network.

CSX has already had tremendous success in growing our revenue, including eight consecutive quarters of surface transportation revenue growth, despite a soft economy. Last year CSX produced revenue growth that outpaced the general economy in many commodity areas. Over the last two quarters, surface transportation revenue was the highest on record.

We're going to continue to focus on profitable revenue growth – matching our capacity to grow revenue with a comparable ability to cut costs…

…And we're going to do that while continuing to introduce innovative products and technologies.

The Conrail Transaction laid the basis for more efficient operations, including fewer train miles due to more direct routes, reduced switching costs, and more efficient car utilization. We are determined to build on that base.

I am confident that these steps – combined with our investments in products, systems and technology – will lead to the profitability we are targeting.

A Successful Oversight

Mr. Chairman, as this oversight process draws to a close and I look back over the past five years, I am proud of how much we have achieved. I want to thank the team at CSX, and our partners in the process at Conrail and NS. I also want to thank you and the staff at the Surface Transportation Board for guiding this process toward the public good. As citizens, we sometimes hear about government efforts that go awry. To the contrary, this is one of the instances where government goals were met, and where government oversight achieved its objective.

Mr. Chairman, the benefits of this transaction have been widespread.

- Extending market reach into the Northeast.
- Providing two balanced competitors in the East.
- Improving service and efficiency.
- Making significant capital investments in infrastructure.
- Taking trucks off the highways

...All in ways that promote the competition that benefits our customers, who in turn serve the consumer.

Mr. Chairman, you have my word that that focus – serving the customers who serve the consumer – will remain the goal that guides CSX. Thank you. I look forward to your questions.

STB FD-33388 (SUB 91) 05/03/04 D 210785

210785

STATEMENT OF DAVID R. GOODE
Chairman, President and Chief Executive Officer
Norfolk Southern Corporation

Before the Surface Transportation Board
Conrail transaction oversight hearing
Washington, D.C.
May 3, 2004

Thank you, Chairman Nober, for this opportunity to present the views of Norfolk Southern on the Conrail transaction.

We are at the end of the Surface Transportation Board's five-year formal oversight period. The Board set up this oversight period to ensure that the conditions it imposed worked as intended and to determine whether the transaction resulted in any major competitive issues. In its decisions at the end of the first four years of oversight, the Board found that the conditions have worked as intended.

We believe that continues to be the case. Accordingly, we recommend that formal oversight should terminate as scheduled. It should not be extended.

It is useful to review the broad contours of the transaction the Board approved in 1998.

Before 1998, there were three major rail systems in the East – Norfolk Southern, CSX and Conrail. Significantly, though, while there was competition in the southeast, most areas north of Maryland and east of Ohio were served by only one Class I railroad – Conrail – and had been for more than 20 years.

The Conrail transaction approved by the Board in 1998 divided the use and operation of most of Conrail's 10,500-mile system between NS and CSX.

A very important and, indeed, unique aspect of the transaction was that both NS and CSX would serve shippers on some 700 miles of lines to be retained by Conrail in three Shared Assets Areas – the North Jersey, South Jersey/Philadelphia and Detroit SAAs.

NS and CSX both have the right to operate on those lines, but they serve most of the shippers in these areas through a physical interchange with Conrail. Conrail handles the traffic for those shippers as the agent of either NS or CSX.

This aspect of the transaction brought direct, two-carrier competitive service to shippers in important population and industrial centers in the Northeast that had not had such service for many years. The transaction also gave CSX access to shippers on some 190 miles of line allocated to NS in what we call the "Monongahela," or "Mon," coalfields in Pennsylvania and West Virginia.

In assessing whether the transaction has met the expectations of the Board, I refer to the Board's specific approval language in 1998. The Board said – and I quote here – "the transaction will result in a pro-competitive restructuring of rail service throughout much of the Eastern United States. … After the transaction is fully consummated, both CSX and NS will provide vigorous, balanced and sustainable competition, each over approximately 20,000 miles of rail line in the East."

The history of the past five years shows that the transaction has lived up to the Board's expectations. The transaction greatly expanded the single-line reach of NS and CSX in the eastern United States. Shippers now enjoy single-line service on NS between all points on our former system and many former Conrail points in New Jersey, Maryland, West Virginia, New York State and Pennsylvania. That provides better service.

The transaction also brought new two-carrier competitive service to the Shared Assets Areas and the Mon coalfields and that is working smoothly and well. Perhaps most importantly, the transaction resulted in two competitively balanced rail systems serving the eastern United States. NS and CSX are now engaged in strong competition, not only with each other but also with other modes of transportation, particularly trucks – a factor that was important at the outset, but it has become much more important since the transaction was approved.

In specific terms, the transaction has led to improvements at Norfolk Southern in safety, service, and competition.

First, with respect to safety, the Board required NS and CSX to prepare Safety Integration Plans and to work with the Federal Railroad Administration to ensure that those plans were properly implemented.

We did that. I am very pleased to report that those efforts, representing the hard work and commitment of a lot of people, have paid off.

In 2003, Norfolk Southern employees won their 14^{th} consecutive E.H. Harriman gold medal award for achieving the lowest employee injury ratio among Class I railroads. CSX won the silver award. Conrail won the silver award in the switching and terminal railroad category.

While we can never be satisfied when it comes to safety, we have every reason to believe the transaction has been successful from a safety standpoint. The good results of all three participants in the industrial benchmark competition illustrate that.

Regarding customer service, the story is also strong. After some initial challenges, we are very pleased that the service metrics on Norfolk Southern are the best ever. In the first quarter of 2004, our network velocity (based on average train speed) reached an all-time high and was among the best in the industry. The average dwell time for cars in Norfolk Southern terminals has decreased from 25.3 hours in 2000 to 22.9 hours in 2003. And overall, our network fluidity has continued to improve, and this, of course, only serves to increase our ability to compete more effectively against other rail carriers and against other modes of competition. In recent days increasing traffic volumes have been handled without disruption to the system.

In addition, of course, the transaction has created vigorous new rail-to-rail competition throughout the former Conrail territory. The prime beneficiaries of this new competition, but by no means the only ones, are shippers and communities in the Shared Assets Areas, which were the focus of the Board's hearing in Trenton last month, and intermodal shippers in the critical Chicago-New York and North-South lanes, which now have two carriers competing for their business.

The expanded reach of our system and the new rail-to-rail competition brought about by the transaction has allowed us to achieve some noteworthy results in addition to the overall improvements in our service metrics that I've mentioned. These include:

- An increase of 230,000 intermodal units handled by Norfolk Southern from 2000 to 2003;

- An increase in rail traffic in the Shared Assets Areas of almost 10 percent from 2000 to 2003.

- A steady increase in the number of carloads interchanged with our short line partners in the Shared Assets Areas from 9,521 in 2000 to 12,228 in 2003.

- A record number of Norfolk Southern coal trains moved in the Monongahela Valley in February and March 2004.

- An increase in our north-south intermodal traffic through Hagerstown, Maryland from just over 30,000 units in 2000 to 90,000 units in 2003, and with an additional 28,000 units handled in just the first quarter of this year. These increases are particularly gratifying because it is traffic that, before the Transaction, Conrail had little incentive to move on a joint-line basis. We are now better able to move it because of the single-line service that the Transaction created.

- Another instance of this increased north-south traffic is the explosive growth of intermodal traffic into and out of the Ohio Valley. As just one example of this, the number of intermodal units we moved between the Ohio Valley and Norfolk Virginia more than doubled from 2000 to 2003.

I think it's important to understand that our business has changed in major respects since the transaction was approved. The economy today is very different from 1998. Our traffic base has diversified as a result of our expanded reach and greater efficiency and competitiveness. This means that Norfolk Southern today has greater flexibility to respond to economic and market changes than before the transaction. A good example is our export coal business. Despite a downturn in that business in the years after 1998, we have more than made up for it in other areas, such as automobile and intermodal. Our success in doing that is apparent by any measure I can apply. I note parenthetically that we have seen some upward trends in the export coal market, and I can only say that I hope that this trend continues.

It's also important to note that over the last four years, we've made very substantial capital investments in the former Conrail territory. Our major projects have included:

- New intermodal facilities in Rutherford, PA, Maple Heights, Ohio, and soon at the former Navy base in Philadelphia, PA;

- An expansion of our yard in Croxton, New Jersey;

- Major improvements in coal lines and facilities on the former Monongahela Railroad, in central Pennsylvania to serve the Keystone plant in Shelocta, PA, and in Baltimore, MD and Stratton Ohio

- Other major improvements in our yards at Enola, PA and Bison Yard in Buffalo, NY;

- We have increased the weight limits on lines on the Delmarva Peninsula from 263,000 pounds to 286,000 pounds, which has greatly improved the economics and opportunities for our coal and grain customers in the Peninsula.

- Major reconfiguration of our track structure through Cleveland.

- In partnership with Delaware, reconstructed the Shellpot Bridge, which, when completed, will positively affect operations through Wilmington, DE.

In addition, over the last four years, Norfolk Southern has spent almost $95 million annually on program rail, tie and ballast program work on former Conrail lines, and this year we have budgeted an additional $110 million.

In other words, the Conrail transaction has been a success. We haven't always made everybody happy. We have had to systematically improve service levels. That has, however, occurred, and we now have a stable, well-tuned system in the former Conrail areas. Not everything is perfect. Some issues were raised in the first four years of oversight. The Board addressed them in its previous decisions, and other issues likely will be raised in these hearings.

For the most part, however, the issues raised have been the kinds of issues that arise routinely between railroads and their customers. They are concerns about service or problems affecting a particular locality. They are important to the parties, but they are not really related to the transaction. Moreover, they are issues that carriers and their customers can – and routinely do – resolve in the normal course of business without the need for Board intervention or oversight.

In that connection, I note that Larry Parsons of the Wheeling & Lake Erie will not be here to speak today. He asked me to convey his regrets and to inform the Board that he is very pleased that the Wheeling and Norfolk Southern have been able to reach a tentative resolution of the various issues between the two railroads. He asked me to convey his appreciation for the hard work that went into that result.

In summary, we think the Board's previous conclusions continue to apply today. The conditions it established for the transaction have worked as intended. No major competitive – or other – problems related to the transaction have occurred.

No party has demonstrated any transactional or other issues that warrant extending the formal oversight period beyond its five-year term. We therefore request that the Board not extend its formal oversight and the periodic reporting requirements that go along with it.

Of course, the Board retains jurisdiction, even in the absence of a formal oversight proceeding, to address any major problems related to the transaction that might arise in the future.

Thank you again, Mr. Chairman, for the opportunity to appear before you today. I will be pleased to answer any questions you might have.

STB FD-33388 (SUB 91) 05/03/04 D 210784

210784

Before the
Surface Transportation Board
Washington, D.C.

CSX Corp. and CSX Transportation, Inc., Norfolk Southern Corp. and Norfolk Southern Railway Co. -- Control and Operating Leases/ Agreements -- Conrail, Inc. and Consolidated Rail Corp. (GENERAL OVERSIGHT)	Fin. Dkt. No. 33388 (Sub- No. 91)

Statement of the
United States Department of Transportation
May 3, 2004

The Conrail Transaction changed the landscape of railroading in the Eastern United States. Beginning with the filing of the initial application in 1997, and continuing through Decision No. 89 in 1998, the June 1999 "Split Date" and early implementation troubles, and five years of formal oversight, the Surface Transportation Board has considered and resolved an extremely broad array of issues: intramodal and intermodal competition, rate monitoring, fee and service prescriptions, shipper contracts, and environmental and community impacts. In coordination with the Board, the Federal Railroad Administration worked with CSX and Norfolk Southern (collectively, the Applicants) to ensure that all safety issues were addressed.

Through the terms of the original application, numerous settlement agreements, and far-ranging conditions, the Board has striven to make sure that this new landscape serves the public interest. An unprecedented increase in rail competition in the Shared Asset Areas and elsewhere, the reintroduction of rail service "East of the Hudson," and noise/pollution/congestion mitigation measures have all been put in place. Over the last five years the STB has monitored these and other conditions to determine whether they were working as intended and were complied with by the Applicants. See Fin. Dkt. No.

33388 (Sub-No. 91) General Oversight Decision No. 1 (STB served February 9, 2000) slip op. at 2.

The oversight process during that period has followed a familiar course. Initially, a relatively large number of parties raised serious issues about the Applicants' compliance with various conditions. As time passed, the number of active participants and issues raised in the annual oversight proceedings declined. Cf., e.g., General Oversight Decision No. 5 (STB served February 2, 2001) and General Oversight Decision No. 11 (STB served January 16, 2004). The Board also reduced the reporting burden imposed on Applicants. General Oversight Decision No. 10 (STB served November 11, 2002).

Nonetheless, complaints about the Applicants' compliance with conditions have continued, albeit at a low level. Allegations have most often focused on non-compliance with one condition in particular: that the Applicants "must adhere to all of the representations they have made during the course of this proceeding." CSX Corp., et al. -- Control -- Conrail, Inc., et al., 3 S.T.B. 196 at 387(1998) (ordering paragraph 19).

Most parties claiming noncompliance with this condition have not sought specific relief from the Board because of continuing discussions with the Applicants. See General Oversight Decision No. 10, and General Oversight Decision No. 11, both supra. The STB has properly taken no affirmative action in these circumstances. Id. Now, however, the scheduled end of the oversight period, the reduced number and volume of complaints, and the interests of finality suggest that the time has come to resolve all remaining issues and end formal oversight.

Perhaps not surprisingly in so massive a transaction, the Applicants made a great many commitments to a great many parties in the course of this proceeding. By imposing adherence to these commitments as a condition of approval, the Board relied upon those representations to a major extent in meeting the "public interest" standard. The declining number of claims from individual parties indicates that the Applicants have by and large fulfilled their obligations in this respect. It is also clear from the presentations made earlier in New Jersey and from written statements submitted, however, that such issues remain. These encompass both representations made or conditions imposed for the benefit of individual parties as well as those of a more fundamental nature, such as whether the structure, funding, and decisional processes of Conrail allow it to function as intended in the Shared Asset Areas.

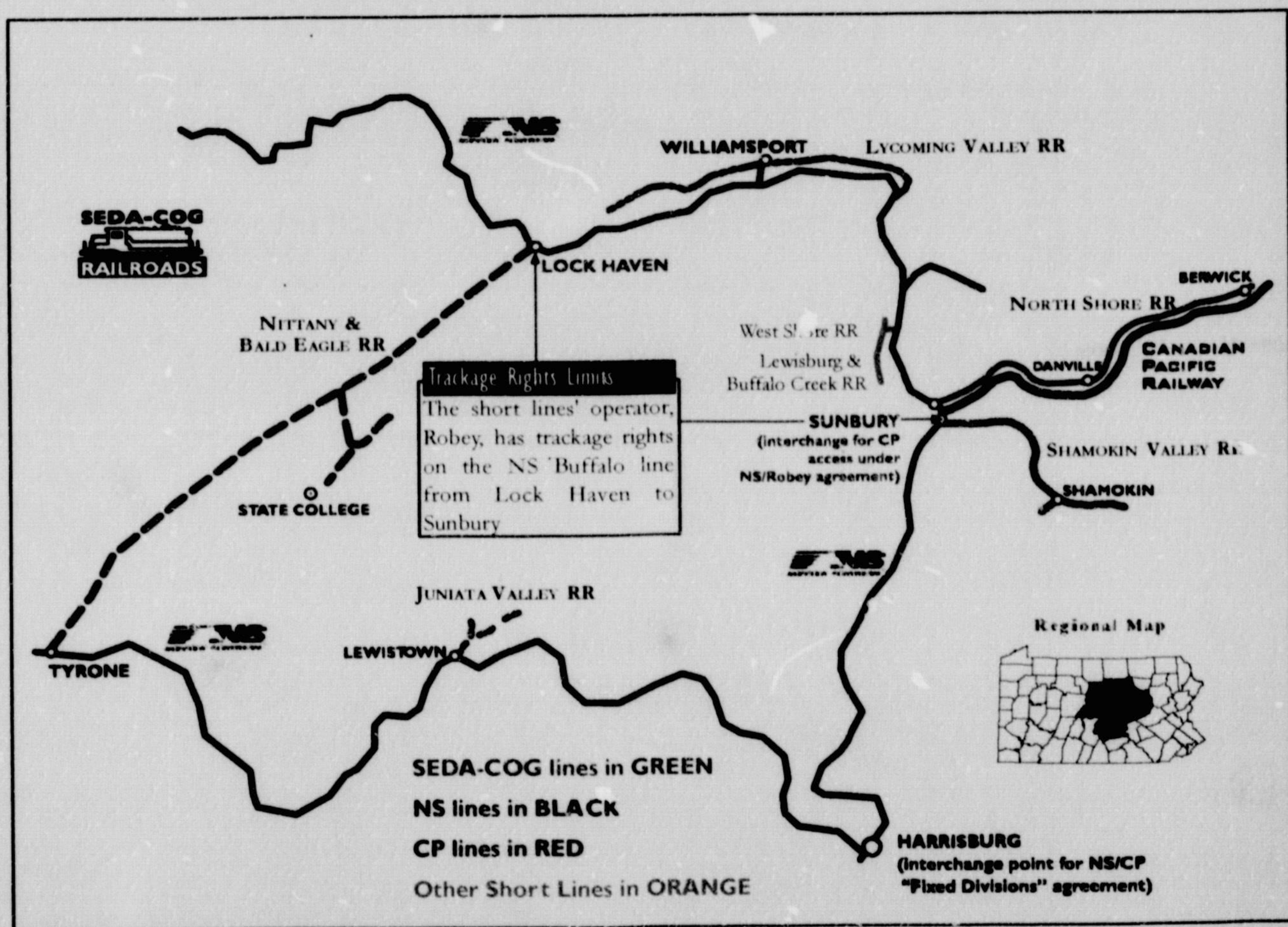
After five years it is time to resolve these lingering questions. The record compiled to date suggests that the Board's conditions have worked overall. What remains is for the Board to bring about an appropriate conclusion of the pending issues. Specifically, complaining parties should identify the specific representations made or other conditions imposed and allegedly unfulfilled, and present the evidence and arguments on which they rely to support their claims. The Applicants should be given an opportunity to present any rebuttal or other response.

The procedures now in place -- these oral hearings and the corresponding written statements, as well as the opportunity for written comments scheduled for July -- provide the proper framework. After that this proceeding should be closed. For any serious concerns that may subsequently arise, the Board has repeatedly emphasized its authority to take appropriate action without regard to the existence of a formal oversight proceeding. See Fin. Dkt. No. 33556 (Sub-No. 4), Decision No. 4 (served December 27, 2001). Existing rules on reconsideration and reopening provide another safeguard for any subsequent serious concerns. 49 C.F.R. § 1115.4.

STB FD-33388 (SUB 91) 05/03/04 D 210783

Testimony before Surface Transportation Board
May 3, 2004
Washington, D. C.
Submitted by:
SEDA-COG Joint Rail Authority - Lewisburg, PA 17837

My name is Jeffery K. Stover I am Executive Director of the SEDA-COG Joint Rail Authority ("JRA") which is affiliated with the SEDA-Council of Governments. JRA is an eight county Pennsylvania municipal authority created in 1983 to acquire rail lines and preserve rail service on Conrail branch lines slated for abandonment.[1] Commencing with acquisition of two Conrail lines in 1984, the JRA now owns five operating rail lines totaling 195 route miles that handle approximately 30,000 carloads of traffic annually. The preservation and readily available rail service on the JRA lines has been instrumental in economic development activity and expansion of employment in Central Pennsylvania over the last twenty years. All our lines are operated by companies owned and managed by Mr. Richard D. Robey ("Robey") and his rail operations are financially self supporting.



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[1] The counties which comprise SEDA-COG JRA include Centre, Clinton, Lycoming, Mifflin, Montour, Northumberland, Columbia and Union Counties.

The JRA is mindful that it has a residual common carrier service obligation. For this and other important reasons we value an effective working partnership with Norfolk Southern Corporation ("NS") as all our former Conrail lines now connect with NS. In addition we coordinate closely with Mr. Robey and his staff on economic and industrial development projects.

Since 1999, economic development related to rail infrastructure has continued to move forward despite early problems related to the split of Conrail. The first year after the "split date" was trying for all parties, but since then the quality of service we receive from NS is generally satisfactory. Further, the access to the Canadian Pacific Railway ("CP") that has been enjoyed since 1999 has allowed our region to compete effectively for new and expanded industrial development-providing for increased traffic and revenues for our five short lines and both Class 1 railroads in the region. The JRA's mission is furtherance of economic development through the retention, improvement and expansion of both rail infrastructure and rail service.

In previous oversight proceedings, the JRA expressed serious concerns related to service issues during the transition from Conrail and in regard to unresolved interchange commitments that had been made by NS in connection with the acquisition proceeding. At this juncture, the service issues have been resolved or they are being managed to the extent that they no longer present serious problems for JRA.

However, not all of our previously expressed concerns relating to interchange expectations arising out of pre-acquisition commitments by NS have been resolved at this point. We hope on-going efforts will produce long term solutions and results that will prove to be both satisfactory and beneficial to all interested parties including NS, JRA and the rail dependant shippers in the region we serve.

To fully understand our current issues, however, we must look back to the breakup of Conrail and its subsequent events as they affected Central Pennsylvania.

With encouragement from JRA and its constituent shippers, and at the behest of NS, Robey supported NS in its quest to acquire major portions of the Conrail system including a direct connection with the Robey/JRA rail lines. The JRA was supportive of the NS acquisition as well. In recognition of this support, NS committed in June of 1997 to grant trackage rights to facilitate the connection of Robey's leased lines and to permit direct interchange with the CP at Sunbury for traffic originating or terminating at local points on CP or at points on carriers that connect only with CP. In a letter dated June 10, 1997, NS also stated that connecting the five Robey railroads and providing access to CP would be initial steps to grow business in the region. This letter was referenced by both Robey and JRA in prior submissions and statements to the Board.

JRA, its constituent shippers, and its connecting short lines were apprised of the NS commitments. Following the split of Conrail in June of 1999, NS encountered monumental operating problems and CP access at Sunbury, PA was crucial in keeping some industries going in Central Pennsylvania. No effort was made to formalize the NS commitment for many months. In reliance on this arrangement, the shippers grew new business in new traffic lanes. The result has been increased rail traffic for the JRA, CP, and significantly, the NS; all parties have realized a net gain in rail traffic and revenue. The region has also benefited from the creation of new jobs.

On September 1, 2001, NS and Robey entered into a complex trackage rights agreement purporting to formalize the NS commitment. The NS/Robey agreement substantially restricts access to CP and provides sanctions against Robey for traffic handled in violations of the strictures.

Central Pennsylvania shippers and their suppliers are not privy to the September 1, 2001 agreement. As a result of continuing expectations based on the June 1997 commitment, we understand numerous inbound shipments received via interchange with CP over the past three years are now claimed by NS to have been misrouted in violation of the private two party agreement. Many of these shipments were routed by Midwest grain brokers who had no knowledge of routing restrictions imposed by the private agreement. Simply put, the existing NS/Robey agreement differs from expectations of service users and is difficult to administer and which can actually foster misrouted cars resulting in violations of the existing agreement-a situation that none of the affected parties wants to see.

The problem has escalated to serious proportions in Central Pennsylvania as it threatens serious impacts on transportation service accessible to regional shippers and the JRA as well as two private short lines over which Robey also operates: the West Shore Railroad ("WTSE") and Lewisburg & Buffalo Creek Railroad ("LBCX").

The affected shippers and JRA seek to achieve five goals related to expectations from prior NS commitments:

- The agreement with NS should fulfill the access to CP promised by the 1997 NS letter to Robey.

- The agreement with NS should provide that the traffic that can be interchanged directly with CP at Sunbury is the same as the traffic that can be interchanged indirectly with CP via Harrisburg (the latter being their "fixed divisions" agreement whereby NS provides haulage from Harrisburg to the Robey interchange at Northumberland, PA).

- The agreement with NS should provide that all existing traffic should be meaningfully "grandfathered", even if it does not meet the new definition of covered traffic under the prevailing NS/Robey agreement.

- The agreement with NS should be permanent.

- The agreement with NS should apply to the owners (JRA, WTSE, LBCX) of the various rail lines, and to the Robey railroads and any successor operators of the lines. An agreement with a specific operator is temporal; the agreement needs to be able to be transferred to a different operator in the future.

The JRA is optimistic that further discussions and negotiations with NS regarding these issues and the regional rail network will be fruitful. The JRA recognizes the importance of continuing to be a valued partner with NS and will endeavor to do so. The JRA is currently engaged in discussions with NS which hopefully will result in constructive resolution of the access issue and other issues of mutual interest and concern. Since this matter has been identified as a serious concern during the oversight process we believe that continuation of oversight for an additional year would be helpful in facilitating a resolution in the interests of all concerned.

For further information:

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STB FD-33388 (SUB 91) 04/30/04 D 210764

210764

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

Re: Finance Docket No. 33388 (Sub-No. 91); *CSX Corp., et al. - - Control and Operating Leases/Agreements - - Conrail, Inc., et al. [General Oversight]*

Dear Sir:

We represent the State of Maryland in this proceeding. The State has elected not to appear at the hearing the Board will hold on May 3, 2004 in this matter, and appreciates the opportunity to submit this written statement of its position with respect to the Oversight Proceeding.

In the main proceeding that led to the approval of the transactions, the implementation of which the Board is now "overseeing" in this proceeding, the State of Maryland executed and submitted for the record letter agreements with both CSX Corporation and Norfolk Southern Corporation, respectively (each dated September 24, 1997). These letters included commitments from both companies as to the actions they would take to preserve and improve rail service in the State following the implementation of these transactions. In its letter agreement, NS stated its intention to provide the improvements listed there. In its letter, CSX made specific "commitments" to undertake improvements and to preserve the integrity of the MARC train commuter rail service operated on CSX's lines in the State.

In a filing in this Oversight Proceeding dated July 14, 2000, the State provided a comprehensive listing of the status of the two rail carriers' commitments. *See,* Attachment 3 to Letter dated July 14, 2000, from Hon. John Porcari (then, Maryland's Secretary of Transportation) to Hon. Vernon Williams. The status at that time was less than heartening from the State's perspective. Since that time, we have appreciated the Board's continuing oversight of the railroads' performance.

We are pleased to report that representatives of both companies continue to work with the State to implement the commitments they made in order to secure the State's support for the transaction. In a recent meeting with representatives of Norfolk Southern, the State heard that the company recognizes that it has a continuing obligation to work on implementation of the items described in the 1997 letter. Representatives of CSX, similarly, have continued to work with the State to monitor the quality of service provided to commuters in the MARC service, and to find ways to improve the quality of rail and intermodal service available to shippers in the State.

The story is not over, because economic factors and other matters have prevented the railroads from implementing all of the actions described in the 1997 letters within the time frames described. We will continue to work with our railroad partners to fulfill our mutual obligations under those letter agreements.

Thank you again for providing the State with the opportunity to comment on this matter.

Respectfully submitted,

Charles A. Spitulnik
Counsel for the State of Maryland

cc: All Parties of Record

STB FD-33388 (SUB 91) 04/29/04 D 210753

210753

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VIA HAND DELIVERY
The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 711
Washington, DC 20423

Re: STB Finance Docket No. 33388 (Sub-No. 91), CSX Corporation, et al. -- Control and Operating Leases/Agreements -- Conrail Inc. et al. (General Oversight)

Dear Secretary Williams:

Enclosed for filing on the record of the referenced proceeding please find an original and ten copies of the Verified Statement of John F. Guinan, Assistant Commissioner of the New York State Department of Transportation. Mr. Guinan will be appearing at the May 3, 2004 oversight hearing on behalf of the State of New York and NYSDOT.

The unexpected unavailability of key State officials whose participation and approval were necessary for the preparation and submission of the Statement precluded its submission by August 26, 2004, as provided by the Board's scheduling order. Acceptance of the Statement should not prejudice the rights of any party, however, as copies of the Statement are being served this date on counsel for CSXT and Norfolk Southern, and Mr. Guinan will be present at the hearing to response to any questions. Therefore, New York respectfully requests that Mr. Guinan's Statement be accepted for inclusion in the record of this proceeding.

Mr. Vernon Williams
April 29, 2004
Page 2

Thank you for your consideration in this matter.

Sincerely,

Kelvin J. Dowd
An Attorney for
The State of New York

KJD:dmb

Enclosure

cc: Mr. David Konschnik
Richard A. Allen, Esq.
Dennis G. Lyons, Esq.
Mr. John F. Guinan

STB Finance Docket No. 33388 (Sub. No. 91)

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

Verified Statement of John F. Guinan Assistant Commissioner New York State Department of Transportation

April 28, 2004

My name is John F. Guinan, and I am Assistant Commissioner of the New York State Department of Transportation (NYSDOT). I am submitting this Statement on behalf of the State of New York and NYSDOT. New York appreciates the opportunity to continue its participation in this proceeding, on behalf of its citizens, communities and resident businesses.

In its principal Comments on the then-proposed acquisition and division of Conrail by CSXT and Norfolk Southern in October, 1997, New York outlined its historic financial, legislative and regulatory support for a sound and efficient freight rail system, and the importance of such a system to the economic health of the State. Particularly as regarded CSXT and Norfolk Southern's plans for Conrail, New York noted the applicants' claims that approval of their proposal would lead to expanded and enhanced freight service at reduced costs; expanded market opportunities for regional shippers;

significant diversions of freight traffic from overburdened highways; and short and long-term synergies and efficiency gains that would benefit all affected constituencies. Inasmuch as over 90% of the freight tonnage moving to and through in New York was controlled by Conrail, New York was numbered among those who the applicants claimed would gain from the transaction.

New York supported the stated goals of the Conrail acquisition plan, and acknowledged that many elements of the applicants' proposal as they related to the Conrail lines within the State did offer an improvement over the then *status quo*. As New York explained, however, on balance the unconditioned approval of the CSXT/Norfolk Southern proposal would fail to meet the goals set by the applicants and serve the public interest. New York proposed seven (7) specific conditions which, if adopted, would enable the State and the STB to conclude that the applicants' plan was consistent with the public interest. Those conditions were:

1. An order requiring CSXT to grant trackage rights to New York's carrier nominee over the portions of the Hudson Line that would be controlled by CSXT from the Selkirk interchange with CP Rail to the end of Conrail's Fremont Secondary, to permit dual rail carrier service to points east of the Hudson River.

2. A directive that CSXT and NS take steps to open the Buffalo area to rail competition and to improve the rail infrastructure in the region.

3. The establishment of an oversight period to monitor the safe co-existence of CSXT and NS freight service with commuter and inter-city passenger service throughout New York.

4. The full assumption by CSXT and NS of Conrail's continuing obligations under 13 enumerated contracts with New York or its agencies.

5. A commitment by CSXT and NS to continue and expand Conrail's cooperation with and participation in the New York High Speed Passenger Rail Program to upgrade infrastructure between Albany and Buffalo and between Albany and New York City, above and beyond passenger-related contract projects.

6. A commitment by CSXT and NS to enhance and expand the passenger rail infrastructure in New York, in conjunction with Amtrak.

7. The imposition of conditions to protect the interests of New York's short line railroads, including the Livonia, Avon and Lakeville Railroad ("LAL"), which sought the elimination of a restriction on its access to the Genessee Junction Yard that limited LAL to a single Class I line-haul connection.

While CSXT and Norfolk Southern initially opposed the conditions sought by New York, eventually they agreed to assume and fulfill all contracts to which Conrail was a party. They also agreed to work in good faith with New York and other states to address issues regarding passenger service efficiency and safety. These commitments represented progress in two (2) of the key issue areas raised by New York in its Comments.

In its July, 1998 Decision approving CSXT and Norfolk Southern's acquisition and division of Conrail, the STB imposed the following specific conditions for the benefit of New York and its constituents:

1. An order directing CSXT to negotiate unrestricted trackage or haulage rights in favor of CP Rail over the Hudson Line from Selkirk to Fresh Pond.

2. A requirement that CSXT adhere to its representations regarding intended investments in new connections and upgraded facilities in the Buffalo area. These included: (1) upgrading Conrail's computer technology and fueling facilities; (ii) maintaining or increasing current Conrail employment levels; (iii) providing NS with overhead trackage rights to Suspension Bridge; (iv) working with other carriers to schedule switching and through movements to reduce congestion at points like CP Draw;

and (v) "investing substantial funds" in network improvements to reduce shipping time and enhance service reliability.

3. A directive that CSXT cooperate with New York and NYCEDC to study the feasibility of upgrading the New York Cross-Harbor car float and tunnel facilities.

4. A requirement that CSXT establish a committee with New York City officials to develop ways to promote increased truck-rail traffic diversions to and from New York City, and a committee with Buffalo regional and local authorities to promote rail traffic growth in that region.

5. A directive to CSXT to negotiate an agreement that would grant LAL trackage rights over the Genessee Junction Yard sufficient to allow LAL to connect with the Rochester & Southern Railroad ("RSR"), and to both carriers to enter agreements as needed to limit the scope of "blocking" or other restrictive interchange provisions in leases and contracts between Conrail and short lines generally.

In addition, the STB broadly mandated that CSXT and Norfolk Southern must adhere to all of the representations that they made to the STB and various parties during the course of the case. Among other things, the effect of this general condition was to bind CSXT and Norfolk Southern to their commitments to assume Conrail's obligations under its various contracts with New York, as well as to the representations made by both CSXT and Norfolk Southern in their respective Safety Integration Plans.

Over the ensuing years since the STB's Decision, New York carefully monitored CSXT and Norfolk Southern's implementation of their Conrail plan, and their compliance with the conditions imposed by the STB on the transaction. Through NYSDOT, the State legislature, and a number of localities, state agencies and political subdivisions, New York continued its active engagement in the promotion of freight rail service and the enhancement of the freight rail infrastructure, with a specific focus on working with CSXT and Norfolk Southern to promote the stated goals and claimed benefits of their joint takeover of Conrail.

In many respects, CSXT and Norfolk Southern can claim technical compliance with the STB's New York conditions. The State's contracts with Conrail were assumed and have been performed; CSXT and CP Rail entered into an agreement for unrestricted trackage rights on the Hudson Line; and the Cross-Harbor, Buffalo and New York City study committees were formed and meet as specific issues arise. In the key areas of infrastructure improvements, freight service quality enhancements, expansion of marketing opportunities, and a general commitment to the growth of the New York freight rail transportation system, however, CSXT and Norfolk Southern have failed to live up to the expectations set by their original application. Indeed, New York's experience has shown the carriers retreating from the goals and benefits that they touted in 1997, even as the State has worked to support their achievement. Some examples of this disturbing pattern follow.

Buffalo Region

Following the completion of CSXT's upgrades to computer and fueling facilities and Norfolk Southern's expansion of Bison Yard, the railroads effectively suspended efforts to enhance infrastructure and improve freight service efficiency in the Buffalo area. CSXT eliminated a crew shift at its Frontier Yard, and closed its Seneca Yard south of Buffalo altogether. The latter yet may be resurrected as an intermodal facility, due to a $4 million capital infusion provided by the State. Otherwise, however, we are unaware of any projects or specific plans for the carriers themselves to invest in network improvements to reduce shipping times and enhance service reliability, as they represented they would during the STB's consideration of their Conrail proposal. Additionally, the rail workforce appears to have been reduced in the Buffalo area.

General Rail Infrastructure

From the inception of their takeover of Conrail, CSXT and Norfolk Southern both expressed concerns that the property tax structure in New York, as applied to railroad assets, created a disincentive to new infrastructure investment. In response, the New York legislature enacted--and Governor Pataki signed--the NYS Rail Infrastructure Investment Act of 2002. This legislation is one of many steps by which New York has materially supported rail infrastructure development since the Conrail transaction was completed. Indeed, since 1998 New York has expended or programmed approximately $185 million in State and federal funds to improve the State's rail network.

The 2002 Act provided significant property tax relief for existing rail property as well as for new railroad infrastructure investment. Essentially, the law created a 10-year property tax valuation exclusion for new investments in rail facilities and infrastructure improvements. The program covers the value of the new investment regardless of the source of the invested capital. Thus, the railroads can claim the exclusion even where the State provides part or all of the funding for the improvements.

Despite this extraordinary outreach by New York in direct response to the carriers' expressed concerns, neither CSXT nor Norfolk Southern has submitted a project for qualification under the program.

Compounding their apparent lack of follow-through on the commitment to improve and enhance the freight rail infrastructure in New York, both railroads have closed economic development offices in the State. These moves adversely impact efforts to promote and market expanded rail freight service in New York, one of the stated goals of the carriers' Conrail plan.

<u>The LAL Railroad</u>

As I noted above, LAL was the beneficiary of a specific condition imposed by the STB on its approval of the Conrail acquisition. Soon after the STB's Decision, CSXT entered into an agreement with LAL granting the latter access over the Genessee Junction Yard to effect interchange with the RSR, as required by the condition. According to LAL, however, CSXT's commitment to the purpose and intent of the condition has not extended very far beyond the signing of the agreement.

The Genessee Yard is used principally by LAL and RSR. CSXT's only use of the yard is to set off and pick up cars to and from LAL. However, the LAL-CSXT agreement provides that CSXT would rehabilitate and maintain the Yard to FRA Class 1 condition. LAL had sought to acquire the Yard in the Conrail proceeding, but CSXT argued (successfully) that divestiture was unnecessary in light of its commitment to rehabilitate and maintain the tracks. LAL and RSR thus must rely on CSXT to facilitate smooth and efficient interchanges between them.

In June, 2000, CSXT performed a "safety tie" replacement sufficient to reduce the likelihood that the track would come apart under a train. However, according to LAL, this work did not bring the track up to FRA Class 1 standards, and CSXT has yet to rehabilitate the Yard as promised during the Conrail proceeding and effectively ordered by the STB. Since 2000, track conditions have continued to deteriorate with very little attention from CSXT beyond emergency-type repairs. The results have been rail spreads, derailments, and the closing of tracks in the Yard due to unsafe conditions. Both LAL and RSR have suffered losses because of CSXT's neglect, including lost revenue due to service interruptions and significant cleanup and re-railing costs following derailments.

Southern Tier Rail Lines

As a result of the Conrail transaction, Norfolk Southern assumed control over two rail lines in New York's Southern Tier. The Southern Tier Mainline extends from Buffalo to the Northern New Jersey port area. The Southern Tier Extension runs from Corry, PA to Hornell, NY, where it connects with the Southern Tier Mainline.

Norfolk Southern is to be commended for its cooperation with the Southern Tier Rail Authority, the State and the Western New York and Pennsylvania Railroad to complete a sale-leaseback arrangement which resulted in the re-establishment of rail service to many local businesses, and a through rail route for the diversion of Norfolk

Southern coal trains. However, New York has concerns regarding the future of the Southern Tier Mainline.

The Portage Bridge over Letchworth Gorge between Buffalo and Binghamton was identified by the FRA as a safety concern during the Conrail proceeding. This segment also is used by CP Rail via trackage rights to connect freight movements from the Canadian border to its rail network at Binghamton. While Norfolk Southern now has an alternate route via the Southern Tier Extension, CP Rail must depend on its trackage rights over the NS lines via Portage Bridge.

Although the FRA report found that the Portage Bridge has a limited life without extensive rehabilitation, Norfolk Southern has not announced any plans to address the Bridge's existing condition or operating plans in the event that the bridge becomes unuseable. This is a matter of great concern to New York and the interests of expanded rail freight service, as loss of the bridge would dramatically reduce CP Rail's effectiveness as a competitor in the western part of the State.

In addition, the portion of the Southern Tier Mainline between Binghamton and Port Jervis, PA is significantly underutilized, and has been identified by Norfolk Southern as a candidate for sale or lease. So long as Norfolk Southern's intentions regarding the Southern Tier Mainline are not clear, the State's transportation capital and freight rail development plans remain incomplete.

Grade Crossings

Finally, but by no means least, serious concerns have arisen over the prospect of CSXT system downgrades contributing to increased risks at grade crossings, especially in the Rochester, NY area. Investigations are underway by the FRA and others into the specific causes of accidents and grade crossing protective device malfunctions, and the steps that could or should have been taken to avoid them.

Reducing the number of highway grade crossings was among the programs incorporated in CSXT's Safety Implementation Plan, and ensuring that all railroads that operate in New York dedicate the necessary human and financial resources to properly maintain safety devices and other equipment at the crossings which must remain is a State priority. New York will continue to monitor the situation and report further findings to the STB, the FRA, and/or other appropriate federal authorities as they become available.

* * *

New York remains willing and prepared to work with CSXT and Norfolk Southern earnestly and in good faith, to address the matters described above and otherwise try to realize the promise of expanded rail freight service and enhanced transportation efficiency that was part and parcel of the carriers' Conrail plan. Expanding and improving rail transportation is an important goal of New York. The State has worked to fulfill its role by increasing its investment in rail infrastructure and assisting the carriers doing business in New York through initiatives such as the 2002 property tax legislation discussed above. We ask the STB to provide continued oversight to assure that carriers fulfill their commitments to New York.

VERIFICATION

COUNTY OF ALBANY)
) SS:
STATE OF NEW YORK)

John F. Guinan, being duly sworn, deposes and says that he has read the foregoing Verified Statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.

____
John F. Guinan

Sworn to and subscribed before me
this ____ Day of ___, 2004.

____
Notary Public for the State of New York

My Commission Expires ______________________________.

VERIFICATION

COUNTY OF ALBANY)
) SS:
STATE OF NEW YORK)

John F. Guinan, being duly sworn, deposes and says that he has read the foregoing Verified Statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.

John F. Guinan
John F. Guinan

Sworn to and subscribed before me
this 28th Day of April, 2004.

Yvie J. Dondes
Notary Public for the State of New York

My Commission Expires July 6, 2007.

YVIE J. DONDES
Notary Public, State of New York
No. 4902123
Qualified in Albany County
My Commission Expires July 6, 2007

STB FD-33388 (SUB 91) 04/29/04 D 210748

210748

American Chemistry Council Good Chemistry Makes it Possible

April 29, 2004

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

Re: STB Finance Docket No. 33388 (Sub-No. 91)

Dear Secretary Williams:

On April 15, 2004, I submitted to your office the original and 10 copies of the Notice of Intent To Speak of the American Chemistry Council ("ACC"). In my transmittal letter, I noted that I would subsequently inform you who would represent ACC at the Surface Transportation Board's hearing in this matter on May 3, 2004.

I will speak on behalf of ACC. Because I am submitting this letter by means of the Board's new e-filing process, I would appreciate having your office confirm receipt by a phone call (703-741-5172) or e-mail (tom_schick@americanchemistry.com). Thank you for your cooperation.

Sincerely,

Thomas E. Schick

Thomas E. Schick
Assistant General Counsel

cc: Julia M. Farr, Esq.

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Other Submissions

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Docket #: FD -33388 -91 -

Subject: * Conrail General Oversight
First Name: * Thomas
Middle Name: E.
Last Name: * Schick
Address: * 1300 Wilson Blvd.

City: * Arlington
State: * VA
Zip Code: * 22209-2307
Email Address: * tom_schick@americanchemistry.com
Group/Affiliation: American Chemistry Council
Message: Attached are "pdf" & "doc" versions of letter identifying ACC's speaker @ Monday's hearing on Conrail oversight. Please advise of receipt.

STB FD-33388 (SUB 91) 04/29/04 D 210716

210716

CEMEX

Kenneth R. Pramik
Director Transportation
Cemex, Inc.
840 Gessner, Suite 1400
Houston, Texas 77025
(713)-722-6059
kennethrpramik@cemexusa.com

APR 29 2004
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April 28, 2004

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

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Dear Secretary Williams:

Ref: STB Finance Docket No. 33388 (Sub- No. 91)
And my letter dated March 18 requesting time to speak at the May 3 public hearing

Please excuse me for just now sending my written testimony to the Board. The information in the Federal Register indicated "written statements by persons speaking…may be submitted prior to the hearing but are not required." I spoke to Mr. Rudolph Saint Louis on Monday, who indicated I should submit a statement in advance. Enclosed is my statement along with ten copies of my intended remarks.

Sincerely,

Kenneth R Pramik

Kenneth R. Pramik

Enclosures: 10 copies

REMARKS OF KENNETH R. PRAMIK
DIRECTOR TRANSPORTATION
CEMEX, INC.

Before the Surface Transportation Board

STB Finance Docket No. 33388 (Sub. 91)
Conrail Transaction Oversight

Public Hearing in Washington, D.C. – May 3, 2004

My name is Ken Pramik, and I am Director of Transportation at CEMEX. I appreciate the opportunity to appear before the Board today to relate our experiences, particularly in regard with CSX, since the time of the STB's final approval of the Conrail Transaction. CEMEX is the largest cement manufacturer and shipper in North America. We ship via all major modes of transportation. We manage a private cement hopper car fleet numbering nearly 1,500. Personally, my career in transportation began pre-Staggers. I have been directly involved in rail transportation as a shipper for the past thirty years.

CEMEX as well as my experiences with the CSX since the Conrail split have been very different compared to the many years prior. It is our opinion that the financial and operational challenges CSX faced with the new properties caused significant changes in management practices which have adversely affected our business and ultimately has led to CSX's de-marketing of at least two of our major traffic lanes. The service crisis we experienced just after the split was more pronounced on the Norfolk Southern, however they recovered after a few months. CSX service for us has deteriorated and most recently has become a major problem affecting our Florida market, as well as driven up our costs, as we often must truck to our distribution terminals to avoid stock outs.

During the time when CSX and Norfolk Southern were bidding for the Conrail assets, we were assured by then CSX Chairman Snow that existing shippers and business would not bear the cost of the Conrail acquisition. The reasoning was that new rail business generated by taking freight off the highway system would be more than adequate to pay the cost and provide profit for CSX. Within a year after the transaction date, we began to see a different attitude and results in our business dealings with CSX. Since the split, we have experienced annual increases every year, including through the time of recession after 9/11. These increases were above inflation demonstrating that the increases were not market based, and that CSX was taking advantage of their captive shipper base. Specific examples include a single 17% rate increase on our largest volume move. This is a move CSX had handled for at least 15 years previously. This year we were presented with increases of 26% on two major moves, which has now resulted in a non-competitive situation for CEMEX in those two markets. Additionally CSX has reduced service to our rail captive plant in Brooksville, Florida and made changes for operational conveniences on the routings of our traffic, which have increased transit times, and negatively impacted our car costs, as well as the overall supply costs to our terminals.

It is our position that CEMEX has been and continues to pay for the CSX's part of the Conrail acquisition. CEMEX recommends the extension of the Conrail "General Oversight" proceedings beyond the original five year term, and extend this oversight beyond the Shared Asset Areas, as the issues and repercussions of CSX's overpayment and poor management of the Conrail assets continue to be felt throughout the CSX rail system. We would further ask the STB to take actions to reduce abusive operational and commercial practices by CSX. We also would hope the STB will soon be in position to move forward and create a procedure for "small shippers" to contest rate matters via an arbitration process. Thank you for consideration of our position in this matter. We would be glad to make further information and details available to the Board.

STB FD-33388 (SUB 91) 04/27/04 D 210690

210690

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April 27, 2004

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

Re: Finance Docket No. 33388 (Sub-No. 91)
CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company, et al. – Control and Operating Leases/Agreements – Conrail Inc., et al.

Dear Secretary Williams:

Enclosed for filing are the original and ten copies of the Written Statement by Hammond, Indiana Mayor Scott L. King on behalf of the Cities of East Chicago, Gary, Hammond and Whiting, Indiana (collectively the "Four City Consortium"). Mr. King is scheduled to speak on behalf of the Four City Consortium at the hearing scheduled for May 3, 2004, in Washington.

Decision No. 12 in this proceeding served February 12, 2004, indicates that parties desiring to submit written statements for the May 3 hearing should do so by April 26, 2004. Due to difficulties receiving timely approvals from all members of the Four City Consortium, this Statement is being submitted one day late. The Four Cities respectfully request the Board to accept this filing notwithstanding that it is being submitted one day after the due date specified in Decision No. 12.

This letter will certify that on the date shown above the undersigned served copies of the enclosed statement upon counsel for the Applicants, as shown below.

Please date-stamp the enclosed extra copy of this letter and return it to our messenger. Thank you for your attention to this matter.

Sincerely,

Christopher A. Mills
Attorney for the Four City Consortium

CAM:dmb
Enclosures

cc: Dennis G. Lyons, Esq.
Arnold & Porter
555 Twelfth Street, N.W.
Washington, D.C. 20004-1202
(Counsel for CSX)

Richard A. Allen, Esq.
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W., Suite 600
Washington, D.C. 20006-3939
(Counsel for NS)

STB Finance Docket No. 33388 (Sub-No. 91)

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY – CONTROL AND OPERATING LEASES/ AGREEEMENTS – CONRAIL, INC. AND CONSOLIDATED RAIL CORP. (General Oversight)

WRITTEN STATEMENT BY
GARY, INDIANA MAYOR SCOTT L. KING
ON BEHALF OF THE FOUR CITY CONSORTIUM
April 27, 2004

I. INTRODUCTION

My name is Scott King. I am the elected Mayor of the City of Gary, Indiana. I am testifying on behalf of the Four City Consortium, also known as the "Four Cities," which is an association of the Cities of East Chicago, Gary, Hammond and Whiting, Indiana. The Four City Consortium was formed for the purpose of analyzing the regional impacts of the Conrail control transaction and recommending solutions to the adverse impacts identified. The Four Cities are located in northwestern Indiana, directly east of Chicago which is the nation's largest rail hub.

I appear on behalf of the Four Cities for two reasons. The first is to provide the Board with background on the impacts of the Conrail transaction on the highway transportation infrastructure in Northwest Indiana and the steps taken by CSXT, NS and the Four Cities to minimize the adverse impacts. The second is to request the Board's continued assistance in minimizing the adverse impact of CSXT's and NS's rail operations in the Four Cities region on vehicular traffic (including police, school, fire and EMS vehicles) that must use the many rail/highway grade crossings in the region. In particular, we request the Board to help facilitate the development of an alternative, high-volume, grade-separated rail corridor through the region and to encourage the railroads to move as much of their freight traffic as possible over the corridor when it comes to fruition.

II. BACKGROUND

The Four Cities participated actively in the Conrail control proceeding. They filed comments on the control application and requests for conditions designed to ameliorate expected adverse impacts of CSXT's and NS's post-Conrail operations on the highway transportation infrastructure in the Four Cities region. The primary focus was on delays at the region's numerous rail-highway grade crossings caused by increases in rail traffic.[a] The conditions requested by the Four Cities were supported by our Indiana representatives in Congress, Senators Luger and Bayh and Congressman Visclosky.

The Board approved the Conrail control transaction in Decision No. 89, issued in July of 1998. In that decision the Board recognized the transaction's potential

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[a] The problems faced by residents of the Four Cities region due to grade crossing blockages were underscored by a Federal District Court Judge in his preface to a March 2003 order in litigation involving a challenge by NS to a Hammond blocked-crossing ordinance:

> As the undersigned and any other person who regularly comes to the federal building in downtown Hammond, Indiana, know well, freight trains--sometimes stopped so that they are blocking a crossing--often make travel over Hammond streets difficult. This can be more than an inconvenience when it impacts fire and police vehicles, and a member of the undersigned's staff mentioned that on one occasion while driving to work he observed school-children climb between stopped railroad cars in order to continue walking to their destination.

adverse impacts on public health and safety, the provision of emergency services, and vehicular movements in the Four Cities region. Accordingly, the Board imposed some environmental mitigating conditions in favor of the Four Cities. These conditions required CSXT to undertake certain operational improvements to alleviate grade crossing delays and safety concerns in the Four Cities region. They also required CSXT and NS to meet regularly with representatives of the Four Cities to discuss issues of concern relating to grade crossing delays and other matters, and to provide periodic information on train movements over certain high-density rail lines traversing the Four Cities region. These lines include CSXT's "BOCT" line between Pine Junction, IN and Calumet City, IL, and NS's "Nickel Plate" line between Hobart and State Line Tower, IN.

However, the Board denied the most important condition requested by the Four Cities: an Alternative Routing Plan. This Plan would have required CSXT and NS to develop an alternative east-west freight rail corridor using a combination of the former Conrail Porter Branch (now owned by CSXT) and an elevated but little-used Indiana Harbor Belt ("IHB") line extending between Willow Creek, IN and Calumet City, IL. It would also have required the railroads to move as many freight trains as possible from the BOCT and Nickel Plate lines to the grade-separated Alternative Freight Corridor.

Freight traffic across the Four Cities region increased after consummation of the Conrail control transaction. As a result, during the first Conrail Oversight proceeding the Four Cities again requested the Board to impose elements of its

Alternative Freight Corridor plan as a new condition to its approval of the merger. This request was denied in General Oversight Decision No. 5 issued in February of 2001.

Since the Conrail transaction was implemented, CSXT and NS have cooperated with the Four Cities in attempting to minimize train blockages of key roads in the region. In late 1998, the Four Cities and CSXT entered a settlement agreement implementing and modifying, in certain respects, the environmental mitigating measures imposed by the Board as conditions to its approval of the Conrail control transaction. In early 2001, CSXT and the Four Cities entered a second settlement agreement providing for additional cooperation between the railroad and local communities to minimize grade crossing blockages by holding stopped trains short of critical crossings. In this agreement CSXT also stated that it would cooperate with the Four Cities in developing the Alternative Freight Corridor involving the Porter Branch/IHB lines, and would move some trains to this corridor if and when it is completed.

Until recently, the Four Cities' relationship with NS has not been as smooth. Starting in late 1999, as a result of increasing post-merger problems with trains blocking crossings on the Nickel Plate line, the City of Hammond issued numerous citations to NS for violating a municipal ordinance prohibiting the blockage of grade crossings by stopped trains for more than five minutes. In June of 2000, NS filed a lawsuit in federal district court seeking to have the Hammond crossing ordinance (and a companion Indiana State statute which prohibited crossing blockages by stopped trains for more than ten minutes) invalided on grounds of federal preemption and conflict with the Indiana Home Rule Act. In the March, 2003 order noted earlier, the District Court granted partial summary judgment to NS and issued a preliminary injunction against enforcement of the Hammond crossing ordinance due to preemption by the Indiana Home Rule Act. However, the District Court refused to enter summary judgment on the federal-preemption issues.

In the meantime, NS and Hammond had implemented an informal arrangement under which NS undertook not to stop trains on the Nickel Plate line where they would block four critical (high-volume) highway grade crossings, in return for which Hammond refrained from issuing any citations for the resulting blockage of other crossings. In December of 2003, the parties entered into a settlement agreement in which NS agreed to withdraw its court complaint without prejudice, Hammond agreed not to appeal on the Home Rule Act issue, and the parties agreed to supplement their informal arrangement so that NS would effectively hold trains outside Hammond until they have a clear signal to proceed through the city without stopping. The NS lawsuit was formally dismissed in February of this year, and cooperation between the Four Cities and NS has improved particularly with respect to NS's operations in Hammond and East Chicago.

III. REQUESTED BOARD ASSISTANCE

Notwithstanding the cooperation between the Four Cities and the railroads in attempting to minimize train blockages of key high grade crossings, rail freight traffic in the region has been on the increase and all indications are that it will continue to increase in the future. For example, during the Conrail control proceeding CSXT projected that it would handle an average of 32 trains per day over the BOCT line through the Four Cities after the Conrail split date. In fact, CSXT is now operating more than 40 trains per day over this line. Similarly, during the Conrail control proceeding NS projected that the traffic moving over the Nickel Plate line through the Four Cities would decline from an average of 26 trains per day to 11 trains per day (largely because of NS's acquisition of Conrail's Lake Front line). In fact, NS is now operating about 19 trains per day over this line.

The environmental mitigating conditions imposed by the Board in favor of the Four Cities have helped alleviate grade crossing problems by facilitating ongoing communication between the Four Cities and the railroads as well as informal arrangements to avoid blocking the most critical grade crossings, particularly in Hammond and East Chicago. The Four Cities hope and expect that the recent level of communication and cooperation from the railroads will continue after the Conrail oversight period ends on May 31, 2004.

To this end, the Four Cities recently asked both railroads to continue their commitments to attend meetings with the Four City Consortium, provide information on train traffic volumes, and cooperate in minimizing train blockages of highway grade crossings in the region for at least three years after the formal oversight period ends. On April 26 NS responded very favorably to this request, and indicated its belief that "the cooperative spirit that now characterizes our relationship can continue to provide important benefits to each of us in the coming years." A copy of NS's response is attached. The Four Cities have not yet received a written response from CSXT, although CSX has indicated that its response will be similar to NS's positive response. Given NS's response and CSXT's expected response, the Four Cities are not seeking a formal extension of the five-year oversight period. However, the Four Cities reserve the right to return to the Board if the present cooperative spirit changes.

The Four Cities also hope and expect that the railroads will cooperate with them in their continuing efforts to develop the grade-separated Alternative Freight Corridor through the region. The Four Cities believe that the Board has an important role to play by encouraging all interested parties to work together to achieve this solution including the obtaining of necessary federal and other public funding.

Chairman Nober has indicated recently that he encourages private-sector solutions to problems such as that faced by the Four Cities, and that the Board can act behind the scenes as a facilitator of such solutions. We understand that the Board has played such a role in helping to facilitate the Chicago Plan, which involves enhancement of the freight and passenger rail infrastructure in northeastern Illinois. On behalf of the Four Cities of East Chicago, Gary, Hammond and Whiting, Indiana, I urge the Board to become actively engaged in facilitating the Four Cities' Alternative Freight Corridor project in northwestern Indiana.

Representatives of the Four City Consortium would be pleased to meet with members of the Board and its staff to provide additional information on the status of the Alternative Freight Corridor project and what needs to be done to bring it to fruition.

Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, Virginia 23510-9241

John V. Edwards
General Attorney

Writer's Direct Dial Number

(757) 629-2838
(757) 533-4872 (Fax)
john.edwards@nscorp.com

April 26, 2004

**Via Facsimile – 219-844-3400
and U.S. Mail**

J. Justin Murphy, Chief of Staff
Four City Consortium
6949 Kennedy Avenue, Suite E
Hammond, IN 46323

Dear Mr. Murphy:

I am responding to your letter of April 20, 2004, which inquires as to the future of the relationship between Norfolk Southern and the Four City Consortium after the termination of the formal Conrail Transaction oversight. Before responding directly to that letter, I want to thank you and the Four City Consortium for the hard work, leadership and support that the Four City Consortium has provided over the past few years to help make the Conrail Transaction a success.

The formal processes set forth by the Surface Transportation Board have worked in forging a relationship that will outlast formal oversight. Both the railroad and the members of the Consortium have worked diligently at that relationship, and the once mandated process of meeting and specific reporting has now evolved into a voluntary, informal and cooperative process. We believe that the process works well to minimize the adverse effects on the communities you represent, and we know that it is of significant value to the railroad. Based on your letter, I take it you would agree.

Your letter asks whether Norfolk Southern is willing to continue to be engaged in this voluntary, informal and cooperative process, even after the end of formal oversight. Absolutely. With regard to blocked crossings, we have in place a settlement agreement reached in December 2003, and we reiterate our intention to comply with that agreement. (Of course, we do not mean for anything in this letter to be construed as modifying that agreement.) We believe it important to attend meetings with representatives of the Four City Consortium on matters of mutual concern, and to periodically provide information that may be of use in those discussions. We believe the cooperative spirit that now characterizes our relationship can continue to provide important benefits for each of us in the coming years.

Sincerely,

John V. Edwards

STB FD-33388 (SUB 91) 04/26/04 D 210693

210693

PIDC

Philadelphia Industrial Development Corporation

Peter S. Longstreth
President

April 13, 2004

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2004 APR 22 A 8:42

OFFICE OF CHAIRMAN
NOBER

Roger Nober, Esq.
Chair
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

RE: STB Finance Docket No. 33388 (sub. 91)
CSX-NS – Control & Operating Leases/Agreements – Conrail
April 2, 2004 Trenton Hearing

Dear Mr. Nober:

I would like to take this opportunity to thank you for providing the Commonwealth of Pennsylvania, the City of Philadelphia, and Philadelphia Industrial Development Corporation (PIDC) with the opportunity to comment on our experiences with the Conrail merger over the period since October 1997. I had left copies of our testimony with the court recorder, and attach another copy if you have not received one.

We reiterate our belief that an additional period of time and STB-monitored attainment metrics are necessary for NS and CSX to fulfill their 1997 promises to the Commonwealth of Pennsylvania and the City of Philadelphia. Open issues include:

- Investment in rail-served economic development programs – NS' $15 million commitment remains substantially unmet and CSX's $5 million commitment is midway in the process of being met, through a land write-down transaction with our Port.

- Private contracts to encourage shippers to use rail - $9 million of NS' pledge and $9.5 million of CSX's pledge remains unmet.

- Capital investment in Philadelphia rail projects - $21.4 million of required NS development has not occurred.

2600 Centre Square West 1500 Market Street Philadelphia PA 19102-2126
215.496.8020 FAX 215.977.9618 e-mail info@pidc-pa.org

- Rail industry employment in Philadelphia– This area remains woefully short of the commitments made, specifically Conrail employs only 33 of the proposed 350 positions and NS employs only 6 of the proposed 225.

- Corporate citizenship commitments – There are a number of significant corporate citizenship issues which need to be addressed, including CSX's permission to allow grade crossings for critical access to public waterfront recreation areas, completion of land transfers in support of economic development priorities, and general rail infrastructure issues.

In summary, the railroads' unmet commitment total 536 jobs and $55.5 million, including Norfolk Southern's $46 million and CSX's $9.5 million.

We would like to follow up with a meeting with you in your office to discuss appropriate next steps. In lieu of fulfilling certain of these promises, which the passage of time may have made inadvisable, we are prepared to discuss other open issues which the Commonwealth, the City and PIDC desire to have resolved, and thus conclude the oversight process.

Please let me know times and dates that would be convenient with you. Attendees from the Governor's Office, the Philadelphia Commerce Department, and our elected representatives will also be invited to participate.

Sincerely,

Edward W. Duffy

EDWARD W. DUFFY
Vice President

EWD/js

cc: Hon. Edward G. Rendell
Hon. Arlen Specter
Hon. John F. Street
Stephanie Naidoff
Peter Longstreth

COMMENTS OF THE

COMMONWEALTH OF PENNSYLVANIA

AND

CITY OF PHILADELPHIA

AND

PHILADELPHIA INDUSTRIAL DEVELOPMENT CORPORATION

ON

STB FINANCE DOCKET NO. 33388 (sub. No. 91)

CSX-NS – CONTROL & OPERATING LEASES/AGREEMENTS – CONRAIL

APRIL 2, 2004

The Commonwealth of Pennsylvania (Commonwealth), City of Philadelphia (the City) and Philadelphia Industrial Development Corporation (PIDC) thank you for this opportunity to comment on our experience in the five years since the Surface Transportation Board (STB) approved, subject to various conditions, the acquisition of Control of Conrail by CSX and Norfolk Southern (NS) Corporations.

At the time that the Conrail acquisition first surfaced, the City, PIDC, and the Commonwealth were concerned about its impact on Regional economic development, jobs, railroad capital investment and corporate citizenship, fearing severe employment losses and economic dislocation in Philadelphia and across the Commonwealth. In order to allay these concerns, on October 21, 1997, CSX and NS each sent letters to the Governor of Pennsylvania and the Mayor of Philadelphia setting forth commitments to address each of these issues, over a five year period after STB approval.

The Commonwealth and the City submitted these two letter agreements for the STB record on February 23, 1998, with the understanding that the STB might consider them as constituting representations that the Applicants will comply with their respective terms. Our understanding was confirmed when the STB released its decision on July 23, 1998, stating that "applicants must adhere to all the representations they made during the course of this proceeding, whether or not such representations are specifically referenced in this decision."

The Commonwealth, the City and the railroads agreed that the Governor's Action Team would act as a clearinghouse to monitor the railroads' meeting their commitments.

These letters, and a chart outlining both railroads' commitments, are attached, and their highlights are summarized as:

1. Investment in Kvaerner Shipyard, completed by both corporations
2. Investment in rail-served economic development programs for land acquisition, facility construction and rail infrastructure installation, CSX committing $1 M/year, 5 years, and NS $3 M/year, 5 years, total $20 M.
3. Private contracts to encourage shippers to use rail, CSX committing $2 M/year, 5 years, and NS $5 M/year, 5 years, total $35 M.
4. Conrail to remain headquartered in Philadelphia, employing 350; CSX to employ 185 in Philadelphia; NS to employ 75 in a Philadelphia Mid-Atlantic Regional Headquarters, and to create 150 new rail-related jobs.
5. Capital investment, various facilities constructed in Philadelphia.
6. Corporate citizenship, active participation in civic and charitable affairs.

Our experience in achieving compliance with these commitments has been mixed. On the positive side, the Kvaerner investments have been made, CSX has completed its proposed Philadelphia capital investments, and Delaware River Port Authority has begun one of four development projects proposed here by NS. The Governor's Action Team has confirmed that CSX has committed $550,000 in private shipper contracts to encourage rail, and NS has claimed, but the Governor's Action Team has been unable to confirm, that it has committed $15.7 M in private shipper contracts.

On the other hand, the Governor's Action Team has identified only one project, for a total of $81,000.00 that was approved by CSX and NS out of the proposed $20 M of rail-served economic development programs, while a $900,000.00 clearance improvement project for Northeast Philadelphia was rejected by them.

Recently, CSX negotiated a land sale to our Port discounted by the remainder of their economic development commitment, after our Port claimed zoning jurisdiction over a railyard that CSX proposed to sell for commercial development While we see this as a positive development, we remain concerned by the pace of the transaction's progress, knowing that follow-through must occur beyond the STB's original oversight period.

Almost the entire $15 M of the NS commitment to invest in rail-served economic development programs remains unaccounted for, as well as $21.4 M NS commitment for the three Philadelphia development projects that they have not begun. These projects are a Triple Crown facility, an auto terminal, and a track connection at Zoo interlocking.

While we are delighted with the CSX and NS private shipper contract commitments, they total far less than the $35 M promised, leaving $9.5M of the CSX pledge untouched, and $9 M of the NS pledge unmet, for a total of almost $19 M uncommitted.

Regarding rail industry commitments, instead of growing employment in Philadelphia, CSX and NS, and their new holding Conrail, have radically reduced employment in Philadelphia. According to records compiled by the City Department of Revenue in March 2004, CSX employs 167, NS employs 6, and Conrail employs 33 in the City of Philadelphia, a shortfall of 18 employees at CSX, 219 at NS, and 317 at Conrail, for a total rail industry shortfall of 554 employees.

Regarding corporate citizenship, while the City has attempted to engage CSX in actively participating with the City to increase public access to new waterfront parklands that the City has been developing along their Schuylkill River right-of-way, and sought their partnership in devising reasonable safety measures such as state-of-the-art pedestrian grade crossings to implement the City's objectives, it remains to be seen whether CSX will cooperate to make the Park a reality.

To conclude, while thousands of rail industry jobs in Philadelphia and across the Commonwealth have already been lost through the acquisition of Conrail, the commitments made to the Governor of the Commonwealth of Pennsylvania and the Mayor of the City of Philadelphia by CSX and NS in 1997 remain only partially realized and not fully documented. The Commonwealth, City and PIDC respectfully request that the STB extend its oversight period during which these commitments must be fulfilled, and that the STB establish metrics to regularly monitor their progress toward full commitment, according to a schedule.

Undertaking the clearance improvement project for Northeast Philadelphia, at Willets Road on Conrail's Bustleton Branch, will benefit an entire rail-served industrial park and particularly an active rail shipper denied access to the new larger cryogenically refrigerated boxcars by the clearance impediment. This project will make a positive first step for the STB to exercise oversight of the Applicants adhering to their representations.

Monitoring achievement of employment commitments for Conrail, CSX and NS in the City of Philadelphia would be another important metric, as would completion of capital investments in proposed Philadelphia projects.

Considering the railroads' pace in adhering to their representations during the initial five year period, and the length of time necessary to plan and construct capital improvements, we suggest to the Board that it extend its oversight of its Decision for an additional five year period of time. We also understand that with the passage of time, certain of the unmet commitments of October 1997 may not now be necessary, and so we urge the Board to impose alternative conditions where relief from these commitments may be advisable, in order to remediate the profound impacts of the Conrail loss. We offer to assist the Board in identifying alternative special conditions for remediating this loss.

NORFOLK SOUTHERN

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

David R. Goode
Chairman, President and
Chief Executive Officer

October 21, 1997

Copy to:
~~[illegible]~~
Moreno

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

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

Dear Governor Ridge and Mayor Rendell:

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

I. <u>Economic Development</u>

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

A. Norfolk Southern will provide $10 million in cash investments to supplement the public effort to attract Kvaerner ASA to the Philadelphia Navy Yard. Our payments, which will be directed by the state and city, will be made in five (5) equal, annual installments, with the initial installment to be made on July 1, 1998.

B. Norfolk Southern, working with the Department of Community and Economic Development, the Governor's Action Team and the Philadelphia Industrial Development Corporation ("PIDC"), will expend a minimum of $15 million in the five (5) years after STB approval of the Conrail Acquisition for rail-served economic development programs in Philadelphia and across the Commonwealth. These programs will assist in land acquisition, facility construction and rail infrastructure installation with a focus on the Philadelphia Naval Business Center ("PNBC").

C. To complement the prior efforts, Norfolk Southern will pursue additional economic development incentive programs to encourage rail-oriented industry to locate in Philadelphia and across the state. Working with the Department of

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

D. The City of Philadelphia, through the PIDC, and Norfolk Southern plan to execute a Development and Marketing Agreement that is being developed for the PNBC.

E. The Delaware River Port Authority and Norfolk Southern plan to execute an agreement that is being developed for the location and operation of Norfolk Southern's intermodal terminal, referenced in III.B., at the AmeriPort Intermodal Terminal.

F. The Commonwealth of Pennsylvania will approve the expenditure of ISTEA funds for signalization and track improvements on the Chambersburg line and such additional Pennsylvania projects as may subsequently be authorized by Congress involving lines owned or operated by Norfolk Southern, including the Erie track relocation project.

II. Jobs

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

A. A Mid-Atlantic Regional headquarters will be located in Philadelphia. Initially, there will be seventy-five (75) jobs, including a Regional Vice President, at this site.

B. One-hundred-fifty (150) new rail-related jobs will be created as a result of Norfolk Southern commercial and operational activities in the Philadelphia area during the three years after STB approval of the Conrail Acquisition.

C. CSX and Norfolk Southern will jointly own Conrail Inc. Philadelphia will remain as the headquarters of Conrail Inc. for the 350 positions involved with the operation of the "Shared Assets Areas" and other continuing Conrail activities.

III. Capital Expenditures

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

A. Triple Crown facility ($4 million);

B. Intermodal facility ($10 million);

C. Automobile facility ($16 million); and

D. Track connection at Zoo interlocking ($1.4 million).

IV. Passenger Rail

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

V. Corporate Citizenship

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

VI. Regulatory Review

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

Norfolk Southern's commitments in this letter are expressly conditioned upon STB approval of the Conrail Acquisition substantially as it was filed on June 23, 1997, and therefore, will take effect only upon closing of the Conrail Acquisition. Norfolk Southern's commitments also are conditioned upon fulfillment by Pennsylvania and Philadelphia of their reciprocal commitments, reflected in this letter and in the agreements under development.

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

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

Sincerely,

David R. Goode

CSX CORPORATION

One James Center
Richmond, Virginia 23219
(804) 782-1434

John W. Snow
Chairman, President
Chief Executive Officer

October 21, 1997

FILE-
NS INTERMODAL

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

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

Dear Governor Ridge and Mayor Rendell:

We have worked together in a cooperative team over the last seven months, starting just after the announcement of the acquisition of Conrail by CSX and Norfolk Southern. We believe this historic transaction will provide competitive freight transportation to the Northeast that will benefit all shippers by providing improved value for rail freight transportation. Specifically, we have worked with representatives of the Commonwealth, the City of Philadelphia, SEPTA and the Port on economic development projects that can provide future benefits for the citizens of Pennsylvania. This letter outlines proposals necessary to advance developments of these projects consistent with the Commonwealth's and City's active support of the acquisition to the Surface Transportation Board.

1. Economic Development

CSX, the Commonwealth and the City will enter into a public-private partnership in recognition of the changes that will occur in the Philadelphia area and to encourage rail-oriented industry to locate in Philadelphia and across Pennsylvania. This partnership also will benefit the Jones Act trades, in which Sea-Land, a CSX subsidiary, participates. Our respective commitments include:

A. CSX will provide $10M in cash investments to supplement the public effort to attract Kvaerner ASA to the Philadelphia Navy Yard. Our payments, which will be directed by the state, will be made in five (5) equal, annual installments, with the initial installment to be made on July 1, 1998.

B. CSX will expend a minimum of $1M per year over the five (5) years (a total of $5M) after merger approval for rail-served economic development programs in Philadelphia and across the Commonwealth. These programs will assist in land acquisition, facility construction and rail infrastructure improvements with a focus on Philadelphia.

C. To complement these efforts, CSX will establish a new economic development incentive program to encourage rail-oriented industry to locate in Philadelphia and across the Commonwealth. Working with the Department of Economic and Community Development and the Governor's Action Team, CSX will provide capital through these programs to assist potential rail customers in their costs of land acquisition, facility construction, installation of rail sidings, etc., in exchange for contractual obligations for certain levels of rail business. After STB approval, CSX will make available $2M per year over a five year period (a total of $10M) for this program.

D. The City of Philadelphia, through the PIDC, and CSX will execute a Marketing Agreement for the City of Philadelphia.

E. The Delaware River Port Authority and CSX will execute an agreement for the development and operation of its intermodal terminal at Greenwich Yard.

F. The Commonwealth of Pennsylvania will seek, along with CSX, and approve the expenditure of federal funds for clearance improvements on the West Trenton line from Philadelphia to the New Jersey border and approve funding for any such additional Pennsylvania projects as may be subsequently authorized by Congress involving lines owned or operated by CSX.

G. The Commonwealth, the City of Philadelphia and CSX agree that it is in the Commonwealth's economic interest to have a strong, well-maintained and strategically located rail freight infrastructure.

2. Jobs

Job creation is the principal goal of our combined economic development efforts.

A. CSX and Norfolk Southern will jointly own Conrail, Inc. Philadelphia will remain as the headquarters of Conrail, Inc. which, as detailed in our application to the STB, will have 350 positions involved with the operation of the "Shared Assets Areas" and other continuing Conrail activities.

B. Thirty-five new rail-related jobs will be created in addition to 150 existing jobs, as a result of CSX commercial and operational activities in the Philadelphia area during the three years after STB approval of the acquisition.

C. CSX anticipates establishing a regional office in Philadelphia that will include government relations, industrial development, sales and operations.

3. Capital Expenditures

The operating plan filed with the STB identifies more than $27M in capital improvement expenditures by CSX in Pennsylvania with at least $22M in Philadelphia for three major projects:

A. Intermodal facility ($15M). (The Delaware River Port Authority has offered to fund the construction of this facility pursuant to the agreement referred to in paragraph 1E.)

B. Track connection at Eastwick interlocking ($4M).

C. Belmont Siding ($3M).

4. Passenger Rail

Freight and passenger operations share track in more than half of SEPTA's service territory. Our CSX team has begun to work closely with SEPTA, Conrail and the Norfolk Southern to ensure safe on-time passenger and freight operations. CSX will consent to Conrail extending the SEPTA Trackage Rights Agreement for an additional five years as long as SEPTA provides unqualified liability coverage for CSX and the Conrail Shared Area Operations company (CSAO) backed by broad indemnification language and insurance.

5. Civic and Charitable Giving

After STB approval, CSX along with Norfolk Southern and Conrail, Inc. will ensure that all of Conrail's philanthropic obligations as of the date of this letter are met. The three companies will be active members of the civic and charitable community in Philadelphia and throughout the Commonwealth.

6. Regulatory Review

On or before October 21, 1997, the Commonwealth of Pennsylvania and the City of Philadelphia will file written statements of support for the Conrail acquisition with the STB. We anticipate that you will encourage other elected officials and public agencies, including SEPTA and the DRPA, to file timely statements of support and will otherwise continue to support the acquisition.

CSX's authority to acquire Conrail and expand operations in Pennsylvania and, therefore, the terms of our agreement, are expressly conditioned upon approval of the Conrail acquisition by the STB. Of course, CSX obligations contained in this letter are subject to the Commonwealth and the City satisfying their obligations.

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

I look forward to working closely with you in the future.

Sincerely,

John

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

FACSIMILE (202) 457-6315

WRITER'S DIRECT DIAL
(202) 457-6424

PA-10

February 23, 1998

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

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

Dear Secretary Williams:

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

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

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

Sincerely,

John L. Oberdorfer

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

PIDC

PHILADELPHIA INDUSTRIAL DEVELOPMENT CORPORATION

WILLIAM P. HANKOWSKY
President

February 23, 1998

The Honcrable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, D.C. 20423-0001

RE: Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc. et al. -- Control and Operating Leases/Agreements -- Conrail, Inc. and Consolidated Rail Corporation

Dear Secretary Williams:

We represent the Philadelphia Industrial Development Corporation ("PIDC") and the City of Philadelphia ("City"). We filed joint comments supporting Applicants' proposed transaction on October 21, 1997. We reiterate that support.

We also write to join in the letter request of this date filed by the Commonwealth of Pennsylvania, Governor Thomas J. ridge, and the Pennsylvania Department of Transportation (collectively, "Pennsylvania") to make a part of the record in these proceedings the two letter agreements dated October 21, 1997 which are referenced in Pennsylvania's letter request. The City, through its Mayor, is a party to one of those agreements with CSX; it is a party to the other agreement with Norfolk Southern. In addition to joining in Pennsylvania's request to make both of those agreements, which are enclosed with Pennsylvania's letter request a part of the record, the City also joining in the comments set forth in paragraph three of Pennsylvania's letter request.

Sincerely,

G. Craig Schelter

G. CRAIG SCHELTER
Executive Vice President

William R. Thompson / EWD

WILLIAM R. THOMPSON
Chief Deputy City Solicitor
City of Philadelphia Law Department

GCS:jmw

cc: All Parties of Record

2600 Centre Square West 1500 Market Street Philadelphia PA 19102-2126 215.496.8020 Fax 215.977.9618

CONRAIL/CSX/NORFOLK SOUTHERN
ECONOMIC DEVELOPMENT COMMITMENTS

Commitment

Economic Development
Kvaerner Investment - $[illegible] million

Investment in land acquisition, facility construction in Philadelphia and throughout Commwonwealth.
CSX - $5 million over 5 years
NS - $15 million over 5 years

Economic development incentives to encourage private, rail-oriented industry in Philadelphia and throughout the Commonwealth.
CSX - $10 million over 5 years
NS - $25 million over 5 years

Development and Marketing Agreement with PIDC.

Development of Philadelphia intermodal yards.

Jobs
Philadelphia HQ for Conrail and Shared Assets - 350 Jobs

CSX Philadelphia empoyment to 185

NS: Philadelphia regional HQ with 75 employees intially.

150 new rail-related jobs within 3 years of STB approval.

Capital Expenditures
NS: $4 million for Triple Crown facility
$10 million for intermodal
$16 million auto facility
$1.4 million for Zoo track connection

CSX: $15 million in intermodal
$4 million in Eastwick track connection
$3 million at Belmont siding

Passenger Rail
5 year extension of SEPTA operating agreement.

Civic/Charitable/Corporate Citizenship
Ensure all of Conrail's obligations met.

CSX/Conrail and NS all to be active in Philadelphia and PA civic and charitable community.

STB FD-33388 (SUB 91) 04/26/04 D 210688

2106888

APR 26 2004
RECEIVED

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub-No. 91)

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

ENTERED
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[GENERAL OVERSIGHT]

WRITTEN STATEMENT OF R. ADM. RICHARD M. LARRABEE, USCG RET.
ON BEHALF OF THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

My name is Richard M. Larrabee, and I am Director of Port Commerce for the Port Authority of New York and New Jersey. In that capacity, I am responsible for the promotion, protection and development of the Port of New York and New Jersey, and the initiation, development and operation of the facilities and programs that support the region's economy.

My responsibilities include management and direction of the Port Authority's marine terminals in Elizabeth and Newark, New Jersey as well as in Brooklyn and Staten Island, New York. I am responsible for guiding policy implementation for the Port Commerce Department in such areas as dredging, new business development, long-range planning and financial matters. The Port Authority's relationships with rail carriers serving its marine terminal and other facilities are the responsibility of the Port Commerce Department.

The Port Authority submitted comments at the hearings in Trenton last month regarding the cooperation that has existed among the carriers and the Port Authority within the North Jersey Shared Assets Area. In those comments it was pointed out that, due in large part to Port Authority investments in terminal facilities and on-dock rail facilities, rail volumes moving through the New York/New Jersey Port have dramatically increased over the last ten years. In 1993, the Port handled some 50,000 rail containers of export/import freight. Last year that number had grown to 233,000 containers, and for the first quarter of 2004, the number of containers has been 28 percent higher than the same period in 2003. In Trenton, the Port Authority also noted that its plans call for the investment of $438 million between 2002 and 2009 to improve and expand rail capacity at facilities served by Conrail, CSX and Norfolk Southern.

By statute, the Port Authority is limited as to the geographic area within which it may make capital investments. The Port Authority may not invest in projects outside the Port District, which is roughly a 25 radius around the Statue of Liberty. Accordingly, while the Port Authority can seek to improve the infrastructure upon which efficient rail transportation depends within the Port District, it is wholly dependent upon the carriers, and others to maintain the efficiency of the inland rail transportation network outside that District. We look to the Board to be vigilant in protecting our strategic investments for our port and our nation and, we look to the Board to encourage the railroads to provide timely and reliable service to our region's consumers and businesses so that we may maximize the return on the rail infrastructure investments made by the Port Authority and our regional partners.

During the middle of the previous century, the Port of New York/New Jersey was served by as many as seven Class I rail carriers. Unfortunately, for a host of reasons, the service provided by those ultimately bankrupt carriers was at a level that the Port became almost entirely dependent upon motor carrier service. This, of course, led to the inevitable truck congestion that has clogged the highways of the Northeast to this day. In 1975, with the formation of Conrail the Port lost intramodal rail competition as only Conrail served the Port in any meaningful way. The Port did, however, obtain some competitive relief in the form of geographic competition with Conrail serving New York/New Jersey as its main port while other carriers served competing North and South Atlantic ports. While this geographic competition did prod Conrail to improve service and take innovative steps that allowed for some growth in the Port's rail traffic, it did not provide similar geographic competition for the region generally. It was the consistent position of the Port Authority that the Port, as the largest port in the nation served by a single rail carrier to any significant degree, was at a serious disadvantage versus competing ports. Similarly, the region, the largest in the nation served by a single rail carrier, was also at a substantial disadvantage. Thus, the Port Authority consistently sought a second major carrier to serve the Port and the region.

The acquisition of Conrail by CSX and Norfolk Southern has provided for that long-awaited intramodal competition at the Port and in the region. While the Port Authority did have some reservations regarding the ability of the financially strained acquiring carriers to provide for the necessary infrastructure improvements within the Shared Assets Area, it ultimately supported the Conrail acquisition before this Board. I am pleased to report to you that that has proven to have been a wise decision.

The head to head competition between CSX and Norfolk Southern has resulted in significant innovation and the growth in the Port's rail traffic to which I previously referred. CSX and Norfolk Southern are not, however, solely responsible for the growth in traffic. The entire rail network must operate smoothly and efficiently if operations in any one region of the country are to prosper. While we at the Port of New York/New Jersey must look to CSX and Norfolk Southern for efficient service, they, in turn, must look to their connections for the same efficiencies.

Recent press reports of trouble brewing on the Union Pacific are giving us pause. To the extent that such operational problems spread to the East, as they did during the post Union Pacific/Southern Pacific merger period, the welfare of the Port's rail operations could be prejudiced. The Port Authority fully recognizes the difficulties that you, Mr. Chairman have faced in being the sole Board member during the recent past, and we hope that assistance is on the way. With a full compliment of Board members we trust that you will continue active oversight of the rail network, not merely with respect to the Conrail acquisition, but with respect to the entire network. To the extent that further Board actions become necessary to prevent service disruptions that threaten to slow traffic growth through the Port of New York/New Jersey, and to slow economic growth generally, we trust that the Board will be quick to respond to take such actions.

Thank you Mr. Chairman for the opportunity to present these remarks.

STB FD-33388 (SUB 91) 04/26/04 D 210687

210687

IANA

INTERMODAL ASSOCIATION OF NORTH AMERICA

Chairman
Barry D. Michaels
Union Pacific Railroad Company

President and CEO
Joanne F. Casey

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April 26, 2004

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

RE: Finance Docket No. ~~33323~~ 33388 (Sub-No. 91)
Conrail Transaction – General Oversight

Dear Mr. Williams:

On behalf of the Intermodal Association of North America (IANA), I would like to encourage the Surface Transportation Board to conclude its formal oversight of the Conrail Transaction in which CSX and Norfolk Southern were authorized to jointly acquire and divide the routes of Conrail, retaining with Conrail only limited operations in the "Shared Assets Areas."

IANA represents the combined interests of 500+ intermodal freight transportation companies, including railroads, intermodal drayage and highway motor carriers, intermodal marketing companies, ocean carriers and industry equipment and service suppliers. IANA promotes the benefits of intermodal freight transportation and encourages growth of the industry through innovation, improved service and operating efficiencies. Its members are vitally interested in public policy issues.

Intermodal freight transportation is one of the fastest growing segments of our country's transportation network. In a recent study, the U.S. Chamber of Commerce has projected that cargo volumes will increase by 67% by the year 2020. A similar forecast was released by the Federal Highway Administration of the U.S. Department of Transportation. The division of Conrail's routes -- especially those into the Northeast -- and the integration of Conrail's traffic base into the respective CSX and NS intermodal networks has been a contributory factor in the growth of intermodalism over the past five years. Specific IANA members have expressed satisfaction with the implementation of the Conrail transaction and many have benefited from it.

From the Association's perspective, the Board's Oversight of the Conrail Transaction has been a success. I believe I can speak with some confidence on this subject, because I was a member of the Conrail Transaction Council and followed first hand the pre-Split planning and post-Split implementation. The Conrail Transaction Council, created by settlement agreements and imposed by the Board as a condition, provided an outstanding opportunity for shippers, trade associations, and other interests to come together for monthly pre-Split briefings with opportunities to ask, and get answers to, hard questions. I know that the Board followed those meetings as just one part of its extensive oversight of planning and implementation. The carriers were open to comments and suggestions, and were very responsive to our questions. The satisfaction of the Council members with the process was underscored by our knowledge that the Board was watching the carriers even more closely.

I believe that the trade association members of the Council, like IANA, played a small, but important role in the success of the Conrail Split, by widely disseminating important information to their members related to processes and procedures that would be affected by the Split. After Split date, the carriers reported that they had received virtually no misbilled shipments and gave much of the credit to the Council members for their work.

7501 Greenway Center Dr., S-720 ■ Greenbelt, MD 20770-6705 ■ Phone: 301.982.3400 ■ Fax: 301.982.4815
Email: IANA@intermodal.org ■ Web-site: www.intermodal.org

The actual operational implementation of the Conrail Split was completed years ago, and while oversight has continued, IANA's members have not raised any transaction-related issues subsequent to the Split.

While the burden on CSX, NS, and Conrail from continued oversight may seem insignificant given their size and resources, it does nonetheless require the expenditure of resources that are diverted from other matters. This same theory of resource allocation could be applicable to the Board. From my work on the Conrail Transaction Council, I saw first hand how seriously the carriers have taken the Oversight process and how much management time and energy was devoted to making it the success that it was. Consequently, now that the Board's Oversight period is coming to an end, IANA sees no reason to continue regulatory monitoring of this Transaction and respectfully submits that there is no need to extend the five-year Oversight period.

Sincerely,

Joanne F. Casey

Joanne F. Casey

2106886

COMMENTS OF THE
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

ON

STB FINANCE DOCKET NO. 33388 (sub. No. 91)

CSX-NS – CONTROL & OPERATING LEASES/AGREEMENTS – CONRAIL

MAY 3, 2004

By order issued July 20, 1998 (the "Approval Order"), the U.S. Surface Transportation Board (the "Board") approved with conditions a complex transaction which included the acquisition of control of Consolidated Rail Corporation ("Conrail") by CSX Corporation ("CSX") and Norfolk Southern Corporation ("Norfolk Southern") and the division of Conrail's operating assets between CSX and Norfolk Southern (the "Conrail Transaction").

By order dated February 12, 2004, the Board scheduled two hearings, on April 2, 2004 and May 3, 2004, to offer interested parties an opportunity to express concerns they may have regarding the Conrail Transaction. The Board's order stated that the May 3 hearing will deal with all aspects of the Conrail Transaction other than shared asset areas.

The Commonwealth of Pennsylvania, acting by and through its Department of Community and Economic Development (the "Commonwealth"), thanks the Board for this opportunity to comment on our experience with the Conrail Transaction.

Our comments will be limited to one issue: the failure by both Norfolk Southern and CSX (such parties collectively, the "Purchasers") to comply fully with their representations set forth in separate letter agreements, from Norfolk Southern and from CSX respectively, each dated October 21, 1997, addressed to the Governor of the Commonwealth of Pennsylvania and the Mayor of the City of Philadelphia (the "City") and subsequently submitted for the record.

These letter agreements had been negotiated between the Purchasers, on the one hand, and the Commonwealth and the City, on the other hand, to address and alleviate the concerns of the Commonwealth and the City that the Conrail Transaction could have a massive adverse effect on economic development, jobs, railroad capital investment and corporate citizenship in Philadelphia and across the Commonwealth. In consideration of these letter agreements, the Commonwealth and the City supported the Conrail Transaction before the Board. As Governor Ridge and the Commonwealth stated in PA-8 (filed October 21, 1997, the same date as the letter agreements):

> Representatives of the Governor and the Pennsylvania Department of Transportation have had numerous meetings with the Applicants regarding the benefits of the transaction for Pennsylvania. During the course of these meetings and in their filing Applicants have made commitments regarding investments and other benefits to the Commonwealth. These include contributions to Pennsylvania's economic development efforts . . . . We expect the Applicants to adhere to all commitments made in the Control Application. . . .

The Norfolk Southern and CSX letter agreements are attached as Exhibits A and B hereto respectively. Attached as Exhibit C hereto is a letter from counsel to the Commonwealth of Pennsylvania adding the two letter agreements to the record in this matter.

In the Approval Order, the Board directed Norfolk Southern and CSX to "adhere to all the representations they made during the course of this proceeding, whether or not such representations are specifically referenced in this decision."

In its letter agreement, Norfolk Southern stated as follows:

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

. . .

B. Norfolk Southern, working with the Department of Community and Economic Development, Governor's Action Team and the Philadelphia Industrial Development Corporation ("PIDC"), *will expend a minimum of $15 million in the five (5) years after STB approval of the Conrail Acquisition for rail-served economic development programs in Philadelphia and across the Commonwealth.* These programs will assist in land acquisition, facility construction and rail infrastructure installation with a focus on the Philadelphia Naval Business Center ("PNBC").

C. To complement the prior efforts, Norfolk Southern will pursue additional economic development incentive programs to encourage rail-oriented industry to locate in Philadelphia and across the state. Working with the Department of Community and Economic Development and the Governor's Action Team, Norfolk Southern will provide up front capital through these programs to assist potential rail customers in their costs of land acquisition, facility construction and rail infrastructure installation in exchange for contractual obligations for acceptable levels of rail business. *After STB approval, Norfolk Southern will make available for such projects a maximum of $5 million annually and will continue this program for a minimum of five (5) years, thus*

> *making an additional $25 million available for rail-oriented economic development projects.*

(emphasis added) These economic development commitments were separate from and in addition to capital expenditure commitments set forth in section III of Norfolk Southern's letter agreement.

Norfolk Southern has treated its obligations under its letter agreement as binding. For example, in a letter dated April 5, 2001, a copy of which is attached as Exhibit D, Norfolk Southern stated:

> While we have not kept you informed on a regular basis, I thought it would be useful to provide you with a current, comprehensive summary of our investments, with a specific focus on those programs agreed upon and committed to by Norfolk Southern and the Commonwealth.

Norfolk Southern has failed to carry out these commitments fully. Its commitments are expressly stated to be a partnership effort among the respective railroads, the Commonwealth and the City of Philadelphia. However, while Norfolk Southern has made substantial unrelated facility improvements, Norfolk Southern has failed to provide any significant funding for rail-related economic development projects brought to it for funding by the Commonwealth or the City. Only one project, for a total of $40,500.00, has been funded by Norfolk Southern out of the $15 Million for rail-served economic development programs to which it committed in paragraph I(B) of its letter agreement.

Likewise, Norfolk Southern has not complied with its commitment set forth in paragraph I(C) of its letter. It has completely failed to coordinate its projects with the Commonwealth or the City's economic development efforts. Moreover, even the completely independent customer-development projects referred to in its letter attached as Exhibit D total at most $15.7 million, far less than the $25 million to which it committed. See Exhibit D, p. 2.

Finally, Norfolk Southern has commenced only one of the four capital improvement projects to which it committed in Section III of its letter: an intermodal facility being constructed for Norfolk Southern by the Delaware River Port Authority. Norfolk Southern has yet to begin construction of its Triple Crown or auto facilities or its track connection at the Philadelphia Zoo interlocking, a total of $21.4 million of capital investment commitments which it has not yet commenced.

CSX's commitments were similar. In its letter agreement, CSX stated as follows:

> I. CSX, the Commonwealth and the City [of Philadelphia] will enter into a public-private partnership in recognition of the changes that will occur in the Philadelphia area and to encourage rail-oriented industry to locate in Philadelphia and across Pennsylvania. . . . Our respective commitments include:

. . .

C. To complement these efforts, CSX will establish a new economic development incentive program to encourage rail-oriented industry to locate in Philadelphia and across the Commonwealth. Working with the Department of Economic and Community Development [sic] and the Governor's Action Team, CSX will provide capital through these programs to assist potential rail customers in their costs of land acquisition, facility construction, installation of rail sidings, etc., in exchange for contractual obligations for certain levels of rail business. After STB approval, CSX will make available $2M per year over a five year period (a total of $10M) for this program.

(emphasis added) These economic development commitments were separate from and in addition to capital expenditure commitments set forth in section III of CSX's letter agreement.

Like Norfolk Southern, CSX has treated its obligations under its letter agreement as binding. For example, in a letter dated October 29, 2003, CSX requested that the Commonwealth consider funds proposed to be used to purchase property as a qualifying expenditure under an "Economic Development Fund to which CSX had committed funds at the time that Conrail was purchased."

Although CSX's record is better than Norfolk Southern's, CSX has also failed to carry out its commitments fully. Its commitments are also stated to be a partnership effort among the respective railroads, the Commonwealth and the City of Philadelphia. CSX has funded only $550,000 of its commitment under section I(C) of its letter agreement, leaving approximately $9.5 million.

Both carriers appear to be taking the position that the Board should consider rail infrastructure improvements totally unrelated to their 1997 commitments and undertaken for their own business reasons and without any consultation or cooperation with the Commonwealth or the City to count toward their commitments.

The Commonwealth urges the Board to reject this position, because it would allow Norfolk Southern and CSX unilaterally to alter or abrogate their commitments to the Commonwealth and the City, with which the Board in its Approval Order directed them to comply. Neither Norfolk Southern nor CSX can claim poverty as an excuse for not carrying out these commitments. Norfolk Southern has just reported record quarterly revenues and profits[1], while CSX had strong 2003 results, including "tremendous revenue growth" for the year, and over $300 million in free cash flow.[2]

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1 www.nscorp.com (news release April 21, 2004)

2 see http://www.csx.com/share/csx/investor/press_release/pressrel4q2003.pdf (news release Jan 27, 2004)

The Commonwealth respectfully requests that the Surface Transportation Board extend its oversight period during which these commitments must be fulfilled, and that the Board establish a schedule for their full compliance with their commitments and establish a means to monitor their progress.

Considering the railroads' pace in adhering to their representations during the initial five year period, and the length of time necessary to plan and construct capital improvements, we suggest to the Board extend its oversight of the Approval Order for an additional five year period of time.

EXHIBIT A	Letter to The Honorable Thomas Ridge, Governor of Pennsylvania and The Honorable Edward Rendell, Mayor of Philadelphia from David R. Goode, CEO, Norfolk Southern, dated October 21, 1997.
EXHIBIT B	Letter to The Honorable Thomas Ridge, Governor and The Honorable Edward Rendell, Mayor of Philadelphia from John W. Snow, CEO, CSX Corporation, dated October 21, 1997.
EXHIBIT C	Letter to The Hon. Vernon A. Williams, Secretary, Surface Transportation Board from John L. Oberdorfer, Patton Boggs, L.L.P., dated February 23, 1998.
EXHIBIT D	Letter to The Honorable Tom Ridge, Governor from David R. Goode, Norfolk Southern, dated April 5, 2001.
EXHIBIT E	Letter to David Yeager, Director, Governor's Action Team from D. Kevin Hurley, Assistant Vice President, CSX Real Property, dated October 29, 2003.

EXHIBIT A

EXHIBIT A

NORFOLK SOUTHERN

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

David R. Goode
Chairman, President and
Chief Executive Officer

October 21, 1997

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

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

Dear Governor Ridge and Mayor Rendell:

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

I. Economic Development

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

A. Norfolk Southern will provide $10 million in cash investments to supplement the public effort to attract Kvaerner ASA to the Philadelphia Navy Yard. Our payments, which will be directed by the state and city, will be made in five (5) equal, annual installments, with the initial installment to be made on July 1, 1998.

B. Norfolk Southern, working with the Department of Community and Economic Development, the Governor's Action Team and the Philadelphia Industrial Development Corporation ("PIDC"), will expend a minimum of $15 million in the five (5) years after STB approval of the Conrail Acquisition for rail-served economic development programs in Philadelphia and across the Commonwealth. These programs will assist in land acquisition, facility construction and rail infrastructure installation with a focus on the Philadelphia Naval Business Center ("PNBC").

C. To complement the prior efforts, Norfolk Southern will pursue additional economic development incentive programs to encourage rail-oriented industry to locate in Philadelphia and across the state. Working with the Department of

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

D. The City of Philadelphia, through the PIDC, and Norfolk Southern plan to execute a Development and Marketing Agreement that is being developed for the PNBC.

E. The Delaware River Port Authority and Norfolk Southern plan to execute an agreement that is being developed for the location and operation of Norfolk Southern's intermodal terminal, referenced in III.B., at the AmeriPort Intermodal Terminal.

F. The Commonwealth of Pennsylvania will approve the expenditure of ISTEA funds for signalization and track improvements on the Chambersburg line and such additional Pennsylvania projects as may subsequently be authorized by Congress involving lines owned or operated by Norfolk Southern, including the Erie track relocation project.

II. <u>Jobs</u>

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

A. A Mid-Atlantic Regional headquarters will be located in Philadelphia. Initially, there will be seventy-five (75) jobs, including a Regional Vice President, at this site.

B. One-hundred-fifty (150) new rail-related jobs will be created as a result of Norfolk Southern commercial and operational activities in the Philadelphia area during the three years after STB approval of the Conrail Acquisition.

C. CSX and Norfolk Southern will jointly own Conrail Inc. Philadelphia will remain as the headquarters of Conrail Inc. for the 350 positions involved with the operation of the "Shared Assets Areas" and other continuing Conrail activities.

III. Capital Expenditures

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

A. Triple Crown facility ($4 million);

B. Intermodal facility ($10 million);

C. Automobile facility ($16 million); and

D. Track connection at Zoo interlocking ($1.4 million).

IV. Passenger Rail

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

V. Corporate Citizenship

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

VI. Regulatory Review

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

Norfolk Southern's commitments in this letter are expressly conditioned upon STB approval of the Conrail Acquisition substantially as it was filed on June 23, 1997, and therefore, will take effect only upon closing of the Conrail Acquisition. Norfolk Southern's commitments also are conditioned upon fulfillment by Pennsylvania and Philadelphia of their reciprocal commitments, reflected in this letter and in the agreements under development.

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

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

Sincerely,

David R. Goode

EXHIBIT B

CSX
CORPORATION

EXHIBIT B

One James Center
Richmond, Virginia 23219
(804) 782-1434

John W. Snow
Chairman, President
Chief Executive Officer

October 21, 1997

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

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

Dear Governor Ridge and Mayor Rendell:

We have worked together in a cooperative team over the last seven months, starting just after the announcement of the acquisition of Conrail by CSX and Norfolk Southern. We believe this historic transaction will provide competitive freight transportation to the Northeast that will benefit all shippers by providing improved value for rail freight transportation. Specifically, we have worked with representatives of the Commonwealth, the City of Philadelphia, SEPTA and the Port on economic development projects that can provide future benefits for the citizens of Pennsylvania. This letter outlines proposals necessary to advance developments of these projects consistent with the Commonwealth's and City's active support of the acquisition to the Surface Transportation Board.

1. Economic Development

CSX, the Commonwealth and the City will enter into a public-private partnership in recognition of the changes that will occur in the Philadelphia area and to encourage rail-oriented industry to locate in Philadelphia and across Pennsylvania. This partnership also will benefit the Jones Act trades, in which Sea-Land, a CSX subsidiary, participates. Our respective commitments include:

A. CSX will provide $10M in cash investments to supplement the public effort to attract Kvaerner ASA to the Philadelphia Navy Yard. Our payments, which will be directed by the state, will be made in five (5) equal, annual installments, with the initial installment to be made on July 1, 1998.

B. CSX will expend a minimum of $1M per year over the five (5) years (a total of $5M) after merger approval for rail-served economic development programs in Philadelphia and across the Commonwealth. These programs will assist in land acquisition, facility construction and rail infrastructure improvements with a focus on Philadelphia.

• Post Office Box 85629, Richmond, Virginia 23285-5629 •
• FAX (804) 782-6734 •

C. To complement these efforts, CSX will establish a new economic development incentive program to encourage rail-oriented industry to locate in Philadelphia and across the Commonwealth. Working with the Department of Economic and Community Development and the Governor's Action Team, CSX will provide capital through these programs to assist potential rail customers in their costs of land acquisition, facility construction, installation of rail sidings, etc., in exchange for contractual obligations for certain levels of rail business. After STB approval, CSX will make available $2M per year over a five year period (a total of $10M) for this program.

D. The City of Philadelphia, through the PIDC, and CSX will execute a Marketing Agreement for the City of Philadelphia.

E. The Delaware River Port Authority and CSX will execute an agreement for the development and operation of its intermodal terminal at Greenwich Yard.

F. The Commonwealth of Pennsylvania will seek, along with CSX, and approve the expenditure of federal funds for clearance improvements on the West Trenton line from Philadelphia to the New Jersey border and approve funding for any such additional Pennsylvania projects as may be subsequently authorized by Congress involving lines owned or operated by CSX.

G. The Commonwealth, the City of Philadelphia and CSX agree that it is in the Commonwealth's economic interest to have a strong, well-maintained and strategically located rail freight infrastructure.

2. <u>Jobs</u>

Job creation is the principal goal of our combined economic development efforts.

A. CSX and Norfolk Southern will jointly own Conrail, Inc. Philadelphia will remain as the headquarters of Conrail, Inc. which, as detailed in our application to the STB, will have 350 positions involved with the operation of the "Shared Assets Areas" and other continuing Conrail activities.

B. Thirty-five new rail-related jobs will be created in addition to 150 existing jobs, as a result of CSX commercial and operational activities in the Philadelphia area during the three years after STB approval of the acquisition.

C. CSX anticipates establishing a regional office in Philadelphia that will include government relations, industrial development, sales and operations.

3. Capital Expenditures

The operating plan filed with the STB identifies more than $27M in capital improvement expenditures by CSX in Pennsylvania with at least $22M in Philadelphia for three major projects:

A. Intermodal facility ($15M). (The Delaware River Port Authority has offered to fund the construction of this facility pursuant to the agreement referred to in paragraph 1E.)

B. Track connection at Eastwick interlocking ($4M).

C. Belmont Siding ($3M).

4. Passenger Rail

Freight and passenger operations share track in more than half of SEPTA's service territory. Our CSX team has begun to work closely with SEPTA, Conrail and the Norfolk Southern to ensure safe on-time passenger and freight operations. CSX will consent to Conrail extending the SEPTA Trackage Rights Agreement for an additional five years as long as SEPTA provides unqualified liability coverage for CSX and the Conrail Shared Area Operations company (CSAO) backed by broad indemnification language and insurance.

5. Civic and Charitable Giving

After STB approval, CSX along with Norfolk Southern and Conrail, Inc. will ensure that all of Conrail's philanthropic obligations as of the date of this letter are met. The three companies will be active members of the civic and charitable community in Philadelphia and throughout the Commonwealth.

6. Regulatory Review

On or before October 21, 1997, the Commonwealth of Pennsylvania and the City of Philadelphia will file written statements of support for the Conrail acquisition with the STB. We anticipate that you will encourage other elected officials and public agencies, including SEPTA and the DRPA, to file timely statements of support and will otherwise continue to support the acquisition.

CSX's authority to acquire Conrail and expand operations in Pennsylvania and, therefore, the terms of our agreement, are expressly conditioned upon approval of the Conrail acquisition by the STB. Of course, CSX obligations contained in this letter are subject to the Commonwealth and the City satisfying their obligations.

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

I look forward to working closely with you in the future.

Sincerely,

John

EXHIBIT C

EXHIBIT C

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WRITER'S DIRECT DIAL
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PA-10

February 23, 1998

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

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

Dear Secretary Williams:

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

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

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

Sincerely,

John L. Oberdorfer

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

EXHIBIT D

EXHIBIT D

NORFOLK SOUTHERN

Norfolk Southern Corporation
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Norfolk, Virginia 23510-2191
Telephone (757) 629-2610
Facsimile (757) 629-2306

David R. Goode
Chairman, President and
Chief Executive Officer

April 5, 2001

The Honorable Tom Ridge
Governor of Pennsylvania
Main Capitol Building, Room 225
Harrisburg, Pennsylvania 17120

Dear Governor Ridge:

I understand you and other members of your administration have expressed concern about Norfolk Southern's investment in the Commonwealth since the Conrail acquisition. While we have not kept you informed on a regular basis, I thought it would be useful to provide you with a current, comprehensive summary of our investments, with a specific focus on those programs agreed upon and committed to by Norfolk Southern and the Commonwealth.

- **$15 million over five years for rail-served economic development programs in Philadelphia and across the state.**

Norfolk Southern, in partnership with Bethlehem Steel, has developed a $12 million intermodal freight terminal at Bethlehem. This modern intermodal facility serves as the start of a comprehensive redevelopment of the former mill site in Bethlehem, bringing additional jobs to the area. In addition to serving industries in the Allentown/Bethlehem area, this terminal brings new economic activity to the area by also drawing freight from New Jersey points.

Regarding our agreement on the Philadelphia Naval Business Center (PNBC), I am happy to report that Norfolk Southern is very close to an agreement with the Delaware River Port Authority for construction of a $15 million intermodal terminal at the site, to be financed by Norfolk Southern user fees. While negotiations for this agreement have taken longer than anticipated, I believe all involved will not question Norfolk Southern's continuous attention to the matter and dedication towards reaching an agreement. This terminal will be the cornerstone of the PNBC's rail-based economic growth.

Norfolk Southern has taken other actions to advance the redevelopment of the Naval Shipyard. Norfolk Southern has paid $6 million in cash to date toward the public effort to attract Kvaerner ASA to the Philadelphia Naval Shipyard. Norfolk Southern also acquired additional (non-Conrail) trackage from CSXT in South

Philadelphia in order to improve NS's ability to serve the PNBC. NS anticipates financing more than $1 million of improvements to this trackage.

- $25 million over five years at $5 million per year for rail-oriented economic development projects that include contractual obligations for acceptable levels of rail business.

Norfolk Southern has worked aggressively to fund track expansions and locations of new industries on our lines under this provision. Customers benefiting from NS's participation include R.R. Donnelly, Sun Oil, and Schmalbach Container. Approximately $0.5 million has been expended on these projects.

I am happy to report Norfolk Southern has recently agreed in principle to reimburse the cost of a $335,000 track expansion at Novalog, a steel importing firm working on the U.S. Steel Fairless Works site. This track expansion will allow Novalog to accommodate increased business levels. As intended under our agreement, this investment is directly tied to Novalog's shipping levels via Norfolk Southern.

I am especially proud to report Norfolk Southern's involvement in three major rail-oriented economic development projects that are helping to ensure Pennsylvania's energy independence and the continued prosperity of Pennsylvania's coal producers.

Norfolk Southern, in partnership with Tanoma Energy, recently opened a new $3 million coal unloading facility for Midwest Generation's Homer City power plant, located in Indiana County. Homer City, one of the largest power plants in the Commonwealth, can now receive rail-originated coal for the first time. This ability to access competitively-priced coal (most of which is mined in Pennsylvania) is vital to the plant's future competitiveness.

Norfolk Southern and CSX are jointly funding a $5.8 million batch-weigh loading system at Consol's Bailey Mine near Waynesburg. This new system at the Commonwealth's most productive coal mine enables the mine maximize the amount of coal the mine is able to load each day. Similar offers totaling $6.1 million are outstanding at two other area coal mines.

Norfolk Southern also is building a $28 million rail line to serve Key-Con's Keystone Power Plant in Shelocta. Like Homer City, Keystone is one of the largest power plants in Pennsylvania, and this new rail route will enable reliable and economical rail delivery of increased volumes of Pennsylvania coal by rail. I would be

The Honorable Tom Ridge
April 5, 2001
Page Three

remiss if I did not express my appreciation for the assistance of the Commonwealth in this project, especially the Department of Transportation which has helped greatly with this project.

In addition, Norfolk Southern has actively pursued several large rail-served industrial development projects that unfortunately went to other states or located on other railroads. Offers of assistance were also made to industries who either decided not to proceed with the project or were unwilling to contractually commit acceptable levels of rail traffic to Norfolk Southern.

I understand there were several situations when the Commonwealth attempted to locate rail-served industry but did not feel that it received cooperation from Norfolk Southern consistent with the terms of our agreement. Norfolk Southern will continue to work to fulfill not just the terms, but the spirit of the agreement.

- <u>Additional Investment</u>

Overall, I am proud of Norfolk Southern's record of investment in Pennsylvania. Norfolk Southern has already invested nearly $250 million in the Commonwealth, including many dollars not envisioned in our initial application for control of our portion of Conrail.

In addition to the successful opening last year of Norfolk Southern's $31 million Rutherford Intermodal hub in Swatara Township, some of our other major projects include:

- $6.9 million to upgrade Conway yard near Pittsburgh
- $6.8 million to improve signals and safety on our line between Harrisburg and Philadelphia
- $4.9 million to construct and equip the NS Northern Region headquarters building near Harrisburg
- $4.2 million to build new track capacity and signals in Harrisburg
- $2.2 million for new connections at Bethlehem
- $1.2 million to improve our fueling facility in Harrisburg

These investments are in addition to Norfolk Southern's investment of more than $8 million in shop improvements.

The Honorable Tom Ridge
April 5, 2001
Page Four

- <u>Telecommunications Investment</u>

Pennsylvania should be particularly excited by $52 million already invested in the Commonwealth by Thoroughbred Telecommunications and Technology (T-Cubed), Norfolk Southern's wholly-owned telecommunications subsidiary. This construction of fiber-optic capacity from the Ohio border through Pittsburgh and Harrisburg to Washington, DC is a major enhancement to the Pennsylvania's telecommunications infrastructure.

Harrisburg, now a rail and road hub, is slated to become a telecommunications center as well. Norfolk Southern's route structure placed Harrisburg clearly astride the Chicago – Washington fiber route, a corridor that would have otherwise bypassed Harrisburg and all but a small portion of Pennsylvania. Six fiber optic routes are planned to radiate from Harrisburg, of which two are already built. The additional routes – to Allentown/ Bethlehem and New York City, to Reading and Philadelphia, to Williamsport and Buffalo, and to Maryland -- are contingent on interest from telecommunications firms willing to partner with T-Cubed on their construction.

This investment has even greater potential for the Commonwealth, because T-Cubed installed excess capacity for later installation of fiber-optic cable along the route. Constructing now creates future capacity that can be quickly put to use.

- <u>Norfolk Southern's Financial Challenge</u>

Please understand that Norfolk Southern has made these substantial investments despite the very serious financial challenges facing us. I am sure you have seen the economy weaken, which has forced NS to take undesirable actions such as closing of the Hollidaysburg shop. While we have cut our quarterly dividend by 70% and reduced our management work force by nearly 25%, NS has endeavored to meet its investment commitments even in the face of the recent decline in rail traffic.

Given the concern over Norfolk Southern's investment levels, and other recent developments, I would very much like to meet with you at your earliest convenience. I am asking Rich Timmons, Norfolk Southern's Resident Vice President,

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The Honorable Tom Ridge
April 5, 2001
Page Five

to contact your office to arrange such a meeting. Together I hope we can have a substantive discussion of the issues facing Norfolk Southern and Pennsylvania.

I very much look forward to meeting with you.

Sincerely,

David R. Goode

cy: **H. C. Lewis**
R. F. Timmons

bc: **R. M. Bennett**
J. F. Corcoran
J. H. Friedmann
J. A. Hixon

EXHIBIT E

EXHIBIT E

CSX
REAL PROPERTY

2 North Charles Street, 11th Floor
Baltimore, Maryland 21201
(410) 613-6156
FAX: (410) 613-6151
Kevin_Hurley@CSX.com

D. Kevin Hurley
Assistant Vice President

RECEIVED OCT 31 2003

RE: 42101-0071

October 29, 2003

Mr. David Yeager
Director
Governor's Action Team
100 Pine Street, Suite 100
Harrisburg, PA 17101

Dear Mr. Yeager:

This will follow up on our recent conversation regarding the desire of CSX to have certain purchases of railroad property by the Philadelphia Regional Port Authority (PRPA) qualify as eligible under an Economic Development Fund to which CSX had committed funds at the time that Conrail was purchased.

As background, in 2002 CSX sought to have a 44 acre parcel of land that it owned in South Philadelphia rezoned from industrial to commercial to permit the development of a new IKEA and other retail establishments to serve the South Philadelphia community. The PRPA felt that this rezoning would remove from the Port Zone valuable industrial land needed to allow the Port to expand. In exchange for the Port's support of the rezoning, CSX agreed to convey to the Port a pier facility that it had acquired from Conrail. It also agreed to support the Port in its efforts to acquire additional lands and a second pier from Conrail. Because the Port did not have the resources to acquire these properties, CSX offered to apply to the Governor's Action Team to allow the Port to use the remaining funds in the $5 million CSX economic development commitment to be used as credits against real estate purchased from CSX and Conrail.

The PRPA has the primary responsibility to support and grow the port activity in the Port Zone which includes Philadelphia, Bucks and Delaware counties. The purchase of the CSX and Conrail parcels will allow the Port to expand on several different fronts which will be discussed individually below. They are particular crucial to the Port because these sites are primarily located south of the Walt Whitman bridge which has superb rail access, is in close proximity to the Intermodal transfer facilities and there is no air draft restrictions as it relates to vessel's vertical clearance of the bridge. All of the properties are shown on the attached aerial map.

Pier 122 and 124:

These piers, owned by Conrail and CSX respectively, are the only bulk handling piers in Philadelphia, one designed for import and one for export. The export facility designed to handle coal has not been in use for almost 20 years and the import pier is marginally used due to requisite improvements to the infrastructure. Both facilities are rail served and are contiguous. Acquisition of these piers would also provide the Port the option to pursue two opportunities, (1) maintaining and upgrade the existing pier structures and market them to the international bulk cargo market or (2) create a new facility by filling between the two piers and the adjacent land owned by the Commonwealth to create a marginal pier, a more modern and efficient way of handling the demands of commercial shippers and the long term obligations of a Strategic Military Port. The plan attached illustrates this potential and is shown as Southport Development.

With regard to this later project the PRPA is currently assessing environmental, engineering and economic issues. They have engaged a marine engineering firm, a port planning consultant and an economic analysis consultant to evaluate several options, the largest of which would create a new marine terminal with 89 acres and 2000 linear feet of marginal berth.

Pier 122 is supported by an approximate 20 acres of land which is connected to the Pier by a conveyor and has been traditionally used to stockpile imported bulk commodities. This storage is essential to any import operation of bulk materials to facilitate the transfer from vessel to rail or truck.

Whiskey Yard:

This 29 acre parcel of land owned by Conrail is currently vacant but was previously used to support the former Publicker distillery. Across Delaware Avenue from the Packer Avenue Marine Terminal, the Port's primary container facility, this land is essential for this facility to grow. Recently designated as a Strategic Military Port, much of the existing land currently used for storage of containers will need to be utilized to support military movements. The Whiskey Yard offers the most convenient and practical to continue the container operations and support the military in the short term. The yard also offers the flexibility of increasing the area for automobile storage yard due to its proximity to the Pier 98 Annex.

Savage Yard:

This too, is a vacant 12 acre parcel of land which is adjacent the Port's Pier 98 Annex, its import automobile operations. The current facility is often considered less competitive than the neighboring Port of Wilmington because it is not large enough to handle current demands. The acquisition of this land would allow for the expansion of the facility and increase the Port's competitive position. The combination of Whiskey and Savage Yards would also allow the Pier 98 Annex to expand to 100 acres, a minimum threshold requirement for handling large international automobile accounts.

The acquisition of these parcels would allow the Port to expand in several different areas included breakbulk, bulk and containerized cargo for commercial and military customers.

The CSX commercial development is anticipated to create over a thousand new jobs in South Philadelphia and add over a million dollars to the City's tax base. The port expansion has an even greater economic impact on the local community. The expansion would generate approximately 5.6 million tons of additional port traffic creating almost 4,000 direct, new jobs and over 2,300 induced and indirect jobs. It would also spin off benefits of increasing personal income by $325 million, business revenue by $443 million and creating additional $33,627,000 in additional State and Local taxes.

If you have further questions about this proposal, I would be happy to arrange for a meeting with the PRPA so that this project could be discussed in greater detail.

Sincerely,

D. Kevin Hurley

D. Kevin Hurley

CC: Mr. Robert Blackburn
Pennsylvania Regional Port Authority

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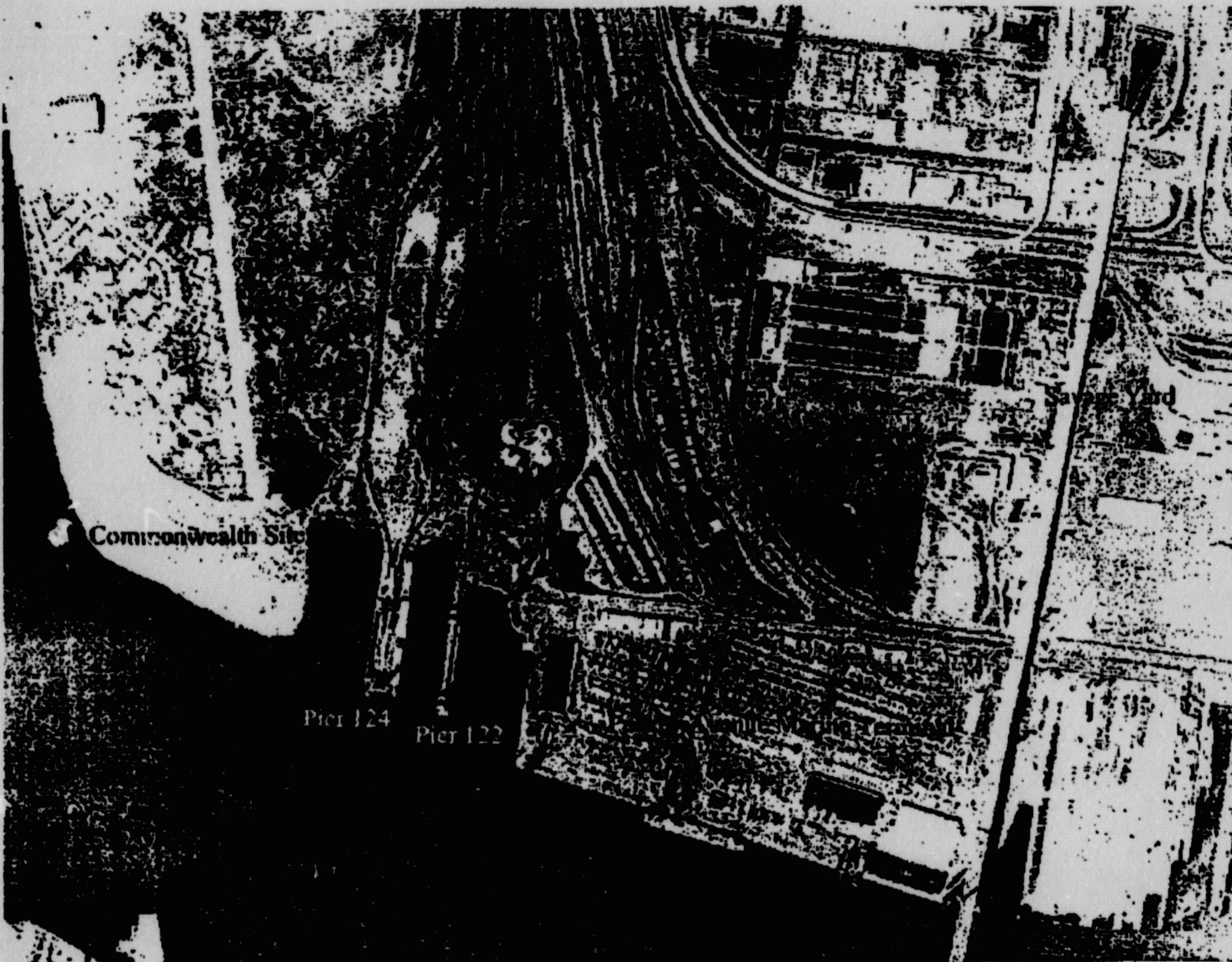
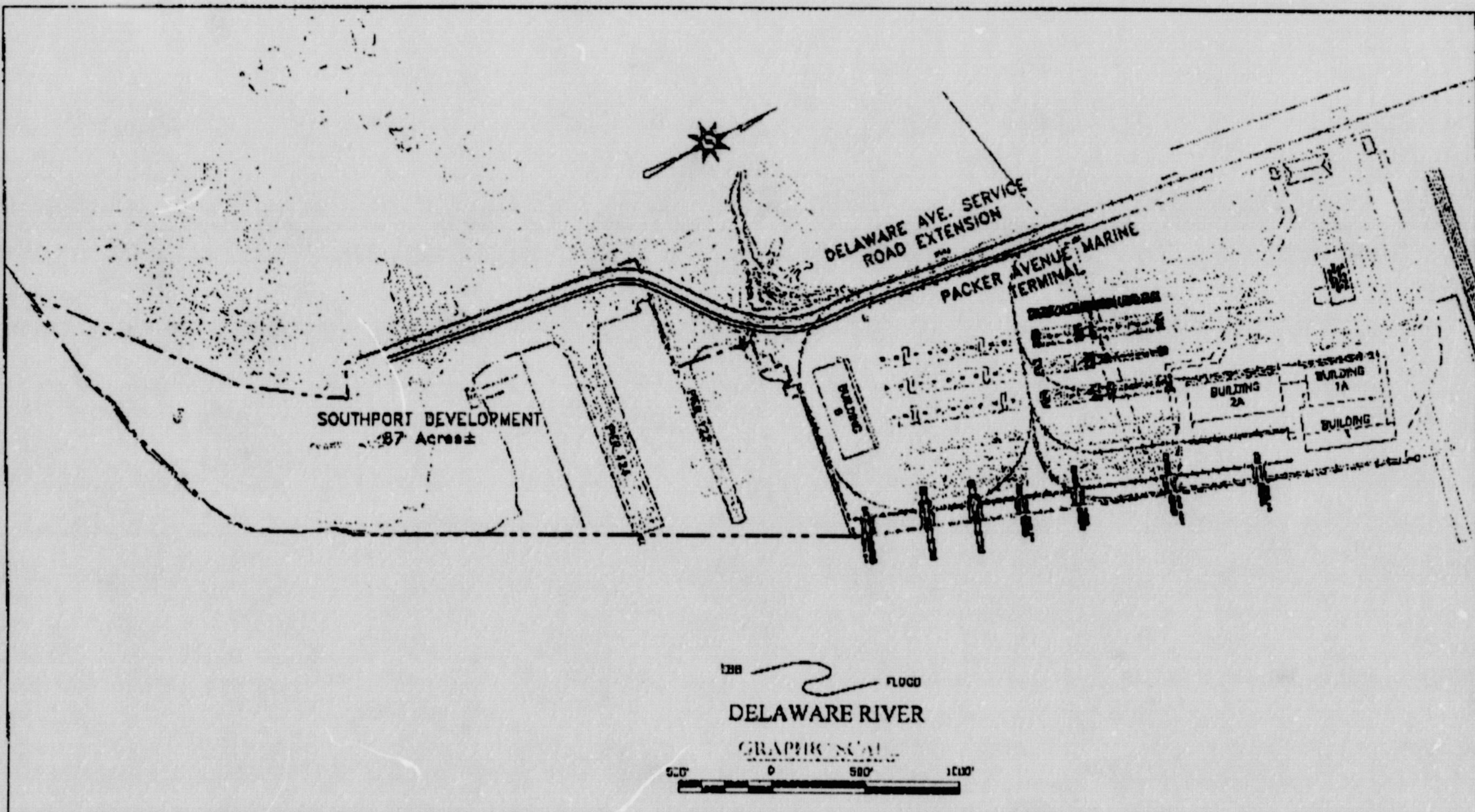

Commonwealth Site
Pier 124
Pier 122



TECHcon Infrastructure Consultants	URBAN ENGINEERS, INC. MARINE ENGINEERING SERVICES DIVISION 530 WALNUT STREET, 14TH FLOOR PHILADELPHIA, PA 19106-3629	OPTION C SOUTHPORT DEVELOPMENT	FILE LOCATION & NAME: PROJECTS\5698 PORT OF PHILADELPHIA\002 PIER 122-124\Deliverable\ 5698 032 Option C and C1.dwg	SCALE: 1" = 500' DATE: 6-26-2003 DRAWN BY: CJL DESIGNED BY: JBH	PIER 122 / 124 TERMINAL PHILADELPHIA REGIONAL PORT AUTHORITY

BEFORE THE
SURFACE TRANSPORTATION BOARD

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY -- CONTROL AND OPERATING LEASES/AGREEMENTS -- CONRAIL INC. AND CONSOLIDATION RAIL CORPORATION	**Finance No. 33388 (Sub- No. 91) (General Oversight)**

CERTIFICATE OF SERVICE

This is to certify that on the 26th day of April, 2004, the undersigned caused the Comments of the Commonwealth of Pennsylvania for the Hearing May 3, 2004 to be served on the parties in the above-captioned proceeding, by electronic mail on those parties for whom a valid electronic mail address is listed in the service list for this matter, and by United States Mail, first class postage pre-paid, on the remaining parties:

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Millburn, NJ 07041

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Date: April 26, 2004

/s/John M. Whitlock
John M. Whitlock, Esquire
Attorney No. 35961

Formal Filing

Docket #: ☒ FD -33388 -91 -

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Filed By: * (person who signed doc.)	John M. Whitlock
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- Public_Certificate of Service 04-26-04.doc

STB FD-33388 (SUB 91) 04/26/04 D 210676

210676

ANACOSTIA & PACIFIC
COMPANY, INC.

THE MONADNOCK BUILDING
53 WEST JACKSON BOULEVARD - SUITE 335
CHICAGO, IL 60604
TEL: (312) 362-1888
FAX: (312) 362-1402

535 FIFTH AVE., 33RD FLOOR
NEW YORK, NY 10017
TEL: (212) 687-9500
FAX: (212) 687-9501

April 16, 2004

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RECEIVED

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

Re: STB Finance Docket No. 33388 (Sub-No. 91)
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 (General Oversight)

Dear Secretary Williams:

Anacostia & Pacific Corporation, on behalf of its affiliated railroads, hereby notifies the Surface Transportation Board of its intent to speak at the public hearing scheduled for May 3, 2004, in Washington, D.C. Peter A. Gilbertson will speak on behalf of Anacostia & Pacific. We request a total of ten minutes to speak about the benefits to these short line railroads of the Conrail Transaction. Anacostia & Pacific does not plan to file a written statement prior to the hearing.

Respectfully yours,

Peter A Gilbertson
by JES

STB FD-33388 (SUB 91) 04/23/04 D 210670

the port of WILMINGTON Delaware

210670

April 22, 2004

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

Re: STB Finance Docket No. 33388 (Sub-No. 91)
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 (General Oversight)

Dear Secretary Williams:

On behalf of the Port of Wilmington, DE, I welcome this opportunity to inform the Surface Transportation Board that the Port has benefited from the Conrail Transaction. The Port supports the planned termination of the Conrail General Oversight Proceeding.

Who the Port is. What services the Port provides. Who are the major customer groups that the Port service.

- The Port is better off because of the Conrail Transaction. The reach of single line service from the Port is far more extensive than was the case prior to the transaction and service has improved.

- Generally, the Port's customers receive first-rate service.

- The Port's relationships with NS and CSX are strong, and communication is effective.

- There is no need further to extend oversight of the transaction. The transaction is fully implemented. If any future problems develop, those can be brought to the Board's attention.

Sincerely yours,

Eugene R. Bailey

Eugene R. Bailey
Executive Director

DIAMOND STATE PORT CORPORATION
1 Hausel Road • Wilmington, Delaware 19801-5852 • Phone: (302) 472-PORT (7678) • Fax: (302) 472-7740
PORT OF PERSONAL SERVICE

STB   FD-33388   (SUB 91)   04/23/04   D   210667

210667

COMMONWEALTH of VIRGINIA

Virginia Port Authority
600 World Trade Center
Norfolk, Virginia 23510-1679
Telephone (757) 683-8000
Fax (757) 683-8500

J. Robert Bray
Executive Director

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April 22, 2004

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

RE: STB Finance Docket No. 33388 (Sub-No. 91)
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 (General Oversight)

Dear Secretary Williams:

On behalf of the Virginia Port Authority (VPA), I welcome this opportunity to inform the Surface Transportation Board that our port has benefited from the Conrail Transaction. The VPA supports the planned termination of the Conrail General Oversight Proceeding.

The Port of Virginia is the third largest port on the U.S. East Coast. In the year 2003, the four marine terminals operating within our port handled 1,646,279 TEUS. Our port primarily services the Mid-Atlantic market, but we also handle about 22% of our business that moves via rail to/from the Midwest. Rail service is an integral part of day-to-day operations at our port with on-dock and near-dock rail facilities at all of our marine terminals. Through the rail services offered by the Norfolk Southern and CSX, our port is able to serve rail markets in cities such as Columbus, Cleveland, Chicago, Detroit, Louisville, St. Louis, and Kansas City. For this reason, I feel well qualified to speak out in support of the planned termination of the Conrail General Oversight Proceeding.

Since the Conrail breakup in 1999, our rail volume has increased from 121,297 containers to 175,145 containers, an increase of 44%. In addition, we have seen more competition develop in our port with CSX now serving nine Midwest origins/destinations compared to just one in 1999. The Norfolk Southern has retained its dominant role in our port serving 22 origin/destinations and continuing to handle the majority of rail volume through our port. This added competition as well as the competition that has been created by the two railroads competing in the New York market, has resulted in better service and lower prices to those shippers moving their cargo on rail through our ports.

The Port of Virginia has always had excellent relationships with Norfolk Southern and CSX. The operating scope and efficient services provided by Norfolk Southern and CSX have been a major contributor to our port's growth and success. We feel the Conrail acquisition has been beneficial to ports, the shipper community, and ultimately the U.S. consumer. It is the view of the VPA that there is no need to extend the oversight of the transaction. The transaction has been fully implemented. Should any future problems develop, those can be brought to the attention of your Board.

Yours truly,

J. Robert Bray
J. Robert Bray
Executive Director

STB FD-33388 (SUB 91) 04/20/04 D 210644

ANACOSTIA RAIL HOLDING Fax:3124310828 Apr 16 2004 14:26 P.02

210644

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FAX: (312) 362-1402

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New York, NY 10017
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April 16, 2004

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

Re: STB Finance Docket No. 33388 (Sub-No. 91)
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 (General Oversight)

Dear Secretary Williams:

Anacostia & Pacific Corporation, on behalf of its affiliated railroads, hereby notifies the Surface Transportation Board of its intent to speak at the public hearing scheduled for May 3, 2004, in Washington, D.C. Peter A. Gilbertson will speak on behalf of Anacostia & Pacific. We request a total of ten minutes to speak about the benefits to these short line railroads of the Conrail Transaction. Anacostia & Pacific does not plan to file a written statement prior to the hearing.

Respectfully yours,

Peter A Gilbertson
by JES

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ANACOSTIA RAIL HOLDINGS

ACCOUNTING AND HUMAN RESOURCE DEPARTMENTS

Phone: 1-312-341-1026
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www.anacostia.com

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FAX TRANSMISSION SHEET

Date: 4/16/04

To: Honorable Vernon A. Williams

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From: Jack Spiese

Message:

YOU SHOULD RECEIVE 2 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES PLEASE CALL SENDER AT 312-341-1026.

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

Re: STB Finance Docket No. 33388 (Sub-No. 91)
Conrail Oversight Hearing

Dear Secretary Williams:

A & R Bulk-Pak, Inc. intends to speak at the public hearing scheduled for May 3, 2004, in Washington. Avi Ron/Jason Blinkoff will speak on behalf of A & R Bulk-Pak, Inc. A & R Bulk-Pak, Inc. requests a total of 5-10 minutes to speak about the benefits created by the Conrail Transaction with respect to the Shared Assets Areas in Elizabeth, NJ. A & R Bulk-Pak, Inc. does not plan to file a written statement before the hearing.

Yours truly,

Avi Ron
President
A & R Bulk-Pak, Inc.

Jason A. Blinkoff
Director, Sales & Marketing
A & R Bulk-Pak, Inc.

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210647

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Donald W. Alexander
Senior Vice President
Operations

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Chemical, Refinery & Industrial Services
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Fax (610) 970-8910

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April 16, 2004

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

Re: STB Finance Docket No. 33388 (Sub-No. 91)
Conrail Oversight Hearing

Dear Secretary Williams:

Savage Services Corporation ("Savage") plans to attend and requests the opportunity to participate at the public hearing scheduled for May 3, 2004, in Washington, DC.

Donald W. Alexander, Senior Vice President Operations of Savage's Chemical, Refinery & Industrial Services Unit will attend the hearing representing Savage and requests a few minutes to address the speaker with regards to the benefits of the Conrail Transaction.

Savage does not plan to file a written statement before the hearing.

Sincerely,

Donald W. Alexander

Donald W. Alexander

STB FD-33388 (SUB 91) 04/19/04 D 210622

210622

CONSOL ENERGY

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web: www.consolenergy.com

April 15, 2004

APR 19 2004
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Secretary
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1925 K Street, NW
Washington, DC 20423-0001

Re: STB Finance Docket No. 33388 (Sub-No. 91)
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 (General Oversight)

Dear Secretary Williams:

This is CONSOL Energy's notice to the Surface Transportation Board that CONSOL Energy intends to appear and speak at the public hearing scheduled for May 3, 2004, in Washington, D.C. Christopher T. Marsh, General Manager – Transportation, will speak on behalf of CONSOL Energy. CONSOL Energy requests a total of five minutes to speak. CONSOL Energy does not plan to file a written statement prior to the hearing.

Yours truly,

James McCaffrey
Vice President – Transportation & Marketing Services

STB FD-33388 (SUB 91) 04/14/04 D 210595

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub-No.91)

210595

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

[GENERAL OVERSIGHT]

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NOTICE OF INTENT OF THE PORT AUTHORITY
OF NEW YORK AND NEW JERSEY TO PARTICIPATE
IN PUBLIC HEARING

As noted in the Port Authority's Notice of March 17, 2004. The Port Authority seeks to participate in the hearing to be held May 3, 2004, in Washington, DC. The Port Authority's comments will be presented by R. Adm. Richard M. Larrabee, U.S.C.G. Ret., Director of Port Commerce. The Port Authority requests 15 minutes to present its comments.

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