

STB

FD-33388 (SUB 91)

04/05/04

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203 PORT JERSEY BOULEVARD • JERSEY CITY, NEW JERSEY 07305

PORT JERSEY RAILROAD COMPANY

Statement of Bob Bailey President New Jersey Short Line Railroad Association

Conrail oversight hearing April 2 2004 Trenton N.J.

Having worked with and observing the Conrail operation for the past 5 years it is my opinion that the continuing dedication of the Conrail employees under the leadership of Ron Batory has made Conrail an extremely well operating railroad in both north jersey and south jersey. I here very few complaints of a continuing nature. Normal glitches like we all have. Through Conrail both shippers and Short lines enjoy dual competitive access with no paper barriers that I'm aware of. This is what we asked for.

The concerns I have are how N.S. and CSX handle marketing of the shared area working with the short line community , and the promise to take trucks off the highways. Combining the two thoughts I believe this is where they have stumbled in their commitment . Both companies have enjoyed success working with Short lines that have brought projects to them. I have not heard of any the other way that doesn't mean there have been none .By working with the short line or by using their own property to develop rail business that gets as close to destination as possible before changing modes, is what should occur . Example there is a company in Kearny N.J. that receives approximately twelve truck loads of material a week from the two class ones CSX brings the cars to their terminal in Elizabeth N.J. transloads then trucks the business the short distance to Kearny ,this is a good practice. N.S. stops the cars in Pennsylvania and transloads then trucks across the

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PORT JERSEY RAILROAD COMPANY

entire state to the customer, not beneficial to the highway system. MY point being if one road can do this why not both This was their stated objective prior to start up .In fairness of statement CSX does some transloading out of the south Philadelphia area into south jersey.

As far as oversight goes I don't really understand what it does other than allow us to air our concerns which is a good thing. But going back to the value of the operating railroad called Conrail , I would like to restate that the short lines and shippers have received the added value of the good service. Having said this I must say there is still a perceived belief among some shippers and possibly some railroads that it cost more to do business in shared . I don't believe this to be true and would like to see it addressed. As for taking trucks off the high ways I would also like to see this addressed . Keeping in mind sometimes we the short lines can be part of the solution in this area.

BOB BAILEY
Vice President & C.O.O.



PORT JERSEY RAILROAD CO.

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Jersey City, NJ 07305

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STB

FD-33388 (SUB 91)

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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.

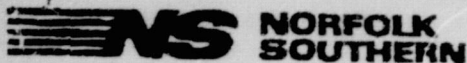
Considering the railroads' pace in adhering to their representations during the initial five year period, and the length of time necessary to plan and construct capital improvements, we suggest to the Board that it extend its oversight of its Decision for an additional five year period of time. We also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

If it is possible, we also ask that the Board address several railroad health and safety issues that currently affect the City. Among them are:

1. Repair of the 25th Street Viaduct, from which chunks of concrete are falling onto vehicles and pedestrians , causing accidents and injuries.
2. Deferred maintenance of rights-of-way and other property, accumulation of trash and debris.
3. Train damage to overhead street bridges and other structures around the City that are not reported or repaired; and
4. Blocking City streets at grade crossings with trains parked for long periods of time, in violation of state and local laws.

Finally, we must caution the Board to avoid accepting projects proposed as fulfilling the representations of October 1997 if they are not specifically noted in the aforementioned October 21, 1997 correspondence, such as, for example, a Triple Crown facility constructed in Rutherford or a regional headquarters established in Harrisburg being , roffered as fulfilling a commitment to the Mayor of the City of Philadelphia.

For our part, we look forward to continuing the relationships that we have developed since 1997 with Conrail, CSX, and NS to promote mutually beneficial economic development in the City and Region.



Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191
804 529-2610

David R. Goode
Chairman, President and
Chief Executive Officer

October 21, 1997

Copy to:
~~*SA [illegible]*~~
More

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. 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

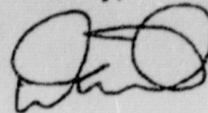
The Honorable Thomas Ridge
The Honorable Edward Rendell
October 21, 1997 - Page 4

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,

A handwritten signature in dark ink, appearing to be "D. Goode", written in a cursive style.

David R. Goode

October 21, 1997

FILE -
NS 17720000

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

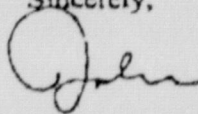
On or before October 21, 1997, the Commonwealth of Pennsylvania and the City of Philadelphia will file written statements of support for the Conrail acquisition with the STB. We anticipate that you will encourage other elected officials and public agencies, including SEPTA and the DRPA, to file timely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

A handwritten signature in dark ink, appearing to be the name "John", written in a cursive style.

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

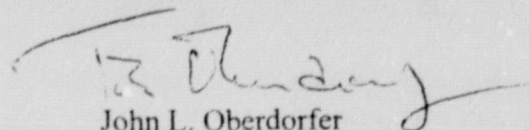
Dear Secretary Williams:

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.

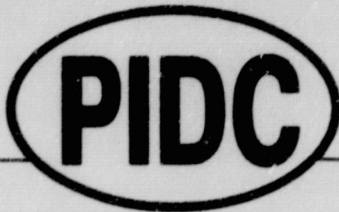
Pennsylvania is also pleased to submit for the record two letter agreements dated October 21, 1997: one with Norfolk Southern and the other with CSX. The Mayor of the City of Philadelphia is also a party to both letter agreements.

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)



PHILADELPHIA INDUSTRIAL DEVELOPMENT CORPORATION

WILLIAM P. HANKOWSKY
President

February 23, 1998

The Honorable 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
Executive Vice President

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

STB

FD-33388 (SUB 91)

04/02/04

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NEW JERSEY
DEPARTMENT OF TRANSPORTATION

SURFACE TRANSPORTATION BOARD (STB)

STB FINANCE DOCKET NUMBER 33388 (Sub-No. 91)

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

[GENERAL OVERSIGHT]

PUBLIC HEARING
APRIL 2, 2004, 12:00 NOON
CEREMONIAL COURTROOM #2
CLARKSON S. FISHER FEDERAL BUILDING & COURTROOM
402 EAST STATE STREET
TRENTON, NEW JERSEY

TESTIMONY OF

JOHN F. LETTIERE
COMMISSIONER, NEW JERSEY DEPARTMENT OF TRANSPORTATION
CHAIRMAN, NEW JERSEY TRANSIT CORPORATION

I. INTRODUCTION

Good afternoon. I am Jack Lettiere, Commissioner of the New Jersey Department of Transportation and Chairman of the Board, New Jersey Transit Corporation (NJ Transit). On behalf of Governor James McGreevey, thank you for the opportunity to present these remarks this afternoon

The State of New Jersey is a major freight distribution platform for over 22 million consumers residing within the boundaries of the New York/New Jersey/eastern Connecticut/eastern Pennsylvania and Delaware metropolitan areas and a major freight port of entry through Port Newark/Elizabeth for large parts of North America. The State of New Jersey has experienced dramatic growth in freight traffic over the last several years and the growth trend will continue for many years to come. New Jersey has also experienced significant growth on its existing commuter rail services, together with demand for new passenger rail services on the State's rail network. New Jersey recognizes the value of its rail infrastructure in mitigating environmental, energy usage, congestion and quality of life issues faced by its citizens. The State has a genuine interest in ensuring that Conrail operations in the North Jersey and South Jersey/Philadelphia Shared Assets Areas continue to thrive and provide all of the public benefits anticipated and described in the Application to acquire control of Conrail filed by Norfolk Southern (NS) and CSX Transportation (CSX) and approved by the Surface Transportation Board.

I appreciate the opportunity to testify this afternoon on the status of CSX and NS operations within the North Jersey and South Jersey/Philadelphia Shared Assets Areas.

- Both CSX and NS said the Conrail Shared Operating Plan took into account "increases in traffic from both truck-to-rail diversions resulting from the more efficient rail service made available by the transaction and traffic growth from new marketing opportunities made available by the transaction." (Id. at 141.)
- Both CSX and NS indicated that both railroads would "invest heavily in capital improvements to their respective systems in order to assure that they have the necessary facilities to compete effectively" in the Conrail Shared market. (Id. at 9.)
- NS indicate that it would institute new intermodal and Triple Crown operations that would improve services to and from Northern New Jersey and provide a viable alternative to trucks in several service lanes. (Id. at 44.)

The NJDOT comments submitted on July 14, 2003 also questioned the degree to which the public benefits anticipated by CSX and NS have come to fruition. Specifically:

- NJDOT revealed that the North Jersey Shared Assets Area has not resulted in the promised pro-competitive effects, and that many shippers have seen no increased competition, despite attempts by shippers and short-lines to facilitate competition.
- NJDOT opined that NS has not used facilities in North Jersey to offer attractive and more competitive single-line services to domestic shippers. Instead, NS has opted-out of rail service in the North Jersey Area and has openly marketed its rail facilities outside of the North Jersey Area and has informed shippers of the higher cost of all-rail moves into and out of the North Jersey Area as compared to truck-rail moves.
- NJDOT also expressed its concerns regarding the failure of CSX and NS to provide sufficient resources to Conrail Shared Assets.

- NJDOT stated that the CSAO appears to be understaffed, oftentimes resulting in significant service delays.
- NJDOT informed the Board that CSX and NS agreed to provide and implement economic development plans to promote the development of rail traffic within the Port Authority of New York and New Jersey's Port District, which covers virtually all of the North Jersey Shared Assets Area; but CSX and NS had yet to develop these economic development plans.

Although NS and CSX did not share NJDOT's view of the gap between the promise and reality of the North Jersey Shared Assets Area as expressed in the July 14, 2003 comments, they nevertheless agreed to meet and confer with NJDOT to discuss the concerns.

Because of their agreement to meet, and the shared desire to resolve differences outside of the Board process, NJDOT did not seek any Board-imposed changes with respect to the North Jersey Shared Assets Area during the fourth annual round of the Conrail general oversight proceeding. However, NJDOT informed the Board that if discussions with NS and CSX were not fruitful, NJDOT would seek Board-imposed changes with respect to the North Jersey Shared Assets Area.

IV. SUMMARY OF NJDOT/CSX AND NJDOT/NS MEETINGS

On October 8, 2003, representatives from NJDOT; NJ Transit, the statewide transit system operator; and, the North Jersey Transportation Planning Authority (NJTPA), the designated metropolitan planning organization for northern New Jersey, met with representatives from NS. The discussions centered on NS industrial development and marketing programs along with their short line business development plan for New Jersey. A significant outcome of that meeting was a better understanding of how NS approaches economic development projects. NJDOT also requested NS to

provide intermodal and carload traffic volume counts and any information available on capital spending that may have occurred within New Jersey. NJDOT has received the requested information from NS.

Several weeks later, on October 27, 2003, representatives from NJDOT, NJ Transit and NJTPA had the opportunity to meet with representatives from CSX. The discussions centered on CSX industrial development and marketing programs, site location processes and the CSX short line business development plan for New Jersey. A second meeting held on March 17, 2004 between NJDOT and CSX provided additional information concerning the CSX intermodal business plan and its bulk commodity trans-load operation, specifically the TRANSFLO Terminal Services facility located in Elizabeth, NJ. As a follow-up to those meetings, NJDOT requested from CSX intermodal and carload traffic volume counts plus any additional information about capital spending that may have occurred within New Jersey.

The information derived from all of these meetings with NS and CSX has been very helpful. I would like to acknowledge the positive, cooperative and open manner in which the meetings were conducted.

V. REQUEST FOR IMPROVEMENT OF CSX/NS OPERATIONS OF NEW JERSEY SHARED ASSETS AREAS.

From our discussions and initial assessment of the data that is now becoming available, I see a number of positive results that have come from the CSX/NS/Conrail transaction as well as areas that require additional effort. Do we still have other concerns? Yes! My direction is to continue the on-going discussions between all of the parties and work towards addressing the remaining issues.

Lets start with the positives:

- NS and CSX have undertaken significant capital investment at such locations as the Port Authority of New York & New Jersey Express Rail facilities at Port Newark/Port Elizabeth, the CSX trans-load facility located in Elizabeth, the NS "E" Rail yard also located in Elizabeth, and the NS Croxton Yard facility enhancements.
- The two Class I carriers are also joining with NJDOT in a cost sharing partnership that will see the re-installation of a new second main line track at several critical locations in the north central part of New Jersey.
- Finally, both CSX and NS have worked diligently with NJ Transit in resolving the passenger line issues consistent with the March 20, 1998 Letter of Understanding. Several projects such as the new Townley Station on the Lehigh Line and the Bordentown Secondary light rail service projects have been completed. Given the complexity of NJ Transit, Conrail, CSX and NS train operations on the New Jersey rail network, all parties will have to continue working cooperatively to ensure that the safety and reliability of all rail services in this region continue to be maintained at the highest levels.

Remaining areas of concern:

- I would ask the STB to encourage all parties to continue the use of Northeast Operating Rules Advisory Committee (NORAC) Operating Rules on all Conrail lines within the New Jersey Shared Assets Area. Even though the March 20, 1998 Letter of Understanding required that the NORAC rules be retained for three years from date of consummation, New Jersey believes that the NORAC Rules should continue to be used beyond the original time period because of the added value of the various railroad operators on this region using the same operating rules.

- The relationship that exists between the Class I carriers and their respective connecting short-lines needs to be looked at in more detail. As the State addresses increasing highway congestion and safety issues along Smart Growth initiatives, the New Jersey short-line rail operators have a unique opportunity to support new economic development including job creation in our mature urban and suburban areas while helping to ease the ever present highway congestion problem. I ask that the concerned parties join together and develop a viable public/private business plan that would produce positive results for all the rail carriers.

- While New Jersey has seen a transition over the years to more service related industry, the manufacturing base of New Jersey is still an important economic element. I ask that the Conrail Shared Assets Operating Plan be reviewed to address carload traffic in addition to new intermodal operations. Carload and intermodal services are integral to many of our state manufacturing operations.

- A final issue concerning us is the routing and interchange of rail freight traffic between the class I, regional and Shortline operator in New Jersey. In an economy that measures time as a critical cost element, I have seen some anecdotal information showing slow, round-about, time consuming movement of cars between the various carriers. I believe this issue warrants a comprehensive look at the way freight moves today and how it could better move into the 21st Century.

VI. CONCLUSION

As New Jersey's population continues to grow, there is increasing pressure to meet the larger freight rail service needs for goods movement as well as to provide additional commuter rail service to more effectively move people to jobs. The challenge to efficiently move both goods and people is one that I face each and every day. We must have new, creative, out-of-the-box thinking and planning as we step forward to address major issues such as air quality, congestion, and sprawl, to name a few.

Realizing the full potential of Conrail Shared Assets is vital for the State of New Jersey to achieve its transportation, economic, and quality of life goals. I feel that progress must be made on our remaining areas of concern, and will continue to foster the coordination and collaboration required to achieve that end. I challenge both NS and CSX to continue "competing vigorously for traffic in New Jersey". This competition should produce results that are both positive and measurable for all parties.

While the New Jersey Department of Transportation does not now seek any formal Board-imposed changes with respect to the North Jersey and South Jersey/Philadelphia Shared Assets Areas, the State may seek Board-imposed changes with respect to these Shared Assets if future discussions with NS or CSX should prove to not be fruitful.

I am pleased that the Surface Transportation Board has taken this opportunity to visit the Garden State today in order to hear the testimony of many interested parties. Again, thank you for your time.

210482



JAMES E. MCGREEVEY
GOVERNOR

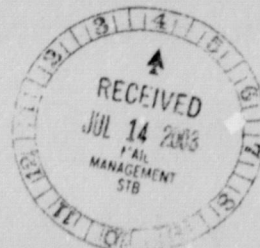
JACK LETTIERE
COMMISSIONER

July 14, 2003

VIA HAND DELIVERY

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

STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION
1035 PARKWAY AVENUE
P.O. BOX 601
TRENTON, N.J. 08625-0601
609-530-3535



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Part of
Public Record

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

Dear Secretary Williams:

I am Commissioner of Transportation for the State of New Jersey. The Northern New Jersey region is the freight distribution platform for 18 million consumers in the New York/New Jersey/Connecticut metro area and a major freight port of entry for large parts of North America. Northern New Jersey has experienced dramatic growth in freight traffic over the last several years and the growth trend will continue for many years to come. NJDOT has a genuine interest in ensuring that the North Jersey Shared Assets Area ("NJSAA") thrives and provides all the public benefits anticipated and described in the Application to acquire control of Conrail filed by Norfolk Southern Railway Company ("NS") and CSX Transportation ("CSX") and approved by the Surface Transportation Board.

NJDOT has significant concerns about the current gap between the promise and the reality of the NJSAA.

In their Application, CSX and NS anticipated many public benefits as a result of the NJSAA:

- CSX and NS claimed that NJSAA shippers would "benefit from extended single-line routing opportunities, improved service and increased competition..." (CSX/NS-119 at 22.)
- CSX and NS indicated that they would "compete vigorously for traffic in the NJSAA." (Id. at 8.)
- CSX and NS said the NJSAA Operating Plan took into account "increases in traffic from both truck-to-rail diversions resulting from the more efficient rail service made available by the transaction and traffic growth from new marketing opportunities made available by the transaction." (Id. at 141.)
- NS indicated that it would institute new intermodal and Triple Crown operations that would improve services to and from Northern New Jersey and provide a viable alternative to trucks in several service lanes. (Id. at 44.)
- CSX and NS indicated that both railroads would "invest heavily in capital improvements to their respective systems in order to assure that they have the necessary facilities to compete effectively" in the NJSAA market (Id. at 9.)

Unfortunately, the public benefits anticipated by CSX and NS have not come to fruition. The NJSAA has not resulted in the promised pro-competitive effects. Many shippers have seen no increased competition, despite attempts by shippers and shortlines to facilitate competition.

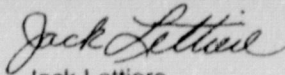
NS has not used facilities in North Jersey to offer attractive and more competitive single-line services to domestic shippers. NS has opted-out of rail service in the NJSAA. NS has openly marketed its rail facilities outside of the NJSAA and has informed shippers of the higher cost of all-rail moves into and out of the NJSAA as compared to truck-rail moves. NS marketing efforts have increased truck traffic in Northern New Jersey.

CSX and NS agreed to provide and implement economic development plans to promote the development of rail traffic within the Port Authority of New York and New Jersey's Port District, which covers virtually all of the NJSAA. CSX and NS have yet to develop these economic development plans.

Honorable Vernon A. Williams
July 14, 2003
Page 3

I have informed NS and CSX of NJDOT's concerns regarding the NJSAA. NS and CSX do not share NJDOT's view of the gap between the promise and the reality of the NJSAA, but they have agreed to meet and confer with NJDOT over the next several months to discuss our concerns. Because of their agreement to meet, and our shared desire to resolve our differences outside of the Board process, NJDOT does not now seek any Board-imposed changes with respect to the NJSAA. However, if our discussions with NS and CSX are not fruitful, NJDOT will seek Board-imposed changes with respect to the NJSAA. I am pleased that the Board intends to continue general oversight for the full 5-year term. The Board's continued oversight will facilitate resolution of NJDOT's concerns through negotiations.

Respectfully submitted,



Jack Lettiere
Commissioner of Transportation

cc: Parties of Record

CSX CORPORATION

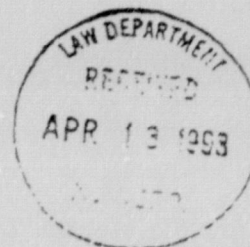
901 E. Cary Street, Richmond VA. 23219
(804) 782-1476

NORFOLK SOUTHERN CORPORATION

Three Commercial Place, Norfolk, VA. 23510
(757) 629-2677

March 20, 1998

Commissioner John J. Haley, Jr.
Department of Transportation, State of New Jersey
New Jersey Transit Corporation
1035 Parkway Avenue, CN 601
Trenton, New Jersey 08625-0601



Dear Commissioner Haley:

CSX Corporation and CSX Transportation, Inc. (collectively referred to as "CSXT"), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively referred to as "NSR") filed an application with the Surface Transportation Board ("STB") for acquisition and control of Conrail, Inc. and Consolidated Rail Corporation ("Conrail"), in **Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail, Inc. and Consolidated Rail Corporation** (the "Control Case"). Representatives of New Jersey Transit Corporation ("NJT") and Department of Transportation, State of New Jersey ("NJDOT") (sometimes collectively referred to as "NJDOT/NJT"), have conferred with representatives of CSXT and NSR regarding the Control Case and its impact on New Jersey. All parties agree that the transactions contemplated by the Control Case, subject to STB consideration, will result in significant benefits to the public. This letter confirms the understandings reached between the representatives of NJDOT/NJT, CSXT, and NSR regarding the transactions contemplated by the Control Case as they affect NJDOT/NJT, and represents their entire formal agreement with respect to the following aspects of the Control Case:

- I. **NJDOT/NJT Statement in Support of Conrail Merger.** NJDOT/NJT agrees to withdraw its request for conditions and release a statement of its support for the acquisition of control and division of Conrail by CSXT and NSR, based on the substantive terms of this letter.
- II. **Coordination with NJDOT/NJT in the Shared Assets Areas.** CSXT, NSR and NJDOT/NJT agree that an effective mechanism for coordination and communication among NJT, Conrail Shared Assets Operator ("CSAO"), NSR and CSXT is necessary to ensure that passenger and freight services continue to operate safely, reliably and conveniently after the consummation of the transactions contemplated by the Control Case.
 - A. The parties agree to meet regularly, in accordance with a schedule to be established by the parties, to discuss major issues necessary to ensure the smooth

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operation of both the passenger and freight service within the New Jersey Shared Assets Areas. Present at these meetings will be the Commissioner of Transportation (or designee(s)), the senior CSAO official (or designee) in charge of the New Jersey Shared Assets Areas, and the senior official of each of CSXT and NSR (or designees) having responsibility for freight rail operations in New Jersey, including such operations in the New Jersey Shared Assets Areas. In the event that New Jersey representatives disagree with a solution to an issue of concern to NJDOT/NJT, arrived at by NSR, CSXT, and CSAO, the Commissioner of Transportation may confer with the President or Chief Executive Officer of CSXT and/or NSR to resolve such issues.

B. In addition, the parties agree that close communications and cooperation at the operating level shall be maintained between NSR, CSXT, CSAO and NJT.

III. **Automatic Train Control/Positive Train Stop ("ATC/PTS").** NSR, CSXT and CSAO trains operating over NJT owned lines will include locomotive(s) equipped with automatic train control/positive train stop ("ATC/PTS") on-board apparatus. NJDOT/NJT shall not be responsible to pay any part of the costs of acquisition, installation, maintenance or the operating expense of any such on-board apparatus; however, this does not preclude NSR, CSXT and/or CSAO from seeking recovery from any other source. The parties agree that all systems used by each party on NJT-owned properties will be compatible with Amtrak requirements and FRA regulations, or that they will adopt such alternative processes and procedures as may be mutually acceptable.

V. **Maintenance Of Way Reimbursement.** The parties agree that, upon consummation of the transactions contemplated by the Control Case, they will enter into negotiations regarding the rates paid by either NJT or Conrail for trackage rights under the NJT and Conrail Trackage Rights Agreement, which was effective on October 1, 1984. These negotiations will include consideration of revising the method for calculation of such rates, effective after consummation of the transactions contemplated by the Control Case. The parties further agree that any change in these rates negotiated by the parties will not be effective until the next anniversary date of the Trackage Rights Agreement after the successful conclusion of negotiations.

V. **Townley Station.** NSR and CSXT acknowledge that a new passenger rail station will be constructed by NJT on the Lehigh Line between NK and Aldene, and agree to cooperate and support NJT's effort to achieve timely construction and operation of the station, in accordance with design and operating plans to which all parties hereto agree.

VI. **NEC Discussions.** NSR and CSXT agree that, where NJT interests may be affected and subject to Amtrak's concurrence, NJT should be given the opportunity to participate in discussions between NSR, CSXT, CSAO, and Amtrak with regard to usage of the

Commissioner Haley
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Northeast Corridor for freight purposes.

VII. **Operating Rules.** The parties agree that the Northeast Operating Rules Advisory Committee ("NORAC") Operating Rules on all Conrail lines within the New Jersey Shared Assets Areas (as defined in the Application) will be retained by NSR, CSXT, CSAO and NJT for three years from the date of consummation of the transaction.

VIII. **New Rail Starts.**

A. NSR and CSXT agree to work closely with NJT to examine and refine proposals for new passenger rail service on the following generally described rail lines, and to cooperate in their development where feasible.

1. The Washington Secondary between Hackettstown and Philipsburg, N.J.;
2. The Elizabeth Industrial Track between Elizabethport and Cranford, N.J.;
3. The Amboy Secondary Track between South Amboy, Jamesburg and Midway (Amtrak) and the Freehold Secondary Track between Jamesburg and Freehold;
4. The Southern Secondary between South Lakewood and Woodmansie, N.J.

B. Subject to the rights of NJDOT and NJT under contracts with Conrail, any new passenger rail service in Sections VIII A. will be developed consistent with the following principles:

1. All applicable federal and industry railroad safety laws, regulations, rules and standards;
2. The importance and necessity for growth and increasing reliability of rail freight service throughout the NSR and CSXT respective networks, including New Jersey;
3. No NSR, CSXT, or CSAO direct or indirect subsidy of passenger rail operations;
4. A level of tort liability indemnity and/or insurance acceptable to NSR and CSXT, and taking into account federal and state law, for those areas of rail operation under the control of NSR, CSXT, or CSAO; and
5. The importance and necessity of rail passenger service as a tool to help

Commissioner Haley

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solve mobility, transportation congestion, and air quality problems, consistent with the needs of the privately owned rail freight systems.

IX. NYS&W, NSR and CSXT (i) acknowledge that the Delaware-Otsego Corporation and/or New York, Susquehanna & Western Railroad (collectively referred to herein as "NYS&W") have authority, subject to NYS&W's agreements with NSR and CSXT, to negotiate for the sale to NJDOT/NJT of the NYS&W right-of-way (or the grant of some other interest therein), and (ii) represent that, to the extent permitted by their agreements with NYS&W, NSR and CSXT will support the negotiations between NYS&W and NJDOT/NJT.

X. Bordentown Secondary.

- A. NJT is designing and planning to construct and operate a new light rail service between Trenton and Camden along and in the right-of-way constituting the Bordentown Secondary Track. NSR and CSXT agree to give this project their early and particular attention. In addition to application of the principles set forth in Section VIII.B., NJDOT/NJT will continue to develop plans for this service with Conrail consistent with:
1. Passenger and freight safety;
 2. The continuation and growth in consistent and reliable local freight service that meets the needs of New Jersey shippers;
 3. Allowance for the route's continued use as a detour route for railroad through-freight service in the case of a major failure in the normal CSXT or NSR routes; and
 4. To the extent required by law and FRA regulations, or by Conrail and industry standards, the need to keep passenger rail separate from freight rail operations.
- B. From the present time until approval of the Conrail acquisition, NSR and CSXT agree to assist with the project only to the extent of keeping abreast of the discussions and providing such relevant information regarding engineering and operating standards and practices as will facilitate the project development. In addition, refinements to the NSR's and CSXT's plans that may affect the project, such as changes in routings or freight volumes, will be shared with NJDOT/NJT as they are developed.
- C. Consistent with the foregoing, upon approval of the Conrail acquisition, and to the

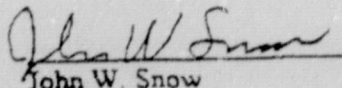
Commissioner Haley

March 20, 1998 - Page 5

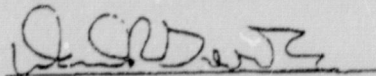
extent that issues are unresolved and agreements not concluded, NSR and CSXT will give the light rail project priority attention and assist NJT in developing a mutually agreeable project.

If the above accurately reflects our understandings, please sign in the appropriate place below and return an original copy to us.

Sincerely,



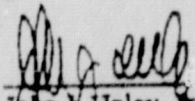
John W. Snow
Chairman, President and
Chief Executive Officer
CSX Corporation



David R. Goode
Chairman, President and
Chief Executive Officer
Norfolk Southern Corporation

Agreed to:

By:



John J. Haley, Commissioner
Department of Transportation, State of New Jersey
New Jersey Transit Corporation