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ENTERED
BEFORE THE
SURFACE TRANSPORTATION BOARD
Office of Proceedings
March 9, 2012

Part of

STB Docket No. AB-167 (Sub-No. 1191-X) Public Record
CONSOLIDATED RAIL CORPORATION
-ABANDONMENT EXEMPTION-
IN PHILADELPHIA, PA

STB Docket No. AB-55 (Sub-No. 710-X)
CSX TRANSPORTATION, INC.
-DISCONTINUANCE OF SERVICE EXEMPTION-
IN PHILADELPHIA, PA

STB Docket No. AB-290 (Sub-No. 552-X)
NORFOLK SOUTHERN RAILWAY COMPANY
-DISCONTINUANCE OF SERVICE EXEMPTION-
IN PHILADELPHIA, PA

OFFER OF FINANCIAL ASSISTANCE

Filed for

CNJ RAIL CORPORATION

- AND -

ERIC S. STROHMEYER (Individually)

FEE RECEIVED

March 9, 2012

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OFFER OF FINANCIAL ASSISTANCE

STB Docket # AB 167 (Sub No. # 1191 - X)

I. INTRODUCTION

Now comes your Offerors, Mr. Eric S. Strohmeier, a citizen of the State of New Jersey, whose address is 81 Century Lane, Watchung, NJ 07069 and CNJ Rail Corporation, a New Jersey corporation, whose mailing address is 191 North Avenue, Suite 238, Dunellen, NJ 08812, (herein after referred to as "Offerors"), who collectively now respectfully submit this Offer of Financial Assistance ("OFA"), pursuant to 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase a portion of a rail line owned and / or operated by the Consolidated Rail Corporation ("Conrail"), which rail line is the subject of the above-captioned abandonment proceeding.

Your Offerors, in support of their offer, state:

1. CNJ Rail Corporation ("CNJ") is a recently re-constituted New Jersey corporation. CNJ's principle business will be to function as a management and holding company for a number of railroad related businesses and rail properties it will either form, or acquire, over the next couple of years. In addition to its own holdings, CNJ may also manage a couple of other rail properties owned, or held by, other parties.

2. CNJ is owned by a number of different shareholders, including Mr. William B. Strohmeier, and Mr. Eric S. Strohmeier. Today's CNJ was created, held, and is managed by the same people who created and managed the original CNJ Rail Corporation (CNJ - 1). In *Consolidated Rail Corporation - Abandonment Exemption - In Jersey City, NJ - STB Docket # AB 167 - 1190 X*, there was some confusion over CNJ - 1's legal status. In its pleadings, Conrail correctly noted that CNJ - 1 was listed as "dissolved without assets". As was explained in that

proceeding, the original corporate shell was inadvertently dissolved.

3. Today's CNJ was re-incorporated specifically to pursue a number of projects, of which this OFA is one of those projects. CNJ plans to pursue a number of business opportunities this year. So there is no confusion in this proceeding as to CNJ's legal standing, please find hereto attached as Exhibit # 1, a certified true test copy of CNJ's certificate of incorporation filed with the Treasury Department of the State of New Jersey on November 7th, 2011.

4. While there may, or may not be, some confusion over CNJ's status, the Board should have no confusion with respect to whom the other Offeror is in this proceeding. Your Offeror has appeared personally before the Board in a large, and diverse, number of proceedings¹. I have been involved in the railroad industry, in various capacities², since the late 1980's. I am currently the Vice President, and Chief Operating Officer (COO) of CNJ.

5. According to Conrail's Notice of Exemption, the subject line is commonly known as the Berks St. Industrial Track (Line). The line begins at Milepost (MP) 0.00 and goes to MP 2.98, a distance of 2.98 miles. The line is entirely situated within the City of Philadelphia, PA.

6. The portion of the Line that the Offerors offer to buy, extends **from MP 0.00 to MP 2.80**, a distance of approximately **2.8 miles**. However, the offerors have chosen to trifurcate their offer. The reason we have chosen to do this is because of the various ownership interests and other legal issues associated with the line. We provide a more detailed explanation in the

¹ For Example - See: *Twenty Five Years of Railbanking: A Review and Look Ahead* - STB Docket No.# EP 690; *Competition in the Railroad Industry* - STB Docket No.# EP 705; *Montreal, Maine And Atlantic Railway Ltd. - Discontinuance of Service and Abandonment - In Aroostook and Penobscot Counties, Maine* - STB Docket No # AB 1043 (Sub No.1)

²See: *Verified Statement of Eric S. Strohmeier : Union Pacific et. al. - Control and Merger - Southern Pacific Transportation et. al.* STB Docket # 32760 (1996); *Verified Statement of Eric S. Strohmeier : CSX Transportation et. al., Control and Operating Leases/Agreements - Conrail Inc. et. al.* STB Docket # 33388 (1997); *Somerset Terminal Railroad Corporation - Operations Exemption - A Line of Railroad owned by Joseph C. Horner* STB Docket # 33999 (2001);

Section III of this pleading below. We believe this approach will actually prove to be a very practical and logical approach in making this offer.

7. Your Offeror's are offering a total figure of \$30,261.00 for the entire line between MP 0.00 and MP 2.80, plus \$2.87 for every square ft of additional right of way needed to facilitate the construction of a rail siding in order to serve an industrial property near the junction of the line with Conrail's Port Richmond Secondary line.

8. The offer can be broken down into three Offers, one for each segment. The three segments are:

- Segment # 1 - "Fairhill Junction" Segment from MP 2.80 to MP 2.70
- Segment # 2 - "1978 Agreement" Segment from MP 2.70 to MP 0.95
- Segment # 3 - "Final System Plan" Segment from MP 0.95 to MP 0.00

9. A more detailed description of the line segments is provided in Sections III. For the three segments, the Offerors offer the following:

- Segment # 1 - We offer the amount of \$30,250.00, plus \$2.87 for every square ft of additional right of way we determine we need in order to provide rail service to an adjacent industrial property.
- Segment # 2 - We offer \$10.00 for Conrail's remaining operating rights in that section of the line.
- Segment # 3 - We offer \$ 1.00 for whatever rights, title, and interest Conrail may have in this section of the line. (It should be noted, the offerors believe this section of the line may actually have a negative Net Liquidation Value (NLV).

10. CNJ's offer includes all ancillary tracks and right of way which are inside the geographic area of the abandonment proceeding and are contiguous to the line. The offer also includes all the track material, and any and all other items on, appurtenant to, or associated with, the Line which are owned by Conrail, including any and all interests, legal or equitable, that Conrail may have in, or which is associated with, the Line, including all licensing and any other agreements associated with the Line, free of all liens and encumbrances, settlement costs to be split by the parties. The offerors acknowledge that for certain portions of the line, Conrail retains only an operating easement and agreement governing the use of the line.

II. BACKGROUND

11. This proceeding began on October 18th, 2011, when Conrail filed a Notice of Intent to Initiate Case with the Board. On January 5th, 2012, Conrail filed its Verified Notice of Exemption in this proceeding. On January 25th, 2012, the notice was published in the Federal Register (See: *Federal Register* : FR - 4915 - 01 P, January 25th, 2012).

12. On January 30th, 2012, your offerors filed a formal Notice of Intent to File an OFA and requested from Conrail the information spelled out in 49 CFR 1152.27 (a), as well as some additional information. We also filed a request to Toll the Time Period for filing an OFA. Conrail respond to the information requested on February 7th, 2012.

13. After reviewing the information provided, and after conversing with Conrail's outside counsel, your offerors requested some additional information from Conrail. On February 23rd, 2012, your offerors filed a second request to Toll the Time Period for Filing an OFA. It was requested that the Board toll the time period until March 9th, 2012. On February 27th, 2012, Conrail responded to our information request.

14. In a decision served on Friday March 2nd, 2012, the Board granted the Second

Request to Toll the Time Period for Filing an OFA until March 9th, 2012. This OFA is being filed in conformity with the Board's March 2nd, 2012 decision.

III. OFFER OF FINANCIAL ASSISTANCE

15. Your Offerors, pursuant to the applicable regulations of the Board, herein submits its formal Offer of Financial Assistance in the above captioned proceeding. Under 1152.27(c)(1)(ii), your Offerors must:

- A. Identify the line in question, which the offerors previously did in ¶ 5, *supra*. A more detailed identification is provided herein below
- B. Demonstrate that the offerors are financially responsible, that is, that they have, or within a reasonable time will have, the financial resources to fulfill its proposed contractual obligations. As stated in ¶ 30, 31 herein below, The Offerors filed with the Board separate filings containing their Financial Statements, which demonstrates the offerors have the financial resources to fulfill their contractual obligations.
- C. Explain the disparity between the offeror's proposed purchase price, if less than the abandoning carrier's estimate, and explain how the offer of purchase is calculated. This is explained in the paragraphs below.

16. While an offeror must meet these criteria, an OFA need not be overly detailed. See *Illinois Central Railroad Co. – Abandonment – Between Aberdeen Junction and Kosciusko*, in *Holmes and Attala Counties*, STB Docket No. AB-43 (Sub-No. 163) STB served January 31, 1997.

A. Identification of the Rail Line

17. As was previously mentioned and discussed above at ¶ 5, *supra*, Conrail's Notice of Exemption refers to the subject line as the Berks St. Industrial Track (Line). The line begins at Milepost (MP) 0.00 and goes to MP 2.98, a distance of 2.98 miles. The line is entirely situated within the City of Philadelphia, PA.

18. The portion of the Line that the Offerors offer to buy, extends **from MP 0.00 to MP 2.80**, a distance of approximately **2.8 miles**. However, the offerors have chosen to trifurcate their offer. The reason we have chosen to do this is because of the various ownership interests and other legal issues associated with the line. As previously stated, we believe this approach will actually prove to be a very practical and logical approach in making this offer.

19. Once again, our offer is broken down into three Offers, one for each segment. The three segments are:

- Segment # 1 - "Fairhill Junction" Segment from MP 2.80 to MP 2.70
- Segment # 2 - "1978 Agreement" Segment from MP 2.70 to MP 0.95
- Segment # 3 - "Final System Plan" Segment from MP 0.95 to MP 0.00

20. Segment # 1 - The "Fairhill Junction" segment is the smallest segment at only 0.1 miles in length. It is the most straight forward segment of the line. The underlying property is owned solely by Conrail. The tracks have been previously salvaged³ from this segment. Conrail owns the right-of-way in fee. This segment appears to hold the greatest value for Conrail.

21. In a our Notice of Intent to File an OFA, the offerors previously identified MP

³ CNJ has come to learn that the salvage of the track material was done by unauthorized persons intent on stealing the material for scrap metal. See: Verified statement of E. Fernando Quiles

2.80 as being "at the north end of bridge" over Conrail's Port Richmond secondary. On February 27th, 2012, Conrail responded to our request to precisely identify the location of MP 2.80. (See Conrail response at: 3, See also: Exhibit B). Conrail's exhibit showed MP 2.80 as being south of the bridge.

22. After careful review, we believe Conrail's description of the precise location of where MP 2.80 is located is fairly close to accurate. As was depicted in Exhibit B, the connecting track from the Port Richmond Secondary track ties into the line at MP 2.75. We therefore feel that an Offer to purchase the Line to MP 2.80 will in fact reach sufficiently far enough in order for the offerors to be able to reach the end of the connecting track right-of-way. Please note, Conrail indicated it intended to retain the connecting track, and the right of way for it. (See Conrail's February 27th response at 8.)

23. To the extent our original offer appeared to indicate we intended to acquire to the "north end of the bridge", your offerors herein modify our offer to reflect the true location of MP 2.80, as is depicted in Exhibit B of Conrail's Feb 27th response. We will not be acquiring any portion of the bridge across Conrail's Port Richmond Secondary Line. We will not acquire any portion of the line north of milepost 2.80.

24. Segment # 2 is being called the "1978 Agreement Segment". It runs from MP 2.70 to MP 0.95 at Thompson St. Like its name suggests, this segment encompasses the entirety of the segment which was subject of the 1978 agreement between the City of Philadelphia and Conrail.

25. This segment's previous real estate transactions appeared to be fairly straight forward. What concerns your Offerors is the fact the Offerors have not been able to find out if this transaction was in fact, reviewed by the ICC or not. In one of the pleadings in this proceeding, there was mention that Conrail was unable to locate a record of as to whether or not the Commission had in fact reviewed this transaction. Given the time period involved,

and the size of the project, your Offerors can't imagine this transaction went unreviewed.

26. Notwithstanding our concern over the issue of review, if one were to carefully review the operating agreement, it is fairly obvious that the agreement, as written back then, would certainly be consistent with what we now commonly refer to as the "State of Maine" series of cases. As such, your offerors would argue that it was clearly not the intent of the parties for the City of Philadelphia to become a "common carrier" as a result of the transaction. The common carrier obligation was clearly intended to remain solely with Conrail. As a result, however, all Conrail retained was an operating easement, and an operating agreement.

27. Segment # 3, which the offerors call the "Final System Plan" Segment, appears to have a number of issues which give your Offerors some cause for concern. Your offers herein clarify they previous statements with respect to this segment. Your offerors are only offering to purchase whatever rights, title, and interest Conrail has in the line from MP 0.00 to MP 0.95 at Thompson Street. Conrail has identified the location of MP 0.00 as being along the southernly edge of Front St. at the intersection with the former Reading Company Willow Street Branch.

28. Your offerors, after examining the material supplied by Conrail, agree that Conrail's Exhibit A in their February 27th pleading appears to accurately depict the exact location of MP 0.00. Your Offerors, upon receiving this information, herein modify our Offer to eliminate any references to the line "connecting to the Philadelphia Belt Line Railroad (PBLR) at Milepost 0.00" The line clearly did not connect at MP 0.00 with the PBLR, but rather with the former Reading Company Willow Street Branch. However, Conrail did indicate that the remaining easements within in the public street right of way on Noble Street are included within the geographic limits of the area to be abandoned.

29. The easements within the Noble St. right of way, do appear to reach all the way

to Christopher Columbus Blvd. Your Offerors will include in there OFA offer, all those easement within the Noble Street right-of-way (See Conrail February 27th, 2012 filing at 2). Conrail did clearly indicate the former side tracks, and the underlying property, which made up the Willow and Noble Street freight yards, were not part of the line of railroad We would agree with their conclusion.

B. Financial Responsibility of the Offerors

30. As mentioned in ¶ 2, *supra*, CNJ is a recently re-incorporated New Jersey corporation. By way of a separate pleading, filed under seal, CNJ is submitting for the Board's review its current financial statement, as well as personal financial statements of a number of CNJ's shareholders. Due to the short time period in which an OFA must be filed in an Notice of Exemption proceeding, CNJ's shareholders decided it is easier to submit personal financial statements in addition to the corporations financial statements, as opposed to trying to move funds into the corporation's possession before the Board renders a decision on the merits of the OFA.

31. Also being filed concurrently, and also under seal, is a verified statement and personal financial statement of Mr. Eric S. Strohmeier. It should be noted, that a number of supporting exhibits which support the representations made in the verified financial statement are in fact public documents which are part of the record in a number of court proceedings. To the extent that those documents are in fact public records, your offeror, in the joint motion for a protective order, respectful requested that they be kept under seal with the exceptions contained therein.

32. The Offerors believe they met the Board's criteria for financial responsibility. However, if the Board feels that additional information is needed, the Offerors are prepared to proffer any additional information the Board may desire, or require.

C. Price to be Paid for the Line / Explanation regarding the Calculation of the Offer

33. As was stated previously at ¶ 9, *supra*, for the three segments, the Offerors offer the following:

- Segment # 1 - We offered the amount of \$30,250.00, plus \$2.87 for every square ft of additional right of way we determine we need in order to provide rail service to an adjacent industrial property.
- Segment # 2 - We offered \$10.00 for Conrail's remaining operating rights in that section of the line.
- Segment # 3 - We offered \$ 1.00 for whatever rights, title, and interest Conrail may have in this section of the line.

34. The Offerors herein below provide an explanation as to how they calculated their offer.

Segment # 1

35. The offer for Segment # 1 was calculated based on acquiring only a portion of the right-of-way that is available. Your offerors began by determining precisely what they needed in order to facilitate a connection from the end of segment # 2 near MP 2.70, to the end of the Conrail-retained connecting track near MP 2.80. It was determined that we only need a right-of-way, 20 feet wide, by 0.1 miles long (528 ft). This would provide ample room for a single track connection between the north end of Segment # 2 and the junction with the connecting track..

36. A right-of-way 20' feet wide by 528 feet in length covers an area of 10,560 sq. ft. We then calculated that 10,560 sq. ft. is 24.2 percent of one acre. We then took Conrail's per

acre price of \$125,000.00 as the base price per acre. 24.2 percent of \$125,000.00 is \$30,250.00. That figure is what we offered to Conrail for a 20' wide, 528' long piece of the right of way, which makes up our initial offer.

37. We also realized that we will need additional square feet in order to build a side track to the industrial property adjacent to the line located along Segment # 1. Conrail has stated that the lot is an irregular size. In addition, your offerors have not been able to determine precisely where all the property lines are, since it appears a portion of the right of way was sold by the Reading Company before the advent of Conrail.

38. Instead of trying to "guess" how much additional square feet we might need, we decided we would simply offer a per square foot price for the additional number of square feet we need. The price of \$2.87 per sq ft is, once again, based on Conrail's asking price of \$125,000.00 per acre. In short, we matched their asking price. However, we will not take any more square feet than what we need to facilitate our connection, and to be able to reach and serve the industrial property adjacent to the line.

39. Whatever land we do not take, Conrail can retain and dispose of as it sees fit. As an aside, the Offerors have learned that the adjacent property owners have an interest in possibly acquiring the remaining property from Conrail. Therefore, it is likely that Conrail will be able to dispose of all the land which does not get transferred pursuant to the OFA process.

40. It should be noted that all of the track material in Section # 1 has already been salvaged. Therefore, we need not calculate the price for any track material in our offer for Segment # 1.

Segment # 2

41. The price for Segment # 2 is actually an arbitrary number. Your Offerors actually

believe Conrail's NLV for segment # 2 is zero. Because we must give some consideration, we simply chose to offer \$10.00 dollars as a nominal consideration for Conrail's freight easement and operating agreement.

42. Careful review of the Agreement between the City of Philadelphia and Conrail actually confirms the Offerors belief that the NLV for this segment is zero. The agreement clearly indicates that the City acquired all the physical fixed assets of the line. Conrail can not salvage any of the track material. They simply don't own it. There is no right-of-way to liquidate, the City has already acquired it. In short, what asset can Conrail claim to own after they consummate their abandonment authority? The act of consummating abandonment authority appears to have the effect of permanently extinguishing the retained easement. There is simply nothing left to liquidate. Therefore, the NLV can only be zero.

43. Since something with no NLV is worthless, a nominal offer of \$10.00 is appropriate for Conrail's retained freight easement and .operating agreement.

Segment # 3

Our offer for this segment actually has the offerors a little worried. The only reason we included this segment in our OFA was the fact that retention of Segment 3 would make a future connection to the Philadelphia Belt Line possible. Without preserving this corridor, there would be no way possible to economically "build out" to reach additional rail carriers.

The Philadelphia Belt Line is unique in that it is one of the few places in the country where it is possible to get service from 3 Class 1 carriers. CSX, NS, and the Canadian Pacific Railway all have rights to serve customers along the Philadelphia waterfront on the southern portion of the PBLR .

IV. PUBLIC CONVENIENCE AND NECESSITY

While OFA's are not required to be "overly detailed", the Offerors have decided to provide some brief comments addressing Public Convenience and Necessity (PC&N) simply because the line has not seen any service for better than 20 years. The extended length of time that the line has been out of service could possibly be viewed as evidence of a lack of public need. Therefore, some comments addressing the issue of PC&N would appear to be appropriate.

V. PROPOSED RESTORATION AND INITIAL OPERATIONS

Once again, while OFA's are not required to be "overly detailed", the Offerors feel compelled to provide at least some limited explanation with regards to how service is to be restored, and what realistic levels of service can be expected for shippers using the line.

CNJ expects to restore service over Segments # 1 and # 2 relatively quickly. The amount of track that must be restored is extremely short. All in all, about 800 linear feet of railroad track, in total, is needed to reconnect the remaining tracks in Segment # 2 to the Conrail-retained connecting track in the southwest quadrant of the junction with Conrail's Port Richmond Secondary located at the end of segment # 1. CNJ expects that track reconstruction on our portions will not take more than 30 days to complete restoration of the missing infrastructure. Very minimal repairs are needed to the remaining tracks in segment #2 in order to make them serviceable once again. CNJ feels very comfortable that it will be able to restore the line, from MP 2.80 to MP 0.95, to serviceable condition within 90 days, or less, of closing.

As mentioned in our discussion of PC&N in Section IV above, the first initial customer is expected to be Morris Iron. They are the only shipper on the line that can convert truck traffic to rail concurrent with the start up of rail operations. Given the traditional lead time necessary to develop new rail customers, it is not expected that other customers will come online within the first 6 months to one year. Based on that assumption, CNJ does not expect to operate more than

75 trains in total (1 to 2 per week) on the line within the first 12 months of restoration of rail service along the line.

In the second year of restored rail operations, CNJ reasonably believes it should be able to increase service on the line to 150 trains per year (roughly 3 trains per week service). CNJ believe Morris Iron will still be the main shipper on the line, but other customers should be procured by then. We would expect them to start shipping by rail as well, justifying the additional service levels.

Restoration of rail service over Segment # 3, however, poses some significant challenges, given some of the major obstacles that must be overcome. Since CNJ will be required to provide service over the line upon a reasonable demand, we feel it necessary to explain how that service might be provide to shippers located in Segment # 3.

As mentioned in the PC&N discussion in Section IV, CNJ negotiated with Mr. Quiles to develop a Trans-load facility in Segment # 1. That trans-load facility is, in part, being built specifically in case a shipper in Segment# 3 levels a demand for service before service can be restored over that segment. Therefore, shippers in Segment # 3 will have at least trans-load service available to them at the start up of operations on Segments #1 and #2.

CNJ does not expect to be able to restore direct rail service over Segment # 3 within the first 24 months of closing on the transaction with Conrail. Notwithstanding the issues mentioned in Sections III and IV of this OFA, one of the biggest challenges will restoring rail service over the one block segment of 2nd Street, from Germantown Ave, to Cadwalder St.

While putting the tracks back in the street is certainly possible, the problem is that 2nd Street has been converted into a one-way street. While train movements will have no problem going in a southbound direction, there are significant safety issues that must be worked out with the Federal Railroad Administration (FRA) and the Pennsylvania Public Utilities Commission

(PA PUC) with regards to how to safely protect vehicular traffic along that segment of the line from northbound train movements.

CNJ expects that is could easily take 2 years, or more, just to design and engineer the appropriate safety systems, submit those plans for review, seek whatever additional approvals which maybe necessary to move the project forward, find and put into place appropriate financing to fund the restoration of that segment, etc. That does not take into consideration delays which could be brought on by litigation which might be generated by third parties opposing the restoration effort.

In crafting our OFA, we took into account the many likely obstacles to restoring rail service over Segment # 3. In short, we view the restoration of direct rail service over this segment a long term goal. There are lots of other items which we must worry about first before committing serious time and energy into restoration of this segment. But for the fact that it makes a "build-out" to an additional Class I carrier possible, we would have likely excluded this segment from our OFA.

Of greater significance to the Board, and the general public, is that actual restoration of service over this line does not rests solely with the Offerors, but rather a number of other parties. CNJ does not, and can not control, when service will actually be restored. Conrail has decided to retain the connecting track right of way, and the tracks thereon. Conrail has also removed the switch at the bottom of the connecting track ramp. Since the ramp is not part of the OFA process, negotiating an interchange agreement, and restoring the connecting track will not, and can not, be a part of this proceeding.

If the Conrail and CNJ can not work out a mutually acceptable agreement on their own regarding an interchange agreement, and address the issue of the restoration of the connecting track, then CNJ will have to bring a new proceeding before the Board to compel a resolution to the dispute. Should that scenario occur, it will be the Board that will ultimately control when

service will actually be restored.

Conclusion

On Behalf of CNJ Rail Corporation

and Myself, Individually,

Respectfully Submitted,

E S Strohmeyer /s/

Eric S. Strohmeyer

Vice President, COO

CNJ Rail Corporation

908 361 2435