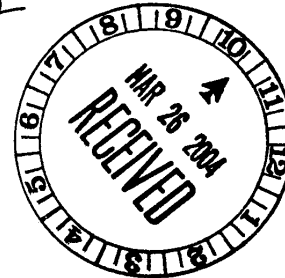




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Peter S. Palmer, Chairman
Joel S. Weiner, Executive Director

210402



March 24, 2004

VIA UPS DELIVERY

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

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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—Control and
Operation Leases/Agreements—Conrail Inc. and Consolidated
Rail Corporation [General Oversight]**

Dear Secretary Williams:

Pursuant to the U.S. Surface Transportation Board Decision Number 12, reference STB Finance Docket No. 33388 (Sub Part 91), to hold hearings regarding the operations of the Conrail Shared Assets Area, please find the attached ten (10) copies of the written statements that I will be making at the April 2, 2004 hearing in Trenton, New Jersey.

We also intend to provide further supporting material that will be submitted for Board consideration by the July 1, 2004 deadline.

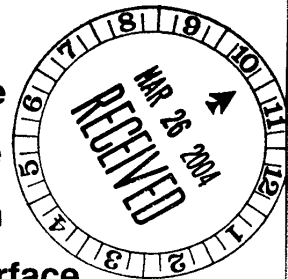
Respectfully,

Peter S. Palmer
Chairman of the Board of Trustees
NJTPA

C: NJTPA Board of Trustees

The Metropolitan Planning Organization for Northern New Jersey

210402



**Draft Testimony by Peter S. Palmer, Chairman of the
North Jersey Transportation Planning Authority, the
Metropolitan Planning Organization for the Northern
Thirteen Counties of New Jersey Before the U.S. Surface
Transportation Board, Regarding the Conrail
Transaction, Board Docket Number 33388. April 2, 2004**

Sub 91

Good Afternoon.

My name is Peter S. Palmer. I am Chairman of the Board of Trustees of the North Jersey Transportation Planning Authority. I am here to convey the strong interest of our Board in effective freight rail operations in our diverse region. The NJTPA is the Metropolitan Planning Organization designated under TEA-21 for the northern thirteen counties of New Jersey. In addition to the thirteen counties, the NJTPA has on its board the mayors of the two largest cities of New Jersey: Newark and Jersey City, as well as the chief executives of four state agencies including the Port Authority of New York and New Jersey, New Jersey Transit, NJ Department of Transportation, and the Governor's Office. Rounding out the Board of Trustees is a gubernatorial appointee as a Citizen Representative.

As the regional planning agency tasked with the responsibility for prioritizing federal contributions to major transportation investments in our region, we have to find intelligent and strategic ways to invest

limited federal and state dollars to cover the huge transportation needs of our large, heavily populated and congested area. In fact, New Jersey is the most densely populated state in the nation, with three quarters of that population in our NJTPA region. Furthermore, northern New Jersey is the gateway to the largest and richest consumer market on earth—the New York, New Jersey, and Connecticut metropolitan region of some 18 million people. The entire state of New Jersey is a federally designated air quality non-attainment area.

In our current freight planning activities we have developed an extensive stakeholder and participant network. This includes the principal funding and implementation agencies of our region: NJDOT, the Port Authority of NY&NJ, and NJ Transit as well as the Class One and shortline railroads, port stevedores and shipping lines, trucking companies and trucking organizations, warehouse and distribution companies, real estate developers, municipal and county governments, public interest groups, and academic institutions. We also work closely with a number of federal, state and neighboring regional planning agencies and are actively planning to meet freight needs in the federally designated International Intermodal Transportation Corridor, which encompasses most of the CSAA.

The NJTPA established itself as a Party of Record in the Conrail Transaction in 1997. We conducted a major study and analysis of regional issues related to the transaction. Working with the New Jersey Department of Transportation, our report became the basis of

the filings by the State before the STB. The report and its recommendations called for the state to achieve several objectives from the merger. These included Class One competition after years of near-monopoly by Conrail; improved service; economic development related to expanded rail opportunities; protection of service on joint passenger/freight rail lines; improved relationships between the Class Ones and the New Jersey Shortlines, and expanded rail service and infrastructure to handle forecasted freight growth in the region. Ultimately, we notified the STB that we would subsume our interests in the Transaction under the filings by the state, which included our key objectives.

We were pleased by the Board's decision to divide Conrail in such a way as to guarantee competitive Class One service to our region, especially through the creation of a Conrail Shared Assets Area (CSAA) which helps to organize operations in our dense rail network and provides competitive service in an area that urgently needs greater diversion of freight traffic from trucks to rail. We noted that the agreements around this Transaction called for continuing collaboration between the Class One railroads and key state agencies such as NJDOT and the Port Authority, access to the Shared Assets interchanges for shortline railroads, increased economic development and marketing in the area, and investments to upgrade rail infrastructure and capacity.

In recognition of the approaching conclusion of the STB's five-year oversight period of the Conrail Transaction, we initiated a review of

the performance of the freight railroads in our region since the acquisition. We particularly focused on the northern Conrail Shared Assets Area, which encompasses most of the key rail lines and terminals in our region and also roughly coincides with both the Port Authority's Port District and the federally designated International Intermodal Transportation Corridor.

Working with NJDOT, which has a standing research grant with the New Jersey Institute of Technology, we designed a study that was conducted under contract with Rutgers University's Voorhees Transportation Institute, a neutral third party, to review the STB decisions as they pertain to our region under the Conrail transaction. The study included surveys of the railroads, both Class One and Shortlines, as well as key rail customers large and small to determine general levels of rail service, outstanding issues, and suggested improvements, if any. Based on a preliminary report produced by the Rutgers study, the NJTPA, under signature of our then-chairman Theodore Narozanick, as well as the Commissioner of the NJ Department of Transportation filed letters of concern about the operations of the Class Ones and the CSAA to the STB in July 2003. Since then, a draft report of the study's findings has been produced. After final review, we expect to submit the full report to the STB before the July 1 deadline for written submissions. My testimony today is based primarily on some of the key findings from the study. I should emphasize that the interviews and surveys that were performed by the Rutgers Study Team were conducted under terms of confidentiality so therefore in this testimony we are not at liberty to

cite specific names and places. We have urged that interested parties submit their own testimony or otherwise determine whether they want us to identify them in our additional written materials submitted by July 1.

The Shared Assets area, with its large rail yards and its proximity to the largest port on the Atlantic Seaboard, is the forward-most intermodal freight distribution infrastructure serving the huge metro area. Using these terminals to the greatest extent possible helps to reduce long distance truck vehicle miles traveled (VMT). Goods entering the port can move to more distant markets by rail, thereby sparing the region some of the heavy truck traffic we experience. Likewise, goods destined to the huge metropolitan consumer market from West Coast ports or from NAFTA trade and other parts of the U.S. can be distributed from these rail terminals to the market without traversing the length and breadth of New Jersey by long distance truck movements. We therefore rely on the original assurances given by CSX and NS railroads during the Conrail Transaction that they would commit to diverting long distance truck movements off the major north-south and east-west highway routes.

The NJTPA region and the State of New Jersey have a huge stake in seeing that this is accomplished if we are to realize an efficient and capable rail freight distribution system. We face severe constraints in expanding our roadway network and we must optimize the use of our entire transportation infrastructure. One of the constraints we face, because our region is so developed, is that it is often either

impossible or prohibitively expensive to expand our roadway infrastructure by adding new lanes or other capacity enhancements. Therefore, a key transportation goal for our region must be to encourage as much of our freight traffic to move by rail as possible, especially in the vital Shared Assets Area.

With this understanding, it is a cause for concern for many in our region that the Class One railroads are not handling all their rail borne traffic to the forward-most rail terminals in our Shared Assets Areas. The report we commissioned has identified several instances where carload and intermodal traffic are dropped just beyond the New Jersey border and trucked into or through the region. By handling New Jersey and metro-bound customers at its own facilities in Pennsylvania, NS keeps these customers captive to its own facilities rather than exposing them to the competitive and jointly operated CSAA. This of course has the effect of greatly adding to truck traffic on our region's roadways and does not fulfill the assurances of NS that one of the benefits of the Conrail Transaction would be the diversion of truck traffic to rail service throughout its system, which is especially vital to the heavily congested Shared Assets Area. In addition, the report finds that the organizational structure of the Conrail Shared Assets Area may be an impediment to providing a strong rail marketing approach by the two Class One parents.

In general the report notes that the current level of intermodal service to the port and several large customers in the CSAA is well run. The

vast amount of port traffic was one of the major markets sought by both CSX and NS at the time of the Conrail Transaction.

However, the report also finds that similar levels of service in many cases are not being provided to other customers, particularly smaller and medium sized carload customers. Such customers form a key and growing segment of our rail freight business. Unlike other areas of the U.S. that have extensive large industrial plants, grain silos and mines, our aging industrial base leaves us with many smaller firms that depend on carload services, which for a number of customers is provided by the shortline rail roads.

Some of these smaller and mid-size customers in northern New Jersey have complained of late or insufficient service, or of receiving unrealistic and non-competitive rate quotes for service. Some cargoes are moved by Class Ones circuitously rather than on the shortest direct route, thereby adding time to final delivery. In many areas of the Shared Assets service region, marketing to new and existing customers has been left solely to the Shortline railroads.

Our report notes that the Class Ones have a minimal marketing and economic development presence in New Jersey, which undermines their ability to conduct a consistently strong marketing approach to the state. CSX has a small marketing office in central New Jersey. Its economic development and government affairs staff reside in Albany New York and have responsibility for all of Pennsylvania, New York and New Jersey. NS public affairs, economic development and

marketing staff serve New Jersey from Philadelphia, Delaware and Virginia. This creates a situation where it is difficult for state economic development agencies and Shortline Railroads to readily coordinate new business initiatives with the Class Ones to grow the business in New Jersey.

While short lines might be in a position to fill the vacuum left by the Class Ones in terms of marketing and providing service to some smaller customers on their own lines, their overall effectiveness still depends on a cooperative and collaborative partnership with the Class One railroads. However, our report notes that there are interchange or access agreements between the Class Ones and the New Jersey Shortlines that were sought at the time of the Conrail Transaction that remain uncompleted in the CSAA even now, five years later.

Other small and mid-size customers that are served directly by the Conrail Shared Assets are dependent on investments and operational support provided by the parent railroads.

A key problem with the CSAA organization highlighted by our report is that some Class One pricing practices, particularly in the case of NS, discourage customers who serve the metro market from handling their rail traffic in the CSAA. Interviews with rail customers, under promise of confidentiality, revealed that the Class One railroads are quoting additional prices of \$250 to \$260 for handling traffic into and through the terminals of the CSAA. This violates the assurances of

the Class One railroads under the Conrail Transaction that they would make delivery of traffic via the CSAA an invisible and integrated part of their service to New Jersey. Interviews conducted by the Rutgers Study team show that by making separate and visible additional charges in rate quotes to new customers who will deliver freight traffic in New Jersey or other parts of the metro region, the railroads are encouraging these businesses to establish distribution centers outside of the region and then move the cargo by truck to final market. Likewise, these visible extra charges were used in marketing efforts by NS to encourage existing customers to relocate their New Jersey operations to Pennsylvania where they would then be wholly served by the NS rail system. Obviously, this business approach threatens to reduce economic development opportunities in our region, reduces the incentive of regional freight operators to divert traffic from truck to rail and potentially destabilizes the viability of the Shared Assets Area.

Both the Rutgers report and our earlier Brownfield Economic Redevelopment report note that the dramatic growth of traffic through the Port of New York will create a growing demand for value-added, distribution services to not only our own regional market, but to more distant markets that are very suitable for rail service. Just as in the case of major West Coast ports such as Los Angeles/Long Beach, our growing port traffic will lead to new freight customers who will process goods received from abroad and then redistribute them to customers throughout North America. These operations represent a tremendous opportunity for economic development and jobs in our

region. These new and expanded distribution operations will seek both carload and intermodal rail service to markets beyond our metro region. These customers deserve competitive and cost effective rail service from the nearest rail terminals that are located in the CSAA. Without such rail service, the alternatives are either more truck traffic through our region or the relocation of distribution firms to other states.

While many of the issues found in the report flow from the business practices of the two Class One railroads, the inability of the CSAA itself to provide the same full range of services that are provided by similar terminal railroads in places like Chicago was found to be problematic. It is our view that the CSAA is a very important operational entity that provides crucial and, up to this point, largely effective service throughout the area it defines. It provides important interchange services between the Class Ones themselves and between the Class Ones and the Shortlines. It also provides direct service to final customers in its area, as in the case of the General Motors plant in Linden, the Oak Island yard and others.

However, because it is structured and maintained by its two parents as only a cost center and not a profit center, there is pressure to limit its equipment, personnel and investments in rail infrastructure to the least-cost arrangement possible. The risk is that these limitations, in turn, may limit the CSAA's ability to fully accommodate the projected growth in freight traffic effectively.

The Class Ones have largely divided their respective shares of the Conrail Shared Assets current customers. Since each of the parent railroads has veto power over significant investments and improvements that could benefit the customers of the other, they now face a situation where each railroad cannot be assured that any new investments that it makes in the CSAA will only benefit itself. This creates an incentive to shift customers to facilities that are wholly served by its own operations. As a result, NS, which has greatly expanded its facilities just over the border in Pennsylvania, has been building an alternative service infrastructure outside of the CSAA. Dropping traffic there is generating new truck traffic into our region.

The new federal rules on trucking hours-of-service are compounding this situation. Freight movement in the metro region involves innumerable direct and multiple deliveries of goods to customers. Truckers are now on a continuous clock and must limit the number of deliveries to realistic time frames. Two-thirds of the metropolitan population is east of the Hudson River. Serving this regional metro market from the periphery means that more trucks will now be needed to move goods over tightened delivery schedules, with additional environmental and congestion costs that cannot be quantified at this time. In contrast, handling truck delivery movements from the closer CSAA terminals will reduce vehicle miles traveled, time, and other negative operational impacts.

Rail customers in the entire CSAA and, by extension, the customers of the Shortline railroads that feed into the CSAA are dependent on

the marketing efforts and willingness of the parents to provide investments to assure adequate levels of service. This points to a weakness in the CSAA's structure that could be overcome if the CSAA was given the ability to independently engage in marketing activities and to quote rates. In effect, the CSAA could develop new markets and customers that could be profitably bid on and served by both Class One parents. A CSAA with an independent marketing function that grows new business would provide incentive to the Class One parents to make adequate investments.

Given the above, we therefore conclude that there are lingering problems and unfulfilled promises pertaining to the Conrail Transaction in the State of New Jersey, and especially in the Conrail Shared Assets Areas.

We ask that the Surface Transportation Board analyze and revisit the operations of the CSAAs in our State, with an eye towards strengthening them and allowing them to be active in promoting and growing rail freight business. We ask that the Surface Transportation Board look at ways that can empower the Shared Assets Area to better serve our region and that it continue its oversight until the necessary changes are implemented.

We ask that the STB place additional emphasis on seeing that the Class One railroads resolve outstanding differences with the Shortline Railroads in terms of access to the CSAA and its interchange points. The Class Ones should be instructed to improve marketing

coordination and service to the Shortlines to mutually grow their respective business.

I want to stress that in many ways, we in the region and our friends and colleagues in the rail business want to achieve the same objectives. We want to grow the use of rail service by the goods movement sector. We want the railroads, both Class Ones and the Shortlines, to be successful, efficient and proactive in our state and region. We are aware that in today's world you can't get something for nothing. In this respect, the State of New Jersey and the Port Authority of NY&NJ have spent millions of dollars matching the Class Ones railroads in important investments to increase capacity, signaling and clearances. The New Jersey Department of Transportation also has a funding program to aid the Shortline railroads in improving track and structures to handle heavier weights and keep their lines in good repair.

Since the NJTPA allocates federal TEA-21 dollars to transportation projects, we face restrictions on how we can apply them to freight rail operations. However, as the federal surface transportation reauthorization proceeds, we see that there are calls for greater flexibility under some programs to help to increase rail capacity. It is not inconceivable that we will also find ourselves partners with the railroads on important projects. But we also believe that we have a right to ask that in return for public monies contributed into joint efforts to improve rail infrastructure, we should see a more proactive effort on the part of the rail industry to serve regions such as ours

with its high congestion and population density. In the meantime, we stand ready to work with the railroads towards achieving an improved rail system in New Jersey, any way we can.

In closing, we seek firm commitments from the railroads that they will reinvigorate their marketing and investment strategies for New Jersey and the crucial Shared Assets Areas. These commitments should show that the Class One railroads will help the region and the State to lower truck VMT by handling traffic to the forward-most interchange or intermodal terminal location. And again, the STB should consider addressing the structural problems revealed in its current operations, instituting arrangements that allow the CSAA and its parents actively to cultivate new customers and expanded business in the core New Jersey rail market it serves.

Thank you for allowing this opportunity to bring our concerns and issues before the Surface Transportation Board.