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March 25, 2004
VIA: UPS Overnight

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Mercury Building, #711
1925 K Street, N.W.
Washington, DC 20423-0001

Re: STB Finance Docket No. 33388 (Sub-No. 91)
CSX Corporation et al. - Control - Conrail Inc. et al.
[General Oversight]

Dear Secretary Williams:

Enclosed for filing are the original and ten (10) copies of the Pre-hearing Statement of GROWMARK, Inc.

Please time stamp the extra copy of this letter to indicate receipt, and return it to me in the stamped self-addressed envelope provided for your convenience.

Respectfully,


ERIC M. HOCKY

Enclosures

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Office of Proceedings

MAR 26

U.S. DEPT. OF TRANSPORTATION

GOLLATZ, GRIFFIN & EWING, P.C.

WEST CHESTER

PHILADELPHIA

WILMINGTON

210404

Before the
SURFACE TRANSPORTATION BOARD

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

CSX CORP. ET AL. - CONTROL - CONRAIL INC. ET AL.

[General Oversight]



PRE-HEARING STATEMENT OF GROWMARK, INC.

GROWMARK, Inc. ("GROWMARK") is filing this pre-hearing statement pursuant to the Board's Decision No. 12 issued February 12, 2004, in this oversight proceeding. The statement is being submitted in conjunction with the comments GROWMARK anticipates making at the public hearing scheduled for April 2, 2004.

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GROWMARK'S Interest

GROWMARK is a federated, regional agricultural cooperative that provides products and services to member cooperatives and retail dealers in the Midwest and Eastern United States, and Ontario, Canada. Local member cooperatives and retail dealers, in turn, provide farmers and others with among other products and services, crop inputs, energy products, feed and animal health products, grain handling systems, lawn care products, and grain marketing services.

At the time the Conrail transaction was implemented in July 1999, GROWMARK was primarily active in the Midwest United States, and it was largely unaffected by the transaction. However, in December 2002, GROWMARK acquired a number of assets from Agway

Agronomy, including Agway's storage facilities located on property leased from Conrail at Pier 122 along the Delaware River in Philadelphia. Conrail owns the Pier and the cranes located there which are used to unload vessels and barges, and the tracks that serve the Pier and the storage facilities. Pier 122 and the adjacent property are part of the South Jersey/Philadelphia Shared Asset Area ("SAA"). During the period of Agway's operations, and when GROWMARK took over in December 2002, the Pier 122 facilities received urea, phosphates and ammonium sulphate by barge and vessel, where it was unloaded for outbound shipment by rail.

In the Spring of 2003, GROWMARK was advised that Conrail was closing Pier 122 because the cranes were not in compliance with OSHA regulations. Conrail indicated that it was no longer able to accept freight at Pier 122. GROWMARK had a vessel enroute which it was forced to re-route to another port, where the freight was unloaded and trucked to GROWMARK's storage facilities at Pier 122. CSX Transportation, Inc. ("CSX") and Norfolk Southern Railway, Inc. ("NS") subsequently embargoed the piers. Those embargoes continue today, almost a year later.

In the Fall of 2003, with the cranes not yet repaired by Conrail, GROWMARK was again forced to re-route its freight to other ports. The freight was unloaded, and shipped by rail to the Pier 122 storage facilities where it was held until it was shipped out again by rail. If the cranes are not repaired soon, GROWMARK will continue to have to divert its inbound freight. Despite the efforts of GROWMARK and other interested parties, Conrail has not repaired the cranes.¹

¹ GROWMARK has also filed a claim with Conrail for the increased shipping and handling costs it has. Conrail has denied the claim.

Oversight Proceeding

One of the asserted purposes of the Board's oversight proceeding is to make sure that the Applicants keep the promises and satisfy the representations they made in the course of the proceeding. *CSX Corp. et al - Control - Conrail Inc. et al*, 3 STB 196 (1998) (*Merger Decision No. 89*), at 366. Essential to the concept of the SAAs were Applicants' representations that Conrail would have sufficient resources to maintain its facilities within the SAAs, and if necessary to make capital improvements. *Applicants' Railroad Control Application*, Vol. 1 at 55, 56-57, and 621-622, 623 (Joint V.S. of Sparrow and Romig). *See also Merger Decision 89* at 230-231.

Based on Conrail's actions with respect to Pier 122, Conrail and the other Applicants do not appear able or willing to maintain their SAA facilities. CSX and NS have embargoed Pier 122. Despite that embargoes are meant to be temporary in nature, Applicants have shown no indication that they have plans to repair the cranes and restore service. Conrail has in fact notified GROWMARK that the cranes will not be repaired. To date, attempts to negotiate a resolution have not progressed.

There are a number of possible reasons for Conrail's refusal and/or inability to repair its cranes -

- (1) is it because the Applicants are realizing increased revenues because GROWMARK's freight must now move both in and out by rail?
- (2) is it because CSX and NS do not want to invest in the Port of Philadelphia, preferring other ports (such as Baltimore and Norfolk) where they were already providing service?

- (3) is it because CSX and NS do not want to invest in Conrail facilities because each is afraid that the other will get an advantage?

The problem GROWMARK is experiencing at Pier 122 raises the question whether the governing structure established for Conrail and the SAAs² allows Conrail to be responsive to the needs of its shippers and the facilities that serve them, or does the structure inherently inhibit such responsiveness.

² Conrail exists only to serve NS and CSX and not its former shippers (*Railroad Control Application*, Vol. 1 at 45); 50/50 control of Conrail's board - either NS or CSX can veto (*Railroad Control Application*, Vol. 1 at 33).

Conclusion

For whatever the reason, it appears to GROWMARK that Conrail and its controlling shareholders CSX and NS are not maintaining their promises with respect to the South Jersey / Philadelphia SAA generally, or Pier 122 in particular. GROWMARK recommends that before the Board terminates the formal oversight process, it should investigate whether in fact Conrail is adequately maintaining its facilities, whether NS and CSX are investing the South Jersey / Philadelphia SAA as required, and whether NS and/or CSX is using its veto power to prevent Conrail from making needed maintenance and repairs within the SAA.

Respectfully,



Dated: March 25, 2004

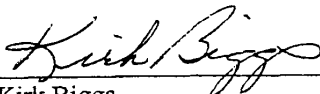
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Attorneys for GROWMARK, Inc.

VERIFICATION

I hereby verify on behalf of GROWMARK, Inc., under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on March 25, 2004.


Kirk Biggs
Title: *Crops Division Manager*
GROWMARK, Inc.