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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 proffered 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
804 629-2610

David R. Goode
Chairman, President and
Chief Executive Officer

October 21, 1997

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

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

Copy to:
~~SA [unclear]~~
More

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.

The Honorable Thomas Ridge
The Honorable Edward Rendell
October 21, 1997 - Page 3

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

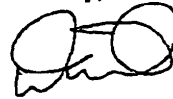
The Honorable Thomas Ridge
The Honorable Edward Rendell
October 21, 1997 - Page 4

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 black ink, appearing to read "D. Goode", with a stylized flourish at the end.

David R. Goode



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

John W. Snow
Chairman, President
Chief Executive Officer

October 21, 1997

FILE -
NS (NORMAL)

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

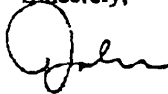
On or before October 21, 1997, the Commonwealth of Pennsylvania and the City of Philadelphia will file written statements of support for the Conrail acquisition with the STB. We anticipate that you will encourage other elected officials and public agencies, including SEPTA and the DRPA, to file timely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

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

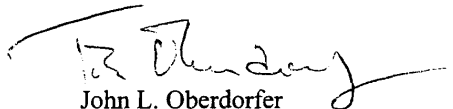
Dear Secretary Williams:

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

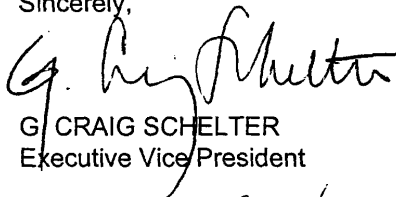
RE: Finance Docket No. 33388, CSX Corporation and
CSX Transportation, Inc. et al. -- Control and Operating
Leases/Agreements -- Conrail, Inc. and Consolidated Rail Corporation

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