

**BEFORE THE UNITED STATES
SURFACE TRANSPORTATION BOARD**

<u>CSX CORPORATION AND CSX</u>	)	
<u>TRANSPORTATION, INC., NORFOLK</u>	)	
<u>SOUTHERN CORPORATION AND</u>	)	
<u>NORFOLK SOUTHERN RAILWAY</u>	)	Finance No. 33388 (Sub- No. 91)
<u>COMPANY -- CONTROL AND</u>	)	(General Oversight)
<u>OPERATING LEASES/AGREEMENTS</u>	)	
<u>CONRAIL INC.AND CONSOLIDATED</u>	)	
<u>RAIL CORPORATION</u>	)	

**Supplemental Submission by the Commonwealth of Pennsylvania Acting by and
Through its Department of Community and Economic Development**

The Pennsylvania Department of Community and Economic Development ("DCED"), by and through the undersigned counsel, and further to its appearance at the hearing on May 3, 2004 in this matter, is pleased to supplement the record of this case with the following information:

1. Correspondence between DCED and CSX regarding certain of the commitments undertaken by CSX in connection with the Conrail transaction, and
2. Further information relating to (a) the Board's question whether continued oversight is necessary and (b) the US Department of Transportation's suggestion that the Board conduct a proceeding to undertake some type of "final resolution" of the remaining issues regarding the commitments of NS and CSX.

I. Recent Correspondence Between CSX and the Commonwealth of Pennsylvania

At the May 3, 2004 hearing, the undersigned was approached by counsel for CSX, who suggested submitting to the Board the attached correspondence -- a letter from CSX to DCED dated. We agree with CSX that these letters will assist the Board in understanding CSX's progress to date in meeting the commitments it made to Pennsylvania in the letter agreement dated October 21, 1997 attached as Exhibit B to its comments submitted April 26, 2004. These December 22,

2003 and March 10, 2004 letters are attached as Exhibits A and B hereto respectively and incorporated by reference herein.

As a further supplement to this correspondence, and to put this correspondence in context, we have prepared a table showing CSX's commitments under its October 21, 1997 letter agreement and the progress to date in meeting them. Numerical headings correspond to those in the October 21, 1997 letter.

CSX Commitments in 10/2/97 letter	CSX Performance
1A. \$10 mm investment in Kvaerner Philadelphia Shipyard	Completed
1B In cooperation with DCED and Philadelphia, \$5 mil investment in land acquisition, facility construction in Philadelphia and throughout Commonwealth over five years	As described in Exhibits A and B hereto, CSX will be deemed to have fully performed its obligation under this paragraph upon completion of a complex land sale transaction under an agreement between CSX and the Philadelphia Regional Port Authority ("PRPA"). This agreement provides for the sale or lease to PRPA at prices based on appraisals of several parcels of land owned either by CSX or Conrail. However, as of the current date, this transaction has not closed, due to breaches of the agreement by CSX. Among other things, the agreement required CSX to deliver to PRPA an appraisal for the properties in question by January 15, 2003, and further required CSX "to cooperate with PRPA and use commercially reasonable efforts to support the acquisition or lease of the Conrail Parcels." CSX did not deliver the required appraisals until March 2004. More fundamentally, Conrail has refused to act in accordance with the agreement in several respects and CSX, although equal partners with Norfolk Southern in the ownership and control of Conrail, has failed to

	demand that Conrail comply with the Agreement. In addition, in 2001-02, CSX refused to fund its share of a \$900,000 clearance upgrade to Conrail's Bustleton Branch needed to serve a frozen food distributor and other occupants of the Willits Road industrial park, Philadelphia, PA. CSX has actually funded only \$40,500 in costs under this paragraph.
1C In cooperation with DCED and Philadelphia, establish new economic development incentive program to encourage rail-oriented economic development by assisting potential customers with land acquisition, facility construction, installation of sidings, etc.; \$2 mm per year for five years.	Funded a total of \$550,000 of such costs; refused to fund at least \$2.2 mm of eligible costs after initially making verbal commitment to such funding. Failed to respond on timely basis to other funding requests.
1D Establish marketing agreement for Philadelphia between CSX and Philadelphia	No formal agreement entered into; however, joint marketing efforts have gone forward
1E Execute agreement for development of intermodal facility at Greenwich.	Completed; CSX developed intermodal facility at Greenwich
2A Philadelphia will remain headquarters of Conrail; Conrail to have 350 jobs in shared assets area	Conrail is currently seeking proposals from governments outside Pennsylvania for economic development assistance in connection with the possible relocation of its headquarters; Conrail currently has 33 jobs.
2B CSX to have 185 jobs in Philadelphia area	Substantially met; 167 jobs
2C CSX anticipates establishing regional office in Philadelphia to include governmental relations, industrial development, sales and operations	No such office established.
3 Facilities investment: \$15 million in intermodal; \$4 million in Eastwick track connection; \$3 million at Belmont siding	Obligations fully met.

As noted at the hearing, CSX has made better progress than Norfolk Southern in meeting the commitments in its October 1997 letter agreement, but substantial commitments remain uncompleted.

II. Further Information Regarding the Need for Oversight

As the undersigned explained to the Board at the hearing, the type of economic development projects that are coordinated and supported by the DCED, and as to which NS and CSX pledged assistance, typically involve the need to assemble financing from a variety of sources in a limited time frame. If financing cannot be assembled during that time, the project will not come to fruition.

Repeatedly over the past five years, NS and/or CSX have been approached to provide such assistance during the window of time in which such financing will make a difference to the project. In numerous cases, NS and CSX have either refused to provide financing in amounts that would have any material effect on the overall project, failed to respond to DCED's request to provide a commitment within the necessary time frame, or most egregiously, committed verbally to provide the financing and then failed to follow up on their commitments.

By way of illustration only, we can cite the following examples:

- A. **U.S Gypsum Beaver County Project.** DCED, through the Governor's Action Team, reached a verbal agreement with CSX to participate but when the final numbers were put together the railroad greatly reduced their participation, which required the Commonwealth to assume the balance of funding for the rail portion of this project in the amount of \$2,200,208 to avoid losing this \$100 mil project.
- B. **Willits Road Industrial Park/Conrail Bustleton Branch Project.** Beginning in 2001, the Philadelphia Industrial Development Corporation requested Norfolk Southern and CSX to share the cost of a \$900,000 clearance upgrade project to the Conrail Bustleton Branch, within the shared assets area. This clearance upgrade was urgently needed to permit food

processing and distribution tenants in the PIDC Willits Road Industrial Park to receive modern cryogenically cooled oversize boxcars. Citing the failure of the tenants to generate sufficient *existing* rail business, neither Norfolk Southern nor CSX was willing to pay any portion of the cost of the upgrade.

The Board could best provide assistance by requiring, as suggested in DECD's oral presentation at the May 3 hearing, that NS and CSX provide quarterly reports concerning their progress in meeting the commitments contained in their October 1997 letter agreements with Pennsylvania. DCED would be pleased to submit reports on the same schedule. DCED believes that if it appeared that the Board were paying close attention, there would likely be significantly greater progress towards meeting the railroads' commitments.

With due respect to the undoubtedly well-intentioned suggestion of the US Department of Transportation that the Board could terminate its oversight after having an adjudication in the immediate future to determine precisely how NS and CSX should meet their obligations going forward, we do not believe that such an adjudication could substitute for further oversight by the Board.

Economic development projects arise intermittently and irregularly on schedules determined by the needs of the underlying businesses involved in these projects and entirely beyond the control of DCED. For the railroads' commitments to be meaningful, it is essential that that their general commitments be translated into approval of specific project expenditures during the limited period when DCED is able to bring a specific project to fruition in Pennsylvania. The board has already ordered the railroads to comply with their representations, which they made in substantial detail in their October 21, 1997 letters.

We note that Norfolk Southern's and CSX's commitments did not contain any time limitation. It is certainly not to Norfolk Southern's or CSX's disadvantage to pay their obligations in 2004 or 2005 or 2006 dollars rather than in 1997 dollars. But DCED does fully expect that Norfolk Southern and CSX will eventually meet their commitments fully. DCED respectfully

urges the Board to continue oversight of their compliance until such compliance is complete or until the parties have resolved this issue through a negotiated settlement.

Respectfully submitted this 20th day of May 2004

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EXHIBIT A



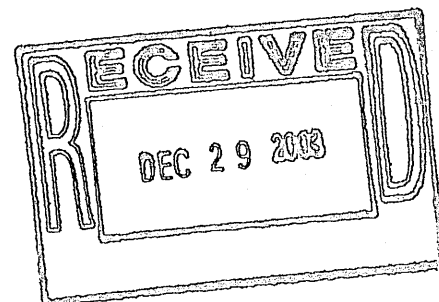
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D. Kevin Hurley
Assistant Vice President

December 22, 2003

Mr. David Yeager
Director – Governor's Action Team
100 Pine Street, Suite 100
Harrisburg, PA 17101

Dear Mr. *David* Yeager:



This will respond to your recent request for an update on commitments made by CSX to the State of Pennsylvania and City of Philadelphia in correspondence dated October 21, 1997 from then Chairman, John Snow.

The letter addressed several areas and, for consistency sake, I will follow the same format.

Economic Development

A. CSX has provided \$10 million in investment to supplement the public effort to attract Kvaerner ASA to the Philadelphia Navy Yard.

B. CSX has committed to invest a minimum of \$1 million per year over five years for rail served economic development programs. To date, the following expenditure has been made with the approval of the State:

PIDC: \$40,000 for upgrade and maintenance of PIDC trackage in its Northeast Philadelphia Industrial Park.

It is the balance of this fund that is requested be applied as credit to certain railroad land purchases in South Philadelphia by the Philadelphia Regional Port Authority. The credits would be applied only to land owned by CSX or Conrail and if these transactions are consummated, the committed funds would be exhausted.

C. CSX committed to establish a customer incentive program making \$2 million available for each year for five years for land acquisition, facility construction and installation of rail sidings in exchange for contractual obligations for certain levels of rail business. The following funds have been expended under this program:

U. S. Gypsum: \$349,254 for the construction of two yard tracks in the CSX Aliquippa Yard to support industry.

U. S. Gypsum: \$200,538 for the installation of two sidetrack turnouts to serve the plant.

The U. S. Gypsum expenditure was instrumental in locating this industry in Western Pennsylvania with \$140 million in new investment and 250 new jobs.

D. CSX and the City of Philadelphia through the Philadelphia Industrial Development Authority have developed a joint marketing plan, a copy of which is attached.

E. CSX and the Delaware River Port Authority have entered into a lease agreement providing for DRPA's Intermodal terminal on CSX property in Greenwich Yard.

F. The Commonwealth and CSX were successful in receiving federal funds for clearance improvements on the West Trenton line from Philadelphia to the New Jersey border.

Jobs

After the merger of Conrail into CSX and Norfolk Southern Railway, the remaining Conrail operations remained headquartered in Philadelphia. CSX did establish a new regional office presence in Philadelphia with law department, corporate communications and facilities management personnel.

Capital Expenditures

The new Intermodal facility at Greenwich Yard was constructed and is in operation at an estimated cost of \$20 million.

The track connection at Eastwick Interlocking was completed.

The proposed siding known as Belmont Siding was constructed.

Passenger Rail

CSX and Conrail continue to work with SEPTA to ensure on-time passenger and freight operations. The SEPTA Trackage Rights Agreement was extended on a renewable basis.

Civic and Charitable Giving

All of Conrail's pre-merger philanthropic commitments were met and CSX and Conrail continue to be active members of the communities in Pennsylvania in which they locate.

I enjoyed meeting you today and hope that this information gives you a better understanding of CSX's commitment to Pennsylvania and the City of Philadelphia.

Sincerely,



D. Kevin Hurley

EXHIBIT B



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
HARRISBURG, PA 17120

OFFICE OF SECRETARY

March 10, 2004

Mr. D. Kevin Hurley
Assistant Vice President
CSX Real Property
Two North Charles Street
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RE: Letter Agreement between the Commonwealth of Pennsylvania, City of
Philadelphia and CSX Corporation dated October 21, 1997

Dear Mr. Hurley:

I am writing in response to your request that the Commonwealth of Pennsylvania, in partnership with CSX Corporation, accept the funding of the remaining balance of the Economic Development Fund as described in the above referenced agreement.

Accordingly, we understand based on your correspondence to David Yeager dated October 29, 2003 and December 22, 2003 that CSX would like to apply the remaining balance of funds in the amount of \$4,960,000 toward the acquisition of land purchases in South Philadelphia by the Philadelphia Regional Port Authority. This amount would be applied only to land owned by CSX or Conrail and if these transactions are consummated, the committed funds by CSX would be fully funded. Therefore, I accept this expenditure under the terms of our letter agreement.

Sincerely,

Dennis Yablonsky
Secretary

Cc: David Yeager
Terry Newburger
Brian Ross
James T. McDermott, Jr.
Brian Preski
Roy Kienitz

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TRANSPORTATION, INC., NORFOLK	)	
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COMPANY -- CONTROL AND OPERATING	)	Finance No. 33388 (Sub- No. 91)
LEASES/AGREEMENTS -- CONRAIL INC.	)	(General Oversight)
AND CONSOLIDATION RAIL CORPORATION	)	
	)	
	)	

CERTIFICATE OF SERVICE

This is to certify that on the 20th day of May, 2004, the undersigned caused the Supplemental Submission of the Commonwealth of Pennsylvania Acting by and Through its Department of Community and Economic Development to be served on the parties in the above-captioned proceeding, by electronic mail on those parties for whom a valid electronic mail address is listed in the service list for this matter, and by United States Mail, first class postage pre-paid, on the remaining parties:

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Date: May 20, 2004

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