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BEFORE THE
SURFACE TRANSPORTATION BOARD



STB FINANCE DOCKET NO. 33388 (SUB-NO. 91)
CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND NORFOLK
SOUTHERN RAILWAY COMPANY – CONTROL AND
OPERATING LEASES/AGREEMENTS – CONRAIL, INC. AND
CONSOLIDATED RAIL CORPORATION

(GENERAL OVERSIGHT)

VERIFIED STATEMENT OF JEFFERY K. STOVER

ENTERED
Office of Proceedings

JUN 30 2004

Part of
Public Record

Keith G. O'Brien
Rea, Cross & Auchincloss
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Washington, DC 20036

Counsel for SEDA-COG
Joint Rail Authority

DATED: June 30, 2004

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB FINANCE DOCKET NO. 33388 (SUB-NO.91)
CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND NORFOLK
SOUTHERN RAILWAY COMPANY – CONTORL AND
OPERATING LEASES/AGREEMENTS – CONRAIL, INC.
AND CONSOLIDATED RAIL CORPORATION

(GENERAL OVERSIGHT)

VERIFIED STATEMENT OF JEFFERY K. STOVER

My name is Jeffery K. Stover and I am Executive Director of the SEDA-COG Joint Rail Authority ("JRA"). I recently appeared before the Surface Transportation Board ("STB" or "Board") to give testimony on behalf of the JRA during the oversight hearing on May 3, 2004 in Washington, DC.

As previously noted JRA is a municipal authority founded in 1983 and currently is comprised of eight Pennsylvania county members. The JRA owns five operating rail lines which handle about 30,000 carloads of rail traffic annually. All of our lines are operated pursuant to separate contracts by companies owned and operated by Mr. Richard Robey ("Robey").

The JRA continues to be active in these proceedings because there remains a serious transaction related problem involving the scope of promised access to the Canadian Pacific Railway ("CP") and because the JRA is mindful of its residual common

carrier service obligations and its public service responsibilities in maintaining availability of responsive rail service throughout the extensive eight county area that comprises our territorial base.

We are also mindful of the importance of the Norfolk Southern Railway ("NS") to our effectiveness in providing for the rail service needs of JRA's constituents as all of our lines now connect with NS as a result of the Conrail acquisition pursuant to this proceeding. In this we value our good working relationship with NS and appreciate the constructive operating rapport that has been established between NS and our contract operator (Robey).

However, we have yet to resolve a very serious issue involving expectations of continuing access to CP based on transaction related commitments by NS. Curtailment of that access by NS has raised the specter of serious economic repercussions for effected constituents unless the current impasse is brought to a constructive resolution.

As stated in my May 3 testimony, the affected shippers, the West Shore Railroad and Lewisburg & Buffalo Creek Railroad (two private railroads over which Robey operates), and the JRA are seeking to achieve five goals related to expectations arising from prior NS commitments:

- The agreement with NS should be permanent.
- The agreement with NS should apply to the owners (JRA, West Shore Railroad and Lewisburg Buffalo Creek Railroad) of the various rail lines, and to the Robey railroads and any successor operators of the lines. An agreement with a specific operator is temporal; the

agreement needs to be able to be transferred to a different operator in the future.

- The agreement with NS should fulfill the access to CP promised by the 1997 NS letter to Robey.
- The agreement with NS should provide that the traffic that can be interchanged directly with CP at Sunbury is the same as the traffic that can be interchanged indirectly with CP via Harrisburg (the latter being their “fixed divisions” agreement whereby NS provides haulage from Harrisburg to the Robey interchange at Northumberland, PA).
- The agreement with NS should provide that all existing traffic should be meaningfully “grandfathered”, even if it does not meet the new definition of covered traffic under the prevailing NS/Robey agreement.

The JRA has appreciated the willingness of NS to engage in private discussions concerning the access issue. However, those discussions have not yet come to a mutually satisfactory conclusion. We are also realistic in our assessment that an ending of the Board’s oversight of commitments arising out of the Conrail Acquisition Proceeding could dampen NS interest in continuing private discussions with a view to mutually acceptable resolution of a problem we deem to be very serious.¹

¹ Separate statements setting forth the concerns of affected shippers and the West Shore Railroad were attached to JRA’s submission on July 19, 2003. Two of the affected shippers, P.A. Distribution and Clark’s Feed Mills subsequently appeared at the oral hearings held by the Board on May 3, 2004, to express their specific concerns. As noted herein affected shippers, the West Shore Railroad, and the Lewisburg Creek join the JRA in the conviction that a mutually acceptable resolution of a serious problem can be achieved through well motivated private discussions. As an accommodation to concerned shippers and the two other interested railroad owners their separate supporting statements are attached.

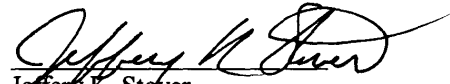
For that reason we join with the Commonwealth of Pennsylvania in urging the Board to continue oversight of unresolved issues at least for an additional year and separately urge the Board that it direct the parties involved in the CP access issue to report at least quarterly on the progress of private negotiations.

The JRA continues to believe that mutually acceptable resolution can be achieved through good faith private negotiations. We also believe that a continuation of the Board's interest in yet unresolved transaction related issues will facilitate resolution in the interest of all concerned.

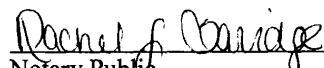
VERIFICATION

Commonwealth of Pennsylvania)
County of Union)

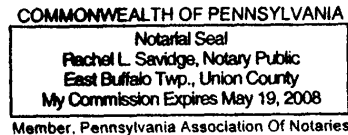
Jeffery K. Stover, being duly sworn, states that he is Executive Director of the SEDA-COG Joint Rail Authority, that he is duly authorized to sign, verify and file the foregoing verified statement; at that such matter as are set forth therein are true and correct to the best of my knowledge, information and belief.


Jeffery K. Stover

Subscribed and sworn to before me this 22nd day of June, 2004

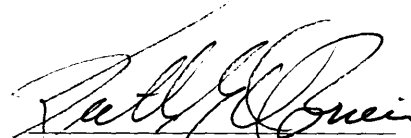

Notary Public

My Commission expires: 5/19/08



CERTIFICATE OF SERVICE

I hereby certify that I have on this the 30th day of June, 2004, served copies of the foregoing Verified Statement on all parties of record by United States Postal Service, First Class Mail, postage prepaid.



Keith G. O'Brien

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB FINANCE DOCKET NO. 33388 (Sub-No. 91)

**CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION**

(General Oversight)

JOINT STATEMENT OF SHIPPERS

Each of the undersigned is a shipper located on lines of railroad operated by North Shore Railroad Company and its affiliates (collectively, "NSHR")¹, and owned by either the SEDA-COG Joint Rail Authority ("SEDA-COG"), West Shore Railroad, or Lewisburg and Buffalo Creek Railroad.

Various shippers have participated in the last two oversight proceedings because of their concerns about a trackage rights agreement that had been entered into between NSHR and Norfolk Southern Railway Company ("NS"), and to share their view that the agreement was not consistent with the original settlement made between NS and NSHR that was a condition of the approval of the transaction.

Since the composition of the Board has changed during the course of this oversight proceeding, for the Board's convenience, attached as Exhibit A is a copy of the statement submitted last year as part of the SEDA-COG filing.²

The concerns of the shippers continue. Although an initial meeting took place this spring between NS and representatives of a SEDA-COG subcommittee which included shipper representation, there has been not been any formal response from NS that has been shared with the shippers. Thus, the frustration and fears of the shippers continue. Two of the shippers, PA

¹ For the purposes of this statement, NSHR refers to the following Class III railroads: North Shore Railroad Company, Juniata Valley Railroad Company, Nittany & Bald Eagle Railroad Company, Lycoming Valley Railroad Company, Shamokin Valley Railroad Company and Union County Industrial Railroad Company. All of the railroads are under the common control of Richard Robey.

² The Exhibit does not include the verifications of the six shippers who joined in last years statement. These can be found of record in last year's proceeding.

Distribution and Clark's Feed Mills, appeared at the oral hearings held by the Board on May 3, 2004, to express these concerns and to inform the Board of the shippers' simple request to have any settlement between NS and NSHR reflect the access to CP that was promised during NS's quest for Board approval of the Conrail transaction, and which the shippers have enjoyed and relied upon.

The access to CP that was promised has enabled the rail lines which NHR operates to attract new shippers who want to be able to connect to more than one Class I carrier, and has allowed existing shippers to increase their rail business. These gains have not taken former-Conrail traffic away from NS, and have created additional opportunities for NS which still handles the vast majority of the freight to and from the rail lines.

The restrictions that NS is attempting to enforce significantly reduce the value of the promised access - they impose geographic and time limitations, they do not fairly grandfather existing traffic, they do not recognize the seasonality and geographic shifts of the grain business that will use the access. These are all restrictions similar to those which NSHR and SEDA-COG objected to in the initial round of oversight proceedings.

At the oral hearing, Chairman Nober asked if shippers were better off now than they were before the Conrail transaction, if they had more access to CP than before. To a certain extent the answer to those inquiries is "yes"; however, the shippers respectfully state that they do not believe that to be the relevant inquiry in this oversight proceeding. Rather, the inquiry is whether NS is satisfying the conditions imposed on the transaction's approval. One of those conditions was that all settlements be honored, and one of those settlements was the settlement with NHR providing access to CP. Based on that promise, shippers have developed new buying and shipping patterns, shippers have located on the NSHR to take advantage of the access, shippers have invested in new and enlarged facilities to handle the traffic that they are developing with CP and NS.

Although the shippers were not expressly parties to the original settlement between NS and NSHR, they, along with the owners of the rail lines, were clearly the intended beneficiaries of the CP access that was promised. The promised access to more than one Class I carrier at various locations throughout the Conrail system was one of the significant bases for approving the transaction. NHR and NS should not be permitted to negotiate away this promised access to the detriment of the shippers, just to satisfy their own agendas.

To the shippers, if NS continues to insist on the restricting the promised access to CP, it will be violating one of the conditions imposed by the Board on the Conrail approval. This violation could be remedied by NS agreeing meet with the affected shippers and rail line owners to negotiate a reasonable resolution to these issues. As presented to the Board in May by both the

shippers and SEDA-COG, the simple resolution would be an agreement that included the following points:

- The agreement with NS should provide that the traffic that can be interchanged directly with CP at Sunbury is the same as the traffic that can be interchanged indirectly with CP via Harrisburg.
- The agreement with NS should provide that all existing traffic should be meaningfully “grandfathered”, even if it does not meet the new definition of covered traffic.
- The agreement with NS should be permanent.
- The agreement with NS should apply to the owners of the various rail lines, and to the Robey railroads and any successor operators of the lines.

The shippers request that the Board order NS to negotiate in good faith with the shippers and rail line owners to accomplish these goals, and that the Board continue oversight to ensure that NS and NSHR do not attempt to implement the restrictions that are inconsistent with the original settlement, and that the negotiations with the affected parties continue.

Subject to the foregoing, the undersigned shippers support the comments of SEDA-COG to which this statement is attached.

JOINDER

Shipper: Clark's Feed Mills, Inc

The above referenced shipper joins in the foregoing statement.

I, Dennis E. Roite of Clark's Feed Mills, Inc. verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on June 30, 2004.

Dennis E. Roite
Name: DENNIS E. Roite

JOINDER

Shipper KEYSTONE Commodities Co.

The above referenced shipper joins in the foregoing statement.

I, JEN HART of KEYSTONE Commodities Co. verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on JUN 30, 2004.

Jen R. Hart
Name: JEN R. HART

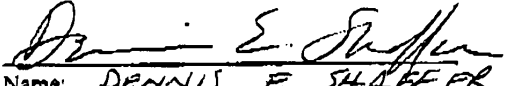
JOINDER

Shipper: PA DISTRIBUTION

The above referenced shipper joins in the foregoing statement.

I, DENNIS E. SHAFFER of PA DISTRIBUTION verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on 6-29, 2004.


Name: DENNIS E. SHAFFER
GENERAL MANAGER

JOINDER

Shipper: BRANOT Mius Inc

The above referenced shipper joins in the foregoing statement.

I, Richard A Bravotto of BRANOT Mius verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on 6/30, 2004.

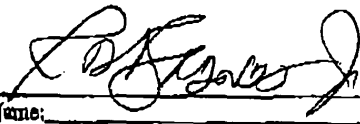
 Pres. BMT
Name: _____

EXHIBIT A

**BEFORE THE
SURFACE TRANSPORTATION BOARD
STB FINANCE DOCKET NO. 33388 (Sub-No. 91)**

**CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION**

(General Oversight)

JOINT STATEMENT OF SHIPPERS

Each of the undersigned is a shipper located on lines of railroad operated by North Shore Railroad Company and its affiliates (collectively, "NSHR")³, and owned by either the SEDA-COG Joint Rail Authority ("SEDA-COG"), West Shore Railroad, or Lewisburg and Buffalo Creek Railroad.

The undersigned shippers participated in last year's oversight proceeding to raise concerns about a trackage rights agreement that had been entered into between NSHR and Norfolk Southern Railway Company ("NS"), and to share their view that the agreement was not consistent with the original settlement made between NS and NSHR that was a condition of the approval of the transaction.

At the time of last year's oversight proceeding, there were ongoing negotiations and the parties were hopeful that a mutually agreeable resolution could be reached. Unfortunately, no changes were made, and there are no currently scheduled negotiations. Instead, NS and NSHR have agreed to provisions that will attempt to implement the terms and restrictions of the trackage rights agreement. The undersigned shippers have not yet been advised of the affects this will have on the traffic they have developed since the Split Date. However, they object to NS and NSHR taking any steps to implement an agreement that is not consistent with the original settlement.

³ For the purposes of this statement, NSHR refers to the following Class III railroads: North Shore Railroad Company, Juniata Valley Railroad Company, Nittany & Bald Eagle Railroad Company, Lycoming Valley Railroad Company, Shamokin Valley Railroad Company and Union County Industrial Railroad Company. All of the railroads are under the common control of Richard Robey.

For the Board's convenience, the shippers restate the background and substance of the position they set forth last year as follows:

One of the major selling points of the Conrail transaction was that many shippers (and the shortlines that serve them) were going to have access to two Class I carriers instead of just Conrail. In June, 1997, Norfolk Southern Railway Company ("NS") and NSHR entered into a settlement under which NSHR would, among other rights, be given direct access to the Canadian Pacific ("CP") system at Sunbury, Pennsylvania, to interchange traffic moving to CP local points and points on railroads interchanging only with CP.⁴ In return NSHR agreed to support the proposed split of Conrail. Based on the settlement, SEDA-COG and various shippers also supported the transaction. NS's compliance with the settlement became a condition of the approval of the transaction. *See* Decision No. 89, p. 105 and ordering paragraph no. 19.

On June 1, 1999 ("Split Date"), Conrail was split between NS and CSX. NSHR and NS entered into temporary interim arrangements that allowed traffic to begin moving directly between the CP system and NSHR at Sunbury. The undersigned shippers began to take advantage of the interchange and to move traffic to and from the CP system that they understood was covered under the settlement. (The shippers understood that they could ship to and from the CP system with CP system being broadly defined in the same way that CP was defined in the CP/NS settlement agreement).⁵ Traffic continued to move in this manner, for over two years.

In the interim, after Split Date, NSHR continued to try to negotiate a formal agreement with NS. However, they were unable to do so because of restrictions that NS insisted on including in the agreement. In the first round of this Oversight Proceeding, both NSHR and SEDA-COG filed comments detailing their frustrations over NS's attempts to limit the points on CP that could be origin or destination points of the traffic, the types of traffic that could be handled, and the

⁴ Later in the proceeding, NS entered into a separate settlement with CP which granted indirect access to CP - the access to CP is only through Harrisburg, Pennsylvania, with NS handling the traffic between Harrisburg and Sunbury for a fixed handling charge.

⁵ As the shippers understand it, under the CP/NS settlement agreement, the CP system is defined broadly to include local points on CP, railroads that are later spun off from CP, and railroads that had been spun off from CP over the previous ten years. Railroads spun off over the last ten years include I&M Rail Line ("IMRL"), New Brunswick Southern, CDAC, Ottawa Valley, Quebec & Gastineau, and Twin City & Western. Although not spinoffs of the CP system, the CP/NS agreement also provides access to points on Ontario Northern and Bangor and Aroostook Railroad.

time period of the agreement.

In July, 2001, SEDA-COG and the shippers first learned that NSHR had reached a tentative agreement with NS; however, the specific terms of the trackage rights agreement that would implement the settlement were not disclosed. Nor was it initially disclosed to SEDA-COG or the shippers that the negotiated terms were far different than those NSHR and SEDA-COG were seeking only a year before. Despite objections to the proposed trackage rights agreement raised by both SEDA-COG and the shippers, on August 21, 2001, without any changes apparently having been made, NSHR notified the Board that they had reached a final agreement with NS over the terms of an agreement to implement the settlement.

The undersigned shippers object to the terms of the trackage rights agreement that has purportedly been reached between NSHR and NS on the basis that they are inconsistent with the original settlement which was made a condition of the transaction. Based upon the description of the terms of the settlement,⁶ the shippers object to the proposed trackage rights settlement because it fails to include the following terms:

- (1) Either SEDA-COG, as the owner of the rail line should be a party to the settlement agreement, or the agreement should be assignable to SEDA-COG or any successor operators of its lines in the event NSHR are no longer the operators;
- (2) The term should be unlimited, or should be renewable at the option of SEDA-COG and its operator(s); early termination provisions must be eliminated;
- (3) The definition of traffic that can be interchanged with CP under the settlement agreement should cover all traffic similar to the traffic that was interchanged at Sunbury between NSHR and CP between June 1, 1999 and June 30, 2001; and
- (4) The definition of traffic that can be interchanged with CP under the settlement agreement should be consistent with the traffic that is covered under the CP/NS settlement agreement.

The undersigned shippers are the parties most affected by the settlement and the

⁶ Despite repeated requests by the shippers, NSHR has refused to provide a copy of the trackage rights agreement. The shippers understand that NSHR and NS have recently provided a copy of the agreement to SEDA-COG under terms of a strict confidentiality agreement that does not permit the agreement to be shared with the shippers.

proposed trackage rights agreement. The shippers understand that SEDA-COG is continuing to negotiate with both NS and NSHR to address these issues. The shippers support the negotiations and are hopeful that the results will be beneficial for all of the concerned parties.

Although negotiations are continuing, the affected shippers believe that it is imperative that the Board make clear that it retains jurisdiction to review any agreements that purport to implement settlements that were a condition of approval of the Conrail transaction (including the agreement between NSHR and NS), whether or not the formal oversight proceeding is continued.

The undersigned shippers are concerned that this matter has yet to be satisfactorily resolved. They hope that NS will commit to meet with SEDA-COG, the other rail owners and the shippers for meaningful discussions to try to reach a mutually agreeable solution to the concerns that have been raised about the interchange restrictions that have been imposed. Subject to the foregoing, the undersigned shippers support the comments of SEDA-COG to which this statement is attached.

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB FINANCE DOCKET NO. 33388 (Sub-No. 91)

**CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION**

(General Oversight)

STATEMENT OF RAIL LINE OWNERS

As stated in prior year's oversight proceedings, West Shore Railroad and Lewisburg and Buffalo Creek Railroad (collectively "Rail Owners"), like the SEDA-COG Joint Rail Authority ("SEDA-COG"), own rail lines operated by Union County Industrial Railroad, one of the affiliates of North Shore Railroad Company (collectively, "NSHR")¹. Rail Owners thus have the same concerns as SEDA-COG about the proposed settlement entered into between NSHR and Norfolk Southern Railway ("NS"), and the lack of progress towards resolving the concerns raised with NS about the restrictions contained in the settlement.

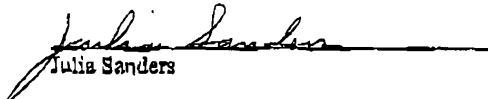
Further, Rail Owners endorse and support the concerns raised by the Joint Statement of the NSHR shippers, and the relief they have requested.

Rail Owners support the continuation of oversight proceedings to allow negotiations with NS to continue in the hope that changes would be made in the settlement that would benefit all of the concerned parties.

¹ For the purposes of this statement, NSHR refers to the following Class III railroads: North Shore Railroad Company, Juniata Valley Railroad Company, Nittany & Bald Eagle Railroad Company, Lycoming Valley Railroad Company, Shamokin Valley Railroad Company and Union County Industrial Railroad Company. All of the railroads are under the common control of Richard Robey.

I, Julia Sanders of Lewisburg and Buffalo Creek Railroad verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document,

Executed on 6-30-, 2004.


Julia Sanders
Title: Owner

I, Noah Brubaker of West Shore Railroad verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on 30 June 2004.

Noah M. Brubaker
 Noah Brubaker
 Title: Track supervisor