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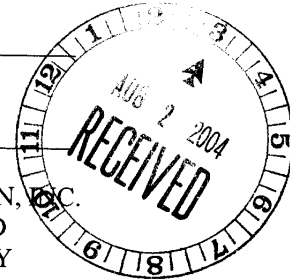
CSX/NS-6

BEFORE THE
SURFACE TRANSPORTATION BOARD

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 REPLY OF
CSX CORPORATION AND CSX TRANSPORTATION, INC.
AND
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
IN THE
FIFTH ANNUAL ROUND OF CONRAIL OVERSIGHT

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Pursuant to Decision No. 11 (served January 21, 2004), CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "Norfolk Southern") hereby submit the following reply in the fifth annual round of the Conrail general oversight proceeding. In this reply, statements are attributable jointly to Norfolk Southern and CSX except where otherwise indicated.

Introduction and Summary

In Decision No. 89 in Finance Docket No. 33388, the Board approved, with conditions, acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively, "Conrail") by Norfolk Southern and CSX and the division of the operation

of the preponderance of the assets of Conrail by and between Norfolk Southern and CSX.¹ As in other recent rail consolidations, in approving the Transaction the Board established a five-year general oversight period to permit it to assess the progress of the Transaction's implementation and the effects of the various conditions the Board imposed.

CSX and Norfolk Southern implemented the Transaction on June 1, 1999 ("Split Date"). In its decisions issued at the end of each of the first four years of oversight, the Board found that the conditions it imposed have worked as intended and that no competitive or other market power problems resulting from the Transaction have arisen. That continues to be the case. As we will discuss, the Transaction has been a success by virtually every measure: It has resulted in greater efficiencies, substantial rail infrastructure investments, economic development, and new rail competition throughout large parts of the Northeastern United States that had been served for many years by only one Class I railroad. For the large majority of rail shippers and communities served by Norfolk Southern, CSX and Conrail, the answer to the question posed by Chairman Nober at the Board's recent oversight hearings in Trenton and Washington — "Are you better off as a result of the Transaction?" — is unquestionably "yes."

No party in this fifth year of oversight has identified any ongoing systemic problem resulting from the Transaction that would warrant the extraordinary and unprecedented steps of extending the oversight period beyond its 5-year term or imposing

¹ *CSX Corp. et al.—Control and Operating Leases/Agreements—Conrail Inc. et al.*, 3 S.T.B. 196 (1998) ("Decision No. 89"). References in this Joint Reply to other numbered decisions refer to decisions in this oversight proceeding, Finance Docket No. 33388 (Sub-No. 91), unless otherwise indicated.

new conditions. Most of the concerns expressed in the relatively few comments submitted involve the kind of ordinary, day-to-day issues concerning service and other matters that commonly arise between railroads and their customers—issues that are unrelated to any effects of the Transaction and that do not warrant Board action to resolve. Accordingly, the Board should conclude that no extension of the oversight period is warranted, while retaining, of course, its general authority to act in response to specific Transaction-related problems should any arise in the future.

In the balance of this Joint Reply, CSX and Norfolk Southern will summarize how the Transaction has succeeded and brought significant benefits to the public, and will respond to the specific concerns that have been raised by various parties.

I. THE CONRAIL TRANSACTION IS A SUCCESS. INTEGRATION OF CONRAIL IS COMPLETE, AND HAS RESULTED IN SIGNIFICANT BENEFITS TO THE SHIPPING PUBLIC.

When the Board approved the Transaction in 1998, it expressed its expectations that “the transaction will result in a pro-competitive restructuring of rail service throughout much of the Eastern United States,” and that “[a]fter the Transaction is fully consummated, both CSX and NS will provide vigorous, balanced and sustainable competition, each over approximately 20,000 miles of rail line in the East.” Decision No. 89, 3 S.T.B. 196 at 247. The Board conducted two public hearings this year, in Trenton, New Jersey on April 2 and in Washington, D.C. on May 3, giving all interested parties the opportunity to express their views about the Transaction five years after its implementation. The views and information provided to the Board at those hearings and

in the written statements filed in this General Oversight proceeding show that the Board's expectations in 1998 have been fulfilled.

The Trenton Hearing

The Trenton hearing on April 2 focused on the three Shared Assets Areas ("SAAs"), where Conrail provides rail service on some 700 miles of lines as the agent of Norfolk Southern and CSX. Two senior Conrail officials, Gregory Weber and Ronald Batory, as well as Norfolk Southern and CSX representatives, presented the Applicants' perspectives.

The Transaction Agreement established the three SAAs — North Jersey, South Jersey/Philadelphia and Detroit — and also provided for access by both Norfolk Southern and CSX to shippers on some 190 miles of line allocated to Norfolk Southern in the Monongahela coal fields in Pennsylvania and West Virginia ("MGA"). As a consequence, shippers and communities served by the SAAs and in the MGA coal fields now have access to two competing Class I railroads whereas, before the Transaction, they had access only to one such carrier, Conrail. As the Board said in Decision No. 89: "The most important public benefit resulting from the transaction will be a substantial increase in competition by allowing both CSX and NS to serve where only Conrail served before." 3 S.T.B. at 333.

In order to effectuate the direct Norfolk Southern-CSX competition in the SAAs that the Transaction created, the Transaction agreements very deliberately provided that Conrail was to function strictly as the agent of CSX and Norfolk Southern and would have no independent marketing or rate-making role. When the Board was considering the Transaction, several parties questioned whether this arrangement in the SAAs could

be implemented efficiently and safely and whether it provided sufficient incentives for improving rail service and investment. Some parties even predicted dire results. Events, however, have soundly disproved these concerns.

Although CSX, Norfolk Southern and Conrail initially experienced some transitional problems implementing the Transaction after Split Date, those problems were substantially resolved within the first year, as the Board found in its first oversight decision. Decision No. 5, slip. op. at 10-11. At Trenton, Mr. Weber and Mr. Batory confirmed that the Transaction has been fully and successfully implemented in the SAAs. Conrail currently has 1,350 employees and operates over 1,200 miles of track using three major classification yards, 25 support yards and 100 locomotives. Conrail Trenton presentation at 4. They testified that, despite very challenging economic conditions, Conrail's traffic in the three SAAs increased almost 10 percent from 2000 to 2003, from 805,000 to 882,000 carloads. *Id.* at 8 and 9. Intermodal traffic through the SAAs grew even more, almost 26 percent, from 272,000 to 342,000 carloads. *Id.* at 9.²

Conrail has handled the increased traffic while at the same time producing impressive improvements in safety, service and efficiency. As reflected in Conrail's presentation in Trenton, since 2000 Conrail has reduced FRA reportable injuries 13 percent, reduced derailments 30 percent and received E.H. Harriman safety awards every year. *Id.* at 10. On-time train departures have increased 56 percent, and yard dwell time has decreased 19 percent. *Id.* Conrail has also enhanced locomotive fleet efficiency 30 percent and crew efficiency 4 percent and reduced car handling costs 20 percent. *Id.*

² Because these traffic figures use 2000 as a base year, the comparisons are not skewed significantly by the transition period immediately after Split Date.

Conrail has partnered with public transportation agencies, jointly investing in major projects, including:

- with the New Jersey Department of Transportation (“NJDOT”) and the Port Authority of New York and New Jersey (“PANYNJ”), \$50 million in North Jersey rail infrastructure;
- with New Jersey Transit, \$18 million in double tracking the Northern Branch;
- with the Michigan Department of Transportation (“MDOT”), \$10.5 million for expanding the Detroit Livernois intermodal facility; and
- with municipalities, various projects in Detroit, Lincoln Park, Perth Amboy, Sayerville and Bayonne.

Id. at 15. In addition, Conrail has coordinated industrial development efforts with Norfolk Southern and CSX which have resulted in, among other things, a 30 percent increase since 2000 in applications by shippers in the SAAs for new side tracks. *Id.* at 16.

Representatives of CSX and Norfolk Southern also testified at Trenton about the successful implementation of the Transaction in the SAAs. *See generally*, Trenton Tr. at 26-34. They reported, among other things, that the growth of traffic in the SAAs has exceeded system-wide growth and that traffic interchanged with short lines in the SAAs has increased substantially since Split Date, particularly in New Jersey, and has exceeded the growth of traffic interchanged with shortlines system-wide.

At the Trenton hearing, the Board also heard from state and other public agencies, shippers and other railroads. Most comments were very positive about the benefits of the Transaction. For example, Mr. Thomas Collard of the Southern Railroad of New Jersey reported that “our traffic has more than doubled from its 1999 level[;] we are a lot better off today than we were before the Conrail split. . . . [T]he combination of consistent reliable local service from Conrail coupled with two Class One carriers competing head-

to-head to participate in our growth is a combination that is hard to beat.” Trenton Tr. at 125.³

A few commentators expressed concerns about service and other matters and questioned whether CSX, Norfolk Southern and Conrail have been making adequate efforts to market rail service and invest in infrastructure in the SAAs and whether Conrail should be restructured as an independent profit center. Those specific issues will be addressed in detail later. We merely note here that concerns about the adequacy of the carriers’ marketing efforts and infrastructure investments are squarely refuted by the numbers, and those suggesting a restructuring of Conrail to add independent ratemaking authority seem not to understand or recognize the competitive drivers that were the basic reasons for Conrail’s present structure.

The Washington, D.C. Hearing

The hearing on May 3, 2004 in Washington, D.C. addressed all aspects of the Transaction, and the Board heard from David R. Goode, Chairman, President and CEO of Norfolk Southern and Michael J. Ward, Chairman, President and CEO of CSX, as well as representatives of public entities, shippers and other railroads.

Mr. Goode and Mr. Ward explained how the Transaction has fulfilled the expectations of the Board in Decision No. 89. It did so, first, by greatly expanding the single-line reach of Norfolk Southern and CSX in the eastern United States. This has improved service to shippers and made both Norfolk Southern and CSX stronger

³ See also, e.g., testimony of: Michel Klein for Mars Industries, Inc; Jim Bruno for Madison International Sales Company; David Reid for Novolog Bucks County, Inc. and James Cumby for the United Transportation Union.

competitors, not only with each other but also with other modes of transportation, particularly trucks.

Mr. Goode testified that the expanded reach of the Norfolk Southern system and its enhanced competitiveness have produced noteworthy results. For example, from 2000 to 2003, intermodal traffic handled by Norfolk Southern increased by 230,000 units. Significantly, Norfolk Southern tripled its north-south intermodal traffic through Hagerstown, traffic that Conrail had little incentive before the Transaction to move on a joint-line basis. *See* D.C. Tr. at 15-16.

Similarly, Mr. Ward reported that the Transaction has enabled CSX to increase its intermodal traffic 11 percent since Split Date and also to win business from water carriers. *See* D.C. Tr. at 28. The Transaction has also enabled CSX to reach new markets with new services, such as (1) moving municipal solid waste from the Northeast to underutilized landfills in the southern United States (a \$120 million annual business), (2) expansion of its TRANSFLO terminal business for customers without rail sidings, and (3) ExpressLane, a CSXT/UP service to move perishable goods quickly across the country. *See id.* at 29-30.

The testimony of Mr. Ward and Mr. Goode regarding the growth of the carriers' respective intermodal businesses was confirmed by the Intermodal Association of North America ("IANA"), which wrote to the Board on April 26, 2004 to report that the Transaction "has been a contributory factor in the growth of intermodalism over the past five years." IANA Letter at 1.

At the same time that Norfolk Southern and CSX have been growing new rail business, both carriers also have achieved significant improvements in efficiency and

impressive safety results. In 2003, Norfolk Southern employees won their 14th consecutive E.H. Harriman gold medal award for the lowest employee injury ratio among Class I railroads, CSX won the silver award, and Conrail won the silver award in the switching and terminal railroad category. *See* D.C. Tr. at 13-14. Mr. Goode also reported that in the first quarter of 2004, Norfolk Southern's network velocity reached an all-time high and was among the best in the industry; that the average dwell time for cars in Norfolk Southern terminals decreased from 25.3 hours in 2000 to 22.9 hours in 2003; and that overall network fluidity has continued to improve. *See id.* at 14. Mr. Ward reported that CSX's extended single-line service reduced costs and transit times by eliminating CSX/Conrail interchanges. Gateway optimization projects have reduced car handlings five to 12 percent in joint-line service between CSX and the Burlington Northern, Canadian National and Union Pacific. The increased volumes from the Transaction have also helped CSX to expand its pre-blocking capability and often to operate run-through trains in major gateway terminals, eliminating classification work that can add an average 24-hour delay. CSX customers have benefited from reduced handling damage, improved transit times and new competitive products. *Id.* at 33-34.

As noted by both Mr. Ward and Mr. Goode, CSX and Norfolk Southern have also made substantial investments in railroad infrastructure and economic development since Split Date. In the Application, the carriers identified numerous capital improvement projects they intended to make as a direct result of the Transaction, which they estimated would cost almost \$1 billion. In their first three annual oversight reports, the carriers reported in detail on the completion status of those projects. Although changing shipper needs and business conditions and modifications to the carriers' operating plans have put

a few projects on hold, the large majority have been completed, while others more appropriate to the new business and operating climate have been added.

In addition to those projects specifically identified in the Application, CSX and Norfolk Southern have invested hundreds of millions in other capital improvements in the former Conrail territory. These investments include construction of additional main tracks, connections and sidings; major track rehabilitation projects that have increased capacity; upgrade of signaling systems (including installation of TCS on many lines); improvements to and expansions of numerous yards and intermodal facilities; and construction of new transload facilities.

Mr. Ward and Mr. Goode also described the public benefits resulting from the Transaction's creation of new competition between two balanced and evenly matched Class I railroads, not just in the SAAs and MGA, but throughout the Eastern United States. As Mr. Ward stated, "When you look at the competitive service the East now enjoys, it's important to keep in mind that it benefits the region as a whole, not just those who see direct rail-to-rail competition. A major retailer, for example, is looking to locate a warehouse in the region. The fact that it has two Class I railroads competing to provide services widens the options. That's exactly what balanced rail competition in the East means." D.C. Tr. at 30-31.

Finally, it is important to note that the carriers' achievements were accomplished during, and in spite of, a period of economic downturn in the United States. As Mr. Goode observed at the hearing, that fact is a reflection of the greater flexibility the Transaction has given the carriers to adjust and respond to new market and economic conditions. *Id.* at 17. Although the businesses and traffic bases of each railroad have

changed in major respects since the Transaction was approved, both railroads have been able, because of their expanded reach and greater efficiencies, to make up for declines in some markets with gains in other markets as well as development of new markets altogether.

As at the Trenton hearing, a large number of other parties who spoke at Washington or who submitted written comments expressed very positive views about the benefits of the Transaction after the first five years. Among the comments of parties who, in the main, are very pleased with the Transaction are the virtually unanimous expressions from the ports of New York/New Jersey ("PANYNJ"), Wilmington and Virginia, who frequently have differing views on transportation matters but who each praised the Transaction. At the Washington hearing, Rear Admiral Richard M. Larrabee, Director of Port Commerce of PANYNJ, told the Board that, despite PANYNJ's initial reservations about the Transaction, "I am pleased to report to you that [the Port's support for the Transaction] has proven to be a wise decision. The head-to-head competition between CSX and Norfolk Southern has resulted in significant innovation and the growth in the port's rail traffic to which I had previously referred." D.C. Tr. at 79. In the same vein, the Port of Wilmington, Delaware wrote to the Board on April 22, 2004, stating: "The Port is better off because of the Conrail Transaction. The reach of single line service from the Port is far more extensive than was the case prior to the transaction and service has improved. Generally the Port's customers receive first-rate service. The Port's relationships with NS and CSX are strong, and communication is effective." The Virginia Port Authority also wrote the Board on April 22, 2004, stating: "Since the Conrail breakup in 1999, our rail volume has increased from 121,297 containers to

175,145 containers, an increase of 44%. In addition, we have seen more competition develop in our port with CSX now serving nine Midwest origins/destinations compared to just one in 1999.” Both the Port of Wilmington and the Virginia Port Authority also specifically urged the Board to conclude formal oversight.

A number of shipper representatives testifying in Washington were equally positive about the results of the Transaction. For example, PP&L Energy Plus, a major consumer of coal from, among other places, the Monongahela region served by Norfolk Southern and CSX, reported that “[d]ual access for NS and CSX to [Monongahela]-served mines has worked well for those mines, PP&L and other receivers. . . . PP&L’s access to service from those mines has been good, and I believe enhanced competition between NS and CSX helps both railroads to stay on top of their operation. . . . PP&L’s overall tonnage volumes have increased over the past several years, and Norfolk Southern and CSX have provided good quality service, moving PPL unit trains to and from mines and generating stations.” D.C. Tr. at 115-117. Similarly, Consol Energy, a major coal producer, testified that “the Conrail merger has had a positive impact on the ability to be competitive in the marketplace and to serve our customers’ needs.” *Id.* at 119.⁴

Other parties were also positive and expressed no major concerns. For example, the State of Maryland, which had actively participated in earlier oversight rounds, wrote to the Board on April 30, 2004 stating: “We are pleased to report that representatives of both [Norfolk Southern and CSX] continue to work with the State to implement the

⁴ See also, *e.g.*, the hearing testimony in Washington of John Gallaher for Kinder Morgan Liquids Terminals; Donald Alexander for Savage Services Corporation; and Jason Blinkoff for A&R Bulk-Pac.

commitments they made in order to secure the State's support for the transaction." Exhibit 1 hereto. The State of Michigan similarly wrote to the Board on May 24, 2004, reporting the success of the Detroit Shared Assets Area, and stating: "Michigan's shippers appear to have been well served by the acquisition of Conrail and the establishment of the SAA." Exhibit 2 hereto. Anacostia & Pacific Corporation, on behalf of three short line affiliates that connect with CSX and Norfolk Southern, described a number of new markets they have been able to develop as a result of the Transaction. *See* D.C. Tr. at 174-76. The Ohio Central Railroad system, comprised of ten short line railroads in Ohio and Pennsylvania, reported that those railroads have enjoyed a "six to seven percent annual growth rate on virtually all of our railroads as a result of what we believe is a much more competitive reach that our customers have through us" *Id.* at 178-79.

Even those who expressed concerns or criticisms (which will be addressed in greater detail in Section III of this Joint Reply) overwhelmingly conceded that they are better off for the Transaction having occurred.

Overview of Comments

It is natural, and appropriate, to focus on the interests of those who came forward to comment on the Transaction in this most recent round of oversight. It is noteworthy, however, that so few have come forward at all, and that the concerns they have raised have been so limited. The Conrail Transaction was unquestionably one of the most significant consolidation cases ever brought before the Board. Hundreds of parties filed comments asking for concessions or conditions and hundreds more sent letters of support. The Board imposed conditions for the benefit of many commenting parties and the

Applicants settled with many others. Today, five years later, only about forty parties testified or submitted written comments (or both) in this final round of General Oversight. This is a very small number in light of the significance of the Conrail Transaction and the very large number of parties who participated in the main proceeding. Additionally, a very substantial portion of these comments from those who took the time to participate were favorable. Considering that the American Chemistry Council, IANA, and the National Industrial Transportation League (“NIT League”) spoke on behalf of their many members, it is apparent that the overwhelming number of shippers are satisfied with the results of the Conrail Transaction.

Additionally, Norfolk Southern and CSX connect with hundreds of shortlines. Only a handful of them were moved to provide their views to the Board, and a number of those expressed satisfaction with the Transaction. The few who expressed concerns did not raise any issue that would warrant the extension of this proceeding.

Throughout this proceeding, the Board also expressed interest in the effects of the Transaction on labor and passenger services. *See* Decision No. 89, 3 S.T.B. at 296-97, 327-33. The only labor organization that participated in this round of General Oversight spoke in support of NS, CSX and Conrail. No serious concern about the effect of the Transaction on passenger services was raised; indeed, John F. Lettiere, Chairman of New Jersey Transit and Commissioner of the New Jersey Department of Transportation, expressed his support for the cooperative relationship between the carriers and state officials on passenger rail issues and others.

Five states — Maryland, Michigan, New Jersey, New York, and Pennsylvania — expressed views (along with some of their local or regional governmental entities), as did

the Four City Consortium of northwestern Indiana. Maryland, Michigan, the New Jersey Department of Transportation and the Four City Consortium expressed generally positive views of the Conrail Transaction and their relationships with the carriers. New York and Pennsylvania also acknowledged that their citizens were better off as a result of the Conrail Transaction, questioning only whether Norfolk Southern and CSX have done everything they could have done to fulfill certain specific conditions and commitments for the benefit of their citizens. The facts show, however, that NS and CSX have unquestionably complied with the conditions (both general and environmental) imposed by the Board and have honored their commitments in good faith. In light of this, we believe that the very limited number of specific concerns raised can best be addressed, to the extent necessary, by continued consultation between the railroads and state representatives, rather than extension of this formal oversight proceeding. *See, e.g.*, Four Cities Comments at 7; D.C. Tr. at 64 (agreeing that the formal oversight period need not be extended).⁵

⁵ On July 30, the United States Department of Transportation (“DOT”) submitted “Reply Comments” (DOT-8) which urged the Board to “resolve the outstanding disputes and end this formal oversight proceeding.” DOT-8 at 2. DOT proposes that “each complaining party (if it has not already done so) should be required to identify the specific commitment(s) or condition(s) it alleges one or both Applicants have not met,” including the provision of specific documents evidencing such commitments. *Id.* at 3. DOT then proposes further responses by Norfolk Southern and CSX. Although Norfolk Southern and CSX agree that the Board should end this formal oversight proceeding, they believe that the Board has provided parties ample opportunity to present concerns over the past several months, including through the conduct of two public hearings and the opportunity for written submissions. Norfolk Southern and CSX respectfully suggest that the record is complete and there is no need for further submissions.

II. THE GENERAL OVERSIGHT PERIOD IS PRESUMPTIVELY A TEMPORARY PERIOD.

The General Oversight period was imposed for a defined period of time and should terminate as scheduled absent proof of circumstances warranting extension of the period. *See UP/SP Merger*, Finance Docket No. 32760 (Sub-No. 21), Decision No. 21, slip op. at 5 (served December 20, 2001) (“The oversight process we imposed in 1996 was intended, absent evidence of ongoing problems, to be temporary, not permanent.”). No such evidence has been presented here. As the Board noted in its decision in the first year of Conrail oversight, “the purpose of this proceeding is to determine whether the conditions we imposed in our decision approving the transaction are being complied with and are serving their intended purpose of addressing harms that otherwise would have resulted from the Conrail transaction. . . . Our primary focus is on remedying competitive harms.” Decision No. 5, slip op. at 12. The evidence in this case shows there are no systemic competitive harms and no failure of conditions.

Significantly, the Board terminated the UP/SP oversight proceeding on schedule even though extension of a limited form of oversight had been requested. The Board held that extending the formal oversight proceeding, even in a limited form, was unnecessary because “despite the conclusion of our formal oversight process, parties will continue to have the opportunity to request that we address merger-related concerns. Also, our Office of Compliance and Enforcement continues to monitor the rail industry generally and to make its Rail Consumer Assistance Program available to consider informal complaints involving railroads.” *UP/SP Merger*, Finance Docket No. 32760 (Sub-No. 21), Decision No. 21, slip op. at 5 n.12.

In this case, a three-year oversight period was a bargained-for provision of the NIT League settlement. *See* Applicants' Rebuttal CSX/NS-176 at P-726 to P-728 (Dec. 1997). The Board decided, however, to extend the oversight period to five years. *See* Decision No. 89, 3 S.T.B. at 365. The Board has thereafter repeatedly referred to general oversight as a "5-year" oversight condition. *See, e.g.*, Decision No. 11 (served January 21, 2004).

Nothing was presented in the prior rounds of this proceeding to indicate that the formal oversight period should be extended. Indeed, the evidence demonstrated that termination was warranted. As the Board stated earlier this year:

The comments and replies filed in this fourth annual round of the Conrail "general oversight" proceeding demonstrate that the conditions the Board imposed on the Conrail transaction are working as intended, that the Conrail transaction has not resulted in any competitive or market power problems, and that the service problems that occurred immediately after the Split Date have not recurred. The comments and replies further demonstrate that the implementation of the Conrail transaction is nearing completion.

Decision No. 11 (served January 21, 2004), slip op. at 10. The Board had reached a similar conclusion at the end of the third annual round of General Oversight. Decision No. 10 at 3 (served November 5, 2002). Indeed, Vice Chairman Burkes separately commented at the end of Decision No. 10 that "the formal oversight reporting procedure is an unnecessary burden and should be discontinued." *Id.* at 9.

Moreover, a number of commentators in this round of oversight have expressly recommended that this proceeding not be extended. For example, IANA, which was an active participant in the meetings of the Conrail Transaction Council (created in the NIT League settlement agreement), stated that it "saw first hand how seriously the carriers have taken the Oversight process and how much management time and energy was

devoted to making it the success that it was. Consequently, . . . IANA sees no reason to continue regulatory monitoring of this Transaction and respectfully submits that there is no need to extend the five-year Oversight period.” IANA Letter at 2. See also, for example, the comments of the Ports of Wilmington and Virginia, each of which urged the Board to conclude formal oversight.

Accordingly, the temporary general oversight period should conclude, as originally contemplated, upon issuance of the Board’s decision in this fifth annual round. As explained below, no party has demonstrated that there is any systemic problem with the implementation of the Conrail Transaction that requires extension of the presumptive five-year period. The Board’s ordinary statutory authority and complaint resolution mechanisms are fully sufficient to address any future party-specific concern that may arise.

III. NONE OF THE ISSUES RAISED BY COMMENTING PARTIES WARRANTS INTERVENTION BY THE BOARD OR EXTENSION OF THIS FORMAL OVERSIGHT PROCEEDING.

As the discussion in Section I above shows, the overwhelming (and uncontroverted) evidence shows that the Conrail Transaction, far from raising issues of competitive harm that would justify Board intervention and remediation, has benefited the public by, among other things, injecting competitive rail service in extensive regions of the country where none existed before and extending the single-line reach of the Norfolk Southern and CSX systems.

Despite this evidence, a number of parties have raised issues or concerns that they assert warrant extension of the formal oversight process beyond its originally-

contemplated 5-year period, and some ask the Board to grant additional (and indeed, in some cases radical) affirmative relief.

The following discussion will show that there is no basis for the Board to require additional formal oversight. Indeed, doing so would mean that this Transaction, which has *created* more rail-to-rail competition than any other in history, would have to undergo more extensive formal regulatory scrutiny than required for any other transaction before it, including those that not only did not create broad new competition, but in which far-reaching conditions had to be imposed merely to remedy extensive competitive *harm* that would have resulted otherwise.

Moreover, there is no basis for the Board to impose any new affirmative relief. In some cases, the issues raised by a party are not the proper object of this Board's attention at all, but routine business and operational matters that railroads and their stakeholders discuss and deal with every day in the ordinary course of business. In some cases, parties have used this proceeding simply as a means of enlisting the Board, not to remedy any concrete and identifiable competitive harm caused by the Transaction, but simply to impose that party's vision of what could be done to make things even better. That is not the Board's proper role or the purpose of oversight. *See* Decision No. 89, 3 S.T.B. at 278 (the purpose of the Board's conditioning power is to remedy, where necessary, transaction-related competitive harms; a condition should not be imposed "simply to put its proponent in a better position than it occupied before" the transaction). In some cases, parties have alluded to the broad, aspirational goals of the Transaction — goals that, as shown in Section I above, indisputably have been achieved — as if they were particularized, bargained-for obligations that must be satisfied with respect to, and to the

satisfaction of, every individual stakeholder. That, too misapprehends the applicable legal standards, the purposes of oversight and the Board's conditioning power. *Cf. UP/SP Merger*, 1 S.T.B. 233, 401 (1996) ("We will not impose a condition just because one group of shippers obtains pro-competitive merger benefits that other shippers do not enjoy."). Some parties make generalized assertions of "commitments" entered into by the railroads without providing evidence that such supposed "commitments" were ever made. And in some cases, parties that assert the carriers have failed to live up to identifiable commitments are simply wrong – the carriers have honored their commitments in good faith and indeed in some instances have gone far beyond what is properly required.

A. GOVERNMENTAL ENTITIES

State of New Jersey

New Jersey Department of Transportation

Norfolk Southern and CSX entered into a letter agreement dated March 20, 1998 with the New Jersey Department of Transportation and New Jersey Transit Corporation to address concerns of NJDOT/NJT relating to the Conrail Transaction.⁶ NJDOT also submitted comments last year in the fourth round of General Oversight. NJDOT (along with the North Jersey Transportation Planning Authority) complained of insufficient competition and economic development within the NJSAA. *See* Decision No. 11 (Sub-No. 91), slip op. at 8-10 (served January 21, 2004). In their detailed Replies dated August 4, 2003, Norfolk Southern and CSX documented the service successes of the

⁶ This New Jersey Letter Agreement was submitted to the Board by counsel for CSX on April 20, 1998.

NJSAA and their future plans for the area. *See* NS-11 at 16-20; CSX-13 at 5-12. Noting the large number of “capital, service and other improvements each carrier has undertaken in the NJSAA,” the Board endorsed ongoing discussions among the parties and concluded that no action was required. Decision No. 11 (Sub-No. 91), slip op. at 11.

This year, the Trenton testimony of John F. Lettiere, Commissioner of NJDOT and Chairman of New Jersey Transit Corporation, demonstrates that the Board was correct. Commissioner Lettiere noted the positive and cooperative spirit that has characterized the relationship between NJDOT and CSX and Norfolk Southern. He praised the “significant capital investment” undertaken by Norfolk Southern and CSX in New Jersey, including the ExpressRail facilities at Port Newark/Port Elizabeth, CSX’s transload facility in Elizabeth, and Norfolk Southern’s Croxton Yard and E-Rail facility, and noted the cost-sharing partnership between the railroads and NJDOT pertaining to the reinstallation of double-tracking at several locations in north central New Jersey. Trenton Tr. at 37; NJDOT Comments at 6. Commissioner Lettiere also complimented CSX and Norfolk Southern on their work in conjunction with New Jersey Transit to address passenger rail issues. *See id.* at 37-38; NJDOT Comments at 6. NJDOT said that it wishes to continue the “coordination and collaboration” between the state and the carriers to accomplish their common goals. NJDOT Comments at 8.⁷ NJDOT does not seek extension of the formal oversight period.

CSX and Norfolk Southern, too, are pleased with their positive and cooperative relationships with NJDOT, and will seek to maintain those relationships with NJDOT,

⁷ Norfolk Southern, CSX and Conrail representatives meet periodically with the Commissioner himself to discuss matters of mutual interest.

New Jersey Transit and other stakeholders in the coming years. That is not to say there never will be problems or disagreements, but if and when they arise, they will be more amenable to resolution if the preexisting relationship between the parties is one of open communication and cooperation.

The one specific issue Commissioner Lettiere asked the Board to consider as a condition was mandated application of the Northeast Operating Rules Advisory Committee (NORAC) operating rules to Conrail lines in the Shared Assets Areas in New Jersey beyond the agreed-upon three-year period. Such a condition, however, is not warranted. CSX and Norfolk Southern are acutely aware of the need to coordinate and apply operating rules so as to facilitate the safe and efficient operation of freight and passenger rail service in New Jersey, an area of dense rail infrastructure and heavy usage, and will continue to work in close coordination with Conrail, NJDOT and New Jersey Transit toward that end. Moreover, the adoption of railroad operating rules is subject to the oversight of the Federal Railroad Administration under 49 C.F.R. Part 217.

In sum, CSX and Norfolk Southern agree with NJDOT that “[g]iven the complexity of NJ Transit, Conrail, CSX and NS train operations on the New Jersey rail network, all parties will have to continue working cooperatively to ensure that the safety and reliability of all rail services in this region continue to be maintained at the highest level.” NJDOT Comments at 6. CSX and Norfolk Southern look forward to continuing to work cooperatively with New Jersey DOT and New Jersey Transit toward those goals.

North Jersey Transportation Planning Authority

The North Jersey Transportation Planning Authority (“NJTPA”) is the metropolitan planning organization for the North Jersey area. In marked contrast to the

views of NJDOT (discussed above), NJTPA seeks a forced radical and unwarranted restructuring of the SAAs. NJTPA submitted a preliminary written statement dated March 24, 2004 and a final statement dated June 29, 2004. Peter Palmer, Chairman of the Board of Trustees, also testified at the Trenton hearing. Trenton Tr. at 59-69, 87-88, 91. The NJTPA final statement presents a report on the NJSAA prepared by the Alan M. Voorhees Transportation Center at Rutgers, dated May 2004. That report concludes with three recommendations, including restructuring of the NJSAA.

Neither NJTPA's comments nor the report it submits warrant the extraordinary and fundamental structural changes NJTPA appears to seek. Most of the report is devoted merely to describing the proceedings in Finance Docket No. 33388. Only limited additional information was obtained and evaluated. The study relies heavily on statements made in a series of meetings held in March, April and May 2003, but neither the identity, affiliation or even number of individuals who participated and expressed various views is reported (except that it is revealed that representatives of PSE&G and PANYNJ participated). It is thus impossible to assess the statements presented in the report. For example, the report states (at page 23): "A major shipper and a switching railroad noted that cars were arriving later and were no longer blocked by customer. In addition, some crew and locomotive shortages were recently reported." Such anecdotal assertions, even if they were correctly reported, suggest nothing more than the occasional isolated incidents that inevitably occur from time to time in areas of heavy rail activity. Indeed, the comprehensive data provided by Norfolk Southern, CSX and Conrail regarding SAA operations and the overwhelming testimony as to good service within the

NJSAA demonstrate that the NJSAA and the other SAAs are functioning well and that there is no basis for any action by the Board.

Further down on page 23 the report states: "Class I staff, in submitting quotes and invoicing for service were reported in the interviews as having noted the *additional* cost of serving locations in the Shared Assets Areas. Several individuals interviewed during the study noted that the Class I railroads quoted an additional price per car at between \$250-to-\$260. This practice is contrary to the STB approval agreement with the Class I railroads that created the CSAO." But at the Trenton hearing, David Brown of Norfolk Southern and Les Passa of CSX each said that his company assesses no separate charge to shippers for service to or from the SAAs; the quoted price is for the total move. Trenton Tr. at 47-48. Whatever the source of misunderstanding by the persons interviewed for the Vorhees report, if there were any widespread issue as to pricing within the SAAs surely the NIT League and/or the American Chemistry Council would have so reported, but they did not.

Apart from the anonymous and unverifiable interview statements, the report references only five documents (other than those that were part of the Conrail proceeding itself), which provide some general background information.⁸ Based on this insubstantial foundation, the report recommends costly and radical relief: (1) that Norfolk Southern and CSX contribute \$30 million to a rail economic development fund over the next five

⁸ (1) Then-CSX Resident Vice President Michael Brimmer's presentation to the NJTPA in February 2002 (p. 14), (2) an NJDOT report from February 2001 on the value of freight to NJ (p. 16), (3) an NJDOT Press Release from April 2003 announcing \$80 million for freight rail improvements (p. 21), (4) a Journal of Commerce online report from January 2004 on CSX's falling profits (p. 23), and (5) a Logistics Management article from November 2003 on the 2001 STB Revenue Shortfall Allocation Methodology Study (p. 24).

years, (2) that the CSAO be restructured to take on sales and economic development functions, and (3) that Norfolk Southern and CSX be required to comply with unspecified agreements with short lines for interchanges at unspecified locations and an undefined “dual access.”

NJTPA’s requests are unwarranted and should be denied. First, NJTPA provides no basis for requiring an additional, Board-directed \$30 million investment of the kind suggested. Norfolk Southern, CSX and Conrail have invested significantly in the Shared Assets Areas since Split Date. Of course, Norfolk Southern and CSX will continue to invest in North Jersey, just as they will continue to invest in other states, when the investments make sense operationally and commercially.

Second, NJTPA’s request to radically restructure the CSAO is contrary to a fundamental premise of the Board’s approval of the Conrail Transaction: that the NJSAA (and the other SAAs) should be operated neutrally by an entity owned by both carriers, and used by its joint owners, the competing Class I carriers themselves, for the pickup and delivery of their line-haul freight. The proposal was intensely scrutinized in the main proceeding by numerous parties with significant financial interest in the proposed SAAs, and based on their filings, and on its own comprehensive review of the NS/CSX Application, the Board approved the structure of the SAAs as in the public interest. Decision No. 89, 3 S.T.B. at 247-48, 371-74.

The filings submitted in this General Oversight proceeding confirm the benefits of the SAAs to the overwhelming number of shippers. Indeed, Tom Collard of the Southern Railroad of New Jersey addressed this very point in his testimony in Trenton and ably explained why various suggestions to require Conrail to have its own independent sales

and economic development functions should be rejected: “As I view it, if Conrail were to have a marketing organization, and do its own pricing, it would in fact become another short line between myself and the Class 1s. I think we are far better off having the two Class I railroads competing with one another. . . . If Conrail did their own pricing, got their own division of revenue, they in fact would be a cost-[center] and we would be an add-[on].” Trenton Tr. at 146-47. NJTPA has offered no evidence that would support its suggested radical restructuring of the mechanism through which Norfolk Southern and CSX have introduced two-carrier competition in Northern New Jersey and elsewhere.

Finally, the Vorhees report provides no specifics as to so-called “commitments” for “dual access” obligations (however that might be defined) for the benefit of New Jersey shortlines, and none were promised by the Applicants or imposed by the Board.⁹ Norfolk Southern and CSX made no general commitment of “dual access” for New Jersey short lines. Norfolk Southern and CSX agreed only to “adopt Conrail’s existing agreements for their duration.” Decision No. 89, 3 S.T.B. at 275. The Board expressly declined to impose a condition requiring Norfolk Southern and CSX to maintain existing gateways and rate relationships in perpetuity. *Id.* at 276. That being said, the evidence presented by Norfolk Southern and CSX shows that both carriers have worked diligently, and successfully, with their shortline partners in New Jersey and elsewhere.¹⁰ Norfolk Southern and CSX will continue to work with their short line partners to develop new

⁹ Perhaps there has been some misunderstanding of the concept that the SAAs have brought dual competitive access by two Class I carriers – CSX and Norfolk Southern – to shippers in those areas.

¹⁰ See the response to the New Jersey Short Line Railroad Association, below at pp. 68-69.

business and improve service for existing customers. No intervention by the Board is required.

Union County, NJ

Union County submitted a preliminary written statement dated March 29, 2004 and a final statement dated July 1, 2004. James Daley, Director of Economic Development, also testified at the Trenton hearing. Trenton Tr. at 69-76, 86-87. Union County had not previously participated in the General Oversight proceeding.

Union County recommends a stunningly radical restructuring and divestment of the NJSAA assets:

We recommend that CSAO Facilities within service area of the Port Authority of New York and New Jersey be transferred to that agency for operation. These facilities can be upgraded for intermodal and transload facilities related to Port Activity and used for the development of the Port Inland Distribution System (PIDN).

Written Testimony of James Daley at 5 (July 1, 2004). This recommendation is apparently made without any consultation with the Port Authority, and the Port Authority has not suggested that it endorses either the underlying premise that there must be any fundamental restructuring or the idea that it acquire substantial rail facilities for its freight operations. In fact, both Don Lotz, Intermodal Manager for the Port Authority of New York/New Jersey, who testified at the Trenton hearing, and Rear Admiral Richard M. Larrabee, Director of Port Commerce for the Port Authority, who testified at the Washington hearing, testified to the dramatic growth in port traffic and the railroads' contribution to that growth. Union County provides no basis for this startling request for action by the Board.

Mr. Daley also asserts that Norfolk Southern and CSX have failed to satisfy their transaction commitments in a number of ways, and suggests that for this reason oversight should be continued for two more years. But Mr. Daley's characterizations of the commitments and the status of their fulfillment are not entirely accurate. For example, Mr. Daley says (at 2) that the railroads' 50% match for port area improvements "has not been consummated." What Mr. Daley refers to, however, are discussions about an initiative launched *after* the Conrail Transaction, as to which none of the involved parties has expressed any concerns. Mr. Daley also asserts (at 2-3) that numerous brownfield properties still remain undeveloped in Union County. Again, this has nothing to do with any obligation arising under the Conrail Transaction. As stated above, Norfolk Southern and CSX have already invested substantial resources in North Jersey and will continue to do so when the investments make sense operationally and commercially.

Mr. Daley then moves on to assert (at 3) that a promise was given to all short lines in New Jersey "as a condition of the merger" that they would have access to both Class I railroads. But he cites to no such promise, and none was made.

Finally, Mr. Daley complains (at 3-4) about lack of progress on the proposed light rail passenger service between Elizabethport and Cranford. NJT is in the process of conducting studies for this service. Mr. Daley is correct that Norfolk Southern and CSX pledged their cooperation for this project in their March 20, 1998 Letter Agreement with Commissioner Haley of the New Jersey Department of Transportation, but NJDOT has not complained of any lack of cooperation on this project, and Norfolk Southern and CSX do not believe that there would be any basis for such a complaint.

As to the more general complaint that Norfolk Southern and CSX have not done enough to promote freight rail in the NJSAA, Mr. Daley acknowledges, as he must, that rail traffic has in fact grown in the area.

In sum, Union County has provided no basis either for extending oversight or for its proposed radical restructuring of the NJSAA.

New York State

John F. Guinan, Assistant Commissioner for the New York State Department of Transportation, submitted a written statement dated April 29, 2004 and testified at the Washington hearing. He said that New York State is better off after the Conrail Transaction than before it, and that “we don’t want to go back to the Conrail days.” D.C. Tr. at 106. He also pledged that New York “want[s] to partner with the railroads,” and recognized that “both of these railroads have made investments in New York State.” *Id.* at 99. Mr. Guinan specifically cites Norfolk Southern’s cooperation with MTA and Metro North to improve commuter service in the lower Hudson Valley and with interests in western New York on rehabilitating the Southern Tier Extension and CSX’s improvements to their yards, to grade crossings across the middle of the state, and to the West Side Hudson Line. *Id.* at 99-100.

Nevertheless, New York asserts that, in a number of respects, Norfolk Southern and CSX have failed to live up to commitments made in the proceeding with respect to various matters. New York alleges that “[i]n the key areas of infrastructure improvements, freight service quality enhancements, expansion of marketing opportunities, and a general commitment to the growth of the New York freight rail transportation system,” Norfolk Southern and CSX have “failed to live up to the

expectations set by their original application.” NY Comments at 5. New York also claims that both railroads have “effectively suspended efforts to enhance infrastructure and improve freight service efficiency in the Buffalo area,” *id.*, comments on the railroads’ “apparent lack of follow-through on the commitment to improve and enhance the freight rail infrastructure in New York,” and asserts that “both carriers have closed economic development offices in the state.” The state asks the Board to extend oversight for an unspecified period.

The carriers appreciate and share New York’s desire to continue to work together to achieve common goals. They respectfully and fundamentally disagree, however, that they have failed to fulfill any obligations to the state arising out of the Conrail Transaction. Because the specific issues New York raises are largely pertinent to one or the other of the carriers, each will respond separately below to those matters relevant to it. In sum, however, as the following discussion will show, there is no basis for concluding that any Board intervention is required or that the formal oversight period needs to be extended.

Response of Norfolk Southern

As noted above, Mr. Guinan specifically cites Norfolk Southern’s cooperation with MTA and Metro North to improve commuter service in the lower Hudson Valley and with interests in western New York on rehabilitating the Southern Tier Extension, *id.* at 99, and acknowledges that “[i]n many respects,” Norfolk Southern and CSX can claim “technical” compliance with conditions imposed by the Board pertaining to New York.

As pertinent to Norfolk Southern, New York expresses concern generally about infrastructure investment and raises in particular the status of the Portageville Bridge on

the Southern Tier Line. New York also complains that Norfolk Southern has closed an economic development office in the state.

It is important to note that New York does not identify any alleged specific, bargained-for undertaking connected with the Conrail transaction that Norfolk Southern has failed to perform. Essentially, the State's complaint is that Norfolk Southern has failed to live up to certain generalized "expectations" to the state's satisfaction. But generalized assertions about "expectations," without more, cannot form the basis for intervention by the Board or for the extension of the oversight period beyond its intended termination.

After the Transaction was initially implemented, Norfolk Southern opened an economic development office in New York, but subsequently determined that it could more efficiently serve New York from its Harrisburg, Pennsylvania office.

As to infrastructure generally, Norfolk Southern will continue to work with state officials as warranted on issues of infrastructure and economic development. Norfolk Southern does, and must, take a system-wide approach to assessing infrastructure needs; limited dollars for capital improvements must be allocated not based on political boundaries, but on where those resources can best be applied so as to respond most effectively to the business and operational needs of customers throughout Norfolk Southern's 22-state system. As previously noted in the carriers' report to the Board in the Buffalo-area infrastructure proceeding, Norfolk Southern's infrastructure investment team must look "to the network as a whole, and individual geographic regions as they fit into that network." *CSX Corp. et al.—Control and Operating Leases/Agreements—Conrail Inc. et al., [Buffalo-Area Infrastructure]* Finance Docket No. 33388 (Sub-No.

93), CSX/NS-1 at 53. As a corollary, and because rail systems operate as intricate networks, operational fluidity and efficiency often can be improved for one geographic region by implementing infrastructure projects or operational modifications hundreds of miles away. Norfolk Southern will continue to examine very carefully the need for infrastructure investment across its system and will, as it must, allocate those finite dollars where the need is greatest.

With respect specifically to the Portageville Bridge on the Southern Tier line, as of several years ago, Norfolk Southern's estimate of the cost associated with undertaking refurbishment of the bridge was approximately \$35 million — a substantial expenditure not then, or now, justified by the level of usage on the Southern Tier and the finite pool of available capital dollars, which must be directed where they will have the greatest impact in responding to the operational and business needs of Norfolk Southern and its customers. Norfolk Southern has, however, secured operating rights that will ensure the continued flow of traffic in the event the bridge becomes unusable. First, as New York notes, Norfolk Southern can reroute its own traffic over the Southern Tier extension, via trackage rights it now holds over the Western New York & Pennsylvania Railroad. *See Norfolk So. Ry. Co.—Trackage Rights Exemption—Western New York & Pennsylvania Railroad, LLC*, Finance Docket No. 34470 (served March 9, 2004). Second, Norfolk Southern has committed to use its best efforts to assist CP to obtain trackage rights over the same route. Finally, Norfolk Southern and CP are working toward agreements that would permit CP freight traffic between Binghamton and Buffalo to move via Norfolk Southern haulage. Should that come to fruition, then in the event the Portageville Bridge

cannot be used, that CP traffic could move, in NS haulage, via the same Norfolk Southern trackage rights over the WNY&P.

To the extent infrastructure investment in New York State is warranted by circumstances, Norfolk Southern will continue to work with state and local officials to pursue such projects. The process of identifying and prioritizing infrastructure investment projects and working with relevant state and local officials in the affected locations, is, however, not a requirement unique to, or imposed on Norfolk Southern by, the Conrail Transaction, but rather an ordinary part of the railroad's day-to-day operation of its business, as it must be in this capital-intensive industry. The concerns raised by New York are generalized concerns not arising from or related to the Transaction governed by the Conrail General Oversight Proceeding, and do not form the basis for an extension of that proceeding.

Response of CSX

CSX believes that its ongoing working relationship with the State of New York has been much better than the State's comments in this proceeding indicate. Mr. Guinan complained that CSX has not fulfilled all the promises that induced New York to support the Transaction. CSX respectfully disagrees.

The Board imposed numerous conditions in Decision No. 89 for the benefit of New York. New York acknowledges that CSX has fulfilled most of them. These include:

- Condition 28 directing CSX to attempt to negotiate unrestricted haulage or trackage rights with CP from Selkirk to Fresh Pond and indicating the Board would intervene if no agreement were reached. CSX granted unrestricted trackage rights to CP.

- Condition 29 directing the establishment of a committee with New York City representatives to promote the development of rail traffic to and from the City. The work of this committee is ongoing.
- Condition 30 directing CSX to cooperate with New York in studying the feasibility of cross-harbor car float and tunnel facilities. This cooperation is ongoing.
- Condition 33 directing establishment of a committee with regional and local authorities to promote rail traffic. CSX continues to participate in this committee even though it no longer has an obligation to do so.

Mr. Guinan questioned, however, whether CSX had maintained Conrail's employment levels and invested sufficiently in network improvements in the Buffalo area (Condition 35), and complained about the condition of the Genesee Junction Yard (Condition 56). He also had complaints unrelated to any specific conditions, including insufficient capital investment in New York generally, insufficient economic development effort by CSX, and concerns about CSX grade crossing warning systems. These issues are addressed in turn below.

Condition 35 requires CSX to adhere to representations regarding investment in new connections and upgraded facilities in the Buffalo area. New York says that these representations included:

- (1) upgrading technology and fueling facilities;
- (2) maintaining Conrail employment levels;
- (3) providing NS with overhead trackage rights to Suspension Bridge;
- (4) working with other carriers to reduce congestion at CP Draw; and
- (5) "investing substantial funds" in network improvements.

New York expresses dissatisfaction as to (2) and (5). New York asserts that CSX closed Seneca Yard and eliminated a crew shift at Frontier Yard. It also asserts that there have

been no recent investments in network improvements.

CSX has fulfilled Condition 35. After Split Date, CSX hired 250 T&E employees in the Buffalo area, expanding the total to 900. Those figures have largely been maintained, and efforts are underway to expand hiring further this summer. While there were reductions in operations at Frontier Yard for a period of time as a result of a downturn in car volumes tied to the economy, employment there has since been restored, and in fact has increased over the prior level. With respect to infrastructure investments, recognizing the increases in volumes in intermodal and rail-truck transfers over traditional carload business, plans were developed to convert Seneca Yard to an intermodal facility, beginning this year. This project will be funded with \$4.5 million in State dollars and \$1.5 million from CSX, the second investment of that amount by CSX in the area since Split Date. There is also a plan to develop a TRANSFLO project at William Street next year, once CSX vacates the property for its new facility, and that facility will cost \$1 million, with equal shares of funding from TRANSFLO and NYSDOT.

CSX has also fulfilled Condition 56. Condition 56 granted Livonia, Avon & Lakeville Railroad (LAL) trackage rights to Genesee Junction Yard to connect with the Rochester & Southern (RSR). CSX entered into the mandated arrangement with LAL and agreed to maintain the yard in FRA Class 1 condition. New York asserts that the yard has not been maintained in that condition, and that LAL and RSR have suffered damages as a result. It should be noted that LAL has not itself asserted noncompliance with Condition 56. An NYSDOT inspection on April 23, 2004 identified minor problems (no violations noted), all of which were promptly corrected.

Moreover, CSX does not believe that New York's complaints that are unrelated to any condition have merit. First, it complains about insufficient capital investment. In support of this complaint, Mr. Guinan said that the New York legislature enacted the Rail Infrastructure Investment Act of 2002 ("RIIA"), providing tax relief as an incentive to investment, but that CSX has not submitted a project for qualification under this program. In fact, however, CSX undertook a number of capital projects in New York to implement the Conrail Transaction, as set forth in our 2000, 2001 and 2002 annual oversight reports. CSX has already made substantial investment in New York, including \$49.3 million in completed (\$34.9 million) or planned (\$14.4 million) improvements along the River Line, the majority of which (\$28 million) was invested in New York, and all of which has direct impact on operations in the state. Additionally, substantial investment was made in the Selkirk Yard, totaling \$7.8 million. And, as stated above, there are plans for additional projects in Buffalo. The RIIA, which was signed into law by the Governor on January 30, 2003, provides for a period of up to one year after the *completion* of a project to file for tax benefits. CSX fully intends to file for tax benefits for its qualifying investments in New York.

Second, New York complains that CSX has closed its New York economic development offices. In fact, however, two CSX industrial and economic development personnel are located in Selkirk, New York. They oversee the economic development effort statewide.

Third, New York expresses serious concerns about CSX grade crossing warning systems, particularly in the Rochester area, the subject of an FRA investigation. CSX is fully cooperating with the FRA, and is implementing an action plan in Rochester and

throughout the State. This plan addresses each crossing at which 3 or more reports of malfunctions had occurred within the past year, resulting in a plan to address at least 46 crossings on 67 tracks over 9 subdivisions. The work began on February 25th with an expected completion date of mid-September.

New York has benefited from the balanced competition brought by the Conrail Transaction, and CSX has complied with all the conditions imposed by the Board for its benefit. CSX has actively participated on both the Commissioner's Passenger Rail Advisory Council and Freight Rail Advisory Council, and will continue to meet and consult with representatives of the State of New York on a regular basis to ensure that mutually beneficial arrangements are explored and implemented. There is no need for an extension of the formal oversight period. The Board remains available in any event to address any future concerns related to the Conrail Transaction.

Commonwealth of Pennsylvania

Recognizing the important interests of the Commonwealth of Pennsylvania in the Conrail Transaction, Norfolk Southern Chairman, President and Chief Executive Officer David R. Goode and then-CSX Chairman, President and Chief Executive Officer John W. Snow each sent a letter dated October 21, 1997 to then-Governor Thomas Ridge and then-City of Philadelphia Mayor (now Governor) Edward Rendell. The letters ("Pennsylvania Letters") are attached as Exhibits 3 and 4 respectively. They set forth proposals for action by CSX, Norfolk Southern, the Commonwealth and the City on economic development projects and other matters to benefit the citizens of Pennsylvania.

In the first round of General Oversight, comments were filed by the Transportation Committee Chairmen of the Pennsylvania House of Representatives. *See*

Decision No. 5, slip op. at 96-99 (served Feb. 2, 2001) for the Board's summary of these comments and Norfolk Southern's and CSX's replies. The Board responded to these comments by stating that it would continue to monitor the carriers' service performance, commitments made, and conditions imposed (including environmental conditions). *Id.* at 27. No comments were filed by Pennsylvania parties in the second, third and fourth rounds of General Oversight.

This year, various Pennsylvania parties have submitted the following:

1. Comments on behalf of the Commonwealth, City, and Philadelphia Industrial Development Corporation ("PIDC") (April 2, 2004).
2. Oral testimony at the Trenton hearing by Edward Duffy, Vice President of PIDC (April 2, 2004), Trenton Tr. at 76-81.
3. Comment letter from PIDC (April 13, 2004).
4. Comments by the Pennsylvania Department of Community and Economic Development ("DCED") (May 3, 2004).
5. Oral testimony at the D.C. hearing by John M. Whitlock, Deputy Chief Counsel of DCED (May 3, 2004), D.C. Tr. at 71-74.
6. "Supplemental Submission" by DCED (May 20, 2004).
7. Comment letter from DCED (July 1, 2004).

In general, the Pennsylvania parties assert that Norfolk Southern and CSX have failed to fulfill certain commitments they made in the Pennsylvania Letters. They ask that the formal oversight period be extended for an additional five years, and that CSX and Norfolk Southern be required to submit quarterly reports to the Board during this period. April 2 Comments at 3; May 3 Comments at 5; July 1 Comments at 2. They recognize that certain projects, as originally proposed, "may not now be necessary," and request that the Board require alternative projects in those circumstances. April 2 Comments at 3.

As noted, Norfolk Southern and CSX do not believe that an extension of formal oversight is warranted. First, Norfolk Southern and CSX have substantially completed,

or are in the process of completing, the anticipated actions proposed in the Pennsylvania Letters. When circumstances indicated that an adjustment in approach should be made, Norfolk Southern and CSX have proceeded with alternative projects and other efforts that have provided comparable, if not greater, benefits to the citizens of Pennsylvania. *See* letter from H. Craig Lewis, Norfolk Southern's Vice President Corporate Affairs, to David J. Yeager, Director of the (Pennsylvania) Governor's Action Team (April 28, 2004) (the "Lewis Letter") (Exhibit 5), in which Norfolk Southern explained in detail how the commitments in the Pennsylvania Letter had been satisfied and its "aspirations and underlying spirit fulfilled." *See also* letters from D. Kevin Hurley, Assistant Vice President CSX Real Property, to Mr. Yeager (October 29, 2003 and December 22, 2003) (Exhibits 6 and 7) providing information on CSX's progress in accomplishing its commitments and achieving its goals.

Second, of all the states in which Norfolk Southern operates, its greatest rail infrastructure presence is in Pennsylvania (2,508 track miles). CSX has a more limited presence (1,058 track miles), though Pennsylvania is very important for both CSX's north-south and east-west traffic flows. Customers in the major industrial areas of Pittsburgh and Philadelphia, as well as elsewhere in the Commonwealth, are important to both CSX and Norfolk Southern. Norfolk Southern and CSX thus will continue to have significant business interests within Pennsylvania and will continue to make economic development investments in Pennsylvania without any need for continuing Board involvement.

The Pennsylvania Letters sets forth five categories of proposals for action by Norfolk Southern and CSX. Each will be addressed in turn.

I. Economic Development

A. Cash Investment in Philadelphia Shipyard (\$20 million total)

Pennsylvania acknowledges that Norfolk Southern and CSX each contributed \$10 million toward the successful effort to attract Kvaerner ASA to the Philadelphia Navy Yard. The Kvaerner shipyard christened its second ship on July 21, 2004, and its third ship is close to 60% complete. That shipyard employs nearly 1,000 people.¹¹

B. Land Acquisition, Facility Construction and Rail Infrastructure Improvements with a Focus on Philadelphia (\$20 million total)

Norfolk Southern. Norfolk Southern, in cooperation with PIDC, the Philadelphia Authority for Industrial Development and the Delaware River Port Authority (“DRPA”), is constructing a new intermodal terminal at the Philadelphia Naval Business Center (“PNBC”). The terminal is expected to be completed and open for business in 2005. Norfolk Southern’s investment in that project alone is estimated at \$16 million, which by itself fully satisfies the \$15 million commitment under this provision. PIDC has hailed the project as one that “will usher in further revitalization at the former Navy Yard,”¹² “enhance the capacity and competitiveness of Philadelphia’s entire port system”¹³ and create 500 to 1,000 jobs in the Philadelphia region.¹⁴

¹¹ See Exhibit 8, “Revived shipyard set to christen 2d vessel,” *Philadelphia Inquirer* (July 17 2004); available at <http://www.philly.com/mld/inquirer/2004/07/17/business/9175301.htm?1c>

¹² “Construction of a \$16 million rail facility at the former Navy Yard is under way,” PIDC news release, October 28, 2002, available at <http://www.pidc-pa.org/newsDetail.asp?pid=25> (attached as Exhibit 9) (“PIDC Oct. 28, 2002 News Release”).

¹³ See PIDC 2002 Annual Review at p. 9, available at <http://www.pidc-pa.org/annualreview.pdf> (attached as Exhibit 10).

¹⁴ Exhibit 9 (PIDC Oct. 28, 2002 News Release).

CSX. CSX and Norfolk Southern each spent \$40,500 in 2002 for upgrade and maintenance of PIDC's Northeast Philadelphia Airport Industrial Track. *See* Exhibit 11 hereto for correspondence relating to this project.

CSX was surprised to see the assertion in the May 20 Supplemental Submission (at 3, 4-5) that CSX had "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." In fact, PIDC informed CSX in an April 11, 2002 letter (included in Exhibit 11) that the only customer on that line that would have benefited from the clearance project ceased operations in the months following PIDC's proposal of the project to Norfolk Southern and CSX, and PIDC did not pursue the project further.

More significantly, as Pennsylvania acknowledges, CSX has reached agreement with the DCED that the balance of \$4,960,000 will be contributed through a credit toward the Philadelphia Regional Port Authority's purchase of parcels in South Philadelphia owned by CSX and Conrail (the credit on the Conrail parcels would be in the amount of CSX's 42% ownership interest). *See* letter from Dennis Yablonsky, Secretary of the DCED, to D. Kevin Hurley of CSX (March 10, 2004) (Exhibit 12 hereto.) But DCED complains in its May 20 Supplemental Submission (at 2-3) that the transactions have not closed due to CSX's delay in providing appraisals for the parcels. CSX timely provided an appraisal for its parcel, but failed to understand that it was to provide appraisals for the Conrail parcels as well. When this omission was pointed out, CSX obtained and provided the appraisals. PRPA believes the appraisals are too high, however, and further work must be done to determine a price. In addition, some environmental issues must be

addressed before transfer. CSX is optimistic that these issues will be resolved, and that PRPA will acquire the land it desires.

C. Customer Incentive Program (up to \$35 million to be made available)

DCED expresses dissatisfaction with Norfolk Southern's and CSX's compliance with these provisions. Norfolk Southern and CSX believe, however, that DCED is not correctly interpreting these provisions and that Norfolk Southern and CSX have in fact complied with those commitments. Moreover, as stated above, Norfolk Southern and CSX are willing to work cooperatively with DCED on future customer incentive initiatives without the need for any further formal agreement.

These provisions are not open-ended, unconditional promises for Norfolk Southern and CSX to make payments of \$25 million and \$10 million, respectively, for any economic development project proffered by DCED or the Governor's Action Team. Rather, the Pennsylvania Letters call for Norfolk Southern to "make available" (not "expend") a "maximum" of \$5 million per year and for CSX to "make available" \$2 million per year for five years in support of such economic development projects, if any, that meet the specified criterion – specifically, those that will provide Norfolk Southern or CSX (as the case may be), in return, *contractual obligations for acceptable levels of rail business*. See Exhibit 3, ¶ 1.C.; Exhibit 4, ¶ 1.C. That condition, of course, makes perfect sense: The very purpose of a railroad's economic development effort is to support the location or expansion of facilities along its own system that will generate new or increased business for it. The plain language of these provisions reflects the fact that the actual expenditure of funds depends on the availability of qualifying projects and, more generally, future business and economic conditions.

It is important to understand that economic development initiatives cannot be unilaterally mandated by the Commonwealth or even bilaterally agreed to by the Commonwealth and a rail carrier. Such initiatives must also include direct consultation between the appropriate railroad and the specific shipper whose facilities are sought to be developed or expanded on that railroad's lines. A contractual commitment for an acceptable level of rail business for the sponsoring carrier must come from the shipper itself. In addition, there is no simple formula that Norfolk Southern or CSX can mechanically apply in assessing an economic development proposal; each proposal must be evaluated on its own facts. Moreover, carriers seeking to attract new or expanded business provide different kinds of support and the value of such support cannot always be measured in terms of dollars expended; in addition to providing direct financial assistance where appropriate, Norfolk Southern and CSX routinely provide shippers considering relocation or expansion free and confidential site selection, engineering and technical assistance to help the shipper understand how rail service can be crafted to meet its transportation needs. Finally, the decision to expand or locate a new facility in a particular place at a particular time is the *shipper's*, and transportation considerations often play a modest or even negligible role in that decision.

For these reasons, neither government nor railroad representatives can dictate a schedule of *results*, but only of their cooperative *efforts*. While DCED assuredly understands that economic development initiatives arise according to circumstances dictated by the needs of the underlying businesses and often beyond DCED's control (*see* May 20 Comments at 5) it fails to appreciate that those circumstances are also beyond the *railroads'* control. Norfolk Southern and CSX made the required amount of funds

available, for the required period, to fund any economic development projects identified in cooperation with Commonwealth officials that satisfied the requirements of paragraph I.C. of their respective Pennsylvania letters. DCED's position that economic development projects not specifically proposed by DCED or the Governor's Action Team are irrelevant (*see, e.g.*, May 3 Tr. at 96-7) is utterly unreasonable. The Norfolk Southern and CSX business development efforts outlined below (and, as discussed below, described in the separate CSX/NS-7 submission also filed today) demonstrate that the carriers have accomplished Pennsylvania's goal of benefiting its citizens. These initiatives are providing the same benefits — job creation and economic growth — as would any project arrived at through formal consultation with state officials.

Norfolk Southern. Norfolk Southern did, as it said it would, make available up to \$5 million per year in each of the first five post-Split years for qualifying economic development projects. Had Pennsylvania identified projects that qualified for funding, the funds were available to be expended. Over the 5-year period, the Governor's Action Team identified a few projects for Norfolk Southern's consideration, but they either did not offer the requisite prospect of rail business or were not pursued for reasons unrelated to Norfolk Southern. For example, one proposed project was a new truck-rail transfer facility near Pittsburgh, which would facilitate a Canadian National-Wheeling & Lake Erie traffic flow that would compete directly with Norfolk Southern. Needless to say, there was no prospect for this project to provide a contractual obligation for an acceptable level of rail business to Norfolk Southern. (The project later was constructed without Norfolk Southern funds.) As another example, a PIDC proposal to partially fund the

acquisition of certain real estate with the *hope* that rail-served shippers might eventually locate there did not provide the needed contractual guarantee of rail business.

But Norfolk Southern has not passively waited for DCED or other Pennsylvania parties to bring economic development opportunities to it. Norfolk Southern has a very real economic interest in progressing projects that make commercial and operational sense, and has identified and pursued numerous shipper-specific development opportunities throughout Pennsylvania since Split Date. In a Highly Confidential supplement filed concurrently with this Reply, designated CSX/NS-7, Norfolk Southern identifies several dozen new or expanded facilities and projects as to which it has taken (or is presently taking) a role in bringing to Pennsylvania.¹⁵ That listing includes projects involving direct financial assistance by Norfolk Southern, or in-kind technical assistance (such as site selection assistance, engineering support, technical drawings and specifications, etc.), or both.

Additionally, Norfolk Southern has undertaken projects at locations outside Pennsylvania that are of a direct economic benefit to companies in the Commonwealth. One example of this is Norfolk Southern's installation of a new siding at the Sammis power plant in Steubenville, OH, which has permitted rail deliveries to the plant for the first time. Norfolk Southern is now moving coal to the plant from Pennsylvania mines.

Further, Norfolk Southern has identified, pursued and funded numerous other projects in Pennsylvania since Split Date, projects that mean jobs and economic growth for the Commonwealth, including:

¹⁵ A copy of the Highly Confidential CSX/NS-7 shall be provided to any interested outside counsel or consultant for any party to this proceeding upon request and upon
(continued on next page . . .)

- Altoona, PA – Improvements to Juniata Locomotive Shop -- \$10.2 million
- Bethlehem, PA – Triple Crown facility – over \$6 million
- Conway Locomotive Shop improvements -- \$1.15 million
- Erie, PA – track realignment –
- Harrisburg, PA – Improvements to Enola Car and Locomotive Shops -- \$1.12 million
- Rutherford, PA -- Construction of new intermodal terminal -- \$31.0 million.

CSX. CSX expended approximately \$550,000 on two projects in 2000 to provide incentive for the location of U.S. Gypsum in Aliquippa, as explained in Mr. Hurley's December 22, 2003 letter. *See* Exhibit 7. DCED complains in its May 20 Supplemental Submission (at 3, 4) that CSX had verbally committed to fund another \$2.2 million of costs for that project, but then refused. CSX does not believe that this characterization is fair. While U.S. Gypsum desired a total incentive benefit of \$2.75 million, CSX determined that its appropriate contribution was \$200,538 for the installation of two turnouts (which was in addition to its earlier expenditure of \$349,254 to build additional tracks in its Aliquippa Yard to serve U.S. Gypsum and another facility). *See* letter from David Hemphill of CSX to Steven Kohler, Director of the Governor's Action Team (June 21, 2000) (Exhibit 13 hereto). By letter dated July 6, 2000 (Exhibit 14 hereto), Mr. Kohler accepted CSX's contribution: "Upon review of your request, I feel that it falls within the spirit and intent of the agreement that was reached between The

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demonstration that such outside counsel or consultant has executed the applicable Highly Confidential undertaking.

Commonwealth and CXS [sic] in connection with the CSX/Norfolk Southern acquisition of Conrail.”

Apart from the projects mentioned above, CSX representatives recall that the Governor's Action Team suggested a few other projects for possible funding but that, after preliminary discussions, these possibilities did not develop into viable opportunities.¹⁶

Despite the fact that the parties availed themselves of a formal consultative process on only a limited number of occasions, CSX was actively pursuing opportunities for new or expanded business along its lines in Pennsylvania. Like Norfolk Southern and other rail carriers, CSX routinely provides shippers considering relocation or expansion technical assistance and, in some cases, CSX also offers contract incentives to offset the cost of constructing rail access facilities. CSX/NS-7 identifies companies that have located new facilities, or have expanded existing facilities, on CSX's lines in Pennsylvania since approval of the Conrail Transaction.

CSX and Norfolk Southern also have been working together on certain joint projects to assist coal shippers located on the MGA, as described in more detail in CSX/NS-7. Norfolk Southern and CSX expect that their contribution to economic development in Pennsylvania will exceed \$9 million within the next two years *through this initiative alone*. CSX and Norfolk Southern also have been working on joint projects

¹⁶ One of these was the proposal made in 2000 for NS and CSX to fund PIDC's acquisition of two parcels along the Delaware River in Philadelphia, discussed by Norfolk Southern above. PIDC planned to improve them and market them for a rail-served industry, but, as Norfolk Southern explains, the hope of attracting a rail-served business did not amount to an actual rail contract for an acceptable level of business as required.

to attract businesses to Philadelphia within the South Jersey/Philadelphia Shared Assets Area, as described in more detail in CSX/NS-7.

Future Approach to Economic Development in Pennsylvania

Norfolk Southern and CSX believe that it would be productive in the future to establish a program of regular, periodic (perhaps quarterly) bilateral¹⁷ meetings between each respective carrier's representatives (including a mid- to upper-level Marketing official, an Industrial Development Department representative, and, when appropriate, Engineering and Transportation Department personnel as well) and representatives of relevant Commonwealth, municipal and local entities. The focus would be cooperative pursuit of future economic development opportunities. Such a program should help foster a sense of trust and mutuality and maximize the prospect that projects of shared importance will be realized in the future. These meetings would complement other established channels of communication with Commonwealth representatives (such as the quarterly meetings with the Pennsylvania DOT Rail Freight Advisory Council). As another example, representatives of Norfolk Southern and CSX took part, along with Governor Rendell, in a meeting of the Keystone State Railroad Association on July 22, 2004; economic development was a major focus of that meeting.

D. Marketing Agreements with PIDC

Pennsylvania specifically has acknowledged that joint marketing efforts have gone forward with CSX. May 20 Supplemental Submission at 3. Pennsylvania expresses no concerns as to joint marketing efforts with regard to Norfolk Southern.

¹⁷ It would not be appropriate, of course, for NS and CSX personnel to attend the same meetings; we envision each carrier meeting separately with Commonwealth officials.

E. Development and Operation of Intermodal Terminals

Norfolk Southern. Norfolk Southern's Pennsylvania Letter contemplated that the DRPA and Norfolk Southern would enter into an agreement for development of a Norfolk Southern intermodal terminal in the Philadelphia area. The new Norfolk Southern intermodal terminal at the PNBC will be completed in 2005.

CSX. As explained above, CSX constructed a new state-of-the-art intermodal terminal at Greenwich Yard to replace its small facility on Snyder Avenue. The Transaction has permitted CSX to handle double-stack container traffic at this facility by utilizing the CSX-allocated line in New York and trackage rights over Norfolk Southern in Pennsylvania.

II. Jobs

The Norfolk Southern and CSX Letters include certain projections related to employment in the Philadelphia area. The projections as to Conrail, Norfolk Southern and CSX employment were made in good faith based on the best assessment at that time of, among other things, the numbers of positions that would be required to manage the as-then untried concept of Shared Assets Areas. Both Letters contemplate that Philadelphia would remain the headquarters for Conrail for an indefinite period. Norfolk Southern's Pennsylvania Letter also states that (1) A Mid-Atlantic Regional Headquarters would be located in Philadelphia, headed by a Regional Vice President and estimated to require 75 jobs, and (2) 150 other rail-related jobs would be created in the Philadelphia area as a result of Norfolk Southern's activities. CSX's Pennsylvania Letter says that CSX anticipates establishing a regional office in Philadelphia (to include government relations, industrial development, sales and operations staff) and that 35 new rail-related jobs

would be created in the Philadelphia area as a result of CSX activities, in addition to 150 existing jobs.

As the Pennsylvania Letters contemplated, Conrail's headquarters has remained in Philadelphia, and CSX and Norfolk Southern anticipate that it will remain there for an indefinite period of time. Over the years, the composition, size and positioning of Conrail's staff have changed as it and its co-owners have responded to market and economic conditions and the operational and business needs of the carriers' customers. Today, Conrail is a smaller, more efficient organization than originally anticipated in 1997. It has proven able to perform safely, efficiently and effectively with a total of about 1350 employees, down from about 1700 employees just after the Split. The number of headquarters and other administrative staff in particular is much smaller than the 350 people thought to be needed in October 1997, almost two years before the eventual Split Date, and the needs of Conrail further evolved as employees successfully completed transition and startup work. As economic, business and operational conditions affecting Conrail continue to change in the future, it is to be expected that the size, composition, and location of Conrail staff will also continue to evolve in response those conditions as necessary to permit CSX and Norfolk Southern to serve the public most effectively and efficiently.

As anticipated, Norfolk Southern established a Mid-Atlantic Regional headquarters in Philadelphia, headed by H. Craig Lewis, Vice President of Corporate Affairs. As is described in more detail in the Lewis Letter, Norfolk Southern's basic approach for operating its system has evolved from the operating plan set forth in the Application, which was the basis for the projections set forth in the Norfolk Southern's

Pennsylvania Letter. Norfolk Southern's effort to convert north-south traffic back to rail is now centered in Harrisburg, PA, one of the three hubs in the new Norfolk Southern system. Therefore, many of the positions anticipated to have been located in the regional headquarters are now located elsewhere in Pennsylvania.

CSX has a small office in Philadelphia which is presently staffed with facilities management, government relations/corporate communications, intermodal, and law department personnel. Some additional CSX employees were initially relocated to the Philadelphia office immediately after Split Date, but CSX subsequently determined that it could more efficiently serve Pennsylvania from its Maryland and New York division offices.

With respect to new rail-related jobs, PIDC itself has estimated that Norfolk Southern's new intermodal terminal at the PNBC will generate some 500-1,000 jobs after it opens in 2005. Exhibit 9 (PIDC Oct. 28, 2002 News Release). Those figures exceed by several multiples the number of jobs hoped to be created by Norfolk Southern activities in Philadelphia, and meet or exceed the combined number of Norfolk Southern, Conrail, and other rail-related jobs anticipated in the Norfolk Southern's Pennsylvania Letter. DCED has acknowledged that CSX has substantially complied with its projection of 185 jobs in Philadelphia. May 20 Supplemental Submission at 3. The new Greenwich intermodal terminal alone employs 45 CSX employees and 29 employees of contractors who provide service on a full-time basis. Like the new Norfolk Southern terminal, the CSX terminal has undoubtedly generated many more rail-related jobs.

Additionally, the combined \$20 million in payments made by CSX and Norfolk Southern to support the redevelopment of the Philadelphia Navy Yard have also paid off in light of the nearly 1,000 jobs Kvaerner has brought to Philadelphia.

Although it is difficult to determine with precision how many jobs have been added in Pennsylvania since 1999, and will be added, as a direct result of the industrial development efforts of Norfolk Southern and CSX, Norfolk Southern estimates that companies benefiting from its industrial development efforts have brought approximately 3,600 new jobs to Pennsylvania since 1999, while CSX estimates that the new and expanded facilities it serves represent over 600 new jobs for Pennsylvania.¹⁸

An important goal of the Pennsylvania Letters was job expansion. Although the jobs that resulted from the Conrail Transaction differ somewhat in nature and location from those anticipated in 1997, the evidence indicates that the Conrail Transaction has produced more jobs for Pennsylvanians than would have existed absent the Transaction.

III. Capital Expenditures

The Pennsylvania Letters recited the significant capital investments Norfolk Southern and CSX anticipated undertaking in Pennsylvania and listed certain specific anticipated Philadelphia-area projects (four for Norfolk Southern and three for CSX). Pennsylvania does not complain about Norfolk Southern's or CSX's statewide level of investment, but objects that not all the Norfolk Southern projects slated for Philadelphia

¹⁸ As already noted, Norfolk Southern has significantly more track miles in Pennsylvania than does CSX.

were completed as originally contemplated.¹⁹ Pennsylvania acknowledges that the projects contemplated in the CSX Letter have been implemented.

Norfolk Southern. The capital expenditure provisions of Norfolk Southern's Pennsylvania Letter set forth the four capital projects anticipated at the time for Philadelphia that had been described in Norfolk Southern's operating plan. As this Board has made clear, however, applicants are not bound to carry out every project and make every expenditure described in an operating plan. "[T]here is no requirement that a merger applicant actually make investments in the exact places or at the precise dollar amount that it predicts it will spend in its application." *Union Pac. Corp. et al.—Control and Merger—Southern Pac. Rail Corp. et al., [General Oversight]* STB Finance Docket No. 32760 (Sub-No. 21), slip op. at 13 (served December 15, 2000); *CSX Corp. et al.—Control and Operating Leases/Agreements—Conrail Inc. et al., [General Oversight]* Finance Docket No. 33388 (Sub-No. 91), slip op. at 24-25 (served February 2, 2001) (operating plans are projections only; they are not "commitments" that must be enforced without variation); *see also CSX Corp. et al.—Control and Operating Leases/Agreements—Conrail Inc. et al., [Buffalo Area Infrastructure]*, Finance Docket No. 33388 (Sub-No. 93), slip op. at 5-6 (served February 2, 2001) (after Norfolk Southern determined that two rail infrastructure projects anticipated for the Buffalo area in Norfolk Southern' operating plan were not feasible, Board refused to require Norfolk Southern to spend a comparable amount on other projects.).²⁰

¹⁹ See May 3 Comments at 3; April 2 Comments at 2; PIDC Comments dated April 13, 2004 at 1.

²⁰ In a case arising from the UP/SP merger, the Board recognized the fundamental principle that the carriers themselves, not the Board or other commenting parties, are in the best position to determine how to adapt their capital programs to meet business and

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With respect to the four Norfolk Southern projects specifically identified in Norfolk Southern's Pennsylvania Letter: First, the Norfolk Southern Triple Crown facility was constructed at Bethlehem, PA rather than Philadelphia for the operational reasons explained in Mr. Lewis' letter to Mr. Yeager. *See* Exhibit 5 at 6. This Triple Crown facility, constructed at a cost of more than \$6 million, will enable service to be developed between Atlanta and points west, on the one hand, and the Philadelphia-Morrisville region—service that did not exist prior to the Conrail Transaction. Another project, the intermodal terminal, is under construction at the PNBC, and Norfolk Southern's expenditure of an estimated \$16 million substantially exceeds the original cost estimate of \$10 million.

The other two listed Norfolk Southern projects have not been undertaken because post-Transaction operations or business circumstances have not justified them: To date, the business necessary to justify construction of the automobile facility has not developed; Norfolk Southern, however, retains property on an immediately-available option at the PNBC in Philadelphia which is dedicated to this facility should the business develop. Operational circumstances have rendered the Zoo interlocking project unnecessary. *See* Lewis Letter, Exhibit 5 at 6.

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operational needs: "On several occasions in recent months, we have expressed our concern over rail infrastructure, and have urged carriers to invest in adequate facilities. *We have not, however, micro-managed the industry by telling carriers which projects to undertake.*" *Rail Service in the Western United States*, STB Ex Parte No. 573 (served September 22, 1998), slip op. at 5 (emphasis supplied, footnote omitted). *See also Joint Petition For Service Order*, Supplemental Order No. 1 to STB Service Order No. 1518, 2 S.T.B. 764, 765 (1997) ("[G]iven our view that we cannot run railroads as well as railroads can run themselves, we have promoted an environment in which railroads can provide improved service without seeking to micromanage railroad operations ourselves.").

Norfolk Southern has responded to the post-Transaction business and operational environment by investing additional millions of dollars in Pennsylvania in ways not specifically anticipated in the application. One significant example is the \$5.6 million automation and expansion of Enola Yard near Harrisburg, which quadrupled the Yard's switching capacity and allowed Norfolk Southern to streamline various routings and improve customer service. Another major project is the anticipated construction of a new rail line in Indiana County, PA, that will create a new, shorter route for delivery of coal to Reliant Energy's Keystone Generating Plant. As the Board noted in approving Norfolk Southern's application for this project, the project will enhance the plant's access to Pittsburgh Seam coal from Pennsylvania sources along the Mon Line.²¹ The cost to Norfolk Southern of this project alone is presently estimated to exceed \$25 million. Additionally, Norfolk Southern has reached an agreement in principle (the details of which are yet to be completed), the terms of which include the expenditure of millions of dollars by Norfolk Southern and Amtrak to improve an Amtrak line within Pennsylvania, and further to address clearance problems for traffic moving into, out of and through the state.

Norfolk Southern has fully met its obligations to develop rail infrastructure in Pennsylvania. Pennsylvania is absolutely critical to Norfolk Southern's post-Transaction system, and it has prudently supported its investment in Conrail's Pennsylvania assets with investment in infrastructure improvements needed to make the expanded system work even better.

²¹ See *Norfolk So. Corp. et al.—Construction and Operation—In Indiana County, PA*, STB Finance Docket No. 33928 (STB served May 16, 2003) (slip op. at 7).

CSX. As noted above, Pennsylvania acknowledges that the three projects specifically listed in CSX's Pennsylvania Letter (the Greenwich Yard intermodal facility, the Eastwick connection track and the Belmont siding) have been completed. It should be noted that the intermodal facility was actually a \$22 million investment, \$7 million more than the \$15 million estimated in October 1997.

Since approval of the Conrail Transaction, CSX has also made a substantial investment in many other capital improvement projects in Pennsylvania, including the following significant projects:

- Improvements to the Greenwich Yard merchandise facility in Philadelphia (\$8.5 million);
- Improvements to Newell Yard to serve MGA coal customers (\$8.4 million);
- Construction of four car inspection tracks and a yard office at New Castle (\$4.3 million);
- Construction of sidings on the Mon Subdivision at Glassport and Webster to support MGA coal moves (\$2.0 million);
- Upgrade crossovers and install TCS on the Keystone Subdivision (\$3.8 million);
- Extend siding at Feltonville (\$3.2 million); and
- Installation of concrete ties and TCS signals to increase capacity on the Pittsburgh Subdivision (\$19.5 million).

The major projects identified above alone total more than \$80 million. In addition, a host of smaller capacity-enhancing or otherwise beneficial capital improvement projects undertaken following the Conrail Transaction, and maintenance expenditures to preserve CSX's investment in Pennsylvania, total tens of millions of dollars more. For example, CSX undertook projects (totaling about \$900,000) to facilitate the relocation of Norfolk Southern's main line through the city Erie, PA — a line that literally ran down the middle of a residential street — to the right-of-way allocated to CSX. While not an industrial development project, the individual citizens of Erie greatly benefited from this project, which would have been possible only as a result

of the Conrail Transaction. It should be noted that CSX's Pennsylvania Letter recites that the CSX Operating Plan projected about \$27 million in capital improvement expenditures in Pennsylvania. It turns out that CSX actually invested much more. In some cases projections made in 1997 turned out to be high, and in other cases they turned out to be low. In all cases, however, CSX has proceeded in good faith to assess circumstances as they developed to build a strong rail network for the benefit of the citizens of Pennsylvania and all other interested parties.

CSX's investments will continue. For example, planning for the future, CSX has purchased land in Chambersburg for a possible intermodal terminal.

CSX has also invested in Pennsylvania in another significant way. CSX has entered into a valuable multi-million dollar contract with Union Switch & Signal (a Pittsburgh-based supplier) for purchase and ongoing maintenance of its new systemwide dispatching system. This contract will support many Pennsylvania jobs.

IV. Passenger Rail

Pennsylvania does not contend that these commitments have not been satisfied.

V. Corporate Citizenship

Norfolk Southern. Norfolk Southern is an active participant in civic and charitable affairs in Philadelphia and throughout Pennsylvania. For example, Norfolk Southern has made substantial contributions to the development of the performing arts in Philadelphia. The commemoration of the 150th anniversary of Horseshoe Curve and other philanthropic and community activities are described in the Lewis Letter. Another recent example is Norfolk Southern's \$50,000 sponsorship of the Railroaders Memorial Museum's Railroad Heritage Scholarship Program (RHSP) for the 2003-2004 and 2004-

2005 school years, which provides school districts throughout Pennsylvania with a no-cost opportunity for students in Kindergarten through 12th Grade to learn and interpret the social and transportation history of Central Pennsylvania. The Railroaders Memorial Museum is itself a recipient of Norfolk Southern contributions. Norfolk Southern is providing \$200,000 to The Gettysburg National Battlefield Museum Foundation to help fund a new museum and visitor's center near Ziegler's Grove and Cemetery Ridge. In addition, Mr. Lewis serves on various boards and committees, including as Chairman of The Philadelphia Foundation. Norfolk Southern and its employees continue to contribute to the United Way and other national and local charities.

CSX. CSX has honored the charitable commitments previously made by Conrail and also continues to support local civic and charitable groups in Philadelphia and throughout the Commonwealth. For example, CSX is a national sponsor of the City Year organization, and has led the effort behind two Service Days in Philadelphia — one in 2003 and one planned for 2004. CSX employees also continue to contribute to national and local charities.

* * *

In sum, both Norfolk Southern and CSX have substantially satisfied the actions contemplated in their respective Pennsylvania Letters. When conditions did not develop as anticipated, the carriers nonetheless directed substantial resources for the benefit of Pennsylvania as befits their commitments and self-interest.

Similarly, encouraging the development and expansion of industry along their routes is a core business function of both Norfolk Southern and CSX. Although not all rail economic development projects envisioned by the Pennsylvania parties bore the

anticipated fruit, Norfolk Southern and CSX nevertheless vigorously have pursued, and are continuing to pursue, opportunities throughout the Commonwealth on their own initiative, attracting new and expanded business that has brought thousands of jobs to Pennsylvania.

Both carriers desire a strong, cooperative working relationship with the Commonwealth. To that end, in the weeks following the May 3 hearing Norfolk Southern initiated two meetings with Commonwealth officials. (Given its more significant presence in Pennsylvania, Norfolk Southern has tended to take the lead in communications with DCED.) The first meeting, on June 3, 2004, was attended by Michael Fesen (Norfolk Southern Regional Vice President), Daniel Beren (Norfolk Southern outside counsel) and Roger Bennett (Norfolk Southern Assistant Vice President of Industrial Development) and by David Yeager (Director of the Governor's Action Team), Brian Ross (Governor's Action Team), and John Whitlock (Deputy Chief Counsel for DCED). The second, on June 22, included the same participants except David Yeager. Following that meeting, Norfolk Southern attempted to arrange a third meeting to include participation by Edward Duffy, Vice President of PIDC. As of the end of June, however, the two sides were unable to arrange such a meeting at a time that would accommodate all schedules.

The purpose of the meetings was not to renegotiate or amend Norfolk Southern's Pennsylvania Letter, as DCED claims (because, as discussed above, the actions anticipated in that Letter have been accomplished), but to establish a pattern of bilateral meetings with Commonwealth officials and set in place a more formalized consultative

process for the future, modeled in part on efforts with the Port Authority of New York and New Jersey that have proved so successful.

In the last month, CSX's Kevin Hurley has had discussions with David Yeager of the Governor's Action Team and John Whitlock of DCED. Mr. Hurley assured them that CSX representatives are more than willing to confer with Commonwealth officials regarding cooperation on mutually beneficial economic development projects.

As previously described, Norfolk Southern and CSX each share with the Commonwealth a common interest in pursuing economic and community development in Pennsylvania on a reasonable basis. Indeed, economic development efforts are essential to the carriers' continued traffic growth in the state and region. It is this common interest and shared incentives that will ensure economic development in the Commonwealth.

Norfolk Southern and CSX have honored, in good faith, the commitments described in their respective Pennsylvania Letters, and beyond that have contributed significantly to economic development and employment in the Commonwealth. There is no need to negotiate changes to the Letters, nor is there any reason to extend the oversight proceeding or impose any new reporting requirement to monitor compliance with them.

Delaware Valley Regional Planning Commission

The Delaware Valley Regional Planning Commission ("DVRPC") is a metropolitan planning organization for the South Jersey/Philadelphia area.²² Donald Shanis, its Director of Transportation, submitted a written statement (filed April 1, 2004) and testified at the Trenton hearing. Trenton Tr. at 81-84, 86, 88, 89. Like the

²² DVRPC participated in the main proceeding. See Decision No. 89, slip op. at 304.

Pennsylvania parties, DVRPC's first concern was whether Norfolk Southern and CSX had met their commitments under the Pennsylvania Letters. Mr. Shanis also raised the following additional concerns about the South Jersey/Philadelphia SAA.

DVRPC suggested that Norfolk Southern and CSX had deemphasized the SAA by creating intermodal facilities outside of the SAA. This concern is unwarranted. Both Norfolk Southern and CSX have constructed or are constructing new first class intermodal terminals in South Philadelphia. CSX developed an intermodal terminal at Greenwich Yard at a cost of \$22 million; that facility opened in 1999 and has successfully operated since then. As explained above, Norfolk Southern is constructing its new intermodal terminal at the Philadelphia Navy Yard. Norfolk Southern continues to develop Croxton Yard, E-Rail and Livernois Yard facilities, within the SAAs, as well as service to its Rutherford Yard and to Bethlehem, both in Pennsylvania.

DVRPC also cautioned that Norfolk Southern and CSX must continue to invest in infrastructure within the SAA. We agree. As explained by Ron Batory at the Trenton hearing, Conrail invested \$75 million to maintain, enhance and upgrade its infrastructure during the 2000-2003 period. Trenton Tr. at 21-24. There is no reason to believe that Norfolk Southern and CSX will not continue to invest at an appropriate level to obtain maximum benefit from their investment in Conrail.

DVRPC also expressed concern about redevelopment of inactive Conrail land holdings in South Philadelphia. As explained above, Norfolk Southern and CSX have worked on, and are continuing to work on, redevelopment of a number of Conrail parcels in Philadelphia.

Finally, DVRPC suggested that Conrail should have its own sales and economic development staff. This suggestion should be rejected. This structure is fundamentally different from the one agreed to by Norfolk Southern and CSX and approved by the Board. The role of Conrail as a neutral switcher acting solely as an impartial agent of its two owners, CSX and Norfolk Southern, was, of course, a critical component of the Transaction proposed by Norfolk Southern and CSX, created that way in order to facilitate direct competition in the SAAs by the linehaul carriers.

As explained above, the SAAs are working well as designed; no basis has been provided for such a fundamental restructuring.

Four Cities Consortium

The Four Cities Consortium, comprised of the cities of East Chicago, Gary, Hammond and Whiting, Indiana, was an active participant in the main proceeding and submitted comments in the first annual round of General Oversight (*see* Decision No. 5, slip op. at 30-31, 45-51). Gary, Indiana Mayor Scott L. King provided oral and written testimony at the Washington hearing. D.C. Tr. at 63-71. Among other things, the Four Cities note the 1998 and 2001 agreements with CSX regarding environmental mitigation and grade crossing blockages respectively, and the resolution of grade-crossing issues and improved cooperation with Norfolk Southern. The Four Cities state that “[s]ince the Conrail Transaction was implemented, CSXT and NS have cooperated with the Four Cities in attempting to minimize train blockages of key roads in the region” (Four Cities Comments at 4), and that the “environmental mitigating conditions imposed by the Board in favor of the Four Cities have helped alleviate grade crossing problems by facilitating ongoing communication between the Four Cities and the railroads as well as informal

arrangements to avoid blocking the most critical grade crossings, particularly in Hammond and East Chicago” (*id.* at 6). In his oral testimony, Mayor King cited the “mutual compromise” that has resulted from ongoing dialogue between the Four Cities and the carriers based on each party’s “having learned from experience” over the course of the past several years. D.C. Tr. at 68. The Four Cities agree with CSX and Norfolk Southern that the formal oversight period need not be extended, but simply noted that they reserved the right to come back to the Board in the future, even in the absence of a formal oversight proceeding, if future events so warrant. *See* D.C. Tr. at 64; Four Cities Comments at 7.

The Four Cities also discuss their vision for an alternate, grade-separated rail corridor in the Four Cities area; they do not seek any Board-imposed relief regarding such a proposal, but ask that the Board become “actively engaged” in efforts to develop such a project (Four Cities Comments at 7), and provide “such assistance as it would deem appropriate” in “assisting [the Four Cities’] efforts” to achieve this goal.

Shortly before the May 3 hearing in Washington, the Four Cities wrote to each carrier regarding the future relationship between each carrier and the Four Cities following the conclusion of the formal oversight process. Each carrier responded in writing. Norfolk Southern noted that it and the Four Cities have “worked diligently” at forging “a relationship that will outlast formal oversight,” and made clear its willingness to continue the present “voluntary, informal and cooperative process, even after the end of oversight.” Exhibit 15 at 1. Norfolk Southern concluded that “[w]e believe the cooperative spirit that now characterizes our relationship can continue to provide important benefits for each of us in the coming years.” *Id.* CSX, in response to the Four

Cities, noted its investments in the Chicago terminal area to facilitate “the smooth and expeditious movement of rail traffic” and various other investments and operational changes it has made under its 1998 and 2001 settlement agreements to improve safety and reduce grade crossing blockages in the Four Cities area. Exhibit 16 at 1. CSX also noted that representatives of it and the Four Cities have met regularly regarding rail operations, real property and economic development issues, and the proposed reconstruction of the elevated IHB/Conrail Dunes Park Branch. CSX concluded that “[e]ven with the end of formal oversight, we will continue to meet with the Four Cities to discuss matters affecting our rail operations and facilities in your area. Continuing cooperation will serve the interests of both CSX and the Four Cities.” *Id.*

Norfolk Southern and CSX reiterate the themes they previously articulated in writing to the Four Cities. Each looks forward to continuing a productive, voluntary dialogue with the Four Cities on matters of mutual concern as they arise, such as safety, economic development, and such infrastructure matters as make sense in light of the carriers’ operational, business and financial circumstances and their customers’ operational and business needs. CSX and Norfolk Southern agree that the Four Cities’ approach to oversight is the correct one. There is no warrant for extending the formal oversight period, as the Board has the statutory authority to address any Transaction-related issues as may be brought before it in the future independent of this formal proceeding.

B. RAILROADS AND RELATED INTERESTS

New Jersey Short Line Railroad Association

The New Jersey Short Line Railroad Association (NJSLRA) offered oral and written testimony by its President, Bob Bailey. Trenton Tr. at 120-22. Mr. Bailey praised the “continuing dedication” of Conrail employees and described Conrail as an “extremely well operated railroad in North Jersey and South Jersey.” *Id.* at 120. Further, Mr. Bailey noted that “shortlines and shippers have received the added value of the good service” provided by Conrail. *Id.* at 121-22.

NJSLRA raised some generalized concerns regarding CSX’s and Norfolk Southern’s dedication to marketing of the shared assets areas, working with shortlines, and efforts to take trucks off the highways. As discussed further elsewhere in this Reply, however, such concerns are without basis; the facts simply do not support them. Both carriers have been successful in taking trucks off the highway as a result of the extended single-line service the Transaction created. Far from “de-marketing” the shared assets areas, CSX and Norfolk Southern compete vigorously for business there, working with New Jersey shortline railroads in the process. As indicated in Conrail’s presentation in Trenton, Conrail, CSX and Norfolk Southern meet regularly to address shortline initiatives, and many have been implemented, including sales, new shortline startups, and enhancement of existing shortline arrangements. Conrail Trenton presentation at 17; *see* Trenton Tr. at 25. CSX, as Mr. Passa noted in Trenton, regularly meets and confers with its shortline partners, and the rate of growth of CSX traffic exchanged with shortlines exceeds the rate of growth of CSX local traffic. Trenton Tr. at 51. For its part, Norfolk Southern has worked specifically with the NJSLRA to develop a Commercial

Development Business Guide to promote business opportunities with New Jersey shortlines and has developed a New Jersey Business Development Initiative with a number of New Jersey shortlines, the results of which Norfolk Southern regularly reports to Mr. Bailey at NJSLRA. In the first quarter of 2004, the latest for which data is available, there was a 25% increase in carloads exchanged between Norfolk Southern and the participating New Jersey shortlines compared with the first quarter of 2003, and eight of the thirteen participating shortlines showed increases in the number of cars exchanged. As Chairman Goode testified on May 3, Norfolk Southern has enjoyed a steady increase in carloads interchanged with its shortline partners in the shared assets areas from 9,521 cars in 2000 to 12,228 cars in 2003. *See* Statement of David R. Goode at 9; D.C. Tr. at 16.

In sum, CSX and Norfolk Southern have worked diligently, and successfully, to develop and realize opportunities in conjunction with their shortline partners in the shared assets areas. Nothing in NJSLRA's comments provides any basis for extending the formal oversight period or imposing any new conditions or other relief.

Morristown & Erie Railway

Gordon Fuller, Chief Operating Officer of the Morristown & Erie Railway ("M&E"), testified at the Washington hearing. D.C. Tr. at 163-66, 181-82.

Mr. Fuller said that he was satisfied with his relationship with Conrail. He complained that, post-Transaction, M&E has interchanged only with Norfolk Southern. Mr. Fuller said that he has lost some traffic located on CSX lines because the CSX-Norfolk Southern-M&E combined rate is not competitive with trucks, but later acknowledged that his business has increased. *Id.* at 165, 181. Nevertheless, he said that

he is disadvantaged compared to shortlines that connect with two Class I carriers. Mr. Fuller recommended that *in future proceedings* the Board consider requiring that short lines be given rights to connect to multiple carriers. *Id.* at 165. We do not understand Mr. Fuller to be claiming that any promise was made in *this proceeding* that short lines would be given rights to connect to two carriers. As explained above, the assertions by NJTPA and Union County that there was such a promise are simply erroneous.

In any event, however, M&E does have the right to interchange with CSX through Conrail at its interchange at Center Street.

SMS Rail Service

SMS Rail Service, Inc., a shortline railroad operating in southern New Jersey and connecting to Conrail in the South Jersey/Philadelphia Shared Assets Area, offered oral testimony by its outside counsel at the Board's hearing in Trenton. SMS admits that the Transaction's introduction of competition by two Class I carriers in New Jersey is "a plus," but complains that, in its view, CSX and Norfolk Southern "do not work as cooperatively with the shortlines as they should nor are they as aggressively competitive as they should be." Trenton Tr. at 115. SMS asserts that CSX and Norfolk Southern "have failed in meeting their announced expectations at least insofar as the southern New Jersey shared asset area is concerned." SMS summarizes various general aspirational goals set forth in the Conrail application regarding increased competition, improved service, attracting new customers, removing trucks from the road, cites one or two alleged anecdotal counterexamples and from them asks the Board to draw the sweeping conclusion that the benefits of the Conrail Transaction have not been realized and more oversight is in order.

In response, CSX and Norfolk Southern note that, first, the aspirational goals articulated in the Conrail application that SMS summarizes are just that: statements about the broad expected impact of the Transaction generally. They are not, as SMS appears to imply, specific promises of individualized benefits guaranteed to accrue to the satisfaction of every individual shipper or (in SMS' case) shortline that does business in the eastern United States.

Second, the alleged anecdotal examples SMS cites, even if they were accurate, would not suggest that the Transaction has created any competitive harm requiring a remedy—indeed, quite the opposite: SMS itself admits, as it must, the indisputable fact that rail competition in New Jersey has increased because of the Transaction. That SMS may lose some business as shippers change their service preferences after considering options not available before is not evidence of inadequate competition, but a reflection of the *improved* competitive landscape created by the Transaction.

Moreover, SMS' facts are not entirely accurate. SMS alleged that Del Monte Foods previously shipped 3,600 carloads from a facility in Swedesboro, NJ to a warehouse served by SMS, but Norfolk Southern allegedly persuaded Del Monte to switch those volumes to a warehouse that only Norfolk Southern serves. But the volumes cited by SMS far exceed the entire volume of Del Monte traffic moved by Norfolk Southern over its entire system for both 2003 and year to date 2004. In the second anecdotal example, SMS alleges that Norfolk Southern's alleged failure to cut its rates has caused a particular traffic move to be diverted to trucks. But rail carriers routinely win and lose business amongst each other and competing modes of transportation every day. Although Norfolk Southern has not confirmed the particular move mentioned, the

issue raised, even taken at face value, does not suggest any Transaction-related issue, but merely reflects a routine business decision made by a shipper to select among the transportation options available to it.

Finally, the evidence, as presented by Norfolk Southern, CSX and Conrail in this proceeding and recounted in Section I above, clearly shows that, contrary to SMS' anecdotal assertions to the contrary, the broad goals of the Transaction as to increased competition, efficiency and service have indeed been fulfilled. Indeed, the facts show that both carriers have worked extensively with shortlines in New Jersey to the mutual benefit of the Class I's and the shortlines. See the response to the New Jersey Short Line Railroad Association, above at pp 68-69.

SMS' comments, in sum, provide no grounds for any Board action or any extension of the oversight period.

C. SHIPPERS AND RELATED INTERESTS

American Chemistry Council

The American Chemistry Council ("ACC") provided testimony at the Board's May 3 hearing in Washington by Assistant General Counsel Thomas A. Schick. ACC first noted that safety was not a concern to ACC in this proceeding because safety is "always number one for our members, and we know it's number one for our railroad partners . . . [T]hat's not a problem." D.C. Tr. at 128. Similarly, while ACC noted that rail service to its members is not "perfect" and there is "always room for improvement," it does not contend that there is any service "problem." *Id.* at 129. The main focus of ACC's testimony was to reiterate the Board's conclusion in Decision No. 10 that "it is likely that any significant change [in the way shared assets area operations are conducted]

would require [STB] approval, either because the change would conflict with a condition [the STB] imposed on the Conrail transaction or because, even without any such conflict, the change would require [STB] approval under the governing statute.”²³

ACC raises no specific issues requiring the Board’s attention and does not seek the extension of the formal oversight proceeding. CSX and Norfolk Southern appreciate the views of ACC and will continue to strive to provide their chemical customers with safe and reliable rail service in the Shared Assets Areas and elsewhere.

Cemex (CSX only response)

Kenneth Pramik, Director of Transportation of Cemex, Inc., submitted a written statement dated April 28, 2004 and testified at the Washington hearing (D.C. Tr. at 136-40, 151-56). Cemex had not previously participated in the General Oversight proceeding. Cemex is the largest cement manufacturer and shipper in North America, headquartered in Houston, TX. CSX provides service to Cemex’s Florida destinations (which represents about 10% of the transportation services purchased by Cemex). Mr. Pramik complained about CSX’s service and its higher rates since the Conrail Transaction. He asserted that CSX overpaid for Conrail and that the overpayment was being extracted from him, a captive shipper. He asked the Board to take action against this assertedly abusive process.²⁴

Cemex was a valued customer of CSX before the Conrail Transaction and

²³ slip op. at 6 (served November 5, 2002).

²⁴ Mr. Pramik also requested that the Board implement procedures for handling smaller rate disputes. The Board is considering such procedures in a separate proceeding. See *Rail Rate Challenges In Small Cases*, STB Ex Parte No. 646.

remains a valued customer of CSX. The rates charged Cemex for freight services are based on market conditions (the rate of inflation being only one of many relevant factors), which change over time. The Board carefully examined concerns that the carriers would charge higher rates to captive shippers in order to recover an alleged “acquisition premium,” and found no basis for those concerns. *See* Decision No. 89, 3 S.T.B. at 261-62. Nor did the Board find any basis for a different conclusion during the first four rounds of General Oversight. *See* Decision No. 5 (Sub-No. 91), slip op. at 18-19. Cemex provides no basis for reexamining that conclusion now. If there were any widespread issue as to pricing, surely the NIT League and the ACC — the parties most concerned about the “acquisition premium” in the main proceeding — would have similarly raised the issue, and they have not.

DaimlerChrysler Corporation

DaimlerChrysler submitted a letter to the Board on March 29, 2004.

DaimlerChrysler had not previously participated in the General Oversight proceeding. DaimlerChrysler complains about service difficulties in the Detroit and North Jersey Shared Assets Areas during the preceding nine months (specifically auto rack car supply and delays in shipment to the NJSAA), and requests continuation of oversight until service improves.

These concerns do not arise out of the Conrail Transaction, but are the kind of day-to-day service issues that railroads and shippers must, and do, routinely work through as they arise. The demand for auto rack cars remains very high, especially for the bi-level cars used to transport SUVs and minivans (both significant parts of Chrysler’s product mix). At the Ridgefield Heights auto ramp (where Chrysler vehicles are

unloaded), steps have been underway to relieve congestion, including adding more workers and reconfiguring the ramp layout to increase capacity. Chrysler and other customers have also assisted by agreeing to route more vehicles into the Doremus Avenue auto ramp (thereby also saving some drayage costs in some circumstances).

The overwhelming weight of evidence demonstrates that service has been very good as a general matter within the Shared Assets Areas post-Transaction and particularly strong, with a high on-time performance, in the Detroit SAA. There is no need for intervention by the Board or extension of any formal oversight period to address this matter.

Growmark, Inc.

Growmark, Inc. is a federated, regional agricultural cooperative that provides products and services to member cooperatives and retail dealers in the Midwest and Eastern United States. In December 2002, Growmark acquired Agway Agronomy's storage facilities on property leased from Conrail at Pier 122 along the Delaware River in Philadelphia. Growmark submitted a pre-hearing statement on March 26, 2004, and Kirk Biggs, Growmark's Crops Division Manager, testified at the Trenton hearing. Trenton Tr. at 94-98, 114-116, 118-19. Mr. Biggs then followed up with a letter dated May 26, 2004 to Melvin F. Clemens, Jr., Director of the Board's Office of Compliance and Enforcement. Mr. Biggs complains about Conrail's suspension of operations at Pier 122.

John Enright, Conrail's Industrial Development Coordinator, submitted a letter to Mr. Clemens, dated July 7, 2004, responding in detail to Mr. Biggs' complaint. That letter explains that Conrail suspended operations at Pier 122 for safety reasons, that Growmark has no contractual right to the continued operation of Pier 122, and that

expensive repairs are not justified given that Conrail is presently negotiating with the Philadelphia River Port Authority for the sale of the property.

This matter, an operational issue not arising out of the Conrail Transaction, is being addressed through the Board's Office of Compliance and Enforcement – a mechanism that is independent of this proceeding and that will continue to be available even in the absence of formal oversight. Growmark's situation presents no broad issue that requires extension of oversight or any other action with respect to the SAAs in general.

Madison International Sales

Jim Bruno of Madison International Sales testified at the Board's hearing in Trenton. Trenton Tr. at 100-02. Madison, a shipper utilizing warehousing facilities in the South Jersey/Philadelphia Shared Assets Area, noted that it is "very happy with the shared assets in Philadelphia, it provides for great opportunity for competition." *Id.* at 100.

Madison did suggest that the Board consider two changes that Madison believes would provide it and other shippers with additional benefits: First, Madison suggested "a dedicated daily departure on [Norfolk Southern] from downtown Philadelphia to Allentown"; second, Madison suggested instituting a reciprocal switching arrangement, apparently among Norfolk Southern, CSX, and Canadian Pacific. *Id.* at 101.

Norfolk Southern and CSX appreciate Madison's comments regarding its experience in the South Jersey/Philadelphia SAA and its suggestions as to how operations might be improved further. It is important to note, however, that railroad operations must be designed to reflect the needs of shippers throughout the system, and those operations

are constantly adjusted and modified to adapt to changing business and economic circumstances. Specific individual operational changes can, and often do, have a ripple effect throughout a railroad's system. For that reason, a change in service to a certain specific shipper or group of shippers cannot be considered solely on the basis of its impact on those shippers, but must also take into account the downstream effects the change may have elsewhere in the railroad's network. That is why the Board has concluded that decisions regarding day-to-day operational matters are best left to the railroads themselves, and not the Board. *See Joint Petition For Service Order*, Supplemental Order No. 1 to STB Service Order No. 1518, 2 S.T.B. 764, 765 (1997).

Norfolk Southern and CSX appreciate their respective relationships with Madison and will be pleased to continue to work closely with Madison on operational and service matters and consider proposals that are consistent with the operational requirements of their rail networks and the business needs of Madison and other customers systemwide.

National Industrial Transportation League

The National Industrial Transportation League, the nation's largest shipper trade association, has been an active participant in the Conrail proceeding. Its filings with the Board and discussions with Norfolk Southern and CSX resulted in a December 12, 1997 agreement, which was approved by the Board (as modified in certain respects) as "provid[ing] significant benefits both to the parties and to the public." Decision No. 89, 3 S.T.B. at 256. At the Trenton hearing, NIT League, represented by Mr. Acker of DuPont, presented its overall view as follows:

The League strongly believes that intermodal and intramodal competition in the shared areas must remain vigorous and effective. The League agrees that the shared asset areas are a true success story for rail competition. Rather than entertain modifications that might

compromise, adversely effect or threaten, or negate competition, the League believes the shared asset areas should be a model for future rail policy.

Trenton Tr. at 92-94.

The NIT League suggested only that any initiatives by Norfolk Southern and CSX to improve rail service within the SAAs should be (1) transparent to affected shippers, (2) made only after notice to affected shippers, and (3) made only if they benefit shippers. CSX and Norfolk Southern appreciate the suggestions of the NIT League and assure the Board that they recognize the importance of effective communication with their customers and seek to provide their customers the best service possible.

No extension of the oversight period or any other condition is required, however. The Board previously has noted that “it is likely that any significant change [in the way shared assets area operations are conducted] would require [STB] approval, either because the change would conflict with a condition [the STB] imposed on the Conrail transaction or because, even without any such conflict, the change would require our approval under the governing statute.” Decision No. 10, slip op. at 6 (served November 5, 2002). If the NIT League were to object to any future change in operation of the SAAs, it would retain the ability, even in the absence of a formal oversight proceeding, to petition the Board at that time should discussions with Norfolk Southern and CSX fail to resolve the matter.

Resources Warehousing & Consolidation Services

Frank Folise testified on behalf of Resources Warehousing & Consolidation Services (“RWCS”) at the Trenton hearing. Trenton Tr. at 106-10, 114, 116-17. RWCS operates a private intermodal terminal in North Bergen, NJ. RWCS has been an active participant in the Conrail proceeding. The Board first addressed RWCS’s request for

relief in Decision No. 89, 3 S.T.B. at 326. RWCS next filed comments in the 2000 round of the General Oversight proceeding, which the Board addressed in Decision No. 5, slip op. at 18 (served Feb. 2, 2001). RWCS then filed comments in the 2001 round of the General Oversight proceeding, which finally clarified what it was seeking. CSX's Reply Comments, CSX-5 (filed August 6, 2001) (Exhibit 17 hereto), recount the relevant proceedings up to that date. In Decision No. 6, slip op. at 5-6 (served Dec. 13, 2001), the Board rejected RWCS's request for relief, stating:

RWCS now complains that CSX has refused RWCS' request to quote a general rate that could be used by any shipper using RWCS' services regardless of the commodity and the origin and destination. CSX has no such obligation either under our merger conditions or under the statute. First, RWCS is not a shipper, so CSX has no obligation to quote any rate to it. Moreover, when CSX does quote a rate to shippers who use RWCS' services, it is statutorily entitled to do so in the manner that it chooses as long as it does not violate any provision of the Act. 49 U.S.C. 10701(c). Most carriers tailor their rates to the particular shippers, commodities and routes they are serving, just as CSX has done here. Accordingly, we see no basis upon which to grant RWCS' request for relief.

At the Trenton hearing, Mr. Folise expressed the view that service in the NJSA would be improved if CSX and Norfolk Southern promoted the use of RWCS's facility, and suggested that the competitive intermodal service promised in the Transaction should be extended beyond CSX and Norfolk Southern to include RWCS. Trenton Tr. at 109-110, 117. Mr. Folise acknowledged, however, that CSX and Norfolk Southern have improved service within the SAAs in some ways. *Id.* at 116-17.

RWCS has offered no basis for any relief. As they promised, CSX and Norfolk Southern have brought *two-carrier* competition to northern New Jersey, an area previously served only by Conrail. CSX and Norfolk Southern did not offer to utilize their investment in Conrail for the benefit of other intermodal terminals, nor does any condition imposed by the Board require them to do so. The evidence before the Board

indicates that the Shared Assets Areas are working as anticipated, and that service has generally been good within these areas (as Mr. Folise acknowledges). Specific complaints about service can and will be addressed in the ordinary course of dealings between carriers and shippers. RWCS has not shown any need for action by the Board or any extension of formal oversight.

SEDA-COG Joint Rail Authority; Clark's Feed Mill; PA Distribution (Norfolk Southern response only)

The SEDA-COG Joint Rail Authority ("SEDA-COG") is a rail authority in central Pennsylvania that owns rail lines operated by various railroads controlled by Richard Robey. (Mr. Robey's railroads will be referred to collectively as the "North Shore affiliates.") SEDA-COG's Executive Director, Jeffrey Stover, submitted written and oral testimony for the Board's May 3 hearing in Washington (D.C. Tr. at 166-172), as well as a June 30, 2004 verified statement. Also testifying at the May 3 hearing were Robert Clark, co-owner of Clark's Feed Mills (D.C. Tr. at 140-44), and Dennis Schaffer of PA Distribution (D.C. Tr. at 145-48), two shippers on the North Shore affiliates' lines.

Before the Conrail Transaction, the North Shore affiliates connected to Conrail's Buffalo-Harrisburg line, a line allocated to Norfolk Southern's operation as a result of the Transaction. In 1997, in the course of the Conrail control proceeding, Norfolk Southern reached an understanding with Mr. Robey's North Shore affiliates regarding certain steps to be taken by Norfolk Southern if the Conrail Transaction was approved. The basic understanding was set forth in a June 10, 1997 letter from Bill Schafer of Norfolk Southern to Mr. Robey. *See* Exhibit 18. One of the elements of that agreement was that Norfolk Southern would grant the North Shore affiliates a new option to interchange certain traffic with the Canadian Pacific Railway at Sunbury, PA—a connection that the

North Shore affiliates did not enjoy prior to the Transaction. The 1997 letter, however, did not contemplate that the rights to connect with CP would be unlimited; rather, the letter expressly states that access to CP would be limited to that which “does not harm NS.” In 2001, Norfolk Southern and the North Shore Affiliates executed a trackage rights agreement that memorializes the 1997 understanding. The North Shore affiliates submitted a confidential copy of the trackage rights agreement to the Board on August 21, 2001, noting that the agreement “is the formal implementation of the proposal contained in Norfolk Southern’s letter of June 10, 1997 on the basis of which North Shore Railroad Company and its affiliates supported Board approval” of the Conrail Transaction.

The crux of the complaint here is that SEDA-COG, the owner of rail lines operated by the North Shore affiliates, supported by Clark’s Feed Mill and PA Distribution, asserts that the 2001 trackage rights agreement does not properly implement the 1997 understanding between Norfolk Southern and the North Shore affiliates because it assertedly includes restrictions to the North Shore affiliates’ access to CP inconsistent with the 1997 letter.²⁵ SEDA-COG and the shippers ask the Board to substantially rewrite the trackage rights agreement between Norfolk Southern and the North Shore affiliates, by:

- Making the agreement permanent (the trackage rights agreement as written is for a term of ten years, with a possible additional 5-year renewal)
- Making SEDA-COG (and two other entities that own other lines operated by the North Shore affiliates) actual parties to the agreement, which they are not now, so that they would have the right to “transfer” the rights to operators other than the North Shore affiliates in the future;

²⁵ SEDA-COG, along with certain shippers, raised similar claims in 2002 and 2003, to which Norfolk Southern similarly responded. *See* NS-9 at 6-8 and NS-11 at 7-10.

- “grandfathering” traffic that allegedly had moved via CP since Split Date notwithstanding the provisions of the trackage rights agreement; and
- Expanding the terms of access to CP allegedly to correspond with the terms of the 1997 letter.

See Stover verified statement (June 30, 2004) at 2-3.

As explained below, however, the extraordinary relief SEDA-COG seeks is not justified in fact or law and should be denied.

First, as Norfolk Southern has pointed out in responding to SEDA-COG’s claims in earlier rounds of oversight, *neither SEDA-COG nor the shippers are parties to either the 1997 letter or the 2001 trackage rights agreement implementing it.* The 1997 discussions were with Mr. Robey, for the North Shore affiliates. The 1997 letter is between Norfolk Southern and Mr. Robey. And the 2001 trackage rights agreement is between Norfolk Southern and the North Shore affiliates—not SEDA-COG or any shipper. Neither SEDA-COG, Clark’s Feed Mill nor PA Distribution participated in the Conrail control proceeding or bargained with Norfolk Southern for any rights in connection with the Conrail Transaction. Indeed, the Board has already recognized that the real parties in interest with respect to this matter are the North Shore affiliates, not SEDA-COG or any shipper. *See* Decision No. 5 (served February 2, 2001), slip op. at 22. There is simply no basis for a non-party such as SEDA-COG to demand changes to an agreement to which it is not a party and that was negotiated in connection with a proceeding in which it did not participate. SEDA-COG is not entitled to have legal and contractual rights for which it did not bargain bestowed upon it by Board mandate.

Second, the real parties in interest, Mr. Robey and his North Shore affiliates, have expressly confirmed to Norfolk Southern in writing that the 2001 trackage rights agreement and the access rights to CP embodied in it *are fully consistent with the rights*

contemplated in the 1997 letter. In a July 10, 2003 letter to John Edwards of Norfolk Southern, Mr. Robey's counsel, Richard Wilson, expressly states that "Mr. Robey wants NS to be aware that we have consistently and adamantly advised both the shippers and SEDA-COG Joint Rail Authority that the LVRC-NS Trackage Agreement and CP access provided thereby is consistent with all prior filings made with the STB in the Conrail proceeding and *the terms of the Trackage Agreement are consistent with Bill Ingram's [sic] letter of June 10, 1997.*" Exhibit 19 at 2 (emphasis supplied).

As the North Shore affiliates thus themselves have acknowledged, and as the plain language of the 1997 letter (CP access "that does not harm Norfolk Southern") clearly shows, there is simply no factual basis for the present assertion by SEDA-COG that the CP access contemplated by Norfolk Southern and the North Shore affiliates in 1997 was intended to be the unlimited, completely unrestricted access that SEDA-COG *et al.* now demand that the Board impose for their benefit.

Finally, it must be remembered that the access to Canadian Pacific that the North Shore affiliates and their shippers enjoy under the terms of the 2001 trackage rights agreement, even with the limitations in that agreement, is access *that did not exist before the Conrail Transaction.* Before the Transaction, those shippers had direct access only to Conrail. *See* D.C. Tr. at 156 (testimony of PA Distribution)("[p]rior to the NS takeover of Conrail, there was no competitive access at all on any of these shortlines. It was strictly Conrail access, period, even though physically that connection was possible. There was a paper barrier imposed by Conrail."). As a result of the Transaction, shippers on the North Shore affiliates now have direct access to Norfolk Southern and, pursuant to Norfolk Southern's 1997 letter to the North Shore affiliates and the 2001 trackage rights

agreement implementing it, to CP as well. Even though the access to CP is not, and was never intended to be, completely unlimited and unrestricted, that new access, even with its limitations, is a *new* competitive option. Under the longstanding principles applied in this and other major merger cases, the purpose of the Board's conditioning power is to remedy, where necessary, a harm resulting from the transaction, such as a loss of competition; it is not to confer additional benefits on parties that already enjoy *increased* competitive options because of the transaction. *See* Decision No. 89, 3 S.T.B. at 277.

Indeed, in this very proceeding the Board, applying this principle, rejected a request for additional relief by a shortline whose routing options had increased as a result of the Transaction. *See* Decision No. 5 (served February 2, 2001), slip op. at 23-24. The shortline had claimed that a new routing created by the Transaction was inefficient and asked the Board to compel elimination of a contractual interchange restriction that would permit a more efficient routing. The Board declined. It noted that the new routing, though more circuitous than the shortline would have liked, nevertheless was a new competitive option that the Transaction had created; the Board agreed that "[w]hatever [this routing's] shortcomings may be, there is no public harm or need to impose additional conditions when options have been increased, not decreased, as a result of the Transaction." *Id.* at 24. The same principle applies here.

For these reasons, the relief requested by SEDA-COG and the shippers is without merit and should be denied.

D. OTHER PARTIES

Bucks County, PA Interests

Arthur Shenefelt, the former Press Secretary and Transportation Advisor to Senator Vance Hartke (1970-73), submitted a written statement (dated March 4, 2004), and testified in Trenton (Trenton Tr. at 134-141, 146) to express his own views and those of the affiliated Bucks County, PA HUB Conference. On the national level, Mr. Shenefelt urged the Board to fulfill President Lincoln's dream of a transcontinental railroad. On the local level, he expressed his frustration that large volumes of aggregate and sand are currently being hauled through Bucks County by truck rather than rail. While Mr. Shenefelt has a long-term, historical perspective on the rail industry, the broad issues he raises are plainly beyond the scope of this General Oversight proceeding. With respect to the specific issue of possible rail service for aggregate/sand shipments, Mr. Shenefelt was short on specific facts. No basis for any action by the Board was presented.

Lackawanna Coalition (Norfolk Southern response only)

The Lackawanna Coalition describes itself as a not-for-profit corporation of the State of New Jersey that represents various counties, municipalities and individuals and advocates on behalf of riders of passenger transit along New Jersey Transit's Morris & Essex and Montclair-Boonton lines. It presented a written statement (filed March 25, 2004) as well as oral testimony by John Healy at the Board's hearing in Trenton (Trenton Tr. at 129-133). The Coalition appears essentially to re-raise issues that it first raised in this proceeding a year ago, regarding the Boonton Line (a PRR line allocated to Norfolk Southern's operation) and an alleged "plan" by the New York & Greenwood Lake

Railway for passenger service over that line; a desire to restore the so-called Lackawanna Cutoff line and establish passenger service over it (and to mandate access to New Jersey by the Canadian Pacific over that line); and a desire for the Board to simply hand over to “another operator” the “lines which NS does not wish to operate in the interest of the people of our region” so that they will be used in ways more to the Coalition’s liking. March 25 Comments at 7.

Norfolk Southern responded to the Coalition’s claims and extraordinary requests for forced access by CP and divestiture of certain Norfolk Southern-operated lines last year. *See* NS-11 at 10-16. That response, attached as Exhibit 20, need not be repeated in detail here, but we refer the Board to it. In last year’s round of oversight the Board firmly rejected the Coalition’s arguments and requests for relief. In Decision No. 11 (served January 21, 2004), the Board held, at p. 11, that “the Coalition has failed to show that the divestiture of NS’ Boonton Line or restoring the Lackawanna Cutoff Line have anything to do with any purported harm arising from the Conrail transaction. There is no Board precedent for granting any of the Coalition’s requested measures.”

Those conclusions are equally true this year. The Coalition presents no new evidence or argument that would warrant the extraordinary — and as the Board previously described it, unprecedented — relief the Coalition apparently seeks nor any extension of the formal oversight period.

Rail Cents Enterprises

Rail Cents Enterprises, Inc. (“RCE”), a railroad consulting business headquartered in Delaware County, PA, filed a written statement dated March 29, 2004. RCE questions the fundamental structure of the Shared Assets Areas and suggests three alternative

structures: (1) Conrail should independently market and charge for its services, (2) Conrail's Shared Assets Area assets should be divided between Norfolk Southern and CSX (with reciprocal switching arrangements if necessary), or (3) Conrail should be sold to an independent owner/operator. The Board should reject this suggestion. As explained above, the structure of the Shared Assets Areas was an essential component of the Conrail Transaction. The fact that a consultant may now have ideas as to how Norfolk Southern and CSX might have structured the SAAs differently is no basis for a massive and radical Board-ordered revision at the very end of the General Oversight period.

William R. Wright

William R. Wright, a retired rail marketer, secretary to the New Jersey Association of Railroad Passengers, and a member of "state, regional and county transportation advisory boards," submitted a one-page written statement and provided oral testimony at the Board's April 2 hearing in Trenton (Trenton Tr. at 141-43, 147).

In his testimony, Mr. Wright asserted that the shared assets area concept was the so-called "fatal flaw" of the Conrail "fire sale," and that the "very existence" of the shared assets areas is "anti-competitive." *Id.* at 142; Comments at 1. He also asserted that the Class I's have encouraged the "offload[ing of] freight cars in Pennsylvania and truck[ing of] goods into New Jersey, Trenton Tr. at 142; Comments at 1, and alleges a "general downgrading" of the shared assets areas. Trenton Tr. at 142; Comments at 1.

Mr. Wright offers no evidence to support these very broad conclusory assertions and indeed, his allegations are squarely refuted by the record evidence provided by CSX, Norfolk Southern and Conrail in this proceeding. That evidence need not be rehashed in

detail here. It demonstrates, however, that far from being “anti-competitive,” the shared assets areas now enjoy, by virtue of the Conrail Transaction, significant investments in infrastructure and vigorous competition from two Class I carriers in territory formerly served solely by Conrail. The shared assets areas are, in sum, a success story, and Mr. Wright’s allegations to the contrary are simply without merit.

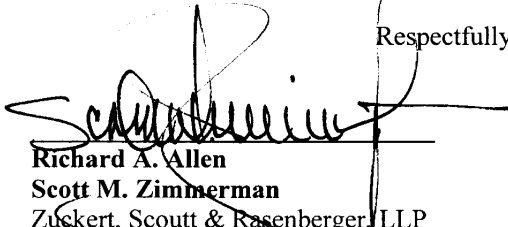
CONCLUSION

The Conrail Transaction created extensive new, vigorous rail-to-rail competition and has greatly expanded the single-line reach of Norfolk Southern and CSX to the benefit of the shipping public. The Transaction has been fully and safely implemented. The Board’s conditions have been complied with and have worked as intended. As strongly attested at the Board’s oversight hearings last Spring, the Transaction has significantly improved the rail landscape in the eastern United States, and the shipping public is clearly and significantly better off for this Transaction having occurred. No party has demonstrated any structural or competitive harms arising from the Transaction. No party has met the standard for justifying the imposition of any new conditions or other Board intervention. And no party has shown that extension of the formal oversight process beyond the ordinary 5-year term is warranted; indeed, a number of parties have testified in agreement with CSX and Norfolk Southern that no extension of oversight is warranted. Insofar as individual parties may have expressed complaints or made suggestions about how things might be done better or differently, they are, by and large, the types of issues that routinely arise between railroads and other stakeholders from time to time that can be, and are, discussed and advanced through normal business channels.

If any party comes to believe in the future that a true Transaction-related harm exists that must be brought to the Board's attention, it can do so under the Board's routine processes and the Board can address it as appropriate pursuant to its independently-existing statutory authority.

For the foregoing reasons, CSX and Norfolk Southern respectfully request that the Board: (1) deny all requests for relief by any commenting party, (2) deny all requests to extend this oversight proceeding beyond its intended 5-year term, and (3) discontinue all remaining reporting requirements arising out of the main Conrail control proceeding, Finance Docket No. 33388, or any of its sub-dockets.

Respectfully submitted,



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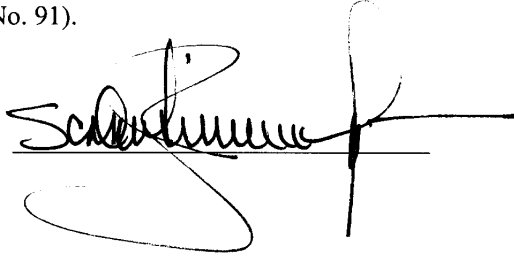
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August 2, 2004

CERTIFICATE OF SERVICE

I certify that on August 2, 2004 a true copy of CSX/NS-6 was served by first class U.S. Mail, postage prepaid, or by more expeditious means, upon all known parties of record in Finance Docket No. 33388 (Sub-No. 91).

A handwritten signature in black ink, appearing to read "Scott R. Smith", is written over a horizontal line. The signature is stylized with a large initial 'S' and a long horizontal stroke extending to the right.

1

LAW OFFICE

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GOVERNMENT RELATIONS

April 30, 2004

Hon. Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 33388 (Sub-No. 91); *CSX Corp., et al. - Control and Operating Leases/Agreements - Conrail, Inc., et al. [General Oversight]*

Dear Sir:

We represent the State of Maryland in this proceeding. The State has elected not to appear at the hearing the Board will hold on May 3, 2004 in this matter, and appreciates the opportunity to submit this written statement of its position with respect to the Oversight Proceeding.

In the main proceeding that led to the approval of the transactions, the implementation of which the Board is now "overseeing" in this proceeding, the State of Maryland executed and submitted for the record letter agreements with both CSX Corporation and Norfolk Southern Corporation, respectively (each dated September 24, 1997). These letters included commitments from both companies as to the actions they would take to preserve and improve rail service in the State following the implementation of these transactions. In its letter agreement, NS stated its intention to provide the improvements listed there. In its letter, CSX made specific "commitments" to undertake improvements and to preserve the integrity of the MARC train commuter rail service operated on CSX's lines in the State.

In a filing in this Oversight Proceeding dated July 14, 2000, the State provided a comprehensive listing of the status of the two rail carriers' commitments. See, Attachment 3 to Letter dated July 14, 2000, from Hon. John Porcari (then, Maryland's Secretary of Transportation) to Hon. Vernon Williams. The status at that time was less than heartening from the State's perspective. Since that time, we have appreciated the Board's continuing oversight of the railroads' performance.

MCLEOD, WATKINSON & MILLER

Hon. Vernon A. Williams

April 30, 2004

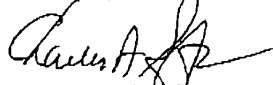
Page 2

We are pleased to report that representatives of both companies continue to work with the State to implement the commitments they made in order to secure the State's support for the transaction. In a recent meeting with representatives of Norfolk Southern, the State heard that the company recognizes that it has a continuing obligation to work on implementation of the items described in the 1997 letter. Representatives of CSX, similarly, have continued to work with the State to monitor the quality of service provided to commuters in the MARC service, and to find ways to improve the quality of rail and intermodal service available to shippers in the State.

The story is not over, because economic factors and other matters have prevented the railroads from implementing all of the actions described in the 1997 letters within the time frames described. We will continue to work with our railroad partners to fulfill our mutual obligations under those letter agreements.

Thank you again for providing the State with the opportunity to comment on this matter.

Respectfully submitted,



Charles A. Spitznik
Counsel for the State of Maryland

cc: All Parties of Record

2



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

May 24, 2004

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Dear Secretary Williams:

Subject: STB Docket No. 33388 (Sub-No. 91) Conrail General Oversight

The State of Michigan supported the acquisition of Conrail by CSX and Norfolk Southern (NS). We believed that the restructuring of the railroad system in the eastern United States would result in a more efficient transportation system with balanced competition between two strong carriers. In our statement of support, we urged CSX and NS to continue working with the Michigan Department of Transportation (MDOT) toward the development of expanded intermodal facilities in the Conrail Shared Asset Area (SAA) in Detroit.

We understand that rail traffic has grown significantly in the Detroit SAA since 2000, reflecting improved transportation options for area shippers. Overall traffic has reportedly grown by 17% and intermodal traffic by 55%. CSX and NS are working with the State of Michigan to address intermodal terminal capacity and service issues. An Environmental Impact Statement for the Detroit Intermodal Freight Terminal is currently in preparation. This study addresses intermodal needs through the year 2025. In the interim, CSX and NS have executed a public/private funding partnership with MDOT to double the railroads' intermodal capacity in the SAA Livernois Yard in Detroit. This \$10.4 million project will be in operation this September.

Michigan's shippers appear to have been well served by the acquisition of Conrail and the establishment of the SAA. Continued access to the competitive rail service provided in the SSA is necessary for the economic health of southeastern Michigan.

Sincerely,

Rob Abent, Director
Multi-Modal Transportation Services Bureau

MURRAY D. VAN WAGONER BUILDING • P.O. BOX 30050 • LANSING, MICHIGAN 48200
www.michigan.gov • (313) 875-3000

LH-LAN-0 (5/1/03)

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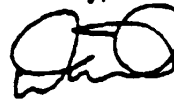
The Honorable Thomas Ridge
The Honorable Edward Rendell
October 21, 1997 - Page 4

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

4



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

John W. Snow
Chairman, President
Chief Executive Officer

October 21, 1997

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

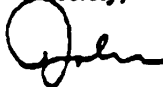
On or before October 21, 1997, the Commonwealth of Pennsylvania and the City of Philadelphia will file written statements of support for the Conrail acquisition with the STB. We anticipate that you will encourage other elected officials and public agencies, including SEPTA and the DRPA, to file timely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

5



H. Craig Lewis
Vice President
Corporate Affairs
215-209-4284 Phone
215-209-4286 Fax

April 28, 2004

David J. Yeager
Director, Governor's Action Team
Commonwealth Keystone Building
400 North Street, Plaza Building
Keystone Building
Harrisburg, PA 17120-0225

Dear Mr. Yeager:

I appreciate the opportunity to respond to your letter of March 22, 2004 and the subsequent testimony by the Philadelphia Industrial Development Corporation ("PIDC") on behalf of the Commonwealth of Pennsylvania ("Commonwealth") and the City of Philadelphia ("City") before the Surface Transportation Board on April 2, 2004.¹ Your letter of March 22 and PIDC's testimony focused on matters set forth in Chairman Goode's October 21, 1997 letter to then-Governor Tom Ridge and then-Mayor Edward Rendell (which I will hereinafter refer to as the "Pennsylvania Letter"). Norfolk Southern has, from time to time in the past, provided detailed information concerning Norfolk Southern's Pennsylvania investments, economic development and other efforts, in order to keep you informed in light of the Pennsylvania Letter. This response, however, may be especially useful given the now-active fifth year of the Conrail General Oversight Proceeding.

The Pennsylvania Letter responded, we believe, to concerns raised by the City of Philadelphia and the Commonwealth of Pennsylvania about the proposed Conrail Transaction and its impact on state and local economic development, jobs, railroad capital investment and corporate citizenship. The feared adverse impacts that formed the basis for those concerns, of course, have not come to pass, as the Conrail Transaction has resulted in extraordinary levels of railroad capital investment throughout Pennsylvania and continued involvement by the Norfolk Southern and Conrail in the life and business of Pennsylvania and the City of Philadelphia.

¹ I note that on April 26, 2004, the Commonwealth of Pennsylvania's Department of Community and Economic Development filed written comments in the Conrail General Oversight Proceeding. Although this letter does not respond directly to those comments, many of the points raised in this letter relate to matters raised by those comments.

David J. Yeager
Director, Governor's Action Team
April 28, 2004

In addition, much has happened since the Conrail Transaction was approved. Norfolk Southern successfully addressed the severe service disruptions that plagued its operations in the initial period following Split Date. Norfolk Southern adjusted its service delivery system and operating plan in several material ways. Norfolk Southern has now developed the three hub intermodal network (Atlanta, Chicago, Harrisburg) that it operates today. As part of that network, Norfolk Southern invested \$31 million in developing Rutherford Yard, an investment not anticipated at the time of the Conrail transaction. Further, Norfolk Southern quadrupled capacity at Enola Yard outside of Harrisburg as part of its modified carload routing effort. This newly designed intermodal and carload network, together with the Thoroughbred Operating Plan (a combined effort of Norfolk Southern's marketing, transportation, strategic planning and field operations employees) and other service initiatives, has been instrumental in Norfolk Southern's move to a more scheduled and reliable service, with the benefits to our customers that this implies. We have done this despite, and in part reaction to, the period of economic recession that struck our nation soon after the transaction was implemented. Norfolk Southern has accomplished much on the operating side, while at the same time implementing a significant adjustment to its work force.

Conrail has been transformed, as well, and for the better. As several parties testified in Trenton, New Jersey on April 2, Conrail is performing safely, efficiently, effectively and with a strong cooperative spirit. This is true despite the fact that Conrail is now much smaller than even anticipated. The number of employees working for Conrail, for example, has shrunk from 1,710 to just 1,306 over the past few years. The composition of this workforce has been transformed as well, with reductions taken throughout the Conrail organization – in the Detroit Shared Asset Area, the North Jersey SAA, the South Jersey/Philadelphia SAA, and headquarters.

These changes were not anticipated in the Transaction. Instead, they have come about through the application of business judgment in the management of the day-to-day affairs of the railroad. These changes have had a positive impact on Norfolk Southern, its customers and the economic welfare of the communities that Norfolk Southern serves.

Overall, Norfolk Southern believes that the concerns Pennsylvania and Philadelphia raised in the Pennsylvania Letter have been addressed, any commitments in that letter satisfied, and the aspirations and underlying spirit fulfilled. It is my hope that the information provided in this letter will provide grounds on which you will concur. For ease of reference, I will address matters as they appear in the Pennsylvania Letter.

I. Economic Development

In this section of the Pennsylvania Letter, Norfolk Southern committed to pursuing "a public-private partnership to encourage rail-oriented industries to locate in Philadelphia and across Pennsylvania." As described in detail below, this partnership has developed and been a success, and Norfolk Southern recommits to working with the State and the City to encourage rail-oriented economic development.

David J. Yeager
Director, Governor's Action Team
April 28, 2004

In the Pennsylvania Letter, Norfolk Southern committed to a direct payment of \$10 million to the City of Philadelphia to help attract Kvaerner shipbuilders to locate at the Philadelphia Navy Yard and the Philadelphia Naval Business Center ("PNBC"). As you have observed, that commitment has been fulfilled. The investment has paid off for the City both in terms of jobs and economic development. The investment has helped bring over 900 jobs to the City. Further, Kvaerner Philadelphia Shipyard recently noted that it has begun laying the keel for the third Jones Act ship to be constructed in the shipyard and a solid re-emergence of shipbuilding to the area following a thirty-year hiatus.

Norfolk Southern committed to expend a minimum of \$15 million for rail-served economic development programs in Philadelphia and across the Commonwealth. That investment was to focus on "land acquisition, facility construction and rail infrastructure installation" on the PNBC. In September of 2001, Norfolk Southern announced its intention to construct a new intermodal terminal at the PNBC. That Navy Yard Terminal, to be constructed at a cost estimated at the time to total at least \$16 million, is now under construction and estimated to be completed and open for business later this year. Norfolk Southern worked with the Delaware River Port Authority of Pennsylvania and New Jersey ("DRPA"), the Philadelphia Authority for Industrial Development ("PAID"), and the City of Philadelphia in order to ensure that this project, hailed by the PIDC as bringing direct and indirect economic development and jobs to the PNBC and the region, was progressed.

Norfolk Southern committed to providing, and had available to provide, industrial development seed money to enable new potential rail customers to locate in the Philadelphia area and across the State in exchange for contractual obligations for acceptable levels of rail business. Norfolk Southern anticipated that this industrial development effort could reach \$25 million, and that the then-vibrant economy would foster significant new rail traffic at levels that would justify such an industrial development effort. The dramatic downturn in the economy prevented this from happening.

That economic downturn no doubt contributed to the fact that the Governor's Action Team and the Department of Community and Economic Development ("DCED") originated only a few requests for the funding described. Even so, some of the proposals that did originate from the Governor's Action Team, the DCED or the PIDC did not qualify for consideration. I present two particular examples.

The first example is a request for Norfolk Southern funding for a new truck-rail transfer facility (Safe Handling, Inc.) in Western Pennsylvania outside of Pittsburgh, a request that arose from the Governor's Action Team. That rail-truck transfer facility enables a Canadian National - Wheeling and Lake Erie traffic flow to directly compete with Norfolk Southern services in the Pittsburgh markets. This, of course, is not the type of industrial development effort that Norfolk Southern could be expected to support. Further, Norfolk Southern funding for that project would not - indeed could not - be provided "in exchange for contractual obligations for acceptable levels of rail business." The Safe Handling facility was constructed without Norfolk Southern funding involvement.

David J. Yeager
Director, Governor's Action Team
April 28, 2004

Most of the funding for the facility came from the federal Transportation Enhancement Act.

The second example is a PIDC request to partially fund the acquisition of real estate with the hope that in the future some rail-service shippers might relocate to that property. That proposal involved much speculation and no contractual obligations for acceptable levels of rail business.

The economic downturn also adversely affected Norfolk Southern's efforts to develop new industries and new investment in Pennsylvania. Notwithstanding that fact, Norfolk Southern has invested heavily in infrastructure and industrial development throughout Pennsylvania, be it in new industry or enhancement of existing industrial facilities. Norfolk Southern has provided substantial funding for rail-related infrastructure at the Bailey mines, Homer City transloads and the new route into Keystone Conamaugh's power plant. Norfolk Southern has provided industrial development funds for Schmalbach Lubeca Plastics, Sun Company, R.R. Donnelley & Sons, Filmtech, FabriKal, Wolf Lumber, and Novolog, and Norfolk Southern's expansion of facilities in Harrisburg and Bethlehem. Further, Norfolk Southern service initiatives and reliable service have brought other industrial development to Pennsylvania – two good examples are the new ConAgra Foods temperature controlled distribution warehouse that located in Emigsville, PA and the Elk Corporation (a roof shingle company) facility that located in Myerstown, PA. Norfolk Southern will continue to make industrial development investments that make business sense and to the extent that funding is available. Norfolk Southern is committed to industrial development in Pennsylvania.

Further, the public/private partnership sought by Pennsylvania has resulted in several service initiatives of importance to the Pennsylvania business community. One significant example is the Norfolk Southern partnership with the Commonwealth of Pennsylvania and Northeast Freight Transfer to develop a guaranteed on-time intermodal service between Chicago and Taylor Yard in the Scranton/Wilkes Barre area that was announced last July. This service, of course, builds on the guaranteed on-time premium service initiated in conjunction with BNSF announced in November of 2002. The only Northeast origin or destination that qualifies for that premium service is Philadelphia.

The Pennsylvania Letter states that "The City of Philadelphia, though the PIDC, and Norfolk Southern plan to execute a Development and Marketing Agreement that is being developed for the PNBC." That letter also states that: "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 ... at the AmeriPort Intermodal Terminal." It is Norfolk Southern's understanding that the Navy Yard Terminal agreements suffice.

The Pennsylvania Letter discusses the State's approval of certain ISTEAs expenditures. This has been accomplished.

David J. Yeager
Director, Governor's Action Team
April 28, 2004

II. Jobs

The Pennsylvania Letter set forth several Norfolk Southern job creation goals. Initially, it was thought that there would be a Mid-Atlantic Regional headquarters located in Philadelphia, which would consist of 75 employees, including a Regional Vice President. Further, there was a goal of 150 new rail-related jobs created as a result of Norfolk Southern's commercial and operational activities in the Philadelphia area during the three years after STB approval.

As was anticipated by the Pennsylvania Letter, the Norfolk Southern Mid-Atlantic Regional headquarters is located in downtown Philadelphia. I head that office, originally (as mentioned in the Pennsylvania Letter) as a Regional Vice President, and now as board-elected Vice President of Corporate Affairs and a member of the senior management team of Norfolk Southern.

As is described in more detail in the following section, the basic operating plan for operating the Norfolk Southern system has migrated and developed significantly from that set forth in the Application and that which formed the aspirational projections set forth in the Pennsylvania Letter. At the time of the Application, the operating plan was based, in part, on Philadelphia being the center for Norfolk Southern's efforts to convert north-south traffic back to rail. That effort is now centered in Harrisburg, one of the three hubs in the new Norfolk Southern system. Therefore, many of the positions anticipated to have been located in the regional headquarters in Philadelphia are now located there.

Notwithstanding that fact, Norfolk Southern anticipates that the new intermodal facility and the possible new automobile distribution facility located at the PNBC will create a significant number of new rail-related positions in the community – both through direct employment at the facilities and serving the same. According to a PIDC news release, "Once up and running in 2004, the Norfolk Rail Yard should generate 500 to 1,000 jobs...."

The Pennsylvania Letter stated that Philadelphia will remain as the headquarters for Conrail. Conrail's headquarters is located in downtown Philadelphia. As has been discussed above, though, the fundamental nature and size of Conrail is substantially different than that anticipated. The administrative and headquarters staff that at one time was anticipated to be 350 people throughout the Detroit-New Jersey-Pennsylvania system has now been effectively transformed into a much smaller group. Interim arrangements have many of this group located at Mt. Laurel, New Jersey.

III. Capital Expenditures

This section of the Pennsylvania Letter is primarily informational, setting forth the overall capital improvement expenditures anticipated by Norfolk Southern for the Commonwealth of Pennsylvania. Certain of these expenditures were targeted for Philadelphia, as Norfolk Southern anticipated that Philadelphia would be instrumental in the effort to capture the north-south traffic that had largely been ignored by Conrail prior

David J. Yeager
Director, Governor's Action Team
April 28, 2004

to the Conrail Transaction. Of course, the decisions as to the precise mix and timing of capital expenditures is something that to be made in light of the circumstances following the transaction, including the then-current economic and business climate, the railroad's success of capturing and sustaining business, developments to the operating plan to take into account factors from throughout the network, and changes in operating philosophies, all of which are necessary in order to permit the railroad to develop and become a more efficient carrier.

One capital expenditure anticipated for the Philadelphia area – a Triple Crown facility – has instead been located in Bethlehem, PA. Norfolk Southern anticipated using the Northeast Corridor ("NEC") through Philadelphia as a primary route for the traffic that would use the Triple Crown facility. Charges for use of the NEC, however, have proven excessive, and Norfolk Southern is only permitted onto the route on a limited basis and generally only during the overnight window. From an operational and business standpoint, these factors forced the facility to be relocated to Bethlehem, where it is now a success with full capacity to accommodate the current traffic needs.

A second capital expenditure anticipated for the Philadelphia area that is listed in the Pennsylvania Letter – the intermodal facility – is now under construction at the PNBC. The initial \$10 million investment for the site has now been revised upwards substantially, as that investment will be more on the order of \$16 million.

A third capital expenditure anticipated for the Philadelphia area – the automotive facility – is currently on hold pending the acquisition of sufficient business to justify the construction of such a facility. Norfolk Southern has optioned property in the PNBC in Philadelphia primarily for this facility, although the size of the potential facility has had to be reduced because PIDC wanted for other purposes much of the land that was dedicated for this facility. If this facility becomes a reality, additional rail-related employment is expected to result.

The Pennsylvania Letter also describes a capital expenditure for a track connection at Zoo interlocking that was mentioned in the Norfolk Southern operating plan submitted in its Application to the STB. This track reconnection project would permit trains traveling on the NEC to bypass the Amtrak 30th Street Station through the use of the High Line as in the pre-Conrail past. This project likely would be valuable should substantial north-south NEC develop. Norfolk Southern had anticipated this traffic, but extraordinary NEC trackage rights charges and a constrained operating window has forced much of this traffic to move through Harrisburg. Norfolk Southern is working diligently to develop one line of traffic for movement along the NEC – traffic largely consisting of movements for UPS – but Amtrak has permitted that movement to be made through the 30th Street Station. At this time, the Zoo interlocking expenditure is unnecessary and the scarce capital dollars that would go to that project are being used elsewhere on the Norfolk Southern system.

David J. Yeager
Director, Governor's Action Team
April 28, 2004

IV. Passenger Rail

In this section of the Pennsylvania Letter, Norfolk Southern, the City and the Commonwealth agreed to recommend to Conrail and SEPTA that the existing Trackage Rights Agreement be extended for five years. Further, Norfolk Southern agreed to negotiate an extension of SEPTA service on the Harrisburg and Morrisville lines, as well as other issues. This has been accomplished.

V. Corporate Citizenship

Conrail had several philanthropic commitments as of the time of the Pennsylvania Letter, and one concern raised and addressed was the fulfillment of those commitments. These commitments were fulfilled.

Norfolk Southern believes that it is an active participant in civic and charitable affairs in Philadelphia and throughout Pennsylvania. We do so directly through charitable giving and indirectly through, for example, my participation on various boards and committees. Norfolk Southern and its employees continue to contribute to the United Way and other national and local charities.

Norfolk Southern is involved in developing the community in other ways. As an example, Norfolk Southern has made contributions to the development of the performing arts in Philadelphia. Another notable example is the contribution of significant time, management and money to the much anticipated 150th anniversary of the Horseshoe Curve, which Norfolk Southern is sponsoring in conjunction with Osram Sylvania and the Railroaders Memorial Museum of Altoona, PA (itself a recipient of Norfolk Southern funds). Norfolk Southern is providing \$200,000 to The Gettysburg National Battlefield Museum Foundation to help fund a new museum and visitor's center near Ziegler's Grove and Cemetery Ridge.

Norfolk Southern recognizes that it is an important member of the local communities in which it is located, throughout Pennsylvania and elsewhere on its 21,000 mile system. It takes that role very seriously.

VII. Regulatory Review

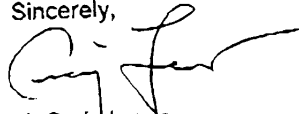
The Commonwealth of Pennsylvania and the City of Philadelphia was to file written statements of support for the Conrail Transaction with the STB. Norfolk Southern appreciates the fact that this was done.

Norfolk Southern recognizes that future business in the State is vital to the railroad's continued success, and further recognizes that the railroad has an active role in contributing to and shaping that future.

David J. Yeager
Director, Governor's Action Team
April 28, 2004

Therefore, this letter closes, just as the Philadelphia Letter closed, with a reiteration of Norfolk Southern's intention to continue to work closely with the City of Philadelphia and the Commonwealth of Pennsylvania.

Sincerely,



H. Craig Lewis

cc: Peter Longstreth, PIDC

6



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Baltimore, Maryland 21201
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FAX: (410) 613-6151
Kevin_Hurley@CSX.com

D. Kevin Hurley
Assistant Vice President

RE: 42101-0071

October 29, 2003

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

Dear Mr. Yeager:

This will follow up on our recent conversation regarding the desire of CSX to have certain purchases of railroad property by the Philadelphia Regional Port Authority (PRPA) qualify as eligible under an Economic Development Fund to which CSX had committed funds at the time that Conrail was purchased.

As background, in 2002 CSX sought to have a 44 acre parcel of land that it owned in South Philadelphia rezoned from industrial to commercial to permit the development of a new IKEA and other retail establishments to serve the South Philadelphia community. The PRPA felt that this rezoning would remove from the Port Zone valuable industrial land needed to allow the Port to expand. In exchange for the Port's support of the rezoning, CSX agreed to convey to the Port a pier facility that it had acquired from Conrail. It also agreed to support the Port in its efforts to acquire additional lands and a second pier from Conrail. Because the Port did not have the resources to acquire these properties, CSX offered to apply to the Governor's Action Team to allow the Port to use the remaining funds in the \$5 million CSX economic development commitment to be used as credits against real estate purchased from CSX and Conrail.

The PRPA has the primary responsibility to support and grow the port activity in the Port Zone which includes Philadelphia, Bucks and Delaware counties. The purchase of the CSX and Conrail parcels will allow the Port to expand on several different fronts which will be discussed individually below. They are particularly crucial to the Port because these sites are primarily located south of the Walt Whitman bridge which has superb rail access, is in close proximity to the Intermodal transfer facilities and there is no air draft restrictions as it relates to vessel's vertical clearance of the bridge. All of the properties are shown on the attached aerial map.

Pier 122 and 124:

These piers, owned by Conrail and CSX respectively, are the only bulk handling piers in Philadelphia, one designed for import and one for export. The export facility designed to handle coal has not been in use for almost 20 years and the import pier is marginally used

due to requisite improvements to the infrastructure. Both facilities are rail served and are contiguous. Acquisition of these piers would also provide the Port the option to pursue two opportunities, (1) maintaining and upgrade the existing pier structures and market them to the international bulk cargo market or (2) create a new facility by filling between the two piers and the adjacent land owned by the Commonwealth to create a marginal pier, a more modern and efficient way of handling the demands of commercial shippers and the long term obligations of a Strategic Military Port. The plan attached illustrates this potential and is shown as Southport Development.

With regard to this later project the PRPA is currently assessing environmental, engineering and economic issues. They have engaged a marine engineering firm, a port planning consultant and an economic analysis consultant to evaluate several options, the largest of which would create a new marine terminal with 89 acres and 2000 linear feet of marginal berth.

Pier 122 is supported by an approximate 20 acres of land which is connected to the Pier by a conveyor and has been traditionally used to stockpile imported bulk commodities. This storage is essential to any import operation of bulk materials to facilitate the transfer from vessel to rail or truck.

Whiskey Yard:

This 29 acre parcel of land owned by Conrail is currently vacant but was previously used to support the former Publicker distillery. Across Delaware Avenue from the Packer Avenue Marine Terminal, the Port's primary container facility, this land is essential for this facility to grow. Recently designated as a Strategic Military Port, much of the existing land currently used for storage of containers will need to be utilized to support military movements. The Whiskey Yard offers the most convenient and practical to continue the container operations and support the military in the short term. The yard also offers the flexibility of increasing the area for automobile storage yard due to its proximity to the Pier 98 Annex.

Savage Yard:

This too, is a vacant 12 acre parcel of land which is adjacent the Port's Pier 98 Annex, its import automobile operations. The current facility is often considered less competitive than the neighboring Port of Wilmington because it is not large enough to handle current demands. The acquisition of this land would allow for the expansion of the facility and increase the Port's competitive position. The combination of Whiskey and Savage Yards would also allow the Pier 98 Annex to expand to 100 acres, a minimum threshold requirement for handling large international automobile accounts.

The acquisition of these parcels would allow the Port to expand in several different areas included breakbulk, bulk and containerized cargo for commercial and military customers.

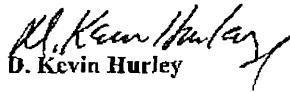
The CSX commercial development is anticipated to create over a thousand new jobs in South Philadelphia and add over a million dollars to the City's tax base. The port

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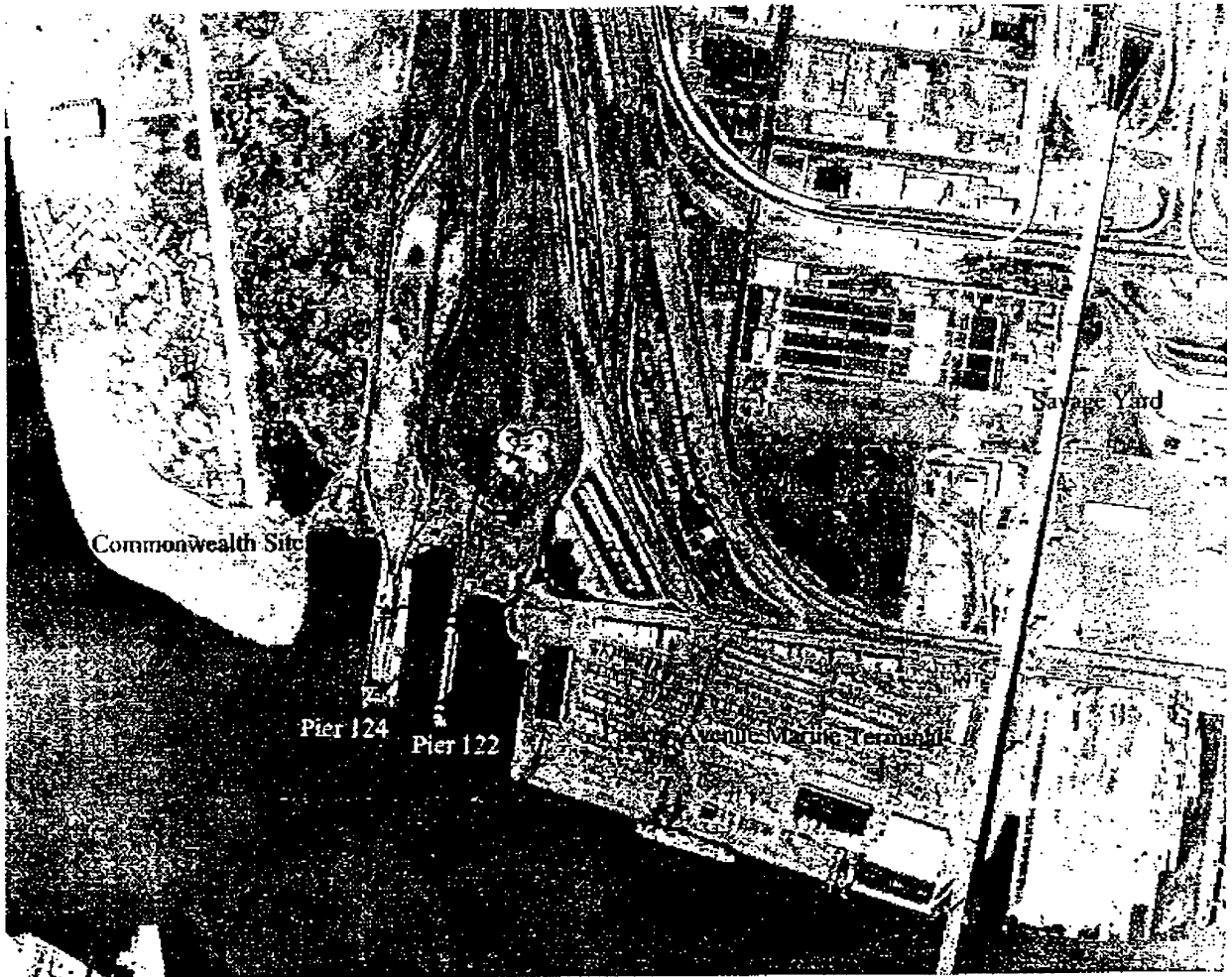
expansion has an even greater economic impact on the local community. The expansion would generate approximately 5.6 million tons of additional port traffic creating almost 4,000 direct, new jobs and over 2,300 induced and indirect jobs. It would also spin off benefits of increasing personal income by \$325 million, business revenue by \$443 million and creating additional \$33,627,000 in additional State and Local taxes.

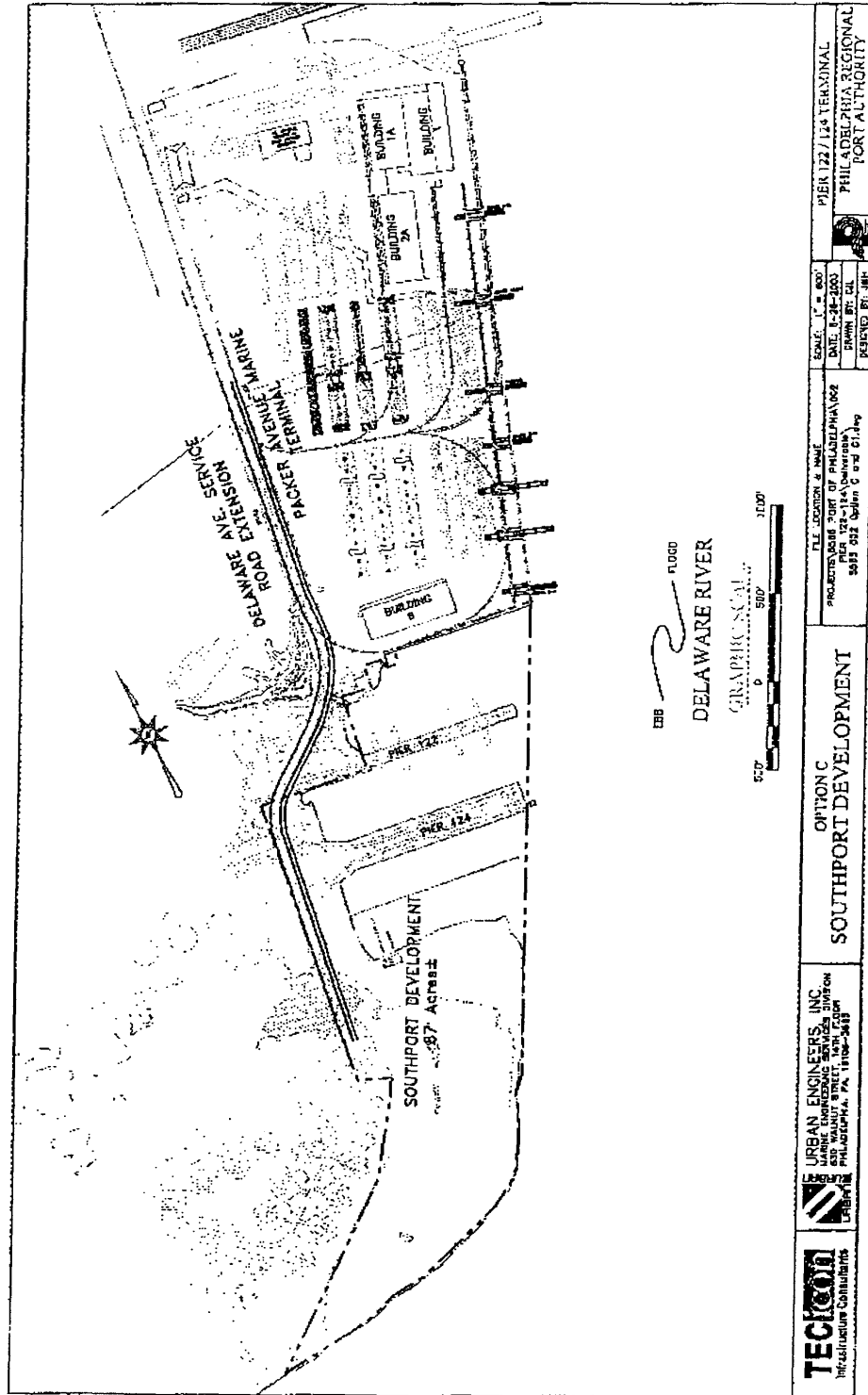
If you have further questions about this proposal, I would be happy to arrange for a meeting with the PRPA so that this project could be discussed in greater detail.

Sincerely,


D. Kevin Hurley

CC: Mr. Robert Blackburn
Pennsylvania Regional Port Authority





		OPTION C SOUTHPORT DEVELOPMENT	FILE LOCATION & NAME PROJECTS\ASB PART OF PHILADELPHIA\022 PIER 122-124\Delaware S015 012 Option C.dwg	SCALE: 1" = 500' DATE: 8-24-2001 DRAWN BY: ELL REVISION BY: JMR	PIER 122/124 TERMINAL PHILADELPHIA REGIONAL PORT AUTHORITY
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7



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Baltimore, Maryland 21201
(410) 613-6156
FAX: (410) 613-6151
Kevin_Hurley@CSX.com

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. 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



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
11th Floor
Baltimore, MD 21201

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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Posted on Sat, Jul. 17, 2004

Revived shipyard set to christen 2d vessel

Kvaerner hopes to make such milestones routine.

By Henry J. Holcomb
Inquirer Staff Writer

The Kvaerner Philadelphia Shipyard, on the site where the Navy once built and repair warships, will christen its second ship this afternoon.

It will be a smaller ceremony than the one last July in which Gov. Rendell and other d celebrated the first ship built here in 31 years.

"We want it to feel more like a routine event," said David E. Meehan, president of the standing alongside the vessel, the Maunawili.

The yard already is at work on its third cargo ship, which is 60 percent finished, and delivered next month so work on a fourth vessel can commence. The yard could soon christening two cargo ships a year.

The productivity of the yard's nearly 1,000 workers on the second ship was more tha better than on the first. On the third, it is 20 percent better than the second, Meehan means quicker work with fewer mistakes.

"We're getting better every day," said Gary Gaydosh, president of the union Metal Tr

Meehan said the yard needed further improvement to be competitive with more expe shipbuilders but was gaining the confidence of its European owners.

"We told them seven months ago that we would launch this ship May 15," Meehan sa day the vessel floated from the dry dock where final assembly took place. "And we di

By summer's end, the ship christened today will join the yard's first ship, the Manuka cargo between the West Coast and Hawaii for the venerable Matson Navigation Co. T on its 21st voyage, is due in Los Angeles tomorrow.

Both ships are 712 feet long, built to carry cargo in truck-size containers, and powere 38,700-horsepower diesel engine.

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They cost Matson \$115 million each, including financing and construction oversight co with the \$160 million it paid 13 years ago for a similar vessel built in San Diego.

Matson calls the Manukai the most efficient ship in its 12-vessel fleet. "It has perform We've done a series of performance tests since it went into service last October. It sc all areas," spokesman Jeff Hull said.

There have been no mechanical failures, he said.

When the Maunawili is delivered next month, Meehan's staff will step up efforts to sig for the third and fourth ships.

The shipyard is an economic development partnership between Kvaerner A.S.A., a No conglomerate, and the Commonwealth of Pennsylvania, signed in late 1997 by Gov. T

The commonwealth, with help from federal and local governmental units, has investe in construction and job-training funds.

Kvaerner built and operates the commercial shipyard on the site of the Philadelphia N which closed in 1996, after spending final years overhauling aircraft carriers. The new European technology - building ships in modules, indoors, with assembly-line efficien subcontractors for specialized work.

These modules become full-width sections, called grand blocks, which are then hoiste dock by the towering blue crane that has become a South Philadelphia landmark.

The Kvaerner-Pennsylvania partnership has endured a series of economic storms. In Kvaerner management that signed with Ridge was ousted in a hostile takeover. The n quickly put all 14 of the firm's shipyards, including Philadelphia, up for sale.

But before Philadelphia and other big yards could be sold, Kvaerner was hit by anothe takeover. In 2001, Kjell Inge Roekke, a Norwegian entrepreneur and successful shipb control.

Roekke went on to invest more than \$200 million the Philadelphia yard.

At the time he took over, Roekke was flying high, jetting across oceans in his persona airliner. Since then impatient creditors and larger-than-expected management and ac problems acquired with Kvaerner have tamed his lifestyle.

He has been forced to sell the airplane and other assets. He has divided his empire in companies, offering shares to the public to reduce debt. One is the oil industry engine components of Kvaerner. The second includes profitable shipyards, including Kvaerne yards and his Aker yards.

The third is a holding company, which owns the yard here, which is not expected to t until after its fourth or fifth ship. Roekke owns most of the holding company, which in majority share of the other two.

Waves of uncertainty have discouraged firms from moving to Philadelphia to become subcontractors, diminishing a key component one of the yard's anticipated impact on

economy.

But that could soon change.

There is a need for more than 30 tanker and container ships to replace older, deteriorated that carry cargo between U.S. ports, and the federal Jones Act requires them to be built in the U.S. The other large domestic yards are built around military work.

The average age of the Jones Act fleet is 25 years. Many are still powered by steam engines in poor condition.

Contact staff writer Henry J. Holcomb at 215-854-2614 or hholcomb@phillynews.com.

 email this



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Philadelphia Industrial Development Corporation



Annual Review

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PIDC has closed 4600 individual transactions in Philadelphia with a combined project costs of over \$10 bil

News

Monday, October 28, 2002
By Lorraine Gennaro



Construction of a \$16-million rail facility at the former Navy Yard is under way

If the **Philadelphia Industrial Development Corp.** and the Delaware River Port Authority get their way, a phoenix will rise yet from the ashes of the old Navy Yard.

That phoenix was one step closer to taking flight with a press conference and groundbreaking Monday for the new Norfolk Southern Rail Yard at the eastern end of the expansive Navy Yard, now known as the Philadelphia Naval Business Center.

Officials from the **PIDC**, DRPA and Norfolk Southern delivered the big news while a bulldozer idled in the background of Mustin Field Naval Air Station, the site on which the railyard is being built.

The \$16-million intermodal rail facility, capable of handling 60,000 lifts annually, will occupy about 50 acres at the former air station. It will aid in the movement of containerized domestic and international cargo from ships calling on the Ports of Philadelphia and Camden, as well as railroad cars and trucks entering the region.

With the addition of Norfolk Southern, Philadelphia will be the only major city on

the East Coast with three Class-1 railroads: CSX, CP Rail and Norfolk, noted DRPA chairperson Manny Stamatakis. Class-1 railroads allow the maximum height and width for trains passing through.

Citing the importance of transportation to Philadelphia and the surrounding region, Stamatakis said more than 70,000 jobs in the area depend on cargo coming into this region.

"If we can get the cargo to come into our port, then we can get the cargo out to the channels," he said. "This [Norfolk facility] is another instrument in connecting the port to international terminals."

Once up and running in 2004, the Norfolk Rail Yard should generate 500 to 1,000 jobs, Stamatakis said.

Norfolk Southern Corp. is one of the country's leading transportation companies. Its Norfolk Southern Railway Co. subsidiary operates approximately 21,500 route miles in 22 states, Washington, D.C., and Ontario. It is the nation's largest rail carrier of automotive parts and finished vehicles.

The DRPA acquired the local property from the **PIDC**, which is managing the city's redevelopment of the former Philadelphia Navy Yard into a commercial and industrial business park. Stamatakis said the DRPA loaned Norfolk Southern funds for construction of the facility. After the railyard is complete, Norfolk Southern will repay the loan over a 20-year period.

Craig Lewis, vice president of corporate affairs for the Virginia-based rail company, admitted Monday he had been "fearful" the deal would never come to fruition because of the many challenges facing his company, including the ailing economy.

But now that the project is on solid ground, he is more optimistic.

"The Navy Yard terminal improves the competitive balance between freight railroads servicing the Philadelphia region and strengthens Norfolk Southern's position as the premier intermodal rail carrier in the Eastern United States," said Lewis.

The official called the deal another piece of the puzzle in fully utilizing the Naval Business Center.

PIDC president **Peter Longstreth** said the Norfolk Southern Railyard will usher in further revitalization at the former Navy Yard.

"This is just one of many projects. It's a very exciting future," he said.

The **PIDC** has selected Liberty Property Trust to develop a 60-acre parcel of ground near the main entrance to the Navy Yard, said **PIDC** senior vice president **John S. Grady Jr.**

Preliminary plans call for construction of a proposed 1.1-million square feet of office space over a 10-15 year period, said **Grady**.

Since the **PIDC** acquired the property from the U.S. Navy almost two-and-a-half years ago, the focus has been on industrial development and the renovation of key

historic buildings on the site, noted **Grady**.

"What this project will let us do is expand much more broadly into office development to complement the existing industrial development that we've been pursuing," he said.

About 6,000 people currently work in the Navy Yard, half of whom are Navy personnel, **Grady** said. The other half are employees of the nearly 35 companies housed in the complex.

To augment future development, **Grady** said the **PIDC** has been investing in utilities and the road systems of the expansive Navy Yard.

Two historic buildings on South Broad Street are currently in the process of being renovated for office use. One 30,000-square-foot structure will be available for occupancy later this year, while a 50,000-square-foot property will be ready in 2003.

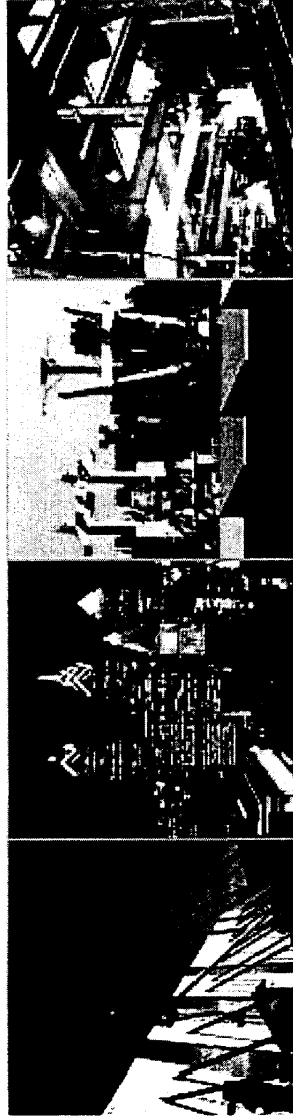
Additionally, **Grady** said some older buildings in the yard are being demolished to make way for future development.

"It's all part of an effort to begin to attract more of an office base to complement the industrial base already there," said **Grady**.

Reprinted from "South Philly Review.Com"

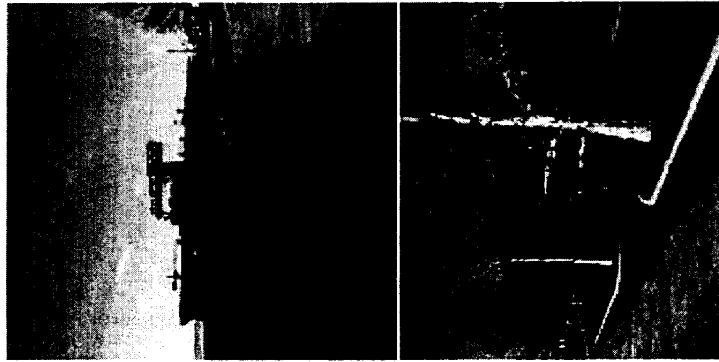
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02

PTDC 2002 ANNUAL REVIEW



PRODUCTS - PHILADELPHIA NAVAL BUSINESS CENTER

During the past decade, the United States Department of Defense has downsized significantly in the Philadelphia area, resulting in substantial excess real estate in the city. PIDC is responsible for converting these former military properties to civilian use and many of the dispositions realized during 2002 included development sites from this portfolio.

Located on the Delaware River at the south end of Broad Street, the Philadelphia Naval Business Center (PNBC) is the largest former Defense Department asset, with 1,000 acres and 6.5 million square feet of existing industrial and office space. Since the ownership transfer in March 2000, PIDC has been responsible for planning, operations and development of this massive property.

Initial emphasis was on upgrading roads and utility systems with over \$25 million of infrastructure investment. Development of the Kvaerner Philadelphia Shipyard (KPS), a \$300 million state-of-the-art facility, was an early triumph funded by federal, state and local participation. Successful leasing efforts have occupied over 4.5 million square feet of space with approximately 6,000 employees of the U.S. Navy, KPS and forty-six other private businesses.

During 2002 this momentum continued with the following milestone achievements:

Leasing Activity: Approximately 500,000 square feet in twenty-five leases were executed during the year, creating work places for almost 1,000 employees.

Intermodal Yard: Approximately 185 acres were conveyed to the Delaware River Port Authority which will construct and lease an intermodal facility to Norfolk Southern Corporation. This facility will enhance the capacity and competitiveness of Philadelphia's entire port system. Construction is underway.

Renovation Activity: A number of historically certified buildings were renovated, creating approximately 60,000 square feet for office reuse. A feasibility study is also underway to consider the residential conversion of other significant, older buildings.

Gateway Campus: PIDC selected Liberty Property Trust, a national real estate company, to develop sixty acres at the entrance to the property with 1.1 million square feet of Class A suburban office space with a total projected investment of over \$200 million.

Master Plan: In cooperation with Liberty Property Trust, PIDC has initiated a master planning process for the entire PNBC property, which will culminate in appropriate re-zoning in 2003.

AppTec: This Minneapolis-based biotech testing firm has committed to lease a 75,000 square foot build-to-suit laboratory facility to be developed by Liberty Property Trust on a 15-acre site at PNBC. Construction will commence in early 2003 and 200 high-tech employees will begin occupying the facility in 2004.



11



Philadelphia Industrial Development Corporation

Peter S. Longstreth
President

April 11, 2002

Mr. David W. Hemphill
Assistant Vice President
Industrial & Economic Development
CSX Transportation
6735 Southpoint Drive,
South Building II, S/C J607
Jacksonville, FL 32216

RE: Economic Development Projects for CSX/Norfolk Southern Funding

Dear Mr. Hemphill:

Dave

As you know, on October 21, 1997, Pennsylvania Governor Ridge and Philadelphia Mayor Rendell received letters from the presidents of CSX and Norfolk Southern relating to their Conrail acquisition and offering various commitments conditioned on Surface Transportation Board approval of their acquisition, which has occurred.

In October, 2001, I communicated to Steven Morgan, Director of Governor Ridge's Action Team, requesting a joint Commonwealth-City effort to secure CSX/NS funding for two rail infrastructure projects needed in Philadelphia.

These included a height clearance improvement project in Northeast Philadelphia, to lower the Conrail Bustleton Branch below the Willits Road overpass, and the replacement of 1,200 ties on the PIDC Northeast Philadelphia Airport Industrial Track. Since October, the shipper requiring the clearance improvement has ceased operations.

We have received the attached Norfolk Southern response to Mr. Morgan, offering to revisit the clearance project should a new shipper locate beyond the Willits Road overpass that could benefit from this project, and offering PIDC \$40,500 representing one half the cost of the tie replacement project.

Mr. David W. Hemphill
April 12, 2002
Page Two

We have not received a response from CSX, and on bringing this matter to the attention of Mr. Michael Brimmer, he requested that I direct our request to you. I request that you also commit to have CSX revisit the clearance project later, and that CSX commit to half of our tie replacement project. I am also attaching brochures on the vacant rail-served property whose owner originally requested the clearance improvement project.

If you have any questions or would like to discuss this further, please do not hesitate to contact me at (215) 496-8172.

Sincerely,



EDWARD W. DUFFY
Vice President

EWD:mmcc

cc: M. Brimmer



**NORFOLK
SOUTHERN**

Norfolk Southern Corporation
Industrial Development Department
4600 Deer Path Road, Suite 202
Harrisburg, PA 17110
717-541-2230
717-541-2435 fax
rmbennet@nscorp.com

Roger M. Bennett
Director
Industrial Development

March 15, 2002

Mr. Steve Morgan
Director
Governor's Action Team
Commonwealth of Pennsylvania
100 Pine Street, Suite 100
Harrisburg, PA 17101

Dear Mr. Morgan:

On February 28th I received additional information from Mr. Edward Duffy, Vice President of PIDC, concerning the two projects referenced in your letter of February 13th requesting investment consideration by Norfolk Southern Corporation.

Willits Road Clearance Project

The interest in exploring the possibility of increasing the clearance on the Buselton Branch was initiated by RFDI the former occupant of the facility located at 2701 Red Lion Road. It is my understanding that RFDI received approximately 350 to 400 rail cars (primarily or entirely frozen french fries) in 2001, however I am only able to verify the traffic that Norfolk Southern handled which was one car. CSXT handled over 99% of this customer's rail business. RFDI has now vacated the facility and the facility is currently listed for sale by Colliers L&A (as information I have submitted this building to two potential tenants). I have also reviewed the traffic of the other six customers on the line to determine if there would be potential economic benefit to other customers and the Railway if the clearance improvement project were to be undertaken. Based on the commodities currently shipped or received by this group of customers, the use of Plate F cars does not provide sufficient economic benefit to undertake the project. Therefore, Norfolk Southern cannot agree to invest \$900,000 toward increasing the clearance under the Willits Road overpass. However, if in the future should a new industry locate beyond the Willits Road overpass that could benefit from this project, NS would again consider making such an investment based on the potential benefit to the industry and rail shipments handled by the Railway.

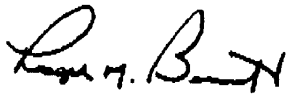
Maintenance of PIDC Trackage NE Philadelphia Industrial Park

Based on the business that Norfolk Southern participates in with our existing customers located in the NE Philadelphia Industrial Park, NS is agreeable to providing \$40,500 in funds to PIDC for the upgrade of PIDC owned trackage within the park. I will contact Mr. Duffy to work out the details of this funding.

Mr. Steve Morgan
Director
Governor's Action Team
March 15, 2002
Page 2

I appreciate your bringing these projects to the attention of Norfolk Southern and we want to continue working with you to promote rail economic development in Pennsylvania. Since assuming control of Conrail, NS has made over \$380,000,000 in investments in Pennsylvania. Please feel free to contact me if you have any questions about these two projects.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger M. Bennett". The signature is stylized with a large, looped "R" and a trailing "N".

Roger M. Bennett

Cc: Mr. Edward W. Duffy
Vice President
Philadelphia Industrial Development Corporation



David W. Hemphill
Assistant Vice President
Industrial & Economic Development

500 Water Street - J853
Jacksonville, FL 32202
(904) 359-1742
Fax (904) 359-1077
Email: David_Hemphill@csx.com

May 15, 2002

Mr. Daniel J. Kennedy
Deputy Director for Operations
Governor's Action Team
100 Pine Street, Suite 100
Harrisburg, Pennsylvania 17101

Dear Mr. Kennedy:

Pursuant to procedures we established several years ago with your predecessor Steve Kohler, relative to the CSX Economic Development Rail Customer Incentive Program, I am requesting that the Commonwealth of Pennsylvania, in partnership with CSXT and PIDC, accept the expenditure of approximately \$40,500.00 for the upgrade and maintenance of PIDC trackage at the Northeast Philadelphia Industrial Park. You recently received a similar letter from the Norfolk Southern Corporation relative to the same project and CSXT is proud to also sponsor this project. Once we receive approval of this project from your department, we will proceed to work through its implementation with Ed Duffy of PIDC, looking forward to a quick and effective completion.

If you have any questions regarding this request, please feel free to contact me. We look forward to continuing our close working relationship with the Action Team as we address a very challenged economy and the many needs that our customers are placing upon its rail service providers.

Sincerely,

DWH/sab

cc: Ms. Sharon W. Disque
CSX Transportation
Baltimore, Maryland

Mr. J. Randall Evans
CSX Transportation
Jacksonville, Florida

Mr. Steve C. Thienel
CSX Transportation
Baltimore, Maryland



David W. Hemphill
Assistant Vice President
Industrial & Economic Development

500 Water Street - J855
Jacksonville, FL 32202
(904) 359-1742
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Email: David_Hemphill@csx.com

May 15, 2002

Mr. Edward W. Duffy, Vice President
Philadelphia Industrial Development Corporation
2600 Centre Square West, 1500 Market Street
Philadelphia, PA 19102-2126

Dear Ed:

Sharon Disque and I enjoyed the opportunity of meeting with you last week to discuss a number of subjects relative to our working together in order to grow new customers for CSX Transportation and PIDC.

One of the topics discussed was the maintenance of the PIDC trackage in the Northeast Philadelphia Industrial Park. You shared with us the most recent cost estimate of upgrading this trackage, which totals approximately \$94,000.00, an estimate submitted by Transrail, Inc. It is my understanding that you are asking from CSXT to pay for \$40,500.00 of that upgrade with Norfolk Southern providing an equal share, and any difference made up by PIDC. Given the facts that CSXT customers will be positively impacted by this project and safety of Crew Operations will be enhanced, CSXT is in support of this project and is willing to contribute its fair share as noted above. This is subject to approval by the Director of the Pennsylvania Governor's Action Team, which has co-responsibility with us in appraising projects which utilize the CSX Economic Development Program.

We are pleased to be able to participate in this important project and do so in a true public / private partnership with PIDC in order to encourage rail oriented industry to use and expand their operations and use of rail. Thank you for this opportunity and I will be sending a letter to the Governor's Action Team requesting its authorization to expend these funds immediately.

I look forward to seeing you again soon and thank you for hosting the wonderful Train Trip around Philadelphia that everyone enjoyed last Thursday.

Sincerely,

DWH/sub

cc: Mr. Mike F. Drimmer
CSX Transportation
Cranbury, New Jersey

Ms. Sharon W. Disque
CSX Transportation
Baltimore, Maryland

Mr. J. Randall Evans
CSX Transportation
Jacksonville, Florida



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR
HARRISBURG

GOVERNOR'S ACTION TEAM
100 PINE STREET, SUITE 100
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Tel: (717) 787-8199
Fax: (717) 772-5419

May 29, 2002

Mr. David W. Hemphill
Assistant Vice President
Industrial & Economic Development
CSX Transportation
500 Water Street
Jacksonville, FL 32202

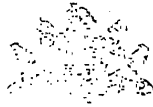
Dear Mr. Hemphill:

The Governor's Action Team accepts the expenditure of \$40,000 by CSXT for the upgrade and maintenance of PIDC trackage at the Northeast Philadelphia Industrial Park. We appreciate your assistance to this important project.

Sincerely,

Dan Kennedy
Daniel J. Kennedy

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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
11th Floor
Baltimore, MD 21201

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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David W. Hemphill
Assistant Vice President
Industrial & Economic Development

June 21, 2000

Mr. Steven L. Kohler, Director
Governor's Action Team
Office of the Governor
Commonwealth of Pennsylvania
100 Pine Street, Suite 100
Harrisburg, PA 17101

Dear Steve:

Pursuant to procedures we established last year to fund projects under the CSX Economic Development Rail Customer Incentive Program, I am requesting that the Commonwealth of Pennsylvania, in Partnership with CSXT, accept the expenditure of \$200,538 for the installation of 2 turnouts to serve the U.S. Gypsum facility at Aliquippa, PA, under this Program. CSXT has recently reached agreement with U.S. Gypsum, relative to these turnouts, and is in the process of installing them so that we can immediately begin rail service to this new customer (see attachments).

We have now spent approximately \$550,000 on economic development projects in Pennsylvania, with the addition earlier of an expenditure of \$349,254 for the purpose of building additional tracks in our Aliquippa Yard to serve both National and U.S. Gypsum facilities. In total, these two projects have invested \$140 million and created 250 jobs for the state.

We look forward to working in partnership with the Governor's Action Team in order to incent other customers to the Commonwealth. At this time there are a number of projects that we are pursuing, although our plate is not as full as we would like. If you have anything that we can work with you on that might be able to take advantage of this Incentive Program, please contact me or CSXT's local representatives, Gerry Edwards in Western Pennsylvania and Sharon Disque in Eastern Pennsylvania.

We have a great partnership with Pennsylvania and look forward to a brighter future together.

Sincerely,

DWH/sab

Attachments

cc: CSX Transportation

Sharon W. Disque	Manager Industrial Development	Baltimore, MD	Phone - 410 / 613 - 6263
Gerard F. Edwards	Manager Industrial Development	Buffalo, NY	Phone - 716 / 891 - 6054
Edward T. Tucker	Northeast Regional Director	Cranbury, NJ	Phone - 609 / 409 - 2034

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COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR
HARRISBURG

GOVERNOR'S ACTION TEAM
100 PINE STREET, SUITE 100
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July 6, 2000

Mr. David Hemphill
Assistant Vice President
Industrial & Economic Development
CSX Transportation
500 Water Street - J855
Jacksonville, FL 32202

Dear Dave:

I am writing in response to your request that the Commonwealth of Pennsylvania, in partnership with CSXT, accept the expenditure of \$200,538 for the installation of two turnouts to serve the U.S. Gypsum facility at Aliquippa, PA. The funds would be provided under the CSX Economic Development Rail Customer Incentive Program.

Upon review of your request, I feel that it falls within the spirit and intent of the agreement that was reached between The Commonwealth and CXS in connection with the CSX/Norfolk Southern acquisition of Conrail. Therefore, I accept the expenditure \$200,538 from the CSX Economic Development Rail Customer Incentive Program, as detailed in your June 28, 2000 letter and attachments.

Sincerely,

Steve Kohler
Director

cc: John W. Snow ✓
James Sheehan
Brad Mallory
Joy Pooler
bcc: John Brown

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Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, Virginia 23510-9241

John V. Edwards
General Attorney

Writer's Direct Dial Number

(757) 629-2838
(757) 533-4872 (Fax)
john.edwards@ns.com

April 26, 2004

Via Facsimile - 219-844-3400
and U.S. Mail

J. Justin Murphy, Chief of Staff
Four City Consortium
6949 Kennedy Avenue, Suite E
Hammond, IN 46323

Dear Mr. Murphy:

I am responding to your letter of April 20, 2004, which inquires as to the future of the relationship between Norfolk Southern and the Four City Consortium after the termination of the formal Conrail Transaction oversight. Before responding directly to that letter, I want to thank you and the Four City Consortium for the hard work, leadership and support that the Four City Consortium has provided over the past few years to help make the Conrail Transaction a success.

The formal processes set forth by the Surface Transportation Board have worked in forging a relationship that will outlast formal oversight. Both the railroad and the members of the Consortium have worked diligently at that relationship, and the once mandated process of meeting and specific reporting has now evolved into a voluntary, informal and cooperative process. We believe that the process works well to minimize the adverse effects on the communities you represent, and we know that it is of significant value to the railroad. Based on your letter, I take it you would agree.

Your letter asks whether Norfolk Southern is willing to continue to be engaged in this voluntary, informal and cooperative process, even after the end of formal oversight. Absolutely. With regard to blocked crossings, we have in place a settlement agreement reached in December 2003, and we reiterate our intention to comply with that agreement. (Of course, we do not mean for anything in this letter to be construed as modifying that agreement.) We believe it important to attend meetings with representatives of the Four City Consortium on matters of mutual concern, and to periodically provide information that may be of use in those discussions. We believe the cooperative spirit that now characterizes our relationship can continue to provide important benefits for each of us in the coming years.

Sincerely,

John V. Edwards



Peter J. Shudtz
Vice President-Federal Regulation and
Washington Counsel

Suite 560, National Place
1331 Pennsylvania Avenue, NW
Washington, DC 20004
Phone (202) 626-4929
Fax (202) 783-5929
Cell (804) 347-6492
Peter.Shudtz@csx.com

April 28, 2004

J. Justin Murphy, Chief of Staff
Four City Consortium
6949 Kennedy Avenue, Suite E
Hammond, IN 46323

Re: Surface Transportation Board Conrail Proceeding

Dear Mr. Murphy:

I thank you for your letter of April 21, 2004 concerning the scheduled termination of the Surface Transportation Board's five-year oversight period for the Conrail Transaction. CSX believes that the Conrail Transaction has benefited the four cities of East Chicago, Gary, Hammond and Whiting, Indiana, and we are very pleased that you concur with that assessment.

In connection with the Conrail Transaction, CSX made a substantial capital investment within the Chicago terminal area, including the Four Cities, to facilitate the smooth and expeditious movement of freight rail traffic. This investment has accomplished this goal, and has also reduced blockage of the many rail/highway grade crossings in the Four Cities area. In addition, pursuant to our October 26, 1998 and January 3, 2001 Settlement Agreements, CSX made additional investments in the Four Cities area to upgrade highway/rail at-grade crossing signal warning systems at specified important crossings, committed funds for other safety improvements, contributed to the Railroad Avenue grade separation project, and implemented a number of operational improvements that have further reduced grade crossing blockage and improved safety in the Four Cities area. Moreover, CSX representatives have met and consulted with representatives of the Four Cities on a regular basis regarding rail operations, real property and economic development issues, and a proposed major infrastructure project (the reconstruction of the elevated IHB/Conrail Dunes Park Branch).

We look forward to continuing our meetings and discussions, which have been productive for many years without the need for any intervention by the Board. With the passage of time, our reporting and meetings may have become less formal, but they have been no less beneficial. Even with the end of formal oversight, we will continue to meet with the Four Cities to discuss matters affecting our rail operations and facilities in your area. Continuing cooperation will serve the interests of both CSX and the Four Cities.



Peter J. Shultz
Vice President-Federal Regulation and
Washington Counsel

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Washington, DC 20004
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Fax (202) 783-5929
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Peter_Shultz@csx.com

We will contact you shortly to discuss how we can best work together during the next several years.

We appreciate your efforts over the last seven years as Chief of Staff, and the efforts of representatives of each of the Four Cities, to ensure that the Conrail Transaction benefited the citizens of northwest Indiana while providing the basis for a sound rail transportation network in the eastern United States.

With best regards.

Sincerely,

A handwritten signature in dark ink, appearing to be "P. J. Shultz", written over a horizontal line.

Peter J. Shultz
Vice President-Regulatory Affairs and
Washington Counsel

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PUBLIC VOLUME

CSX-5

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)

**REPLY COMMENTS OF APPLICANTS
CSX CORPORATION AND
CSX TRANSPORTATION, INC.,
TO COMMENTS MADE ON THEIR SECOND ANNUAL SUBMISSION**

VOLUME I – PUBLIC VOLUME

Of Counsel:

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Samuel M. Sipe, Jr.
David H. Coburn
Carolyn D. Clayton
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795

Counsel for Applicants
CSX Corporation and
CSX Transportation, Inc.

Dated: August 6, 2001

V. RESOURCES WAREHOUSING & CONSOLIDATION SERVICES, INC.

RWCS has had a long dialogue with the Board and with CSX and, unfortunately, has not until now made it quite plain what it is that it wants. What it wants is something that CSX never promised, and is under no duty to provide, to RWCS.

In Decision No. 89, served July 23, 1998, the Board had the following to say about RWCS:

RWCS is a freight forwarder that operates out of warehouse and terminal facilities located in North Bergen, NJ, that are, and will continue to be, exclusively served by the New York Susquehanna & Western Railroad (NYS&W), owned by the Delaware Otsego Corporation. In response to RWCS' request that it be afforded equal access to CSX and NS, applicants have stated that RWCS "will be able to connect to NS via Passaic Junction off the Southern Tier on the Conrail lines to be allocated to NS; and to CSX via a connection to be built from North Bergen to Little Ferry." CSX/NS-176 at 168. On brief, RWCS indicates that, while it accepts applicants' statement that it will be provided the dual access it seeks, it is nonetheless concerned that CSX and NS "have in fact purchased NYS&W and are the co-owners." RWCS-4 at 4. RWCS requests that we impose a condition to ensure that the North Bergen-Little Ferry connection is built and that applicants take no steps to restrict its opportunity for access to each of their systems. We will require applicants to hold to the representations they have made to RWCS. (Decision No. 89 at 123; footnotes omitted.)

The Board was thus under the impression that RWCS was a freight forwarder and presumably had, in that capacity, cargo to submit for shipment. It turns out, however, that RWCS is not a shipper; in fact, it vehemently denies that it is a shipper – it has no cargo to submit for shipment to CSXT or to the NYS&W, which is the only carrier physically serving it.

As to the “commitments” made to RWCS of which the Board spoke, the only commitments that were made in the course of the proceeding before the Board which led to the Board’s analysis and disposition just quoted were the following, contained in the Rebuttal Verified Statement of CSX’s witness John W. Orrison at 128 (CSX/NS-177, Vol. 2A, at 599).⁶ These commitments simply cover the issue whether there would be a physical ability for CSX to participate in movements tendered for shipment by shippers at the intermodal facilities located at RWCS’s property:

Resources Warehousing & Consolidation Services (RWCS) has intermodal facilities located on the southern terminus of a north/south rail line owned and operated by the New York Susquehanna & Western Railroad (NYS&W). While RWCS can be served directly now, and in the future, only by NYS&W, the CSX and NS Operating Plans will provide RWCS with the dual access it seeks. NYS&W will be able to connect to NS via the Passaic Junction off the Southern Tier on the Conrail lines allocated for use by NS, and to CSX via a connection to be built from Bergen to Little Ferry.

The connection between CSX and NYS&W at Little Ferry just mentioned was in fact built.

By the first round (year 2000) of General Oversight filings, it started to become evident that, unlike a freight forwarder, RWCS did not have cargo itself

⁶ A similar statement was made in the narrative of the joint rebuttal, CSX/NS-176, Vol. 1, at 167-68, as cited by the Board:

RWCS will be provided the dual access it seeks. Orrison RVS at 128. It can only be served now, and in the future, by NYS&W. It will be able to connect to NS via Passaic Junction off the Southern Tier on the Conrail lines allocated to NS; and to CSX via a connection to be built from North Bergen to Little Ferry. Id. at 128.

to tender to CSXT or its connections, and that only its customers had such cargo. CSX brought the following to the Board's attention in its August 3, 2000, reply to the comments made by RWCS at that time that CSX had not lived up to its commitments:

Resources Warehousing and Consolidation Services
("RWC"). —RWC operates a small private intermodal terminal in North Bergen, NJ, on the New York, Susquehanna & Western Railroad ("NYSW") and provides container yard and warehousing services for international ocean carriers. *See* Decision [No. 89] at 123. It complains that it does not have competitive intermodal service from CSX despite representations that such service would be established post Split. RWC also complains that CSX has refused to meet to discuss service issues.

CSX understands that the primary international ocean carrier customer utilizing RWC is Hanjin which routes its Chicago/North Jersey traffic via NS connecting to NYSW. CSX understands that Hanjin utilizes NS's Landers Yard intermodal terminal in Chicago and has a service contract with NS.

The fact is that RWC does have access to intermodal service provided by CSX Intermodal, Inc. ("CSXI") with rail transportation by CSXT, for its business. To the extent that RWC has container or trailer business and wishes to utilize that intermodal service, it can easily access any of the CSXI terminals at Little Ferry, North Bergen and Kearny, all quite close to it in Northern New Jersey. As to direct intermodal service at RWC's own facility, CSX notes that the RWC facility is a local station on NYSW. Therefore any direct service involving CSX must be routed interline via NYSW and CSX. CSX has met with NYSW to arrange post-merger joint-line intermodal service to the RWC facility. Indeed, as a result of those arrangements, a service proposal was made by CSX to Hanjin for direct service in conjunction with NYSW to the RWC facility. However, this proposal was declined and Hanjin retained its existing service route via NS and NYSW. CSX is willing to work with other ocean carriers or other customers of RWC along with NYSW to consider future opportunities for direct service to the RWC facility.

CSX-2 at 9-10.

Following that, in Decision No. 5 in the present proceeding, the Board said the following:

RWCS . . . claims that it has been denied the access to competitive intermodal service by both CSX and NS that it was promised by applicants. RWCS already has the access to both carriers that it was promised, in each instance via an interline arrangement with the shortline, NYS&W. RWCS complains, however, that, although NS now serves RWCS' North Bergen facilities, CSX does not. CSX, however, does stand ready to serve RWCS' North Bergen facilities; the problem here is not with CSX but with RWCS' shippers, which (at least to date) have preferred to tender their traffic to NS. Unless RWCS' shippers switch their traffic from an NS/NYS&W routing to a CSX/NYS&W routing, CSX will not be able to participate in these joint movements, even though CSX service is available. Thus, RWCS has provided no basis for relief. (Decision No. 5, served Feb. 2, 2001, at 18.)

The Board thus pointed to the critical factor: RWCS seemed to have no cargo to ship; CSX was very willing to carry the cargo of RWCS's customers tendered at the RWCS facility to CSX's connection NYS&W, but RWCS's principal customer unfortunately preferred NS service, possibly because it used NS facilities at the other end of the rail move, in Chicago. CSX's commitments to RWCS have only been to give cargo consigned by shippers to or from its facility access to the CSX system, via interchange with NYS&W, the only rail carrier physically serving the facility. CSX remains willing to do that.

The obligation of carriage owed by railroads is to shippers, and to the extent that RWCS was a shipper (which RWCS firmly denies that it is), or to the extent that entities had cargo which they wished to have transported to and from the

RWCS facility, CSX made it plain that it would serve them. The case of the attempt to sell Hanjin NYS&W/CSXT joint service from the RWCS facility, discussed by CSX and the Board in last year's Oversight proceedings, is a clear example of this.

Rail carriers do indeed have certain duties to serve shippers – and service to shippers is the lifeblood of CSXT's business. But railroads undertook no obligations to promote the business of entities which want to sell ancillary services to shippers (such as warehousing and terminal facilities). Railroads, of course, may choose to promote the business of other service providers if they find it advantageous, but CSX has never promised to do so in this situation. It has endeavored to work with the major ocean carrier client of RWCS, and would be glad to provide a service plan to any other such customers interested in offering cargo at the RWCS facility.

It now is evident, however that that is not what RWCS wants. That is made crystal clear by the correspondence of Mr. Frank Folise with Mr. Allen Peck of CSX Intermodal and Mr. Melvin Clemens of the Board, contained in RWCS's present filing with the Board. RWCS wants CSX to establish a set of intermodal rates and services in the abstract to be applicable with respect to movements to and from the RWCS facility, without regard to the identity of the shipper, the particular destination point, the frequency and volume of service, *etc.* That is not anything that CSX has ever promised to do. RWCS cites the requirements in the Board's Decision No. 89 requiring applicants to fulfill the promises they make in their presentation to the Board. But RWCS does not quote any promises at all, and

what was in fact promised is quoted by us above and is something entirely different.

CSX maintains terminals in a number of places in Northern New Jersey to which RWCS can take its clients' intermodal cargo, the most convenient to RWCS being Little Ferry and Kearny. Alternatively, CSX will participate in movements of RWCS's clients' cargo in connection with NYS&W if they are to be shipped from the RWCS facility itself. No other promises or assurances were given to RWCS.⁷

⁷ In its comments (RWCS-2 at 2), RWCS says that CSX and NS "own" NYS&W. That is not so. As a matter of clarification, CSX and NS each have ownership interests in certain securities of NYS&W's parent company and are entitled to elect one director each to the seven-person board of directors of that parent. Neither the securities holdings nor the board seats constitute control of NYS&W.

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**NORFOLK
SOUTHERN**

Norfolk Southern Corporation
Strategic Planning
Three Commercial Place
Norfolk, Virginia 23510-2191
757 629-2887

Bill Schafer
Director
(757) 629-2677
(757) 533-4884 FAX

June 10, 1997

Mr. Richard D. Robey
President
North Shore Railroad Company
856 Priestly Avenue
Northumberland, PA 17857

Dear Dick:

Mr. Goode has forwarded your May 23, 1997 letter to me for handling. This is also an appropriate time to document the understanding that was reached last week among you, Brian Wotring, Howard Starkloff and Roy Blanchard in Burlington, Vermont.

We offer the following, effective upon Norfolk Southern Railway Company (NS) gaining control of Conrail properties, assuming STB approval. NS will:

- Grant the North Shore Railroad, the Nittany & Bald Eagle Railroad, the Lycoming Valley Railroad, the Shamokin Valley Railroad, and the Union County Industrial Railroad (hereafter the Five Railroads) overhead trackage rights over the Harrisburg-Buffalo line between Lock Haven and Sunbury, Pennsylvania. The purpose of these trackage rights is to enable the Five Railroads to connect with each other, and is subject to execution of requisite agreements with NS. Also, the operating employees of the Five Railroads will be required to qualify for operation over NS lines.
- Grant the Five Railroads the option to interchange traffic, with the Canadian Pacific (CPRS) at Sunbury, Pennsylvania, originating or terminating at local points on the CPRS or at points located on carriers that connect only with CPRS.
- Work with the Five Railroads and the Wellsboro & Corning Railroad, the Juniata Valley Railroad, and the Stourbridge Railroad, to protect traffic currently moving to and from CSXT points so that these railroads are not inadvertently threatened with the loss of this business by a transload facility or other means. These railroads will identify such moves, and NS will work to address each one from a marketing and commercial standpoint so that what is on rail today stays on rail tomorrow (the Heinz business to Kankakee is an example).

Our goal is to minimize potential harm to present traffic lanes in which the Five Railroads participate. We want to help you keep what you have today and to work with you to

Mr. Richard D. Robey
June 10, 1997
Page Two

grow the business for *both* of us. Connecting the Five Railroads, protecting the Heinz traffic, and providing access to CP that does not harm Norfolk Southern are first steps. The rest is up to us both.

Sincerely,

Bill Schafer

cc: David Goode
Sam Mason
Steve Eisenach
Brian Wotring

19

RICHARD R. WILSON, P.C.

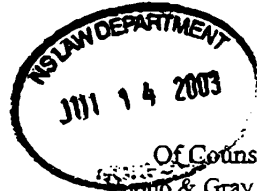
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July 10, 2003

John V. Edwards, Esq.
Law Department
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191

Re: LVRC - NS Trackage Agreements via CP Access

Dear John:

As you know, a small group of shippers have continued their efforts to revise the LVRC-NS Trackage Agreement to eliminate limitations on CP access for shipments to and from western Canada points. I recently provided you with an exchange of correspondence between myself and Eric Hockey, the attorney for these shippers regarding concerns he expressed about administrative aspects of the Trackage Agreement. I have also provided you with correspondence sent by one of these shippers to Melvin S. Clemens, Director of the Office of Enforcement and Compliance of the Surface Transportation Board. Fortunately, Mr. Clemens determined not to become involved in this matter and suggested that the shippers address their concerns to the Board in the NS-Conrail Oversight proceedings.

SEDA-COG Joint Rail Authority plans to file an oversight statement with the Board but will not endorse the shipper position. The Authority's position is that further negotiations with NS can resolve any remaining issues with respect to the LVRC-NS Trackage Agreement. Moreover, the Authority understands that the Board is unlikely to become involved in consensual trackage rights between connecting carriers.

The agitation for access to western Canada points via Sunbury, PA is likely to diminish this year. In the last several years, drought conditions in the eastern United States made access to western Canada grain points an important consideration for several members of the shipper group. With the change in weather and the elimination of drought conditions in the eastern United States, we believe it is unlikely that access to western Canada will be as important as it once was to these shippers. Furthermore, the Corning Ashai video plant has now closed depriving the shipper group of one of its important financial contributors. If the NS marketing group could select one or two other shippers and enter into some favorable commercial

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arrangements which would eliminate their incentive to continue participating in the shipper group, this entire effort could evaporate.

Nonetheless, Mr. Robey wants NS to be aware that we have consistently and adamantly advised both the shippers and SEDA-COG Joint Rail Authority that the LVRC-NS Trackage Agreement and CP access provided thereby is consistent with all prior filings made with the STB in the Conrail proceeding and that the terms of the Trackage Agreement are consistent with Bill Ingram's letter of June 10, 1997. Attached for your information is a draft letter which we had prepared to send to Melvin Clemens at the STB. It sets forth the Lycoming Valley Railroad position with respect to the claims made by the shipper group. At this point, Mr. Robey is not inclined to direct further attention to the shipper group oversight statement by filing a separate response, but the enclosed draft letter to Mr. Clemens may prove useful to NS as background information for whatever response NS decides to make to the shipper group.

If we can be of any further assistance in this connection, please do not hesitate to contact us.

Very truly yours,

Richard R. Wilson, P.C.

A handwritten signature in black ink, appearing to read "Richard R. Wilson", written in a cursive style.

Richard R. Wilson

RRW/klh
Enclosures
xc: Mr. Richard D. Robey

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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)

REPLY OF NORFOLK SOUTHERN CORPORATION
AND NORFOLK SOUTHERN RAILWAY COMPANY

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*Attorneys for Norfolk Southern Corporation
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Date: August 4, 2003

The "Lackawanna Coalition"

The "Lackawanna Coalition," which describes itself as "an independent coalition which advocates on behalf of rail riders on New Jersey Transit's Morris & Essex and Montclair-Boonton Lines," (Coalition Comments at 1),⁷ submits a letter that raises issues regarding two rail lines: the Boonton Line, a line owned by PRR⁸ and operated by NS between Hoboken and Dover, New Jersey, and the Lackawanna Cutoff Line, an abandoned former Conrail line between Port Morris Junction and the Pennsylvania/New Jersey state line near the Delaware Water Gap.⁹ (The Coalition refers to the Boonton Line as a shared asset, but it is not; it is a PRR-allocated asset operated by Norfolk Southern.)

⁷ The Coalition provides no indication as to what persons or entities comprise it. The Coalition has never before appeared in either the main Conrail control proceeding or in this general oversight sub-docket.

⁸ PRR refers to Pennsylvania Lines LLC.

⁹ The bulk of what the Coalition refers to as the Lackawanna Cutoff Line was abandoned by Conrail in the late 1970's. The abandoned Lackawanna Cutoff Line connects with an 8.4-mile line segment owned by PRR and allocated to NS' operation; that PRR line segment has been leased to the Monroe County Rail Authority.

The Coalition makes an astonishing request that the Board step in and simply confiscate significant privately-held property—namely, the Boonton Line—and hand it to someone else, primarily in pursuit of an extraordinarily speculative future commuter operation. The Coalition's comments are unfounded, and its bald attempt to commandeer PRR property is utterly baseless and should be rejected.

First, the Coalition says it supports a proposal by the New York & Greenwood Lake Railway Co. to operate commuter passenger service on the Boonton Line, following cessation of service by New Jersey Transit (NJT) on September 20, 2002. In this regard, the Coalition expresses “concern” that NS’ “recent removal of one of the tracks” of the formerly double-tracked line has reduced the likelihood of restoring passenger service on the line and that NS “could decide to discontinue operations” on the DB drawbridge, “thereby rendering restoration of commuter service impossible.” Coalition Comments at 1. The Coalition concludes that the STB should simply take the Boonton Line away from NS and give operation and control of the line to some “local, New Jersey-oriented entity.”¹⁰ *Id.* at 2.

Second, the Coalition says it supports the rebuilding of the “Lackawanna Cutoff Line between Morris Jct. and the Pennsylvania side of the Delaware Water Gap” for the restoration of passenger rail service. *Id.* It asserts that the rebuilding could allow access to the New York area by Canadian Pacific/Delaware & Hudson, via the Boonton Line. The Coalition, however, expresses a vague concern that NS “could engage in

¹⁰ The Coalition further suggests that “[s]uch an entity could be either an independent railroad company established to operate the line at issue, or a consortium of existing short line railroads currently operating in the region (such as the Morristown & Erie).” *Id.*

unspecified “practices” that will “have impact of preventing competition from D&H.” *Id.* at 2.¹¹

To respond to the Coalition’s comments, it is necessary, at the outset, to take a step back and recall first principles. Fundamentally, conditions are to be imposed only to ameliorate or eliminate harms that result from the transaction itself; “[c]onditions will generally not be imposed unless the merger produces effects harmful to the public interest that a condition will ameliorate or eliminate.” *CSX Corp. et al.—Control and Operating Leases/Agreements—Conrail Inc. et al.*, 3 S.T.B 196, 277 (1998). In short, a condition “must address an effect of the transaction. . . .” *Id.* at 278.

Based on those principles alone, the Board should reject the Lackawanna Coalition’s request, as the issues it raises and the forced line divestiture it seeks have nothing whatsoever to do with any purported harm arising from the Conrail transaction. With respect to the Boonton Line, the Coalition itself admits that the problem it seeks to address—the loss of certain passenger service on the line—arose from a decision by NJT to make certain changes in its operations that took effect last September. See Coalition Comments at 1; see also NJT “Customer Notice” attached as Exhibit 1. It had nothing to do with the Conrail transaction. Similarly, as NJT notes on its website, the Lackawanna Cutoff Line project is a stand-alone proposal that involves the possible

¹¹ The Coalition also generally asserts that NS “has attempted to entice shippers to move away from locations along [the Boonton Line] . . . in favor of other locations on its line in Pennsylvania,” and leaps to the conclusion that, in essence, NS “does not wish to actively compete with CSX in New Jersey.” Coalition Comments at 1. First, NS has not “enticed” shippers off the Boonton Line. Second, NS, which accesses the North Jersey Shared Assets Area via a number of routes, does compete vigorously with CSX in northern New Jersey and has every intention of continuing to do so. See also the discussion below under the heading “North Jersey Shared Assets Area.”

reconstruction and reactivation of a line that Conrail abandoned in the 1970's—decades before the Conrail transaction. See "Lackawanna Cutoff – Background," *available at* http://www.njtransit.com/an_capitalprojects_project019.shtm (attached as Exhibit 2). Again, it has nothing whatsoever to do with remedying a "harm" caused by the Conrail transaction. Thus, even if one were to take the Coalition's allegations and assertions at face value, it is not entitled to relief under the Board's well-established standards for exercising its conditioning power.

Moreover, the Coalition's comments contain a number of factual inaccuracies and fail to mention various facts that further undermine its request for Board action. First, the Coalition repeatedly asserts that the Boonton Line is part of the North Jersey Shared Assets Area. As already noted, that is not correct; the Boonton Line is a PRR line allocated to NS' operation. See, e.g., Finance Docket No. 33388, CSX/NS-25 (Control Application) Vol. 8B pocket part, containing Transaction Agreement Schedule 1 Attachment II (system map). Additionally, as for the "proposal" by the New York & Greenwood Lake Railway Company ("NYGL") to operate commuter passenger service, there is no agreement in place, and no negotiations in progress, for NYGL to operate such service. NS has repeatedly asked NYGL to provide a viable business plan for such service, including financial information and proof of sufficient liability insurance, neither of which NYGL has provided. In short, NYGL has not demonstrated that it has the capability to provide the service that the Coalition supports, and there is no agreement in place for it to do so. NJT also has recognized as much. See Exhibit 1. Finally, NS believes the Boonton Line is important to NS' future operating capabilities. NS has no present intention of abandoning the Line; although NS might not presently

operate over a portion of the Line, it is, and will remain, available and accessible in the event future business opportunities arise.

As for restoration of the Lackawanna Cutoff Line, apart from the essential point, discussed above, that the project has no bearing on any "harm" caused by the Conrail transaction, and thus is inappropriate as the subject of a Board-imposed condition here, a number of other points should be made. First, publicly-available information estimates the total project cost for restoring the Lackawanna Cutoff at some \$200-230 million, not including property acquisition costs, and indicates that the project is not funded. See Exhibit 2. The Coalition has provided no evidence to indicate that sufficient funding will be available to accomplish the project anytime in the foreseeable future.

Second, as a group self-described as advocating for rail passengers (Coalition Comments at 1), the Coalition's primary goal in supporting rebuilding and reactivation of the Lackawanna Cutoff purportedly is the restoration of passenger service over the Line. But even assuming, for the sake of argument, that the Lackawanna Cutoff project were actually completed some time in the future, the passenger service that the Coalition apparently wants could be established over that Line without regard to NS' Boonton Line. Instead, that service could be routed over NJT's Morristown Line. In short, restoring passenger service over the Lackawanna Cutoff would not require the extraordinary line divestiture that the Coalition demands.

Perhaps realizing this, the Coalition goes on to add, as a further reason for forcing the divestiture of the Boonton Line, that restoring the Cutoff could allow access to the New York area for freight service by Canadian Pacific/Delaware & Hudson, via the Boonton Line. The Coalition expresses "concern" that NS "could engage in

practices that will have the impact of preventing competition from CP/D&H." Coalition Comments at 2. This argument is specious. As the Board has recognized, the Conrail transaction created new direct, two-carrier competition between NS and CSX in numerous markets where Conrail did not face competition from other major railroads before, including northern New Jersey. See *CSX Corp. et al.—Control and Operating Leases/Agreements—Conrail Inc. et al.*, 3 S.T.B. 196, 247 (1998). That extraordinarily pro-competitive restructuring, far from being a "harm" that must be remedied, is one of the central public benefits of the Conrail transaction. Nevertheless, the Coalition asks the Board here to accept the utterly remarkable proposition that a transaction that *increased* access from one Class I carrier to two in northern New Jersey (and numerous other areas) must be further conditioned to force access by yet a *third* carrier. There is absolutely no basis in fact or in law for that astounding proposition, and the Board should reject it in no uncertain terms.

Further, the "concern" that the Coalition raises about NS in connection with the Lackawanna Cutoff amounts to nothing more than a prediction that NS might do something in the future that the Coalition would label as "anticompetitive." See Coalition Comment at 2. Such vague, unsubstantiated and conclusory allegations about possible future unidentified events provide no basis whatsoever for Board action—particularly the draconian step the Coalition advocates of forced divestiture of a significant NS-operated rail line.

NS wishes to be clear that all of the foregoing is not meant to imply that restoring the Lackawanna Cutoff Line may not be a project worthy of pursuit or support as a stand-alone project. NS expresses no view on that question here, and the company is

always ready and willing to discuss with NJT and others possible projects that NS believes make operational and commercial sense. The point here, rather, is that this is not the proper forum for debating the question; in the context of this proceeding, the Coalition has no legal or factual basis for seeking Board-imposed confiscation of PRR property in pursuit of that project.