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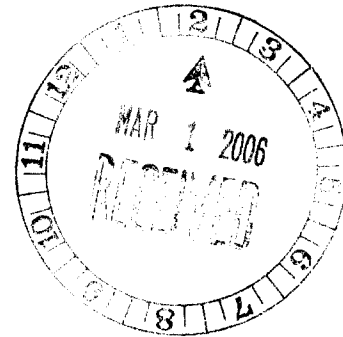
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March 1, 2006

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board - Case Control Unit
1925 K Street, N.W.
Washington, D. C. 20423



Re: Finance Docket No. 33388 (Sub-No. 100)
CSX Corporation, et al.— Control and Operating Leases/Agreements
— Conrail Inc., et al. (Petition for Supplemental Order)

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are the original and ten copies of the Reply of Bridgewater Resources, Inc.'s and ECDC Environmental, L.L.C. to Norfolk Southern Corporation and Norfolk Southern Railway Company's Motion to Dismiss and the Reply of Bridgewater Resources, Inc. and ECDC Environmental, L.L.C. to Norfolk Southern Corporation and Norfolk Southern Railway Company's Motion for Protective Order. Also enclosed are three copies of a CD containing the text of these Replies including the supporting Verified Statement of Paul H. Reistrup in WordPerfect 8.0 format.

Kindly acknowledge receipt of these materials by date-stamping and returning the enclosed extra copy of this letter to our messenger.

Sincerely,

Christopher A. Mills

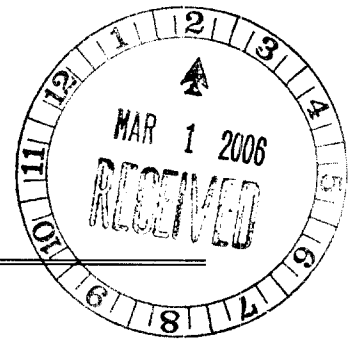
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cc: David M. Konschnik (STB Office of Proceedings)
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BEFORE THE
SURFACE TRANSPORTATION BOARD



CSX CORPORATION AND CSX	)	
TRANSPORTATION, INC., NORFOLK	)	
SOUTHERN CORPORATION AND	)	
NORFOLK SOUTHERN RAILWAY	)	Finance Docket No. 33388
COMPANY – CONTROL AND	)	(Sub-No. 100)
OPERATING LEASES/AGREEMENTS –	)	
CONRAIL INC. AND CONSOLIDATED	)	
RAIL CORPORATION	)	(Petition for Supplemental Order)

REPLY OF BRIDGEWATER RESOURCES, INC. AND ECDC
ENVIRONMENTAL, L.L.C. TO NORFOLK SOUTHERN CORPORATION
AND NORFOLK SOUTHERN RAILWAY COMPANY'S
MOTION FOR PROTECTIVE ORDER

BRIDGEWATER RESOURCES, INC.
ECDC ENVIRONMENTAL, L.L.C.

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: March 1, 2006

By: Christopher A. Mills
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Their Attorneys

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	)	
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COMPANY – CONTROL AND	)	(Sub-No. 100)
OPERATING LEASES/AGREEMENTS –	)	
CONRAIL INC. AND CONSOLIDATED	)	
RAIL CORPORATION	)	(Petition for Supplemental Order)
	)	

Pursuant to 49 C.F.R. § 1104.13, Bridgewater Resources, Inc. (“BRI”) and ECDC Environmental, L.L.C. (“ECDC”) hereby reply to the Motion of Norfolk Southern Corporation and Norfolk Southern Railway Company for Protective Order.

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In its Motion for Protective Order, NS seeks to quash BRI/ECDC's Discovery Requests¹ or, in the alternative stay all discovery pending the Board's decision on NS's Motion to Dismiss the Petition. NS's request that the BRI/ECDC's Discovery Requests be quashed is unsupported and should be denied. Assuming the Board denies NS's Motion to Dismiss, it should include in its decision an order directing NS and Conrail to respond promptly to BRI/ECDC's Discovery Requests.

**I. The Board Should Deny NS's Request to Quash
Discovery as this Is Not an Informal Proceeding**

NS claims that BRI/ECDC's Petition initiates an informal proceeding and as a result BRI is not entitled to discovery. While BRI/ECDC agree that 49 C.F.R. § 1114.21(a)(1) does not allow for automatic discovery in informal proceedings, NS uses a definition of "informal proceeding" which applies only in relation to filing fees and not in the discovery context.

NS argues that BRI/ECDC's Petition involves an informal proceeding by reference to 49 C.F.R. § 1002.2, which lists filing fees for various types of proceedings. Because the Petition does not fit squarely into one of the categories listed in § 1002.2(f), NS argues that it should be classified as a request for "STB adjudicatory services not otherwise covered," the filing fee for which is included under "Informal Proceedings" in Part VI of that subsection. This is sheer bootstrapping. The classification of proceedings

¹ BRI/ECDC's discovery requests are attached to NS's Motion for Protective Order as Exhibit 1.

for purposes of filing fee has nothing to do with discovery matters, which are governed by 49 C.F.R. § 1114.21. There is nothing in the Board's regulations which indicates that the filing fee provisions of § 1002.2(f) are intended to define whether a proceeding is an "informal proceeding" for purposes other than filing fees, and there is no reference to this section in the discovery regulations.

While ECDC/BRI's Petition apparently has been categorized under "informal proceedings" for purposes of the filing fee, the Petition relates directly to a major rail consolidation proceeding involving two or more Class 1 railroads. Rail merger proceedings fall under Part IV of § 1002.2(f) ("Rail Applications to Enter Upon a Particular Financial Transaction or Joint Agreement") and are certainly considered formal proceedings.

The proper definition of what constitutes an "informal proceeding" for discovery purposes is found in the Board's discovery regulations at 49 C.F.R. § 1114.21. Section 1114.21(a)(1) defines an informal proceeding as follows:

For purposes of this subchapter, informal proceeding are those not required to be determined on the record after hearing and include informal complaints and all proceedings assigned for initial disposition to employee boards under §1011.6.

This provision indicates that the definition of "informal proceeding" turns on whether the proceeding requires a hearing on the record. The regulations indicate that informal proceedings would include informal complaints and procedural matters governed by § 1011.6. BRI/ECDC's Petition does not fall under either of these categories.

Informal complaints are governed by 49 C.F.R. §§ 1130.1 to 1130.2. Such complaints have many of the same elements as formal complaints; the difference is that under these procedures the parties can attempt to resolve the matter through correspondence, thus avoiding the time and expense of a formal complaint proceeding. If resolution using the informal procedures is not achieved, a formal complaint may be filed. See 49 C.F.R. § 1130.1. The classification of a proceeding as formal or informal is not based on the subject matter of the complaint, but on the election of the party bringing the matter to the Board. It is clear that BRI/ECDC have made no election to resolve the subject matter of their Petition under the informal complaint procedures.

BRI/ECDC's Petition clearly is not a matter that falls under § 1011.6. Section 1011.6 allows the Board to delegate procedural matters to employees. ECDC's Petition is clearly not a procedural matter. It seeks clarification or (alternatively) modification of a decision approving consolidation of Class I railroads – and thus requires a substantial evidentiary record as well as legal argument. Indeed NS does not argue that BRI/ECDC's Petition is merely procedural in nature.

Examples of matters that would be considered procedural under § 1011.6 include:

the assignment of the time and place for hearing; the assignment of proceedings to administrative judges; the issuance of decisions directing special hearing procedures; the establishment of dates for filing statements in cases assigned for hearing under modified (non-oral hearing) procedure; the consolidation of proceedings for hearing or disposition. . . .

49 C.F.R. §1011.6(c)(1). These items are all clearly procedural in nature and require no determinations of law or fact. The instant Petition is simply not the type of matter covered by this section. In order to obtain the requested clarification or a supplemental order, BRI/ECDC must provide evidentiary support for their claims. This requires a developed record to resolve disputed factual issues, as demonstrated in BRI/ECDC's companion Reply to NS's Motion to Dismiss, and thus a hearing. While the Board may not conduct an oral hearing, it will review the evidence provided on the record and make substantive factual and legal determinations.

II. The Board Should Not Quash Discovery Based on NS's Allegation that No Facts Are In Dispute

NS argues that the Board should deny discovery because BRI's Petition presents legal questions rather than factual questions and therefore discovery would not aid the Board in reaching a decision. NS cites no cases, statutes or regulations supporting its position, and indeed there is no precedent for limiting discovery based on such a standard. The standard for discovery is "any matter not privileged, which is relevant to the subject matter involved in a proceeding. . . ." 49 C.F.R. 1114.21(a)(1). In addition, "[i]t is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." 49 C.F.R. 1114.21(a)(2).

NS does not argue that the information sought by BRI/ECDC's discovery requests is not relevant or that it will not lead to the discovery of admissible evidence.

Instead it argues that no factual matters are in dispute. However, as discussed in BRI/ECDC's separate Reply to NS's Motion to Dismiss, a number of factual issues are in dispute. The language in the Transaction Agreement concerning the limits of the North Jersey Shared Assets Area ("NJSAA") and other relevant documents is ambiguous, and underlying information regarding that language is both relevant and discoverable. Such information is also relevant to determining the benefits and burdens for the public interest inquiry related to the supplemental order aspect of BRI/ECDC's Petition. Discovery in this case is necessary because NS has access to relevant information which BRI/ECDC cannot otherwise obtain.

III. In the Unlikely Event that the Board Finds this to be an Informal Proceeding, the Board Should Allow Discovery

In the unlikely event that the Board finds this to be an informal proceeding in which BRI/ECDC are not automatically entitled to discovery, BRI/ECDC request that the Board treat this Reply as a request for permission to seek discovery in this matter. This proceeding requires a factual inquiry regarding a condition to a decision in a major rail merger proceeding and the intent of the parties in determining the boundaries of the NJSAA in the Port Reading Jct. area. BRI/ECDC only have access to the publicly filed documents in this proceeding, which BRI/ECDC have shown to be ambiguous. As a result, BRI/ECDC need additional documents related to the extent of Conrail's operating rights in the area. Their discovery requests are narrowly tailored to ensure that the burdens on NS and Conrail are minimized to the maximum extent possible. Denying

BRI/ECDC the opportunity to obtain this necessary information would fundamentally prejudice their ability to present their case.

**IV. NS's Alternative Request to Stay Discovery
Pending Resolution of Its Motion to Dismiss**

As an alternative to its request to quash discovery, NS asks the Board to stay discovery pending the resolution of its Motion to Dismiss. NS (and Conrail) have exercised self-help in this regard by refusing to respond to BRI/ECDC's Discovery Requests within the period provided in the Requests (which expired on February 21, 2006).

BRI/ECDC recognize as a practical matter that the Board is unlikely to order NS and Conrail to respond to BRI/ECDC's Discovery requests while the Motion to Dismiss and Motion for Protective Order are pending. However, assuming NS's Motion to Dismiss is denied, there is no reason for further delay in completing discovery. Accordingly, BRI/ECDC request the Board to include in its decision denying the Motion to Dismiss an order requiring NS and Conrail to respond to BRI/ECDC's Discovery Requests within 30 days.

Conclusion

For the foregoing reasons, BRI/ECDC respectfully request that the Board (1) deny NS's motion to quash discovery, and (2) order NS and Conrail to respond to their Discovery Requests within thirty days of the date of service of the Board's decision on NS's pending motions.

Respectfully submitted,

BRIDGEWATER RESOURCES, INC.
ECDC ENVIRONMENTAL, L.L.C.

OF COUNSEL:

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Dated: March 1, 2006

By: Christopher A. Mills
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A handwritten signature in black ink, appearing to read "Christopher A. Mills", is written over the typed name and address of the attorney.

Their Attorneys

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of March, 2006, caused copies of the foregoing Reply to be served by hand upon Washington counsel for Applicants, and by United States Mail upon all other known parties of interest, as follows:

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