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SLOVER & LOFTUS

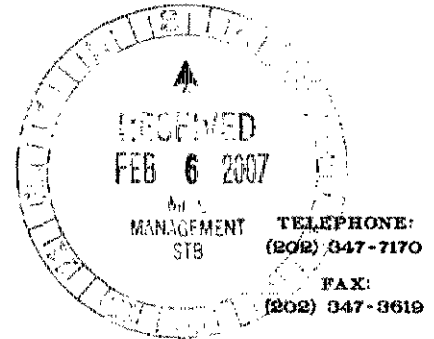
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February 6, 2007



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ENTRUSTED
Office of Proceedings

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 Bridgewater Resources, Inc.'s and ECDC Environmental, L.L.C.'s Reply to Comments on their Petition for Clarification or in the Alternative for Supplemental Order - North Jersey Shared Assets Area.

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

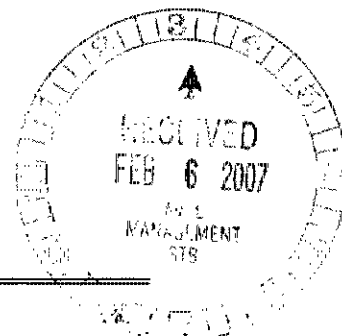
Sincerely,

Christopher A. Mills

CAM:lad
Enclosures

cc: Service List per Certificate of Service

**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 TO COMMENTS ON
PETITION FOR CLARIFICATION OR IN THE ALTERNATIVE FOR
SUPPLEMENTAL ORDER – NORTH JERSEY SHARED ASSETS AREA**

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

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Dated: February 6, 2007

Their Attorneys

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)

Pursuant to the Board's decisions in this proceeding served July 31, August 29 and December 13, 2006, and January 12, 2007, Petitioners Bridgewater Resources, Inc. ("BRI") and ECDC Environmental, L.L.C. ("ECDC") hereby reply to the Comments on their Petition filed by various parties on December 1, 2006.¹

¹ Comments were filed by Norfolk Southern Corporation and Norfolk Southern Railway Company (“NS”), CSX Corporation and CSX Transportation, Inc. (“CSX”); Consolidated Rail Corporation (“Conrail”); CNJ Rail Corporation (“CNJ Rail”); and James Riffin dba The Raritan Valley Connecting Railroad (“Riffin”).

The Board's December 13, 2006 and January 12, 2007 decisions postponed the due date for this reply to January 15 and subsequently February 6, 2007, at BRI/ECDC's request, to facilitate settlement discussions between BRI/ECDC and NS. No settlement has been achieved to date, and BRI/DCDC do not view a settlement as likely.

Shared Assets Area Operating Agreement for North Jersey (“NJSAA Operating Agreement”) among the Conrail control applicants. Both of these agreements were approved by the Board in *CSX Corp., et al. – Control – Conrail Inc., et al.*, Decision No. 89, 3 S.T.B. 196 (1998). Resolution of this issue requires the Board to determine the limits of Conrail’s operating rights in the vicinity of Port Reading Jct. NJ. This, in turn, depends largely – but not entirely – on what the parties to the Transaction Agreement intended in designating “CP-Port Reading Jct.” as the westerly limit of the North Jersey Shared Assets Area (“NJSAA”) on the former Conrail Lehigh Line.

NS and CSX have submitted evidence that when they established the limits of the NJSAA at Port Reading Jct. they intended “CP-Port Reading Jct.” to refer to a specific point on the Lehigh Line. This is the so-called “cut point” which delineated the division of property ownership as between Conrail and Pennsylvania Lines, LLC (“PRR”) for the benefit of NS. According to the deed transferring Conrail’s property interests in this area to PRR (NS), this point is located at Milepost 35.92 on the Lehigh Line. This is the westerly right-of-way boundary of the “Reading Connector” line where it crossed the Lehigh Line at grade, prior to its partial removal in the 1980’s.² See NS Comments at 10-

² The Reading Connector was part of Conrail’s Trenton Line which extended from Trenton, NJ north to Bound Brook, NJ, where it connected with Conrail’s (now New Jersey Transit’s) Raritan Valley Line. The Reading Connector has also been referred to in this proceeding as the Raritan Valley Connecting Line and by the name of its original owner, the Delaware & Bound Brook Railroad. As indicated in the accompanying Verified Statement of BRI’s President, William W. Gay (“Gay V.S.”), New Jersey Transit is presently studying the restoration of commuter rail service over the route of the Trenton Line, including the Reading Connector.

12 and accompanying Verified Statement of John H. Friedman; CSX Comments at 6-7 and accompanying Verified Statement of Mark A. Hinsdale. This point is less than half a mile east of the connection between the Lehigh Line and BRI's Royce Spur.

BRI/ECDC do not contest the railroads' evidence indicating that the term "CP-Port Reading Jct." was intended to refer to Milepost 35.92 on the Lehigh Line. However, that evidence is not dispositive of whether Conrail can operate over a short NS-owned portion of the Lehigh Line west of Milepost 35.92 to reach BRI's Royce Spur (the track that actually serves BRI's waste transfer facility), in view of other evidence of record in this case – evidence that was not available to BRI/ECDC when they filed their Petition and Supplement thereto.

A. BRI/ECDC ARE ENTITLED TO CONRAIL SWITCHING SERVICE VIA THE RARITAN VALLEY LINE

The railroads' evidence indicates that the "cut points" delineating the division of property interests between Conrail and NS (or CSX) for various lines established the limits of the NJSAA and thus of Conrail's basic operating rights. Evidence submitted by NS and Riffin indicates that on the Raritan Valley Line, the cut point representing the division of property interests/operating rights as between Conrail and NS is located west of the point where the north end of the Reading Connector connected with the Raritan Valley Line prior to Conrail's removal of the Reading Connector's track (including the switch connection). This point is also west of BRI's property. *See Gay V.S.* at 2-3.

The Reading Connector joined the Raritan Valley Line at Milepost 32.0 (which was also Milepost 58.20 on the Reading Connector). The deed by which Conrail quitclaimed its interests in parts of both the Lehigh Line and the Raritan Valley Line to PRR (NS) is attached to the Verified Statement of NS Witness Friedmann (“Friedmann V.S.”) as Exhibit 5. According to the deed’s Exhibit B, Conrail conveyed its interest in the Raritan Valley Line west of the junction between that line and a branch line known as the Middle Brook Branch (as well as the Middle Brook Branch itself) to PRR.³ This junction point, Milepost 32.4, is not only west of the point where the Reading Connector connected with the Raritan Valley Line, it is also west of the westerly boundary of BRI’s property, which abuts the south side of the Raritan Valley Line. *See* Gay V.S. at 2-3. Since Conrail did not convey its interest in the Raritan Valley line *east* of Milepost 32.4, that interest constitutes a Conrail retained asset and Conrail continues to have freight operating rights east of Milepost 32.4.

Conrail’s operating rights east of the point where the Middle Brook Branch joins the Raritan Valley Line are confirmed by the map of the area that is part of the Transaction Agreement. In particular, the enlargement of the map attached as Exhibit 3 to the Friedmann V.S. shows the southernmost track of the Raritan Valley Line in blue

³ The interest in the Raritan Valley line that was conveyed to PRR is described in the last paragraph of Exhibit B, which reads: “Also, INCLUDING Grantor’s remaining rights, title and interest in the line of Railroad known as the Raritan Valley Railroad that lies west of Middle Brook Branch including Somerville Yard.” Conrail sold the Raritan Valley Line to New Jersey Transit before the Transaction Agreement was negotiated, but retained freight operating rights on the line. Conrail’s freight operating rights west of Milepost 32.4 were conveyed to PRR (NS) under the language quoted above.

color as far west as the point denominated “Brook,” which is where the Raritan Valley Line connects with the Middle Brook Branch (denominated “Middle Brook I.T.” on the map). Blue color is used for lines (or, in this case, operating rights) retained by Conrail and “allocated to the NJSAA.” Friedmann V.S. at 5; *see also* NS Comments at 7.

The point of connection between the former Reading Connector (whose right-of-way is now the right-of-way for BRI’s Royce Spur) and the Raritan Valley Line was located at Milepost 32.0, which is east of “Brook” and thus within the blue colored portion of the Raritan Valley Line. Consistent with NS’s and CSX’s “cut point” evidence, that connection was unmistakably located within what is now the NJSAA. Had the Reading Connector switch connection and related trackage not been improperly removed by Conrail, BRI’s waste transfer facility clearly would be eligible for direct service from Conrail because Conrail has the right to perform switching service to facilities reached by trackage “attached to trackage included within the Shared Assets.” *See* NJSAA Operating Agreement §§ 1(ss) and (tt) and NS Comments at 8.⁴

⁴ The Reading Connector was not specifically allocated to Conrail as a Retained Asset under the Transaction Agreement because the trackage had been removed and the right-of-way sold prior to negotiation of the Transaction Agreement. Although the present Royce Spur (which was subsequently constructed on the right-of-way for the Reading Connector) connects only to the NS-owned portion of the Lehigh Line at a point located just outside the NJSAA, this does not mean that the Reading Connector should be treated as an asset allocated to NS, rather than Conrail. The first paragraph of Attachment 1 to Schedule 1 of the Transaction Agreement states: “Lines not specifically listed are to be acquired by the owner/acquirer of the CRC route/line to which they connect.” Prior to its removal, the Reading Connector connected with the portion of the Raritan Valley Line east of Milepost 32.4 that was subsequently allocated to Conrail as a Retained Asset. It did not connect with trackage that was subsequently acquired by NS.

The Comments in this proceeding submitted by CNJ Rail and Riffin (and Riffin's original Notice of Exemption in Finance Docket No. 34963 as well as NS's Motion for a Housekeeping Stay thereof) indicate that Conrail never sought (or received) authority from the Board's predecessor to abandon or discontinue service on the Reading Connector, which Conrail has acknowledged was a line of railroad. This means Conrail never had authority to remove the track, including the Lehigh Line crossing diamond and the switch connection with the Raritan Valley Line which could have been used by BRI to obtain switching service by Conrail after consummation of the Conrail control transaction. It thus appears to be Conrail's obligation to restore the switch connection (and/or the crossing diamond) so that BRI and ECDC – the only current rail shippers served by the trackage that was part of the Reading Connector – can exercise their right to obtain Conrail switching service.

Conrail owned all of the lines discussed herein prior to the removal of the Reading Connector in the late 1980's. The result of Conrail's removal of the grade crossing diamond where the Reading Connector crossed the Lehigh Line and the switch connection between the Reading Connector and the Raritan Valley Line⁵ is that the BRI waste transfer facility presently can be served only from what is now the NS-owned portion of the Lehigh Line, at a point of connection with the BRI Spur that lies just

⁵ Conrail probably removed the Lehigh Line crossing diamond for its own convenience, to avoid having to maintain and operate over the diamond, and because it had other alternatives for reaching its lines to the north and east that did not require it to use the Reading Connector and the Raritan Valley Line.

outside the NJSAA. However, Conrail abandoned and removed the Reading Connector, and sold the right-of-way to BRI's predecessor, without obtaining the required authority or an exemption from the ICC. Absent the unauthorized abandonment and removal of the Reading Connector, the BRI facility could have been served by Conrail from within what is now the NJSAA.

B. THE BOARD HAS AUTHORITY TO PERMIT CONRAIL TO SWITCH THE BRI FACILITY VIA THE LEHIGH LINE, THUS AVOIDING THE NEED TO RESTORE THE READING CONNECTOR TO SERVICE

BRI /ECDC submit that in the circumstances described above, it is appropriate to authorize Conrail to provide switching service between the BRI transfer facility and CSX's Manville Yard using the existing connection between the Lehigh Line and the remnants of the Reading Connector (*i.e.*, BRI's Royce Spur), even though the connection is located on the NS-owned portion of the Lehigh Line. This is consistent with the terms of Sections 3(c)(ii) and (iii) of the NJSAA Operating Agreement. Section 3(c)(ii) provides:

NSR hereby grants to CRC and CSXT overhead operating rights to operate CRC and CSXT trains, with their own crews, over such NSR line segments access to and use of which by

CRC and CSXT are necessary to effectuate the train operations and services contemplated by this Agreement.

Section 3(c)(iii) authorizes Conrail (and NS) to use CSXT's Manville Yard.

Under these provisions, Conrail should be able to operate over the NS-owned portion of the Lehigh Line west of Milepost 35.92 in order to serve a facility that it

could have served from within the NJSAA had the switch connection between the Reading Connector and the Raritan Valley Line (and the diamond for the crossing of the Lehigh Line) not been improperly removed. This remedy does not require the construction of any rail facilities. It is thus the simplest and most cost-effective way for BRI and ECDC to obtain the Conrail switching service they are legally entitled to, and which they believe will be superior to (and less costly than) the switching service provided by NS. *See Gay V.S. at 3.*

As far as BRI and ECDC are concerned, if the Board authorizes them to obtain service from Conrail in this manner, it need not reach the issue raised by Riffin and CNJ Rail as to whether Conrail should be required to restore the Reading Connector to service, given its abandonment and removal without receiving requisite authority from the Board's predecessor. If the Board denies the requested relief, BRI and ECDC intend to seek and obtain access to Conrail (or another carrier) by other means. This includes, without limitation, a request that the Board order Conrail to restore the switch connection between the former Reading Connector and the Raritan Valley Line and/or the Lehigh Line crossing diamond. *Gay V.S. at 3-4.*

CONCLUSION

For the foregoing reasons, BRI/ECDC respectfully request that the Board clarify Decision No. 89 by finding that, under the unique circumstances presented by this case, Conrail's operation over a short segment of the Lehigh Line that is owned by NS to

switch cars between the BRI waste transfer facility and CSX's Manville Yard is authorized under the Transaction Agreement and Sections 3(c)(ii) and (iii) of the NJSAA Operating Agreement.

Respectfully submitted,

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

OF COUNSEL:

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Dated: February 6, 2007

Their Attorneys

Finance Docket. No. 33388 (Sub-No. 100)

**VERIFIED STATEMENT OF
WILLIAM W. GAY**

My name is William W. Gay. I am President of Bridgewater Resources, Inc. ("BRI") which owns and operates the waste transfer facility in Bridgewater Township, Somerset County, NJ described in the Petition in this proceeding. BRI and its assets were acquired from their prior owner (Joseph C. Horner) on July 1, 2003, as part of a bankruptcy reorganization. I have been President of BRI since that date.

In addition to the waste transfer facility itself, BRI's assets include railroad trackage needed for switching and loading railroad cars with solid waste products. Parts of the underlying land are leased from Mr. Horner, who retains title to the right-of-way which he purchased from Conrail in 1995. BRI has an option to purchase the underlying land, and currently owns the tracks on it as well as a railroad bridge over the Raritan River. The property on which the waste transfer building is located abuts the south side of the right-of-way for New Jersey Transit's Raritan Valley Line.¹

BRI's railroad trackage is known as the Royce Spur. It presently extends north from a connection with the former Conrail Lehigh Line to BRI's waste transfer building, and thence around the north side of the transfer building where it parallels the Raritan Valley Line for about two hundred feet. There is no switch connection between the Royce Spur and the Raritan Valley Line, although there was one at one time.

¹ I understand that the Raritan Valley Line was originally owned by the Central Railroad Company of New Jersey, and was acquired by Conrail when the latter was created in the 1970's. Conrail subsequently sold the Raritan Valley Line to New Jersey Transit for the provision of commuter passenger service, but my understanding from the filings in this proceeding is that Conrail reserved freight operating rights over the line.

As NS and CSX have documented in this proceeding, the present connection between the Royce Spur and the Lehigh Line is located slightly west of the division of ownership between Conrail and NS pursuant to the Conrail Transaction Agreement. Rail switching of cars between BRI's waste transfer facility and CSX's Manville Yard is presently performed by NS.

As has also been documented in this proceeding, at one time the right-of-way for the Royce Spur was part of Conrail's Trenton Line which extended from Trenton, NJ north to a connection with the Raritan Valley Line at Bound Brook, NJ. This line crossed the Lehigh Line at grade. From the point of the crossing north to the connection with the Raritan Valley Line, this line was variously known as the Reading Connector or the Raritan Valley Connecting Line. The Reading Connector trackage was removed by Conrail prior to the sale of the right-of-way to Mr. Horner in 1995; Mr. Horner and BRI subsequently re-constructed what is now the Royce Spur. The removed trackage that has not been restored includes the crossing diamonds where the Reading Connector crossed the Lehigh Line, and the switch connection with the Raritan Valley line. This switch connection, which was located at Milepost 32.0 on the Raritan Valley Line, was located immediately northeast of what is now BRI's property.²

² The layout of the former Reading Connector in relation to the Lehigh Line and the present Trenton Line, as well as the Raritan Valley Line, is correctly shown on the "Vicinity Map" attached to Mr. Riffin's December 1, 2006 Comments in this proceeding. A copy of this map is attached to my testimony, for convenience, as Exhibit 1. BRI's waste transfer facility is located just south and west of the point designated as "MP 58.5," which I understand to be the same point on the Reading Connector as Milepost 32.0 on the Raritan Valley Line.

According to the December 1, 2006 filings by NS and James Riffin in this proceeding, the division of property interests and freight operating rights on the Raritan Valley Line as between Conrail and NS under the Transaction Agreement is at the point where a branch line known as the Middle Brook Branch connected with the Raritan Valley Line. Mr. Riffin states that this point is located at Milepost 32.4. I do not know the exact milepost but I can confirm from personal observation that the junction between the Raritan Valley Line and the Middle Brook Branch is located about a quarter-mile west of Polhemus Lane, which marks the westerly boundary of BRI's property. If this point marks the westerly limit of the North Jersey Shared Assets Area ("NJSAA") on the Raritan Valley Line – which is consistent with NS's and CSX's position with respect to the limit of the NJSAA on the Lehigh Line – then BRI's property is adjacent to the portion of the Raritan Valley Line that is within the NJSAA.

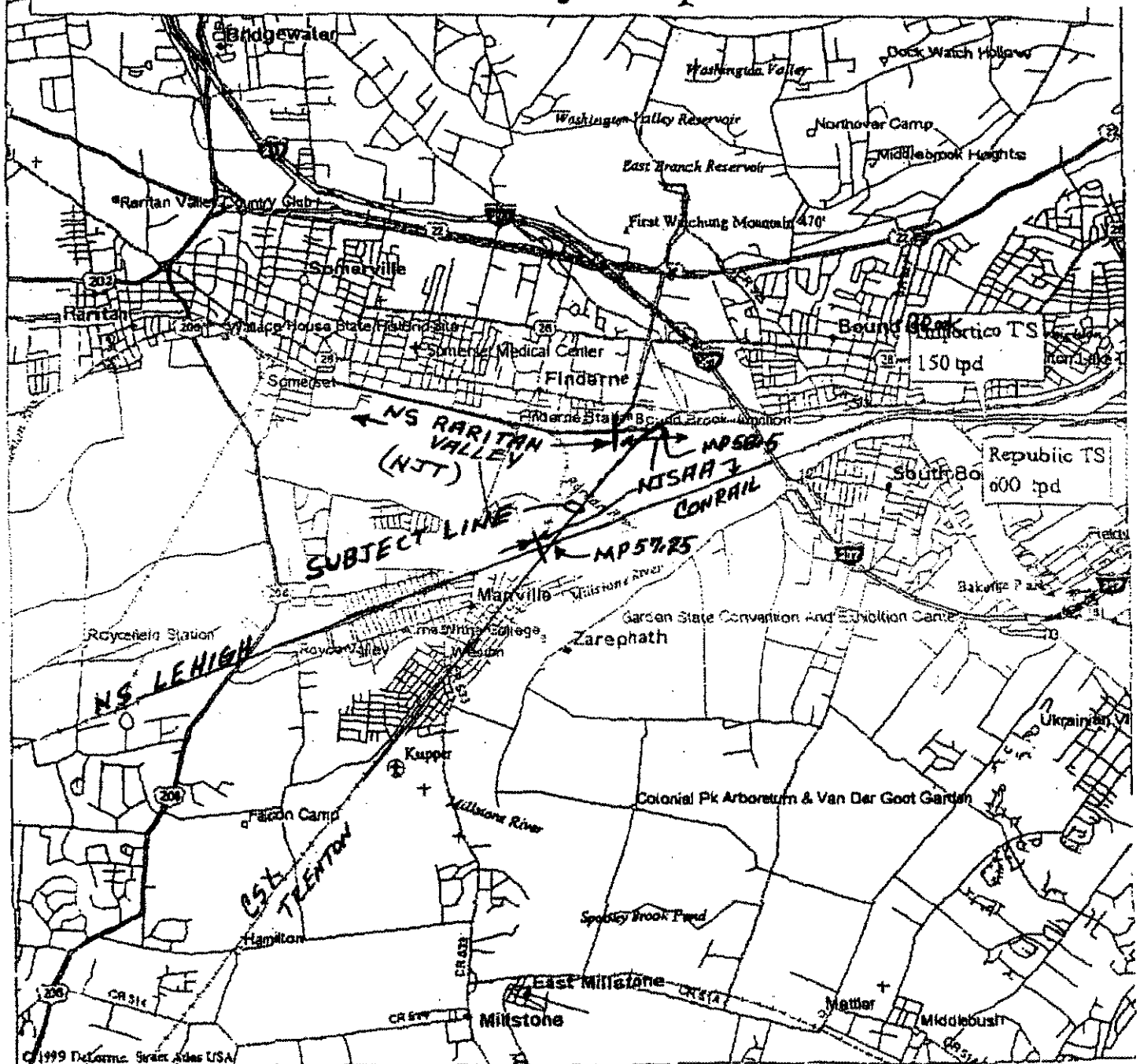
BRI and the other rail shipper who uses BRI's waste transfer facility, ECDC Environmental, L.L.C., desire direct access to Conrail because they believe Conrail will provide better switching service at lower prices than NS. BRI and ECDC filed the Petition in this proceeding as the simplest means of obtaining access to Conrail, without the need for construction of additional rail facilities. If the Petition is denied, BRI fully intends to pursue direct access to Conrail or another rail carrier by other means, including but not necessarily limited to restoration of the switch connection to the Raritan Valley Line on the north side of BRI's property. Based on information provided by NS/Conrail and Mr. Riffin in their filings in this proceeding and in Finance Docket No.

34963, restoration of that connection and/or the crossing diamond where the Reading Connector crossed the Lehigh Line appears to be Conrail's responsibility since Conrail did not obtain authority from the STB or its predecessor to abandon and remove these essential parts of the Reading Connector.

The Board should be aware that New Jersey Transit is presently studying the restoration of rail passenger commuter service between Newark and Trenton, NJ. This service would use the route of the Reading Connector and CSX's Trenton Line. My understanding is that in the 1980s Conrail granted NJ Transit an easement for operating commuter service over this route, and that when Conrail conveyed the right-of-way underlying a portion of the Reading Connector to Mr. Horner in 1995 the conveyance was subject to this easement. NJ Transit referenced its easement and plans to restore commuter rail service using the former Reading Connector in a letter to the STB dated December 22, 2006, in Finance Docket No. 34963, *James Riffin, D/B/A the Raritan Valley Connecting Railroad— Acquisition and Operation Exemption—On Traritan Valley Connecting Track* .

BRI has cooperated with NJ Transit to make sure that track extensions and relocations it has recently completed in the area of the waste transfer facility are consistent with both NJ Transit's commuter rail service restoration plans and BRI's need for rail freight service, which would continue after commuter rail service is restored.

Vicinity Map



Map 13.00

Tue Jun 07 08:15 2005

Scale 1:62,500 (at center)

1 Miles

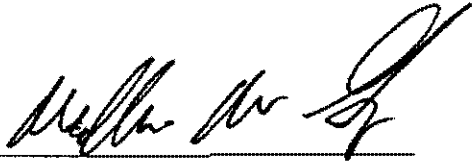
2 KM

- Local Road
- US Highway
- Interstate/Limited Access
- Major Connector
- State Route
- Exit
- Railroad
- Point of Interest

- County Seat
- ◆ Small Town
- ▲ Summit
- ▽ Geographic Feature
- ✚ Hospital
- ▲ Park/Reservation
- Locale
- ✈ Public Airport

VERIFICATION

I, William W. Gay, verify under penalty of perjury that I have read the foregoing Verified Statement and know the contents thereof, and that the same are true and correct except as to those matters stated on information and belief, and as to those, that I believe them to be true. Further, I certify that I am qualified and authorized to file this statement.



William W. Gay

Executed on: January 7, 2007.

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February, 2007 I served copies of the foregoing Reply to Comments upon all parties of record in this proceeding, as follows:

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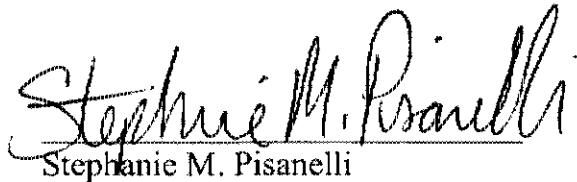
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