FINAL REPORT

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An Assessment of Rail Freight Service Within The International Intermodal Transportation Corridor

Prepared for:
New Jersey Department of Transportation

Prepared by:

Alan M. Voorhees Transportation Center
Edward J. Bloustein School of Planning and Policy Development
Rutgers, The State University of New Jersey
and
A. Strauss-Wieder, Inc.

And

New Jersey Institute of Technology
International Intermodal Transportation Center

New Jersey Institute of Technology
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16. Abstract

Northern New Jersey is experiencing rapid growth in the movement of freight traffic through its major terminals and on its infrastructure. The North Jersey Planning Authority (NJTPA) and the New Jersey Department of Transportation (NJDOT) concluded that there was a need to review the record and effects of the 1998 Conrail, CSX, Norfolk Southern (NS) railroad merger and division of assets, including the creation of a core terminal area, known as the Conrail Shared Assets Area (CSAA). The oversight period of the merger and division of assets by the U.S. Surface Transportation Board (STB) was expected to end in June 2004. The purpose of this study, thus, is to examine the performance of CSX, Norfolk Southern (NS) and Conrail in the northern New Jersey area in the nearly five years since Conrail was acquired by the Class I railroads, CSX and NS. The project involved a detailed review of the acquisition application material submitted by the two Class I railroads and other entities to the STB and follow up documentation and, then, extracting information pertinent to the State of New Jersey. The team also conducted a series of interviews to gather a wide variety of perspectives on the performance of the Conrail Shared Assets Area since the completion of the acquisition. The report also describes the current rail freight system in New Jersey, including: what types of rail freight service are provided; who is using or could potentially use rail freight services in New Jersey; how the rail industry is structured in New Jersey; and what types of investments are currently being made in New Jersey's rail freight infrastructure. The key findings are: 1) Inter-modal rail freight service, along with service for several large customers, has generally been working; 2) Conrail, as the CSAO operator, is generally providing as good or better service than the previous single Class I operator in New Jersey. However, the CSAO operation should be watched and could destabilize; 3) current Class I marketing and pricing practices disfavor use of the CSAO and may ultimately destabilize the institution; 4) medium and smaller carload customers have generally not seen increased competition or service; 5) CSX and NS have done limited marketing in New Jersey; and 6) the Class I railroads have a limited physical presence in New Jersey. The study identified specific issues in the relationship between the NJ Short-Line Railroads and the Class I Railroads. They are: Class I operational issues; transloading; and customer relocations to captive lines. The report makes three recommendations: establish a New Jersey rail economic development fund with contributions from CSX and NS of $30 million over the next 5 years; empower Conrail to market/sell carload rail freight for its service area, as well as quote rates; and comply with agreements with New Jersey's short-lines to provide interchanges at the negotiated locations, as well as assure dual access.

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TABLE OF CONTENTS

LIST OF FIGURES

ABSTRACT

Northern New Jersey is experiencing rapid growth in the movement of freight traffic through its major terminals and on its infrastructure. The North Jersey Planning Authority (NJTPA) and the New Jersey Department of Transportation (NJDOT) concluded that there was a need to review the record and effects of the 1998 Conrail, CSX, Norfolk Southern (NS) railroad merger and division of assets, including the creation of a core terminal area, known as the Conrail Shared Assets Area (CSAA). The oversight period of the merger and division of assets by the U.S. Surface Transportation Board (STB) was expected to end in June 2004. The purpose of this study, thus, is to examine the performance of CSX, Norfolk Southern (NS) and Conrail in the northern New Jersey area in the nearly five years since Conrail was acquired by the Class I railroads, CSX and NS.

This study involved a detailed review of the acquisition application material submitted by the two Class I railroads and other entities to the STB and follow up documentation and, then, extracting information pertinent to the State of New Jersey. The team also conducted a series of interviews to gather a wide variety of perspectives on the performance of the Conrail Shared Assets Area since the completion of the acquisition. The report also describes the current rail freight system in New Jersey, including: what types of rail freight service are provided; who is using or could potentially use rail freight services in New Jersey; how the rail industry is structured in New Jersey; and what types of investments are currently being made in New Jersey's rail freight infrastructure.

The key findings are: 1) Inter-modal rail freight service, along with service for several large customers, has generally been working; 2) Conrail, as the Conrail Shared Assets Operator (CSAO), is generally providing as good or better service than the previous single Class I operator in New Jersey. However, the CSAO operation should be watched and could destabilize; 3) current Class I marketing and pricing practices disfavor use of the CSAO and may ultimately destabilize the institution; 4) medium and smaller carload customers have generally not seen increased competition or service; 5) CSX and NS have done limited marketing in New Jersey; and 6) the Class I railroads have a limited staff presence in New Jersey. The study identified specific issues in the relationship between the NJ Short-Line Railroads and the Class I Railroads. They are: Class I operational issues; transloading; and customer relocations to captive lines.

The report makes three recommendations: 1) establish a New Jersey rail economic development fund with contributions from CSX and NS of $30 million over the next 5 years; 2) empower Conrail to market/sell carload rail freight for its service area, as well as quote rates; and 3) comply with agreements with New Jersey's short-lines to provide interchanges at the negotiated locations, as well as assure dual access.

INTRODUCTION

Background

Northern New Jersey is experiencing rapid growth in the movement of freight traffic through its major terminals and on its infrastructure. The importance of the region's port and airport facilities as well as New Jersey's leading role in key industries has led Federal legislators to establish an International Intermodal Corridor (IIC) where many interlinked activities are concentrated. This legislation established the International Intermodal Transportation Center (IITC) at the New Jersey Institute of Technology (NJIT) to analyze these activities, supply the needs of the freight industry as it serves businesses in the IIC and find ways to improve the IIC's infrastructure, sustainability, and throughput.

The North Jersey Planning Authority (NJTPA), the designated metropolitan planning organization for the northern New Jersey region, and the New Jersey Department of Transportation (NJDOT) have taken leading roles in supporting improvements in the region's freight transportation infrastructure. Several initiatives, including the construction of Portway, funding for key rail freight projects, support for deepening key marine channels and ports, establishing a Freight Initiatives Committee, and advancing a Statewide Freight Planning Study are aimed at enhancing the region's freight distribution system.

In conjunction with the above, the NJTPA and the NJDOT concluded that there was a need to review the record and effects of the 1998 Conrail, CSX, Norfolk Southern (NS) railroad merger and division of assets, including the creation of a core terminal area, known as the Conrail Shared Assets Area. This core terminal area falls within the geographic and industrial limits of the IIC. The oversight period of the merger and division of assets by the U.S. Surface Transportation Board (STB) was expected to end in June 2004.

One motivation for the review of the merger's effects in New Jersey is that CSX and NS have proposed a set of projects to increase rail capacity in New Jersey. These projects would involve joint State/Federal and corporate investments to increase system capacity. The State of New Jersey and the NJTPA, therefore, have reason to examine railroad practices to ensure that agreements made under the Conrail/CSX/NS merger are being adhered to. If rail operations are under-serving industry and customers in the region, this may have deleterious effects on the region's economy, its industries and the various short-line railroads operating in the region. These effects may encourage greater reliance on short to medium distance trucking, worsening air quality and increasing congestion. These issues need to be studied and reported on, based on industry and stakeholder interviews, and other available evidence. It is high priority for both the NJDOT and NJTPA to make sure that the use of shared rail assets in northern New Jersey are maximized and any incentives not to use them are removed.

The Alan M. Voorhees Transportation Center (VTC) at Rutgers, The State University of New Jersey is well positioned to provide such investigation and report. VTC can build upon and supplement the ongoing work of the NJIT-IITC in the movement of freight and economic impacts within the International Intermodal Corridor. VTC, as a sub-contractor to NJIT, has collaborated with a Project Team, which includes representatives from NJTPA, NJDOT, and IITC in assembling information, gathering input from key freight stakeholders and documenting pertinent findings relevant to the effectiveness of the Conrail Shared Assets Area in northern New Jersey.

Objectives

The purpose of this study is to examine the performance of CSX, Norfolk Southern (NS) and Conrail in the northern New Jersey area in the nearly five years since Conrail was acquired by the Class I railroads, CSX and NS. The study was conducted within the policy framework established by Governor James McGreevey, which recognizes that rail freight is an important component of a multi-modal freight transportation system, and that the State of New Jersey is committed to providing a freight system that supports the needs of its businesses and population.

Approach

This project involved a detailed review of the acquisition application material submitted by the two Class I railroads and other entities to the STB and follow up documentation and, then, extracting information pertinent to the State of New Jersey. This included a review of what was planned and agreed to by CSX and NS and how the State of New Jersey would benefit from the acquisition of Conrail by CSX and NS. In addition, the study examined the terms of the two Class I railroad agreements with NJDOT and the Port Authority of New York and New Jersey (PANYNJ). Documents pertaining to the STB approval and subsequent oversight were also reviewed, as were comments submitted to the STB by relevant regional agencies, such as the PANYNJ. These documents have been attached as reference material in the Appendix.

The team also conducted a series of interviews to gather a wide variety of perspectives on the performance of the Conrail Shared Assets Area (CSAA) since the completion of the acquisition. Meetings were conducted with CSX (March 12, 2003), NS (March 5, 2003) and Conrail (April 29, 2003) to ascertain their views of how the two Class I railroads and the CSAA have performed in northern New Jersey. Numerous shippers, clients and other interested parties were interviewed to gain their perspectives on the performance of the two Class 1 railroads and of the CSAO. These stakeholders included: rail shippers (April 24, May 12 and May 19, 2003), short-line railroads (April 23 and May 8, 2003), economic development officials from PSE&G (May 8, 2003), and PANYNJ officials (March 17, 2003).

Procedure Context

This study was carried out in the context of oversight proceedings conducted by the STB to monitor the acquisition of Conrail, to address any unforeseen harms against interested parties brought about by the acquisition, and to impose additional conditions on the two Class I railroads, should these be necessary. This examination specifically addresses the functioning of the unusual arrangement which created CSAA as a mechanism to promote competition between the two Class I railroads in northern New Jersey, a long-sought objective of the public agencies in the New Jersey-New York region. A similar shared asset area was established in southern New Jersey.

The USDOT has stated that the true state of competition in the Shared Assets Areas is a "major and recurring question."[1] In fact, the STB has noted that dual rail competition is "the most important public benefit" to be derived from the establishment of the Shared Assets Areas.[2] The STB reemphasized its oversight authority by explicitly stating that it maintains "the power to prohibit any NJSAA (North Jersey Shared Asset Area) change that conflicts with a condition imposed on the Conrail transaction."[3]

Report Organization

In examining the performance of the two Class I railroads within the Shared Assets Area of northern New Jersey, this report is divided into four sections. The first section, which outlines the context within which the NJSAA was established, lists the commitments of the two Class I railroads, CSX and NS, to the STB, and examines the history of the STB's oversight of the acquisition of Conrail by CSX and NS. In the second section, rail freight service in northern New Jersey is analyzed with particular emphasis on the structure of freight rail services, the types of services offered by the Class I railroads, the service characteristics of the railroads' different customers, and the role of the state's short-line rail operators in marketing rail service and promoting economic development. The third section focuses on the study's findings, dealing with the competitive behavior between the Class I railroads, their service reliability, their economic

[1] US Dept. of Transportation (2002), "Reply Comments of the US Department of Transportation", Finance Docket No. 33388. (p.4)
[2] US Dept. of Transportation (2002), "Reply Comments of the US Department of Transportation", Note #3, Finance Docket No. 33388. (p.4)
[3] Surface Transportation Board (2002), "Decision No. 10: General Oversight", Finance Docket No. 33388. (p.7).
[4] US Dept. of Transportation (2002), "Reply Comments of the US Department of Transportation", Finance Docket No. 33388. (p.4)
[5] US Dept. of Transportation (2002), "Reply Comments of the US Department of Transportation", Note #3, Finance Docket No. 33388. (p.4)

development agendas, their marketing practices and their relationships with the short-line rail operators. The final section outlines the recommendations of this report.

CONTEXT

Surface Transportation Board – Conditions Of Acquisition Approval

In July 1998, when the STB approved the acquisition of Conrail by CSX and NS, it imposed numerous conditions on the two Class I railroads which were intended to satisfy concerns about possible adverse impacts on customers and regional authorities located within the areas previously served by Conrail. The conditions included a five-year oversight period of the operations of the two Class I railroads, CSX and NS.

To assure dual competitive access to northern New Jersey, the STB-approved terms of the Conrail acquisition created a NJSAA encompassing much of northern New Jersey. Conrail, jointly controlled by CSX and NS, was created to provide switching and local service for the two Class I railroads and to function as an operating terminal railroad. Numerous facilities, motive power and much of the trackage were to be jointly owned and controlled by CSX and NS. The two Class I railroads, in turn, were to serve the Shared Assets Area in a competitive manner.

The STB's approval of the acquisition of Conrail specifically took into account concerns, like those expressed in the administrative proceeding leading to the acquisition, by the PANYNJ, a regional authority deeply involved in the proceeding. (Coincidentally, the NJSAA also includes a large portion of PANYNJ's Port District.) The PANYNJ wanted to see the two Class I railroads compete for traffic to and from ExpressRail, its inter-modal yard serving North Jersey port operations.[6] The PANYNJ was concerned that NS had no intention of serving ExpressRail facility, creating a situation whereby CSX would simply replace Conrail as the sole carrier at this critical facility.

The New Jersey Department of Transportation (NJDOT) was likewise concerned about competitive rail access in northern New Jersey. After a long process of negotiations with CSX and NS, the NJDOT concluded in 1997 that the Shared Assets Area was a satisfactory structure to resolve its concerns regarding competitive access objectives.[8] In March 1998, the NJDOT agreed to support the acquisition application.

The agreement between NJDOT and CSX and NS provided that the signatories would coordinate positions on various issues concerning the CSAA, maintain continued consultation after the acquisition took effect, and preserve certain

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[6] Port Authority of NY & NJ (1998), "Brief of the Port Authority of New York and New Jersey", Finance Docket No. 33388. (p.5).
[7] Port Authority of NY & NJ (1998), "Brief of the Port Authority of New York and New Jersey", Finance Docket No. 33388. (p.5).
[8] New Jersey Department of Transportation, Letter to Mr. David R. Good and Mr. John W. Snow, September 23, 1997.

rights-of-way for possible future passenger services.[9] The issues between the two Class I railroads and the New Jersey short-lines were assumed by the NJDOT to have been resolved through a series of letters, discussions and memorandums that all parties concurred to prior to the March 1998 document. These agreements are discussed later in this section.

Expectations (Public Benefits)

In their application to acquire Conrail, CSX and NS promised numerous benefits to regions along the expanded rail systems, including New Jersey. These benefits included:

- Competition between the two railroads;
- Substantial capital investment in the expanded rail systems;
- Significant industrial development and marketing along the expanded systems;
- Competitive access for short-line railroads;
- Increased diversion of freight from truck to rail; and
- continued consultation with interested parties once the merger took effect.

CSX and NS quantified the public benefits of a two-railroad network in the Northeast. They estimated that the total public benefit would amount to nearly $1 billion annually. This included, $562.6 million in operating cost savings, $340.1 million in shipper logistics savings, and $95.5 million in avoided highway maintenance costs.[10]

These benefits are explained in more detail in the following sections.

<u>Competition</u>

The greatest positive impact anticipated from the acquisition of Conrail by CSX and NS was the benefit that would be derived from the two Class I railroads competing “head-to-head” for service in the areas formerly served only by Conrail. More specifically, the two Class I railroads claimed that the acquisition would bring new competition to shippers in northern New Jersey and other areas in the Northeast.[11] The two Class I railroads expected reductions in transit times and terminal delays, both of which would make the railroads more competitive with trucking companies.[12]

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[9] New Jersey Department of Transportation, Letter to Mr. David R. Good and Mr. John W. Snow, September 23, 1997.
[10] Surface Transportation Board (1998), Decision No. 89. Finance Docket No. 33388. (p.138).
[11] Surface Transportation Board (1998), Decision No. 89. Finance Docket 33388. (p.50).
[12] Surface Transportation Board (1998), Decision No. 89, Finance Docket 33388. (p.51).
[13] Surface Transportation Board (1998), Decision No. 89. Finance Docket No. 33388. (p.138).

Capital Investments

CSX and NS both committed themselves to major capital investments. In their acquisition application CSX and NS agreed to invest $488 million and $729 million, respectively, in new rail property and equipment system-wide. This included the investments to be made in routes that served the New York/New Jersey area.[14]

CSX promised clearance improvement projects in the Northeast, such as the Virginia Avenue Tunnel in Washington, D.C., which would accommodate multi-level automobile shipments on the Atlantic Coast Service Route (parallel to I-95). CSX reported to the STB that it would invest $196.2 million in track upgrades so as to be able to offer New York-to-Chicago inter-modal rail services that are 2.5 hours faster than Conrail's best service prior to the acquisition.[15]

NS promised investment of $35 million in upgrading the Southern Tier Line, one of its two New York-to-Chicago routes from New Jersey, between Buffalo and Port Jervis, NY. It also promised to invest $32 million in the first two years to upgrade track on Conrail's other core routes.[16] Overall, improvements promised by NS include, $120 million in corridor upgrade projects, including siding construction, siding extensions and traffic control, $200 million to upgrade inter-modal facilities, and $25 million to form new efficient through-routes.[17]

Industrial Development And Marketing

CSX and NS explicitly agreed with the PANYNJ to promote economic development programs designed to increase rail freight traffic within the Port District, which encompasses a roughly "25-mile radius around the Statue of Liberty,"[18] virtually the entire CSAO territory in North Jersey.[19] The agreement stated that, "CSX, NS and CSAO shall provide and implement economic development programs designed to promote the development of rail traffic within the Port District."[20]

CSX promised better customer service as a result of the acquisition, once customers were given access to sophisticated computer systems for car ordering

[14] Surface Transportation Board (1998), Decision No. 89. Finance Docket No. 33388. (p. 51).
[15] CSX, Norfolk Southern (1997), Finance Docket No. 33388, Volume 3A of 8, for Surface Transportation Board. "Verified Statement of John Orrison." p.103.
[16] CSX, Norfolk Southern (1997), Finance Docket No. 33388, Volume 3B of 8, for Surface Transportation Board. (p.277).
[17] CSX, Norfolk Southern (1997), Finance Docket No. 33388, Volume 3B of 8, for Surface Transportation Board. (p.50).
[18] Port Authority of NY & NJ (2002), Comments of the Port Authority of New York and New Jersey, Finance Docket No. 33388. (p.3).
[19] Port Authority of NY & NJ (2002), Comments of the Port Authority of New York and New Jersey, Finance Docket No. 33388. (p.1).
[20] Port Authority of NJ & NJ (2002), "Comments of the Port Authority of New York and New Jersey", Finance Docket No. 33388. (p.3).

and billing.[21] A centralized customer service center for CSX would be located in Jacksonville, FL.[22]

Diversion of Freight From Truck To Rail

CSX and NS made commitments with respect to the quantity of freight which would be diverted in the CSAA, nationally, from truck to rail as a result of the acquisition of Conrail. The two Class I railroads estimated over one million truck trips a year would be removed from the highways system-wide. Of this amount, CSX would divert 438,000 trucks and NS 589,000 trucks.[23] This amounts to shifting over $400 million worth of traffic each year from highways to the two Class I railroads. CSX calculated the financial benefits of reduced highway wear from the diversion of highway freight to CSX trains at $50 million a year.[24]

Rules Governing Conrail's Operation

The CSAA in northern New Jersey was created under conditions and restrictions, agreed to by CSX and NS, in the *Shared Assets Area Operating Agreement for North Jersey* (Operating Agreement). The conditions and restrictions were intended to protect the integrity of rail customers as well as the regional authorities dependent on freight rail transportation. The Operating Agreement sets forth that CSX and NS jointly control the Consolidated Rail Corporation or "Conrail," also referred to as the CSAO. CSX, NS and the CSAO agreed that the NJSAA would be owned, operated and maintained by Conrail and utilized for the exclusive benefit of CSX and NS. The agreement gave CSX and NS full and equal rights to use the CSAA to provide competitive railway freight services to, from and between all places within the NJSAA.[25]

The most important conditions agreed to by the two Class I railroads are discussed below. They include:

- The governance structure;
- The duration of the CSAO;
- Marketing and rate quoting by the two Class I railroads;
- The process by which capital improvements would be funded by the two Class I railroads;
- Rights of access by short-line operators; and
- The process of consultation between the two Class I railroads and interested parties.

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[21] CSX and Norfolk Southern (1997), Finance Docket No. 33388, Volume 3A of 8, For Surface Transportation Board. (p. 67).

[22] CSX and Norfolk Southern (1997), "Verified Statement of John W. Orrison, Finance Docket No. 33388. Volume 3A of 8 for Surface Transportation Board. (p.66).

[23] Surface Transportation Board (1998), Decision No. 89, Finance Docket 33388. (p. 51).

[24] CSX, Norfolk Southern (1997), "Verified Statement of Thomas M. Corsi, Finance Docket No. 33388, Volume 2B of 8, for Surface Transportation Board. (p.170).

[25] CSX, Norfolk Southern (1997), "Exhibit G: Shared Assets Area Operating Agreement for North Jersey", Finance Docket 33388, Volume 8C of 8, for Surface Transportation Board. (p.66).

These conditions are explained in more detail in the following sections.

Governance

As set forth in the Operating Agreement, the CSAO is controlled by the Conrail Board of Managers nominated by CSX and NS, with an equal number of representatives from each railroad.[26]

Duration – Continuance Of Conrail Shared Assets Operation

The CSAO is to have a significant life span. The Operating Agreement provides that CSX and NS must continue to operate the CSAO for a term of at least 25 years. The two Class I railroads have also been given the option of extending the life of the term, if they so wish, by the 23rd year of the term.[28]

Marketing And Rate Quoting

The CSAO was designed exclusively as a "jointly owned terminal railroad"[29] operating arm of CSX and NS "for the exclusive benefit of CSXT and NSR."[30] The CSAO neither markets its services[31] nor participates in the development of rate quotes.[32] Such activities were to be solely the province of CSX and NS.

The Operating Agreement included a commitment by the two Class I railroads to make the CSAO invisible to shippers in the development of rates for cargo movements. It proscribed the two Class 1 railroads from quoting any additional rates or charges to customers for transportation of rail freight to, from or within the NJSAA which is handled by CSAO. The Operations Agreement provided that "the transfer or exchange of freight traffic between CSXT and CRC, and between NSR (Norfolk Southern Railway) and CRC (Consolidated Rail Corportaion), within the Shared Assets Areas, shall not constitute an interchange of freight traffic or freight rail cars for purposes of determining rates, routes, divisions or interline settlements relating to any such freight traffic."[33] As a result, "CRC shall

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[26] CSX, Norfolk Southern (1997), "Exhibit G: Shared Assets Area Operating Agreement for North Jersey", Finance Docket 33388, Volume 8C of 8, for Surface Transportation Board. (p.73)
[27] CSX, Norfolk Southern (1997), "Exhibit G: Shared Assets Area Operating Agreement for North Jersey", Finance Docket 33388, Volume 8C of 8, for Surface Transportation Board. (p.82)
[28] CSX, Norfolk Southern (1997), "Exhibit G: Shared Assets Area Operating Agreement for North Jersey", Finance Docket 33388, Volume 8C of 8, for Surface Transportation Board. (p.93).
[29] CSX Corporation (2003), Meeting with Mike Brimmer of CSX Corp., March 12, 2003.
[30] CSX Corporation (2003), Meeting with Mike Brimmer of CSX Corp., March 12, 2003.
[31] Conrail Shared Assets Operation (2003), Meeting with Ronald Batory of CSAO, April 29, 2003.
[32] CSX, Norfolk Southern (1997), "Exhibit G: Shared Assets Area Operating Agreement for North Jersey", Finance Docket 33388, Volume 8C of 8, for Surface Transportation Board. (p.77)
[33] CSX, Norfolk Southern (1997), "Exhibit G: Shared Assets Area Operating Agreement for North Jersey", Finance Docket 33388, Volume 8C of 8, for Surface Transportation Board. (p.77).

not participate or appear in any rates, routes or divisions relating to any freight traffic whatsoever to, from and within the Shared Assets Areas."[34]

Capital Improvements

The Operating Agreement also determined the rules governing capital improvements and maintenance of the acquired Conrail rail network. As such, the two Class I railroads are responsible for funding the capital and operating costs of the CSAO. Maintenance projects approved by the CSAO Board were to be funded equally by the two Class I railroads. Any proposed capital improvement deemed integral to the operation of the NJSAA which is neither approved nor disapproved by a majority vote of the CSAO Board is sent to an arbitrator who decides which aspects of the proposal were to be either funded or not funded.[36]

Access Of Short-line Railroads

The issue of competitive access to both CSX and NS facilities by all (17) of New Jersey's short-line carriers was an important consideration to the NJDOT during the acquisition process. In the STB Decision No. 89, the two Class I railroads agreed to adopt all of the existing agreements between Conrail and the various short-lines for their duration.[37] In the September 1997 letter to the two Class I railroads, NJDOT stated both that "Both Norfolk Southern and CSX have agreed that all contracts or agreements in place at the time of the merger will be honored."[38] In addition, NS made separate agreements with Black River & Western, the Belvidere & Delaware River Railroads, the Morristown & Erie Railroad.

In the cases of the Black River & Western and the Belvidere & Delaware River Railroads an agreement was reached between the NJDOT and both CSX and NS in September 1997. This letter of understanding confirmed that "Norfolk Southern has offered an agreement to the Black River & Western and the Belvidere & Delaware River Railroads which provides for direct service via Norfolk Southern or, at the customer's discretion, haulage to CSX." In the case of the Morristown & Erie Railroad, the same letter goes on to say that, "the Morristown & Erie Railroad will have competitive access to both railroads via

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[34] CSX, Norfolk Southern (1997), "Exhibit G: Shared Assets Area Operating Agreement for North Jersey", Finance Docket 33388, Volume 8C of 8, for Surface Transportation Board. (p.77).
[35] CSX, Norfolk Southern (1997), "Exhibit G: Shared Assets Area Operating Agreement for North Jersey", Finance Docket 33388, Volume 8C of 8, for Surface Transportation Board. (p.77).
[36] CSX, Norfolk Southern (1997), "Exhibit G: Shared Assets Area Operating Agreement for North Jersey", Finance Docket 33388, Volume 8C of 8, for Surface Transportation Board. (p.80).
[37] Surface Transportation Board (1998), Decision No. 89, Finance Docket 33388. (p. 76).
[38] New Jersey Department of Transportation, Letter to Mr. David R. Good and Mr. John W. Snow, September 23, 1997.

haulage agreement or trackage rights over NJ TRANSIT."[39] In addition, in a January 1998 letter from NS to the Morristown & Erie Railroad, NS confirmed that it "will not object to the M&E's exercise of its trackage rights under the October 13, 1987 agreement between M&E and New Jersey Transit, as amended on August 1, 1989, for the use of hauling revenue freight cars that originate and terminate on the freight lines currently owned or operated by M&E on one hand, and an interchange with CSX and NS via the interchange locations listed in the previously-executed agreements."[40]

Consultation

CSX and NS agreed to consult with interested agencies operating in New Jersey on a regular basis after the acquisition took effect. For example, the PANYNJ and the two Class I railroads agreed that they "shall meet regularly, in accordance with a mutually amenable schedule, to discuss major issues affecting the Port Authority and the provision of rail service to the Port District."[42]

In addition, the PANYNJ and the two Class I railroads agreed in 1998 that "should any impasse arise between Norfolk Southern and CSX that they submit to arbitration under the Shared Assets Agreement regarding CSAO improvements or capital investment in the Port District affecting the Port Authority's interest, the Port Authority will have a right to present an amicus position to the arbitrator or arbitrators setting forth the Port Authority's views from a regional perspective."[43]

Similarly, in the 1998 final agreement CSX, NS, the NJDOT, and NJ Transit agreed to "meet regularly, in accordance with a schedule to be established by the parties, to discuss major issues necessary to ensure the smooth operation of both the passenger and freight service within the New Jersey Shared Assets Areas." The agreement continued, "Present at these meetings will be the Commissioner of Transportation (or designee(s)), the senior CSAO official (or designee) in charge of the New Jersey Shared Assets Areas, and the senior official of each of CSXT and NSR (or designees) having responsibility for freight rail operations in New Jersey, including such operations in the New Jersey Shared Assets Areas. In the event that New Jersey representatives disagree with a solution to an issue of concern to NJDOT/NJT, arrived at by NSR, CSXT, and CSAO, the Commissioner of Transportation may confer with the President or

[39] New Jersey Department of Transportation, Letter to Mr. David R. Good and Mr. John W. Snow, September 23, 1997.
[40] Norfolk Southern, Letter to Mr. B.J. Friedland, Morristown and Erie Railway, Inc, January 9, 1998.
[41] Port Authority of NJ & NJ (2002), "Comments of the Port Authority of New York and New Jersey", Finance Docket No. 33388. (p.3).
[42] Port Authority of NJ & NJ (2002), "Comments of the Port Authority of New York and New Jersey", Finance Docket No. 33388. (p.2).
[43] Port Authority of NJ & NJ (2002), "Comments of the Port Authority of New York and New Jersey", Finance Docket No. 33388. (p.3).

Chief Executive Officer of CSXT and/or NSR to resolve such issues." In addition, the parties agreed that "close communications and cooperation at the operating level shall be maintained between NSR, CSXT, CSAO and NJT.[44]

[44] CSX, Norfolk Southern (1998), Letter to NJ Transportation Commissioner John J. Haley, Jr., March 20, 1998.

THE CURRENT RAIL FREIGHT MARKET AND SYSTEM IN NEW JERSEY

The rail freight system is extensive in the State of New Jersey and plays an integral role in the movement of goods into, out of, and within New Jersey. The railroads handle 30 million tons of freight in New Jersey, 21 million tons inbound and 9 million tons outbound.[48] The industry employs 1,700 workers in the State and operates over more than 2,100 miles of track.[49]

This section describes the current rail freight system in New Jersey, including:

- What types of rail freight service are provided;
- Who is using or could potentially use rail freight services in New Jersey;
- How is the rail industry structured in New Jersey; and
- What types of investments are currently being made in New Jersey's rail freight infrastructure.

What Types Of Rail Freight Service Are Provided?

There are two major types of rail freight service, that is, cargo transported by the railroads:

- *Containerized or "inter-modal*" consists primarily of containers or truck trailers moved on rail cars. When containers are stacked two-high on a specialized railcar platform, it is referred to as "doublestack" service. Containerized cargo includes international maritime containers and domestic containers. Containerized traffic is considered inter-modal, because the railroads share the movement of the containers from origin to destination with maritime carriers and trucking firms. Containerized or inter-modal rail service is essential to New Jersey's ports and the backbone for some time-sensitive services (such as UPS).

[45] Surface Transportation Board (2002), "General Oversight, Decision No. 10", Finance Docket 33388. (p.4).
[46] Surface Transportation Board (2002), "Decision No. 10: General Oversight", Finance Docket No. 33388. (p.7).
[47] Surface Transportation Board (2002), "General Oversight, Decision No. 10", Finance Docket 33388. (p.4).
[48] Michael Brimmer, CSX, Presentation to the North Jersey Transportation Planning Authority Freight Initiatives Committee, February 19, 2002.
[49] Ibid.

Figure 1. Example of intermodal rail freight service

- *Carload traffic* includes boxcars, hopper cars, gondola cars and tanker cars. The commodities handled tend to be bulky and/or heavy. Accordingly, one boxcar or hopper car can often replace three-to-five truckload movements. Examples include paper, lumber, cocoa, petroleum products, chemicals, plastics, flour, corn syrup and food products. Carload traffic generally moves from either the origin directly to the end user or to a trans-load facility (where the commodities are transferred to trucks for final delivery). Carload traffic is essential to New Jersey's manufacturing base. Carload traffic can vary in terms of time sensitivity. Examples of high priority carload traffic include movements of orange juice concentrate for Tropicana and finished autos (for a number of makes, including Ford, GM, Nissan, Toyota, Mazda, Honda, BMW, Volvo and others) and auto parts for several manufacturers.

Figure 2. Example of carload rail traffic

Who Is Using Or Could Potentially Use Rail Freight Services In New Jersey?

New Jersey is centrally located in one of the largest consuming areas in North America. As such, a significant amount of goods are moved into the State to serve the regional consumer market, and rail freight service plays a significant role in distributing these goods.

In response to the proximity of that market and the quality of the State's highway infrastructure, railheads and large distribution and warehousing operations have located in the State. New Jersey serves as the continental land terminus for most of the rail traffic, including "landbridge" rail freight for international containers arriving from the West Coast and North American domestic traffic. These railheads have tended to locate near the New Jersey Turnpike and the interstate highways. New Jersey has over 440 million square feet of warehousing space, employing over 380,000 workers.[50] Examples of distribution centers relying on rail freight service include Tropicana, Toys'R'Us and the Judge Organization.

The State also has an older but active industrial base. In 2000, manufacturing employed 462,000 workers.[51] While there are some very large manufacturing and production facility employers in the State, many of the firms are medium- and smaller-sized. The General Motors Plant and Bayway Refinery in Linden, NJ are two examples of facilities that rely on rail freight service. Many of the medium- and smaller-sized manufacturers depend on numerous short-line railroads for their freight service that interchange with the Class 1 railroads.

Another major source of goods movement in northern New Jersey is the port complex centered in Newark, Elizabeth and nearby Staten Island, the largest port complex on the East. In 2002, the Port of New York/New Jersey handled 21.6 million tons of general cargo, including more than 3.7 million TEUs (20-foot equivalent units) of containerized cargo.[52] Rail traffic to and from the port complex generally consists of intermodal trains handling containers. The railroads also handle autos and carload traffic from the port complex. Additional port facilities exist in southern New Jersey as part of the greater Philadelphia-Delaware River port district.

How Is The Rail Freight Industry Structured In New Jersey?

The rail freight system in New Jersey contains three components:

- Access to three "Class I" railroads that provide service throughout North America;

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[50] New Jersey Department of Transportation, *Value of Freight to the State of New Jersey*, February 2001.
[51] Ibid.
[52] http://www.panynj.gov

- Two Conrail Shared Asset Areas; and
- More than 15 short-line, terminal switching and regional rail lines.

Prior to the acquisition by CSX and NS, New Jersey, largely, had access to a single Class I carrier – Conrail. Canadian Pacific serves the northern CSAA, but only through overhead trackage rights terminating at the Oak Island Yard and only for non-intermodal carload traffic. Single Class I service was a major concern to New Jersey, with issues raised regarding pricing, the quality of service and infrastructure maintenance/development. When bidding began for Conrail, New Jersey strongly lobbied for dual Class I rail access to restore rail competition.

Today, New Jersey has access to three Class I railroads – CSX, NS and Canadian Pacific (whose division of rail routes has remained unchanged since the Conrail transaction). These railroads may, in turn, interline or connect with the other Class I rail carriers in North America, including the BNSF (Burlington Northern Santa Fe), the UP/SP (Union Pacific), and the Canadian National.

As described in Chapter 1, as part of the acquisition of Conrail and in response to New Jersey's desire for competitive dual Class I rail access throughout the State, CSX and NS developed the concept of "Shared Assets Areas." No other state in the US has as much area covered by Shared Assets Areas (see Figure 1). The CSAO would be operated by Conrail, a vestige of the previous operator, serving as a terminal switching railroad, operating trains for both CSX and NS in the designated portions of northern and southern New Jersey and interfacing Class I railroads, port operators and short-line railroads, as needed.

Based on discussions with the Class I railroads, their preferred customers are major companies that can tender consistent large blocks of rail traffic for long distances. Smaller blocks of traffic and/or shorter hauls appear to be of far less interest, based on discussions with the railroads and other entities. Accordingly, the New Jersey shippers of greatest interest to CSX and NS are such customers as the General Motors assembly plant in Linden; the Tropicana facility in Jersey City; Port Newark/Elizabeth (the largest container complex on the East Coast); UPS; the Bayway Refinery; and the Judge Organization (a major paper transload operation).

CSX maintains a small sales office in Cranbury, NJ that can interface with the short-lines and potential customers. The CSX economic development and public affairs staff for New Jersey is based in Albany, NY. NS does not maintain any offices in New Jersey. NS sales, public affairs and economic development staff are all located in Pennsylvania, Delaware and Virginia. Conrail is headquartered in Mount Laurel, NJ but, as previously noted, is not permitted to market rail freight services.

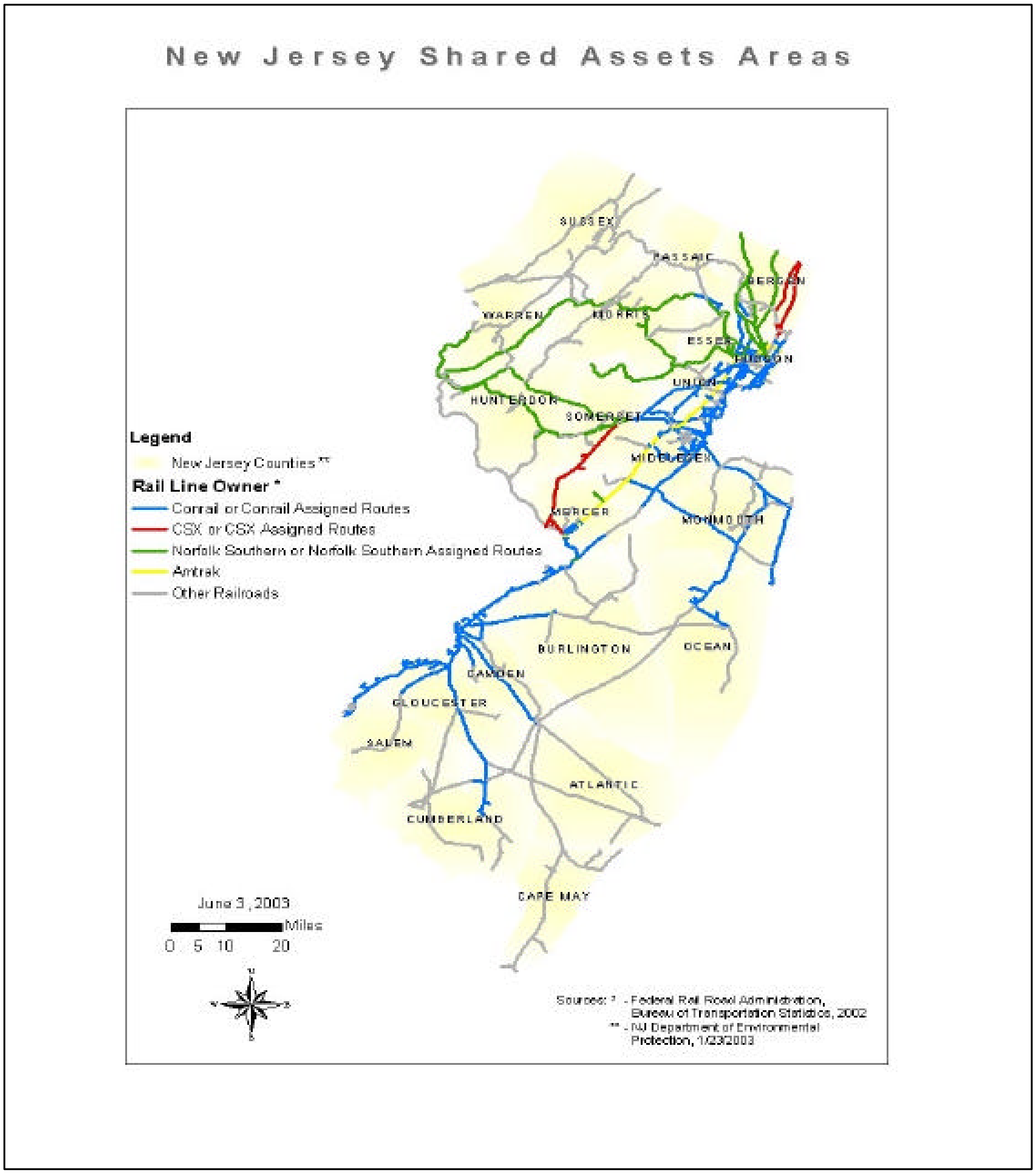
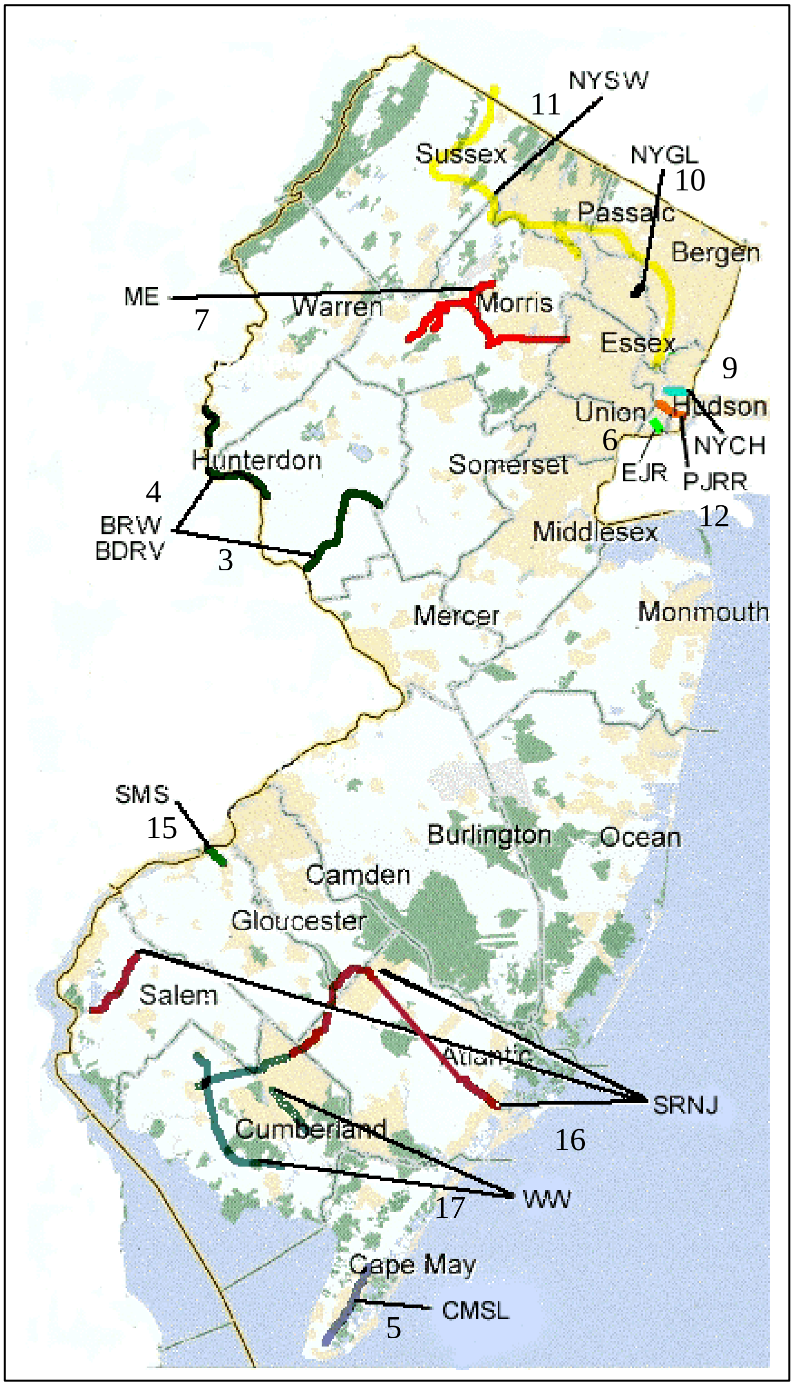


Figure 3. Shared Asset coverage In New Jersey.

New Jersey is also unique in terms of the number of short-lines serving a geographical area. The short-line railroads in New Jersey include (see figure 4):

1. Ashland Railway Inc.
2. Bayshore Terminal Railroad
3. Belvidere & Delaware River Railway Co. (BDRV)
4. Black River and Western Railroad (BRW)
5. Cape May Seashore Lines (CMSL)
6. East Jersey Railroad & Terminal Co. (EJR)
7. Morristown & Erie Railway, Inc. (ME)
8. New Jersey and Northern Railroad
9. New York Cross Harbor Railroad Terminal Co. (NTCH)
10. New York and Greenwood Lake Railway (NYGL)
11. New York Susquehanna and Western Railroad (NYSW)
12. Port Jersey Railroad (PJRR)
13. Raritan Central Railway
14. Rahway Valley Railway (the reactivated Staten Island and Rahway Valley rail lines in Union County)
15. SMS Rail Service, Inc. (SMS)
16. Southern Railroad Company of NJ (SRNJ)
17. Winchester & Western Railroad Co. (WW)

The short-line railroads are the primary marketers and service providers for the smaller and medium-sized rail users in New Jersey. They handle carload traffic only; they do not currently handle inter-modal traffic. The short-lines market and quote rates to shippers, as well as interface with the Class Is and Conrail. The short-lines provide carload service directly to New Jersey warehouses and manufacturing operations. Based on discussions during the course of the study, the short-lines have been actively trying to develop the rail freight market in the State, including the promotion of economic development by rail users.



Source: http://njshortline.com/members.htm

Figure 4. New Jersey Short-Line Railroads.

What Types of Investments Are Currently Being Made In New Jersey's Rail Freight Infrastructure?

Much of New Jersey's rail freight infrastructure is older. Accordingly, continuing investments are needed to ensure that the rail system can handle the desired amount of rail freight traffic.

The NJDOT is working with a consortium of states to obtain funds for expanding the national rail freight system. It also maintains a limited financial program for the State's short-line railroads which provides assistance to the 14 short-line railroad operators in New Jersey. Current funding level is $10 million annually allocated through a competitive process. Several major investments have recently begun to advance the rail freight system in NJ. Two examples are:

<u>The North Jersey Freight Rail Program</u>

The North Jersey Freight Rail Program is a public/private effort by the Port Authority, CSX and NS to alleviate a series of bottlenecks for intermodal trains serving the Port Newark/Elizabeth complex. The $50 million program includes:

- Adding a second mainline track on the Chemical Coast Line serving the port complex to relieve congestion and improve efficiency;
- Providing a second track near Conrail's Oak Island Yard to improve train movements and eliminate delays;
- Providing a second main line track on the Lehigh Valley Line between Bound Brook and Clark to allow trains to move in both directions simultaneously, eliminating the need to idle on sidings; and
- Acquiring additional property in Oak Island to accommodate additional capacity and eliminate the "mountain" of stored containers that has grown over the years.[53]

The PANYNJ is contributing $25 million to the program, with the two Class I railroads investing the remaining $25 million. Both the railroads and the PANYNJ benefit through the increased ability to handle inter-modal container traffic for the region's port.

<u>New County Road</u>

An additional $30 million investment is being made by the PANYNJ to eliminate a grade crossing at NS's Croxton Yard in Secaucus by building a bridge to carry New County Road over the yard.[54] The current at-grade crossing created a bottleneck that was anticipated to worsen with the new connection of Main and Bergen County lines and the opening of the Secaucus Junction rail transfer station.

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[53] New Jersey Department of Transportation Press Release, *Gov. McGreevey Announces $80 Million for Freight Rail Improvements,* April 28, 2003.
[54] <u>Ibid.</u>

KEY FINDINGS

The key findings of this study are based on an analysis of the material collected by the study team, discussions with the railroads and the PANYNJ, and confidential interviews with shippers and economic development experts. The findings are divided into two sections – broad findings and specific issues related to the relationship between the New Jersey short-line railroads and the Class I railroads.

The analysis conducted by the team compares New Jersey's rail freight system as it exists today to the goal envisioned at the time of the Conrail acquisition. That goal was to create a fully competitive rail freight system in New Jersey – one that would meet the State's current and future needs, as well as vigorously seek to encourage rail freight use throughout the State.

Overall Findings

The following are the key findings:

- Inter-modal rail freight service, along with service for several large customers, has generally been working.
- Conrail, as the CSAO operator, is generally providing as good or better service than the previous single Class I operator in New Jersey. However, the CSAO operation should be watched and could destabilize.
- Current Class I marketing and pricing practices disfavor use of the CSAO and may ultimately destabilize the institution.
- Medium and smaller carload customers have generally not seen increased competition or service.
- CSX and NS have done limited marketing in New Jersey.
- The Class I railroads have a limited physical presence in New Jersey.

Inter-modal rail freight service, along with service for several large customers, has generally been working.

Serving the growing amount of containerized maritime cargo through the Port of New York and New Jersey was a major objective of the railroads' acquisition of Conrail five years ago. The Port handles the greatest number of containers on the East Coast. Further, New Jersey is the eastern terminal for containerized cargo railed from the West Coast ports. This inter-modal cargo met the criteria for the Class Is – large volumes, generally consistent, moving long distances.

From the information obtained to date, it would appear that NS and CSX are aggressively competing for this traffic. In addition, large corporate carload customers, who meet the preferred customer criteria of the Class I railroads, appear generally satisfied by the level of service provided. As an example of the level of service provided to these customers, some key Class I customers have one or more railroad staff located on premise to ensure service quality.

Conrail, as the CSAO operator, is generally providing as good or better service than the previous single Class I operator in New Jersey. However, the CSAO operation should be watched and could destabilize.

In general, the large customers and short-lines reported that Conrail worked well operationally. However, because the Class I railroads primarily consider Conrail a cost center, rather than a profit center, the risk exists that the Class I railroads will so strip Conrail of resources that it will no longer be able to function effectively. Without the ability to market its area, Conrail must rely on the Class I railroads and the short-lines to grow its traffic base. If either of the Class I railroads lose interest in developing a market base in the Shared Assets Area, investment policy could be stalemated and Conrail's Board (equal representation from the parent railroads NS and CSX) may not invest sufficiently in the region to maintain a high quality of service.

Some observers expressed concerns. 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. It may be possible that continued cost cutting and staff attrition has led to service erosion in the CSAA. Conrail's parent companies – CSX and NS – are also engaged in cost cutting, and this could spill over into Conrail. For example, CSX announced that it would reduce its staff by 1,000 positions in November, 2003.[55]

Current Class I marketing and pricing practices disfavor use of the CSAO and may ultimately destabilize the institution.

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 Area. Several individuals interviewed during the study noted that the Class 1 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. As noted in the previous chapter, the original intent of the Class I railroads in that agreement was to make the CSAO operation an invisible, integrated part of their service. This approach of highlighting CSAO costs creates a competitive disadvantage for the Shared Assets Area in the minds of customers. The pricing practice is contrary to an "invisible" CSAO and creates an incentive to encourage customers to relocate to captive lines outside the Shared Assets Area where no Conrail costs would be charged. Captive rail lines are served only by one Class I railroad. During the study team's interviews there are repeated anecdotes concerning encouragement by one of the Class1 railroads (NS) that shippers and receivers relocate their operations along its captive lines in eastern Pennsylvania, offering lower rail service prices as an inducement. To the extent that NS is locating transload operations in eastern

[55] Journal of Commerce Online, "CSX Profit falls on fuel, restructuring costs," *JoC Online*, January 27, 2004.

Pennsylvania, it is likely that the VMT (vehicle miles traveled) to core destinations in New Jersey have increased. Further investigation would be needed to verify this finding.

Indeed, the long-time marketing paradigm of the Class I railroads favor moving as much business as possible to captive rail lines, as opposed to those where competitive access is guaranteed. According to a STB study, the Class I railroads generally charge shippers a rate that is 180 percent above the variable costs of the haul.[56] However, customers on captive rail lines were charged rates averaging 237 percent above variable costs. Of the four US Class I railroads, NS and CSX derive the most revenue from captive lines – NS receives more that 38 percent of its revenue from customers on captive lines, and CSX receives nearly 36 percent of its revenue for captive line customers.[57]

Medium and smaller carload customers have generally not seen increased competition or service.

In contrast to the very large customers, medium and smaller carload customers have not seen increased competition for their shipments. Instead, some customers have experienced reductions in service or have received unrealistic, non-competitive service quotes from the Class I railroads. On the other hand, increased rail freight use by this clientele has occurred where facilities are served by short-lines that market and provide high levels of customer service. The short-lines have taken the lead role in expanding carload rail freight use in New Jersey.

CSX and NS have done limited marketing in New Jersey

Rail freight in New Jersey needs to be marketed aggressively by both the short-lines and Class I railroads to reach its full potential. Without marketing and educating potential customers about rail freight options, more traffic is likely to move by truck or consider sites outside of the State where rail service is perceived as less expensive. In contrast to the short-lines, the Class I railroads do not appear to market rail freight carload service aggressively in the State, particularly within the area encompassed by the CSAO; instead, they have generally limited marketing to existing large customers. Rather than pursuing new customers, one Class I is largely leaving the marketing of new customers to short-lines. In addition, the short-lines have also reported that the Class Is were, on occasion, either not responsive in quoting rates for a potential customer or quoting unrealistic rates.

[56] John Shanahan, "Rail Shippers Yearn to be Free," *Logistics Management*, November, 2003, p. 39 (referencing the 2001 STB Revenue Shortfall Allocation Methodology Study.
[57] Ibid.

The Class I railroads have a limited staff presence in New Jersey.

Although the State is a major rail freight location, New Jersey does not receive the same level of Class I rail attention as that provided to preferred rail customers. NS has no sales staff based in New Jersey. Neither CSX nor NS has public affairs staff positioned in the State. CSX has two Albany, NY based staff members who are responsible for New Jersey. NS staff members are based in Philadelphia, PA. Interviewees report that it can be difficult to communicate with Class I staff and that Class I sales and marketing staff also have limited knowledge of New Jersey.

As previously noted neither Class I railroad has economic development staff in the State nor are they actively involved in economic development organizations within the State. Limited economic development activity by the Class Is has been detected in the Shared Assets Area, contrary to the Class I railroads commitments in 1998 to the PANYNJ.

Issues Specific to the Relationship between the NJ Short-Line Railroads and the Class I Railroads

The short-line railroads have more actively marketed rail freight options to potential customers in New Jersey. As such, these railroads serve an important role in providing modal options and enhancing economic development in the State. However, the short-lines have often found the business behavior of the Class Is to be frustrating their pursuit of traffic. It has taken forms that include refusals to grant short-distance trackage rights to serve a customer, lack of attention and knowledge from marketing personnel, and paradigmatic competitive behavior to relocate businesses to captive Class I rail lines. A positive and productive relationship between the New Jersey short-lines and the Class I railroads is needed for the promise of dual competitive rail access to be achieved.

The specific issues identified during the study include:
- Class I operational issues
- Transloading
- Customer relocations to captive lines

Class I operational issues

Serious operational issues between the short-lines and the Class I railroads include unresolved interchange location agreements that were negotiated as part of the Conrail acquisition and circuitous routing of carload traffic (leading to increased cost and travel time). As noted in Chapter 1, the Class Is had assured the NJDOT that they would abide by the pre-acquisition Conrail interchange agreements with the short-lines. These operational issues impede the development of rail freight traffic in the State and contribute to increased truck traffic.

Transloading

The Class I railroads appear to be more focused on encouraging shippers to use transload or inter-modal services rather than direct rail service to Shared Assets Area sites (either by the Class I or via short-lines), particularly for smaller customers. Both transload and inter-modal involve rail to a central point and truck to the shipper. While the approach is consistent with the Class I business model of moving large quantities from point A to point B, the result can be an increase in truck traffic into and through the major consumer market of New Jersey. For example, increased use of trans-loading by NS at its Bethlehem, PA facility may have contributed to the increase in trucks on Route 78 in New Jersey.

Customer relocations to captive lines

The shippers and short-lines interviewed felt strongly that the current Class I practices regarding the CSAO have resulted in an uneven playing field, favoring relocations to sites on captive lines or use of facilities in non-CSAO areas. Interviewees reported that Class I staff, particularly from NS, suggested on numerous occasions that potential shippers and rail freight users would benefit from locating or relocating out of the CSAO, particularly to rail lines captive to their railroad. The Class Is, in these discussions, cited cost savings, notably saving the additional CSAO rail cost. Anecdotal evidence suggests that some customers have relocated to Pennsylvania.

RECOMMENDATIONS

New Jersey is densely developed with congested highways; has an older but active industrial base; is a major hub of North American and regional distribution; and is a very lucrative consumer center. As such, the State is a major rail freight user and has the potential to shift even more goods movement to rail use.

However, the full attention of the two Class I railroads is required to realize the potential of rail freight in New Jersey, along with a solid and competitive rail freight system. While the research conducted for this study indicates areas where rail freight is moving to its potential, other rail freight opportunities are suffering from inattention and demarketing. To this end, further research is needed to adequately quantify the extent to which transload operations are being located in eastern Pennsylvania and VMT is increasing as a result.

The recommendations focus only on <u>carload traffic</u>; intermodal rail freight traffic appears to be competitive, growing, and moving forward on the enhancements necessary to meet future needs. The recommendations also recognize that the carload rail freight market in New Jersey is different from the type and size of companies and length of hauls historically most desired by the Class I railroads. Nevertheless, the potential for significant rail freight traffic exists in the State.

- *Establish a New Jersey rail economic development fund with contributions from CSX and NS totaling $30 million ($15 million each from CSX and NS) over the next 5 years*.
  The objective of the fund is to retain and increase the number of jobs and carloads generated by New Jersey firms. The specific elements of this recommendation include:
  - The fund can be used by the two Class I railroads to help support the presence of their marketing, sales and economic development staff in New Jersey up to a certain negotiated amount annually. The recommended Conrail marketing and sales functions, described below, can also be supported by this fund up to a negotiated amount.
  - Should the two Class I railroad contributions to the fund, the public sector's share of the next stage of the Class I/New Jersey rail freight capital investment (currently under discussion) would increase up to 50 percent.
  - Each Class I railroad would be eligible for a predetermined and negotiated rebate in their annual contribution to the fund based on its respective accomplishments in terms of increases in net <u>carload</u> traffic and jobs retained/added through the economic/industrial development program. New carload traffic could originate or terminate on New Jersey's short-lines.
  - At the NJDOT's direction, up to certain pre-negotiated amounts, the fund could be used by New Jersey short-lines and economic development

organizations for projects or activities designed to retain or attract rail freight-related businesses and jobs.

- The two Class I railroads will confidentially submit, on a semi-annual basis, reports documenting the carload traffic and new business development and related jobs added within the State.
- The fund would be administered jointly by the two Class I railroads and the NJDOT, with 50 percent of the voting power given to CSX, NS and Conrail. The remaining 50 percent would belong to NJDOT.
- The Class I railroads should be mandated to supply origin, destination and routing information on a confidential basis to be used in substantiating rail freight development efforts in New Jersey.

- *Empower Conrail to market/sell carload rail freight for its service area, as well as quote rates*.
  The economic development fund can be used to support sales, marketing and economic development staff at either of the Class I railroads or at Conrail. Conrail can work with the short-lines and the Class I railroads to build its traffic base and enhance development in the Shared Assets Areas. Conrail's knowledge of New Jersey, combined with its current good working relationship with the short-line railroad, can be leveraged to enhance rail freight marketing and sales.

- *Comply with agreements with New Jersey's short-lines to provide interchanges at the negotiated locations, as well as assure dual access.*
  In some cases, the Class I railroads have not complied with the agreements that they negotiated with the State of New Jersey and the short-lines during the Conrail acquisition. These agreements must be concluded immediately.

- *Continue to coordinate with NJDOT similar to what is being done currently*.
  The Class I railroads are presently in discussions with NJDOT to identify what initiatives can be undertaken by all parties to enhance rail freight movement throughout New Jersey and reduce the impact of truck traffic on New Jersey's highway system. This dialogue needs to continue on a regular basis.

APPENDIX

A. Pre-Acquisition Documents

1. Agreement between CSX, NS and NJDOT, March 20, 1998.
2. Letter from the NJDOT, to Mr. David R. Good and Mr. John W. Snow, September 23, 1997
3. Brief of the PANYNJ, February 23, 1998.

B. Pertinent Filings from 2002 STB Oversight Proceedings

1. Comments of the PANYNJ, July 17, 2002.
2. Surface Transportation Board, Decision No. 10, November 5, 2002.

C. Pertinent Filings from 2003 STB Oversight Proceedings*

1. Letter from the NJDOT, July 14, 2003
2. Letter from the North Jersey Transportation Planning Authority, July 14, 2003
3. Reply Comments of Applicant CSX Corporation and CSX Transportation, Inc. August 4, 2003
4. Reply of Norfolk Southern Corporation and Norfolk Southern Railway Company, August 4, 2003
5. Reply Comments of the United States Department of Transportation, August 4, 2003

D. Pertinent Filings from 2004 STB Oversight Proceedings[58]

1. Surface Transportation Board, Decision No. 11, January 21, 2004
2. Surface Transportation Board, Decision No. 12, February 12, 2004

[58] The scope of this report did not extend beyond the July 14, 2003 deadline for submission of STB oversight comments, however, these documents have been included in the Appendix as reference material.