

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037
TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

KEITH G. O'BRIEN

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(202) 663-7852 (Direct Dial)
E-Mail: kobrien@bakerandmiller.com

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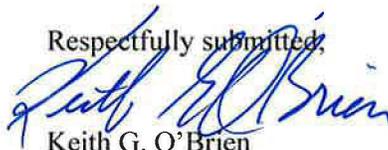
Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Reading, Blue Mountain & Northern Railroad Company – Petition for
Declaratory Order, FD 35956

Dear Ms. Brown:

Enclosed is the Joint Reply of Pennsylvania Northeast Regional Railroad Authority and the SEDA-COG Joint Rail Authority (the "Authorities") to Reading, Blue Mountain and Northern Railroad Company's Petition for a Declaratory Order. Should you have any questions concerning this filing, please contact the undersigned counsel for the Authorities.

Respectfully submitted,



Keith G. O'Brien
Attorney for Pennsylvania Northeast Regional
Railroad Authority and the SEDA-COG Joint Rail
Authority

Enclosures

cc: Parties of Record
Jeffery K. Stover
Lawrence C. Malksi

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35956

**READING, BLUE MOUNTAIN NORTHERN RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER**

**JOINT REPLY OF PENNSYLVANIA NORTHEAST REGIONAL RAILROAD
AUTHORITY AND SEDA-COG JOINT RAIL AUTHORITY**

**Keith G. O'Brien
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW,
Suite 300
Washington, D.C. 20037
Tel: (202) 663-7820
Fax: (202) 663-7849
Attorneys for Pennsylvania Northeast Regional
Railroad Authority and SEDA-COG Joint Rail
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INTRODUCTION & BACKGROUND

On September 11, 2015, Reading, Blue Mountain and Northern Railroad Company (“RBMN”), a Class III railroad operating in northeastern Pennsylvania, petitioned the Surface Transportation Board (“Board”) to exercise its authority under U.S.C. § 554(e) and 49 U.S.C. § 721 and institute a declaratory order proceeding (“Petition”). RBMN asserts that it filed its Petition in an effort to eliminate several controversies pending in the Pennsylvania courts between RBMN and other common carriers, the Pennsylvania Northeast Regional Railroad Authority (“PNRRA”)¹ and the SEDA-COG Joint Rail Authority (“JRA”).² Specifically, the

¹ PNRRA, a non-operating rail common carrier, owns several rail lines on which the Delaware-Lackawanna Railroad (“DL”), which is also a common carrier subject to the Board’s jurisdiction, is the operator under the terms of an operating agreement. The pending Commonwealth of Pennsylvania court case which addresses the controversy between the parties is Reading Blue Mountain & Northern Railroad v. Pennsylvania Northeast Regional Rail Authority and Board of Pennsylvania Northeast Regional Rail Authority, Case No. 13-06796, Court of Common Pleas of Lackawanna County, Pennsylvania (the “PNRRA Action”). A copy of the current Operating Agreement between PNRRA and the DL is attached as Exhibit A.

² JRA, a non-operating rail common carrier, owns several rail lines which it has leased pursuant to an operating agreement to Juniata Valley Railroad Company, Lycoming Valley Railroad Company, Nittany & Bald Eagle Railroad Company, North Shore Railroad Company, and Shamokin Valley Railroad Company, all of which are common carriers, subject to the Board’s jurisdiction. The pending Commonwealth of Pennsylvania court case, which addresses the controversy between the parties is Reading Blue Mountain & Northern Railroad v. SEDA-COG

Petition concerns whether the application of certain provisions of the Pennsylvania Municipality Authorities Act (“PMAA”) and remedies sought by RBMN from the Commonwealth of Pennsylvania courts are preempted by the provisions of the ICC Termination Act (“ICCTA”), 49 U.S.C. § 10501(b).³ PNRRA and JRA⁴ support institution of a declaratory order because the issues at stake if decided at the state court level without the Board’s guidance on preemption would potentially interfere with and/or disrupt railroad operations to the detriment of the public interest in light of the remedies sought by RBMN in the pending state court actions.

Both operating and non-operating rail common carriers subject to the Board’s jurisdiction⁵ are required to provide safe, efficient, and responsible competitive rail service to shippers because such service serves the public interest. It is important to recognize that while non-operating rail common carriers contract with an operator to directly provide rail service to rail customers, the non-operating rail common carrier remains subject to the Board’s jurisdiction because it has residual common carrier obligation (as a statutory common carrier) under 49 U.S.C. § 11101(a) to provide “transportation or service on reasonable request,” in the event the non-operating rail common carrier’s chosen operator is unable to fulfill its responsibilities. In the Petition, RBMN attempts to trivialize the Authorities’ status⁶, perhaps because RBMN is unaware that the Board has authority over non-operating rail carriers as well as operating carriers

Joint Rail Authority and Board of SEDA-COG Joint Rail Authority, Case No. CV-15-1201, Court of Common Pleas Northumberland County, Pennsylvania (the “JRA Action”). Copies of the current Lease/Operating Agreement between JRA and its operators are attached as Exhibit B.

³ A copy of the PMAA, 53 Pa. C.S. § 5601 *et seq.* is attached as Exhibit C.

⁴ PNRRA and JRA are referred to collectively herein as (the “Authorities”).

⁵ See 49 U.S.C §10101.

⁶ See Petition at 11 (stating “the Board does not have exclusive jurisdiction over the restrictions imposed by the PMAA on public authorities just because they happen to own railroad facilities and have some ‘residual’ authority as railroads.”)

subject to its jurisdiction; or perhaps RBMN understands that its claims are subject to preemption unless it can create some artificial distinction which does not exist under 49 U.S.C. § 10501(b). In fact, the Board as the implementer of the nation's Rail Transportation Policy is tasked with assuring that all railroads subject to the Board's jurisdiction fulfill their responsibilities, and that any state and local laws that "may reasonably be said to have the effect of managing or governing rail transportation", or "the effect of unreasonably burdening or interfering with rail transportation" are preempted.⁷

Contrary to RBMN's attempts to disguise or couch its arguments in the Pennsylvania courts and before the Board, RBMN is engaged in an extended litigation campaign in the courts of the Commonwealth of Pennsylvania, which would disrupt current rail operations, without the Board's approval.⁸ In the PNRRA Action, RBMN has asked a Commonwealth of Pennsylvania court, based on the application of a state statute (the PMAA), to enter a judgment declaring that:

1. PNRRA "must refrain from direct competition with private enterprise, either through divestiture of its rail freight business, and/or sale of the rights to freight rail traffic on its lines";⁹

⁷ N. Y. Susquehanna & W. Ry. Corp. v. Jackson ("Susquehanna"), 500 F.3d 238, 252 (3d Cir. 2007); City of Milwaukee - Petition for Declaratory Order ("City of Milwaukee"), 2013 STB LEXIS 100, at *3 (S.T.B. served Mar. 25, 2013). The Board also has exclusive jurisdiction to regulate rail-to-rail competition under 49 U.S.C §10101.

⁸ Essentially, RBMN seeks to accomplish two objectives (1) prevent the Authorities from continuing mutually satisfactory leases and/or operating agreements that have provided reasonable and efficient service to the customers served by the lines for decades; and (2) prevent non-operating common carriers and their operators, which are also common carriers subject to the Board's jurisdiction from fulfilling their common carrier obligations by restricting the Authorities from assisting their chosen operators with soliciting customers and obtaining grants that are necessary to earn adequate revenues and to operate the transportation facilities safely and without detriment to the public health and safety.

⁹ See RBMN Second Amended Complaint against PNRRA, Exhibit D at 15. In this regard, RBMN claims that Section 5607(b)(2) of the PMAA, 53 Pa. C.S. § 5607(b)(2), bans PNRRA from undertaking activities which RBMN alleges compete with RBMN. In other words, RBMN

2. The existing operating agreement between PNRRA and its rail operator is “null and void;”¹⁰ and
3. PNRRA must utilize a complex and time-consuming public bidding process before entering into any “contract for the operation of its rail lines.”¹¹

Similarly, in the JRA Action, RBMN has asked a Commonwealth of Pennsylvania court, based on the application of a state statute (the PMAA), to enter a judgment declaring that

1. JRA “must refrain from direct competition with private enterprise” for customers and grants;¹²
2. JRA must bid its operating agreement/lease and award the agreement/lease to the highest bidder, regardless of the Authority’s criteria for determining which operator best serves the public interest and promotes the interest of the Authority, and fulfills the duties of a residual common carrier;
3. JRA must reject all existing bids and start the solicitation process over using RBMN’s arbitrary criteria for awarding a “contract for operation of its rail lines.”

In short, RBMN asks the Commonwealth of Pennsylvania courts to enter a judgment declaring (1) that one or both of the Authorities must refrain from competition with private rail

seeks to eliminate competition by removing PNRRA, a non-operating rail common carrier, from the rail freight industry altogether.

¹⁰ See RBMN Second Amended Complaint against PNRRA, Exhibit D at 15-16. In this regard, RBMN claims that the operating agreement between PNRRA and its rail operator must be declared void because (1) PNRRA is purportedly engaging in activities which RBMN alleges unfairly compete with RBMN under Section 5607(a) of the PMAA, and (2) PNRRA entered into the operating agreement with its rail operator without using a public bidding process, which RBMN alleges is required under Section 5614(a) of the PMAA, 53 Pa. C.S. § 5614(a). Voiding the existing operating agreement between PNRRA and its rail operator on its face will make continued operation of the rail lines problematic by eliminating contract provisions relating to important issues as insurance, liability and other operating requirements, which establish the responsibility of the rail operator for these important matters

¹¹ See RBMN Second Amended Complaint against PNRRA, Exhibit D at 16. In this regard, RBMN alleges that Section 5614(a) of the PMAA requires PNRRA to utilize a public bidding process for any operating agreement for the operation of its rail lines.

¹² See Count 1 of RBMN’s Second Amended Complaint (Exhibit D). While, the JRA litigation was initiated more recently than the PNRRA litigation, JRA fears that RBMN will ultimately seek to have JRA to either divest its rail freight business or sell its rights to operate freight traffic on its lines because RBMN accuses the Authorities of the same alleged violation of anti-competition provisions of the PMAA.

carriers; (2) that one or both of the Authorities must undertake divestiture of rail freight assets and/or sell its rights to freight traffic; (3) that existing operating agreements between the Authorities and their respective rail operators, including provisions relating to operation and safety of the rail lines, are null and void; and (4) that the Authorities are barred from entering into future lease/operating agreements for the operation of their rail lines without the use of complex and time consuming procedures that restrict the Authorities' discretion in selecting a rail operator. RBMN seeks this unauthorized and drastic relief through the application of an ambiguous state statute (the PMAA) in the Commonwealth of Pennsylvania courts, irrespective of the facts that both Authorities are non-operating rail common carriers, that the Board has exclusive authority to regulate railroad operations,¹³ and that the operating agreements RBMN asks to have voided became effective subject to the Board's oversight.¹⁴

PNRRA and JRA each responded to RBMN's Complaints in the Commonwealth of Pennsylvania courts by raising federal preemption under 49 U.S.C. 10501(b), in addition to asserting numerous state law arguments as to why RBMN's claims lack merit; while the Authorities arguments are meritorious, they are not relevant here.¹⁵ Regardless of whether or not the purported actions of the Authorities complained of by RBMN are contrary to the PMAA, the issue presently before the Board is whether the application of the PMAA in the manner sought

¹³ 49 U.S.C. § 10501(b).

¹⁴ Once the Board has authorized a common carrier to commence operations, it is difficult to void the authority granted. For example, any finding that a court might make with respect to fraud would not be conclusive as to the type of fraud necessary to void the authority [the Board] has issued with respect to [the] lines." See Richard D. Robey, Juniata Valley Railroad Company, et. al. – Petition for Declaratory Order – Allen J. Levin and Lewistown Central Railroad Company ("Robey"), FD 33420, slip op. at 3 (STB served June 17, 1998).

¹⁵ See Defendants' (PNRRA and its Board) Pre-Hearing Brief in Opposition to Plaintiff's Emergency Application for Preliminary Objections (PNRRA Action), attached as Exhibit E, pp. 9-47.

by RBMN in the Commonwealth of Pennsylvania courts and the relief and remedies requested by RBMN in the courts are preempted under ICCTA.¹⁶

Succinctly put, a Declaratory Order (or at a minimum Board guidance interpreting preemption) is necessary because application of the state statute (the PMAA) and the remedies sought by RBMN in the Commonwealth of Pennsylvania courts, if granted, will interfere with PNRRA's and JRA's rail operations for the reasons stated above and below and will infringe upon matters directly regulated by the Board. RBMN essentially seeks to transfer responsibility for managing and governing rail transportation from the Board to the courts of the Commonwealth of Pennsylvania, contrary to 49 U.S.C §10501(b), irrespective of the impact such changes would have on rail operations, and contrary to the Supremacy Clause. Therefore, PNRRA and JRA request that the Board declare that the application of Sections 5607(b)(2) and 5614(a) of the PMAA to the Authorities in the manner sought by RBMN in the Commonwealth of Pennsylvania courts and the relief and remedies requested by RBMN in the Commonwealth of Pennsylvania courts are either facially preempted or preempted as applied under 49 U.S.C. § 10501(b).

PARTIES

PNRRA

PNRRA, an authority formed under the PMAA and other relevant law, is a non-operating rail common carrier subject to the Board's jurisdiction that owns nearly 100 miles of rail lines within its four member counties. PNRRA was formed in 1982 for the purpose¹⁷ of acquiring,

¹⁶ The Board has recognized that remedial tools available to courts in connection with alleged violations of state laws, including violations of the PMAA are limited. See Robey, slip. op. at 3. For example, any divestiture remedy sought is clearly subject to the Board's jurisdiction and approval.

¹⁷ See PNRRA Articles of Amendment. Exhibit F.

holding, constructing, improving, maintaining, operating, owning and leasing, either in a capacity of lessor or lessee, rights-of-way, trackage, sidings and other related rail transport facilities and to accept grants and borrow money from any Authority, Corporation or Agency of the United States or the Commonwealth of Pennsylvania for the purpose of acquiring and preserving such rail transport facilities within the Commonwealth of Pennsylvania. PNRRA acquired the majority of its lines, running northeast from Scranton to Carbondale and southeast from Scranton to Analomink, during the period 1985 to 1994.¹⁸

¹⁸ PNRRA will not regurgitate its entire background or the history of the litigation between the parties in the Commonwealth of Pennsylvania courts; however, it is important to note that PNRRA does not concede that the history is correct as stated in the Petition, and, in fact, the Petition includes numerous incorrect false and misleading statements. For example:

- On page 3 of the Petition, RBMN claims that “PNRRA was formed in 2006” as a result of “the merger of two other municipal authorities, the Lackawanna County Railroad Authority (‘LCRA’) and the Monroe County Railroad Authority (‘MCRA’).” This is just wrong and RBMN has access to the public documents demonstrating it is wrong. PNRRA was formed on April 12, 1982 as the Monroe County Railroad Authority and changed its name to PNRRA in 2006. See Articles of Incorporation of MCRA, Certificate of Incorporation of MCRA, Articles of Amendment of MCRA, Exhibits G, H, and F respectively. LCRA was formed in 1984. See Articles of Incorporation of LCRA, Exhibits I. LCRA joined into MCRA, which changed its name to PNRRA in 2006. See Certificate of Joinder. Exhibit J. Thus, PNRRA’s corporate existence began on April 12, 1982 and the prior acts of MCRA and LCRA are all acts of PNRRA.
- On page 3 of the Petition, RBMN states “LCRA first acquired rail lines in 1993.” This is also wrong. LCRA, now joined (not merged) into PNRRA, acquired existing rail lines in northeastern Pennsylvania beginning in 1985. See Exhibit E, Pages 1-9. Before 1993, LCRA had acquired multiple rail lines.
- RBMN states on page 3 of the Petition that “RBMN does not believe that MCRA used an RFP or sought competitive bidding prior to contracting with the DL.” This is also wrong. RBMN knows through discovery in the state court action that both LCRA and MCRA issued RFP’s before selecting the DL as a rail operator initially. Exhibits. K, L.
- Significantly, on page 6 of the Petition, RBMN gives the impression that the state court definitively and finally ruled on the issue on preemption when it ruled on preliminary objections to the Amended Complaint in the PNRRA Action, asserting:

“This despite the earlier State Court Order (Exhibit D) by another member of the Court denying a preliminary objection on this very issue.”

JRA

JRA, a joint authority formed under the PMAA and other relevant law, is a non-operating rail common carrier subject to the Board's jurisdiction that owns nearly 200 miles of rail lines within its eight member counties. JRA was incorporated in 1983 for the purpose of acquiring, owning, and maintaining railroad properties throughout Central Pennsylvania to provide rail freight service and foster economic development and job creation in the region through the improvement and expansion of rail infrastructure.¹⁹ All of JRA's rail lines were established many years prior to RBMN commencing operations.

RBMN

RBMN is a for-profit Pennsylvania Corporation. According to RBMN, it is a Class III carrier with 320 miles of railroad in Berks, Bradford, Carbon, Columbia, Lackawanna, Luzerne, Northumberland, Schuylkill and Wyoming Counties, Pennsylvania. The railroad runs from

RBMN's Pennsylvania-based counsel must know that a ruling on preliminary objections under Pennsylvania law is not dispositive of an issue like preemption which can be asserted as an affirmative defense later in the same case, even after denial of a preliminary objection on the same basis earlier in the case. See Abbott v. Anchor Glass Container Corp., 758 A.2d. 1219 (Pa. Superior Ct. 2000). In addition, the denial of preliminary objections to RBMN's Amended Complaint (see RBMN Amended Complaint, Exhibit M) in the PNRRA Action related only to the claim of RBMN concerning the use of public bidding under Section 5614(a) of the PMAA, the only issue RBMN had at that point raised in the PNRRA Action. It did not address the issue of RBMN's later allegations that PNRRA should be ordered to divest itself of its freight rail assets and be barred from competing with RBMN. That issue was not even raised by RBMN until its Second Amended Complaint (see RBMN Second Amended Complaint, Exhibit D) was filed much later in the PNRRA Action. When RBMN raised this issue in its Second Amended Complaint, PNRRA preliminarily objected to the application of the statutory provision and the relief sought by RBMN on the grounds of preemption which remains pending before the Pennsylvania court. RBMN's attempt in the Petition to suggest that preemption has already been addressed in some final fashion by the Commonwealth of Pennsylvania court is simply erroneous. Indeed, when the Pennsylvania court addressed RBMN's attempt to obtain preliminary injunctive relief, the Pennsylvania court correctly determined that it would be premature for the court to grant any injunctive relief in part because the issue is still pending before the court on preliminary objections. See Opinion of Hon. V. Geroulo, Exhibit N.

¹⁹ See Exhibit O (JRA's Articles of Amendment).

Reading PA to Mehoopany PA and it also operates a seven mile rail line extending from Towanda to Monroeton in Bradford County, PA. RBMN did not begin operating as a common carrier railroad until 1990, eight years after PNRRA was formed and seven years after JRA was formed.²⁰ With respect to PNRRA, RBMN's own website states that RBMN acquired its rail lines that it now alleges compete with the rail lines owned by PNRRA in 1996, years after PNRRA acquired its parallel and allegedly competing rail lines.²¹ RBMN presumably has filed the Commonwealth of Pennsylvania court actions against the Authorities as part of a continuing effort to add to its for-profit business operations. RBMN seeks to obtain control over the Authorities' rail lines now that the Authorities' business and industrial development efforts over the past three decades have developed their respective rail lines into valuable assets.

LEGAL DISCUSSION

A. Preemption Generally

“WHAT A STATE CANNOT DO DIRECTLY, IT ALSO CANNOT DO INDIRECTLY.”²²

The threshold question in determining whether preemption applies to a particular state statutory provision is whether the state law or a remedy sought in connection with an alleged violation of the state law conflicts facially or as applied with an act of Congress. "The Constitution's Supremacy Clause permits Congress to expressly displace state or local law in any given field." Norfolk S. Ry. Co. v. City of Alexandria, 608 F.3d 150, 156 (4th Cir. 2010). The

²⁰ See Petition at 2.

²¹ See Exhibit P (RBMN's Website); see also Exhibit Q, which contains deeds reflecting PNRRA's acquisition of rail lines in its earlier MCRA name and in the name of its now joined predecessor, LCRA. Specifically, RBMN did not acquire rail lines running roughly parallel to PNRRA's earlier acquired Scranton/Analomink rail line in a north/south direction from Lehighton to the Scranton area until 1996, years after PNRRA owned its active parallel lines.

²² See 520 S. Mich Ave. Assocs., Ltd. v. Shannon ("Shannon"), 549 F. 3d 1119, 1129 (7th Cir. 2008).

express intent of Congress in enacting ICCTA was to preempt remedies under state law that directly or indirectly regulate rail transportation pursuant to the United States Constitution's Supremacy Clause. Section 10501(b) of ICCTA provides:

(b) The jurisdiction of the Board over—

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one state,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

49 U.S.C. § 10501(b).

It is well-established that 49 U.S.C. § 10501(b) preempts state and local regulation of rail transportation. See Fayus Enterprises v. BNSF Ry. Co., 602 F.3d 444, 449-50 (3d Cir.), cert. denied, 131 S. Ct. 822 (2010). “The regulation of railroad operations has long been a traditionally Federal endeavor, to better establish uniformity in such operations and expediency in commerce, and it appears manifest that Congress intended ICCTA to further that exclusively federal effort.” Friberg v. Kansas City S. Ry. Co., 267 F.3d 439, 443 (5th Cir. 2001). As noted by multiple United States Courts of Appeals, “[i]t is difficult to imagine a broader statement of Congress’s intent to preempt state regulatory authority over railroad operations.” Green Mountain R.R. Corp. v. Vermont, 404 F.3d 638, 645 (2d Cir. 2005) and City of Auburn v. United States, 154 F.3d 1025, 1030 (9th Cir. 1998) (quoting CSX Transp., Inc. v. Ga. Pub. Serv. Comm’n, 944 F. Supp. 1573, 1581 (N.D. Ga. 1996)).

Courts and the Board have consistently interpreted ICCTA to “preempt[] all state laws that may reasonably be said to have the effect of managing or governing rail transportation.” Susquehanna, 500 F.3d at 252 (quotations omitted); see also Elam v. Kansas City S. Ry. Co., 635 F.3d 796, 805 (5th Cir. 2011); PCS Phosphate Co., Inc. v. Norfolk S. Corp., 559 F.3d 212, 218 (4th Cir. 2009); Fla. E. Coast Ry. Co. v. City of W. Palm Beach, 266 F.3d 1324, 1331 (11th Cir. 2001); City of Milwaukee, slip op. at 3-4. Likewise, “[t]o the extent remedies are provided under laws that have the effect of regulating [i.e., managing or governing] rail transportation, they too are expressly preempted.” Elam, 635 F.3d at 805 (alterations in original) (quoting Franks Inv. Co. LLC v. Union Pac. R.R. Co., 593 F.3d 404, 410 (5th Cir. 2010)). The Board has recognized that, regardless of the merits of the underlying state law claims, any application of state law or any remedy sought in connection with a state law “which infringes upon [the Board’s] exclusive jurisdiction to regulate rail transportation is preempted by section 49 U.S.C. § 10501(b).” See Robey, slip op. at 3.

While broad, the preemption provisions of 49 U.S.C. § 10501(b) are not without limitations. For example, state and local governments retain limited police powers under ICCTA to enforce generally applicable laws having not more than an incidental or remote effect on rail transportation. Such state and local actions, however, escape preemption only if they do not prevent, interfere with or unreasonably burden railroad activities. Fayus, 602 F.3d at 451; Susquehanna, 500 F.3d at 253; City of Milwaukee, slip op. at 3-4; CSX Transp., Inc.-Petition for Declaratory Order, FD 34662, 2005 WL 1024490, *4 (S.T.B. May 3, 2005).²³ As the Board

²³ RBMN does not contend in its Petition or its filings in the Commonwealth of Pennsylvania courts that Sections 5607(b)(2) and 5614(a) of the PMAA were promulgated under the Commonwealth of Pennsylvania’s police powers, nor does RBMN contend that application of those statutory provisions to the Authorities in the manner sought by PNRRA in the Commonwealth of Pennsylvania courts would constitute an exercise of such police powers.

stated in City of Milwaukee, “[i]t is well settled that states cannot take an action that would have the effect of foreclosing or unduly restricting a railroad’s ability to conduct any part of its operations or otherwise unreasonably burden interstate commerce.” City of Milwaukee, slip op. at 4.²⁴

In applying ICCTA preemption, the state or local actions at issue are either facially preempted or preempted as applied, or both. Courts and the Board have recognized “two broad categories of state and local actions to be preempted regardless of the context or rationale for the action,” thus constituting a “*per se* unreasonable interference with interstate commerce:”

(1) states and municipalities are prohibited from imposing requirements that, “by [their] nature, could be used to deny a railroad the ability to conduct some part of its operations or to proceed with activities that the Board has authorized;” and

(2) “there can be no state or local regulation of matters directly regulated by the [STB]—such as the construction, operation, and abandonment of rail lines; railroad mergers, line acquisitions, and other forms of consolidation; and railroad rates and services.”

CSX Transp., 2005 WL 1024490, *2 (citations omitted) (citing Green Mountain, 404 F.3d at 641-45; City of Auburn, 154 F.3d at 1030-31); see also Union Pac. R.R. Co. v. Chicago Transit Auth., 647 F.3d 675, 679 (7th Cir. 2011); Susquehanna, 500 F.3d at 253. State or local actions not preempted on their face under these categories may be preempted “as applied,” which “requires a factual assessment of whether [the state or local] action would have the effect of preventing or unreasonably interfering with railroad transportation.” CSX Transp., 2005 WL 1024490, *3; see also Union Pac., 647 F.3d at 679 (demonstrating that claims “may be preempted as applied” when the record shows that the particular action or remedy sought would

²⁴ RBMN quotes City of Milwaukee extensively in its Petition, yet selectively fails to include the language quoted above. See Petition at 9-10. Indeed, RBMN quoted the Board’s entire discussion regarding “General Preemption Precedent” except for the paragraph containing such language.

have the effect of preventing or unreasonably interfering with railroad transportation); City of Milwaukee, slip op. at 4.

B. RBMN's Attempted Application of Section 5607(b)(2) of the PMAA and the Remedies RBMN Seeks Thereunder in the Commonwealth of Pennsylvania Court Actions are Preempted by 49 U.S.C. § 10501(b).

RBMN's attempted application of Section 5607(b)(2) of the PMAA and the remedies RBMN seeks thereunder in the Pennsylvania courts are completely preempted by Section 10501(b) of ICCTA, or, at a minimum, completely preempted as RBMN seeks to apply them. Specifically, an order from a Commonwealth of Pennsylvania court applying Section 5607(b)(2) of the PMAA in the manner advocated by RBMN and/or granting the remedies RBMN seeks against the Authorities would foreclose the Authorities' ability to conduct some part or all of their operations, would prevent the Authorities from proceeding with activities expressly authorized by the Board, would encroach upon matters directly regulated by the Board, and would otherwise have the effect of preventing or unreasonably interfering with rail transportation.²⁵ See Union Pac., 647 F.3d at 679; City of Milwaukee, slip op. at 4; CSX Transp., 2005 WL 1024490, *2-*3.

RBMN seeks to apply Section 5607(b)(2) of the PMAA in such a way as to require one or both of the Authorities to cease all activities that compete with private railroads (including

²⁵ For example, some of the activities that RBMN seeks to prohibit the Authorities from performing, such as assisting their operators in obtaining customers and securing grants are essential responsibilities of rail carriers. RBMN's claim that is at a competitive disadvantage for grants is simply not true. Pennsylvania's Rail Freight Assistance Program and the Rail Transportation Assistance Program routinely provide state grants that are readily available to all Pennsylvania railroads, including publically and privately owned entities. Despite RBMN's claims of disadvantage in obtaining grants, RBMN has been a successful applicant numerous times. In fact, last year RBMN received a \$10 million grant for just one railroad bridge project. JRA has never received a grant that large. See Exhibit S (Progressive Railroad Article entitled Reading & Northern lands Pennsylvania grant to build \$14 million bridge). Further, All government entities routinely support projects that serve a public interest, such as stimulating economic development - such support is certainly not anti-competitive.

RBMN), and further requests the Commonwealth of Pennsylvania courts to order relief including, inter alia, the divestiture of existing rail freight business and/or sale of rights to freight traffic by one or both of the Authorities. In other words, RBMN seeks to remove the Authorities (which are both non-operating rail common carriers subject to the Board’s jurisdiction) from the freight rail industry entirely. It is difficult to imagine a state or local action that would deny a railroad’s ability to conduct some part of its operations more directly and effectively than an order from a Commonwealth of Pennsylvania court requiring the Authorities to cease railroad freight activities and mandating divestiture of their entire rail freight business, as requested by RBMN.

Courts and the Board have held that claims that would divest a party of property that is used for railroad activities are completely preempted. See 14500 Ltd. v. CSX Transp., Inc., 2013 WL 1088409, *4-*5 (N.D. Ohio 2013); B&S Holdings, LLC v. BNSF Ry. Co., 889 F.Supp.2d 1252, 1257-58 (E.D. Wash. 2012); Mark Lange—Petition for Declaratory Order, FD 35037 at p. 3 (S.T.B. Jan. 24, 2008). Of particular note here, the Board held in a prior matter involving claims asserted against JRA for purported violations of the PMAA that “any remedy which infringes upon our exclusive jurisdiction to regulate rail transportation is preempted by section 10501(b). Thus, the remedial tools available to a court considering violations of the PMAA are limited.” Robey, slip op. at 3. Specifically addressing Levin’s request for relief in the form of a court order requiring divestiture of the JRA rail lines at issue, the Board held that “[t]he divestiture remedy sought by Levin, for example, may not be accomplished without our approval.” Id. at n.5.²⁶

²⁶ Citation to Robey is noticeably absent from the RBMN Petition.

Further, if applied to railroad-related municipal authorities in the manner advocated by RBMN, Section 5607(b)(2) of the PMAA would effectively regulate who can acquire, construct and/or operate rail lines; where rail lines can be acquired, constructed and/or operated; and what activities and operations can be performed on rail lines. Further, such application and the remedies sought by RBMN in the Commonwealth of Pennsylvania courts would necessarily include or necessitate: discontinuance of freight rail service by the Authorities and their chosen rail operators; divestiture or abandonment by one or both of the Authorities of their rail lines or sale of their freight traffic rights; and acquisition or purchase of one or both of the Authorities' rail lines and/or freight traffic rights by third parties. All of these activities clearly fall within the ambit of ICCTA, and perhaps more importantly, all of these activities are directly regulated by the Board.

Section 10501(b) of ICCTA itself provides: “[t]he jurisdiction of the Board over...transportation by rail carrier, and...the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State...is exclusive” 49 U.S.C. § 10501(b) (emphasis added). Expanding on this broad statement of jurisdiction, ICCTA includes extensive provisions regarding the Board’s authority over construction and operation of rail lines (see 49 U.S.C. § 10901 (requiring Board review approval to construct and/or provide rail transportation over a rail line)); abandonment of rail lines and discontinuance of rail operations (see 49 U.S.C. §§ 10903-10904 (requiring Board review and approval to abandon and/or discontinue rail transportation on any rail line)); and purchase, acquisition and operation of rail lines and trackage rights (see 49 U.S.C. §§ 10901 and 10902 (requiring Board review and approval for short line purchases), 10905 (relating to purchase of abandoned rail properties for

public convenience and necessity), 10907 (relating to preemptive acquisition of rail lines for inadequate service), and 11323-11326 (requiring Board review and approval for acquisition of rail lines and trackage rights)). The Authorities complied with and received approval from the Board under the relevant statutory provisions listed above to undertake a variety of their actions. As a result, the Authorities are non-operating Class III rail carriers wholly subject to the Board's jurisdiction. Thus, application of Section 5607(b)(2) of the PMAA here would not only constitute an improper state intrusion into matters directly regulated by the Board and an impermissible attempt by RBMN to have Commonwealth of Pennsylvania courts exercise jurisdiction where jurisdiction is vested by law exclusively in the Board, it would deny the Authorities the ability to proceed with activities the Board has expressly authorized the Authorities to undertake—activities which the Authorities are required to continue until relieved of their obligations by the Board.²⁷

²⁷ RBMN states in its Petition that:

The relief sought by RBMN in the state court actions does not seek to supersede or infringe upon the Board's exclusive jurisdiction to authorize the ownership and operation of rail lines, or the discontinuance of rail service. While the relief requested includes the possible divestiture of rail lines by a municipal authority if it cannot or will not comply with the MAA's restrictions on competition, RBMN acknowledges that any acquirer of the rail lines would need Board authorization to complete the purchase.

Petition at 12. This statement completely sidesteps the issue of ICCTA preemption, and intentionally glosses over the fact that the effect of granting RBMN's requested relief would be to foreclose all railroad freight activities of the Authorities and completely remove one or both of the Authorities from the rail freight industry entirely. RBMN also intentionally glosses over the fact that any acquirer of the Authorities' rail lines would only be seeking Board approval to complete the purchase because a Commonwealth of Pennsylvania court, applying a state statute, has already ordered one or both of the Authorities (both of which are non-operating rail common carriers) to cease railroad activities and sell such rail lines. Finally, RBMN ignores the fact that the Board specifically authorized the Authorities' ownership of the relevant rail lines as well as the railroad operations conducted thereon.

Moreover, while the Authorities deny that their rail freight activities violate Section 5607(b)(2) of the PMAA, RBMN claims on the face of its Complaints filed in the Commonwealth of Pennsylvania courts that the Authorities must be barred from competing with private railroads, including RBMN. For purposes of RBMN's attempt to deny preemption, it is particularly noteworthy that Congress has explicitly directed the Board to foster and maintain competition in the railroad industry. The expressly stated purposes of ICCTA include "to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers" and "to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers." 49 U.S.C. § 10101 (emphasis added). With these purposes in mind, ICCTA includes extensive provisions relating to the Board's purview over competition between rail carriers, including, inter alia, determining whether the acquisition or divestiture of rail lines or trackage rights will result in a "substantial lessening of competition, creation of a monopoly, or restraint of trade." 49 U.S.C. § 11324. To allow Commonwealth of Pennsylvania courts to apply Pennsylvania state statutes to prohibit competition among rail carriers would be tantamount to transferring jurisdiction for regulating rail-to-rail competition from the Board to the Commonwealth of Pennsylvania.

Accordingly, RBMN's attempted application of Section 5607(b)(2) of the PMAA and the remedies RBMN seeks thereunder in the Pennsylvania courts are either facially preempted or preempted as applied under 49 U.S.C. § 10501(b).²⁸

²⁸ RBMN also requests relief under Section 5607(b)(2) of the PMAA in the form of a judicial order declaring that PNRRA's current operating agreements with its rail operator is null and void. ICCTA preemption of this requested relief is discussed below in the section addressing Section 5614(a) of the PMAA.

C. RBMN's Attempted Application of Section 5614(a) of the PMAA and the Remedies RBMN Seeks Thereunder in the Commonwealth of Pennsylvania Court Actions are Preempted Under 49 U.S.C. § 10501(b)

Application of Section 5614(a) of the PMAA in the manner advocated by RBMN in the Commonwealth of Pennsylvania courts is similarly completely preempted by Section 10501(b) of ICCTA. RBMN seeks in the PNRRA Action a judicial order from a Commonwealth of Pennsylvania court declaring that PNRRA must, under Section 5614(a) of the PMAA, utilize a public bidding process before entering into any contract for the operation of its rail lines, and further declaring that any agreements entered into without having been subject to public bidding, including the current operating agreement between PNRRA and its rail operator, are deemed null and void. With respect to the JRA Action, RBMN seeks a judicial order from a Commonwealth of Pennsylvania court declaring that JRA must, under Section 5614(a) of the MAA, resubmit its operating agreement²⁹ to a public bidding process and award its operating agreement to the highest bidder, regardless of JRA's published criteria for determining which operator would best serve the public interest and promote the interests of JRA and the customers served by its lines.

RBMN's insistence that the JRA operating agreement be awarded to the highest bidder is particularly confusing considering that the very statute RBMN relies upon in arguing that public bidding is required, Section 5614(a) of the PMAA, expressly requires municipal authorities to award publicly bid contracts to the "lowest responsible bidder." 53 Pa. C.S. § 5614(a). As discussed below, such non-meritorious claims, preposterous and contrary to the express language of the PMAA as they may be, serve as a basis for RBMN's claims in the Pennsylvania cases as illustrated by the JRA Action which is intended to prevent JRA from selecting and contracting with a rail operator. Applying Section 5614(a) literally as stated in PMAA would obligate the

²⁹ RBMN concedes in its complaint against the JRA that it is functioning under an operating agreement as a lease.

Authorities to choose an operator solely based on the lowest proposed compensation; further, it would exclude all other valid criteria designed to choose a carrier, which best serves the interest of the Authorities and the public.

The activities contemplated by the Authorities' operating agreements with their respective rail operators,³⁰ *i.e.*, the rail operators' exclusive use of the Authorities' rail lines and the provision of common carrier rail freight service on those rail lines, even as framed by RBMN in the Pennsylvania state courts, clearly implicate application of ICCTA, which grants the Board exclusive jurisdiction over "transportation by rail carriers" and "operation" of rail lines and facilities. 49 U.S.C. § 10501(b). Subjecting such operating agreements to public bidding through the application of Section 5614(a) of the PMAA in the manner advocated by RBMN would have the effect of governing or managing rail transportation or unreasonably interfering with railroad operations. See Susquehanna, 500 F.3d at 252; City of Milwaukee, slip op. at 3-4. Application of such public bidding requirements would dictate not only how and when the Authorities may contract for the provision of common carrier rail freight service on their rail lines, but with whom the Authorities may contract and at what price. The timing, economics and terms of the Authorities' operating agreements, as well as the rail operators with whom the Authorities contract, directly impact the operation and economics of rail transportation on the Authorities' rail lines.

Further, application of Section 5614(a) of the PMAA to the Authorities in the manner advocated by RBMN in the Pennsylvania state courts and the relief RBMN seeks in requiring the Authorities to submit all future operating agreements to public bidding are preempted under Section 10501(b) of ICCTA because of the potential for such requirements to deny the

³⁰ See Operating Agreements as Exhibits A, B.

Authorities the ability to conduct part of their operations. Not only would the Authorities be required to complete complex and time consuming public bidding procedures before an operating agreement with a rail operator could be executed, the Authorities would be subject to subsequent legal challenges, including appeals questioning the Authorities' compliance with such requirements, which would further delay execution of an operating agreement. One only need look as far as RBMN's own behavior in the JRA Action to see how such an action could delay execution of an operating agreement.

Although not required by Section 5614(a) of the PMAA, JRA developed and issued a Request for Proposals ("RFP") on May 16, 2014 to provide all qualified rail operators an opportunity to provide rail freight service on JRA's rail lines under an operating agreement.³¹ RBMN participated in the process and submitted a proposal, but RBMN remains unhappy with the results of the process and now seeks court intervention because in RBMN's biased opinion the process offered by JRA was not fair enough.³² Essentially, in RBMN's opinion the process will never be fair enough, unless the sole criterion is price, which it believes would significantly increase the likelihood of RBMN being awarded the operating agreement. Contrary to RBMN's claim, RBMN does not seek to level the playing field, but rather seeks to eliminate the competition it faces from potentially better-qualified rail operators by seeking application of Section 5614(a) of the PMAA in such a way that unilaterally favors RBMN. In addition, if RBMN's application of Section 5614(a) of the PMAA is accepted, and a Pennsylvania court orders that operating agreements must be awarded solely on the basis of price, the Authorities' discretion in selecting the rail operator most-qualified to perform the task at hand will be unduly

³¹ See Exhibit R (Copy of RFP). JRA initiated an RFP process not because it was required under Section 5614(a) of the PMAA, but because JRA's Board determined it was in the best interest of the authority to do so.

³² See Petition at Page 7, FN 4.

restricted, particularly where the Authorities seek to select the rail carrier best suited to serve the Authorities' public interest mission.

An additional potential for disruption of railroad operations as a result of having to comply with public bidding requirements would occur where a non-operating rail carrier must acquire a new rail operator under exigent or emergent circumstances, such as where an existing rail carrier becomes insolvent or otherwise unexpectedly becomes non-operational. If the Authorities were to encounter such a situation, application of Section 5614(a) of the PMAA in the manner advocated by RBMN would prohibit the Authorities, which both have residual common carrier obligations, from securing a replacement rail operator to operate on their respective rail lines without having first successfully completed a public bidding process, which may take years. While under 49 U.S.C. 11123, an emergency service order could be sought from the Board to allow for continued rail service, the assertedly applicable PMAA provisions would prevent the Authorities and a replacement operator from forming a contract under the Commonwealth of Pennsylvania law to address essential operational issues such as insurance, indemnity, safety, and other critical provisions.

With respect to the PNRRA Action, RBMN requests an order from a Commonwealth of Pennsylvania court declaring that the current operating agreement between PNRRA and its rail operator, the DL, is "null and void" because it was not subjected to public bidding under Section 5614(a) of the PMAA. Notwithstanding the fact that the DL would be required to continue to operate PNRRA's rail lines until excused of its obligations by the Board, RBMN's requested remedy is nevertheless preempted because such a judicial declaration by a Pennsylvania state court would have the effect of managing or governing railroad operations in contravention of Section 10501(b) of ICCTA. Declaring the operating agreement between PNRRA and the DL

null and void would make continued operation of the rail lines problematic by eliminating contract provisions relating to such important issues as insurance, liability, and other operating requirements, such as grade crossing obligations, which establish the responsibility of the DL for such critical matters. Such an order from a Pennsylvania state court voiding the operating agreement based on the application of a state statute would be equivalent to the Commonwealth of Pennsylvania altering and/or dictating the contractual terms that govern the provision of common carrier rail freight service on PNRRA's rail lines.

Accordingly, RBMN's attempted application of Section 5614(a) of the PMAA and the remedies requested thereunder in the Pennsylvania state court actions are preempted under 49 U.S.C. § 10501(b).

D. The Authorities Have Not Voluntarily Agreed to Be Bound By Sections 5607(b)(2) and 5614(a) of the PMAA

RBMN offers several baseless arguments concerning the application of ICCTA preemption to the state statutory provisions at issue, without any support. RBMN argues, for example, that because the Authorities were formed under the PMAA, they purportedly voluntarily agreed to be bound by its restrictions, including the PMAA's limitation on competition with private enterprise under Section 5607(b)(2) and the requirement of public bidding under Section 5614(a).³³ In this argument, RBMN attempts to twist prior decisions relating to the Board declining jurisdiction over contractual disputes concerning voluntary commitments between private contracting parties as evidence for the proposition that state and local actions otherwise preempted under ICCTA are not preempted where a railroad has "voluntarily committed" to the restrictions at issue.

³³ See Petition at 11-16.

Initially, RBMN's attempt to analogize the present situation to a contract dispute falls flat. The present matter does not involve a contract dispute arising out of a voluntary agreement between the parties, and RBMN is not seeking enforcement of mutually agreed upon contract terms (nor does RBMN have any contract rights to enforce here); rather, RBMN seeks application of a state statute (the PMAA) to the Authorities, and based on that application, requests relief in the form of a judicial order declaring that the Authorities cannot compete with private rail entities, ordering divestiture of existing rail assets by one or both of the Authorities, declaring existing operating agreements null and void, and barring the Authorities from entering into future operating agreements for the operation of their rail lines without the use of complex and time-consuming procedures that restrict the Authorities' discretion in selecting a rail operator. Thus, RBMN's reliance on PCS Phosphate Co. v. Norfolk Southern Corporation, 559 F.3d 212 (4th Cir. 2009) and Lackawanna County Railroad Authority—Acquisition Exemption—F&L Realty, Inc., STB Finance Docket No. 33905, consolidated with, Delaware-Lackawanna Railroad Co., Inc.—Operation Exemption—Lackawanna County Railroad Authority, STB Finance Docket No. 33906 (S.T.B. Oct. 19, 2001) is misplaced because those cases are inapposite here.

To the contrary, PCS Phosphate demonstrates why ICCTA preemption applies here. That case involved a contract dispute between contracting parties, in which the defendant railroad asserted that the plaintiff's claims for breach of contract and breach of easement covenants under North Carolina state law were preempted by Section 10501(b) of ICCTA. Focusing on Section 10501(b)'s use of the word "regulation," the Fourth Circuit held that the plaintiff's contract enforcement action was not expressly preempted under ICCTA because it was "not the sort of rail 'regulation' contemplated by the statute." Id. at 214, 218-20. In so holding, the court

explained that “regulation” “connotes official government-imposed policies, not the terms of a private contract,” *id.* at 219 (quoting American Airlines, Inc. v. Wolens, 513 U.S. 291, 222 (1995), and “decline[d] to view private contracts as presumptively regulatory.” *Id.* at 220. Unlike PCS Phosphate, which concerned the enforcement of voluntarily agreed upon terms in a private contract, the relief RBMN seeks here, i.e., orders from Pennsylvania state courts applying a state statute and compelling the Authorities to take certain actions to comply with that state statute in the manner advocated by RBMN, clearly constitutes “the sort of rail ‘regulation’ contemplated by the statute.” *Id.* at 214, 218-20.

Moreover, RBMN cites no legal authority supporting the extension of decisions of the courts and the Board relating to contract enforcement actions to actions based on the application of state statutory provisions like RBMN’s claims in the Commonwealth of Pennsylvania state court actions at issue here. Even if such a leap of faith could be indulged, notwithstanding the lack of legal authority or supporting statutory language, RBMN’s argument that the Authorities “voluntarily committed” to be bound by the restrictions contained in the PMAA is fundamentally flawed. Importantly, the PMAA was enacted and the Authorities were formed under the PMAA well before the time ICCTA was enacted in 1995. Thus, the Authorities’ formation under the PMAA at a time when ICCTA preemption did not apply, at least not in its current form, cannot be interpreted as the Authorities voluntarily agreeing to be bound by the PMAA in contravention of ICCTA. Moreover, from an historical standpoint, RBMN cannot point to any instance where either of the Authorities operated as if it were bound by Sections 5607(b)(2) or 5614(a) of the PMAA. Thus, as a matter of contract law, which RBMN seeks to apply here, there is no evidence of any “voluntary agreement” to be bound.

RBMN's attempt to liken the application of a state statute to a "voluntary agreement" is a desperate attempt to negate the clear applicability of preemption. In fact, RBMN has been attempting vigorously for months to pressure PNRRA into unilaterally agreeing to amend its operating agreement with DL to include a provision stating that the DL will surrender possession of the rail lines within six months of an administratively final judicial determination holding the lease/operating agreement to be issued in violation of state law. This is likely because RBMN is well aware that absent such a concession, it would have to seek an adverse discontinuance to get the Board approved operator off the lines in question. Of course, PNRRA has not waived ICCTA preemption, and has not agreed to voluntarily comply with RBMN's request, despite RBMN's best efforts to leverage PNRRA into such an agreement through threats of costly litigation. Thus, RBMN's attempted application of the PMAA and the remedies RBMN against PNRRA are preempted under 49 U.S.C. § 10501(b). JRA has likewise not waived ICCTA preemption through voluntarily agreement; thus, RBMN's claims against JRA and the remedies RBMN seeks in the JRA Action are similarly preempted under ICCTA.

CONCLUSION

RBMN has sought a declaratory order that the requirements of the PMAA are not preempted by ICCTA; however, as shown herein the relief and remedies that RBMN seeks, if granted at Pennsylvania state court level, would directly and detrimentally impact railroad operations, contrary to the public interest. Further, such relief would intrude on the exclusive jurisdiction of the Board to regulate rail-to-rail competition and rail operations. Therefore, the Authorities respectfully request that the Board issue a Declaratory Order or provide guidance to the Pennsylvania courts that the provisions of PMAA, if interpreted as RBMN suggests, would restrict competition, and interfere with railroad operations; thus, the application of the sections of

the PMAA as proposed by RBMN and the relief/remedies requested are preempted in accordance with 49 U.S.C. § 10501(b).



Keith G. O'Brien
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave, NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

Attorneys for Pennsylvania Northeast Regional
Railroad Authority and the SEDA-COG Joint Rail
Authority

October 1, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of “the Joint Reply of Pennsylvania Northeast Regional Railroad Authority and the SEDA-COG Joint Rail Authority” in STB Finance Docket No. 35956, by first class mail, properly addressed with postage prepaid, or via more expeditious means of delivery, upon all parties of record.



Crystal M. Zorbaugh
Attorney for Pennsylvania Northeast Regional
Railroad Authority and the SEDA-COG Joint Rail
Authority

October 1, 2015

VERIFICATION

I, Lawrence C. Malski, President of the Pennsylvania Northeast Regional Railroad Authority, verify under the penalty of perjury that the statements contained in the foregoing Joint Reply to the Reading, Blue Mountain and Northern Railroad Petition for a Declaratory Order are true and correct to the best of my knowledge and belief. Further, I certify that I am qualified to file this Verification.

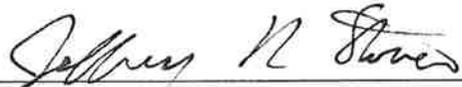
Lawrence C. Malski

Lawrence C. Malski

September 30, 2015

VERIFICATION

I, Jeffery K. Stover, Executive Director for the SEDA-COG Joint Rail Authority, verify under the penalty of perjury that the statements contained in the foregoing Joint Reply to the Reading, Blue Mountain and Northern Railroad Petition for a Declaratory Order are true and correct to the best of my knowledge and belief. Further, I certify that I am qualified to file this Verification.



Jeffery K. Stover

September 30, 2015

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35956

**READING, BLUE MOUNTAIN NORTHERN RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER**

**JOINT REPLY OF PENNSYLVANIA NORTHEAST REGIONAL RAILROAD
AUTHORITY AND SEDA-COG JOINT RAIL AUTHORITY**

Exhibit A

OPERATING AGREEMENT

THIS AGREEMENT made this 27th day of August 2010 by and between the Pennsylvania Northeast Regional Railroad Authority, hereinafter referred to as PNRRA and "the" Delaware-Lackawanna Railroad Co., Inc., hereinafter referred to as DL;

WITNESSETH

WHEREAS, the PNRRA owns a line of railroad known as the Scranton to Carbondale Line, aka Carbondale Mainline between M.P. 196.8 and M.P. 174.59 which was purchased from the Delaware and Hudson Railway Corporation in 1985; and

WHEREAS, the PNRRA owns a line of railroad known as the Scranton to Slateford Line, aka Pocono Mainline between M.P. 134 and M.P. 74 and the Brady Lead Track which was purchased from the City of Scranton, Steamtown Foundation and Conrail in 1991; and

WHEREAS, the PNRRA owns a line of railroad known as the Laurel Line Mainline between M.P. 0 and M.P. 4.81, including the Minooka Industrial Track which was purchased in 1999; and

WHEREAS, the PNRRA has selected the proposal of DL to operate and provide rail freight service on these lines of railroad for the benefit of shippers and communities.

NOW, THEREFORE, the parties intending to be legally bound agree as follows:

AGREEMENT

1. Use of the Lines of Railroad.

PNRRA hereby agrees to provide DL access to and use of the lines of railroad which shall include, but not be limited to property of every kind and description, real, personal and mixed, including the right-of-way, roadbed, tracks, track materials, signals and other facilities, and appurtenances located in the Counties of Lackawanna, Wayne, Northampton and Monroe in the Commonwealth of Pennsylvania as is more fully described in Appendix A. DL shall have the right to use the lines of railroad for exclusive railroad freight service and to establish, operate and maintain freight rail service thereon during the term of this Agreement, or any extension, or renewal thereof, subject to the terms and conditions hereinafter contained. This Agreement shall not be construed as conveying any ownership interest to DL. The PNRRA hereby designates the DL to perform all passenger services with the exception of commuter and intercity passenger services on the lines of railroad owned by PNRRA and PNRRA reserves the right to award and contract for commuter and intercity passenger services on the lines of railroad owned by PNRRA with other parties. The PNRRA reserves the right to grant and contract with Norfolk Southern (NS) for

nonexclusive overhead trackage rights on and over the Pocono Mainline with NS and DL will pay PNRRA 5% any and all such overhead trackage rights revenue.

2. Term.

The term of this Operating Agreement shall be five (5) years from the effective date hereof unless terminated prior thereto in accordance with the provisions of this Agreement,

Provided that:

- (i) DL shall not be in default of any of its material obligations hereunder;
- (ii) PNRRA shall continue to own the lines of railroad;
- (iii) DL shall have the right, after giving written notice to PNRRA at least 180 days prior to the expiration date of the initial term or any renewal term thereof, to terminate this Agreement or, to request a renewal term of this Agreement;
- (iv) PNRRA will have the option to extend the existing contract for another five (5) year term upon ninety (90) days written notice to DL prior to August 27, 2015.

3. Operating Fees and Other Payments.

- (A) Commencing on DL's operation and continuing through the term of this agreement, unless renegotiated pursuant to the terms of Section 15 of this Agreement, DL will pay PNRRA ten (10 %) percent of all DL rail freight operating revenues on cars originating and terminating on former Lackawanna County Railroad Authority owned lines and ten (10%) of all DL rail freight operating revenues or \$8,000.00 per month, whichever is greater on cars originating and terminating on former Monroe County Railroad Authority owned lines on a monthly basis for the use of the lines of railroad. DL will place 5% of all passenger revenues into a track fund each year to be used for maintenance of the railroad right of way and structures on the lines of railroad owned by PNRRA. Rail freight operating revenue shall include but not be limited to Horizon, CP, NS switching settlements, weighing, flagging and storage and 5% of all overhead freight traffic revenues handled over lines of railroad owned by PNRRA. DL will pay PNRRA one time \$125,000.00 cash towards the matching share of PNRRA's purchase of the NS trackage from Anomink to Slateford, PA per the following payment schedule: \$25,000.00 due by August 15, 2009; \$5,000 per month in September 2009 – July 2010; and \$45,000 on August 15, 2010. PNRRA and DL will continue to contribute to the local matching share on grants on a 50%/50% basis of a mutually agreed to grant amount. DL also will pay PNRRA 5% on any fuel surcharge payments received by DL during the term of this agreement. DL will pay 20% of all

investment tax credit payments received by DL to PNRRA. DL will pay PNRRA 5% on grain train power agreements.

- (B) DL shall also pay and discharge, on or before the last day on which payment may be made without penalty or interest, any tax, assessment, charge for public utilities, excise, license and permit fees, and other governmental impositions and charges which shall or may during the term hereof be charged, laid, assessed, imposed, become due and payable, become a lien upon, or arising in connection with the use or operation of the lines of railroad for freight service. DL shall have the right to contest any such taxes or other charges by appropriate legal proceedings, conducted at its own expense, providing the DL shall furnish to PNRRA a surety bond or other security satisfactory to cover the amount of the contested item or items, with interest and penalty for the period which such proceedings may be expected to take.
- (C) DL shall also pay, on or before the last day on which payment may be made without penalty or interest, all trackage rights fees or payments, all interchange agreement fees or payments, all track lease fees or payments, and any and all other fees or payments arising from or in connection with the common carrier obligations of providing freight service on the lines of the railroad.

4. Conditions of Railroad Premises.

DL has inspected the lines of railroad and accepts the same "as is, where is". PNRRA makes no representation or warranty as to the physical condition of the lines of railroad or the condition of legal title (other than for railroad purposes). DL shall maintain and return the lines of railroad to the PNRRA in no less than FRA Class I condition on the Scranton to Carbondale line of railroad and on the Brady Lead Track and no less than FRA Class II condition on the Laurel Line and the Pocono Mainline.

5. Provision of Additional Equipment and Facilities.

DL shall be responsible for providing all equipment and facilities required for operation of the lines of railroad and not part of the premises provided hereunder. Such equipment and facilities shall include, but shall not be limited to, locomotives, rolling stock, maintenance equipment, office space, a public unloading facility and such other facilities and equipment as are required to provide rail freight service over the lines of railroad as contemplated by this Agreement. Both parties agree that a public unloading facility is necessary for operation of freight service on the lines of railroad. DL agrees to cause such a facility to be constructed at its own expense and to amortize the cost thereof over the contract period.

6. DL Obligations.

DL agrees that it will at all times during the continuance of this Agreement:

- (A) Pay all charges herein requested to be paid by the PNRRA under Paragraph 3 at such time as the same are due and payable including, but not limited to, the rail freight operating revenue payment which will be due on the 15th of each month for the proceeding month's revenue;
- (B) Operate freight service in accordance with all federal, state, and local requirements and shall be responsible for obtaining all governmental approvals, authorizations, franchises, licenses and permits as may be prerequisite to the rendering of such service;
- (C) Observe and comply with any and all requirements of the constituted public authorities and with all federal, state and local statutes, ordinances, regulations and standards applicable to DL or its use of the lines of railroad;
- (D) Maintain and operate at its own expense the lines of railroad, including any structures or related facilities located thereon in good operating condition and repair in a manner consistent with sound, accepted engineering principles and maintain the track to FRA Class I Standards on the Scranton to Carbondale line of railroad and the Brady Lead Track and to FRA Class II Standards on the Laurel Line and Pocono Mainline;
- (E) Repair or replace at its own expense, any rail, ties and other items of track structures or signaling equipment as may be necessary to keep the lines of railroad in good operating condition. In the event of any such replacement at the expense of DL the new property shall become the property of the PNRRA;
- (F) Operate freight service on the lines of railroad at such levels, and at such frequency to be acceptable to PNRRA and the shippers and receivers of rail freight now or to be located on the lines of railroad;
- (G) Fully indemnify, defend and hold harmless PNRRA, its officers, agents, employees, successors and assigns, from and against all claims, suits, actions or judgments, based upon or arising out of damage, injuries or death to persons or property caused by the negligence of DL or its agents, employees, guests, invitees, contractors, suppliers of materials, or furnishers of services in the use and occupancy of the property and lines of railroad or CP Rail or Norfolk Southern property by the DL;
- (H) Be liable, defend and indemnify the PNRRA for any damages, harm or injury to the lines of railroad or CP Rail or Norfolk Southern property caused by the negligence of the DL, its agents or employees;
- (I) Maintain a policy or policies of liability insurance to insure itself against liability for injury or damage to persons or property, which policies will be in the minimum amounts set forth below:

<u>TYPE</u>	<u>LIMITS</u>
(i) Comprehensive General Liability	For all claims \$10,000,000 per Occurrence, \$50,000.00 deductible;
(ii) Federal Employer's Liability Act	Covered by blanket policy noted in (i);
(iii) Cargo Legal Liability	Covered by blanket policy noted in (i);
(iv) Foreign Rolling Stock	Covered by blanket policy noted in (i);
(v) Automobile Liability	Covered by blanket policy noted in (i);
(vi) Comprehensive Passenger General Liability	For all claims \$25,000,000.00 per occurrence on any and all NPS Trains operated by NPS over DL, With premium to be paid by NPS; otherwise \$10,000,000.00 per occurrence for other passenger services operated by DL;

- (J) Cause PNRRA to be named as an additional named insured under each such policy and furnish PNRRA with appropriate certificates of such insurance which shall specifically state that the insurance company shall furnish to PNRRA at least thirty (30) days notice of any lapse or material change in such insurance;
- (K) Peacefully deliver up and surrender possession of the lines of railroad to PNRRA at the expiration of other termination of this Agreement;
- (L) Provide unencumbered minimum working capital of fifty thousand (\$50,000.00) dollars;
- (M) Provide and maintain in escrow a reserve fifty thousand (\$50,000.00) dollars at all times in addition to the minimum working capital requirements of this section for the purpose of payment of liability claims not otherwise covered by insurance. The escrow may be reduced upon written approval by PNRRA. Any withdrawal from escrow by DL for payment of claims shall be matched by an equal deposit by DL within thirty (30) days thereafter;

- (N) DL shall be permitted only by written PNRRA approval, with such approval not to be unreasonably withheld, to remove, replace, or relay elements of the track or structures on the lines of railroad in the interest of cost and/or operating efficiency, provided that a continuous and useful, rail transportation facility is maintained as related to Part E of this Section. Improvements made by DL to the track, right of way, structures or related facilities shall become the property of the PNRRA;
- (O) DL shall allow officers of PNRRA the opportunity to inspect any portion of the lines of railroad including permission to ride any and all trains operated by DL, and DL will provide hirail inspection services to the PNRRA upon three days notice to DL;
- (P) DL will perform marketing and sales programs for the lines of railroad in order to increase the number of carloads per year on the lines of railroad and the DL will employ a marketing/sales employee, to be selected in consultation with PNRRA, to perform marketing and sales activities on lines of railroad owned by PNRRA in order to increase carloads and encourage economic and industrial development on lines of railroad owned by PNRRA;
- (Q) DL will provide security on the leased premises. If , and where outside contract security is deemed to be necessary PNRRA will split the costs associated with same with the DL on a 50%/50% basis of mutually agreed to costs. Security named in this paragraph will only be on property leased by the DL,
- (R) On the 27th day of August of each year this agreement is in effect, DL shall provide PNRRA with the following information: (1) a complete list of the names and addresses of all employees of DL, (2) a complete list of the names and addresses of all officers and directors of DL, and (3) a complete list of the names and addresses of all stockholders in DL and the total number of shares owned by each stockholder.
- (S) DL hereby covenants and agrees to provide one hundred twenty (120) days written notice of any proposed change in stock ownership which would change control of the DL. Upon receipt of such notice to PNRRA, PNRRA shall have the right to terminate the operating contract with DL upon thirty (30) days written notice to DL.

7. Restrictions.

DL further agrees that it will not:

- (A) Occupy the lines of railroad in any way or for any purpose unrelated to the operation of the lines of railroad;
- (B) Assign, mortgage, pledge or encumber the lines of railroad, or any part thereof or assign its obligation under this Agreement without prior written consent of PNRRA; or

- (C) Handle hazardous, toxic or noxious commodities without requisite insurance and written approval of the PNRRA which will not be reasonably withheld.

8. Relationship between DL and PNRRA.

The DL and PNRRA shall meet at least monthly to review and discuss revenue, costs, operations, marketing, maintenance and service concerns. DL shall inform the PNRRA and affected shippers of any major action or event related to the lines of railroad which may affect rail freight service to those shippers as soon as such action or event is known to DL. The PNRRA will inform DL of any problems or concerns related to the rail freight service. DL is a private corporation and is an independent contractor and is not an agent of the PNRRA. Whenever a written approval is required by DL from PNRRA, the signature of the Board Chairman and President will suffice to validate such written approval. The PNRRA will conduct an annual performance audit of marketing, operating, maintenance and other functions performed by the DL. The maintenance performance of DL will in part be analyzed by fulfillment of annual maintenance expenditures in the minimum of twenty-five (25%) percent of rail freight operating revenues on a rolling 3 year average, starting with calendar year 2010 with a minimum of 3,000 ties installed per year, the addition of stone ballast and raise, line and surfacing of at least 15 miles of railroad per year and the installation of a minimum of 1,500 track feet of new or good quality relay rail per year on the lines of railroad.

9. Rents from Non-Operating Properties.

PNRRA shall receive any and all rents arising from any leases of non-operating properties presently outstanding or to be negotiated on any portion of the lines of railroad and any renewals thereof, including, but not limited to, rents, license fees, and other revenues paid by any party occupying a portion of the lines of railroad including but not limited to rental sand fees for pipe and wire crossings, utility crossings and occupations, signboards, platform locations, driveways, storage facilities, side tracks, parking lots, water rights, land rents, building rents and water tank rents, among other things. PNRRA shall collect such monies as they become due. PNRRA will determine which properties are classified as non-operating.

10. Public Crossings.

During the term of this Agreement or any renewal thereof, DL shall assume and be responsible for any obligation flowing to PNRRA as a result of obligations formerly assigned to D&H or Conrail or any other predecessor railroad, or which may be imposed under the provisions of Pennsylvania Public Utility laws and any orders issued thereunder with respect to crossings of the lines of railroad by public highways, bridges or utilities.

11. Condemnation of the Lines of Railroad.

If the lines of railroad, or any portion thereof, are condemned or taken by any competent authority for public use, the award for payment of damages resulting therefrom, or any amount paid in settlement thereof, shall be paid to and retained by PNRRA, except as hereinafter provided. If the entire lines of railroad are taken or such substantial part thereof as shall materially impair or interfere with DL's proper use and enjoyment thereof, this Agreement shall automatically terminate as of the date of the taking. If only such portion of the lines of railroad is taken as shall not materially impair or interfere with the DL's proper use and enjoyment thereof, this Agreement shall continue in full force and effect, and all proceeds of the condemnation award or payment shall first be used by PNRRA as may be required for the restoration of the lines of railroad in such manner as will enable the continuing operation thereof by the DL as hereinabove provided.

12. Default.

If during the term of this Agreement there shall occur any of the following events ("Events of Default"):

- (A) DL shall fail to pay any payments or fees provided for in this Agreement at such times as they are due and payable;
- (B) DL shall fail to perform any of its other obligations hereunder, and shall not cure such default within thirty (30) days after written notice thereof shall have been given to DL by PNRRA or if such default cannot be cured within such period, shall not commence to cure within such period and thereafter diligently proceed to complete the same;
- (C) DL makes an assignment for the benefit of the creditors or files a voluntary petition under any bankruptcy or insolvency law or is adjudicated as bankrupt or insolvent in voluntary or involuntary proceedings or seeks reorganization or receivership, or similar relief, or
- (D) A proceeding against DL seeking reorganization or receivership or similar relief is not dismissed or vacated or stayed on appeal within sixty (60) days;
- (E) DL fails to maintain or operate the lines of railroad in accordance with the terms of this Agreement or fails to conduct its operation in a manner consistent with generally accepted railroad safety practices;
- (F) Any conduct of its operations in such a manner so as to commit intentional waste of the lines of railroad;
- (G) Fails to discharge any claims or liens for materials and services for with DL becomes obligated while providing freight rail transportation service under this

Agreement, then and at any time thereafter while such Event of Default is continuing and has not been cured by DL within thirty (30) days after notification by the PNRRA of such event, the PNRRA may in addition to its other remedies at law or equity or as provided for in this Agreement, by notice to DL specifying the Event of Default, terminate this Agreement.

All remedies given to PNRRA by this Agreement and all rights and remedies given to it by law or equity shall be cumulative and concurrent. No termination of this Agreement or recovery of the lines of railroad shall deprive PNRRA or any of its remedies or actions against DL for tent and all other sums due at the time of termination of this Agreement, nor shall any action for operating fees, breach of covenant or resort to any other remedies for recovery of operating fees be deemed or construed a waiver of the right o obtain possession of the lines of railroad.

13. Failure of Cure Default.

If DL shall fail to perform any of its obligations hereunder and shall fail to cure any default upon the giving of written notice and upon the time period specified in this Agreement or if DL shall not commence to comply within such period and thereafter complete with due diligence, PNRRA shall have the right, but not the obligation and in addition to all other remedies it may have hereunder, upon twenty-four hours written notice to DL to undertake the performance of such obligations and obtain reimbursement from DL thereof.

14. Financial Settlement on Termination and Termination Costs.

In any case of termination, each party shall bear its own expenses of termination.

15. Renegotiation.

Either party shall have the right to request renegotiation of this Agreement upon ninety (90) days' written notice to the other party. When notice of such request is served upon the other party, it shall specify the changes requested. Upon failure to reach agreement, either party may request arbitration pursuant to Section 22 or terminate the Agreement. During any period of negotiation, all existing terms shall remain in force. Any changes agreed upon will be retroactive to ninety (90) days from the date of this Notice for Renegotiation.

16. Waiver.

Any waiver by either party under this Agreement of any breach by the other party shall not effect similar rights subsequently arising nor operate as a waiver of subsequent breaches of the same or similar kinds nor as a waiver of the clause or condition under which said right arose or said breach occurred.

17. Notice.

Notice provided for herein shall be sufficient if sent by certified mail, postage prepaid, as follows:

To the PNRRA at:

Pennsylvania Northeast Regional Railroad Authority
280 Cliff Street
Scranton, PA 18503
ATTN: President

To the DL at:

"the" Delaware-Lackawanna Railroad Co., Inc.
280 Cliff Street
Scranton, PA 18503
ATTN: General Superintendent

And

Genesee Valley Transportation Company, Inc.
1 Mill Street, Suite 101
Batavia, NY 14020-3141
ATTN: President

or such other address as either party may, from time to time designate to the other in writing.

18. Regulatory Agency.

- (A) This Agreement is subject to the orders, rules and regulations of appropriate regulatory authorities having jurisdiction over DL.
- (B) If any portion of this Agreement is determined to be unduly burdensome by such authority, the parties shall make such modifications as may be necessary or reasonable.

19. Access to Records.

- (A) DL agrees to maintain and make available to PNRRA monthly carload and interchange records and reports and such other records and reports necessary to permit PNRRA to fully verify statements of traffic, revenue, and expenditures furnished by DL on a monthly basis.
- (B) PNRRA shall have full access to these records and reports during normal business hours upon 48 hours written notice, duly given to DL.

(C) DL will deliver to PNRRA a certified public audit of its financial reports to be performed by a certified public auditing firm no later than June 30th for the preceding year ending December 31. DL will also deliver to PNRRA quarterly non certified financial statements. All records, reports and summaries shall be held in confidence by PNRRA and shall not be disclosed to any other party to extent allowed by law.

20. Force Majeure.

Neither party hereto shall be held responsible or liable, either directly or indirectly, or be deemed in default or breach of this Agreement for any loss, damage, injury, delay, failure, or inability to meet all or any portion of its commitments hereunder caused by or arising from any cause which is unavoidable or beyond its reasonable control, including without limitation, war, hostilities, invasion, insurrection, riot, the order of any competent civil or military government, explosion, fire, strikes, lockouts, AAR service orders, actions of other carriers which materially effect DL's operations, labor disputes, perils of water including floods, ice, breakdowns, Acts of God including storms or other adverse weather conditions, derailments, wrecks or other causes of a similar or dissimilar nature which wholly or partially prevent the Parties or either of them from carrying out the terms of this Agreement; provided that the Party experiencing such force majeure or partial force majeure promptly gives to the other Party written notice that the disabling effect of such force majeure shall be eliminated as soon as and to the extent reasonably possible and that each Party shall have the right to determine and settle any strike, lockout and labor dispute in which that Party may be involved in its sole discretion. In the event that one Party's performance is suspended in whole or in part by force majeure, the other Party's obligation to perform hereunder shall be suspended or commensurately reduced for the duration of the force majeure and for such additional reasonable period as may be required because of the existence of the force majeure. In the event that on Party's performance hereunder is suspended by force majeure and cannot be resumed within a reasonable period of time, either Party shall have the right to terminate this Agreement.

21. Labor Conditions.

If during the term of this Agreement or subsequent renewal thereof, any labor protective conditions shall be imposed as a result of an ICC or STB order or pursuant to the Railway Labor Act, DL agrees to fully indemnify and hold harmless PNRRA from the costs of said protective conditions.

22. Arbitration.

Any claim or controversy arising out of or relating to this Agreement, shall be settled by arbitration in Scranton, Pennsylvania, in accordance with the Rules of the

American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof.

23. Successors and Assigns.

This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. However, this provision shall not be construed to confer on DL any right or authority to assign all or any part of this Agreement without the PNRRA's prior consent.

24. Entire Agreement.

This Agreement contains the entire understanding of the parties with respect to its subject matter. No oral statement or prior written matter shall have any force or effect. The parties hereby acknowledge that they are not relying on any representations or agreements other than those contained in this Agreement.

25. Severability.

If any term, covenant, condition or provision (or part thereof) of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision (or remainder thereof) to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, or condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

26. Anti-Discrimination.

DL and PNRRA will execute and comply with the non-discrimination clause attached hereto and incorporated herein as Appendix B.

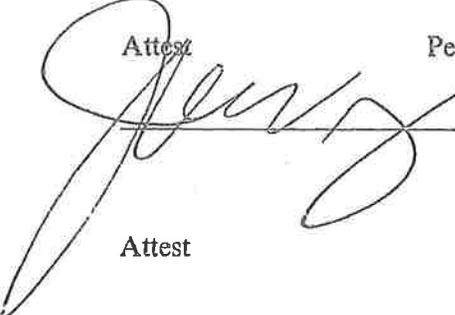
27. Applicable Law.

This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

28. Extension of 'Terms and Conditions.

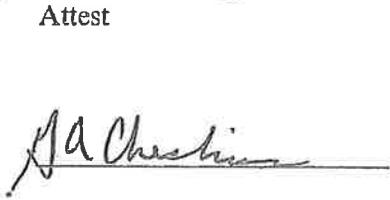
PNRRA shall have the option to extend the terms and conditions of this agreement to any other PNRRA owned or acquired lines of railroad which connect to these lines of railroad in order to avoid in whole or in part the duplication of existing activities performed by DL serving substantially the same purposes.

IN WITNESS WHEREOF, the parties hereto have caused this Operating Agreement to be executed by themselves or by their respective duly authorized officers as of the day and year first above written.

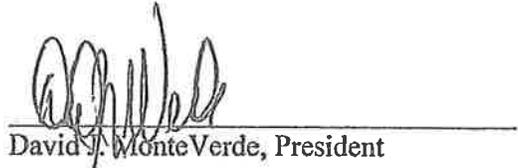
Attest


Pennsylvania Northeast Regional Railroad Authority


Robert C. Hay, Chairman

Attest


"the" Delaware-Lackawanna Railroad Co., Inc.


David J. MonteVerde, President

APPENDIX A

DESCRIPTION OF SCRANTON TO CARBONDALE RAIL LINE
(formerly owned by Lackawanna County Railroad Authority)

PARCEL 1. A tract, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in Fell Township, the City of Carbondale, Carbondale Township, the Boroughs of Mayfield, Jermyn, Archbald, Jessup, Olyphant, and Dickson City, and the City of Scranton, County of Lackawanna, and Commonwealth of Pennsylvania, containing a line of railroad known as a portion of the former mainline of Delaware and Hudson Railway Company and extending between a line at right angles to the westerly line of this Parcel 1 and located at Mile Post A-174.59 in Fell Township on the north and two lines located at Mile Post A-191.42 in the City of Scranton on the south with the westerly of said two lines being located on the north line of Marion Street and the easterly of said two lines being located in the center line also being and northerly line of the Vine Street Branch, all being more particularly described in Exhibit D&H, attached hereto and made a part hereof.

PARCEL 2. A tract, piece parcel of land, wit the buildings and improvements thereon, situate, lying, and being in the City of Scranton, County of Lackawanna, and Commonwealth of Pennsylvania, containing a line of railroad known as the Vine Street Branch of Delaware and Hudson Railway Company and extending between a line located at Mile Post A-191.42 in the center line of Marion Street on the north and a line which crosses the center line of Track at Mile Post A-192.63 as said line is shown on Exhibit VINE, Sheet 1 on the south, and being more particularly described in said Exhibit VINE, attached hereto and made a part hereof.

PARCEL 3. A tract, piece of parcel of land, with the buildings and improvements thereon, situate, lying, and being in the City of Scranton and the Borough of Moosic, county of Lackawanna, and Commonwealth of Pennsylvania, containing a line of railroad known as a portion of the former main line of the Delaware and Hudson Railway Company and extending between a line located at Mile Post A-191.42, said line being the north line of Marion Street, in the City of Scranton on the north and a line at right angles to the center line track in the borough of Moosic, on the south and being more particularly described in Exhibit NC&I, attached hereto and made a part hereof.

TOGETHER WITH all of the right, title and interest of the GRANTOR in and to the continuous lines of railroad trackage and facilities extending between the respective mile posts set forth respectively in the descriptions of Parcels 1, 2, and 3 above and in and to various rail, highway, and bridge crossings of the lines of railroad trackage and facilities as shown on aid Exhibits D&H, VINE, AND NC&I.

EXCEPTING AND RESERVING to Delaware and Hudson Railway Company (D&H), it successors and assigns (1) all coal fill and coal finds located in, upon and under the above described Parcels 1, 2, and 3, together with the right to enter and come upon said premises themselves and/or with their contractors and/or subcontractors, with equipment,

for the purpose of removing said coal fill and coal fines, so long as such entry does not unreasonably interfere with the use of said premises by the successors in title of the said Delaware and Hudson Railway Company and so long as such entry and removal are preceded by reasonable notice to and consulting with the Chief Engineer of Lackawanna County Railroad Authority (LCRA) with respect to any portion of the said Parcels 1, 2, and 3 to which title is uninterruptedly held by LCRA from the date of transfer of title thereto from D&H to LCRA to the date of such entry and (2) a longitudinal easement, with crossings where necessary above, below and on the surface of the above described Parcels 1, 2 and 3 to which title shall have uninterruptedly remained in LCRA, as aforesaid.

ALSO EXCEPTING AND RESERVING to Delaware and Hudson Railway Company, its successors and assigns, those areas in Parcel 1 shown by diagonal shading on Exhibit D&E.

DESCRIPTION OF SCRANTON TO MT. POCONO AND BRADY LEAD AND
CHAMBERLAIN LEAD LINES OF RAILROAD
(formerly owned by Lackawanna County Railroad Authority)

APPROXIMATELY 0.2 of a mile of the former Conrail Scranton Branch from Mile Post 134.0 at the D&H Railway right of way line to Mile Post 133.8 at Cliff Street; and 0.7 of a mile of the Brady Industrial Lead from Mile Post 0.0 at Cedar Avenue to Mile Post 0.0 being the north abutment of the bridge over Roaring Brook; and 0.6 of a mile of the Brady Industrial Lead between Cliff Street and Cedar Avenue; and 0.5 of a mile of the Chamberlain Lead between Cliff Street and South Washington Avenue, all in the City of Scranton, Lackawanna County, Pennsylvania.

AS FURTHER DESCRIBED AS all that certain line of Railroad, being a portion of Consolidated Rail Corporation's Scranton Branch identified as line Code 6201 in the records of the United States Railway Association and also being a portion of the former Erie Lackawanna Railway Company's line of Railroad known as the Erie Lackawanna Main Line (Line Code 6201) and further identified in the Recorder's Office of Lackawanna County, Pennsylvania in Book 954 at Page 346; and beginning at about Railroad Mile Post 120.0 in the Township of Covington, County of Lackawanna and Commonwealth of Pennsylvania; and extending thence in a general northwesterly direction and passing through Covington township, the Borough of Moscow, Roaring Brook township, Borough of Elmhurst, Roaring Brook Township, Borough of Dunmore and into the City of Scranton to a point of ENDING on the east line of Cliff Street, in the said City of Scranton, County of Lackawanna and Commonwealth of Pennsylvania, opposite Railroad Mile Post 133.8, all as indicated by "PS" on Consolidated Rail Corporations' Case Plan No. 67880, sheets 1 through 14(c), which sheets are the same sheets attached to the August 13, 1985 Deed between Consolidated Rail Corporation and the Grantor, and recorded in Deed Book 1145, pages 528 through 545 in the office aforesaid, and;

AS FURTHER DESCRIBED AS all that certain portion of right of way and the buildings and improvements, thereon erected, of railroad of Consolidated Rail Corporation (formerly Erie Lackawanna Railway Company) known as the Scranton Branch and identified as Line Code 6201 in the records of the United States Railway Administration, situate in the Townships of Coolbaugh, Pocono and Tobyhanna, County of Monroe, Pennsylvania; and further identified in the Monroe County, Pennsylvania Recorder's Office in Deed Book Volume 902 at Page 144, and also situated in the Township of Lehigh, County of Wayne; and further identified in the Wayne County, Pennsylvania Recorder's Office in Deed Book 351 at Page 688; and also situated in the Townships of Clifton and Covington, County of Lackawanna; and further identified in the Lackawanna County, Pennsylvania Recorder's Office in Deed Book 954 at Page 346; and beginning at Railroad Milepost 101 in said Township of Coolbaugh, Monroe County, Pennsylvania and extending thence in a general northwesterly direction through Wayne county, Pennsylvania to the ENDING at Mile Post 120 in said Township of Covington, Lackawanna County, Pennsylvania, all as indicated as "PS" on Grantors Case Plan No. 68388, sheets 1 through 22 and;

AS FURTHER DESCRIBED AS all that certain property of the Grantor, located at Mt. Pocono, with the improvements thereon, being adjacent to Grantor's former line of railroad known as the Scranton Branch and identified as Line Code 6201 in the Recorder's Office of Monroe County in Deed Book Volume 902 at Page 144, also formerly known as the Mt. Pocono Automobile Unloading Terminal, situate partly in the Townships of Pocono, Tobyhanna and Coolbaugh, County of Monroe and Commonwealth of Pennsylvania, all as indicated "PS" on Grantor's Case Plan No. 70139, dated September 4, 1991, being all that property at said location which lies northwest of said Scranton Branch and southeast of the westerly edge of the access road located within said property.

DESCRIPTION OF SCRANTON BRANCH, LINE CODE 6201
M.P. 84.6 TO M.P. 101
MONROE COUNTY, PENNSYLVANIA
(formerly owned by Monroe County Railroad Authority)

ALL THAT CERTAIN property of the Grantor, being a portion of the former line of railroad known as the Erie Lackawanna Main line (a.k.a. Scranton Branch), and identified as Line Code 6201 in the Recorder's Office of Monroe County, Pennsylvania in Volume 902 at page 144; being further described as follows:

BEGINNING at approximately Railroad M.P. 84.6, in the Township of Stroud, as indicated on sheet 1 of 17 of Exhibit "B"; thence extending in a general northeasterly direction, passing through the Townships of Pocono, Paradise and Barrett; thence turning in the Township of Barrett and extending in a general southwesterly direction, re-entering and passing through the Township of Paradise to Railroad Mile Post 101.0 at the end of Grantor's ownership in the Township of Coolbaugh the place of ENDING as indicated on sheet 17 of 17 of Exhibit "B".

BEING a part or portion of the same premises which Thomas F. Patton and Ralph S. Tyler, Jr., as Trustees of the Property of Erie Lackawanna Railway Company, Debtor, by Conveyance Document No. EL-CRC-RP-62, dated March 31, 1976 and recorded on October 16, 1978, in the Recorder's Office of Monroe County, Pennsylvania, Deed Book Volume 902 at page 139&c.; granted and conveyed unto Consolidated Rail Corporation.

DESCRIPTION OF LINE OF RAILROAD PURCHASED FROM
NORFOLK SOUTHERN
PORTION OF STROUDSBURG SECONDARY

BEING all the land, right of way and track beginning at Milepost 84.6, approximately 550 feet south of the Route 191 highway bridge overpass, over the land and mainline tracks of the Pennsylvania Northeast Regional Railroad Authority in Stroud Township, Pennsylvania, to the north side of Courtland Street grade crossing in the Borough of East Stroudsburg, Pennsylvania, a distance of approximately 2 miles as more fully described by the copies of valuation maps shown as Exhibits A1 through A13 attached hereto and made a part hereof.

Also being a portion of the land, right of way and track conveyed by Consolidated Rail Corporation to Pennsylvania Lines LLC, predecessor of Norfolk Southern Railway Company, on May 19, 1999 in the Township of Stroud and the Borough of East Stroudsburg in Monroe County, Pennsylvania by deed recorded at Record Book 2082, page 6765 et seq. Pennsylvania Lines LLC was merged in to Norfolk Southern Railway Company on August 27, 2004.

DESCRIPTION OF LINE OF RAILROAD LEASED FROM
NORFOLK SOUTHERN

That portion of the Stroudsburg Secondary Track extending between M.P. 2.0, approximately old M.P. 74.4 (Slate) and M.P. 10.2, approximately old M.P. 82.6, located in Monroe and Northampton Counties.

DESCRIPTION OF LAUREL LINE MAINLINE AND MINOOKA INDUSTRIAL
TRACK

ALL that line of railroad beginning at the north side of Montage Road crossing in the Borough of Moosic and proceeding in a general northerly direction to the City of Scranton, all in Lackawanna County, Pennsylvania and comprising approximately 4.81 miles of rail line, also including the Minooka Industrial Track which is comprised of an approximately 2.1 mile spur track extending from a junction at Little Virginia on the Laurel Line main line to the end of track including the switches to service Compression Polymers in the Borough of Moosic.

APPENDIX B

COMMONWEALTH NONDISCRIMINATION CLAUSE

During the term of this contract, Contractor agrees as follows:

1. Contractor shall not discriminate against any employee, applicant for employment, independent contractor, or any other persons because of race, color, religious creed, ancestry, national origin, age or sex. Contractor shall take affirmative action to insure that applications are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places, available to employees, agents, applicants for employment, and other person, a notice to be provided by the contracting agency setting forth the provision of this nondiscrimination clause.
2. Contractor shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applications will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age or sex.
3. Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment of this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.
4. It shall be no defense to a finding of noncompliance with this nondiscrimination clause that Contractor had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.
5. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under this nondiscrimination clause, Contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.

6. Contractor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's noncompliance with the nondiscrimination clause of this contract or with any such laws, this contract may be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35956

**READING, BLUE MOUNTAIN NORTHERN RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER**

**JOINT REPLY OF PENNSYLVANIA NORTHEAST REGIONAL RAILROAD
AUTHORITY AND SEDA-COG JOINT RAIL AUTHORITY**

Exhibit B

OPERATING AGREEMENT

THIS AGREEMENT is made and entered into on the 13th day of December, 2006, to become effective January 1, 2007, by and between SEDA-COG JOINT RAIL AUTHORITY, a Pennsylvania municipal authority created under the Municipality Authorities Act of 1945, referred to herein as the "Authority;"

a
n
d

LYCOMING VALLEY RAILROAD COMPANY ("LVRR"), NITTANY & BALD EAGLE RAILROAD COMPANY ("NBER"), NORTH SHORE RAILROAD COMPANY ("NSHR"), JUNIATA VALLEY RAILROAD COMPANY ("JVRR") and SHAMOKIN VALLEY RAILROAD COMPANY ("SVRR"), the foregoing parties all being Pennsylvania corporations and are individually referred to herein as an "Operator" and collectively referred to herein as the "Operators".

WITNESSETH

WHEREAS, the Authority is the owner of certain lines of railroad (the "Railroad Premises") described in Exhibit A as authorized by the Interstate Commerce Commission in Docket No. AB-167 (Sub Nos. 392N, 457N, 489N, 989, 779 and 485N), and STB Finance Docket Nos. 33010 and 33008; and

WHEREAS, The Operating Companies have been authorized to conduct and provide common carrier railroad operations and service on lines of railroad (the "Railroad Premises") described in Exhibit "A", in ICC Finance Docket Nos. 30536, 31543, 31378 and 31378 (Sub No. 1) and STB Finance Docket Nos. 33010 and 33008; and

WHEREAS, the Authority has selected the Operating Companies to provide rail freight service and to maintain the Railroad Premises for the benefit of shippers and communities served by said lines of railroad;

NOW THEREFORE, the parties, intending to be legally bound, agree as follows:

Section 1. Definitions

"Affiliate" means any entity engaged in providing railroad services to the Operators, owned, directly or indirectly, in whole or in part, by either: (i) any of the Operators; (ii) any of the directors, officers or employees of any of the Operators or their spouses or lineal descendants; (iii) any individual having greater than a 25% ownership interest in the equity of any of the Operators (a "Principal"), or (iii) a Principal's spouse or lineal descendants.

"Authority Standards" means the maintenance standards set forth in Exhibit B, "Track Maintenance Standards", of this agreement.

"Capital Improvements" mean asset additions, improvements, or replacements, that are not the result of ordinary maintenance activities to be performed by Operators under this Agreement. In the event of a dispute as to whether an improvement constitutes a Capital Improvement or Maintenance, the dispute shall be submitted to Arbitration pursuant to Section 29 of this Agreement.

"Change in Control" of the Operators shall be deemed to have occurred if and when any person or group of persons shall, subsequent to the date of this Operating Agreement, have acquired ownership of or the right to vote or to direct the voting of shares of any of the Operators representing fifty-one (51%) percent or more of the total voting interest of such Operator.

"Environmental Contamination" shall mean any contamination of the Railroad Premises arising from the deposit, acceptance, use, storage, transport, disposal or release of Hazardous Materials to, or under the Railroad Premises as a result of the receipt, transportation, delivery, use or storage of said materials by any of the Operating Companies.

"Hazardous Materials" shall mean and include, without limitation, (1) "hazardous substances" or "toxic substances", or "pollutants or contaminants" as those terms are defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601, et seq.; or the Transportation of Hazardous Materials Act, 49 U.S.C. §5102, et seq., all as amended; (2) "hazardous wastes" as that term is defined by the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., as amended; (3) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials or substances within the meaning of any other applicable federal, state or local law, regulation, code, ordinance, guideline, order, agreement or requirement imposing liability or standards of conduct concerning any hazardous, toxic or dangerous residual waste substance or material, or the exposure of persons thereto all as amended as of the date hereof; (4) any crude oil or any other petroleum product; (5) any radioactive material, including any source, special or nuclear or by-product material as defined in 42 U.S.C. §2100, et seq. as amended; (6) asbestos and asbestos containing materials in any form; or (7), compounds containing polychlorinated biphenyls.

"Janotti Report" means the Track Inspection and Maintenance Right of Way Report to be prepared by Paul Janotti pursuant to Section 13(a) of this Agreement, and appended to this Agreement as Exhibit "E".

"Railroad Premises" means all property of every kind and description, real, personal, and mixed, including, but not limited

to, the right of way, roadbed, tracks, bridges, track materials, poles, wire lines, signals, switches, and other facilities, buildings, and appurtenances comprising the premises described on Exhibit "A" and utilized in the provision of rail freight services pursuant to this agreement.

"**Rail Freight Service**" means rail freight transportation service to be provided by the Operating Companies pursuant to the provisions of Title 49 of the United States Code, Part A, and under the terms of this Agreement.

"**STB**" means the Surface Transportation Board of the United States Department of Transportation.

"**This Agreement**" means this Operating Agreement.

"**Track Consultant**" means a qualified consultant engaged by the Authority from time to time for the purpose of inspecting the Railroad Premises and providing periodic reports to the Authority regarding the condition thereof.

Section 2. Exclusive Use of Railroad Premises. The Authority shall provide to the Operating Companies access to and use of the Railroad Premises. The Operating Companies shall have the exclusive right to use the Railroad Premises only for the purpose of providing rail freight service thereon during the term of this Agreement, or any extension or renewal thereof, subject to the terms and conditions hereinafter contained. This Agreement shall not be construed as conveying any ownership interest to Operators. Any use for purposes other than rail freight service, including passenger service or rail excursions, shall require prior written permission of the Authority.]

Section 3. Use by Other Carriers or Third Parties. In the event that Operators desire to allow any other person or entity access to or upon the Railroad Premises for any purpose other than the provision of rail freight services hereunder, the Operator shall secure prior written approval from the Authority which approval shall not be unreasonably withheld. Nothing herein shall

prohibit Operator from providing access to or upon the Railroad Premises by persons or entities as required to enable Operator to provide rail freight services as provided herein.

Section 4. Non-Transferability. This Agreement and the rights herein granted shall not be assigned, sold, leased, transferred, or in any other way alienated without prior written consent of the Authority. For purposes of this Section 4, an assignment shall include any transfer of any rights under this agreement, whether voluntary or involuntary or by operation of law, including any merger or consolidation of the Operator or any Change in Control of the Operator made without the Authority's prior written consent.

Section 5. Defects in Title. The rights contained herein as to the Railroad Premises are granted only insofar as the Authority's federal regulatory authorization and title permits. The Authority specifically disavows any implied or other warranty of title, nor shall the Authority be liable to Operators for any defects or encumbrances upon the title to the properties constituting the grant of exclusive use in Section 2. Should a third party assert a claim of title to the Railroad Premises, Authority and Operators shall cooperate with each other and take action as necessary to preserve the Railroad Premises for its intended use hereunder.

Section 6. Right to Inspect. The Authority, its agents or assigns, shall have the right, upon reasonable notice, to enter upon the properties constituting the Railroad Premises for the purpose of making reasonable inspections. The parties shall make reasonable arrangements to assure that the inspections can be performed safely, without undue interference or disruption of the Operators' railroad operations, in a manner consistent with the security of the railroad facilities. Operators shall, upon adequate advance notice, provide hi-rail equipment and a qualified driver to facilitate inspections exercised hereunder. The cost of such hi-rail equipment and driver shall be borne by Operators; provided, however that in the event the Authority requires such inspections more than two times during any calendar year, the Authority shall reimburse to Operators the cost incurred by Operators for such additional inspections.

Section 7. Taxes and Utilities. Operators shall pay and discharge, on or before the last day on which payment may be made without penalty or interest, any and all taxes (including without limitation all real property taxes), assessments, charges for public utilities, excise, license and permit fees, assessments, sewer rentals and other governmental impositions and charges which shall or may during the term hereof be charged, assessed, imposed, become due and payable, or a lien upon, or arising in connection with the use by the Operators of the Railroad Premises for rail freight service. Operators shall have the right to contest any such taxes or other charges by appropriate legal proceedings, conducted at their own expense, providing that Operators shall furnish to Authority a surety bond or other security satisfactory to the Authority sufficient to cover the amount of the contested item or items when such item or items exceed \$2,500.00, with interest and penalty for the period which such proceeding may be expected to take. Operators shall also pay any and all charges for water, gas, electricity, and other utility services provided to the Railroad Premises and used by the Operator in the provision of rail freight services hereunder.

Section 8. Existing Agreements. Operators' use of the Railroad Premises is subject to all of the terms and conditions contained in the following existing agreements, copies of which have been previously delivered to the Operator:

a) Acquisition Agreement dated July 25, 1984 between the Authority and the Consolidated Rail Corporation ("Conrail") under which the Railroad Premises was acquired from Conrail (referred to herein as the July 25, 1984 Agreement);

b) Acquisition Agreement dated November 28, 1988, between the Authority and Conrail (referred to herein as the November 28, 1988 Agreement);

(c) Acquisition Agreement dated November 6, 1996 between the Authority, NBER and Conrail (referred to herein as the "November 6, 1996 Agreement");

(d) Trackage Rights Agreement dated August 15, 1996, between the Norfolk Southern (as successor to Conrail), NBER and the Authority (the "Trackage Rights Agreement"); and

(e) Settlement Agreement dated July 1, 2005 between Norfolk Southern Railway (NSR), LVRR, NBER, NSHR, SVRR, and Union County Industrial Railroad (UCIR) and the Authority.

The Operators shall conduct their operations over said Railroad Premises in accordance with the terms and conditions of the aforesaid Agreements and all other agreements to which they are a party and the Authority is now or hereafter becomes a party or third party beneficiary. Additionally the Operators hereby jointly and severally assume all obligations of LVRR under the July 1, 2005 Settlement Agreement and all obligations of NBER under the November 6, 1996 Agreement and the Trackage Rights Agreements, and shall indemnify and hold the Authority harmless from all liability with respect thereto. Except as set forth herein, neither the Authority nor the Operators shall incur any obligation, undertake any action or assume any liability of the other party under the aforesaid Agreements.

Section 9. Term. The term of this Agreement shall commence January 1, 2007 and continue until June 30, 2017, unless terminated prior thereto in accordance with the provisions of this Agreement,

Section 10. Operating Fees.

(a) Operators shall be jointly and severally obligated to pay certain Operating Fees for the use of the Railroad Premises as set forth in Exhibit C, "Operating Fees".

(b) It is expressly understood that such Operating Fees shall be paid to the Authority without off-set for any charges incurred by Operators in the provision of rail freight services.

Section 11. Condition of Railroad Premises. Operators have inspected the Railroad Premises and accept the same "as is". The Authority makes no representation or warranty as to the physical condition of the Railroad Premises or the condition of the legal title. Operators shall return the Railroad Premises to the Authority upon the termination of this Agreement in the same condition as received or as improved. Notwithstanding the foregoing, the Authority shall make no claim or demand against the Operators regarding the condition of the Railroad Premises at the termination of this Agreement,

provided that the Operators have complied with their annual maintenance responsibilities as set forth in Section 13 of this Agreement.

Section 12. Provision of Additional Equipment and Facilities. Operators shall be responsible for providing all equipment and facilities that are reasonably necessary for the safe and adequate rail freight services on the Railroad Premises. Such equipment and facilities shall include, but shall not be limited to, locomotives, rolling stock as available, maintenance equipment, office space, and such other facilities and equipment as are reasonably necessary to provide rail freight service on the Railroad Premises as contemplated under this Agreement. Notwithstanding the above, Operators shall not be found in default if cars which must be obtained from a Class I Carrier are not available at that time.

Section 13. Maintenance

(a) Promptly following the execution of this Agreement, the parties shall engage, Mr. Paul Janotti, at Operators' sole expense, to prepare a comprehensive report (the "Janotti Report"), setting forth the existing condition of the Railroad Premises, which report shall be appended to this Agreement as Exhibit "E." Operators shall be solely responsible for maintaining the Railroad Premises in accordance with the Authority Standards or to the condition to which they have been improved. Notwithstanding the foregoing, to the extent the Janotti Report establishes that the present condition of any portion of the Railroad Premises fails to comply with the Authority Standards, Operators shall not be required to maintain such portion of the Railroad Premises to the Authority Standards, but shall instead maintain said portion of the Railroad Premises to condition as described in the Janotti Report, but not less than applicable FRA Standards. It is the intention of the parties that any portion of the Railroad Premises that do not presently comply with the Authority Standards shall be improved to a condition that complies with Authority Standards over a reasonable period of time, giving due consideration to the reasonable rail traffic and revenue projections for said portions of the Railroad Premises through the Annual Maintenance Program hereinafter described, and which

shall thereafter be maintained to the Authority Standards. Without limiting the foregoing, the parties further agree as follows:

(1) On or before January 15 of each year, Operators shall prepare and submit to the Authority, a program (hereinafter referred to as the "Annual Maintenance Program") setting forth the maintenance items to be performed for the entire Railroad Premises during the remainder of the calendar year, and the anticipated cost of such items to ensure that the Railroad Premises are maintained in accordance with the Authority Standards.

(2) Operators will review the Annual Maintenance Program with the Authority's Staff and Track Consultant who shall review and amend the same to ensure that it complies with the Authority Standards not later than March 1 of said year.

(3) Operators shall at their own cost be responsible for maintaining the Railroad Premises in accordance with the Authority Standards as set forth in the Annual Maintenance Program approved by the Authority's Track Consultant.

(4) The Authority's Track Consultant shall inspect the Railroad Premises at least twice each calendar year to ensure that Operator is maintaining the same in accordance with the Annual Maintenance Program adopted by the parties for the Railroad Premises. Any deficiencies noted by the Track Consultant or by inspectors from the Federal Railroad Administration or the Pennsylvania Public Utilities Commission in routine inspections of the Railroad Premises shall be promptly remedied by the Operators at their sole cost and expense.

(5) Any disputes arising with respect to either the terms or requirements of the Annual Maintenance Program or Operators' compliance with the Annual Maintenance Program shall be submitted to Arbitration pursuant to Section 29 of this Agreement.

(b) The parties agree that any and all rails, ties or other items of track and signaling equipment removed and replaced by Operators in the performance of required maintenance (the "Replaced Materials") shall become the property of the Operators, regardless of whether such removed property is sold or retained by Operator as materials and

supplies, provided the Operators purchased the material used in the replacement.

(c) It is expressly agreed that Operators shall be financially responsible for the repair of damage to any portion of the Railroad Premises caused by a landslide, geological disturbance, flood or significant natural catastrophe in an amount not to exceed \$25,000 per occurrence. In the event of an uninsured catastrophe resulting in damages to the Railroad Premises in excess of \$25,000, the Authority shall have the right, but not the obligation to pay such excess amount required to repair the damages, and in the absence of such repair the provisions of Section 27 of this Agreement shall apply.

Section 14. Capital Improvements. Operators shall have the right, but not the obligation with the prior written approval of the Authority, to make, at their own expense, Capital Improvements for railroad purposes on the Railroad Premises during the term of this Agreement. In such voluntary capital improvements, Operators shall be required to pay the cost of removal of appurtenant structures, excluding track improvements, where required by the Authority. Where such Operator financed Capital Improvements require or involve the replacement of an asset in place, the parties shall agree in writing in advance of installation of the replacement asset, who will have ownership of the assets to be removed from the Railroad Premises, and in the absence of such written agreement such assets will belong to the Authority. The Operators shall have no other obligations to finance or pay for any capital improvement to the Railroad Premises under the terms of this Agreement.

Section 15. Operators' Obligations. Operators agree that they will at all times during the continuance of this Agreement:

(a) Pay all charges in accordance with Sections 7 and 10 herein, at such time as the same are due and payable, which charges may be recovered by the Authority in the same manner as any charge due or in arrears.

(b) Operate rail freight service in accordance with all federal, state and local requirements and shall be responsible for obtaining all governmental approvals, authorizations, franchises, licenses and permits as may be prerequisite to the rendering of such service.

(c) Observe and comply with any and all requirements of all constituted public authorities and with all federal, state and local statutes, ordinances, regulations and standards applicable to Operators or their use of the Railroad Premises.

(d) Maintain and operate at their own expense the Railroad Premises, including any buildings used or leased by Operators thereon, in good operating condition and repair in a manner consistent with sound, accepted engineering practices and maintain the track in accordance with the provisions of Section 13 of this Agreement. Such operations shall include, but not be limited to, the removal of all wrecks and derailments within thirty (30) days following any such occurrence, restoration of the derailment site to safe operating condition within thirty (30) days following such occurrence, and restoration of a derailment site to its original condition or better within ninety (90) days following the occurrence, subject to the provisions of Sections 13(c) and 27 of this Agreement.

(e) Operate rail freight service on lines of the Authority at such levels and at such frequency as reasonably acceptable to the Authority, subject to the following guidelines:

(1) Frequency of Service: The Operators shall provide rail freight service a minimum of twice a week. Nothing herein shall require the Operators to operate a scheduled train when there are no cars to be picked up from or delivered to shippers on the Railroad Premises. The failure to provide rail freight service for ten (10) days (exclusive of Saturdays, Sundays, and Holidays) after need for such rail freight service has been established, according to subsection (e) (2) hereof, shall constitute a breach of this agreement by the Operators.

(2) Shipments destined to and from stations on the Railroad Premises shall be handled in accordance with rail transportation contractors or delivered to consignee not later than the third day (exclusive of Saturdays, Sundays, and Legal Holidays) after arrival of the shipment in the yard serving the line with adequate billing information unless consignee notifies the supervisor in charge of the Operator's Rail Freight Service of the shipment's imminent arrival on the lines of the Operators, in

which case the consignee can request a prompt placement date. The Operators shall exercise reasonable efforts to provide prompt empty car placement whenever the consignor notifies the Operators' supervisor three (3) days prior to the day on which the loaded car(s) shall be placed for loading, specifying the date for the placement of the empty car(s) for movement to the destination. However, nothing in this paragraph contemplates the Operators' providing better levels of rail freight service for certain customers with similar, but not identical, characteristics without collection of the applicable contract or appropriate published charges for such special rail freight service. Nothing in this paragraph precludes the Operators from providing more frequent rail freight service than that agreed upon in accordance with Section 15(e) (1).

(3) Quality of Service: The Operators shall provide safe and efficient rail freight service, including, but not limited to: (1) delivery and access to empty rail cars subject to car availability; (2) prompt handling of loaded rail cars with reasonable dispatch to and from points of interchange with other carriers; and (3) maintenance and repairs, snow removal, and clearing of train derailments and wrecks on the Railroad Premises, all as specified in this agreement. The Operators shall provide the name, address, telephone number, and point of contact of the shippers that are served on the Railroad Premises to the Authority within thirty (30) days from the date of execution of this agreement. The Authority will survey shippers during the term of this agreement to determine quality of rail freight service provided by the Operators, provided, however, that such survey shall not seek information concerning confidential rail transportation contracts, rates or price negotiations of rail freight service by any of the Operators or their connecting carriers, and the survey results will be provided to Operators.

(4) Control: The Operators shall have exclusive control of the operation, performance and pricing of the rail freight service, including but not limited to the dispatching and control of trains, assignment of available cars in good order, assignment

of crews and other employees, and assignment and use of power. The Operators shall use their best efforts to provide such rail freight service in an efficient manner.

(5) Operating Rules and Regulations: The Operators shall have the exclusive authority to promulgate and adopt rules, regulations and tariffs that are consistent with regulations issued by the STB and FRA and the provisions of Title 49 United States Code, Subtitle IV, Part A.

(f) Notify the Authority in writing within ten (10) days of any management and supervisory personnel changes. In the event that such employee is no longer part of the Operators' organization, the Operator shall advise the Authority of the action taken to ensure that it will be able to provide rail freight services under this Agreement.

(g) The individual Operator authorized by the STB to provide rail freight services on the rail line on which a claim arises shall fully indemnify, defend and hold harmless the Authority, its members, officers, agents, employees, successors and assigns, from and against all claims and actions up to the Authority's legal obligation to pay any such claims, including the Authority's reasonable attorney's fees and litigation costs and expenses, based upon or arising out of (i) Operator's breach of its obligations under this Agreement; or (ii) damage or injuries to persons or property (including the Railroad Premises) caused by the negligence of the involved individual Operator, or its agents, employees, guests, invitees, contractors, suppliers of materials, or furnishers of service in the use and occupancy of the Railroad Premises by the Operator.

(h) The individual Operator authorized by the STB to provide rail freight services on the rail line on which a claim arises shall be liable, defend and indemnify the Authority for any damages, harm or injury to the Railroad Premises caused by the negligence of the involved individual Operator, its agents or employees.

(i) All of the Operators shall be jointly and severally responsible to the Authority and defend, indemnify and hold the Authority, its directors, officers and agents harmless from and against any liability arising out of any environmental protection or pollution law, or any liability in tort (strict liability or otherwise), up to the

Authority's legal obligation to pay any such liability, arising out of Environmental Contamination of the Railroad Premises caused by any of the Operators' rail operations or their use of the Railroad Premises.

(j) Maintain a policy or policies of liability insurance to insure itself against liability for injury or damage to persons and property, which policies will be in the minimum amounts set forth below:

<u>Type</u>	<u>Limits</u>
(1) <u>Comprehensive General Liability</u>	For all claims \$5,000,000 per Occurrence, \$25,000 deductible
(2) <u>Federal Employer's Liability Act</u>	Covered by blanket policy noted in (1)
(3) <u>Cargo Legal Liability</u>	Covered by blanket policy noted in (1)
(4) <u>Foreign Rolling Stock</u>	Covered by blanket policy noted in (1)
(5) <u>Automobile Liability</u>	1,000,000 per occurrence; \$1,000 deductible

(k) Cause the Authority to be named as an additional insured under each such policy (other than Employer's Liability) and furnish the Authority appropriate certificates of such insurance which shall specifically state that the insurance company shall furnish to the Authority at least thirty (30) days notice of any lapse or material changes in such insurance;

(l) Perform marketing and sales activities to promote increased rail traffic to and from the Railroad Premises.

(m) Annually, on the anniversary date of this agreement, provide Authority with the following information, which to the extent possible under applicable law, shall be maintained by the Authority in confidence:

1. Complete listing of names and addresses of all officers, directors and senior management of Operators.
2. Complete listing of names and addresses of all stockholders of Operators, including the total number of shares owned by each stockholder.

(n) Operators hereby covenant and agree to provide one hundred twenty (120) days written notice of any proposed Change in Control of Operators. The Authority shall have the right to approve or disapprove any such Change in Control and shall have the right to terminate this Agreement if any actual Change in Control occurs without Authority approval.

(o) Operators agree to provide and maintain combined unencumbered minimum working capital of fifty thousand dollars (\$50,000.00).

(p) Operators agree to provide and maintain a reserve on deposit with the Authority, of twenty five thousand dollars (\$25,000.00) at all times in addition to the minimum working capital requirements of this section for the purpose of payment of liability claims not otherwise covered by insurance. The said reserve shall be held by the Authority in an interest bearing account, with all interest accruing to the benefit of the Operator. This amount may be reduced or waived upon written approval of the Authority. The Operators shall make an equal deposit to match any withdrawal from this reserve for payment of claims within thirty (30) days thereafter.

(q) Peacefully deliver up and surrender possession of the Railroad Premises to the Authority at the expiration or upon earlier termination of this Agreement.

(r) Upon expiration of this Agreement or termination of this Agreement for any reason, the Operators shall immediately file for discontinuance with the Surface Transportation Board and assist the Authority in making the transition to a new operator. Notwithstanding the foregoing, in the event the Operators contest any asserted termination by reason of default and demand arbitration in accordance with Section 29 of this Agreement, Operators shall not be required to file for discontinuance of rail freight service until such date as such arbitration has been concluded and a determination has been made that Operators have breached the Agreement.

Section 16. Restrictions. Operators further agree that they will not:

(a) Occupy the Railroad Premises in any way or for any purposes unrelated to the provision of rail services on the Railroad Premises;

(b) Assign, mortgage, pledge or encumber the Railroad Premises or any part thereof or assign its obligations under this Agreement without the prior written consent of the Authority;

(c) Permit to be created or knowingly allow to exist upon the Railroad Premises any use or storage (except as necessary for the provision of rail freight services), or the disposal or release of Hazardous Materials, public or private, and Operators shall indemnify and hold harmless the authority and all of its directors, officers, agents and employees, in accordance with Section 15(i). Operators shall comply with all applicable federal, state and local laws, rules and regulations pertaining to air, water, noise and wastes and other pollution or relating to the storage, transport, disposal or release of Hazardous Materials, and shall bear the expense of any and all pollution control structures, devices or equipment which are required during the term of this Agreement under applicable laws, ordinances or governmental regulations as a result of Operator's provision of rail freight services. Operators shall exercise due care in their use and operation of the Railroad Premises, including taking precautions against reasonably foreseeable acts or omissions or the release of Hazardous Materials into the environment.

(d) Initiate or conduct rail passenger service over the Railroad Premises without the prior written approval of the Authority in accordance with Section 2;

(e) Except upon the Authority's prior written consent, neither the Operator(s) nor any Affiliate of the Operator(s) shall continue or enter into negotiations or enter into any agreements with any other railroad, including specifically Class I railroads, which in the reasonable opinion of the Authority affects the interests of the Authority, including: (i) the competitive access of the shippers within the constituent counties of the Authority to Class I rail services; (ii) the proper maintenance of the Railroad Premises; or (iii) the carrying out of the Authority's stated mission to preserve rail service in

Central Pennsylvania and to further economic development through the retention, improvement and expansion of the infrastructure.

(f) Enter into a contract or agreement with an Affiliate of the Operators having a value in excess of \$5,000, except upon the Authority's prior written consent, which consent will not be withheld if the transaction is determined by the Authority to be commercially reasonable.

(g) Except upon the Authority's prior written consent, enter into negotiations or agreements with any third parties for the lease or acquisition of rail lines located within the counties comprising the membership of the SEDA-Council of Governments or which directly connect with the Railroad Premises, it being the parties' express understanding that the Authority shall have the first right and option to acquire any such lines.

Section 17. Relationship between Operators and the Authority. Authority is a Pennsylvania municipal authority, and a body corporate and politic. Each of the Operators is a private corporation, an independent contractor, and none of the Operators are agents of the Authority. Except as set forth in Section 15(g) and (h), each of the Operators shall be jointly and severally liable to the Authority for any breach of this Agreement by any single Operator. Whenever Operators require written approval from the Authority, the signature of the Executive Director will suffice to validate such written approval. Whenever the Authority requires written approval from the Operators, the signature of the President of any single Operator will suffice to validate the written approval of each Operator. Operators and the Authority shall meet at least quarterly to review and discuss revenues, costs, operations, maintenance, marketing, and service. Operators shall inform the Authority and affected shippers of any major action or event related to the Railroad Premises that may affect rail freight service to those shippers as soon as Operators know such action or event. The Authority will inform Operators of any problems or concerns related to the rail freight service.

Section 18. Annual Reporting.

(a) Annual Report: The Operators shall prepare an annual report including, at a minimum, 1) the number of revenue producing carloads, 2) the number of reportable accidents as defined by FRA and their location, 3) reportable derailments as defined by FRA and their location, 4) Financial statements audited by an accounting firm acceptable to the Authority, 5) construction and maintenance expenses, 6) FRA and/or Authority inspection reports with corrective action taken or planned, and 7) a report of other occurrences having a significant impact on the condition of the Railroad Premises or the rail traffic handled thereon. An annual report shall cover the Operator's fiscal years or parts of fiscal years from the date of execution of this agreement to its termination. Annual reports shall be submitted to the Authority within three (3) months after the close of each such fiscal year, provided Operators' tax filings are completed by that time and shall be submitted to the Authority subsequent to a deferred tax filing upon completion by Operators' accountant, in which instance a preliminary Report shall be submitted within three (3) months after the close of the Operator's fiscal year.

(b) Audit and Inspection: Upon reasonable notice, the Operator will allow the auditors of the Authority to audit all the records of the Operators that were used to determine the revenues and costs related to the annual report. All such records shall be kept for a period of four (4) years after the issuance of the related annual report. The Operators will also allow inspection of the Railroad Premises and the equipment used thereon by the authorized representatives of the Authority upon reasonable notice.

Section 19. Performance Audit. The Authority may at its expense, from time to time, conduct a performance audit of marketing, operating, maintenance, and other obligations and functions of the Operators.

Section 20. Rents from Non-Operating Properties. The Authority is solely responsible for entering into, extending, or terminating all non-operating leases, licenses, and easements on all Authority property, including the Railroad Premises. The Authority shall receive any and all rents arising from any leases, private crossings, licenses and occupations or renewals thereof

on any portion of the Railroad Premises, including, but not limited to, rents, license fees, crossing fees, easements, and other revenues paid by any party occupying a portion of the Railroad Premises with poles and wire, and rentals and fees for signboards, platform locations, driveways, storage facilities, side tracks, pipe lines, water rights, fiber optics, land rents, building rents and water tank rents, among other things. The Authority shall collect such amounts as they become due. The Authority shall determine the properties classified as "Non-Operating Properties," except that any such designation shall not interfere with Operators' ability to fulfill its obligations under this Agreement. It is expressly agreed that the Authority shall have the unilateral right to withdraw such portions of the Railroad Premises from the provisions of this Operating Agreement as it reasonably determines are not required to enable Operators to fulfill their common carrier obligations and to provide Rail Freight Services to customers under this Agreement.

Section 21. Public Crossings. During the term of this Agreement or any renewal thereof, Operators shall assume and shall indemnify the Authority for and against all obligations with respect to all public crossings by public highways, bridges, or utilities, including such obligations as presently exist or which may be hereinafter imposed under the provisions of Pennsylvania Public Utility Code and any orders issued thereunder with respect to the Railroad Premises except those "non-operating properties" for which the Authority has sole responsibility under Section 20 of this Agreement.

Section 22. Condemnation of Railroad Premises. If the Authority's ownership interest in the Railroad Premises, or any portion thereof, are condemned or taken by any competent authority for public use, the award for payment of damages resulting therefrom, or any amount paid in settlement thereof, shall be paid to and retained by the Authority, except as hereinafter provided. If the Operators' occupancy interest in the Railroad Premises or any portion thereof are condemned or taken by any competent authority for public use, the award or payment of damage resulting or any amount paid in settlement thereof shall be paid to and retained by the Operators. If the entire Railroad Premises are so taken or such substantial part thereof as shall materially impair or interfere with Operators' proper use and enjoyment thereof, this Agreement shall automatically terminate as of the date of the taking. If only

such portion of the Railroad Premises is taken as shall not materially impair or interfere with the Operator's proper use and enjoyment thereof, this Agreement shall continue in full force and effect, and all proceeds of the condemnation award or payment to either party shall first be used as may be required for the restoration of the Railroad Premises in such a manner as will enable the continuing operation thereof for rail freight services hereunder.

Section 23. Breach

(a) Any one or more of the following events shall constitute an event of default (an "Event of Default"):

(i) Operators' failure to pay any Operating Fees to the Authority hereunder within fifteen (15) days of the date due and payable hereunder;

(ii) Operators' failure to observe and perform any of the terms, covenants, conditions, limitation or commitments under this Agreement on Operators' part to be observed or performed (other than payment of Operating Fees) for a period of thirty (30) days following written notice thereof ;

(iii) Any of the Operators shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangements, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy or insolvency statute or law (collectively in this Article "insolvency laws"), or shall seek, consent to or acquiesce in the appointment of any bankruptcy or insolvency trustee, receiver or liquidator of any such Operators or of all or any substantial part of their properties;

(iv) The commencement of any action, case or proceeding ("proceeding") against any of the Operators seeking (i) any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any insolvency laws, or (ii) the appointment, without the consent or acquiescence of such Operator, of any trustee, receiver or liquidator of Operator or of all or substantially all of its properties, and the proceedings shall continue un-dismissed for a period of sixty (60) days;

(v) Operators shall discontinue service or vacate any portion of the Railroad Premises without the Authority's prior written consent;

(vi) If a federal or state tax Lien is filed against any of the Operators affecting the Railroad Premises and remains undischarged within sixty (60) days after its filing;

(vii) If a final judgment for the payment of money in excess of \$25,000 shall be rendered against any of the Operators and such judgment shall remain undischarged for a period of sixty (60) days during which execution shall not be effectively stayed;

(viii) A Change in Control of any of the Operators shall occur without the Authority's prior written consent

(b) Notwithstanding the provisions of Section 23(a), if any default other than a default in payment is curable, it may be cured (and no Event of Default will deemed to have occurred) if Operators, after receiving written notice from the Authority demanding cure of such default: (1) either cure the default within thirty (30) days; or (2) if the cure requires more than thirty (30) days, immediately initiate to cure the default and thereafter continue and complete all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical;

(c) In the event any of the Operators commits an Event of Default as provided in Section 23(a), which Event of Default is not timely cured as provided in Section 23(b), in addition to its other rights and remedies available at law or equity, the Authority shall have the immediate right upon written notice to the Operators to terminate this Agreement. In the event of such termination, the Authority will use its best efforts to engage a replacement operator to provide such service. In the event such replacement operator must be subsidized by the Authority, the Authority will bill the Operator for the subsidy amount and the Operator shall remit payment to the Authority in a timely manner for a period not to exceed one (1) year from the date of such termination. However, in the event no operator can be engaged for such purpose, and in the event the Railroad Premises are abandoned by the Authority by reason of such breach, or otherwise terminated by legal action, the Operator shall cooperate fully with the Authority in settling any and all claims sought by any party as a result.

Section 24. Notice. Notice provided for herein shall be sufficient if sent by certified mail postage prepaid, or commercial overnight delivery service requiring execution of a receipt indicating delivery, as follows:

To the Authority:

SEDA-COG JOINT RAIL AUTHORITY
201 Furnace Road
Lewisburg, PA. 17837

To Operators:

North Shore Railroad Company
356 Priestley Avenue
Northumberland, PA 17857

or to such other address as either party may, from time to time designate to the other in writing. It is expressly agreed that notice to any of the Operators provided to the above addressed shall constitute notice to all Operators.

Section 25. Regulatory Jurisdiction.

(a) This Agreement is subject to the orders, rules and regulations of appropriate regulatory authorities, including the STB and the Pennsylvania Public Utility Commission, having jurisdiction over Operators and the Authority.

(b) In the event that either party determines that it is necessary to participate in an administrative or judicial proceeding or to take a position before any governmental body which may affect the interests of the other or the rail freight services provided hereunder, each party shall provide the other party reasonable advance notice of its intent to do so and the nature of the interest or position it will assert. The parties shall use their best efforts to communicate and coordinate their participation and/or positions.

Section 26. Access to Records.

(a) Operator agrees to maintain sufficient records and reports to permit the Authority to fully verify statements of traffic, revenue, and expenditures furnished to the Authority by Operator. The

Authority shall maintain the information contained in such records and reports in confidence to the extent possible under applicable law.

(b) The Authority shall have full access to these records and reports during normal business hours and the right to make copies at the Operators' office upon 48 hours written notice, duly given to Operator.

Section 27. Force Majeure. None of the parties hereto shall be held responsible or liable, either directly or indirectly, or be deemed in default or breach of this Agreement for any loss, damage, injury, delay, failure or inability to meet all or any portion of its commitments hereunder caused by or arising from any cause which is unavoidable or beyond its reasonable control, including without limitation, war, hostilities, invasion, insurrection, riot, terrorist activities the order of any competent civil or military government, explosion, fire, strikes, lockouts, AAR service orders, actions of other carriers that materially affects Operator's operations, labor disputes, perils of water including floods, ice, breakdowns, Acts of God including storms or other adverse weather conditions, washouts, wrecks or derailments that cannot be removed within thirty (30) days pursuant to Section 15(d) or other causes of a similar or dissimilar nature which wholly or partially prevent the Parties or either of them from carrying out the terms of this Agreement; provided that the Party experiencing such force majeure or partial force majeure promptly gives to the other Party written notice that the disabling effect of such force majeure shall be eliminated as soon as and to the extent reasonably possible and that each Party shall have the right to determine and settle any strike, lockout and labor dispute in which that Party may be involved in its sole discretion. In the event that one Party's performance is suspended in whole or in part by force majeure, the other Party's obligation to perform hereunder shall be suspended or commensurately reduced for the duration of the force majeure and for such additional reasonable period as may be required because of the existence of the force majeure. In the event that one party's performance hereunder is suspended by force majeure and cannot be resumed within a reasonable period of time, either party shall have the right to seek STB authorization to abandon and/or seek a discontinuance of service with respect to that portion of the Rail Premises adversely affected by the

force majeure condition and upon receipt of such authorization to terminate this Agreement with respect thereto.

Section 28. Labor Conditions. If during the term of this Agreement or subsequent renewal thereof, any labor protective conditions should be imposed as a result of an STB order or pursuant to the Railway Labor Act, Operator agrees to fully indemnify the Authority from the costs of said labor protective conditions.

Section 29. Arbitration. Any claim or controversy arising under the provisions of this Agreement, or an asserted breach thereof, which cannot be resolved by the parties, shall be settled by arbitration in Lewisburg, Pennsylvania, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration proceeding shall be held in Lewisburg, Pennsylvania. The decision of the arbitrator(s) shall be final and conclusive upon the parties hereto and shall be enforceable in a court of competent jurisdiction. Each party to the arbitration shall pay the compensation costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation costs of the arbitrator(s), if any, shall be borne equally by the parties hereto. The arbitrator(s) shall not have the power to award consequential or punitive damages or to determine violations of criminal law or antitrust law. The arbitrators shall have the right to refer any rail regulatory issues to the STB for an advisory opinion.

Section 30. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. However, this provision shall not be construed to confer on Operators any right or authority to assign all or any part of this Agreement without the Authority's prior consent. It is expressly agreed that the Authority shall have the right to assign its interest in this Agreement to a lending institution for purposes of financial security.

Section 31. Entire Agreement. This Agreement, together with the Agreements described in Section 8, contains the entire understanding of the parties with respect to its subject matter. It is expressly understood that the within Agreement shall supersede and replace the existing Operating Agreements

between the Authority and the Operators, which shall each terminate effective midnight, December 31, 2006. No oral statement or prior written matter shall have any force or effect. The parties hereby acknowledge that they are not relying on any representations or agreements other than those contained in this Agreement and the Agreements described in Section 8. This Agreement shall not be modified except by a written instrument subscribed by both parties hereto.

Section 32. Severability. If any term, covenant, condition or provision (or part thereof) of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision (or remainder thereof) to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 33. Nondiscrimination. The Operator shall comply with the nondiscrimination clause attached hereto and incorporated herein as Exhibit D.

Section 34. Applicable Law. This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties hereto have caused this Operating Agreement to be executed by themselves or by their respective duly authorized officers as of the date and year first above written.

ATTEST:

By: Donald R. Krone

SEDA-COG JOINT RAIL AUTHORITY

By: Jerry Swalk

ATTEST:

By: Miriam R. Poluy
S. K. - Trust

OPERATORS:

LYCOMING VALLEY RAILROAD COMPANY

By: Richard M. Moby CEO

By: Muamir Poluy
Sec. - Treas

NITTANY & BALD EAGLE RAILROAD COMPANY

By: Richard W. Coby CEO

NORTH SHORE RAILROAD COMPANY

By: Richard W. Coby CEO

JUNIATA VALLEY RAILROAD COMPANY

By: Richard W. Coby CEO

SHAMOKIN VALLEY RAILROAD COMPANY

By: Richard W. Coby CEO

Exhibit A – Railroad Premises

The Railroad Premises shall include all of the property of every kind and description, real, personal, and mixed, including the right-of-way, roadbed, track, track materials, poles, wire lines, signals, and other facilities, buildings, and appurtenances for the following lines, except as otherwise defined or provided for in the Operating Agreement. These Premises are more fully described in certain deeds from the Consolidated Rail Corporation to the Authority.

Nittany & Bald Eagle Railroad

Nittany Main Line from M.P. 1.0W to M.P. 54.3 (Lock Haven to Tyrone)
Gray Yard adjacent to M.P. 222.2 – M.P. 223.2 (Norfolk Southern Pittsburgh line M.P. numbers)
Lock Haven Yard adjacent to M.P. 194.3 – M.P. 195.1 (Norfolk Southern Buffalo line M.P. numbers)
Pleasant Gap Industrial Track from M.P. 0.0 to M.P. 3.0
Bellefonte Branch from M.P. 30.8 to M.P. 42.5 (Milesburg to Lemont)
Bellefonte Sunnyside Yard M.P. 32.4 to M.P. 33.1
“Shop” Track from M.P. 0.0 to M.P. 1.0
All operating remnants of the Mill Hall Industrial Track (N&BE main line M.P. 51.9)

North Shore Railroad

North Shore Railroad from M.P. 213.45 to M.P. 176.97
Berwick Yard M.P. 178.7

Shamokin Valley Railroad

Shamokin Valley Main from M.P. 0.0 to M.P. 25.2
Carbon Run Branch from M.P. 0.0 to M.P. 1.5
SAIC Industrial Park Track from M.P. 0.0 to M.P. 1.0

Lycoming Valley Railroad

Lycoming Secondary from M.P. 199.8 to M.P. 181.1
Newberry Yard M.P. 181.1 to M.P. 179.4
Avis branch from M.P. 179.4 to M.P. 166.00 at Avis
All operating remnants of the Williamsport Industrial Track
Antlers Running Track M.P. 179.4 to M.P. 178.7

Juniata Valley Railroad

Lewistown Yard M.P. 0.2
Maitland Industrial Track from M.P. 0.0 to M.P. 7.4
Burnham Branch from M.P. 0.0 to M.P. 4.0
MCIDC track

Exhibit B - SEDA-COG JOINT RAIL AUTHORITY Track Maintenance and Safety Standards

CFR Title 49: Transportation, PART 213—Modified TRACK SAFETY STANDARDS

The following subparts have been extracted from the U.S. Department of Transportation's Code of Federal Regulations Title 49: Track Safety Standards - Part 213 and have been modified to provide enhanced track standards to be utilized by the Operator/s for the Railroad Premises owned by the SEDA-COG Joint Rail Authority (JRA). Applicable Subparts that have been modified from the FRA Track Safety Standards for the Authority include the following Subparts: B-Roadbed, C-Track Geometry, D-Track Structure, and E-Track Appliances and Track Related Devices. An additional subpart, JRA Maintenance of Way General Requirements, has been added to include general items pertaining to the Operators' responsibilities to the Authority under the Agreement regarding reporting and Operators' response to identified defects.

Applicable Subparts have been identified with the prefix lettering JRA to distinguish the Subpart from the FRA Track Safety Standards. FRA Subparts not listed or modified have not been incorporated into this document for the sake of brevity. All other FRA Track Safety Standard Subparts, any other Federal, State, or local regulatory requirements and AREMA track standards shall apply to the Railroad Premises and shall be followed by the Operators in the maintenance thereof.

FRA Section Contents Modified for the SEDA-COG Joint Rail Authority:

Subpart A—JRA Maintenance of Way General Requirements

~~§ JRA 200 Operator's Responsibilities.
§ JRA 201 Reporting.
§ JRA 202 Annual M/W Plan.
§ JRA 203 Response to Identified Defects.~~

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Subpart B—Roadbed

§ JRA 213.31 Scope.
§ JRA 213.33 Drainage.
§ JRA 213.37 Vegetation.

Subpart C—Track Geometry

§ JRA 213.51 Scope.
§ JRA 213.53 Gage.
§ JRA 213.55 Alinement.
§ JRA 213.57 Curves; elevation and speed limitations.
§ JRA 213.59 Elevation of curved track; runoff.
§ JRA 213.63 Track surface.

Subpart D—Track Structure

§ JRA 213.101 Scope.
§ JRA 213.103 Ballast; general.
§ JRA 213.109 Crossties.

- § JRA 213.110 Gage restraint measurement systems.
- § JRA 213.113 Defective rails.
- § JRA 213.115 Rail end mismatch.
- § JRA 213.119 Continuous welded rail (CWR); general.
- § JRA 213.121 Rail joints.
- § JRA 213.122 Torch cut rail.
- § JRA 213.123 Tie plates.
- § JRA 213.127 Rail fastening systems.
- § JRA 213.133 Turnouts and track crossings generally.
- § JRA 213.135 Switches.
- § JRA 213.137 Frogs.
- § JRA 213.139 Spring rail frogs.
- § JRA 213.141 Self-guarded frogs.
- § JRA 213.143 Frog guard rails and guard faces; gage.

Subpart E—Track Appliances and Track-Related Devices

- § JRA 213.201 Scope.
- § JRA 213.205 Derails.

Subpart A—JRA Maintenance of Way General Requirements

Subpart B—Roadbed

§ JRA 213.31 Scope.

This subpart prescribes minimum requirements for roadbed and areas immediately adjacent to roadbed within the Railroad Premises.

§ JRA 213.33 Drainage.

Each drainage or other water carrying facility under or immediately adjacent to the roadbed shall be maintained and kept free of obstruction to accommodate expected water flow for the area concerned.

Special attention shall be given to maintaining drainage flow away from the track structure at turnouts and grade crossings.

§ JRA 213.37 Vegetation.

Vegetation on railroad property which is on or immediately adjacent to roadbed shall be controlled so that it does not—

- (a) Become a fire hazard to track-carrying structures;
- (b) Obstruct visibility of railroad signs and signals:
 - (1) Along the right-of-way, and
 - (2) At highway-rail crossings;
- (c) Interfere with railroad employees performing normal trackside duties;
- (d) Prevent proper functioning of signal and communication lines; or
- (e) Prevent railroad employees from visually inspecting moving equipment from their normal duty stations.

Subpart C—Track Geometry

§ JRA 213.51 Scope.

This subpart prescribes requirements for the gage, alinement, and surface of track, and the elevation of outer rails and speed limitations for curved track.

§ JRA 213.53 Gage.

(a) Gage is measured between the heads of the rails at right-angles to the rails in a plane five-eighths of an inch below the top of the rail head.

(b) Gage shall be within the limits prescribed in the following table—

Class of track	The gage must be at least-	But not more than-
Excepted track	NA	4' 10"
Class 1 track	4' 8"	4' 10"
Class 2 and 3 track	4' 8"	4' 9¾"
Class 4 and 5 track	4' 8"	4' 9½"

§ JRA 213.55 Alinement.

Alinement may not deviate from uniformity more than the amount prescribed in the following table:

Class of track	Tangent track	Curved track	
	The deviation of the mid-offset from a 62 foot line ¹ may not be more than – (inches)	The deviation of the mid-ordinate from a 31 foot chord ² may not be more than – (inches)	The deviation of the mid-ordinate from a 62 foot chord ² may not be more than – (inches)
Class 1 track	3	NA ³	3
Class 2 track	2	NA ³	2
Class 3 track	1½	1¼	1½
Class 4 track	1½	1	1½
Class 5 track	¾	½	¾

¹The ends of the line shall be at points on the gage side of the line rail, five-eighths of an inch below the top of the railhead. Either rail may be used as the line rail, however, the same rail shall be used for the full length of that tangential segment of track.

²The ends of the chord shall be at points on the gage side of the outer rail, five-eighths of an inch below the top of the railhead.

³N/A- Not Applicable.

§ JRA 213.57 Curves; elevation and speed limitations.

(a) The maximum crosslevel on the outside rail of a curve may not be more than 6 inches on track Classes 1 and 2; and 6 inches on Classes 3 through 5. Except as provided in §213.63, the outside rail of a curve may not be lower than the inside rail.

(b)(1) The maximum allowable operating speed for each curve is determined by the following formula—

$$V_{\max} = \sqrt{\frac{E_a + 3}{0.0007D}}$$

Where—

V_{\max} = Maximum allowable operating speed (miles per hour).

E_a = Actual elevation of the outside rail (inches). ¹

¹ Actual elevation for each 155 foot track segment in the body of the curve is determined by averaging the elevation for 10 points through the segment at 15.5 foot spacing. If the curve length is less than 155 feet, average the points through the full length of the body of the curve.

D = Degree of curvature (degrees). ²

² Degree of curvature is determined by averaging the degree of curvature over the same track segment as the elevation.

(2) Table 1 of Appendix A is a table of maximum allowable operating speed computed in accordance with this formula for various elevations and degrees of curvature.

(c)(1) For rolling stock meeting the requirements specified in paragraph (d) of this section, the maximum operating speed for each curve may be determined by the following formula—

$$V_{\max} = \sqrt{\frac{E_a + 4}{0.0007D}}$$

Where—

V_{\max} = Maximum allowable operating speed (miles per hour).

E_a = Actual elevation of the outside rail (inches). ¹

D = Degree of curvature (degrees). ²

(2) Table 2 of Appendix A is a table of maximum allowable operating speed computed in accordance with this formula for various elevations and degrees of curvature.

§ JRA 213.59 Elevation of curved track; runoff.

(a) If a curve is elevated, the full elevation shall be provided throughout the curve, unless physical conditions do not permit. If elevation runoff occurs in a curve, the actual minimum elevation shall be used in computing the maximum allowable operating speed for that curve under §213.57(b).

(b) Elevation runoff shall be at a uniform rate, within the limits of track surface deviation prescribed in §213.63, and it shall extend at least the full length of the spirals. If physical conditions do not permit a spiral long enough to accommodate the minimum length of runoff, part of the runoff may be on tangent track.

§ JRA 213.63 Track surface.

The Operators shall maintain the surface of its track within the limits prescribed in the following table:

Track surface	Class of track				
	1 (inches)	2 (inches)	3 (inches)	4 (inches)	5 (inches)
The runoff in any 31 feet of rail at the end of a raise may not be more than.....	3 ½	3	2	1 ½	1
The deviation from uniform profile on either rail at the mid-ordinate of a 62-foot chord may not be more than.....	2¾	2¾	2¾	2	1¼
The deviation from zero crosslevel at any point on tangent or reverse crosslevel elevation on curves may not be more than.....	3	2	1¾	1¼	1
The difference in crosslevel between any two points less than 62 feet apart may not be more than* ¹ ²	3	2¾	2	1¾	1½
*Where determined by engineering decision prior to the promulgation of this rule, due to physical restrictions on spiral length and operating practices and experience, the variation in crosslevel on spirals per 31 feet may not be more than.....	2	1¾	1¼	1	¾

¹Except as limited by § 213.57(a), where the elevation at any point in a curve equals or exceeds 6 inches, the difference in crosslevel within 62 feet between that point and a point with greater elevation may not be more than 1½ inches.

²However, to control harmonics on Class 2 through 5 jointed track with staggered joints, the crosslevel differences shall not exceed 1¼ inches in all of six consecutive pairs of joints, as created by 7 low joints. Track with joints staggered less than 10 feet shall not be considered as having staggered joints. Joints within the 7 low joints outside of the regular joint spacing shall not be considered as joints for purposes of this footnote.

Subpart D—Track Structure

§ JRA 213.101 Scope.

This subpart prescribes minimum requirements for ballast, crossties, track assembly fittings, and the physical conditions of rails.

§ JRA 213.103 Ballast; general.

Unless it is otherwise structurally supported, all track shall be supported by material which will —

- (a) Transmit and distribute the load of the track and railroad rolling equipment to the subgrade;
- (b) Restrain the track laterally, longitudinally, and vertically under dynamic loads imposed by railroad rolling equipment and thermal stress exerted by the rails;
- (c) Provide adequate drainage for the track; and
- (d) Maintain proper track crosslevel, surface, and alinement.

§ JRA 213.109-A Crossties.

- (a) Crossties shall be made of a material to which rail can be securely fastened.
- (b) Each 39 foot segment of track shall have—
 - (1) A sufficient number of crossties which in combination provide effective support that will—
 - (i) Hold gage within the limits prescribed in §213.53(b);
 - (ii) Maintain surface within the limits prescribed in §213.63; and
 - (iii) Maintain alinement within the limits prescribed in §213.55.
 - (2) The minimum number and type of crossties specified in paragraphs (c) and (d) of this section effectively distributed to support the entire segment; and
 - (3) At least one crosstie of the type specified in paragraphs (c) and (d) of this section that is located at a joint location as specified in paragraph (f) of this section.
- (c) Each 39 foot segment of: Class 1 track shall have seven crossties; Classes 2 and 3 track shall have eleven crossties; and Classes 4 and 5 track shall have 14 crossties, which are not:
 - (1) Broken or split through;
 - (2) Split or otherwise impaired to the extent the crossties will allow the ballast to work through, or will not hold spikes or rail fasteners in place;

(3) So deteriorated that the tie plate or base of rail can move laterally more than 1/2 inch relative to the crossties; or

(4) Cut by the tie plate through more than 10 percent of a ties' thickness.

(d) Each 39 foot segment of track shall have the minimum number and type of crossties as indicated in the following table:

Class of track	Tangent track and curves less than or equal to 2 degrees	Turnouts and curved track over 2 degrees
Class 1 track	7	8
Class 2 track	11	13
Class 3 track	11	13
Class 4 and 5 track	14	15

(e) Crossties counted to satisfy the requirements set forth in the table in paragraph (d) of this section shall not be—

(1) Broken or split through;

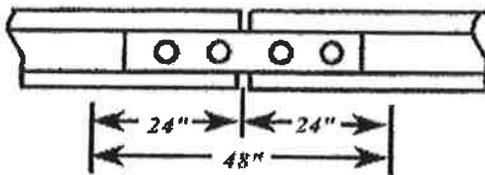
(2) Split or otherwise impaired to the extent the crossties will allow the ballast to work through, or will not hold spikes or rail fasteners in place;

(3) So deteriorated that the tie plate or base of rail can move laterally 1/2 inch relative to the crossties; or

(4) Cut by the tie plate through more than 10 percent of a crosstie's thickness.

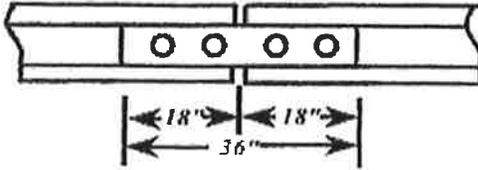
(f) Class 1 and Class 2 track shall have one crosstie whose centerline is within 24 inches of each rail joint location, and Classes 3 through 5 track shall have one crosstie whose centerline is within 18 inches of each rail joint location or, two crossties whose centerlines are within 24 inches either side of each rail joint location. The relative position of these ties is described in the following diagrams:

Classes 1 and 2

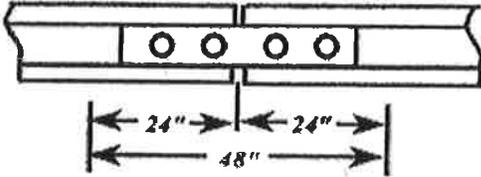


Each rail joint in Classes 1 and 2 track shall be supported by at least one crosstie specified in paragraphs (c) and (d) of this section whose centerline is within 48 inches; shown above.

Classes 3 through 5



Each rail joint in Classes 3 through 5 track shall be supported by either at least one cross-tie specified in paragraphs (c) and (d) of this section whose centerline is within 36&inch; shown above, or:



Two cross-ties, one on each side of the rail joint, whose centerlines are within 24&inch; of the rail joint location shown above.

Curves greater than 2 degrees on Classes 2 through 5 track shall have the high side joints supported by effective ties on each side of the rail joint.

(g) For track constructed without cross-ties, such as slab track, track connected directly to bridge structural components, and track over servicing pits, the track structure shall meet the requirements of paragraphs (b)(1)(i), (ii), and (iii) of this section.

§ JRA 213.109-B Switch Timber.

§ JRA 213.113 Defective rails.

(a) When the Operators learn, through inspection or otherwise, that a rail in that track contains any of the defects listed in the following table, a person designated under §213.7 shall determine whether or not the track may continue in use. If he determines that the track may continue in use, operation over the defective rail is not permitted until—

- (1) The rail is replaced; or
- (2) The remedial action prescribed in the table is initiated.

REMEDIAL ACTION

Defect	Length of defect (feet)		Percent of rail head cross-sectional area weakened by defect		If defective rail is not replaced, take the remedial action prescribed in note
	More than	But not more than	Less than	But not less than	
Transverse flaws			75% 75% 100%	5% 75% 100%	B, A2, A.
Compressed flange			75% 75% 100%	5% 75% 100%	B, A2, A.
Bevel fracture Engine/iron fracture Disintegrating web			75% 75% 100%	5% 75% 100%	C, D, (A2) and E and III, B or E and III.
Horizontal split head Vertical split head Split web Flanged axle Head with separation	1 2 (1)	3 4 (1)	75% 75% (1)	5% 75% (1)	If split F, Limit C, A.
Soft neck track	2 1 (1)	4% (1)	75% (1)	5% (1)	B and F, E and G, B, A.
Broken base	1 (1)	6" (1)	75% (1)	5% (1)	B, A or E.
Ordinary break			75% (1)	5% (1)	A or E.
Damaged rail			75% (1)	5% (1)	B, A.
Fielded rail			75% (1)	5% (1)	B, A.

(1) Break out in rail head.

Notes A. Assign person designated under §213.7 to visually supervise each operation over defective rail.

A2. Assign person designated under §213.7 to make visual inspection. After a visual inspection, that person may authorize operation to continue without continuous visual supervision at a maximum of 10 m.p.h. for up to 24 hours prior to another such visual inspection or replacement or repair of the rail.

B. Limit operating speed over defective rail to that as authorized by a person designated under §213.7(a), who has at least one year of supervisory experience in railroad track maintenance. The

operating speed cannot be over 30 m.p.h. or the maximum allowable speed under §213.9 for the class of track concerned, whichever is lower.

C. Apply joint bars bolted only through the outermost holes to defect within 20 days after it is determined to continue the track in use. In the case of Classes 3 through 5 track, limit operating speed over defective rail to 30 m.p.h. until joint bars are applied; thereafter, limit speed to 50 m.p.h. or the maximum allowable speed under §213.9 for the class of track concerned, whichever is lower. When a search for internal rail defects is conducted under §213.237, and defects are discovered in Classes 3 through 5 which require remedial action C, the operating speed shall be limited to 50 m.p.h., or the maximum allowable speed under §213.9 for the class of track concerned, whichever is lower, for a period not to exceed 4 days. If the defective rail has not been removed from the track or a permanent repair made within 4 days of the discovery, limit operating speed over the defective rail to 30 m.p.h. until joint bars are applied; thereafter, limit speed to 50 m.p.h. or the maximum allowable speed under §213.9 for the class of track concerned, whichever is lower.

D. Apply joint bars bolted only through the outermost holes to defect within 10 days after it is determined to continue the track in use. In the case of Classes 3 through 5 track, limit operating speed over the defective rail to 30 m.p.h. or less as authorized by a person designated under §213.7(a), who has at least one year of supervisory experience in railroad track maintenance, until joint bars are applied; thereafter, limit speed to 50 m.p.h. or the maximum allowable speed under §213.9 for the class of track concerned, whichever is lower.

E. Apply joint bars to defect and bolt in accordance with §213.121(d) and (e).

F. Inspect rail 90 days after it is determined to continue the track in use.

G. Inspect rail 30 days after it is determined to continue the track in use.

H. Limit operating speed over defective rail to 50 m.p.h. or the maximum allowable speed under §213.9 for the class of track concerned, whichever is lower.

I. Limit operating speed over defective rail to 30 m.p.h. or the maximum allowable speed under §213.9 for the class of track concerned, whichever is lower.

(b) As used in this section—

(1) *Transverse fissure* means a progressive crosswise fracture starting from a crystalline center or nucleus inside the head from which it spreads outward as a smooth, bright, or dark, round or oval surface substantially at a right angle to the length of the rail. The distinguishing features of a transverse fissure from other types of fractures or defects are the crystalline center or nucleus and the nearly smooth surface of the development which surrounds it.

(2) *Compound fissure* means a progressive fracture originating in a horizontal split head which turns up or down in the head of the rail as a smooth, bright, or dark surface progressing until substantially at a right angle to the length of the rail. Compound fissures require examination of both faces of the fracture to locate the horizontal split head from which they originate.

(3) *Horizontal split head* means a horizontal progressive defect originating inside of the rail head, usually one-quarter inch or more below the running surface and progressing horizontally in all

- directions, and generally accompanied by a flat spot on the running surface. The defect appears as a crack lengthwise of the rail when it reaches the side of the rail head.
- (4) *Vertical split head* means a vertical split through or near the middle of the head, and extending into or through it. A crack or rust streak may show under the head close to the web or pieces may be split off the side of the head.
- (5) *Split web* means a lengthwise crack along the side of the web and extending into or through it.
- (6) *Piped rail* means a vertical split in a rail, usually in the web, due to failure of the shrinkage cavity in the ingot to unite in rolling.
- (7) *Broken base* means any break in the base of the rail.
- (8) *Detail fracture* means a progressive fracture originating at or near the surface of the rail head. These fractures should not be confused with transverse fissures, compound fissures, or other defects which have internal origins. Detail fractures may arise from shelly spots, head checks, or flaking.
- (9) *Engine burn fracture* means a progressive fracture originating in spots where driving wheels have slipped on top of the rail head. In developing downward they frequently resemble the compound or even transverse fissures with which they should not be confused or classified.
- (10) *Ordinary break* means a partial or complete break in which there is no sign of a fissure, and in which none of the other defects described in this paragraph (b) are found.
- (11) *Damaged rail* means any rail broken or injured by wrecks, broken, flat, or unbalanced wheels, slipping, or similar causes.
- (12) *Flattened rail* means a short length of rail, not at a joint, which has flattened out across the width of the rail head to a depth of 3/8 inch or more below the rest of the rail. Flattened rail occurrences have no repetitive regularity and thus do not include corrugations, and have no apparent localized cause such as a weld or engine burn. Their individual length is relatively short, as compared to a condition such as head flow on the low rail of curves.
- (13) *Bolt hole crack* means a crack across the web, originating from a bolt hole, and progressing on a path either inclined upward toward the rail head or inclined downward toward the base. Fully developed bolt hole cracks may continue horizontally along the head/web or base/web fillet, or they may progress into and through the head or base to separate a piece of the rail end from the rail. Multiple cracks occurring in one rail end are considered to be a single defect. However, bolt hole cracks occurring in adjacent rail ends within the same joint must be reported as separate defects.
- (14) *Defective weld* means a field or plant weld containing any discontinuities or pockets, exceeding 5 percent of the rail head area individually or 10 percent in the aggregate, oriented in or near the transverse plane, due to incomplete penetration of the weld metal between the rail ends, lack of fusion between weld and rail end metal, entrapment of slag or sand, under-bead or other shrinkage cracking, or fatigue cracking. Weld defects may originate in the rail head, web, or base, and in some cases, cracks may progress from the defect into either or both adjoining rail ends.

(15) *Head and web separation* means a progressive fracture, longitudinally separating the head from the web of the rail at the head fillet area.

§ JRA 213.115 Rail end mismatch.

Class of track	Any mismatch of rails at joints may not be more than the following -	
	On the tread of the rail ends (inches)	On the gage side of the rail ends (inches)
Class 1 track	1/4	1/4
Class 2 track	1/4	3/16
Class 3 track	3/16	3/16
Class 4 and 5 track	1/8	1/8

§ JRA 213.119 Continuous welded rail (CWR); general.

Each Operator with track constructed of CWR shall have in effect and comply with written procedures which address the installation, adjustment, maintenance, and inspection of CWR, and a training program for the application of those procedures, which shall be submitted to the Federal Railroad Administration. FRA reviews each plan for compliance with the following—

(a) Procedures for the installation and adjustment of CWR which include—

(1) Designation of a desired rail installation temperature range for the geographic area in which the CWR is located; and

(2) De-stressing procedures/methods which address proper attainment of the desired rail installation temperature range when adjusting CWR.

(b) Rail anchoring or fastening requirements that will provide sufficient restraint to limit longitudinal rail and crosstie movement to the extent practical, and specifically addressing CWR rail anchoring or fastening patterns on bridges, bridge approaches, and at other locations where possible longitudinal rail and crosstie movement associated with normally expected train-induced forces, is restricted.

(c) Procedures which specifically address maintaining a desired rail installation temperature range when cutting CWR including rail repairs, in-track welding, and in conjunction with adjustments made in the area of tight track, a track buckle, or a pull-apart. Rail repair practices shall take into consideration existing rail temperature so that—

(1) When rail is removed, the length installed shall be determined by taking into consideration the existing rail temperature and the desired rail installation temperature range; and

(2) Under no circumstances should rail be added when the rail temperature is below that designated by paragraph (a)(1) of this section, without provisions for later adjustment.

(d) Procedures which address the monitoring of CWR in curved track for inward shifts of alignment toward the center of the curve as a result of disturbed track.

(e) Procedures which control train speed on CWR track when—

(1) Maintenance work, track rehabilitation, track construction, or any other event occurs which disturbs the roadbed or ballast section and reduces the lateral or longitudinal resistance of the track; and

(2) In formulating the procedures under this paragraph (e), the track owner shall—

(i) Determine the speed required, and the duration and subsequent removal of any speed restriction based on the restoration of the ballast, along with sufficient ballast re-consolidation to stabilize the track to a level that can accommodate expected train-induced forces. Ballast re-consolidation can be achieved through either the passage of train tonnage or mechanical stabilization procedures, or both; and

(ii) Take into consideration the type of crossties used.

(f) Procedures which prescribe when physical track inspections are to be performed to detect buckling prone conditions in CWR track. At a minimum, these procedures shall address inspecting track to identify—

(1) Locations where tight or kinky rail conditions are likely to occur;

(2) Locations where track work of the nature described in paragraph (e)(1) of this section have recently been performed; and

(3) In formulating the procedures under this paragraph (f), the track owner shall—

(i) Specify the timing of the inspection; and

(ii) Specify the appropriate remedial actions to be taken when buckling prone conditions are found.

(g) The Operators shall have in effect a comprehensive training program for the application of these written CWR procedures, with provisions for periodic re-training, for those individuals designated under §213.7 of this part as qualified to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track.

(h) The Operators shall prescribe record keeping requirements necessary to provide an adequate history of track constructed with CWR. At a minimum, these records must include:

(1) Rail temperature, location, and date of CWR installations. This record shall be retained for at least one year; and

(2) A record of any CWR installation or maintenance work that does not conform with the written procedures. Such record shall include the location of the rail and be maintained until the CWR is brought into conformance with such procedures.

(i) As used in this section—

- (1) *Adjusting/de-stressing* means the procedure by which a rail's temperature is re-adjusted to the desired value. It typically consists of cutting the rail and removing rail anchoring devices, which provides for the necessary expansion and contraction, and then re-assembling the track.
- (2) *Buckling incident* means the formation of a lateral mis-alignment sufficient in magnitude to constitute a deviation from the Class 1 requirements specified in §213.55 of this part. These normally occur when rail temperatures are relatively high and are caused by high longitudinal compressive forces.
- (3) *Continuous welded rail (CWR)* means rail that has been welded together into lengths exceeding 400 feet.
- (4) *Desired rail installation temperature range* means the rail temperature range, within a specific geographical area, at which forces in CWR should not cause a buckling incident in extreme heat, or a pull-apart during extreme cold weather.
- (5) *Disturbed track* means the disturbance of the roadbed or ballast section, as a result of track maintenance or any other event, which reduces the lateral or longitudinal resistance of the track, or both.
- (6) *Mechanical stabilization* means a type of procedure used to restore track resistance to disturbed track following certain maintenance operations. This procedure may incorporate dynamic track stabilizers or ballast consolidators, which are units of work equipment that are used as a substitute for the stabilization action provided by the passage of tonnage trains.
- (7) *Rail anchors* means those devices which are attached to the rail and bear against the side of the crosstie to control longitudinal rail movement. Certain types of rail fasteners also act as rail anchors and control longitudinal rail movement by exerting a downward clamping force on the upper surface of the rail base.
- (8) *Rail temperature* means the temperature of the rail, measured with a rail thermometer.
- (9) *Tight/kinky rail* means CWR which exhibits minute alignment irregularities which indicate that the rail is in a considerable amount of compression.
- (10) *Train-induced forces* means the vertical, longitudinal, and lateral dynamic forces which are generated during train movement and which can contribute to the buckling potential.
- (11) *Track lateral resistance* means the resistance provided to the rail/crosstie structure against lateral displacement.
- (12) *Track longitudinal resistance* means the resistance provided by the rail anchors/rail fasteners and the ballast section to the rail/crosstie structure against longitudinal displacement.

§ JRA 213.121 Rail joints.

- (a) Each rail joint, insulated joint, and compromise joint shall be of a structurally sound design and dimensions for the rail on which it is applied.

(b) If a joint bar on Classes 3 through 5 track is cracked, broken, or because of wear allows excessive vertical movement of either rail when all bolts are tight, it shall be replaced.

(c) If a joint bar is cracked or broken between the middle two bolt holes it shall be replaced.

(d) In the case of conventional jointed track, each rail shall be bolted with at least two bolts at each joint in Classes 2 through 5 track, and with at least one bolt in Class 1 track.

(e) In the case of continuous welded rail track, each rail shall be bolted with at least two bolts at each joint.

(f) Each joint bar shall be held in position by track bolts tightened to allow the joint bar to firmly support the abutting rail ends and to allow longitudinal movement of the rail in the joint to accommodate expansion and contraction due to temperature variations. When no-slip, joint-to-rail contact exists by design, the requirements of this paragraph do not apply. Those locations, when over 400 feet in length, are considered to be continuous welded rail track and shall meet all the requirements for continuous welded rail track prescribed in this part.

(g) No rail shall have a bolt hole which is torch cut or burned in Classes 2 through 5 track.

(h) No joint bar shall be reconfigured by torch cutting in Classes 3 through 5 track.

§ JRA 213.122 Torch cut rail.

(a) Except as a temporary repair in emergency situations, no rail having a torch cut end shall be used in Classes 3 through 5 track. When a rail end is torch cut in emergency situations, train speed over that rail end shall not exceed the maximum allowable for Class 2 track. For existing torch cut rail ends in Classes 3 through 5 track the following shall apply—

(1) Within one year of July 1, 2007, all torch cut rail ends in Class 5 track shall be removed;

(2) Within two years of July 1, 2007, all torch cut rail ends in Class 4 track shall be removed; and

(3) Within one year of July 1, 2007, all torch cut rail ends in Class 3 track over which regularly scheduled passenger trains operate, shall be inventoried by the track owner.

(b) Following the expiration of the time limits specified in paragraphs (a)(1), (2), and (3) of this section, any torch cut rail end not removed from Classes 4 and 5 track, shall be removed within 30 days of discovery. Train speed over that rail end shall not exceed the maximum allowable for Class 2 track until removed.

§ JRA 213.123 Tie plates.

(a) In Classes 2 through 5 track where timber crossties are in use there shall be tie plates under the running rails on all ties.

(b) In Classes 3 through 5 track no metal object which causes a concentrated load by solely supporting a rail shall be allowed between the base of the rail and the bearing surface of the tie plate.

§ JRA 213.127 Rail fastening systems.

Track shall be fastened by a system of components which effectively maintains gage within the limits prescribed in §213.53(b). Each component of each such system shall be evaluated to determine whether gage is effectively being maintained.

§ JRA 213.133 Turnouts and track crossings generally.

(a) In turnouts and track crossings, the fastenings shall be intact and maintained so as to keep the components securely in place. Also, each switch, frog, and guard rail shall be kept free of obstructions that may interfere with the passage of wheels.

(b) Classes 3 through 5 track shall be equipped with rail anchoring through and on each side of track crossings and turnouts, to restrain rail movement affecting the position of switch points and frogs. (c) Each flangeway at turnouts and track crossings shall be at least 1 1/2 inches wide.

(d) Turnouts shall be level laterally and properly anchored.

§ JRA 213.135 Switches.

(a) Switch points shall match flush to the stock rails with full bearing on all plates. Stock rail or switch point (lip) overflow shall be ground periodically to maintain flush closure of the switch point. Each stock rail must be securely seated in switch plates, but care shall be used to avoid canting the stock rail by overtightening the rail braces.

(b) All plates shall lie flat on all switch timber with braces drawn tight and secure without displacing the "seating" of the stock rail.

(b) Each switch point shall fit its stock rail properly, with the switch stand in either of its closed positions to allow wheels to pass the switch point. Lateral and vertical movement of a stock rail in the switch plates or of a switch plate on a tie shall not adversely affect the fit of the switch point to the stock rail. Broken or cracked switch point rails will be subject to the requirements of §213.113, except that where remedial actions C, D, or E require the use of joint bars, and joint bars cannot be placed due to the physical configuration of the switch, remedial action B will govern, taking into account any added safety provided by the presence of reinforcing bars on the switch points.

(c) Each switch shall be maintained so that the outer edge of the wheel tread cannot contact the gage side of the stock rail.

(d) The heel of each switch rail shall be secure with a complete set of all heel block bolts secured and the bolts in each heel shall be kept tight.

(e) Each switch stand and connecting rod shall be securely fastened and operable without excessive lost motion.

(f) Each throw lever shall be maintained so that it cannot be operated with the lock or keeper in place. Keepers shall be tightly secured to the headblock timber so there is no more than 1/8-inch movement in the keepers when the throw lever is manipulated.

(g) Each switch position indicator shall be clearly visible at all times.

(h) Unusually chipped or worn switch points shall be repaired or replaced. Metal flow shall be removed to insure proper closure. Switch points that are worn in excess of six inches back and 5/8" below the running surface of the stock rail shall be replaced if located on Main Line track. Welding switch points at the point of switch to the head separation shall not be permitted on Main Line Track. Switch points may be welded at the points to the head separation by a qualified track welder on Branch Lines, Industrial Tracks, and in Yards. Rail-end battered switch heels may be welded by a qualified track welder on all track.

(i) Immediate protection and prompt corrective action shall be taken if a switch point is found to stand open more than 3/16 - inch or if a switch point is found to have an unprotected flat vertical surface of 5/16-inch or more in width at a depth of 5/8-inch below the running surface of the stock rail.

(j) Tongue & Plain Mate switches, which by design exceed Class 1 and excepted track maximum gage limits, are permitted in Class 1 and excepted track.

(k) All fastenings shall be properly torqued and secured.

§ JRA 213.137 Frogs.

(a) The flangeway depth measured from a plane across the wheel-bearing area of a frog on Class 1 track shall not be less than 1 3/8 inches, or less than 1 1/2 inches on Classes 2 through 5 track.

(b) If a frog point is chipped, broken, or worn more than five-eighths inch down and 6 inches back, operating speed over the frog shall not be more than 10 m.p.h.

(c) If the tread portion of a frog casting is worn down more than three-eighths inch below the original contour, operating speed over that frog shall not be more than 10 m.p.h.

(d) Where frogs are designed as flange-bearing, flangeway depth may be less than that shown for Class 1 if operated at Class 1 speeds.

§ JRA 213.139 Spring rail frogs.

(a) The outer edge of a wheel tread shall not contact the gage side of a spring wing rail.

(b) The toe of each wing rail shall be solidly tamped and fully and tightly bolted.

(c) Each frog with a bolt hole defect or head-web separation shall be replaced.

(d) Each spring shall have compression sufficient to hold the wing rail against the point rail.

(e) The clearance between the holddown housing and the horn shall not be more than one-fourth of an inch.

§ JRA 213.141 Self-guarded frogs.

- (a) The raised guard on a self-guarded frog shall not be worn more than three-eighths of an inch.
- (b) If repairs are made to a self-guarded frog without removing it from service, the guarding face shall be restored before rebuilding the point.

§ JRA 213.143 Frog guard rails and guard faces; gage.

The guard check and guard face gages in frogs shall be within the limits prescribed in the following table—

Class of track	Guard check gage The distance between the gage line of a frog to the guard line ¹ of its guard rail or guarding face, measured across the track at right angles to the gage line ² , may not be less than -	Guard face gage The distance between guard lines ¹ measured across the track at right angles to the gage line ² , may not be more than -
Class 1 track	4' 6 1/4"	4' 5 1/8"
Class 2 track	4' 6 1/4"	4' 5 1/8"
Class 3 and 4 track	4' 6 3/8"	4' 5 1/8"
Class 5 track	4' 6 1/2"	4' 5"

¹A line along that side of the flangeway which is nearer to the center of the track and at the same elevation as the gage line.

²A line 5/8 inch below the top of the center line of the head of the running rail, or corresponding location of the tread portion of the track structure.

Exhibit C – Operating Fees

On the fifteenth (15th) day of each month following the execution of this Agreement, Operator shall pay to the Authority the following:

(a) Gross Freight Revenues : For the period beginning January 1, 2007, until June 30, 2007, an amount equal to five (5%) percent of the gross freight revenues received by Operator during the previous calendar month. For the period beginning July 1, 2007 and continuing through the remainder of the term of the Operating Agreement, an amount equal to ten (10%) percent of the gross freight revenue received by Operator during the previous calendar month. "Gross Freight Revenues" shall include all freight revenue settlements with the Class 1 carriers, and local freight charges. Excluded from this definition are Operators' revenues received for demurrage, car repairs, car hire, car usage and car cleaning and repair or maintenance of track off of the Railroad Premises.

(b) Car Storage: Twenty five (25%) percent of the car storage rentals received by Operator during the preceding calendar month.

(c) LVRR Scale: The Authority has installed a scale in the Newberry Yard, Williamsport, Pennsylvania. The Authority and the Operator agree that such scale will be made available for use by customers of the Operator in weighing such inbound and/or outbound materials as required by such customers; provided that the Operator shall pay to the Authority \$5.00 per each carload weighed on the said scale. Operator shall be solely responsible for the maintenance and repair of the said scale during the term of the Operating Agreement and will be liable, defend and indemnify the Authority for any damages, harm, or injury to the scale caused by the negligence of the Operator, its agents, or employees. Operator shall have the right to charge its customers such amounts as it determines for use of such scale.

(d) NBER Main Trackage Rights: The Authority and Operator have executed a certain agreement with Norfolk Southern (referred to herein as the "Trackage Rights Agreement") providing for the grant of trackage rights to Norfolk Southern on portions of both the Nittany and Bald Eagle and Lycoming Valley Railroads (the "Subject Trackage") in consideration of the payment to Operator of compensation (referred

to as "Current Charges") as set forth in Sections 4 and 5 of said Trackage Rights Agreement. The parties agree that Operator shall be entitled to receive all compensation payable by Norfolk Southern pursuant to said Agreement; provided, however, that in addition to the Operating Fees to be paid to the Authority pursuant to Exhibit C of this Agreement, Operator agrees to pay to the Authority fifteen (15%) percent of all such compensation received by it from Norfolk Southern under the terms of the said Trackage Rights Agreement.

Exhibit D - Anti-Discrimination Clause

During the term of the Operating Agreement, the Operators, pursuant to Presidential Executive Order No. 11246, agree as follows:

- a. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Agreement or any subcontract, the Operator, subcontractor, or any person acting on behalf of the Operator or subcontractor shall not by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- b. Neither the Operator nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the Agreement on account of gender, race, creed, or color.
- c. The Operator and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated, and employees who practice it will be disciplined.
- d. The Operator shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the Agreement relates.
- e. The Operator and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the Authority for the purpose of investigation to ascertain compliance with the provisions of this Anti-Discrimination Clause.
- f. The Operator shall include the provisions of this Anti-Discrimination Clause in every subcontract so that such provisions will be binding upon each subcontractor.
- g. The Authority may cancel or terminate the Agreement, and all money due or to become due from the Authority under the Agreement may be forfeited upon a final determination by an administrative agency or court of the operator's noncompliance with the terms and conditions of this Anti-Discrimination Clause.

CONFIDENTIAL

RICHARD R. WILSON, P.C.

Attorney at Law

A Professional Corporation

127 Lexington Avenue, Suite 100

Altoona, PA 16601

(814) 944-5302
(888) 454-3817 (Toll Free)
(814) 944-6978 FAX
rrwilson@atlanticbbn.net

Of Counsel to:
Vuono & Gray LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800
(412) 471-4477 FAX

851 Twelfth Street
Oakmont, PA 15139

August 24, 2005

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., Room 715
Washington, DC 20423-0001

Re: CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail, Inc. and Consolidated Rail Corporation - Finance Docket No: 33388

Dear Secretary Williams:

On behalf of North Shore Railroad Company, Juniata Valley Railroad Company, Nittany & Bald Eagle Railroad Company, Lycoming Valley Railroad Company, Shamokin Valley Railroad Company and Union County Industrial Railroad Company, I enclose for filing under confidential cover an original and twenty-five copies of the July 1, 2005 Settlement Agreement negotiated on behalf of the above mentioned railroads with SEDA-COG Joint Rail Authority and Norfolk Southern Railway Company. North Shore Railroad Company and its affiliates are pleased to report to the Board that this Agreement addresses various issues related to 2001 Trackage Rights Agreement with Norfolk Southern Railway Company which was filed with the Board on August 21, 2001 in this proceeding.

Very truly yours,

RICHARD R. WILSON, P.C.



Richard R. Wilson, Esq.

RRW/bab
Enclosures

xc: Mr. John Ingram (with enclosure)
Keith O'Brien, Esq. (with enclosure)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35956

**READING, BLUE MOUNTAIN NORTHERN RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER**

**JOINT REPLY OF PENNSYLVANIA NORTHEAST REGIONAL RAILROAD
AUTHORITY AND SEDA-COG JOINT RAIL AUTHORITY**

Exhibit C

CHAPTER 56
MUNICIPAL AUTHORITIES

Sec.

- 5601. Short title of chapter.
- 5602. Definitions.
- 5603. Method of incorporation.
- 5604. Municipalities withdrawing from and joining in joint authorities.
- 5605. Amendment of articles.
- 5606. School district projects.
- 5607. Purposes and powers.
- 5608. Bonds.
- 5609. Bondholders.
- 5610. Governing body.
- 5611. Investment of authority funds.
- 5612. Money of authority.
- 5613. Transfer of existing facilities to authority.
- 5614. Competition in award of contracts.
- 5615. Acquisition of lands, water and water rights.
- 5616. Acquisition of capital stock.
- 5617. Use of projects.
- 5618. Pledge by Commonwealth.
- 5619. Termination of authority.
- 5620. Exemption from taxation and payments in lieu of taxes.
- 5621. Constitutional construction.
- 5622. Conveyance by authorities to municipalities or school districts of established projects.
- 5623. Revival of an expired authority.

Enactment. Chapter 56 was added June 19, 2001, P.L.287, No.22, effective immediately.

Special Provisions in Appendix. See sections 2 and 4 of Act 22 of 2001 in the appendix to this title for special provisions relating to applicability to authorities incorporated under former laws and continuation of Municipality Authorities Act of 1945.

Cross References. Chapter 56 is referred to in section 1103 of Title 4 (Amusements); section 1105.1 of Title 8 (Boroughs and Incorporated Towns); sections 2102, 3402, 3902 of Title 12 (Commerce and Trade); section 206 of Title 26 (Eminent Domain); section 1504 of Title 64 (Public Authorities and Quasi-Public Corporations).

§ 5601. Short title of chapter.

This chapter shall be known and may be cited as the Municipality Authorities Act.

§ 5602. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Administrative service." In the case of authorities created for the purpose of making business improvements or providing administrative services, the term means those services which improve the ability of the commercial establishments of a district to serve the consumers, such as free or reduced-fee parking for customers, transportation repayments, public relations programs, group advertising and district maintenance and security services.

place.

(Dec. 17, 2001, P.L.926, No.110, eff. imd.)

2001 Amendment. Act 110 amended subsec. (d), retroactive to June 19, 2001.

§ 5607. Purposes and powers.

(a) Scope of projects permitted.--Every authority incorporated under this chapter shall be a body corporate and politic and shall be for the purposes of financing working capital; acquiring, holding, constructing, financing, improving, maintaining and operating, owning or leasing, either in the capacity of lessor or lessee, projects of the following kind and character and providing financing for insurance reserves:

(1) Equipment to be leased by an authority to the municipality or municipalities that organized it or to any municipality or school district located wholly or partially within the boundaries of the municipality or municipalities that organized it.

(2) Buildings to be devoted wholly or partially for public uses, including public school buildings, and facilities for the conduct of judicial proceedings and for revenue-producing purposes.

(3) Transportation, marketing, shopping, terminals, bridges, tunnels, flood control projects, highways, parkways, traffic distribution centers, parking spaces, airports and all facilities necessary or incident thereto.

(4) Parks, recreation grounds and facilities.

(5) Sewers, sewer systems or parts thereof.

(6) Sewage treatment works, including works for treating and disposing of industrial waste.

(7) Facilities and equipment for the collection, removal or disposal of ashes, garbage, rubbish and other refuse materials by incineration, landfill or other methods.

(8) Steam heating plants and distribution systems.

(9) Incinerator plants.

(10) Waterworks, water supply works, water distribution systems.

(11) Facilities to produce steam which is used by the authority or is sold on a contract basis for industrial or similar use or on a sale-for-resale basis to one or more entities authorized to sell steam to the public, provided that such facilities have been approved by resolution or ordinance adopted by the governing body of the municipality or municipalities organizing such authority and that the approval does not obligate the taxing power of the municipality in any way.

(12) Facilities for generating surplus electric power which are related to incinerator plants, dams, water supply works, water distribution systems or sewage treatment plants pursuant, where applicable, to section 3 of the Federal Power Act (41 Stat. 1063, 16 U.S.C. § 796) and section 210 of the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617, 16 U.S.C. § 824a-3) or Title IV of the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617, 16 U.S.C. §§ 2701 to 2708) if:

(i) electric power generated from the facilities is sold or distributed only on a sale-for-resale basis to one or more entities authorized to sell electric power to the public;

(ii) the facilities have been approved by resolution or ordinance adopted by the governing body of the municipality or municipalities organizing the authority and the approval does not obligate the taxing power of the municipality in any way; and

(iii) the incinerator plants, dams, water supply works, water distribution systems or sewage treatment plants are or will be located within or contiguous with a county in which at least one of the municipalities organizing the authority is located, except that this subparagraph shall not apply to incinerator plants, dams, water supply works, water distribution systems or sewage treatment plants located in any county which have been or will be constructed by or acquired by the authority to perform functions the primary purposes of which are other than that of generation of electric power for which the authority has been organized.

(13) Swimming pools, playgrounds, lakes and low-head dams.

(14) Hospitals and health centers.

(15) Buildings and facilities for private, nonprofit, nonsectarian secondary schools, colleges and universities, State-related universities and community colleges, which are determined by the authority to be eligible educational institutions, provided that such buildings and facilities shall have been approved by resolution or ordinance adopted by the governing body of the municipality or municipalities organizing the authority and that the approval does not obligate the taxing power of the governing body in any way.

(16) Motor buses for public use, when such motor buses are to be used within any municipality, and subways.

(17) Industrial development projects, including, but not limited to, projects to retain or develop existing industries and the development of new industries, the development and administration of business improvements and administrative services related thereto.

(18) Storm water planning, management and implementation as defined in the articles of incorporation by the governing body. Authorities, existing as of the effective date of this paragraph, already operating storm water controls as part of a combined sewer system, sanitary sewer system or flood control project may continue to operate those projects.

(b) Limitations.--This section is subject to the following limitations:

(1) An authority created by a school district or school districts shall have the power only to acquire, hold, construct, improve, maintain, operate and lease public school buildings and other school projects acquired, constructed or improved for public school purposes.

(2) The purpose and intent of this chapter being to benefit the people of the Commonwealth by, among other things, increasing their commerce, health, safety and prosperity and not to unnecessarily burden or interfere with existing business by the establishment of competitive enterprises, none of the powers granted by this chapter shall be exercised in the construction, financing, improvement, maintenance, extension or operation of any project or projects or providing financing for insurance reserves which in whole or in part shall duplicate or compete with existing enterprises serving substantially the same purposes. This limitation shall not apply to the exercise

of the powers granted under this section:

(i) for facilities and equipment for the collection, removal or disposal of ashes, garbage, rubbish and other refuse materials by incineration, landfill or other methods if each municipality organizing or intending to use the facilities of an authority having such powers shall declare by resolution or ordinance that it is desirable for the health and safety of the people of such municipality that it use the facilities of the authority and state if any contract between such municipality and any other person, firm or corporation for the collection, removal or disposal of ashes, garbage, rubbish and other refuse material has by its terms expired or is terminable at the option of the municipality or will expire within six months from the date such ordinance becomes effective;

(ii) for industrial development projects if the authority does not develop industrial projects which will compete with existing industries;

(iii) for authorities created for the purpose of providing business improvements and administrative services if each municipality organizing an authority for such a project shall declare by resolution or ordinance that it is desirable for the entire local government unit to improve the business district;

(iv) to hospital projects or health centers to be leased to or financed with loans to public hospitals, nonprofit corporation health centers or nonprofit hospital corporations serving the public or to school building projects and facilities to be leased to or financed with loans to private, nonprofit, nonsectarian secondary schools, colleges and universities, State-related universities and community colleges or to facilities, as limited under the provisions of this section, to produce steam or to generate electric power if each municipality organizing an authority for such a project shall declare by resolution or ordinance that it is desirable for the health, safety and welfare of the people in the area served by such facilities to have such facilities provided by or financed through an authority;

(v) to provide financing for insurance reserves if each municipality or authority intending to use any proceeds thereof shall declare by resolution or ordinance that it is desirable for the health, safety and welfare of the people in such local government unit or served by such authority; or

(vi) to projects for financing working capital.

(3) It is the intent of this chapter in specifying and defining the authorized purposes and projects of an authority to permit the authority to benefit the people of this Commonwealth by, among other things, increasing their commerce, health, safety and prosperity while not unnecessarily burdening or interfering with any municipality which has not incorporated or joined that authority. Therefore, notwithstanding any other provisions of this chapter, an authority shall not have as its purpose and shall not undertake as a project solely for revenue-producing purposes the acquiring of buildings, facilities or tracts of land which in the case of an authority incorporated or joined by a county or counties are located either within or outside the boundaries of the county or

counties and in the case of all other authorities are located outside the boundaries of the municipality or municipalities that incorporated or joined the authority unless either:

(i) the governing body of each municipality in which the project will be undertaken has by resolution evidenced its approval; or

(ii) in cases where the property acquired is not subject to tax abatement, the authority covenants and agrees with each municipality in which the authority will acquire real property as part of the project either to make annual payments in lieu of real estate taxes and special assessments for amounts and time periods specified in the agreement or to pay annually the amount of real estate taxes and special assessments which would be payable if the real property so acquired were fully taxable and subject to special assessments.

(c) Effect of specificity.--The municipality or municipalities organizing such an authority may, in the resolution or ordinance signifying their intention so to do or from time to time by subsequent resolution or ordinance, specify the project or projects to be undertaken by the authority, and no other projects shall be undertaken by the authority than those so specified. If the municipal authorities organizing an authority fail to specify the project or projects to be undertaken, then the authority shall be deemed to have all the powers granted by this chapter.

(d) Powers.--Every authority may exercise all powers necessary or convenient for the carrying out of the purposes set forth in this section, including, but without limiting the generality of the foregoing, the following rights and powers:

(1) To have existence for a term of 50 years and for such further period or periods as may be provided in articles of amendment approved under section 5605(e) (relating to amendment of articles).

(2) To sue and be sued, implead and be impleaded, complain and defend in all courts.

(3) To adopt, use and alter at will a corporate seal.

(4) To acquire, purchase, hold, lease as lessee and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the authority, and to sell, lease as lessor, transfer and dispose of any property or interest therein at any time acquired by it.

(5) To acquire by purchase, lease or otherwise and to construct, improve, maintain, repair and operate projects.

(6) To finance projects by making loans which may be evidenced by and secured as may be provided in loan agreements, mortgages, security agreements or any other contracts, instruments or agreements, which contracts, instruments or agreements may contain such provisions as the authority shall deem necessary or desirable for the security or protection of the authority or its bondholders.

(7) To make bylaws for the management and regulation of its affairs.

(8) To appoint officers, agents, employees and servants, to prescribe their duties and to fix their compensation.

(9) To fix, alter, charge and collect rates and other charges in the area served by its facilities at reasonable and uniform rates to be determined exclusively by it for the purpose of providing for the payment of the expenses of the

proceeds of bonds previously or hereafter issued for building construction or improvement purposes, which may be used by the authority in the construction, improvement, maintenance or operation of any project. Any municipality or school district may transfer, assign and set over to any authority any contracts which may have been awarded by the municipality or school district for the construction of projects not initiated or completed. The territory being served by any project or the territory within which a project is authorized to render service at the time of the acquisition of a project by an authority shall include the area served by the project and the area in which the project is authorized to serve at the time of acquisition and any other area into which the service may be extended, subject to the limitations of section 5607(a) (relating to purposes and powers).

(b) Acquisition.--

(1) An authority may not acquire by any device or means, including a consolidation, merger, purchase or lease or through the purchase of stock, bonds or other securities, title to or possession or use of all or a substantial portion of any existing facilities constituting a project as defined under this chapter if the project is subject to the jurisdiction of the Pennsylvania Public Utility Commission without first reporting to and advising the municipality which created or which are members of the authority of the agreement to acquire, including all its terms and conditions.

(2) The proposed action of the authority and the proposed agreement to acquire shall be approved by the governing body of the municipality which created or which are members of the authority and to which the report is made. Where there are one or two member municipalities of the authority, such approval shall be by two-thirds vote of all of the members of the governing body or of each of the governing bodies. If there are more than two member municipalities of the authority, approval shall be by majority vote of all the members of each governing body of two-thirds of the member municipalities.

(c) Complete provision.--Notwithstanding any other provision of law, this section, without reference to any other law, shall be deemed complete for the acquisition by agreement of projects as defined in this chapter located wholly within or partially without the municipality causing such authority to be incorporated, and no proceedings or other action shall be required except as provided for in this section.

Cross References. Section 5613 is referred to in section 5614 of this title.

§ 5614. Competition in award of contracts.

(a) Services.--

(1) Except as set forth in paragraph (2), all construction, reconstruction, repair or work of any nature made by an authority if the entire cost, value or amount, including labor and materials, exceeds a base amount of \$18,500, subject to adjustment under subsection (c.1), shall be done only under contract to be entered into by the authority with the lowest responsible bidder upon proper terms after public notice asking for competitive bids as provided in this section.

(2) Paragraph (1) does not apply to construction, reconstruction, repair or work done by employees of the authority or by labor supplied under agreement with a Federal or State agency with supplies and materials purchased as

provided in this section.

(3) No contract shall be entered into for construction or improvement or repair of a project or portion thereof unless the contractor gives an undertaking with a sufficient surety approved by the authority and in an amount fixed by the authority for the faithful performance of the contract.

(4) The contract must provide among other things that the person or corporation entering into the contract with the authority will pay for all materials furnished and services rendered for the performance of the contract and that any person or corporation furnishing materials or rendering services may maintain an action to recover for them against the obligor in the undertaking as though such person or corporation was named in the contract if the action is brought within one year after the time the cause of action accrued.

(5) Nothing in this section shall be construed to limit the power of the authority to construct, repair or improve a project or portion thereof or any addition, betterment or extension thereto directed by the officers, agents and employees of the authority or otherwise than by contract.

(b) Supplies and materials.--All supplies and materials with a base price costing at least \$18,500, subject to adjustment under subsection (c.1), shall be purchased only after advertisement as provided in this section. The authority shall accept the lowest bid, kind, quality and material being equal, but the authority shall have the right to reject any or all bids or select a single item from any bid. The provisions as to bidding shall not apply to the purchase of patented and manufactured products offered for sale in a noncompetitive market or solely by a manufacturer's authorized dealer.

(c) Quotations.--Written or telephonic price quotations from at least three qualified and responsible contractors shall be requested for a contract in excess of the base amount of \$10,000, subject to adjustment under subsection (c.1), but is less than the amount requiring advertisement and competitive bidding. In lieu of price quotations, a memorandum shall be kept on file showing that fewer than three qualified contractors exist in the market area within which it is practicable to obtain quotations. A written record of telephonic price quotations shall be made and shall contain at least the date of the quotation; the name of the contractor and the contractor's representative; the construction, reconstruction, repair, maintenance or work which was the subject of the quotation; and the price. Written price quotations, written records of telephonic price quotations and memoranda shall be retained for a period of three years.

(c.1) Adjustments.--Adjustments to the base amounts specified under subsections (a)(1), (b) and (c) shall be made as follows:

(1) The Department of Labor and Industry shall determine the percentage change in the Consumer Price Index for All Urban Consumers: All Items (CPI-U) for the United States City Average as published by the United States Department of Labor, Bureau of Labor Statistics, for the 12-month period ending September 30, 2012, and for each successive 12-month period thereafter.

(2) If the department determines that there is no positive percentage change, then no adjustment to the base amounts shall occur for the relevant time period provided for in this subsection.

(3) (i) If the department determines that there is a positive percentage change in the first year that the

determination is made under paragraph (1), the positive percentage change shall be multiplied by each base amount, and the products shall be added to the base amounts, respectively, and the sums shall be preliminary adjusted amounts.

(ii) The preliminary adjusted amounts shall be rounded to the nearest \$100 to determine the final adjusted base amounts for purposes of subsections (a)(1), (b) and (c).

(4) In each successive year in which there is a positive percentage change in the CPI-U for the United States City Average, the positive percentage change shall be multiplied by the most recent preliminary adjusted amounts, and the products shall be added to the preliminary adjusted amount of the prior year to calculate the preliminary adjusted amounts for the current year. The sums thereof shall be rounded to the nearest \$100 to determine the new final adjusted base amounts for purposes of subsections (a)(1), (b) and (c).

(5) The determinations and adjustments required under this subsection shall be made in the period between October 1 and November 15 of the year following the effective date of this subsection and annually between October 1 and November 15 of each year thereafter.

(6) The final adjusted base amounts and new final adjusted base amounts obtained under paragraphs (3) and (4) shall become effective January 1 for the calendar year following the year in which the determination required under paragraph (1) is made.

(7) The department shall publish notice in the Pennsylvania Bulletin prior to January 1 of each calendar year of the annual percentage change determined under paragraph (1) and the unadjusted or final adjusted base amounts determined under paragraphs (3) and (4) at which competitive bidding is required under subsection (a)(1) and (b) and written or telephonic price quotations are required under subsection (c), for the calendar year beginning the first day of January after publication of the notice. The notice shall include a written and illustrative explanation of the calculations performed by the department in establishing the unadjusted or final adjusted base amounts under this subsection for the ensuing calendar year.

(8) The annual increase in the preliminary adjusted base amounts obtained under paragraphs (3) and (4) shall not exceed 3%.

(d) Notice.--The term "advertisement" or "public notice," wherever used in this section, shall mean a notice published at least ten days before the award of a contract in a newspaper of general circulation published in the municipality where the authority has its principal office or, if no newspaper of general circulation is published therein, in a newspaper of general circulation in the county where the authority has its principal office. Notice may be waived if the authority determines that an emergency exists which requires the authority to purchase the supplies and materials immediately.

(e) Conflict of interest.--No member of the authority or officer or employee of the authority may directly or indirectly be a party to or be interested in any contract or agreement with the authority if the contract or agreement establishes liability against or indebtedness of the authority. Any contract or agreement made in violation of this subsection is void, and no action may be maintained on the agreement against the authority.

(f) Entry into contracts.--

(1) Subject to subsection (e), an authority may enter into and carry out contracts or establish or comply with rules and regulations concerning labor and materials and other related matters in connection with a project or portion thereof as the authority deems desirable or as may be requested by a Federal agency to assist in the financing of the project or any part thereof. This paragraph shall not apply to any of the following:

(i) A case in which the authority has taken over by transfer or assignment a contract authorized to be assigned to it under section 5613 (relating to transfer of existing facilities to authority).

(ii) A contract in connection with the construction of a project which the authority may have had transferred to it by any person or private corporation.

(2) This subsection is not intended to limit the powers of an authority.

(g) Compliance.--A contract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works shall comply with the provisions of the act of March 3, 1978 (P.L.6, No.3), known as the Steel Products Procurement Act.

(h) Evasion.--

(1) An authority may not evade the provisions of this section as to bids or purchasing materials or contracting for services piecemeal for the purpose of obtaining prices under the amount required by this section upon transactions which should, in the exercise of reasonable discretion and prudence, be conducted as one transaction amounting to more than the amount required by this section.

(2) This subsection is intended to make unlawful the practice of evading advertising requirements by making a series of purchases or contracts each for less than the advertising requirement price or by making several simultaneous purchases or contracts each below that price when in either case the transaction involved should have been made as one transaction for one price.

(3) An authority member who votes to unlawfully evade the provisions of this section and who knows that the transaction upon which the member votes is or ought to be a part of a larger transaction and that it is being divided in order to evade the requirements as to advertising for bids commits a misdemeanor of the third degree for each contract entered into as a direct result of that vote.

(Dec. 17, 2001, P.L.926, No.110, eff. imd.; Nov. 3, 2011, P.L.367, No.90, eff. imd.)

2011 Amendment. Act 90 amended subsecs. (a)(1), (b), (c) and (h)(1) and added subsec. (c.1). Section 4 of Act 90 provided that Act 90 shall apply to contracts and purchases advertised on or after January 1 of the year following the effective date of section 4.

2001 Amendment. Act 110 amended subsecs. (a)(2) and (d), retroactive to June 19, 2001.

§ 5615. Acquisition of lands, water and water rights.**(a) Authorization.--**

(1) Except as provided in paragraph (2), the authority shall have the power to acquire by purchase or eminent domain

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35956

**READING, BLUE MOUNTAIN NORTHERN RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER**

**JOINT REPLY OF PENNSYLVANIA NORTHEAST REGIONAL RAILROAD
AUTHORITY AND SEDA-COG JOINT RAIL AUTHORITY**

Exhibit D

**IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY
CIVIL DIVISION - LAW**

READING, BLUE MOUNTAIN & NORTHERN RAILROAD	:	No. 13-06796
	:	
Plaintiff	:	
v.	:	
	:	
PENNSYLVANIA NORTHEAST REGIONAL RAILROAD AUTHORITY and BOARD OF THE PENNSYLVANIA NORTHEAST REGIONAL RAILROAD AUTHORITY,	:	
	:	
Defendants	:	

SECOND AMENDED COMPLAINT

Plaintiff Reading, Blue Mountain & Northern Railroad, by and through its counsel, Frederick J. Fanelli, Esquire, brings this Second Amended Complaint for declaratory relief against Defendants Pennsylvania Northeast Regional Railroad Authority and the Board of the Pennsylvania Northeast Regional Railroad Authority, and in support thereof, avers as follows:

THE PARTIES

1. Plaintiff Reading, Blue Mountain & Northern Railroad ("RBM&N") is a Pennsylvania corporation with a registered office address of 1 Railroad Boulevard, P.O. Box 218, Port Clinton, Pennsylvania, 19549.
2. RBM&N owns land and rail lines located within Lackawanna County and is bringing this action as a landowner within the county and as a taxpayer of the Commonwealth of Pennsylvania and subject to the Public Utility Realty Tax Act, 72 P.S. §§ 8101 et seq., on behalf of itself and all other taxpayers.

3. RBM&N is in the business of, among other things, providing freight rail service to industries located in east central Pennsylvania, including along its rail lines in Schuylkill, Berks, Carbon, Luzerne, Lackawanna and Wyoming counties.

4. Rail freight service is a substantial part of RBM&N's business.

5. Defendant Pennsylvania Northeast Regional Rail Authority ("PNRRA") is a municipal authority formed pursuant to the Municipality Authorities Act of 1945, Act of May 2, 1945, P.L. 382, as amended, now codified at 53 Pa. C.S. §§ 5601 et seq. (2013), located at 280 Cliff Street, Scranton, Lackawanna County, Pennsylvania, 18503.

6. PNRRA's Board of Directors ("Board") consists of eight members, four appointed by Lackawanna County and four appointed by Monroe County, and holds regular meetings to conduct the business of the PNRRA, in accordance with its bylaws.

JURISDICTION AND VENUE

7. Jurisdiction is based on the Pennsylvania Constitution, Article 5, Section 5; and 42 Pa. C.S.A. § 931(a), both of which confer broad original jurisdiction upon the Court of Common Pleas.

8. Venue in the Lackawanna County Court of Common Pleas is based upon 42 Pa.C.S. § 931(c) and Pa.R.C.P. 1006(c)(1), in that the written contract on which this action is based was entered into in Lackawanna County, and PNRRA's principal office and some of its assets are located within Lackawanna County, Pennsylvania.

9. This Court has jurisdiction over this matter which involves the interpretation and application of the Municipality Authorities Act ("MAA"), 53 Pa. C.S. §§ 5301 et seq. and the

competitive sealed bidding and proposal provisions for contracts for public works of 62 Pa. C.S. § 3901 et seq., rather than the Surface Transportation Board, which routinely declines to exercise jurisdiction over disputes involving state statutory and contractual matters. See, e.g., Lackawanna County Railroad Authority – Acquisition Exemption – F&L Realty, Inc., STB Finance Docket No. 33905, and Delaware-Lackawanna Railroad Co., Inc. – Operation Exemption – Lackawanna County Railroad Authority, STB Docket No. 33906 (STB served Oct. 22, 2001); Indiana Northeastern Railroad Company – Change in Operators – Branch and St. Joseph Counties Rail Users Association, Inc., in Branch County, Michigan, STB Finance Docket No. 33760 (STB served Sept. 1, 1999).

FACTUAL BACKGROUND

10. PNRRA was formed in 2006 for the purpose of acquiring, holding, constructing, improving, maintaining, operating, owning and leasing, either as a lessor or lessee, rights-of-way, trackage, sidings and other related rail transport facilities and to accept grants and borrow money from any authority, corporation or agency of the United States or from the Commonwealth of Pennsylvania for the purpose of acquiring and preserving rail transport facilities within the Commonwealth of Pennsylvania.

11. PNRRA owns nearly 100 miles of rail lines located in Lackawanna, Monroe, Wayne and Northampton Counties, from Carbondale to Scranton through the Pocono region all the way to Slateford, Pennsylvania, on which it provides freight rail service in four counties via a private common carrier rail operator, under contract to PNRRA.

12. The Delaware-Lackawanna Railroad Company, Inc. ("the DL") is a Pennsylvania corporation with a registered business address of Suite 800 Connell Building, 129 North Washington Avenue, Scranton, Lackawanna County, Pennsylvania, 18503 and a mailing address of 280 Cliff Street, Scranton, Lackawanna County, Pennsylvania, 18503.

13. The DL is PNRRA's current rail freight operator on PNRRA's rail lines, and has provided freight service since 1993 to PNRRA and its predecessor authorities.

14. PNRRA and the DL share the same mailing address.

15. Through discovery, PNRRA's President and Chief Executive Officer, Lawrence C. Malski ("Malski") has admitted that PNRRA is a direct competitor of RBM&N, and that its rail lines parallel those of RBM&N's.

16. Both PNRRA and the DL apply for and receive state grant funding for various rail construction projects.

17. Wayne Michel, President of RBM&N, would agree with Malski that PNRRA and RBM&N are direct competitors, not only for rail customers, but for state grants, which are issued in a finite, limited amount each year.

18. Through discovery, PNRRA has admitted that its employees and board members actively work to develop new industry along its own rail lines to increase its freight rail business, in direct competition with RBM&N.

19. At his deposition, Malski testified that he routinely has business dinners and lunches with current and prospective rail shippers along with the owner of the DL, David J. Monte Verde, who Malski believes might have paid the bill for those meals.

20. Through discovery, PNRRA has admitted that Malski regularly collaborates with the DL on sales marketing, to target potential customers using all means possible and develop leads.

21. Through discovery, PNRRA has admitted that it competes with RBM&N and other freight rail operators for the same customers.

22. At his deposition, Malski testified that he has developed more than ten new customers for the DL and PNRRA and/or its predecessors.

23. Through discovery, PNRRA has admitted that it competes with RBM&N on pricing, and that the DL can offer better pricing because it uses PNRRA's rail lines.

24. Through discovery, PNRRA has admitted that it owns property along its rail lines which it can rent, lease or sell to a potential customer in order to attract that customer to locate along PNRRA's rail lines, or use PNRRA's facilities to load and unload freight.

25. As a municipal agency, PNRRA is subject to the requirements of the Municipality Authorities Act ("MAA"), 53 Pa. C.S. §§ 5301 et seq. and, for the contracts subject to competitive bidding under the MAA, to the competitive sealed bidding and proposal provisions for contracts for public works of 62 Pa. C.S. § 3901 et seq.

26. PNRRA was created by the merger of two rail authorities, the Lackawanna County Railroad Authority ("LCRA") and the Monroe County Railroad Authority ("MCRA"), both of which were municipal authorities created under and subject to the MAA, for the purpose of, among other things, acquiring abandoned and/or out of service rail lines and placing those rail lines back into service.

27. Discovery has revealed that PNRRA was formed to consolidate the resources of the two authorities and regionalize in order to pursue passenger rail service from Scranton to New York City, and that one entity would be more successful in obtaining rights of way and track, and in competing for freight rail business.

26. PNRRA and/or its predecessors used state grant monies and its own funds to buy additional rail lines.

28. Discovery in this matter has revealed that in 1993, LCRA issued a Request for Proposal ("RFP") to determine freight rail operator interest prior to hiring a freight rail operator to operate its rail lines; Malski was the executive director of LCRA and wrote the RFP for LCRA at its Board's request.

29. After utilizing an RFP, LCRA contracted with the DL in 1993 and DL became LCRA's freight rail operator.

30. Since 1993, neither LCRA nor its successor, PNRRA, has used an RFP to determine freight rail operator interest prior to entering a new contract with the DL or extending the DL's existing agreements, or sought public sealed competitive bids for its rail freight business pursuant to the MAA, based at least in part on Malski's advice to LCRA and PNRRA that none was required.

31. On June 20, 1994, MCRA, employing LCRA as a consultant, chose the DL to be MCRA's freight rail operator, and it is believed and therefore averred that MCRA did not use an RFP or seek competitive bidding prior to contracting with the DL.

32. It is believed and therefore averred that once MCRA chose the DL as its freight rail operator, MCRA did not use RFPs prior to entering any new contract with the DL or

extending the DL's existing agreement, or seek public sealed competitive bids for its rail freight business.

33. On August 27, 2010, PNRRA through its Board entered into the current contractual operating agreement with the DL ("Operating Agreement"), for the DL to operate and provide rail freight service on railroad lines known as the Carbondale Mainline, the Pocono Mainline, and the Laurel Line Mainline, including the Minooka Industrial Track. A true and correct copy of the DL Operating Agreement is attached hereto as Exhibit "A".

34. The initial term of the Operating Agreement is five years, giving it an expiration date of August 27, 2015, but the contract term can be extended by PNRRA for another five years. Operating Agreement, Ex. A at 2.

35. PNRRA and its Board did not subject the Operating Agreement to a public competitive bidding process as required by the MAA prior to awarding the current Operating Agreement to DL.

36. Malski testified at his deposition that obtaining the highest revenue for PNRRA from a rail freight operator is not the primary factor or purpose of the Operating Agreement; rather, its primary purpose is to simply provide rail service and economic and industrial development in northeast Pennsylvania.

37. PNRRA Board members have testified that they do not believe they need to consider any other rail providers because the DL is performing satisfactorily.

38. On November 6, 2013, RBM&N sent a letter to PNRRA and its Board, asking for an opportunity to submit a competitive bid to operate their rail lines, in anticipation of the August 27, 2015 expiration of the current five year term of the Operating Agreement.

39. In that letter, RBM&N stated that it believed that it could offer superior service to PNRRA than is currently being offered under the existing Operating Agreement.

40. It is believed and therefore averred that in response to RBM&N's letter, PNRRA, through its Board, at its next regularly scheduled meeting on November 19, 2013, went into executive session to discuss topics including the extension of the DL Operating Agreement. The Board emerged from the executive session and voted to extend the current Operating Agreement for an additional five years, although the current Operating Agreement term is not set to end for another year and a half.

41. PNRRA, through its Board, voted to extend the current Operating Agreement for another five years without any form of competitive bidding.

42. Discovery has revealed that PNRRA Board Chairperson, David Brojack ("Chairman Brojack"), who is also a rail freight customer of PNRRA's and the DL's, made the motion to extend the current Operating Agreement for another five years.

43. Chairman Brojack testified on June 24, 2014, that despite being a member of the Board for years, he has never read the entire current Operating Agreement.

44. Discovery has revealed that although Malski claims to have made the PNRRA Board aware of RBM&N's letter which was in fact emailed to each board member prior to the November 19, 2013 Board meeting, prior PNRRA Board Chairman Robert Hay testified that he could not remember any discussion about the RBM&N letter at the November 19, 2013 Board meeting, and current Chairman Brojack testified that he did not recall seeing RBM&N's letter prior to his deposition on June 24, 2014.

45. Discovery has revealed that in renewing or extending the current Operating Agreement, PNRRA did not negotiate with DL any new conditions or increased revenue for PNRRA.

46. Subsequent to the meeting of November 19, 2013, RBMN, through its counsel, wrote to PNRRA and indicated that RBMN could offer a significant increase in fees paid to PNRRA if given an opportunity to bid or submit a proposal for the Operating Agreement.

47. PNRRA did not agree to accept a bid or proposal from RBM&N, and this litigation ensued.

48. Discovery has revealed that the PNRRA Board now has a "litigation committee" composed of Malski, Hay and Chairman Brojack, which Chairman Brojack was unaware of as of the date of his deposition.

49. PNRRA is a municipal authority subject to the statutory requirements of the MAA.

50. The purpose and intent of the Pennsylvania Legislature in enacting the MAA is to benefit the people of the Commonwealth by, among other things, increasing their commerce, health, safety and prosperity, and to permit the authority to benefit the people. 53 Pa. C.S. § 5607(b)(2), (3).

51. One of the powers granted to the Authority in the MMA is the power to enter into contracts. 53 Pa. C.S. § 5607(d)(13), (14).

52. Competitive bidding invites competition and assures that contracts will be awarded free from any possible personal interests, bias or fraud and that the taxpayers receive the work for the best possible price.

53. PNRRA's Operating Agreement is a contract subject to the requirements of 53 Pa. C.S. § 5614, in that it is a contract for work, including for the maintenance of those lines in an FRA Class I and Class II condition; for the maintenance of PNRRA's structures and related facilities and equipment located on the rail lines; for the repair or replacement of same; for the provision of working capital as well as a escrowed reserve; for the removal, replacement or improvement of the track and structures on the railroad lines; for security along the rail lines; for marketing and sales work; for the provision of hirail inspection services; and any other work provided for in the Operating Agreement. Operating Agreement, Ex. A.

54. Because PNRRA's Operating Agreement is subject to the competitive bidding requirements of the MAA, it is also a contract subject to the sealed competitive bidding procedures of 62 Pa. C.S. §§ 3901 et seq.

55. Discovery has revealed that under the terms of the Operating Agreement, DL is required to expend 25% of its annual rail freight operating revenues on a rolling 3 year average on construction, reconstruction, repair and maintenance work as part of its negotiated contractual requirements to PNRRA. Operating Agreement, Ex. A at § 8.

56. According to PNRRA's 2012 Annual Report, the DL paid \$386,869 to PNRRA, or 10% of its annual revenue of \$3,868,690, under the terms of the Operating Agreement.

57. Based on these figures, it is believed and therefore averred that the DL expended approximately \$967,173 on construction, reconstruction, repair and maintenance work for PNRRA in 2012.

58. During his deposition, Board member and former Chairman Hay admitted that the DL expends more than \$18,500 on rail ties, ballast, raise, line surfacing and track each year, and

that the maintenance work performed by DL for PNRRA is an essential part of the Operating Agreement.

59. During discovery, Hay admitted that the Operating Agreement contains a requirement for DL to install a minimum of 3,000 ties per year and 1,500 track feet of rail line as well as stone ballast and raise.

60. During discovery, Malski admitted that the Operating Agreement provides that when the DL repairs or replaces rail, ties or other items of track structure or signaling equipment, the new property shall become the property of PNRRA.

61. Discovery has revealed that PNRRA applies for and receives state grant funding for the same or similar types of work that are required of the DL under the Operating Agreement.

62. During his deposition, Board member and former Chairman Hay testified that PNRRA received \$114,995 for a Section 130 Federal Highway Rail Safety Grant for the purchase and installation of new crossing lights, flashers, gates and bells at the 7th Avenue grade crossing in Carbondale, Pennsylvania, and that PNRRA awarded the contract to Diamond Back Signal, LLC which was the lowest bidder on the project.

63. It is believed and therefore averred that the DL performs similar work for PNRRA as part of the Operating Agreement.

64. During his deposition, Hay testified that PNRRA received \$298,000 for a PennDOT rail Freight Assistance grant for the installation of new ties and rails on its Pocono mainline rail line, and that state grant was placed out to competitive bidding by PNRRA.

65. At his deposition, Hay admitted that this grant was for the same type of work being performed by the DL for PNRRA under the Operating Agreement.

66. During discovery, Board member Hay admitted that the Operating Agreement contains a requirement for the DL to construct a public unloading facility as part of their contractual requirements to PNRRA.

67. Discovery has revealed that PNRRA places all of the work to be funded by the state grants out to competitive bidding, as required by the MAA.

68. Because PNRRA's Operating Agreement contains work including construction, reconstruction, repair, and other work in excess of \$18,500, it should have been subject to competitive bidding pursuant to 53 Pa. C.S. § 5614(a), which provides:

§ 5614. Competition in award of contracts.

(a) *Services.*

(1) Except as set forth in paragraph (2), all construction, reconstruction, repair or work of any nature made by an authority if the entire cost, value or amount, including labor and materials, exceeds a base amount of \$ 18,500, subject to adjustment under subsection (c.1), shall be done only under contract to be entered into by the authority with the lowest responsible bidder upon proper terms after public notice asking for competitive bids as provided in this section.

(2) Paragraph (1) does not apply to construction, reconstruction, repair or work done by employees of the authority or by labor supplied under agreement with a Federal or State agency with supplies and materials purchased as provided in this section.

53 Pa. C.S. § 5614(a) (2013).

69. To the extent that PNRRA seeks to avoid competitive bidding by asserting that the Operating Agreement is some sort of "special services" contract, it is noted that there is nothing unusual, peculiar, or special about providing rail freight contractor services over properties owned by a different entity.

70. As opposed to being a “special services” contract, these agreements/contracts are common. For example, numerous other freight railroads provide services for entities similar to PNRRA, such as North Shore Railroad over SEDA-COG, C&S and RBM&N Railroads over Carbon County, and the DL over PNRRA.

COUNT 1 – DECLARATORY ACTION – VIOLATION OF MAA § 5607(b)(2) – PROHIBITING DIRECT COMPETITION WITH PRIVATE ENTERPRISE

71. The averments of paragraphs 1 through 70 are incorporated herein as if set forth at length.

72. The Declaratory Judgments Act, 42 Pa. C.S. §§ 7531 et seq., provides in part:

Courts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.

42 Pa. C.S. § 7532.

73. It also provides:

Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise, and obtain a declaration of rights, status, or other legal relations thereunder.

42 Pa. C.S. § 7533.

74. PNRRA is a municipal authority subject to the provisions of the MAA and 62 Pa. C.S. §§ 3901 et seq.

75. PNRRA's powers are set forth under the MAA, including the specific powers set forth in section 5607(d), and the exercise of those powers are limited by the limitation provisions of section 5607(b). Dominion Products and Services v. Pittsburgh Water and Sewer Authority, 44 A.3d 697 (Pa. Cmwlth. 2011).

76. The MAA prohibits PNRRA from unnecessarily burdening or interfering with existing business by the establishment of enterprises which in whole or part duplicate or compete with existing enterprises serving substantially the same purpose. 53 Pa. C.S. § 5607(b)(2); Dominion Products and Services v. Pittsburgh Water and Sewer Authority, 44 A.3d 697 (Pa. Cmwlth. 2011).

77. PNRRA was established and is engaging in an enterprise that provides freight rail service in direct competition with privately owned rail freight operators such as the RBM&N, and to the exclusion of same, which PNRRA admitted during discovery.

78. PNRRA directly competes with RBM&N for state grant funding which PNRRA uses to enhance PNRRA's freight rail service in direct competition with other privately owned rail freight operators such as the RBM&N.

79. PNRRA directly competes with RBM&N through the DL's receipt of state grants, which the DL uses to construct, reconstruct, repair and/or maintain PNRRA's assets.

80. Neither the MAA nor any other statute authorizes or requires PNRRA to provide freight rail service or receive state grants which directly competes with privately owned freight rail businesses.

81. The Operating Agreement violates the MAA's express prohibition against interference and competition with existing business and otherwise exceeds the authority of PNRRA under the MAA, and is therefore void. Dominion Products and Services v. Pittsburgh Water and Sewer Authority, 44 A.3d 697 (Pa. Cmwlth. 2011).

WHEREFORE, Plaintiff Reading, Blue Mountain & Northern Railroad respectfully requests that this Court declare that Defendants Pennsylvania Northeast Regional Railroad Authority and its Board are in violation of MAA § 5607(b)(2), and must refrain from direct competition with private enterprise, either through divestiture of its rail freight business, and/or sale of the rights to freight traffic on its lines, declare PNRRA's Operating Agreement with the DL void, and grant any other relief that this Court deems just and proper.

COUNT II – DECLARATORY ACTION – FAILURE TO BID

82. The averments of paragraphs 1 through 80 are incorporated herein as if set forth at length.

83. This Count is asserted in the alternative to the relief sought in Count I.

84. The Operating Agreement contains provisions for construction, reconstruction, repair and other work in excess of \$18,500.00, for the same or similar work that PNRRA places out to competitive bidding when state grant funding is being utilized by PNRRA.

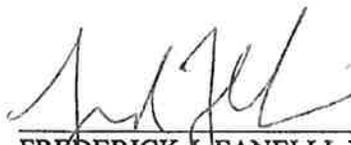
85. The Operating Agreement therefore must be subjected to a public competitive bidding process pursuant to 53 Pa. C.S. § 5614(a), which process is subject to the requirements of 62 Pa. C.S. §§ 3901 et seq.

86. Any contract entered into by PNRRA for the operation of its rail lines without having been subjected to a public competitive bidding process pursuant to these statutory provisions must be declared by this Court to be null and void.

87. PNRRA should be directed by this Court to submit all future operating agreements for freight rail service and any extensions thereto to competitive bidding.

WHEREFORE, Plaintiff Reading, Blue Mountain & Northern Railroad respectfully requests that this Court grant relief to Plaintiff and declare that Defendants Pennsylvania Northeast Regional Railroad Authority and its Board must follow the public notice and competitive bidding requirements of 53 Pa. C.S. § 5614(a) and 62 Pa. C.S. §§ 3901 et seq. for contracts for the operation of its rail lines, and that any operating agreements entered into by PNRRA and its Board without having been subjected to the competitive bidding requirements of 53 Pa.C.S. § 5614(a) and 62 Pa. C.S. §§ 3901 et seq. are deemed null and void, and award any other relief that this Court deems just and proper.

Respectfully submitted by:

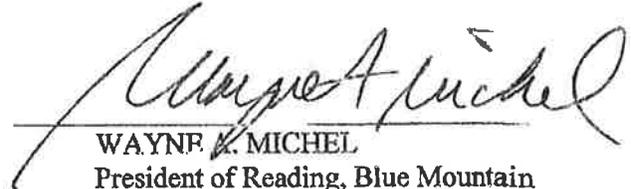


FREDERICK J. FANELLI, ESQUIRE
Attorney I.D. #36672
Fanelli, Evans & Patel, P.C.
The Necho Allen
No. 1 Mahantongo Street
Pottsville, PA 17901
(570) 622-2455

VERIFICATION

The language of the foregoing document is that of counsel and not necessarily my own; however, I have read the foregoing document and to the extent it is based upon information I have given to counsel, it is true and correct to the best of my knowledge, information and belief; to the extent that the content of the foregoing document is that of counsel, I have relied upon counsel in making this verification.

I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A Section 4904, relating to unsworn falsification to authorities.



WAYNE K. MICHEL
President of Reading, Blue Mountain
& Northern Railroad Company

EXHIBIT "A"

8/27/15

OPERATING AGREEMENT

THIS AGREEMENT made this 27th day of August 2010 by and between the Pennsylvania Northeast Regional Railroad Authority, hereinafter referred to as PNRRA and "the" Delaware-Lackawanna Railroad Co., Inc., hereinafter referred to as DL;

WITNESSETH

WHEREAS, the PNRRA owns a line of railroad known as the Scranton to Carbondale Line, aka Carbondale Mainline between M.P. 196.8 and M.P. 174.59 which was purchased from the Delaware and Hudson Railway Corporation in 1985; and

WHEREAS, the PNRRA owns a line of railroad known as the Scranton to Slateford Line, aka Pocono Mainline between M.P. 134 and M.P. 74 and the Brady Lead Track which was purchased from the City of Scranton, Steamtown Foundation and Conrail in 1991; and

WHEREAS, the PNRRA owns a line of railroad known as the Laurel Line Mainline between M.P. 0 and M.P. 4.81, including the Minooka Industrial Track which was purchased in 1999; and

WHEREAS, the PNRRA has selected the proposal of DL to operate and provide rail freight service on these lines of railroad for the benefit of shippers and communities.

NOW, THEREFORE, the parties intending to be legally bound agree as follows:

AGREEMENT

1. Use of the Lines of Railroad.

PNRRA hereby agrees to provide DL access to and use of the lines of railroad which shall include, but not be limited to property of every kind and description, real, personal and mixed, including the right-of-way, roadbed, tracks, track materials, signals and other facilities, and appurtenances located in the Counties of Lackawanna, Wayne, Northampton and Monroe in the Commonwealth of Pennsylvania as is more fully described in Appendix A. DL shall have the right to use the lines of railroad for exclusive railroad freight service and to establish, operate and maintain freight rail service thereon during the term of this Agreement, or any extension, or renewal thereof, subject to the terms and conditions hereinafter contained. This Agreement shall not be construed as conveying any ownership interest to DL. The PNRRA hereby designates the DL to perform all passenger services with the exception of commuter and intercity passenger services on the lines of railroad owned by PNRRA and PNRRA reserves the right to award and contract for commuter and intercity passenger services on the lines of railroad owned by PNRRA with other parties. The PNRRA reserves the right to grant and contract with Norfolk Southern (NS) for

nonexclusive overhead trackage rights on and over the Pocono Mainline with NS and DL will pay PNRRA 5% any and all such overhead trackage rights revenue.

2. Term.

The term of this Operating Agreement shall be five (5) years from the effective date hereof unless terminated prior thereto in accordance with the provisions of this Agreement,

Provided that:

- (i) DL shall not be in default of any of its material obligations hereunder;
- (ii) PNRRA shall continue to own the lines of railroad;
- (iii) DL shall have the right, after giving written notice to PNRRA at least 180 days prior to the expiration date of the initial term or any renewal term thereof, to terminate this Agreement or, to request a renewal term of this Agreement;
- (iv) PNRRA will have the option to extend the existing contract for another five (5) year term upon ninety (90) days written notice to DL prior to August 27, 2015.

3. Operating Fees and Other Payments.

(A) Commencing on DL's operation and continuing through the term of this agreement, unless renegotiated pursuant to the terms of Section 15 of this Agreement, DL will pay PNRRA ten (10 %) percent of all DL rail freight operating revenues on cars originating and terminating on former Lackawanna County Railroad Authority owned lines and ten (10%) of all DL rail freight operating revenues or \$8,000.00 per month, whichever is greater on cars originating and terminating on former Monroe County Railroad Authority owned lines on a monthly basis for the use of the lines of railroad. DL will place 5% of all passenger revenues into a track fund each year to be used for maintenance of the railroad right of way and structures on the lines of railroad owned by PNRRA. Rail freight operating revenue shall include but not be limited to Horizon, CP, NS switching settlements, weighing, flagging and storage and 5% of all overhead freight traffic revenues handled over lines of railroad owned by PNRRA. DL will pay PNRRA one time \$125,000.00 cash towards the matching share of PNRRA's purchase of the NS trackage from Analomink to Slatersford, PA per the following payment schedule: \$25,000.00 due by August 15, 2009; \$5,000 per month in September 2009 – July 2010; and \$45,000 on August 15, 2010. PNRRA and DL will continue to contribute to the local matching share on grants on a 50%/50% basis of a mutually agreed to grant amount. DL also will pay PNRRA 5% on any fuel surcharge payments received by DL during the term of this agreement. DL will pay 20% of all

Investment tax credit payments received by DL to PNRRA. DL will pay PNRRA 5% on grain train power agreements.

- (B) DL shall also pay and discharge, on or before the last day on which payment may be made without penalty or interest, any tax, assessment, charge for public utilities, excise, license and permit fees, and other governmental impositions and charges which shall or may during the term hereof be charged, laid, assessed, imposed, become due and payable, become a lien upon, or arising in connection with the use or operation of the lines of railroad for freight service. DL shall have the right to contest any such taxes or other charges by appropriate legal proceedings, conducted at its own expense, providing the DL shall furnish to PNRRA a surety bond or other security satisfactory to cover the amount of the contested item or items, with interest and penalty for the period which such proceedings may be expected to take.
- (C) DL shall also pay, on or before the last day on which payment may be made without penalty or interest, all trackage rights fees or payments, all interchange agreement fees or payments, all track lease fees or payments, and any and all other fees or payments arising from or in connection with the common carrier obligations of providing freight service on the lines of the railroad.

4. Conditions of Railroad Premises.

DL has inspected the lines of railroad and accepts the same "as is, where is". PNRRA makes no representation or warranty as to the physical condition of the lines of railroad or the condition of legal title (other than for railroad purposes). DL shall maintain and return the lines of railroad to the PNRRA in no less than FRA Class I condition on the Scranton to Carbondale line of railroad and on the Brady Lead Track and no less than FRA Class II condition on the Laurel Line and the Pocono Mainline.

5. Provision of Additional Equipment and Facilities.

DL shall be responsible for providing all equipment and facilities required for operation of the lines of railroad and not part of the premises provided hereunder. Such equipment and facilities shall include, but shall not be limited to, locomotives, rolling stock, maintenance equipment, office space, a public unloading facility and such other facilities and equipment as are required to provide rail freight service over the lines of railroad as contemplated by this Agreement. Both parties agree that a public unloading facility is necessary for operation of freight service on the lines of railroad. DL agrees to cause such a facility to be constructed at its own expense and to amortize the cost thereof over the contract period.

6. DL Obligations.

DL agrees that it will at all times during the continuance of this Agreement:

- (A) Pay all charges herein requested to be paid by the PNRRA under Paragraph 3 at such time as the same are due and payable including, but not limited to, the rail freight operating revenue payment which will be due on the 15th of each month for the proceeding month's revenue;
- (B) Operate freight service in accordance with all federal, state, and local requirements and shall be responsible for obtaining all governmental approvals, authorizations, franchises, licenses and permits as may be prerequisites to the rendering of such service;
- (C) Observe and comply with any and all requirements of the constituted public authorities and with all federal, state and local statutes, ordinances, regulations and standards applicable to DL or its use of the lines of railroad;
- (D) Maintain and operate at its own expense the lines of railroad, including any structures or related facilities located thereon in good operating condition and repair in a manner consistent with sound, accepted engineering principles and maintain the track to FRA Class I Standards on the Scranton to Carbondale line of railroad and the Brady Lead Track and to FRA Class II Standards on the Laurel Line and Pocono Mainline;
- (E) Repair or replace at its own expense, any rail, ties and other items of track structures or signaling equipment as may be necessary to keep the lines of railroad in good operating condition. In the event of any such replacement at the expense of DL the new property shall become the property of the PNRRA;
- (F) Operate freight service on the lines of railroad at such levels, and at such frequency to be acceptable to PNRRA and the shippers and receivers of rail freight now or to be located on the lines of railroad;
- (G) Fully indemnify, defend and hold harmless PNRRA, its officers, agents, employees, successors and assigns, from and against all claims, suits, actions or judgments, based upon or arising out of damage, injuries or death to persons or property caused by the negligence of DL or its agents, employees, guests, invitees, contractors, suppliers of materials, or furnishers of services in the use and occupancy of the property and lines of railroad or CP Rail or Norfolk Southern property by the DL;
- (H) Be liable, defend and indemnify the PNRRA for any damages, harm or injury to the lines of railroad or CP Rail or Norfolk Southern property caused by the negligence of the DL, its agents or employees;
- (I) Maintain a policy or policies of liability insurance to insure itself against liability for injury or damage to persons or property, which policies will be in the minimum amounts set forth below:

<u>TYPE</u>	<u>LIMITS</u>
(i) Comprehensive General Liability	For all claims \$10,000,000 per Occurrence, \$50,000.00 deductible;
(ii) Federal Employer's Liability Act	Covered by blanket policy noted in (i);
(iii) Cargo Legal Liability	Covered by blanket policy noted in (i);
(iv) Foreign Rolling Stock	Covered by blanket policy noted in (i);
(v) Automobile Liability	Covered by blanket policy noted in (i);
(vi) Comprehensive Passenger General Liability	For all claims \$25,000,000.00 per occurrence on any and all NPS Trains operated by NPS over DL, With premium to be paid by NPS; otherwise \$10,000,000.00 per occurrence for other passenger services operated by DL;
(J) Cause PNRRA to be named as an additional named insured under each such policy and furnish PNRRA with appropriate certificates of such insurance which shall specifically state that the insurance company shall furnish to PNRRA at least thirty (30) days notice of any lapse or material change in such insurance;	
(K) Peacefully deliver up and surrender possession of the lines of railroad to PNRRA at the expiration or other termination of this Agreement;	
(L) Provide unencumbered minimum working capital of fifty thousand (\$50,000.00) dollars;	
(M) Provide and maintain in escrow a reserve fifty thousand (\$50,000.00) dollars at all times in addition to the minimum working capital requirements of this section for the purpose of payment of liability claims not otherwise covered by insurance. The escrow may be reduced upon written approval by PNRRA. Any withdrawal from escrow by DL for payment of claims shall be matched by an equal deposit by DL within thirty (30) days thereafter;	

- (N) DL shall be permitted only by written PNRRA approval, with such approval not to be unreasonably withheld, to remove, replace, or relay elements of the track or structures on the lines of railroad in the interest of cost and/or operating efficiency, provided that a continuous and useful, rail transportation facility is maintained as related to Part E of this Section. Improvements made by DL to the track, right of way, structures or related facilities shall become the property of the PNRRA;
- (O) DL shall allow officers of PNRRA the opportunity to inspect any portion of the lines of railroad including permission to ride any and all trains operated by DL, and DL will provide hirail inspection services to the PNRRA upon three days notice to DL;
- (P) DL will perform marketing and sales programs for the lines of railroad in order to increase the number of carloads per year on the lines of railroad and the DL will employ a marketing/sales employee, to be selected in consultation with PNRRA, to perform marketing and sales activities on lines of railroad owned by PNRRA in order to increase carloads and encourage economic and industrial development on lines of railroad owned by PNRRA;
- (Q) DL will provide security on the leased premises. If, and where outside contract security is deemed to be necessary PNRRA will split the costs associated with same with the DL on a 50%/50% basis of mutually agreed to costs. Security named in this paragraph will only be on property leased by the DL,
- (R) On the 27th day of August of each year this agreement is in effect, DL shall provide PNRRA with the following information: (1) a complete list of the names and addresses of all employees of DL, (2) a complete list of the names and addresses of all officers and directors of DL, and (3) a complete list of the names and addresses of all stockholders in DL and the total number of shares owned by each stockholder.
- (S) DL hereby covenants and agrees to provide one hundred twenty (120) days written notice of any proposed change in stock ownership which would change control of the DL. Upon receipt of such notice to PNRRA, PNRRA shall have the right to terminate the operating contract with DL upon thirty (30) days written notice to DL.

7. Restrictions.

DL further agrees that it will not:

- (A) Occupy the lines of railroad in any way or for any purpose unrelated to the operation of the lines of railroad;
- (B) Assign, mortgage, pledge or encumber the lines of railroad, or any part thereof or assign its obligation under this Agreement without prior written consent of PNRRA; or

- (C) Handle hazardous, toxic or noxious commodities without requisite insurance and written approval of the PNRRA which will not be reasonably withheld.

8. Relationship between DL and PNRRA.

The DL and PNRRA shall meet at least monthly to review and discuss revenue, costs, operations, marketing, maintenance and service concerns. DL shall inform the PNRRA and affected shippers of any major action or event related to the lines of railroad which may affect rail freight service to those shippers as soon as such action or event is known to DL. The PNRRA will inform DL of any problems or concerns related to the rail freight service. DL is a private corporation and is an independent contractor and is not an agent of the PNRRA. Whenever a written approval is required by DL from PNRRA, the signature of the Board Chairman and President will suffice to validate such written approval. The PNRRA will conduct an annual performance audit of marketing, operating, maintenance and other functions performed by the DL. The maintenance performance of DL will in part be analyzed by fulfillment of annual maintenance expenditures in the minimum of twenty-five (25%) percent of rail freight operating revenues on a rolling 3 year average, starting with calendar year 2010 with a minimum of 3,000 ties installed per year, the addition of stone ballast and raise, line and surfacing of at least 15 miles of railroad per year and the installation of a minimum of 1,500 track feet of new or good quality relay rail per year on the lines of railroad.

9. Rents from Non-Operating Properties.

PNRRA shall receive any and all rents arising from any leases of non-operating properties presently outstanding or to be negotiated on any portion of the lines of railroad and any renewals thereof, including, but not limited to, rents, license fees, and other revenues paid by any party occupying a portion of the lines of railroad including but not limited to rental sand fees for pipe and wire crossings, utility crossings and occupations, signboards, platform locations, driveways, storage facilities, side tracks, parking lots, water rights, land rents, building rents and water tank rents, among other things. PNRRA shall collect such monies as they become due. PNRRA will determine which properties are classified as non-operating.

10. Public Crossings.

During the term of this Agreement or any renewal thereof, DL shall assume and be responsible for any obligation flowing to PNRRA as a result of obligations formerly assigned to D&H or Conrail or any other predecessor railroad, or which may be imposed under the provisions of Pennsylvania Public Utility laws and any orders issued thereunder with respect to crossings of the lines of railroad by public highways, bridges or utilities.

11. Condemnation of the Lines of Railroad.

If the lines of railroad, or any portion thereof, are condemned or taken by any competent authority for public use, the award for payment of damages resulting therefrom, or any amount paid in settlement thereof, shall be paid to and retained by PNRRA, except as hereinafter provided. If the entire lines of railroad are taken or such substantial part thereof as shall materially impair or interfere with DL's proper use and enjoyment thereof, this Agreement shall automatically terminate as of the date of the taking. If only such portion of the lines of railroad is taken as shall not materially impair or interfere with the DL's proper use and enjoyment thereof, this Agreement shall continue in full force and effect, and all proceeds of the condemnation award or payment shall first be used by PNRRA as may be required for the restoration of the lines of railroad in such manner as will enable the continuing operation thereof by the DL as hereinabove provided.

12. Default.

If during the term of this Agreement there shall occur any of the following events ("Events of Default"):

- (A) DL shall fail to pay any payments or fees provided for in this Agreement at such times as they are due and payable;
- (B) DL shall fail to perform any of its other obligations hereunder, and shall not cure such default within thirty (30) days after written notice thereof shall have been given to DL by PNRRA or if such default cannot be cured within such period, shall not commence to cure within such period and thereafter diligently proceed to complete the same;
- (C) DL makes an assignment for the benefit of the creditors or files a voluntary petition under any bankruptcy or insolvency law or is adjudicated as bankrupt or insolvent in voluntary or involuntary proceedings or seeks reorganization or receivership, or similar relief, or
- (D) A proceeding against DL seeking reorganization or receivership or similar relief is not dismissed or vacated or stayed on appeal within sixty (60) days;
- (E) DL fails to maintain or operate the lines of railroad in accordance with the terms of this Agreement or fails to conduct its operation in a manner consistent with generally accepted railroad safety practices;
- (F) Any conduct of its operations in such a manner so as to commit intentional waste of the lines of railroad;
- (G) Fails to discharge any claims or liens for materials and services for with DL becomes obligated while providing freight rail transportation service under this

Agreement, then and at any time thereafter while such Event of Default is continuing and has not been cured by DL within thirty (30) days after notification by the PNRRA of such event, the PNRRA may in addition to its other remedies at law or equity or as provided for in this Agreement, by notice to DL specifying the Event of Default, terminate this Agreement.

All remedies given to PNRRA by this Agreement and all rights and remedies given to it by law or equity shall be cumulative and concurrent. No termination of this Agreement or recovery of the lines of railroad shall deprive PNRRA or any of its remedies or actions against DL for tent and all other sums due at the time of termination of this Agreement, nor shall any action for operating fees, breach of covenant or resort to any other remedies for recovery of operating fees be deemed or construed a waiver of the right to obtain possession of the lines of railroad.

13. Failure of Cure Default.

If DL shall fail to perform any of its obligations hereunder and shall fail to cure any default upon the giving of written notice and upon the time period specified in this Agreement or if DL shall not commence to comply within such period and thereafter complete with due diligence, PNRRA shall have the right, but not the obligation and in addition to all other remedies it may have hereunder, upon twenty-four hours written notice to DL to undertake the performance of such obligations and obtain reimbursement from DL thereof.

14. Financial Settlement on Termination and Termination Costs.

In any case of termination, each party shall bear its own expenses of termination.

15. Renegotiation.

Either party shall have the right to request renegotiation of this Agreement upon ninety (90) days' written notice to the other party. When notice of such request is served upon the other party, it shall specify the changes requested. Upon failure to reach agreement, either party may request arbitration pursuant to Section 22 or terminate the Agreement. During any period of negotiation, all existing terms shall remain in force. Any changes agreed upon will be retroactive to ninety (90) days from the date of this Notice for Renegotiation.

16. Waiver.

Any waiver by either party under this Agreement of any breach by the other party shall not effect similar rights subsequently arising nor operate as a waiver of subsequent breaches of the same or similar kinds nor as a waiver of the clause or condition under which said right arose or said breach occurred.

17. Notice.

Notice provided for herein shall be sufficient if sent by certified mail, postage prepaid, as follows:

To the PNRRA at:
Pennsylvania Northeast Regional Railroad Authority
280 Cliff Street
Scranton, PA 18503
ATTN: President

To the DL at:
"the" Delaware-Lackawanna Railroad Co., Inc.
280 Cliff Street
Scranton, PA 18503
ATTN: General Superintendent

And

Genesee Valley Transportation Company, Inc.
1 Mill Street, Suite 101
Batavia, NY 14020-3141
ATTN: President

or such other address as either party may, from time to time designate to the other in writing.

18. Regulatory Agency.

- (A) This Agreement is subject to the orders, rules and regulations of appropriate regulatory authorities having jurisdiction over DL.
- (B) If any portion of this Agreement is determined to be unduly burdensome by such authority, the parties shall make such modifications as may be necessary or reasonable.

19. Access to Records.

- (A) DL agrees to maintain and make available to PNRRA monthly carload and interchange records and reports and such other records and reports necessary to permit PNRRA to fully verify statements of traffic, revenue, and expenditures furnished by DL on a monthly basis.
- (B) PNRRA shall have full access to these records and reports during normal business hours upon 48 hours written notice, duly given to DL.

- (C) DL will deliver to PNRRA a certified public audit of its financial reports to be performed by a certified public auditing firm no later than June 30th for the preceding year ending December 31. DL will also deliver to PNRRA quarterly non certified financial statements. All records, reports and summaries shall be held in confidence by PNRRA and shall not be disclosed to any other party to extent allowed by law.

20. Force Majeure.

Neither party hereto shall be held responsible or liable, either directly or indirectly, or be deemed in default or breach of this Agreement for any loss, damage, injury, delay, failure, or inability to meet all or any portion of its commitments hereunder caused by or arising from any cause which is unavoidable or beyond its reasonable control, including without limitation, war, hostilities, invasion, insurrection, riot, the order of any competent civil or military government, explosion, fire, strikes, lockouts, AAR service orders, actions of other carriers which materially effect DL's operations, labor disputes, perils of water including floods, ice, breakdowns, Acts of God including storms or other adverse weather conditions, derailments, wrecks or other causes of a similar or dissimilar nature which wholly or partially prevent the Parties or either of them from carrying out the terms of this Agreement; provided that the Party experiencing such force majeure or partial force majeure promptly gives to the other Party written notice that the disabling effect of such force majeure shall be eliminated as soon as and to the extent reasonably possible and that each Party shall have the right to determine and settle any strike, lockout and labor dispute in which that Party may be involved in its sole discretion. In the event that one Party's performance is suspended in whole or in part by force majeure, the other Party's obligation to perform hereunder shall be suspended or commensurately reduced for the duration of the force majeure and for such additional reasonable period as may be required because of the existence of the force majeure. In the event that one Party's performance hereunder is suspended by force majeure and cannot be resumed within a reasonable period of time, either Party shall have the right to terminate this Agreement.

21. Labor Conditions.

If during the term of this Agreement or subsequent renewal thereof, any labor protective conditions shall be imposed as a result of an ICC or STB order or pursuant to the Railway Labor Act, DL agrees to fully indemnify and hold harmless PNRRA from the costs of said protective conditions.

22. Arbitration.

Any claim or controversy arising out of or relating to this Agreement, shall be settled by arbitration in Scranton, Pennsylvania, in accordance with the Rules of the

American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof.

23. Successors and Assigns.

This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. However, this provision shall not be construed to confer on DL any right or authority to assign all or any part of this Agreement without the PNRRA's prior consent.

24. Entire Agreement.

This Agreement contains the entire understanding of the parties with respect to its subject matter. No oral statement or prior written matter shall have any force or effect. The parties hereby acknowledge that they are not relying on any representations or agreements other than those contained in this Agreement.

25. Severability.

If any term, covenant, condition or provision (or part thereof) of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision (or remainder thereof) to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, or condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

26. Anti-Discrimination.

DL and PNRRA will execute and comply with the non-discrimination clause attached hereto and incorporated herein as Appendix B.

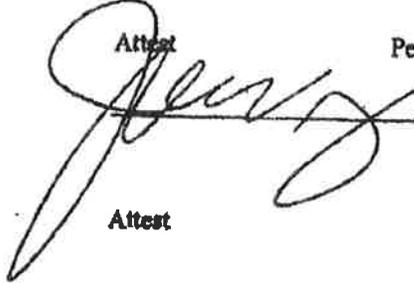
27. Applicable Law.

This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

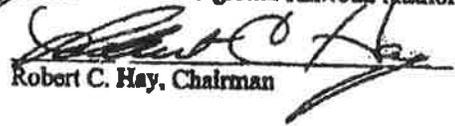
28. Extension of Terms and Conditions.

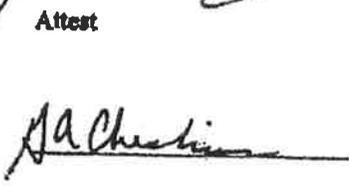
PNRRA shall have the option to extend the terms and conditions of this agreement to any other PNRRA owned or acquired lines of railroad which connect to these lines of railroad in order to avoid in whole or in part the duplication of existing activities performed by DL serving substantially the same purposes.

IN WITNESS WHEREOF, the parties hereto have caused this Operating Agreement to be executed by themselves or by their respective duly authorized officers as of the day and year first above written.

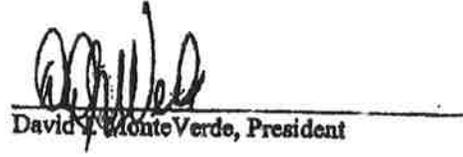
Attest


Pennsylvania Northeast Regional Railroad Authority


Robert C. Hay, Chairman

Attest


"the" Delaware-Lackawanna Railroad Co., Inc.


David V. Monte Verde, President

APPENDIX A

DESCRIPTION OF SCRANTON TO CARBONDALE RAIL LINE
(formerly owned by Lackawanna County Railroad Authority)

PARCEL 1. A tract, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in Fell Township, the City of Carbondale, Carbondale Township, the Boroughs of Mayfield, Jermyrn, Archbald, Jessup, Olyphant, and Dickson City, and the City of Scranton, County of Lackawanna, and Commonwealth of Pennsylvania, containing a line of railroad known as a portion of the former mainline of Delaware and Hudson Railway Company and extending between a line at right angles to the westerly line of this Parcel 1 and located at Mile Post A-174.59 in Fell Township on the north and two lines located at Mile Post A-191.42 in the City of Scranton on the south with the westerly of said two lines being located on the north line of Marion Street and the easterly of said two lines being located in the center line also being and northerly line of the Vine Street Branch, all being more particularly described in Exhibit D&H, attached hereto and made a part hereof.

PARCEL 2. A tract, piece parcel of land, wit the buildings and improvements thereon, situate, lying, and being in the City of Scranton, County of Lackawanna, and Commonwealth of Pennsylvania, containing a line of railroad known as the Vine Street Branch of Delaware and Hudson Railway Company and extending between a line located at Mile Post A-191.42 in the center line of Marion Street on the north and a line which crosses the center line of Track at Mile Post A-192.63 as said line is shown on Exhibit VINE, Sheet 1 on the south, and being more particularly described in said Exhibit VINE, attached hereto and made a part hereof.

PARCEL 3. A tract, piece of parcel of land, with the buildings and improvements thereon, situate, lying, and being in the City of Scranton and the Borough of Moosic, county of Lackawanna, and Commonwealth of Pennsylvania, containing a line of railroad known as a portion of the former main line of the Delaware and Hudson Railway Company and extending between a line located at Mile Post A-191.42, said line being the north line of Marion Street, in the City of Scranton on the north and a line at right angles to the center line track in the borough of Moosic, on the south and being more particularly described in Exhibit NC&I, attached hereto and made a part hereof.

TOGETHER WITH all of the right, title and interest of the GRANTOR in and to the continuous lines of railroad trackage and facilities extending between the respective mile posts set forth respectively in the descriptions of Parcels 1, 2, and 3 above and in and to various rail, highway, and bridge crossings of the lines of railroad trackage and facilities as shown on aid Exhibits D&H, VINE, AND NC&I.

EXCEPTING AND RESERVING to Delaware and Hudson Railway Company (D&H), it successors and assigns (1) all coal fill and coal finds located in, upon and under the above described Parcels 1, 2, and 3, together with the right to enter and come upon said premises themselves and/or with their contractors and/or subcontractors, with equipment,

for the purpose of removing said coal fill and coal fines, so long as such entry does not unreasonably interfere with the use of said premises by the successors in title of the said Delaware and Hudson Railway Company and so long as such entry and removal are preceded by reasonable notice to and consulting with the Chief Engineer of Lackawanna County Railroad Authority (LCRA) with respect to any portion of the said Parcels 1, 2, and 3 to which title is uninterruptedly held by LCRA from the date of transfer of title thereto from D&H to LCRA to the date of such entry and (2) a longitudinal easement, with crossings where necessary above, below and on the surface of the above described Parcels 1, 2 and 3 to which title shall have uninterruptedly remained in LCRA, as aforesaid.

ALSO EXCEPTING AND RESERVING to Delaware and Hudson Railway Company, its successors and assigns, those areas in Parcel 1 shown by diagonal shading on Exhibit D&E.

**DESCRIPTION OF SCRANTON TO MT. POCONO AND BRADY LEAD AND
CHAMBERLAIN LEAD LINES OF RAILROAD
(formerly owned by Lackawanna County Railroad Authority)**

APPROXIMATELY 0.2 of a mile of the former Conrail Scranton Branch from Mile Post 134.0 at the D&H Railway right of way line to Mile Post 133.8 at Cliff Street; and 0.7 of a mile of the Brady Industrial Lead from Mile Post 0.0 at Cedar Avenue to Mile Post 0.0 being the north abutment of the bridge over Roaring Brook; and 0.6 of a mile of the Brady Industrial Lead between Cliff Street and Cedar Avenue; and 0.5 of a mile of the Chamberlain Lead between Cliff Street and South Washington Avenue, all in the City of Scranton, Lackawanna County, Pennsylvania.

AS FURTHER DESCRIBED AS all that certain line of Railroad, being a portion of Consolidated Rail Corporation's Scranton Branch identified as line Code 6201 in the records of the United States Railway Association and also being a portion of the former Erie Lackawanna Railway Company's line of Railroad known as the Erie Lackawanna Main Line (Line Code 6201) and further identified in the Recorder's Office of Lackawanna County, Pennsylvania in Book 954 at Page 346; and beginning at about Railroad Mile Post 120.0 in the Township of Covington, County of Lackawanna and Commonwealth of Pennsylvania; and extending thence in a general northwesterly direction and passing through Covington township, the Borough of Moscow, Roaring Brook township, Borough of Elmhurst, Roaring Brook Township, Borough of Dunmore and into the City of Scranton to a point of ENDING on the east line of Cliff Street, in the said City of Scranton, County of Lackawanna and Commonwealth of Pennsylvania, opposite Railroad Mile Post 133.8, all as indicated by "PS" on Consolidated Rail Corporations' Case Plan No. 67880, sheets 1 through 14(c), which sheets are the same sheets attached to the August 13, 1985 Deed between Consolidated Rail Corporation and the Grantor, and recorded in Deed Book 1145, pages 528 through 545 in the office aforesaid, and;

AS FURTHER DESCRIBED AS all that certain portion of right of way and the buildings and improvements, thereon erected, of railroad of Consolidated Rail Corporation (formerly Erie Lackawanna Railway Company) known as the Scranton Branch and identified as Line Code 6201 in the records of the United States Railway Administration, situate in the Townships of Coolbaugh, Pocono and Tobyhanna, County of Monroe, Pennsylvania; and further identified in the Monroe County, Pennsylvania Recorder's Office in Deed Book Volume 902 at Page 144, and also situated in the Township of Lehigh, County of Wayne; and further identified in the Wayne County, Pennsylvania Recorder's Office in Deed Book 351 at Page 688; and also situated in the Townships of Clifton and Covington, County of Lackawanna; and further identified in the Lackawanna County, Pennsylvania Recorder's Office in Deed Book 954 at Page 346; and beginning at Railroad Milepost 101 in said Township of Coolbaugh, Monroe County, Pennsylvania and extending thence in a general northwesterly direction through Wayne county, Pennsylvania to the ENDING at Mile Post 120 in said Township of Covington, Lackawanna County, Pennsylvania, all as indicated as "PS" on Grantors Case Plan No. 68388, sheets 1 through 22 and;

AS FURTHER DESCRIBED AS all that certain property of the Grantor, located at Mt. Pocono, with the improvements thereon, being adjacent to Grantor's former line of railroad known as the Soranton Branch and identified as Line Code 6201 in the Recorder's Office of Monroe County in Deed Book Volume 902 at Page 144, also formerly known as the Mt. Pocono Automobile Unloading Terminal, situate partly in the Townships of Pocono, Tobyhanna and Coolbaugh, County of Monroe and Commonwealth of Pennsylvania, all as indicated "PS" on Grantor's Case Plan No. 70139, dated September 4, 1991, being all that property at said location which lies northwest of said Soranton Branch and southeast of the westerly edge of the access road located within said property.

DESCRIPTION OF SCRANTON BRANCH, LINE CODE 6201
M.P. 84.6 TO M.P. 101
MONROE COUNTY, PENNSYLVANIA
(formerly owned by Monroe County Railroad Authority)

ALL THAT CERTAIN property of the Grantor, being a portion of the former line of railroad known as the Erie Lackawanna Main line (a.k.a. Scranton Branch), and identified as Line Code 6201 in the Recorder's Office of Monroe County, Pennsylvania in Volume 902 at page 144; being further described as follows:

BEGINNING at approximately Railroad M.P. 84.6, in the Township of Stroud, as indicated on sheet 1 of 17 of Exhibit "B"; thence extending in a general northeasterly direction, passing through the Townships of Pocono, Paradise and Barrett; thence turning in the Township of Barrett and extending in a general southwesterly direction, re-entering and passing through the Township of Paradise to Railroad Mile Post 101.0 at the end of Grantor's ownership in the Township of Coolbaugh the place of ENDING as indicated on sheet 17 of 17 of Exhibit "B".

BEING a part or portion of the same premises which Thomas F. Patton and Ralph S. Tyler, Jr., as Trustees of the Property of Erie Lackawanna Railway Company, Debtor, by Conveyance Document No. EL-CRC-RP-62, dated March 31, 1976 and recorded on October 16, 1978, in the Recorder's Office of Monroe County, Pennsylvania, Deed Book Volume 902 at page 139&co.; granted and conveyed unto Consolidated Rail Corporation.

**DESCRIPTION OF LINE OF RAILROAD PURCHASED FROM
NORFOLK SOUTHERN
PORTION OF STROUDSBURG SECONDARY**

BEING all the land, right of way and track beginning at Milepost 84.6, approximately 550 feet south of the Route 191 highway bridge overpass, over the land and mainline tracks of the Pennsylvania Northeast Regional Railroad Authority in Stroud Township, Pennsylvania, to the north side of Courtland Street grade crossing in the Borough of East Stroudsburg, Pennsylvania, a distance of approximately 2 miles as more fully described by the copies of valuation maps shown as Exhibits A1 through A13 attached hereto and made a part hereof.

Also being a portion of the land, right of way and track conveyed by Consolidated Rail Corporation to Pennsylvania Lines LLC, predecessor of Norfolk Southern Railway Company, on May 19, 1999 in the Township of Stroud and the Borough of East Stroudsburg in Monroe County, Pennsylvania by deed recorded at Record Book 2082, page 6765 et seq. Pennsylvania Lines LLC was merged in to Norfolk Southern Railway Company on August 27, 2004.

**DESCRIPTION OF LINE OF RAILROAD LEASED FROM
NORFOLK SOUTHERN**

That portion of the Stroudsburg Secondary Track extending between M.P. 2.0, approximately old M.P. 74.4 (Slate) and M.P. 10.2, approximately old M.P. 82.6, located in Monroe and Northampton Counties.

**DESCRIPTION OF LAUREL LINE MAINLINE AND MINOOKA INDUSTRIAL
TRACK**

ALL that line of railroad beginning at the north side of Montage Road crossing in the Borough of Moosic and proceeding in a general northerly direction to the City of Scranton, all in Lackawanna County, Pennsylvania and comprising approximately 4.81 miles of rail line, also including the Minooka Industrial Track which is comprised of an approximately 2.1 mile spur track extending from a junction at Little Virginia on the Laurel Line main line to the end of track including the switches to service Compression Polymers in the Borough of Moosic.

APPENDIX B

COMMONWEALTH NONDISCRIMINATION CLAUSE

During the term of this contract, Contractor agrees as follows:

1. Contractor shall not discriminate against any employee, applicant for employment, independent contractor, or any other persons because of race, color, religious creed, ancestry, national origin, age or sex. Contractor shall take affirmative action to insure that applications are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places, available to employees, agents, applicants for employment, and other person, a notice to be provided by the contracting agency setting forth the provision of this nondiscrimination clause.
2. Contractor shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applications will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age or sex.
3. Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment of this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.
4. It shall be no defense to a finding of noncompliance with this nondiscrimination clause that Contractor had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.
5. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under this nondiscrimination clause, Contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.

6. Contractor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's noncompliance with the nondiscrimination clause of this contract or with any such laws, this contract may be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible.

**IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY
CIVIL DIVISION - LAW**

READING, BLUE MOUNTAIN & NORTHERN RAILROAD	:	No. 13 - 06796
	:	
Plaintiff	:	
v.	:	
	:	
PENNSYLVANIA NORTHEAST REGIONAL RAIL AUTHORITY and BOARD OF THE PENNSYLVANIA NORTHEAST REGIONAL RAIL AUTHORITY,	:	
	:	
Defendants	:	

CERTIFICATE OF SERVICE

I, FREDERICK J. FANELLI, Esquire, hereby certify that a true and correct copy of the foregoing Second Amended Complaint emailed upon the following parties:

Jack M. Stover, Esquire
Buchanan Ingersoll & Rooney, PC
409 North Second Street, Ste 500
Harrisburg, PA 17101



FREDERICK J. FANELLI, ESQUIRE

Dated: 12-17-14

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35956

**READING, BLUE MOUNTAIN NORTHERN RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER**

**JOINT REPLY OF PENNSYLVANIA NORTHEAST REGIONAL RAILROAD
AUTHORITY AND SEDA-COG JOINT RAIL AUTHORITY**

Exhibit E

READING, BLUE MOUNTAIN &
NORTHERN RAILROAD,

Plaintiff,

v.

PENNSYLVANIA NORTHEAST
REGIONAL RAIL AUTHORITY and
BOARD OF THE PENNSYLVANIA
NORTHEAST REGIONAL
RAIL AUTHORITY,

Defendants

: IN THE COURT OF COMMON PLEAS
: OF LACKAWANNA COUNTY,
: PENNSYLVANIA

: NO. 13-06796

**DEFENDANTS' PRE-HEARING BRIEF IN OPPOSITION TO PLAINTIFF'S
EMERGENCY APPLICATION FOR PRELIMINARY INJUNCTION**

BUCHANAN INGERSOLL & ROONEY PC

Jack M. Stover
PA I.D. #18051
Kyle J. Meyer
PA I.D. #307743
409 North Second Street, Suite 500
Harrisburg, PA 17101
717-237-4800

*Attorneys for Defendants Pennsylvania Northeast
Regional Railroad Authority and the Board of the
Pennsylvania Northeast Regional Railroad
Authority*

DATE: May 18, 2015

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I. INTRODUCTION

Defendants Pennsylvania Northeast Regional Railroad Authority (“PNRRA”) and the Board of the Pennsylvania Northeast Regional Railroad Authority (“Board”) (collectively “Defendants”), by and through their undersigned counsel, submit this Brief in opposition to the Emergency Application for Preliminary Injunction (“Application”) presented to the Court by Plaintiff Reading, Blue Mountain & Northern Railroad (“RBM&N”) on May 13, 2015.

PNRRA is a municipal authority located in Scranton, Pennsylvania, which owns rail lines in Lackawanna, Monroe, Wayne and Northampton Counties for the purposes of maintaining federal common carrier rail transportation for business and industrial development along the rail lines. PNRRA and its predecessors came into being primarily as a result of private railroads abandoning and/or placing rail lines out of service. By stark contrast, RBM&N is a private for-profit railroad company which claims to be the third largest private railroad company in Pennsylvania. RBM&N has filed this lawsuit in a continuing effort to acquire control of PNRRA’s rail lines to add to its for-profit business operations. Despite PNRRA’s open and public existence since 1982, RBM&N only now seeks to challenge PNRRA’s control and ownership of its rail lines because PNRRA’s business and industrial development efforts over the past three decades have developed the rail lines into a valuable asset.

The current Application filed by RBM&N is intended to disrupt the ongoing contractual relationship (the “Operating Agreement”) between PNRRA and its operator, the Delaware-Lackawanna Railroad Company, Inc. (the “DL”). RBM&N, however, cannot meet the standards required under Pennsylvania law for the type of relief it seeks in its Application for a multitude of reasons, including:

- RBM&N does not have a clear right to relief under 53 Pa. C.S. § 5614(a) because, *inter alia*: the Operating Agreement is not a contract for “construction, reconstruction, repair or work”; PNRRA is not expending public funds under the

Operating Agreement; the Operating Agreement cannot be awarded to the “lowest responsible bidder”; the Operating Agreement is exempt from Section 5614(a) as a professional service contract; and RBM&N lacks standing to assert any claim under that section;

- RBM&N does not have a clear right to relief under 53 Pa. C.S. § 5607(b)(2) because, *inter alia*: Section 5607(b)(2) does not apply to PNRRA or the Operating Agreement; PNRRA’s existence and activities predate the RBM&N; PNRRA does not serve substantially the same purpose as RBM&N; RBM&N’s claim is barred by the statute of limitations; RBM&N’s claim is barred by the doctrine of laches; and PNRRA is exempt from Section 5607(b)(2) under a specific exemption.
- This Court lacks subject matter jurisdiction to grant the Application because RBM&N has failed to join an indispensable party, the DL, whose rights would be directly impaired by RBM&N’s requested injunctive relief;
- This Court lacks subject matter jurisdiction to grant the Application because RBM&N’s claims based on two state statutes and its requested relief, as applied to PNRRA, are expressly preempted by federal law;
- RBM&N cannot demonstrate immediate and irreparable harm;
- Greater injury will result from granting RBM&N’s requested injunctive relief than from denying it;
- RBM&N’s requested injunctive relief adversely affects the public interest; and
- RBM&N’s requested injunctive relief alters the status quo.

Accordingly, the Application must be denied.

II. COUNTER-STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

A. BACKGROUND

PNRRA was formed on April 12, 1982. At the time of its formation, PNRRA was named the Monroe County Railroad Authority (“MCRA”). The project for which PNRRA was formed was acquiring, holding, constructing, improving, maintaining, operating, owning and leasing, either as a lessor or lessee, rights-of-way, trackage, sidings and other related rail transport facilities...for the purpose of acquiring and preserving [such] rail transport facilities within the

Commonwealth of Pennsylvania.” (2d Am. Compl. at ¶ 10; *see also* Appl. at ¶ 6.) In 2006, the Lackawanna County Railroad Authority (“LCRA”), which had been formed in 1984, joined into the MCRA and the MCRA changed its name to the Pennsylvania Northeast Regional Railroad Authority or “PNRRA.” Thus, PNRRA as a corporate entity is the continuing corporate body of both the MCRA and the LCRA.

PNRRA, acting as MCRA and LCRA, acquired existing railroad lines beginning in 1985. By 1994, PNRRA had acquired rail lines running northeast from Scranton to Carbondale (the “Scranton/Carbondale rail line”) and southeast from Scranton to Analomink (the “Scranton/Analomink rail line”). As PNRRA acquired the rail lines in the period 1985-1994, deeds for the rail lines were publicly recorded, the rail lines were marked on publicly available Pennsylvania railroad maps prepared by the Pennsylvania Department of Transportation and, obviously, the rail lines were visible.

After PNRRA acquired the rail lines described above, RBM&N acquired rail lines in 1996 running roughly parallel to PNRRA’s Scranton/Analomink rail line. RBM&N’s rail lines were located west of the PNRRA Scranton/Analomink rail line and ran from Lehighton to the Scranton area in roughly a north/south direction.

PNRRA has entered into a series of operating agreements with the DL since 1993. On August 27, 2010, PNRRA entered into the current Operating Agreement with the DL. Under the terms of the Operating Agreement, the DL was granted access to and exclusive use of the PNRRA rail lines to establish, operate, and maintain freight rail service. (*See* Ex. A. to Appl. at 1-2, § 1.) RBM&N itself has repeatedly asserted throughout this case that the Operating Agreement is a “lease.” (*See, e.g.*, RBM&N Brief in Opp’n to POs to Am. Compl. at 1, 12, 15, 24-26, 31, 43-44; RBM&N Reply to New Matter at ¶¶ 65-70, 77-78; RBM&N Opp’n to POs to

2d Am. Compl. at ¶ 4.) Under the terms of the Operating Agreement, the DL pays PNRRA various fees and payments in exchange for the use of the rail lines. (*See id.* at 2-3, § 3.) The current and continuing term of the Operating Agreement was for five years, expiring on August 26, 2015. (*Id.* at 2, § 2.) Under Section 2 of the Operating Agreement, PNRRA has the option to extend the current Operating Agreement for another five-year term. (*Id.*) In order to preserve its contractual right to exercise the option, PNRRA must give “ninety (90) days written notice to the DL prior to August 27, 2015.” (*Id.*) Thus, PNRRA’s option to extend the current Operating Agreement expires if formal notice is not provided on or before May 28, 2015.

In November 2013, the Board of PNRRA voted unanimously to exercise PNRRA’s option in the current Operating Agreement with the DL to extend the term of the Operating Agreement for an additional five years. This action by PNRRA and its Board did not involve a new Operating Agreement; it simply represented the exercise of an option held by PNRRA under the Operating Agreement entered in 2010. Because of the pendency of this litigation, PNRRA has not yet given the notice to the DL to exercise the option to extend the term of the Operating Agreement.

PNRRA and the DL are subject to the jurisdiction of the Federal government’s Surface Transportation Board under the provisions of the Interstate Commerce Commission Termination Act (“ICCTA”), 49 U.S.C. §§ 10101 *et seq.* Reflecting that jurisdiction, PNRRA and its predecessors received STB approval to acquire PNRRA’s rail lines and the DL received STB approval to operate PNRRA’s rail lines.

B. PROCEDURAL HISTORY

RBM&N filed an initial Complaint in this matter and served the Complaint on or about December 23, 2013. After Preliminary Objections were filed, RBM&N filed a First Amended Complaint on January 28, 2014. Timely Preliminary Objections to the Amended Complaint

were filed, briefed and argued before Judge Saxton, a visiting judge for this Court. On April 9, 2014, Judge Saxton overruled the Preliminary Objections without any opinion. On April 29, 2014, PNRRA and its Board as Defendants filed a timely Answer with New Matter to the Amended Complaint.

Thereafter, the parties commenced discovery. RBM&N has objected to virtually all of the discovery requested by PNRRA and its Board, has produced only three pages of documents to date, and RBM&N's counsel has notified counsel for Defendants that RBM&N will not produce for deposition Andrew Muller, RBM&N's Chairman and CEO. Discovery disputes have been submitted to the Court's Discovery Master but have not been resolved as of the date of this filing. By contrast, PNRRA has produced more than 1,600 pages of documents and has submitted to lengthy depositions of its President, its only other employee, and the majority of the members of its Board. Thus, PNRRA and its Board have been denied any meaningful discovery in this case.

On August 18, 2014, RBM&N filed a Motion Requesting Leave of Court to File a Second Amended Complaint. Although opposed by Defendants, this Court granted RBM&N's Motion to Amend on December 8, 2014, and RBM&N filed its Second Amended Complaint on December 17, 2014. The Second Amended Complaint contains two counts, both styled as declaratory judgment actions.

In Count I of the Second Amended Complaint, which was not included in the First Amended Complaint, RBM&N asserts that PNRRA violated Section 5607(b)(2) of the Municipality Authorities Act ("MAA"), 53 Pa. C.S. § 5607(b)(2), by "engaging in an enterprise that provides freight rail service in direct competition with privately owned rail freight operators such as the RBM&N, and to the exclusion of the same." (2d Am. Compl., ¶ 77.) While

ostensibly styled as a claim for declaratory relief, RBM&N in Count I requests the Court to order that PNRRA and its Board divest PNRRA's "rail freight business," and/or sell "the rights to freight traffic on its lines," and "declare PNRRA's Operating Agreement with the DL void." (*Id.* at p. 15 ("WHEREFORE").) In short, Count I of the Second Amended Complaint asks the Court for relief which could have the effect of removing PNRRA from the rail freight industry, PNRRA's primary purpose.

RBM&N asserts in Count II of the Second Amended Complaint that the Operating Agreement must be competitively bid pursuant to Section 5614(a) of the MAA, 53 Pa. C.S. § 5614(a), as supplemented by 62 Pa. C.S. §§ 3901 *et seq.* RBM&N seeks in Count II an Order from the Court declaring that:

[PNRRA] and its Board must follow the public notice and competitive bidding requirements of 53 Pa. C.S. § 5614(a) and 62 Pa. C.S. §§ 3901 *et seq.* for contracts for the operation of its rail lines, and that any operating agreements entered into by PNRRA and its Board without having been subjected to the competitive bidding requirements of [these statutes] are deemed null and void.

(2d Am. Compl. at 16; *see also id.* at ¶ 86 ("Any contract entered into by PNRRA for the operation of its rail lines without having been subjected to a public competitive bidding process...must be declared by this Court to be null and void.")) Thus, RBM&N's Count II seeks mandatory relief in the form of asking the Court to "void" the existing Operating Agreement.¹

¹ The First Amended Complaint filed by RBM&N contained counts for "injunction" (Count I), "declaratory action" (Count II), and "mandamus" (Count III). All three counts were exclusively based on a claim that the exercise of PNRRA's option under the Operating Agreement to extend the term of that contract for an additional five years was required to be submitted to competitive bidding under Section 5614(a) of the MAA, as supplemented by the provisions of 62 Pa. C.S. §§ 3901 *et seq.* Thus, RBM&N in the Second Amended Complaint tried to combine these counts in Count II while attempting to style count as a request for declaratory relief.

PNRRA and its Board filed timely Preliminary Objections to Count I of the Second Amended Complaint on December 31, 2014, asserting (1) federal preemption under the ICCTA; (2) failure to state a cause on which relief can be granted by attempting to use a declaratory judgment action to secure affirmative or mandamus relief; and (3) lack of subject matter jurisdiction by the Court because of the failure to join the DL as an indispensable party. These Preliminary Objections, which were argued before Judge Braxton on February 27, 2015, remain pending with the Court.

On May 8, 2015, RBM&N's counsel provided notice to Defendants' counsel of RBM&N's intent to present the Application to the Court on May 13, 2015. RBM&N presented its Application to the Court on that date. RBM&N's Application requests that this Court schedule an immediate hearing on the Application, and further requests that this Court enter an Order enjoining PNRRA and its Board from "signing any extension of its current operating agreement until the merits of this controversy are decided," and mandating that "[t]he current operating agreement shall remain in place until that time." (*See Proposed Orders to Appl.; see also Appl. at ¶ 23.*)

Thus, RBM&N seeks in its Application to enjoin PNRRA and its Board from exercising PNRRA's option to extend the Operating Agreement, whereas the ultimate relief RBM&N seeks in this lawsuit is as follows: (1) for purported violation of Section 5607(b)(2) of the MAA, an Order declaring void any Operating Agreement for the use of PNRRA's rail lines and requiring PNRRA to either divest itself of its rail lines or sell the rights to freight traffic on its rail lines; and (2) in the alternative, for purported violation of Section 5614(a) of the MAA, an Order declaring void any Operating Agreement entered into by PNRRA without competitive bidding

and requiring PNRRA to subject the Operating Agreement to the competitive bidding provisions of Section 5614(a).

PNRRA and its Board now submit this Pre-Hearing Brief in Opposition to the Application.

III. STATEMENT OF QUESTION INVOLVED

1. WHETHER RBM&N IS ENTITLED TO THE PRELIMINARY INJUNCTIVE RELIEF REQUESTED IN THE APPLICATION?

Suggested Answer: No

IV. ARGUMENT

A. LEGAL STANDARD FOR PRELIMINARY INJUNCTIVE RELIEF

A preliminary injunction should only be issued where the party seeking the injunction is able to prove all of the following elements:

- (1) that the party's right to relief is clear;
- (2) that the relief is necessary to prevent immediate and irreparable harm which cannot be compensated by damages;
- (3) that greater injury will occur from refusing the injunction than from granting it;
- (4) the preliminary injunction will not adversely affect the public interest;
- (5) that the injunction will restore the parties to the *status quo* as it existed immediately before the alleged wrongful conduct; and
- (6) that the alleged wrong is manifest, and the injunction is reasonably suited to abate it.

See, e.g., Warehime v. Warehime, 860 A.2d 41, 46-47 (Pa. 2004); *Central Dauphin Educ. Ass'n v. Central Dauphin Sch. Dist.*, 792 A.2d 691, 697 (Pa. Cmwlth. 2001). The burden of proving all of the above elements is on RBM&N as Plaintiff; failure to establish any one of the elements requires that the preliminary injunction be denied. *Warehime* 860 A.2d at 47; *Summit Towne*

Center, Inc. v. Shoe Show of Rocky Mount, Inc., 828 A.2d 995, 1001 (Pa. 2003); *Patriot-News Co. v. Empowerment Team of Harrisburg CH. Dist.*, 763 A.2d 539, 546 (Pa. Cmwlth. 2000).

B. RBM&N COMPLETELY LACKS THE REQUISITE CLEAR RIGHT TO RELIEF FOR ANY FORM OF INJUNCTIVE RELIEF

To establish a clear right to relief, the movant must demonstrate that it is likely to prevail on the merits. *Summit*, 828 A.2d at 1001; *Oliviero v. Diven*, 908 A.2d 933, 937 (Pa. Cmwlth. 2006). The movant must, at a minimum, establish a *prima facie* right to relief. *Shenango Valley Osteopathic Hospital v. Dep't of Health*, 451 A.2d 434, 440 (Pa. 1982). For the reasons set forth below, RBM&N does not have a clear right to relief under Count I or Count II of the Second Amended Complaint.

1. RBM&N'S SECOND AMENDED COMPLAINT IS BASED SOLELY ON TWO PENNSYLVANIA STATUTORY PROVISIONS, SECTIONS 5614(A) AND 5607(B)(2) OF THE MAA

In its Second Amended Complaint, RBM&N premises the entirety of its claims on two Pennsylvania statutory provisions, Sections 5614(a) and 5607(b)(2) of the MAA. RBM&N's interpretation of and reliance on both statutory provisions is completely erroneous. For that reason, RBM&N has no clear right to relief to support its Application.

2. RBM&N DOES NOT HAVE A CLEAR RIGHT TO RELIEF UNDER SECTION 5614(A) OF THE MAA, AS SUPPLEMENTED BY 62 PA. C.S. §§ 3901 ET SEQ.

RBM&N attempts to assert in Count II of the Second Amended Complaint that the Operating Agreement must be competitively bid pursuant to Section 5614(a) of the MAA, as supplemented by 62 Pa. C.S. §§ 3901 *et seq.*² RBM&N's superficial claim under Section

² As discussed in greater detail below, the provisions of 62 Pa. C.S. §§ 3901 *et seq.* apply only where competitive bidding is *otherwise required* by some other statute and, thus, are not applicable here because, *inter alia*, competitive bidding is not required under Section 5614(a) of the MAA.

5614(a) of the MAA does not withstand scrutiny for a multitude of reasons and, thus, RBM&N does not have a clear right to relief under Count II of the Second Amended Complaint.

Section 5614(a) of the MAA provides, in pertinent part:

(a)(1) Except as set forth in paragraph (2), all *construction, reconstruction, repair or work of any nature made by an authority* if the entire cost, value or amount, including labor and materials, exceeds a base amount of \$18,500, subject to adjustment under subsection (c.1), shall be done only under contract to be entered into by the authority with the *lowest responsible bidder* upon proper terms after public notice asking for competitive bids as provided in this section.

53 Pa. C.S. § 5614(a)(1) (emphasis added.) Thus, in order for Section 5614(a) of the MAA to apply here, RBM&N must establish that the Operating Agreement meets *all* of the following statutory requirements:

- (1) That the Operating Agreement is for “construction, reconstruction, repair or work of any nature”;
- (2) That such construction, reconstruction, repair or work is “made by an authority”; and
- (3) That the Operating Agreement is to be awarded to the “lowest responsible bidder.”

RBM&N fails on all three bases.

a) **RBM&N’s Own Characterization of the Operating Agreement as a “Lease” Demonstrates that the Operating Agreement is Not a Contract for “Construction, Reconstruction, Repair or Work of Any Nature”**

Demonstrative of how wrong RBM&N’s positions are is the fact that RBM&N has explicitly conceded that the Operating Agreement is not a contract for “construction, reconstruction, repair, or work of any nature” by RBM&N’s own repeatedly stated recognition of the Operating Agreement as a “lease.” (*See, e.g.*, RBM&N Brief in Opp’n to POs to Am. Compl. at 1, 12, 15, 24-26, 31, 43-44; RBM&N Reply to New Matter at ¶¶ 65-70, 77-78;

RBM&N Opp'n to POs to 2d Am. Compl. at ¶ 4.)³ Leases clearly do not fall within the phrase “construction, reconstruction, repair or work of any nature,” and likewise, the word “lease” does not appear anywhere in Section 5614(a). Because the word “lease” was not included in Section 5614(a), it cannot now be artificially read into that provision. The express use of the term “lease” in other provisions of the MAA demonstrates that the General Assembly would have included that term in Section 5614(a) had it intended to require competitive bidding for leases. *See* 53 Pa. C.S. §§ 5607(a) (authorizing authorities to be organized for the purposes of “owning or leasing, either in the capacity of lessor or lessee....”) and 5607(d)(4) (authorizing authorities “[t]o sell, lease as lessor, transfer and dispose of any property or interest therein in any time acquired by it.”). Significantly, Pennsylvania courts have held that these provisions of the MAA authorize a municipal authority to convey an interest in its property, including a lease interest, *without limitation*, including without any requirement of competitive bidding. *See Carbo v. Redstone Township*, 960 A.2d 899, 904 (Pa. Cmwlth. 2008); *Moon Township Municipal Authority v. County of Allegheny*, 596 A.2d 1181, 1184 (Pa. Cmwlth. 1991), *aff'd*, 671 A.2d 662 (Pa. 1996). Accordingly, Section 5614(a) has no application to the Operating Agreement.

Obviously recognizing that Section 5614(a), on its face, does not apply to leases, RBM&N has attempted previously to assert that two cases involving leases, *Price v. Philadelphia Parking Authority*, 221 A.2d 138 (Pa. 1966), and *White v. Township of Upper St.*

³ Significantly, RBM&N asserted that the Operating Agreement is a “lease” in successfully defeating Defendants’ Preliminary Objections to the Amended Complaint. (*See* RBM&N Brief in Opp’n to POs to Am. Compl. at 1, 12, 15, 24-26, 31, 43-44.) As a result, RBM&N is now judicially estopped from changing its position with regard to the Operating Agreement.³ *See In re Estate of Bullotta*, 838 A.2d 594, 596 (Pa. 2003) (explaining that a party is judicially estopped from “assuming a position inconsistent with his or her assertion in a previous action, if the party is successful in maintaining that action.”); *Morris v. South Coventry Twp. Bd. of Supervisors*, 898 A.2d 1213, 1218 (Pa. Cmwlth. 2006) (“The purpose of judicial estoppel is to uphold the integrity of the courts by preventing litigants from ‘playing fast and loose’ with the judicial system by changing positions to suit their legal needs.”).

Clair, 7909 A.2d 188 (Pa. Cmwlth, 2002), stand for the proposition that leases such as the Operating Agreement should be subjected to competitive bidding as contracts for “construction, reconstruction, repair or work of any kind.” Not only do *Price* and *White* fail to support the positions taken by RBM&N, these cases actually support PNRRA’s position with respect to the Operating Agreement.

In *Price*, the Supreme Court interpreted the former version of the Parking Authority Law, 53 P.S. §§ 341-356, to determine whether leases entered into by the Philadelphia Parking Authority (“Authority”) required competitive bidding. There, the Authority entered into two leases in connection with separate development projects: the “Academy House Project” and the “Rittenhouse Square Project.” For both projects, the Authority agreed, *inter alia*, to lease the air-space above its parking garages for the construction of high-rise buildings. In holding that competitive bidding was required for the Authority’s lease of its air-space, the Court relied exclusively on a *specific provision of the Parking Authority Law (not the MAA)* that expressly required competitive bidding for the Authority’s lease of “non-parking commercial space.” *Price*, 221 A.2d at 146. Specifically, Section 5 of the Parking Authority Law provided, in pertinent part: “The Authority shall have the power to lease portions of the street level or other floors of the parking facilities for commercial use and for any use in addition to parking Such leases shall be granted on a fair competitive basis.” 53 P.S. § 345(a). Unlike the Parking Authority Law in *Price*, the MAA does not contain a provision expressly requiring competitive bidding for leases. The absence of such a provision in the MAA is telling, considering that the General Assembly expressly authorized municipal authorities to lease property. *See* 53 Pa. C.S. §§ 5607(a) and (d)(4). Thus, *Price* was based on another statute, not the MAA, and has no application here.

Further, in *Price*, the lease entered into by the Authority in connection with the “Academy House Project” also provided for the lease of the parking garage on which the proposed development was to be constructed “for operation as an Authority parking facility.” *Price*, 221 A.2d at 141 (emphasis added). Thus, in addition to leasing the air-space above the parking garage, the lessee also leased the parking garage itself, which the lessee was to *operate* on behalf of the Authority. Unlike the lease of the air-space, the Court held that competitive bidding was *not required* for the lease of the Authority’s facilities for the operation of a parking garage. *Id.* at 145 (“[W]e are in agreement with the chancellor’s conclusion that the Authority was free to negotiate the lease of the proposed garage facility...”). In so holding, the Court noted the distinction between the lease of non-parking commercial space (*i.e.*, the air-space) and the lease of garage facilities for parking purposes, explaining: “[T]he enabling act [(the Parking Authority Law, 53 P.S. § 345(a))] distinguishes between the leasing of facilities for operation as an Authority parking garage and the leasing of commercial space for incidental, revenue producing purposes, explicitly mandating that the latter commercial leases be granted only on the basis of competitive bidding.” *Id.* at 146.

Although the MAA does not contain a lease provision similar to that at issue in *Price*, the Court’s holding in *Price* that competitive bidding was not required for the Authority’s lease of its facilities for the operation of a parking garage is especially significant in the present context because the Parking Authority Law also contained a provision requiring competitive bidding for contracts for “construction, reconstruction, repairs or work of any nature.” *See* 53 P.S. § 351(a).⁴

⁴ Section 11(a) of the Parking Authority Law provided, in pertinent part:

(a) All construction, reconstruction, repairs or work of any nature made by any Authority, where the entire cost value or amount of such construction, reconstruction, repairs or work including labor and materials, shall exceed ten thousand dollars

Thus, despite the presence in the Parking Authority Law of a competitive bidding provision substantially similar to Section 5614(a) of the MAA, the Court in *Price* did *not* hold that the Authority's lease of its garage "for operation as an Authority parking facility," which imposed incidental maintenance and repair duties on the lessee, was subject to competitive bidding as a contract for "construction, reconstruction, repair or work of any nature."⁵ The Court clearly concluded that because the term "lease" was not included in the competitive bidding provision, that provision (which included "construction, reconstruction, repairs or work of any nature") did not require competitive bidding. Accordingly, *Price* does not support any contention that a "lease" such as the Operating Agreement must be competitively bid under Section 5614(a) of the MAA, and, in fact, directly supports the opposite conclusion that the Operating Agreement is not a contract for "construction, reconstruction, repair or work of any nature."

RBM&N's reliance on *White* is similarly completely misplaced. In that case, the Commonwealth Court considered whether the Township of Upper St. Clair ("Township") was required to use competitive bidding to lease Township property for the installation, maintenance and operation of a communications tower. In exchange for the lease, the lessee agreed to pay an annual rent and "to provide the Township with a public communications system for 911, police, fire and emergency medical services." *White*, 799 A.2d at 191. Residents filed an action challenging the lease, arguing, *inter alia*, that the Township was required to use competitive bidding to acquire emergency communications service. In holding that competitive bidding was

(\$10,000), . . . shall be done only under contract or contracts to be entered into by the Authority with the lowest responsible bidder.

53 P.S. § 351(a).

⁵ The Court in *Price* cited 53 P.S. § 351 and expressly recognized that section of the Parking Authority Law required competitive bidding only for "construction and repair contracts." *Price*, 221 A.2d at 146, n.25.

required, the court relied on a *specific provision of the Township's Home Rule Charter* requiring competitive bidding for *all contracts*, which provided: "Except as otherwise provided in this Chapter, no contract for supplies, material, labor, franchise, or other valuable consideration, *to be furnished to or by the township*, shall be authorized on behalf of the township, except with the *best responsible bidder after competitive bidding.*" *Id.* at 203 (emphasis in original) (quoting 302 Pa. Code § 25.10-1002). Unlike the Home Rule Charter which controlled the Court's direction in *White*, the MAA does *not* contain a provision requiring competitive bidding for *all contracts*. Instead, competitive bidding under Section 5614(a) of the MAA is limited to contracts for "construction, reconstruction, repair or work of any nature made by an authority," wording that does not include "leases." 53 Pa. C.S. § 5614(a).

RBM&N's citations to *Price* and *White* simply do not support the proposition that RBM&N's own description of the Operating Agreement as a lease requires competitive bidding under Section 5614(a) of the MAA. The MAA does not contain a specific provision requiring competitive bidding for leases like the Parking Authority Law in *Price*, and even the provision at issue in *Price* did not require competitive bidding for leases pertaining to the Authority's primary purpose, the operation of a parking facility. Further, the court in *Price* did not find that the lease of the Authority's facilities for the operation by the lessee of an Authority parking garage was required to be bid as a contract for "construction, reconstruction, repairs or work of any nature," despite the presence of such a provision in the Parking Authority Law, 53 P.S. § 351(a). The MAA also does not contain a provision requiring competitive bidding for *all contracts* like the

Home Rule Charter in *White*, but rather is limited to contracts for “construction, reconstruction, repair or work of any nature,” which language does not encompass leases.⁶

b) **The Operating Agreement is Not a Contract for “Construction, Reconstruction, Repair or Work of Any Nature”**

Additionally, even if the Operating Agreement was not a lease, the provisions of Section 5614(a) have no application because the Operating Agreement is not a contract for “construction, reconstruction, repair or work of any nature.” Instead, a plain reading of the contractual provisions readily demonstrates that the Operating Agreement is a contract for the exclusive use of rail lines and provision of common carrier rail freight services.

The Operating Agreement in its “Whereas” clauses describes certain rail lines and indicates that the DL will “*operate and provide rail freight service on these lines of railroad for the benefit of shippers and communities.*” (Ex. A to Appl. at 1 (emphasis added).) Further, in the first substantive provision at Section 1, the Operating Agreement is clear that it is a contract pursuant to which the DL has exclusive rights to rail assets to provide rail services. (*See id.* at 1-2, § 1.) The rail services nature of the Operating Agreement also permeates most of the other provisions of the Operating Agreement. (*See id.* at 2-5, §§ 3-6.) These provisions clearly establish that the Operating Agreement on its face is for the provision of federal common carrier rail freight services on rail lines owned by PNRRA, not “construction, reconstruction, repair or work of any nature.”

Despite the clear purpose of the Operating Agreement, RBM&N contends that the Operating Agreement is nevertheless a contract for “work” under Section 5614(a) because it

⁶ As discussed below, *White* also demonstrates that Section 5614(a) of the MAA does not apply to the Operating Agreement because PNRRA is not expending funds, *i.e.*, the complained of activities are not “made by an authority,” and because the Operating Agreement cannot be awarded to the “lowest responsible bidder.”

provides, *inter alia*, for the DL to maintain PNRRA-owned rail lines, equipment, structures and related facilities. (See 2d Am. Compl. at ¶¶ 53, 55.) An examination of the Operating Agreement, however, demonstrates that such maintenance activities are put in place expressly to ensure the continuous and uninterrupted provision of responsive rail service on PNRRA's rail lines. (See Ex. A to Appl. at 3-7, §§ 4-6, 8.) Thus, the maintenance provisions of the Operating Agreement are an incidental, yet necessary, function of the provision of responsive common carrier rail service on PNRRA's rail lines, which is the primary and fundamental purpose of the Operating Agreement.

Contrary to RBM&N's unsustainable position, the inclusion of such ancillary and incidental activities does not somehow transform the entirety of the Operating Agreement into a contract for "construction, reconstruction, repair or work" requiring competitive bidding under Section 5614(a), especially under RBM&N's broad definition of "work," which, as asserted by RBM&N, would include activities such as maintaining working capital and an escrowed reserve, performing marketing services, providing security, and performing inspections. (See 2d Am. Compl., ¶ 53.) Under RBM&N's interpretation of Section 5614(a), any contract, regardless of its nature or primary purpose, that includes even the slightest modicum of activity that could arguably be considered to constitute "work," in the broadest sense of the word, would require competitive bidding. Recognizing that such an interpretation would eviscerate express statutory limitations on competitive bidding, Pennsylvania courts have repeatedly rejected an expansive interpretation of the words "construction, reconstruction, repair or work of any nature" when considering similar competitive bidding requirements. See *Statewide Building Maintenance, Inc. v. Pennsylvania Convention Center Authority*, 635 A.2d 691 (Pa. Cmwlth. 1993); *Niebauer v. Centre County Solid Waste Authority*, 429 A.2d 1210 (Pa. Cmwlth. 1981).

Following the reasoning of the Commonwealth Court in these cases, the plain language of Section 5614(a) of the MAA clearly indicates the Legislature's intent to mandate competitive bidding *only* for contracts integrally related to specific construction projects, and not for contracts such as the Operating Agreement, which is primarily for the provision of rail service and which anticipates routine maintenance and repair as an ancillary function of the DL's provision of responsive rail freight service using PNRRA's rail lines and facilities.

That Section 5614(a) of the MAA requires competitive bidding only for contracts integrally related to specific construction projects is further supported by the language of subsection (a)(3) of the statute, which requires contractors to secure a construction performance bond as a prerequisite to execution of the contract. Specifically, subsection (a)(3) provides:

No contract shall be entered into for construction or improvement or repair of a project or portion thereof unless the contractor gives an *undertaking with a sufficient surety* approved by the authority and in an amount fixed by the authority for the faithful performance of the contract.

53 Pa. C.S. § 5614(a)(3) (emphasis added). The Operating Agreement is clearly not the type of contract to which construction performance bonds apply, as it does not provide for the DL's performance of a specific construction project. Accordingly, competitive bidding is not required by Section 5614(a) because the Operating Agreement is not a contract for "construction, reconstruction, repair or work of any nature."

c) "Made By an Authority"

Not only is the Operating Agreement not for "construction, reconstruction, repair or work," the Operating Agreement does not provide for actions "made by an authority" as required by Section 5614(a) for its competitive bidding requirements to apply. Pennsylvania's appellate courts have held that this requirement of the statute is based on the fundamental premise of

Section 5614(a) that requires public bidding *only* in circumstances where expenditures of public dollars are involved.

As a review of the Operating Agreement indicates, the provision of common carrier rail service and the maintenance which is ancillary to the provision of that rail service, is undertaken by the DL *at the DL's expense*. (See Ex. A to 2d Am. Compl. at 4, §§ 6(D)-(E)). In other words, RBM&N's attempt to transform the nature of the Operating Agreement from a contract for the provision of rail service to one contemplating construction, reconstruction, repair or work based on maintenance requirements is a futile undertaking because the maintenance requirements are *undertaken by the DL, at its own expense, not PNRRA*. In this regard, these activities are *not* "made by an authority" and consequently cannot justify application of Section 5614(a).

As discussed in greater detail below, the Commonwealth Court in *Gaab v. Borough of Sewickley*, 692 A.2d 643 (Pa. Cmwlth. 1997), considered a competitive bidding provision substantially similar to Section 5614(a) of the MAA, and specifically held that the lease at issue did not require competitive bidding because it did not involve the expenditure of public funds, explaining:

A plain reading of this section reflects that it applies *only to contracts or purchases that involve an expenditure of public funds* by the borough to acquire services or property. It is clear that the Legislature intended to require bidding *only where a borough expends funds* in excess of \$10,000 for a contract or purchase. In the present situation there was no expenditure of public funds for contracts or purchases.

Gaab, 692 A.2d at 645 (emphasis added). PNRRA is *not* expending public funds under the Operating Agreement for maintenance activities, nor is PNRRA performing such maintenance activities using public funds. Rather, the DL is performing the maintenance activities provided under the Operating Agreement, and doing so at its own expense.

The same concept is underscored by the decisions of both the Commonwealth Court and the Pennsylvania Supreme Court in *Willman v. Childrens' Hospital of Pittsburgh*, 459 A.2d 855 (Pa. Cmwlth. 1983) (“*Willman I*”) and 479 A.2d 452 (Pa. 1984) (“*Willman II*”). There, an authority helped finance a construction project at Children’s Hospital of Pittsburgh through the sale of tax-fee revenue bonds. The principal issue before the Commonwealth Court and the Supreme Court was whether the authority’s financing of the project constituted “construction, reconstruction, repairs or work of any nature made by [an] authority” under the competitive bidding provision of the former version of the MAA. *Willman I*, 459 A.2d at 857; *Willman II*, 479 A.2d at 455. Concluding that competitive bidding was *not* required, the Commonwealth Court held that “the legislature’s use of ‘*made by any Authority*’ and ‘*to be entered into by the Authority*’ in [53 P.S. §312] requires public bidding *only where the Authority actually undertakes or manages the construction of a project or is a party to a construction contract,*” and not where an authority merely provides financing. *Willman I*, 459 A.2d at 858 (emphasis added). On further appeal in *Willman II*, the Supreme Court affirmed. The Supreme Court accepted the Commonwealth Court’s interpretation of the MAA, but also formulated an additional basis for its affirmance, explaining:

The contract in question, indeed the entire project, does not involve the use or risk of public funds or public credit. None of the costs of construction is borne by the taxpayers. . . . The obvious intention of a public competitive bidding requirement is to secure public contracts for the use of the government or a governmental body at the lowest cost to the taxpayers. In this case, we are dealing with a private undertaking at no cost to the taxpayers. The reasons for open competitive bids do not exist. . . . The Children’s project is a private project, backed by private property and private funds and is to be managed and constructed by private parties. The Authority’s role is limited to providing a financing vehicle to assist the private parties in the construction of a new hospital facility. Under such circumstances, the public competitive bidding requirement of [the MAA] does not apply.

Willman II, 479 A.2d at 456 (emphasis added). Thus, the Supreme Court held that the MAA's competitive bidding requirement was not implicated because the construction project at issue did not call for the expenditure of public funds by the authority.

The Operating Agreement's maintenance requirements are not "made by an authority" and do not involve expenditures of public funds for the maintenance activities of the DL because they are undertaken by the DL at the DL's own expense. As a result, even if the DL's maintenance activities under the Operating Agreement could be isolated from the Operating Agreement's primary purpose, and even if such activities constitute "construction, reconstruction, repair or work," Section 5614(a) of the MAA does not apply because such activities are not "made by an authority."

d) "Lowest Responsible Bidder"

Section 5614(a) of the MAA also does not apply because of that section's express requirement that a contract must be awarded to the "lowest responsible bidder," which is unworkable and, frankly, nonsensical, in the context of the Operating Agreement. As the text of the Operating Agreement indicates, Section 3 provides for operating fees and other payments which the DL pays to PNRRA. (See Ex. A to Appl. at 2-3, § 3.) These operating fees and other payments are the primary revenues of PNRRA. In addition, the maintenance that the DL performs which is ancillary to its provision of freight rail service is undertaken by the DL at the DL's expense. (See *id.* at 4, §§ 6(D)-(E).) Thus, PNRRA is not *expending* funds, let alone public funds, under the Operating Agreement to pay for maintenance for which the DL is responsible. If the Operating Agreement is subjected to the competitive bidding requirements of Section 5614(a), PNRRA would be required to award the Operating Agreement to the party offering the *least*. This result simply makes no sense in the context of the Operating Agreement. To the contrary, the desired result would be to award the Operating Agreement to the party submitting

the *highest* or *best* proposal. The inability to award the Operating Agreement to the “lowest responsible bidder” further demonstrates the inapplicability of Section 5614(a) of the MAA.

The concept that a municipal authority must expend funds in order for Section 5614(a) to apply is very much connected to the express requirement in Section 5614(a) that the contract be awarded to the “lowest responsible bidder.” The use of “lowest responsible bidder” instead of “best responsible bidder” or “highest responsible bidder” is not simply a distinction without a difference, and the General Assembly’s choice of language in drafting the MAA cannot be ignored. Pennsylvania’s appellate courts have repeatedly recognized the significance of this distinction and how it relates to the expenditure of public funds.

Analyzing a contract and competitive bidding provision substantially similar to the present matter, the Supreme Court in *Lasday v. Allegheny County*, 453 A.2d 949, 952 (Pa. Cmwlth. 1982), held that Allegheny County (the “County”) was not statutorily obligated under the Second Class County Code, 16 P.S. § 5001(a), to utilize competitive bidding when leasing concession space at an airport, despite the fact that the competitive bidding provision at issue applied to “[a]ll contracts or purchases.”⁷ Noting that the County was receiving, not expending, funds when leasing property and focusing on the statute’s use of “lowest responsible bidder,” the Commonwealth Court concluded:

As the Legislature’s use of the phrase “lowest responsible bidder” makes clear, section 2001(a) is addressed to those situations where, unlike here, the County is spending public funds and thus should be attempting to secure for the taxpayers the least costly contract. Here, *as lessor, the County is not spending money, but receiving*

⁷ The competitive bidding provision of the Second Class County Code provided, in pertinent part: “*All contracts or purchases* in excess of two thousand five hundred dollars (\$2,500)...shall not be made except with and from the *lowest responsible bidder* meeting specifications.” 16 P.S. § 5001(a) (emphasis added). Again, Section 5614(a) of the MAA does not apply to all contracts but is limited solely to contracts for “construction, reconstruction, repair and work.” 53 Pa. C.S. § 5614(a).

it. The “lowest responsible bidder” requirement is thus manifestly inappropriate in this case and, if applied, would lead to the absurd result of requiring the County to award its concession contracts to the concessionaire who promised to pay the County the least rent and the smallest concession fee.

Id. (emphasis added). In so holding, the Supreme Court in *Lasday* specifically distinguished its decision in *Bevilacqua v. Clark*, 103 A.2d 661, 663 (Pa. 1954), which involved a competitive bidding provision in the Philadelphia Home Rule Charter requiring award of concession contracts to the “highest responsible bidder.”

The significance of whether a government entity is expending funds and the General Assembly’s use of “lowest responsible bidder,” as opposed to “best responsible bidder” or “highest responsible bidder,” in determining whether a competitive bidding provision applies is further demonstrated by the Commonwealth Court’s decisions in *White* (cited by RBM&N and discussed above) and *Gaab*. *Gaab* involved a lease substantially similar to that found in *White*, under which the Borough of Sewickley (“Borough”) leased Borough property to the same lessee in *White* for the construction of a communications tower, and in exchange, the lessee agreed to pay an annual rent and provide the Borough a public communications system. *See Gaab*, 692 A.2d at 644-45; *White*, 799 A.2d at 190-91. The lessee also agreed to provide routine maintenance and electrical services for the Borough’s communication equipment. Like *White*, the residents in *Gaab* challenged entry into the lease without use of competitive bidding. Despite these virtually identical fact patterns, the Commonwealth Court in *Gaab* held that competitive bidding was not required whereas the Commonwealth Court in *White* held that competitive bidding was required. *See Gaab*, 692 A.2d at 645; *White*, 799 A.2d at 203-04.

The critical distinction between *Gaab* and *White* was the language of the competitive provisions at issue. The Borough Code in *Gaab* provided:

All contracts or purchases in excess of ten thousand dollars (\$10,000), except those hereinafter mentioned, shall not be made except with and from the *lowest responsible bidder*. . . . The amount of the contract *shall in all cases* . . . be the entire amount *which the borough pays* to the successful bidder.

Gaab, 692 A.2d at 645 (first emphasis added) (quoting 53 P.S. § 46402(a)). By contrast, the Home Rule Charter in *White* provided:

Except as otherwise provided in this Chapter, no contract for supplies, material, labor, franchise, or other valuable consideration, *to be furnished to or by the township*, shall be authorized on behalf of the township, except with the *best responsible bidder after competitive bidding*.

White, 799 A.2d at 203 (emphasis in original) (quoting 302 Pa. Code § 25.10-1002). Thus, the Borough Code in *Gaab* contained the language “lowest responsible bidder” whereas the Home Rule Charter in *White* utilized “best responsible bidder.”

Unlike *White*, the court in *Gaab* held that the lease did *not* require competitive bidding, explaining:

A plain reading of this section reflects that it applies only to contracts or purchases that involve an expenditure of public funds by the borough to acquire services or property. It is clear that the legislature intended to require bidding only where a borough expends funds in excess of \$10,000 for a contract or purchase. In the present situation *there was no expenditure of public funds for contracts or purchases*.

Moreover, we agree with the trial court that *application of the bidding requirements of Section 1402(a) to the present matter would be nonsensical*. Section 1402(a) provides that a contract or purchase “shall be made except with and from the lowest responsible bidder.” *If we found this language applicable to the present situation where the Borough is not expending funds, the Borough would be required to contract with the bidder who offered the least services, goods or rent*.

Gaab, 692 A.2d at 645 (emphasis added). Accordingly, the court found that the Borough’s receipt of the public communications system as part of the lease did *not* constitute an expenditure

of public funds by the Borough and did *not* transform the lease into a contract of purchase. The court further found that requiring competitive bidding would inure to the *detriment* of the Township because of the “lowest responsible bidder” requirement.

Noting the distinction between the Borough Code in *Gaab* and the Home Rule Charter in *White*, the court in *White* distinguished *Gaab* as follows:

Despite the similarities in the respective lease agreements, [*Gaab*] is not controlling of this case. The expenditure of public funds was essential in [*Gaab*] where the [Borough Code] *required contracts to be awarded on the basis of price* [by using “lowest responsible bidder”]. By contrast, the Township’s Home Rule Charter requires that its contracts be awarded to the “best responsible” bidder. *The different standard requires a different result.*

White, 799 A.2d at 204 (emphasis added). Thus, the court in *White* would *not* have required competitive bidding for the lease had the Township’s Home Rule Charter provided for the award of contracts to the “lowest responsible bidder” (the wording used in the MAA) as opposed to the “best responsible bidder.” *Cf. id.* (“[T]he Township was required to find the best responsible bidder to provide emergency communications service. Price alone was not to determine the choice.”).

Also important to the court’s holding in *White* was the fact that, in addition to requiring award to the “best responsible bidder,” the Home Rule Charter’s competitive bidding provision applied to all contracts for “supplies, material, labor...or other valuable consideration, to be furnished *to* or *by* the Township.” *Id.* (emphasis added). Thus, whereas the Borough Code in *Gaab*, in addition to requiring award to the “lowest responsible bidder,” applied only where the Borough *expended funds in excess of \$10,000*, the Home Rule Charter in *White* required competitive bidding wherever the Township *provided or received any valuable consideration* (including, *inter alia*, supplies, material, and labor, and not limited to monetary funds).

Unlike the Home Rule Charter in *White* requiring award of contracts to the “best responsible bidder,” Section 5614(a) the MAA here requires award of contracts to the “lowest responsible bidder.” In addition, whereas the Home Rule Charter in *White* applied to contracts for “valuable consideration” either “furnished *to* or *by* the Township,” Section 5614(a) applies only where an expenditure of public funds is “made by an authority.” Section 5614(a) of the MAA is more akin to the Borough Code in *Gaab* and the Second Class County Code in *Lasday*, which required award to the “lowest responsible bidder.” Like *Gaab* and *Lasday*, PNRRA is not expending funds under the Operating Agreement; instead, PNRRA is being paid by the DL as reflected in Section 3 of the Operating Agreement and the DL is performing the maintenance ancillary to its provision of rail services at the DL’s own expense, not PNRRA’s. Requiring PNRRA to accept the “lowest” bid would effectively mean that PNRRA would be required to contract with to the party offering the *least*, the exact situation the Commonwealth Court called “*nonsensical*” in *Gaab* and the Supreme Court called “*manifestly inappropriate*” and “*absurd*” in *Lasday*. Accordingly, like the lease agreements in *Gaab* and *Lasday*, competitive bidding is not required for the Operating Agreement here.⁸

⁸ The discussions in *Lasday*, *White* and *Gaab* demonstrate how use of the phrase “best responsible bidder” or “highest responsible bidder” allows for competitive bidding where the government is the party receiving payment under a contract. Indeed, where the General Assembly intends to require competitive bidding for contracts involving a government entity’s receipt of payment for the sale or lease of real or personal property, the General Assembly consistently uses the language “highest responsible bidder” and “best responsible bidder,” and not “lowest responsible bidder.” *See, e.g.*, 8 Pa. C.S. § 1201.2; 24 P.S. § 791.6; 36 P.S. § 2341; 40 P.S. § 1600.306; 53 P.S. §§ 15728-15728.1, 15732; 53 Pa. C.S. § 25653; 53 Pa. C.S. §§ 8161, 8165; 53 P.S. § 37402.1; 53 P.S. § 53201.1; 53 P.S. § 56501; 55 P.S. §§ 657, 696.7; 62 P.S. § 2255; 71 P.S. §§ 510-8, 513; 71 P.S. § 1340.302; 71 P.S. § 1519.36; 72 P.S. § 3761-304.

RBM&N has attempted to sidestep this important reason why Section 5614(a) has no application to the Operating Agreement. In PNRRA's New Matter filed in this case, Defendants stated at paragraph 77 as follows:

Application of Section 5614(a) of the MAA to the Operating Agreement would require PNRRA to accept the bid of the prospective rail operator that offered to pay the least for the exclusive right to operate common carrier freight rail service on PNRRA's rail lines.

Obviously unable to respond directly, RBM&N stated the following in its Reply to New Matter:

The averments of paragraph 77 contain conclusions of law to which no response is required. To the extent a response is required, the averments are denied. By way of further answer, the Operating Agreement is a lease by a public authority of income-producing publicly owned assets and which is subject to the competitive bidding requirements of 53 Pa. C. S. § 5614(a). Price v. Philadelphia Parking Authority, 422 Pa. 317, 221 A.2d 138 (1966). *Obviously the Defendants would choose the highest bid of a responsible bidder, making this averment specious.* (Emphasis added.)

(Emphasis added). In other words, while attempting to assert the applicability of Section 5614(a), RBM&N has claimed that the express requirement of Section 5614(a) that contracts "be entered into by the authority with the *lowest responsible bidder*" can simply be ignored.⁹ RBM&N essentially asserts that Section 5614(a) should be applied when it is convenient to apply its terms but ignored when those terms do not fit the argument it tries to make and the end result it seeks.

⁹ RBM&N has also represented to this Court that the Operating Agreement is not "the type of contract that is so unique in its requirements that it defies bid specifications." (RBM&N Brief in Opp'n to POs to Am. Compl. at 15.) While there may exist a scenario under which the Operating Agreement could be competitively bid, such a scenario does not exist within the universe of Section 5614(a)(1) of the MAA, which expressly requires award of the contract to the "lowest responsible bidder."

Simply put, if this Court determines that competitive bidding is required for the Operating Agreement under Section 5614(a) of the MAA, PNRRA and its Board must comply with each and every requirement of that statute, including the mandate to award contracts to the “lowest responsible bidder.” In this respect, this Court cannot grant RBM&N its requested relief without violating the Rules of Statutory Construction. On one hand, applying Section 5614(a) to the Operating Agreement without requiring adherence to the “lowest responsible bidder” requirement would render this statutory language utterly meaningless. *See* 1 Pa. C.S. § 1922(2) (“[T]he General Assembly intends the entire statute to be effective and certain.”); *Walker*, 842 A.2d at 400 (holding that no provision of a statute shall be “reduced to mere surplusage”). On the other hand, requiring adherence to the “lowest responsible bidder” requirement in applying Section 5614(a) to the Operating Agreement will inevitably lead to a result that is absurd and unreasonable, as discussed above. *See* 1 Pa. C.S. § 1922(1) (“[T]he General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.”). Accordingly, the only prudent and correct course of action is to hold that Section 5614(a) of the MAA does not apply to the Operating Agreement.

e) **Professional Service Contract Exemption**

Alternatively, PNRRA is not required to utilize competitive bidding under Section 5614(a) of the MAA because the Operating Agreement is exempt as a professional service contract. Pennsylvania courts have long-recognized an exemption from public bidding requirements for professional service/skill contracts. *See Malloy v. Boyertown Area Sch. Bd.*, 657 A.2d 915 (Pa. 1995); *In re 1983 Audit Report of Belcastro*, 595 A.2d 15 (Pa. 1991); *Hibbs v. Arnsberg*, 119 A. 727 (Pa. 1923); *Stratton v. Allegheny Cnty.*, 91 A. 894 (Pa. 1914); *Comerford v. Factoryville Borough*, 75 Pa. D. & C.2d 542 (Pa. Comm. Pl. 1976); *Eliason v. Sch. Dist. of Springfield Twp.*, 54 Pa. D. & C.2d 52 (Pa. Comm. Pl. 1970). In *Malloy*, the Supreme Court

analyzed its decisions in *Belcastro*, *Hibbs* and *Stratton*, and held that contracts that involve quality as the paramount concern and require a recognized profession and special expertise are exempt from statutory competitive bidding requirements, notwithstanding the absence of an express statutory exemption. *Malloy*, 657 A.2d at 917.

It is beyond dispute that the provision of common carrier rail freight service on a federally regulated rail line requires specialized skill and expertise and that PNRRA, as owner, must have trust and confidence in the entity chosen to operate its rail lines. Further, the *quality* of PNRRA's chosen rail operator is critical to PNRRA achieving maximum value from its rail property and furthering its business and industrial development purpose. Not only must PNRRA protect the value of its primary asset by selecting a rail operator that will operate PNRRA's rail lines and facilities in an acceptable manner, and ensure that its economic and industrial development purpose is served by selecting a rail operator that will provide responsive freight rail service, but PNRRA's revenues under the Operating Agreement are directly tied to the effectiveness of its chosen rail operator's rail freight service. Accordingly, the Operating Agreement is exempt from statutory bidding requirements as a professional service contract.

f) The Provisions of 62 Pa. C.S. §§ 3901 et seq. Do Not Apply

In addition to Section 5614(a) of the MAA, RBM&N asserts in Count II of the Second Amended Complaint that the provisions of 62 Pa. C.S. §§ 3901 *et seq.* apply here. Part II, Chapter 39 of Title 62 of the Pennsylvania Consolidated Statutes, 62 Pa. C.S. §§ 3901 *et seq.* ("Chapter 39"), does not independently mandate competitive bidding; rather, it provides additional contracting requirements that apply only when competitive bidding is *otherwise required* by the Commonwealth Procurement Code ("Procurement Code"), 62 Pa. C.S. §§ 101-2311, or some other statute, such as the MAA. *See F. Zacherl, Inc. v. Flaherty Mechanical Contractors, LLC*, 2013 WL 3984461, *3-*4 (Pa. Cmwlth. 2013). Here, there is no statutory

predicate triggering application of Chapter 39 because, as discussed above, RBM&N cannot establish a claim under Section 5614(a) of the MAA. Chapter 39 also does not apply here by its own terms, in that it relates solely to public works contracts involving “construction” and sets forth requirements for retainage, a construction concept, and prompt payment of subcontractors by contractors, also a construction concept. *See* 62 Pa. C.S. §§ 3901(a), 3902, 3921-22, 3931-39.

g) **RBM&N Lacks Standing to Assert Count II of the Second Amended Complaint**

Standing is a threshold requirement mandating that a litigant demonstrate that the litigant is aggrieved. *Pittsburgh Palisades Park, LLC v. Com.*, 888 A.2d 655, 659 (Pa. 2005). In Pennsylvania, only taxpayers have standing to challenge the award of public contracts under competitive bidding statutes. *C.O. Falter Constr. Corp. v. Towanda Mun. Auth.*, 614 A.2d 328, 330 (Pa. Cmwlth. 1992); *Gen. Crushed Stone Co. v. Caernarvon Twp.*, 605 A.2d 472, 473 (Pa. Cmwlth. 1992); *J.P. Mascaro & Sons, Inc. v. Twp. of Bristol*, 505 A.2d 1071, 1074 (Pa. Cmwlth. 1986). A plaintiff’s status as a prospective contractor or disappointed bidder, absent taxpayer status, is insufficient to give rise to standing, regardless of any alleged economic or competitive injury. *See Falter*, 614 A.2d at 330; *Gen. Crushed Stone*, 605 A.2d at 472-74; *Mascaro*, 505 A.2d at 1072-74; *see also Premier Comp Solutions, LLC v. Dep’t of Gen. Servs.*, 949 A.2d 381, 384-85 (Pa. Cmwlth. 2008); *Durkee Lumber Co. Inc. v. Dep’t of Conserv. & Natural Res.*, 903 A.2d 593, 599 (Pa. Cmwlth. 2006); *Nernberg v. City of Pittsburgh*, 620 A.2d 692, 696 (Pa. Cmwlth. 1993); *Willman II*, 479 A.2d at 456. Thus, RBM&N must establish taxpayer standing in order to maintain its claim under Section 5614(a) of the MAA.

RBM&N cannot establish taxpayer standing here because RBM&N has failed to allege and/or establish that it is a taxpayer within the service area of PNRRA, which consists of Lackawanna, Monroe, Wayne and Northampton Counties. RBM&N has alleged only that it is

(1) a taxpayer of the Commonwealth and (2) a landowner in Lackawanna County. (See 2d Am. Compl., ¶ 2.) Pennsylvania courts have repeatedly held that a plaintiff's status as a taxpayer of the Commonwealth is insufficient to give rise to taxpayer standing, and that a plaintiff must, at a minimum, be a taxpayer in the municipality awarding the contract, or in the case of a municipal authority, a taxpayer in a municipality benefitting from the contract, to have standing. See *Falter*, 614 A.2d at 332; *Gen. Crushed Stone*, 605 A.2d at 474; *Mascaro*, 505 A.2d at 1074 n.3. Likewise, RBM&N's status as a landowner in Lackawanna County, by itself, does not confer standing, because, as discussed above, only taxpayer status can confer RBM&N with standing to challenge Defendants' compliance with what RBM&N alleges are competitive bidding requirements. Any actual competitive bidding statutes are for the benefit of taxpayers, not landowners.¹⁰ See *Durkee Lumber*, 903 A.2d at 599; *Mascaro*, 505 A.2d at 1074.

Moreover, RBM&N cannot establish taxpayer standing here, regardless of its taxpayer status, because there is no taxpayer interest to protect with respect to the Operating Agreement in the first place. As a general premise, PNRRA is not paying the DL to operate its rail lines and facilities; *the DL is paying PNRRA* for the exclusive right to provide common carrier rail service on PNRRA's rail lines. Additionally, all maintenance activities incidental to the DL's provision of freight rail service are performed at *the DL's own expense*. A plaintiff asserting taxpayer status simply cannot be aggrieved by the award of a contract without use of competitive bidding where the contract activities purportedly giving rise to the duty to utilize competitive bidding do not involve the expenditure of tax dollars, let alone tax dollars in which the plaintiff lacks a

¹⁰ Despite its awareness of the standing requirement, RBM&N painstakingly avoids making any allegation in the Second Amended Complaint that it is a taxpayer in PNRRA's service area. The absence of this critical averment is telling considering that RBM&N has had at least three opportunities since Defendants' Preliminary Objections to the Original Complaint to adequately plead standing.

substantial, direct, and immediate interest that is greater than that of the common taxpayer. “A taxpayer whose funds are not at stake has no standing.” *Falter*, 614 A.2d at 330 (quoting *Gen. Crushed Stone*, 605 A.2d at 474); *see also Willman II*, 479 A.2d at 456. Accordingly, RBM&N lacks standing to assert a claim under Section 5614(a) of the MAA.

h) The Denial of Preliminary Objections Does Not Finally Resolve the Issues Raised Therein for the Duration of the Case

Defendants in their Preliminary Objections to the Amended Complaint challenged RBM&N’s claims under Section 5614(a) of the MAA. As a result of Judge Saxton’s denial (without opinion) of those Preliminary Objections, RBM&N has repeatedly attempted to argue that the issues raised therein have been finally decided in RBM&N’s favor. This position has been uniformly rejected by the Pennsylvania courts.

The Pennsylvania appellate courts in a long line of cases have consistently held that a party may take discovery on and later assert the same grounds that were raised in previously denied preliminary objections. In reaching this conclusion, the Pennsylvania courts have specifically rejected the argument that an order overruling preliminary objections finally resolves the issues raised therein for the duration of the case:

Ordinarily, a trial judge should not place himself in the position to overrule a decision by another judge of the same court in the same case. . . . However, the rule is not intended to preclude granting summary judgment following denial of preliminary objections. The failure to present a cause of action upon which relief can be granted may be raised at any time. A motion for summary judgment is based not only upon the averments of the pleading but may also consider discovery depositions, answers to interrogatories, admissions and affidavits. We can discern no reason for prohibiting the consideration and granting of a summary judgment if the record as it then stands warrants such action. This is particularly true when the preliminary objections were denied without an opinion.

Salerno v. Philadelphia Newspapers, Inc., 546 A.2d 1168, 1170 (Pa.Super. 1988) (emphasis in original) (citations and quotations omitted). The *Salerno* case has been consistently cited and reaffirmed on multiple occasions by the Pennsylvania courts: *D’Errico v. DeFazio*, 763 A.2d 424, 435-36 (Pa.Super. 2000); *Abbot v. Anchor Glass Container Corp.*, 758 A.2d 1219, 1222-23 (Pa.Super. 2000); *Domineck v. Mercy Hospital of Pittsburgh*, 673 A.2d 959, 315-16 (Pa.Super. 1996); *Rosenfield v. Pennsylvania Automobile Insurance Plan*, 636 A.2d 1138, 390-91 (Pa.Super. 1994).

Accordingly, contrary to RBM&N’s assertion, Judge Saxton’s denial of Defendants’ Preliminary Objections to the Amended Complaint did not finally decide the issues raised therein in RBM&N’s favor. Moreover, because he did not issue an opinion, it is impossible to know the bases and rationale for Judge Saxton’s denial.

3. RBM&N DOES NOT HAVE A CLEAR RIGHT TO RELIEF UNDER SECTION 5607(B)(2) OF THE MAA

RBM&N attempts to assert in Count I of the Second Amended Complaint that PNRRA and its Board have violated Section 5607(b)(2) of the MAA “by engaging in an enterprise that provides freight rail service in direct competition with privately owned rail freight operators such as the RBM&N, and to the exclusion of the same,” (2d Am. Compl., ¶ 77), and uses that premise to ask this Court for draconian relief in the form of an order requiring “divestiture of its [PNRRA’s] rail freight business, and/or sale of the rights to freight traffic on its lines” as well as a declaration that “PNRRA’s Operating Agreement with the DL [is] void.” (*Id.* at 15.) RBM&N’s effort to destroy PNRRA’s freight rail activities through this claim is simply baseless for multiple reasons.

a) RBM&N's Own Recognition of the Operating Agreement as a "Lease" Demonstrates that Section 5607(b)(2) of the MAA Has No Application

As noted above, RBM&N itself has repeatedly asserted to this Court that the Operating Agreement between PNRRA and the DL is a "lease."¹¹ (See, e.g., RBM&N Brief in Opp'n to POs to Am. Compl. at 1, 12, 15, 24-26, 31, 43-44; RBM&N Reply to New Matter at ¶¶ 65-70, 77-78; RBM&N Opp'n to POs to 2d Am. Compl. at ¶ 4.) Of particular note, RBM&N made specific statements to this effect in its efforts to defeat Defendants' Preliminary Objections to the Amended Complaint, which Judge Saxton denied on April 9, 2014. (RBM&N Brief in Opp'n to POs to Am. Compl. at 1, 12, 15, 24-26, 31, 43-44.) RBM&N is now judicially estopped from changing its position with regard to the Operating Agreement. See, e.g., *In re Estate of Bullotta*, 838 A.2d at 596; *Morris*, 898 A.2d at 1218. In light of RBM&N's characterization of the Operating Agreement as a lease, it is clear that RBM&N cannot establish a claim under Section 5607(b)(2) of the MAA.

Section 5607 of the MAA generally establishes the "purposes and powers" of municipal authorities. Under subsection (a), which defines the "scope of projects permitted," municipal authorities may be organized for the purposes of, *inter alia*, "**acquiring, holding, constructing, financing, improving, maintaining and operating, owning or leasing, either in the capacity of lessor or lessee**, projects of [certain kinds delineated in 18 subsections of Section 5607(a)]." 53 Pa. C.S. § 5607(a) (emphasis added). Thus, Section 5607(a) includes "leasing" as a specifically authorized purpose of a municipal authority. Subsection (b) of Section 5607, in turn, provides certain limitations on *some, but not all*, of the purposes and projects authorized in subsection (a). 53 Pa. C.S. § 5607(b). Significantly, the sole limitation relied upon by RBM&N,

¹¹ The Operating Agreement contains terms such as "leased premises" in Section 6(Q). (See, e.g., Ex. A to Appl. at 6, § 6(Q).)

Section 5607(b)(2), limits the activities of municipal authorities only with regard “**construction, financing, improvement, maintenance, extension or operation.**” 53 Pa. C.S. § 5607(b)(2) (emphasis added). Subsection (b)(2) does not apply its limitation to the express authorization for “leasing” under subsection (a). Thus, while Section 5607(a) expressly authorizes municipal authorities to be organized for the purposes of “leasing,” this term is noticeably absent from the limitation contained in Section 5607(b)(2). The absence of the term “leasing” in Section 5607(b)(2) renders that subsection inapplicable in this case.

The Commonwealth Court in *Dauphin County General Authority vs. Dauphin County Board of Assessments*, 768 A.2d 95 (Pa. Cmwlth. 2001), considered the application of Section 5607(b)(2) in a situation where a municipal authority acquires and then leases property. There, a municipal authority purchased two commercial office buildings in the City of Harrisburg from private land developers, which the authority leased to a tenant. The challenging party argued, *inter alia*, that the authority’s acquisition and lease of the office buildings violated Section 5607(b)(2) of the MAA because the authority “competed with existing enterprises serving substantially the same purposes,” *i.e.*, lessors of commercial office space in Harrisburg. The Commonwealth Court held that Section 5607(b)(2) did not prohibit the authority from acquiring and leasing property, notwithstanding the presence of existing commercial lessors in the area, stating:

Notably absent from the express language of [Section 5607(b)(2)] are the words “acquisition” or “leasing.” Our Supreme Court addressed this absence in *In re Thompson Appeal*, 427 Pa. 1, 233 A.2d 237 (1967). In *Thomson Appeal*, the Court held that “the deliberate omission of the power to acquire and hold property” from the non-compete clause, when the same is provided in the statement of general purpose within the same Section of the Act, *i.e.*, Section [5607(a)], “shows a clear legislative design that the proviso was not to be a restriction upon the authority’s right to condemn.” *Thompson Appeal*, 427 Pa. at 3, 233 A.2d at 239.

Id. at 898. Thus, in holding that Section 5607(b)(2) does not apply to acquisitions and leases of property, the Commonwealth Court specifically noted that the words “acquisition” and “leasing,” which are expressly contained in the general powers granted to municipal authorities under Section 5607(a), are *absent* from Section 5607(b)(2), thus demonstrating the General Assembly’s clear intent to not preclude such activities by municipal authorities, notwithstanding the presence of competing enterprises. *Id.* at 898 (citing *In re Thompson Appeal*, 233 A.2d 96 (Pa. 1967)). In short, Section 5607(b)(2) does not apply to leases. RBM&N’s attempt to apply Section 5607(b)(2) to the Operating Agreement is simply erroneous under RBM&N’s own positions in this case.

Here, PNRRA acquired preexisting rail lines previously owned by private railroads that were either abandoned or no longer in service. As alleged by RBM&N itself in the Second Amended Complaint, PNRRA was created “for the purpose of, among other things, acquiring abandoned and/or out of service rail lines and place those rail lines back into service.” (2d Am. Compl., ¶ 26.) The mechanism used by PNRRA to place the rail lines it acquired back into service is the Operating Agreement, which, as discussed above, RBM&N has specifically recognized as a lease. Because the Supreme Court in *Thompson* and the Commonwealth Court in *Dauphin County* held that Section 5607(b)(2) does not apply to acquisitions and leases of property by municipal authorities, RBM&N cannot establish any claim under Section 5607(b)(2) as set forth in Count I of the Second Amended Complaint.

b) Section 5607(b)(2) of the MAA Has No Application to the Facts in This Case Based on the Plain Wording of that Statutory Section

RBM&N’s claim is additionally based on a gross misreading of Section 5607(b)(2) which ignores the express limitations contained in the statute itself. Even if Section 5607(b)(2) had any application to the Operating Agreement (which it does not for the reasons set forth in the

preceding section of this Brief), Section 5607(b)(2) does not bar a municipal authority from ever competing with private enterprise as the RBM&N asserts. On the contrary, the limitation pertinent to RBM&N's claims provides:

(b)(2) The purpose and intent of this chapter being to benefit the people of the Commonwealth by, among other things, increasing their commerce, health, safety, and prosperity and *not to unnecessarily burden or interfere with existing business by the establishment of competitive enterprises*; none of the powers granted by this chapter shall be exercised in the construction, financing, improvement, maintenance, extension or operation of any project or projects or providing financing for insurance reserves which in whole or in part shall *duplicate or compete with existing enterprises serving substantially the same purposes*. *This limitation shall not apply to the exercise of the powers granted under this section:*

....

(ii) *for industrial development projects* if the authority does not develop industrial projects which will compete with existing industries.

53 Pa. C.S. § 5607(b)(2) (emphasis added).

By its plain terms, Section 5607(b)(2) applies only to situations where a municipal authority undertakes the establishment of a competitive enterprise that *duplicates or competes* with an *existing business* that is *serving substantially the same purpose* as the project the municipal authority seeks to establish. In addition, even this limited bar does not apply if any of six categories of exception is applicable. Accordingly, Section 5607(b)(2) is not applicable where:

- (1) The complaining business or enterprise was not in existence at the time the project at issue was established by the municipal authority;
- (2) The project at issue does not duplicate, compete with, and/or serve substantially the same purpose as the complaining business or enterprise in the manner contemplated by Section 5607(b)(2); or
- (3) An exception applies.

i. RBM&N Was Not an Existing Business When PNRRA Was Formed

The application of Section 5607(b)(2) of the MAA on its face is limited to situations where a municipal authority “unnecessarily burdens or interferes with *existing business* by the *establishment of competitive enterprises.*” 53 Pa. C.S. § 5607(b)(2) (emphasis added). Only in these circumstances does Section 5607(b)(2) apply and then only if a project would “duplicate or compete with *existing enterprises* serving substantially the same purposes.” *Id.* (emphasis added). By speaking in terms of “*establishment,*” “*existing business*” and “*existing enterprises,*” Section 5607(b)(2) is fundamentally clear that its limitation applies *only* when the project of a municipal authority comes into existence *after* an allegedly competitive business or enterprise *has already existed.* Section 5607(b)(2) does *not* apply where a complaining business or enterprise comes into existence *after* the municipal authority’s project was already established. *See Evansburg Water Company v. Perkiomen Township*, 569 A.2d 428, 430 (Pa. Cmwlth. 1990); *Northampton v. Bucks County Water & Sewer Authority*, 508 A.2d 605 (Pa. Cmwlth. 1986). In other words, RBM&N cannot complain under Section 5607(b)(2) of the MAA where PNRRA was first in time.

As of April 12, 1982, PNRRA was established as an enterprise for the public purpose of acquiring and preserving rail transport facilities in Pennsylvania. (*See* Appl. at ¶ 6; *see also* 2d Am. Compl. at ¶ 10.) RBM&N, by contrast, did not even come into existence until 1983 at the earliest, and its activities at that time were not in the same vicinity as PNRRA. As a consequence, at the most fundamental level, RBM&N was not an “existing business” when PNRRA was formed and established with the purpose and project of acquiring and preserving rail transport.

RBM&N's positions are even more erroneous given the chronological development of the rail lines acquired by PNRRA. As a fully developed factual record will indicate, PNRRA acquired its rail lines between Scranton and Analomink between 1985 and 1994. These rail lines run roughly parallel to RBM&N's rail lines between Lehighton and Scranton. But RBM&N admits on its own website that it acquired its parallel rail lines in 1996, years *after* PNRRA acquired its lines and commenced its activities. Thus, even from the perspective of the acquisition of rail lines operated by RBM&N which parallel those of PNRRA, RBM&N's "business" arrived *after* PNRRA acquired the relevant rail lines and commenced activities with respect to those rail lines, and RBM&N cannot show that it or its allegedly competing rail lines were in existence when PNRRA began its activities to which RBM&N now objects.¹² RBM&N simply cannot show that either RBM&N as an entity or its rail lines parallel to those of PNRRA were in existence before those of PNRRA. RBM&N was not an "existing business" for purposes of Section 5607(b)(2) and that subsection has no application for that additional reason.

RBM&N is asking this Court in Count I of its Second Amended Complaint to allow RBM&N to force PNRRA to divest "its rail freight business" or "sell the rights to freight traffic on its lines." (2d Am. Compl. at 15.) RBM&N is essentially asserting that because it came into existence *after* PNRRA and developed rail lines parallel to those of PNRRA *after* PNRRA's rail lines were in existence, that it should now be able to force PNRRA to cease its freight rail activities.

In this regard, RBM&N relies almost exclusively on the case of *Dominion Products and Services v. Pittsburgh Water and Sewer Authority*, 44 A.3d 697 (Pa. Cmwlth. 2011). RBM&N's reliance on *Dominion* is simply erroneous here as that case is completely different from the case

¹² Incredibly, RBM&N raised its objections decades after the rail lines were acquired.

RBM&N attempts to advance in Count I of the Second Amended Complaint. As a threshold matter, *Dominion* did not involve a municipal authority that owned rail lines nor did it involve a municipal authority subject to federal preemptive regulation. *Dominion* involved a situation where an authority entered into a contract with a single contractor to make water and sewer line repairs for customers in the City of Pittsburgh. Critical to the court in holding that Section 5607(b)(2) applied was the fact that over 20 pre-existing companies were already providing virtually identical services to the same customers in the same geographic area at the time the authority involved acted to create a competing program. *See id.* at 704-05. Thus, the court held that Section 5607(b)(2) prevented the authority in *Dominion* from establishing a competitive enterprise that displaced businesses *already in existence* and active in providing the same services at the time the authority acted to establish its project. *See id.* As discussed above, PNRRA's existence and rail activities predate RBM&N. RBM&N in this case asks the Court to halt PNRRA's pre-existing activities and divest PNRRA's pre-existing assets when RBM&N later developed its business. RBM&N is turning Section 5607(b)(2) on its head. RBM&N was not an "existing business" under Section 5607(b)(2).

RBM&N's claim under Section 5607(b)(2) fails on the basis of the language of the statute itself. Accordingly, RBM&N cannot sustain its claim for relief under Section 5607(b)(2) of the MAA.

ii. PNRRA Does Not Serve Substantially the Same Purpose as RBM&N and Does Not Duplicate or Compete with RBM&N in the Manner Contemplated by Section 5607(b)(2) of the MAA

Section 5607(b)(2) also does not apply here because PNRRA does not duplicate, compete with, and/or serve substantially the same purposes as RBM&N, as those terms are used in Section 5607(b)(2). RBM&N asserts in Count I of the Second Amended Complaint that PNRRA

violated Section 5607(b)(2) of the MAA by “engaging in an enterprise that provides freight rail service in direct competition with privately owned rail freight operators such as the RBM&N, and to the exclusion of same.” (2d Am. Compl., ¶ 77.) PNRRA, however, does not “compete” with RBM&N in the manner proscribed by Section 5607(b)(2) of the MAA, which employs a much more exacting standard.

When applying Section 5607(b)(2) of the MAA, Pennsylvania courts interpret the terms “duplicate” and “compete” together with the phrase “serving substantially the same purposes,” such that the meanings of the former are controlled by and/or dependent upon the latter. While courts often discuss the phrases “duplicate or compete” and “serving substantially the same purposes” interchangeably, the clear focus of the analysis is on “serving substantially the same purposes” as the dominant language. *See Torbik v. Gus Genetti Hotel & Restaurant, Inc.*, 696 A.2d 1141, 1147 (Pa. 1997); *Highridge Water Authority v. Lower Indiana County Municipal Authority*, 689 A.2d 374, 376-77 (Pa. Cmwlth. 1997); *Evansburg*, 569 A.2d at 429-30; *Para Transit Corporation v. County of Monroe*, 468 A.2d 548, 550 (Pa. Cmwlth. 1983).

These cases demonstrate that the mere presence of competition and/or duplication does not establish a *per se* violation of Section 5607(b)(2) of the MAA; rather, the nature and scope of the competition and/or duplication present and the character of the project at issue must be such that the project can be said to “serv[e] substantially the same purpose[]” as an existing business or enterprise. Applying this standard, Pennsylvania courts analyze *all* characteristics of the project at issue as compared to those of the complaining business or enterprise.

Evansburg and *Bristol Township*, which both involved water authorities, establish that the zone of protection afforded to an existing entity under Section 5607(b)(2) extends only to the limits of the existing entity’s service area, and that a statutory violation will generally only occur

where an authority attempts to provide service to a specific area and/or property that is already being served by an existing entity. See *Evansburg*, 569 A.2d at 429-30; *Bristol Township*, 567 A.2d at 1111, 1115. Thus, whether activities are undertaken in the same county may be relevant to such an analysis as is the direct access to rail lines. A general claim of competition does not meet the standard of Section 5607(b)(2).

PNRRA and RBM&N do not “serv[e] substantially the same purpose[]” because their rail lines are not located in the same place and they do not provide direct rail service to the same businesses and industries. The rail lines of PNRRA and RBM&N run roughly parallel, but never overlap, intersect or directly connect, nor do they connect to any of the same properties. Additionally, PNRRA does not provide direct rail service to the businesses and industries located on RBM&N’s rail lines and RBM&N does not provide rail service to the businesses and industries located on PNRRA’s rail lines.

On a more fundamental level, PNRRA was formed for the *public* purpose of promoting business and industrial development in Lackawanna, Monroe, Wayne and Northumberland Counties through the acquisition and preservation of rail transport facilities. PNRRA and its predecessors came into being as a result of private railroads abandoning and/or placing out of service rail lines that were insufficiently profitable or otherwise no longer fit the railroad’s business model. PNRRA’s acquisition of such rail lines ensured that businesses and industries located on the lines would continue to receive rail freight service. PNRRA does not operate for the purpose of benefiting shareholders, but rather, for the purpose of benefiting the public generally by supporting and developing businesses and industries that create local jobs and

increase the local tax base.¹³ By stark contrast, RBM&N is organized as a for-profit business, the purpose of which is the generation of profits for its officers and owners by extracting fees for providing rail service. PNRRA is thus not engaged in “substantially the same purposes” as RBM&N. *See In re Condemnation of Property of Gifford*, 2009 WL 9101519 (Pa. Cmwlth., Feb. 23, 2009). Accordingly, RBM&N cannot establish a claim under Section 5607(b)(2) of the MAA.

c) **The Business and Industrial Development Purposes of PNRRA are Expressly Excluded from the Application of Section 5607(b)(2)**

Section 5607(b)(2) of the MAA also does not apply here because of PNRRA’s industrial development purpose. Section 5607(b)(2) expressly exempts from its application certain specifically enumerated powers, providing: “This limitation shall not apply to the exercise of the powers granted under this section...(ii) for industrial development projects if the authority does not develop industrial projects which will compete with existing industries.” 53 Pa. C.S. § 5607(b)(2)(ii). This exemption from Section 5607(b)(2) ties directly to Section 5607(a)(17), which expressly authorizes municipal authorities to establish “[i]ndustrial development projects, including, but not limited to, projects to retain or develop existing industries and the development of new industries, the development and administration of business improvements and administrative services related thereto.” 53 Pa. C.S. § 5607(a)(17).

In this case, a fully developed fact record will indicate to the Court that the fundamental goal of PNRRA is to maintain rail service for business and industrial development purposes

¹³ If PNRRA’s rail lines were again owned by a private railroad, like RBM&N, there is no guarantee that such a private railroad would not similarly abandon and/or place the rail lines out of service as soon the rail lines no longer served the private railroad’s business model. At that point, an authority like PNRRA would again have to be formed to acquire the rail lines and ensure continued rail service.

along its rail lines in northeastern Pennsylvania. In this regard, the use of PNRRA's rail lines under the Operating Agreement by the DL, the preservation of railroad service to businesses and industries located along PNRRA's rail lines and the development of new business or industries along PNRRA's rail lines are all industrial development projects. As such, Section 5607(b)(2) has no application to them.

d) **RBM&N's Claim Under Section 5607(b)(2) of the MAA is Barred by the Applicable Statute of Limitations**

RBM&N also has no clear right to relief under Section 5607(b)(2) of the MAA because the statute of limitations for a declaratory judgment action is four years. *Zourelis v. Erie Ins. Group*, 691 A.2d 963, 964 n.2 (Pa. Super. 1997); *Wagner v. Apollo Gas Company*, 582 A.2d 364, 366 (Pa. Super. 1990). "Generally, a statute of limitations begins to run when a cause of action accrues, *i.e.*, when an injury is inflicted and the corresponding right to institute a suit...arises." *Gleason v. Moosic*, 15 A.3d 479, 484 (Pa. 2011). Because a plaintiff can bring a declaratory judgment action when an "actual controversy" exists, a cause of action for declaratory judgment arises for the purposes of the statute of limitations at that time. *Wagner*, 582 A.2d at 366. Thus, any claim that RBM&N had under Section 5607(b)(2) of the MAA arose, if at all, at the time PNRRA established the "project or projects" RBM&N claims are violative of the statute. 53 Pa. C.S. § 5607(b)(2).

RBM&N first raised its asserted claim under Section 5607(b)(2) of the MAA on August 18, 2014, when RBM&N indicated its intent to seek leave to file the Second Amended Complaint. Accordingly, under the four-year statute of limitations for declaratory judgment actions, any claim that RBM&N had against PNRRA under Section 5607(b)(2) that arose prior to August 18, 2010 is now time-barred. Thus, any PNRRA activities or projects commenced by PNRRA prior to August 18, 2010 cannot serve as a basis for RBM&N's claim under Section

5607(b)(2) of the MAA and, likewise, RBM&N is not entitled to any relief under Section 5607(b)(2) that would impede or otherwise impact PNRRA's activities or projects predating August 18, 2010.

As the record will clearly indicate, PNRRA was established in 1982 with the project purpose of acquiring and leasing rail lines and rail transportation facilities. PNRRA acquired the majority of its rail lines in the period 1985-1994. RBM&N acquired its parallel lines later in 1996. PNRRA's establishment in 1982 and its acquisition of ownership of rail lines in the period 1985-1994 were public matters, were open and obvious, and the deeds to the rail lines were publicly recorded. Further, the rail lines obviously were visible and were marked on publicly available railroad maps prepared by PennDOT. Moreover, the statute upon which RBM&N's claim is based, 53 Pa. C.S. 5607(b)(2), was effective and publicly available during the entire period in question. RBM&N clearly was well aware of PNRRA's (and its predecessors') rail lines and real estate locations for at least 20 years, and certainly prior to the four years preceding RBM&N's commencement of its cause of action under Section 5607(b)(2) of the MAA. If RBM&N ever had any claim under Section 5607(b)(2) of the MAA (which PNRRA and its Board deny), that claim arose as early as 1982 but no later than 1996. As such, RBM&N's claims, misplaced and baseless as they may be, have long since been barred by the four-year statute of limitations.

e) **RBM&N's Claim Under Section 5607(b)(2) of the MAA is Barred by the Doctrine of Laches**

In addition to a statute of limitations bar, RBM&N's claims under Section 5607(b)(2) of the MAA are barred by the doctrine of laches. "Laches is an equitable doctrine that bars relief when a complaining party is guilty of want of due diligence in failing to promptly institute an action to the prejudice of another." *Stilp v. Hafer*, 718 A.2d 290, 292 (Pa. 1998). The doctrine is

available to bar claims asserting purported statutory violations. *See id.* A party asserting laches must establish two elements: (1) delay arising from the complaining party's failure to exercise due diligence, and (2) prejudice resulting from the delay. *Id.* at 293.

Here, RBM&N's claim under Section 5607(b)(2) of the MAA is clearly barred by laches due to RBM&N's extreme delay in bringing its purported claim and PNRRA's change in conditions during the period RBM&N failed to act. As discussed above, RBM&N knew or should have known of PNRRA's (and its predecessors') rail lines, real estate locations, and activities for more than 20 years. Moreover, the statutory provision that PNRRA purportedly violated, Section 5607(b)(2) of the MAA, has been effective and publicly available during the entire period in question. PNRRA is clearly prejudiced by this delay as it has devoted significant time and resources to its railroad activities during the period RBM&N failed to act. The DL is similarly prejudiced by RBM&N's delay, further demonstrating the need for the DL to be joined as an indispensable party as discussed in greater detail below. Accordingly, RBM&N's purported claim under Section 5607(b)(2) is barred by laches.

4. RBM&N HAS NO CLEAR RIGHT TO RELIEF BECAUSE THE COURT LACKS SUBJECT MATTER JURISDICTION DUE TO THE FAILURE OF RBM&N TO JOIN AN INDISPENSABLE PARTY

This Court, as a threshold matter,¹⁴ lacks subject matter jurisdiction over RBM&N's claims because RBM&N has failed to join the DL as an indispensable party. Pennsylvania Rule of Civil Procedure 1028(a)(5) authorizes a preliminary objection for "nonjoinder of a necessary party." "A party is generally regarded to be indispensable when his or her rights are so connected with the claims of the litigants that no decree can be made without impairing those rights." *HYK Construction Company, Inc. v. Smithfield Township*, 8 A.3d 1009, 1015 (Pa.

¹⁴ This threshold matter is pending before the Court on Preliminary Objections to the Second Amended Complaint.

Cmwlth. 2013) (quotations omitted). Further, Section 7540(a) of the Declaratory Judgments Act, 42 Pa. C.S. § 7540(a), provides: “When declaratory relief is sought, *all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.*” (Emphasis added). “The failure to join an indispensable party to a lawsuit deprives the court of subject matter jurisdiction.” *HYK Construction Company*, 8 A.3d at 1015.

The DL is a necessary party because RBM&N’s claims in the Second Amended Complaint would have a direct and immediate impact on the DL’s rights under the Operating Agreement. *See HYK Construction Company*, 8 A.3d at 1015; 42 Pa. C.S. § 7540(a); *see also Americus Centre, Inc. v City of Allentown*, 535 A.2d 1200, 1202-1203 (Pa. Cmwlth. 1988); *Borough of Wilkinsburg v. Horner*, 490 A.2d 964, 964-65 (Pa. Cmwlth. 1985). RBM&N irrefutably attacks the validity of the existing Operating Agreement between PNRRA and the DL in Count I of the Second Amended Complaint, purportedly based on Section 5607(b)(2) of the MAA. Specifically, Paragraph 81 of the Second Amended Complaint provides, in pertinent part: “The Operating Agreement violates the MAA’s express provision against interference and competition with existing business and otherwise exceeds the authority of PNRRA under the MAA, and is therefore *void*.” (Emphasis added.) Further, RBM&N requests in its prayer for relief to Count I that the Court “declare PNRRA’s Operating Agreement with the DL *void*.” (2d Am. Compl. at 15 (emphasis added).)

Likewise, RBM&N also attacks the validity of the existing Operating Agreement in Count II of the Second Amended Complaint, purportedly based on Section 5614(a) of the MAA. Specifically, Paragraph 86 of the Second Amended Complaint provides: “*Any contract* entered into by PNRRA for the operation of its rail lines without having been subjected to a public

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35956

**READING, BLUE MOUNTAIN NORTHERN RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER**

**JOINT REPLY OF PENNSYLVANIA NORTHEAST REGIONAL RAILROAD
AUTHORITY AND SEDA-COG JOINT RAIL AUTHORITY**

Exhibit F

ARTICLES OF AMENDMENT

TO THE SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA:

In compliance with the requirements of the Municipality Authorities Act, Title 53 Pennsylvania Consolidated Statutes, Chapter 56, the Monroe County Railroad Authority ("MCRA") pursuant to Resolutions duly adopted by it and by the County Commissioners of Lackawanna County and the County Commissioners of Monroe County, respectively, directing and authorizing the Plan for Lackawanna County to join the MCRA under the provisions of the Municipality Authorities Act, do hereby amend the Articles of Incorporation of the MCRA as follows:

1. The Authority was formed pursuant to the Municipality Authorities Act of 1945, Act of May 2, 1945, P.L. 382, as amended and will be amended pursuant to the said Municipality Authorities Act, 53 Pa.C.S. Chapter 56 of the Commonwealth of Pennsylvania.
2. Paragraph 1 is amended to read as follows:
 - (1) The name of the Authority is amended to: PENNSYLVANIA NORTHEAST REGIONAL RAILROAD AUTHORITY.
3. Paragraph (2) of the Articles of Incorporation, as previously amended, shall be amended to read as follows:

The Authority is formed under the provisions of the Act of Assembly approved May 2, 1945, P.L. 382, as amended and supplemented, known as the "Municipality Authorities Act of 1945," now codified as 53 Pa.C.S. Chap. 56 (the "Authorities Act") for the following purposes:

A. To acquire, hold, construct, improve, maintain, operate, own and lease, either in a capacity of lessor or lessee, rights-of-way, trackage, sidings and other related rail transport facilities and to accept grants and borrow money from any Authority, Corporation or Agency of the United States or the Commonwealth of Pennsylvania for the purpose of acquiring and preserving such rail transport facilities within the Commonwealth of Pennsylvania.

The Board of the Authority shall consist of four members appointed by each of the governing bodies of Lackawanna County and Monroe County (collectively, the "Counties"), as listed below.

<u>Municipality</u>	<u>Person and Address</u>	<u>Term (ending first Monday in January)</u>
Lackawanna	Dominic J. Keating 115 Harper Street Dunmore, PA 18512	One Year, ending January, 2008
Lackawanna	Richard P. Kane 1401 Spyglass Lane Clarks Summit, PA 18411	One Year, ending January, 2008
Lackawanna	Harry A. Duckworth Box 744 Waverly, PA 18471	Three Years, ending January, 2010
Lackawanna	Andrew M. Wallace 126 Burcher Avenue Chinchilla, PA 18410	Two Years, ending January, 2009
Monroe	Robert C. Hay 21 Seneca Road Mt. Pocono, PA 18344	Five Years, ending January, 2012
Monroe	Greg Christine 126 Berwick Heights Road East Stroudsburg, PA 18301	Four Years, ending January, 2011
Monroe	Paul Canevari RR 5, Box 5534 Kunkletown, PA 18058	Three Years, ending January, 2010
Monroe	Andrew Forte P.O. Box 153	Two Years, ending January, 2009

62447.6

B. To undertake projects of the following kind and character:

(i) Railroads, rail equipment, railroad facilities and appurtenances for users in the existing service area of the Authority and such other areas as may be designated by the Authority and approved by the Counties.

(ii) Such other projects as may be approved by the Authority and both Counties.

(iii) Any proposed action to sell or otherwise dispose of either the Authority's railroad or any other project as an entity shall require the prior approval of both Counties.

(iv) Any proposal to add by joinder other municipalities shall require the prior approval of both Counties.

(v) Any proposal for the dissolution of the Authority or the withdrawal of a Member shall require the prior approval of both Counties and compliance with all the provisions of the Municipality Authorities Act, Title 53, Pennsylvania Consolidated Statutes, Chapter 56.

4. Paragraph (5) is amended to read in full as follows:

The names and addresses of the Members of the Authority are:

Monroe County Railroad Authority
1 Quaker Plaza
Stroudsburg, PA 18360

Lackawanna County Railroad Authority
701 Wyoming Avenue
Scranton, PA 18509

5. Paragraph (6) is amended to read, in full, as follows:

62447.6

Stroudsburg, PA 18360

6. A new paragraph 8 shall be added as follows:

The term of the existence of the Authority shall extend to May 31, 2056.

IN WITNESS WHEREOF, the Board of Directors of the Monroe County Railroad Authority, Monroe County, Commonwealth of Pennsylvania have caused these Articles of Amendment to be duly executed on behalf of the Monroe County Railroad Authority by its duly authorized officers and the corporate seal of the Monroe County Railroad Authority affixed and attested hereto on this 24th day of May, 2006.

ATTEST:

MONROE COUNTY RAILROAD AUTHORITY

BY

Frank Allen
Frank Allen, Secretary

BY

Robert C. Hay
Robert C. Hay, Chairman

624476

COMMONWEALTH OF PENNSYLVANIA

:
:SS.

COUNTY OF LACKAWANNA

On this the 24th day of May, 2006, before me, a Notary Public, personally appeared the above named Robert C. Hay and Frank Allen who stated that their official positions with the Monroe County Railroad Authority are respectively Chairman and Secretary of its Board of Directors and who in due form of law acknowledged that the foregoing Articles of Amendment to be the act and deed of said Monroe County Railroad Authority.

Charlene W. Doyle

NOTARY PUBLIC

NOTARIAL SEAL CHARLENE W. DOYLE, NOTARY PUBLIC SCRANTON, LACKAWANNA COUNTY MY COMMISSION EXPIRES OCT. 25, 2007

62447.6

PRR-01602

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35956

**READING, BLUE MOUNTAIN NORTHERN RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER**

**JOINT REPLY OF PENNSYLVANIA NORTHEAST REGIONAL RAILROAD
AUTHORITY AND SEDA-COG JOINT RAIL AUTHORITY**

Exhibit G

ARTICLES OF INCORPORATION

TO THE SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA:

In compliance with requirements of the Act of Assembly approved May 2, 1945, P.L. 382, as amended and supplemented, known as the "Municipality Authorities Act of 1945", and pursuant to an Ordinance duly enacted by the municipal authorities of the County of Monroe, Pennsylvania, expressing the intention and desire of the municipal authorities of said municipality to organize an Authority under the provisions of said Act, said municipality certifies:

1. The name of the Authority is "Monroe County Railroad Authority".

2. The Authority is formed under provisions of the Act of Assembly approved May 2, 1945, P.L. 382, as amended and supplemented, known as the "Municipality Authorities Act of 1945", for the following purposes:

To acquire, hold, construct, improve, maintain, operate, own and lease, either in a capacity of lessor or lessee, rights-of-way, trackage, sidings and other related rail transport facilities and to accept grants and borrow money from any Authority, Corporation or Agency of the United States or the Commonwealth of Pennsylvania for the purpose of acquiring and preserving such rail transport facilities within the Commonwealth of Pennsylvania.

3. No other Authority has been organized under provisions of the Act of Assembly approved May 2, 1945, P.L. 382, as

amended and supplemented, known as the "Municipality Authorities Act of 1945", or under provisions of the Act of Assembly approved June 28, 1935, P.L. 463, as amended and supplemented, and is in existence in or for the incorporating municipality.

4. The name of said incorporating municipality is County of Monroe, Pennsylvania.

5. The names and addresses of the municipal authorities of said incorporating municipality are:

Hon. Nancy Shukaitis, R.D.#5, East Stroudsburg, Pa. 18360
 Hon. Jesse D. Pearson, 540 Sarah Street, Stroudsburg, Pa. 18360
 Hon. Thomas R. Joyce, 446 Clearview Lane, Stroudsburg, Pa. 18360

6. The names, addresses and terms of office of the first members of the Board of the Authority, each of whom is a citizen or taxpayer of the County of Monroe, are as follows:

<u>Name</u>	<u>Address</u>	<u>Term of Office</u>
Fred Taylor	R.D. 269 Winchester Circle East Stroudsburg, Pa. 18301	5 years
Anthony Farda	General Delivery, Tannaxville, Pa. 18372	4 years
J.L. Cohen	200 North Fifth Street Stroudsburg, Pa. 18360	3 years
Thomas Sexton	222 North Courtland Street East Stroudsburg, Pa. 18301	2 years
Kennard Lewis, Esq.	710 Sarah Street Stroudsburg, Pa. 18360	2 years
Dennis Dunn	R.D.#5 East Stroudsburg, Pa. 18301	1 year
Dr. Lawrence A. Wills	P.O. Box 191 East Stroudsburg, Pa. 18301	1 year

7. A public hearing duly advertised in accordance with law was held on March 23, 1982 to discuss the formation of said Authority.

IN WITNESS WHEREOF, the County of Monroe, Pennsylvania, causes these Articles of Incorporation to be executed by the Chairman

of the Board of Commissioners of the County of Monroe and to be attested by the Chief Clerk thereof and the seal of such County to be affixed hereunto, this 8th day of April, 1982.

COUNTY OF MONROE

BY Nancy Shukaitis
Nancy Shukaitis, Chairman

ATTEST:

Janet K. Weidenman
Chief Clerk

ARTICLES OF AMENDMENT

TO THE SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA:

In compliance with the requirements of the Municipality Authorities Act, Title 53 Pennsylvania Consolidated Statutes, Chapter 56, the Monroe County Railroad Authority ("MCRA") pursuant to Resolutions duly adopted by it and by the County Commissioners of Lackawanna County and the County Commissioners of Monroe County, respectively, directing and authorizing the Plan for Lackawanna County to join the MCRA under the provisions of the Municipality Authorities Act, do hereby amend the Articles of Incorporation of the MCRA as follows:

1. The Authority was formed pursuant to the Municipality Authorities Act of 1945, Act of May 2, 1945, P.L. 382, as amended and will be amended pursuant to the said Municipality Authorities Act, 53 Pa.C.S. Chapter 56 of the Commonwealth of Pennsylvania.
2. Paragraph 1 is amended to read as follows:
 - (1) The name of the Authority is amended to: PENNSYLVANIA NORTHEAST REGIONAL RAILROAD AUTHORITY.
3. Paragraph (2) of the Articles of Incorporation, as previously amended, shall be amended to read as follows:

The Authority is formed under the provisions of the Act of Assembly approved May 2, 1945, P.L. 382, as amended and supplemented, known as the "Municipality Authorities Act of 1945," now codified as 53 Pa.C.S. Chap. 56 (the "Authorities Act") for the following purposes:

A. To acquire, hold, construct, improve, maintain, operate, own and lease, either in a capacity of lessor or lessee, rights-of-way, trackage, sidings and other related rail transport facilities and to accept grants and borrow money from any Authority, Corporation or Agency of the United States or the Commonwealth of Pennsylvania for the purpose of acquiring and preserving such rail transport facilities within the Commonwealth of Pennsylvania.

The Board of the Authority shall consist of four members appointed by each of the governing bodies of Lackawanna County and Monroe County (collectively, the "Counties"), as listed below.

<u>Municipality</u>	<u>Person and Address</u>	<u>Term (ending first Monday in January)</u>
Lackawanna	Dominic J. Keating 115 Harper Street Dunmore, PA 18512	One Year, ending January, 2008
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Monroe	Andrew Forte P.O. Box 153	Two Years, ending January, 2009

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B. To undertake projects of the following kind and character:

(i) Railroads, rail equipment, railroad facilities and appurtenances for users in the existing service area of the Authority and such other areas as may be designated by the Authority and approved by the Counties.

(ii) Such other projects as may be approved by the Authority and both Counties.

(iii) Any proposed action to sell or otherwise dispose of either the Authority's railroad or any other project as an entity shall require the prior approval of both Counties.

(iv) Any proposal to add by joinder other municipalities shall require the prior approval of both Counties.

(v) Any proposal for the dissolution of the Authority or the withdrawal of a Member shall require the prior approval of both Counties and compliance with all the provisions of the Municipality Authorities Act, Title 53, Pennsylvania Consolidated Statutes, Chapter 56.

4. Paragraph (5) is amended to read in full as follows:

The names and addresses of the Members of the Authority are:

Monroe County Railroad Authority
1 Quaker Plaza
Stroudsburg, PA 18360

Lackawanna County Railroad Authority
701 Wyoming Avenue
Scranton, PA 18509

5. Paragraph (6) is amended to read, in full, as follows:

62447.6

Stroudsburg, PA 18360

6. A new paragraph 8 shall be added as follows:

The term of the existence of the Authority shall extend to May 31, 2056.

IN WITNESS WHEREOF, the Board of Directors of the Monroe County Railroad Authority, Monroe County, Commonwealth of Pennsylvania have caused these Articles of Amendment to be duly executed on behalf of the Monroe County Railroad Authority by its duly authorized officers and the corporate seal of the Monroe County Railroad Authority affixed and attested hereto on this 24th day of May, 2006.

ATTEST:

MONROE COUNTY RAILROAD AUTHORITY

BY

Frank Allen
Frank Allen, Secretary

BY

Robert C. Hay
Robert C. Hay, Chairman

62447 6

COMMONWEALTH OF PENNSYLVANIA

:
:SS.

COUNTY OF LACKAWANNA

On this the 24th day of May, 2006, before me, a Notary Public, personally appeared the above named Robert C. Hay and Frank Allen who stated that their official positions with the Monroe County Railroad Authority are respectively Chairman and Secretary of its Board of Directors and who in due form of law acknowledged that the foregoing Articles of Amendment to be the act and deed of said Monroe County Railroad Authority.

Charlene W. Doyle

NOTARY PUBLIC

NOTARIAL SEAL
CHARLENE W. DOYLE, NOTARY PUBLIC
SCRANTON, LACKAWANNA COUNTY
MY COMMISSION EXPIRES OCT. 25, 2007

62447.6

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35956

**READING, BLUE MOUNTAIN NORTHERN RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER**

**JOINT REPLY OF PENNSYLVANIA NORTHEAST REGIONAL RAILROAD
AUTHORITY AND SEDA-COG JOINT RAIL AUTHORITY**

Exhibit H

Commonwealth of Pennsylvania
Department of State

753485



Office of the
Secretary of the Commonwealth

To All to Whom These Presents Shall Come, Greeting:

Whereas, In and by the provisions of the Municipality Authorities Act approved May 2, 1945, P. L. 382, as amended, the Secretary of the Commonwealth is authorized and required to issue a

CERTIFICATE OF INCORPORATION

evidencing the incorporation of an authority under the provisions of said Act, and

Whereas, The stipulations and conditions of said Act have been fully complied with by the Municipal Authorities of the County of Monroe, Pennsylvania

Commonwealth of Pennsylvania desiring the organization of

Therefore, Know Ye, That subject to the Constitution of this Commonwealth, and under the authority of Act No. 164, approved the second day of May, Anno Domini one thousand nine hundred and forty-five, P. L. 382, as amended, I DO BY THESE PRESENTS, which I have caused to be sealed with the Great Seal of the Commonwealth, declare and certify the creation, erection and incorporation of

"MONROE COUNTY RAILROAD AUTHORITY"

into a body politic and corporate in deed and in law by the name chosen hereinbefore specified, now to become operative with authority to transact business, and which shall exist for a term of fifty years unless sooner dissolved according to law.

Such corporation shall have and enjoy and shall be subject to all the powers, duties, requirements, and restrictions, specified and enjoined in and by the above Act of Assembly and all other applicable laws of this Commonwealth.

Given under my Hand and the Great Seal of the Commonwealth, at the City of Harrisburg, this 12th day of April in the year of our Lord one thousand nine hundred and eighty two and of the Commonwealth the two hundred and sixth.

William R. Davis

Secretary of the Commonwealth
vod

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35956

**READING, BLUE MOUNTAIN NORTHERN RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER**

**JOINT REPLY OF PENNSYLVANIA NORTHEAST REGIONAL RAILROAD
AUTHORITY AND SEDA-COG JOINT RAIL AUTHORITY**

Exhibit I

ARTICLES OF INCORPORATION

MUNICIPAL AUTHORITY

Commonwealth of Pennsylvania
 Department of State - Corporation Bureau
 308 North Office Building, Harrisburg, PA 17120

846036

1. Name of Authority: Lackawanna County Railroad Authority.
2. Address of registered office in Pennsylvania: Court House Annex, 200 Adams Avenue, Scranton, Lackawanna County, Pennsylvania 18503.
3. Statutory Authority: This Authority is formed pursuant to the Municipality Authorities Act of 1945, Act of May 2, 1945, P.L. 382, as amended.
4. Other Authorities: This Authority has been organized by the Board of Commissioners of Lackawanna County. The following is a list of authorities heretofore created under the Municipal Authorities Act of 1945, Act of May 2, 1945, P.L. 382, as amended and supplemented, or under the Act of June 28, 1935, P.L. 463, and are in existence in and for the County of Lackawanna:
 - (a) Lackawanna Redevelopment Authority
 - (b) Lackawanna Housing Authority
 - (c) Lackawanna County Industrial Development Authority
 - (d) Lackawanna River Basin Sewer Authority
 - (e) County of Lackawanna Transit Authority
 - (f) Scranton-Lackawanna Health and Welfare Authority
5. The names and addresses of the Board of Commissioners of Lackawanna are as follows:

Chairman: Joseph J. Corcoran
 2102 Comegys Avenue, Scranton, Pennsylvania 18509

Ray A. Alberigi
 919 Hilltop Drive, Jessup, Pennsylvania 18434

Charles Luger
 R. D. #5, Box 275, Clarks Summit, Pennsylvania 18411

030 Filed
 Secretary of the Commonwealth
 Department of State
 Commonwealth of Pennsylvania

6. The names, addresses and terms of office of the first members of the Authority are:

<u>NAME</u>	<u>ADDRESS</u>	<u>TERM EXPIRES</u>	<u>YEAR</u>
Dominic Surace	517 Marjorie Drive, Dunmore, Pa. 18512	1st Monday of Jan.	1986
John Murgia	36 Wyoming Street, Carbondale, Pa. 18407	" " "	1987
Ed Rogers	Jefferson Township, Pa.	" " "	1988
John Hart	63 Park Street, Carbondale, Pa. 18407	" " "	1989
Paul Hart	1308 Watson Street, Scranton, Pa. 18504	" " "	1990

7. The purpose and powers of the Lackawanna County Railroad Authority shall be:

To acquire, by gift, purchase, condemnation or in any other lawful manner, and to own, hold, manage, maintain, lease, and operate railroad facilities situated in Lackawanna County, including, but not limited to real estate, rights of way, track and related items, equipment, and related personal property, to make such business improvements with regard to such railroad facilities as the Board of Commissioners shall approve, to incur debt to secure funds for the accomplishment of its purposes, and to have any and all other lawful purposes and powers as permitted pursuant to the Municipality Authorities Act of 1945, Act of May 2, 1945, P.L. 382, as amended, and the laws of the Commonwealth of Pennsylvania and the United States of America.

Chairman: Joseph J. Cotteran

8. The Board of Commissioners of Lackawanna County, has retained the right, which exists under the Act, to approve any plan of the Authority, to the extent that the same exercises its purpose of making business improvements or providing administrative services.

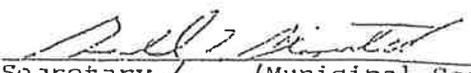
IN TESTIMONY WHEREOF, the incorporators have signed and sealed the Articles of Incorporation this 14th day of November, 1984.

BOARD OF COMMISSIONERS OF LACKAWANNA COUNTY

By: _____

Chairman

ATTEST:


Secretary (Municipal Seal)
ADMINISTRATIVE DIRECTOR

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35956

**READING, BLUE MOUNTAIN NORTHERN RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER**

**JOINT REPLY OF PENNSYLVANIA NORTHEAST REGIONAL RAILROAD
AUTHORITY AND SEDA-COG JOINT RAIL AUTHORITY**

Exhibit J

COMMONWEALTH OF PENNSYLVANIA

Department of State

TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:

BE IT KNOWN THAT,

CERTIFICATE OF JOINDER

has been granted to the Lackawanna County Railroad Authority with and into

PENNSYLVANIA NORTHEAST REGIONAL RAILROAD AUTHORITY

under the authority of Act 22 of 2001, known as the Parking Authority Act.

Filed this 30th day
of May, 2006



Recho A. Cortis

Secretary of the Commonwealth

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35956

**READING, BLUE MOUNTAIN NORTHERN RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER**

**JOINT REPLY OF PENNSYLVANIA NORTHEAST REGIONAL RAILROAD
AUTHORITY AND SEDA-COG JOINT RAIL AUTHORITY**

Exhibit K



KANE 1
LACKAWANNA COUNTY RAILROAD AUTHORITY

717 963-6676

FAX 717 963-6718

Commissioners:
JOSEPH J. CORCORAN
RAY A. ALBERICI
JOHN SENIO

LAWRENCE C. MALSKI, ESQ.
Executive Director
and General Counsel

Board Members:
EDWIN E. ROGERS, Chairman
DOMINIC T. SURACE
RICHARD P. KANE
JOHN M. MURGIA
PAUL R. HART

TO: Interested Rail Operators
FROM: Lackawanna County Railroad Authority
DATE: February 15, 1993
SUBJECT: Request for Proposals and Qualifications
to Operate a 23 Mile Line of Railroad between
Scranton and Carbondale and a 35 Mile Line of
Railroad between Scranton and Mt. Pocono, Pennsylvania
owned by the Lackawanna County Railroad Authority

The Lackawanna County Railroad Authority, hereinafter the LCRA hereby requests proposals and qualifications from potential rail operators to provide designated common carrier freight operations over the aforementioned lines of railroad which are currently in operation in Northeastern Pennsylvania.

The Scranton to Carbondale line of railroad had approximately 18 active rail users which shipped or received 1510 revenue carloads in calendar year 1992. The Scranton to Mt. Pocono line of railroad had approximately 4 active rail users which shipped or received 666 revenue carloads in calendar year 1992.

701 WYOMING AVENUE • SCRANTON, PENNSYLVANIA 18509

REQUEST FOR
PROPOSALS AND QUALIFICATIONS
FROM THE
LACKAWANNA COUNTY RAILROAD AUTHORITY
TO OPERATE
LINES OF RAILROAD
BETWEEN
SCRANTON, PENNSYLVANIA AND CARBONDALE, PENNSYLVANIA
AND BETWEEN
SCRANTON, PENNSYLVANIA AND MT. POCONO, PENNSYLVANIA
FEBRUARY 15, 1993

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RAILROAD TO BE OPERATED.....5

III. DESCRIPTION OF PHYSICAL CHARACTERISTICS
OF THE SCRANTON TO MT. POCONO AND BRADY LEAD
LINES OF RAILROAD TO BE OPERATED.....6

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EXHIBIT "A"

EXHIBIT "B"

I. BACKGROUND AND OVERVIEW

The Lackawanna County Railroad Authority (LCRA) acquired the 23 mile Scranton to Carbondale rail line from Guilford Transportation Industries on April 19, 1985 and contracted with the Lackawanna Valley Railroad Corporation (LVAL) to provide designated common carrier operations on this line of railroad on April 17, 1985.

The LCRA acquired the 33 mile Scranton to Mt. Pocono and the 2 mile Brady Lead rail lines from Conrail on September 12, 1991 and contracted with the Lackawanna Railway, Inc. (LRWY) to provide designated common carrier operations on this line of railroad on August 26, 1991.

The revenue carload data per year per line of railroad is attached hereto as Exhibit "A". The average gross rail freight income per car per line of railroad is also included in Exhibit "A".

The form of operating agreement to be entered into between the LCRA and the selected operator is attached hereto as Exhibit "B."

The LCRA has successfully obtained and invested over \$5 million dollars in local, state and federal grant funds for track rebuilding and rehabilitation projects on the subject rail lines since 1985. The LCRA will also provide a diesel locomotive shop building capable of housing three 60 foot diesel locomotives with a pit, computerized track scale, water service, gas heat, and electric overhead doors. This track scale is the only certified track scale in northeastern Pennsylvania. All LCRA owned mainlines are maintained to at least FRA Class I Standards.

The current operation has active interchanges with Conrail at Pittston, PA and with the CP/D&H at Taylor, PA. A passenger service operating contract will be in effect with the Steamtown National Historic Site on the Scranton to Mt. Pocono and Brady Lead rail lines.

The primary and most heavily weighted criteria to be considered in the selection of the successful operator will be successful previous qualifications and experience in marketing, operations and maintenance of shortline or regional rail lines.

The most responsive proposer must demonstrate a record of having the ability to successfully expand and increase traffic, operations and industrial development on shortline or regional lines of railroad.

II. DESCRIPTION AND PHYSICAL CHARACTERISTICS OF THE SCRANTON TO CARBONDALE LINE OF RAILROAD TO BE OPERATED

A. LENGTH = Mainline = 22.3 miles
= Branch = 1.2 miles

B. RAIL Mainline = 22.3 miles of 115 and 112 lb. rail
approximately 25% of mainline is laid with 112/115 lb
continuous welded rail.
Branch and Yard = 90% = 112 and 115 lb.; 10% = 90 lb.
rail.

C. GEOGRAPHICAL LOCATION: Starting Point = point of switch
off current Delaware and Hudson mainline at Carbon at
Delaware and Hudson old Milepost 196.9 in Borough of
Moosic, Pennsylvania.
End Point = end of track near former Delaware and
Hudson WC Cabin at Milepost 174.6. Mainline traverses
Borough of Moosic, City of Scranton, Borough of Dickson
City, Borough of Olyphant, Borough of Jessup, Borough
of Archbald, Borough of Jermyrn, Borough of Mayfield,
Township of Carbondale; City of Carbondale, Township
of Fell.

D. GRADE AND CONSTRUCTION: Less than 1% throughout.
Bridges built to Delaware and Hudson mainline
specifications. Mainline stone ballasted. Thirty nine
public grade crossings exist on main and branch.

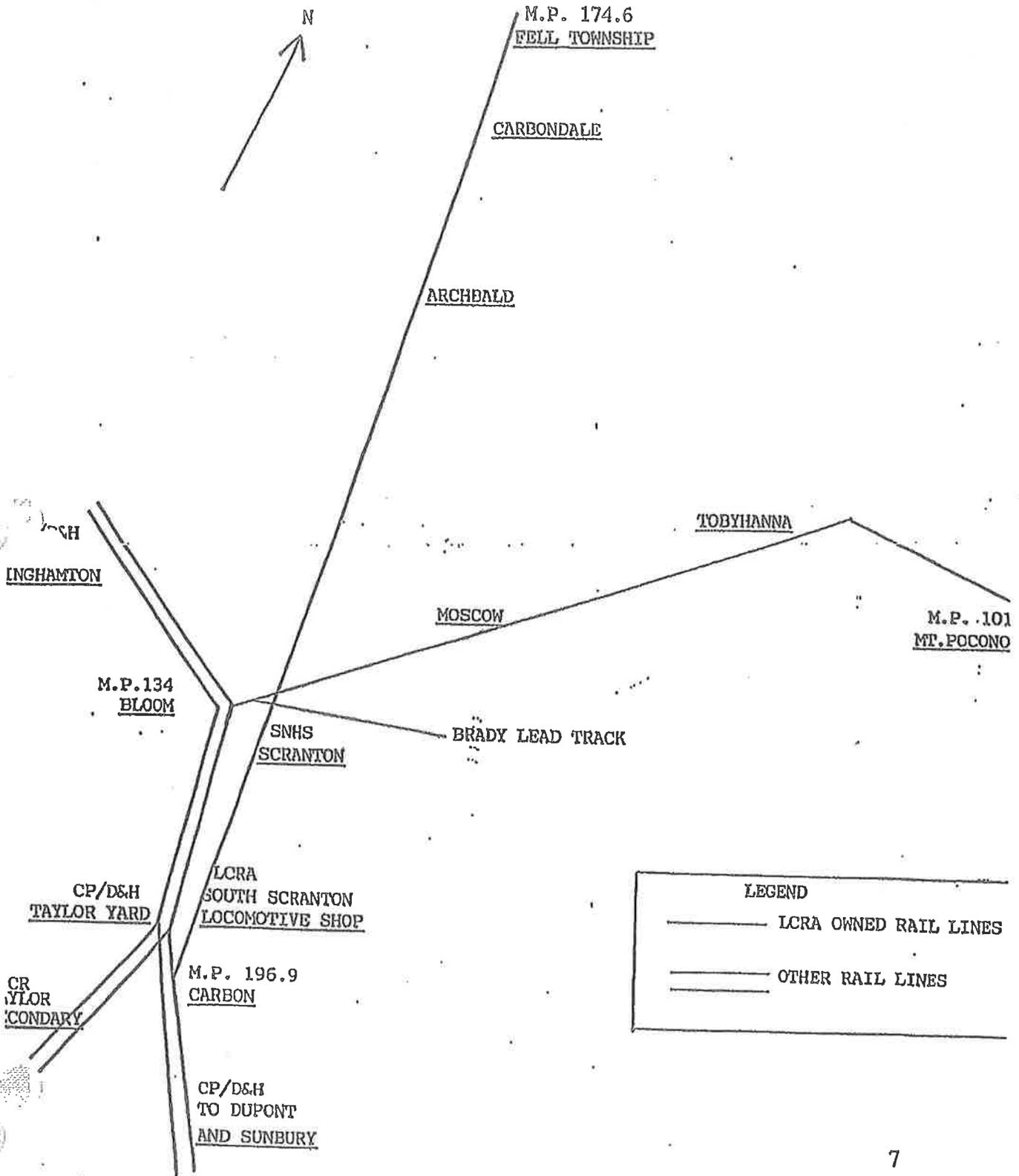
E. SHIPPERS LIST:

- Notarianni Produce
- Scranton Building Block
- Lackawanna County Rail Corp.
- Gress Public Refrigerated Services
- Chesapeake Corporation
- Brick City
- Brojack Lumber
- Tredegar Film Products
- Kane Warehousing, Inc.
- Westlake United, Inc.
- Schoenberg Salt
- Seven D Wholesale
- Elsner & Sons
- Laminations, Inc.
- Holt Lumber
- Archbald Power Corporation
- Northeast Safety Products
- Lackawanna County Recycling Center

III. DESCRIPTION AND PHYSICAL CHARACTERISTICS OF THE SCRANTON TO MT. POCONO AND BRADY LEAD LINES OF RAILROAD TO BE OPERATED

- A. LENGTH = Mainline = 33 miles
= Brady Lead Branch = 2 miles
- B. RAIL = Mainline = 33 miles of 132/131 lb. rail; approximately 10% continuous welded rail.
= Brady Lead Branch = 2 miles of 110 lb. rail installed in 1992.
- C. GEOGRAPHICAL LOCATION: Mainline = point of switch on wye track at former DL&W Milepost 134 to Milepost 101 in Mt. Pocono.
Brady and Chamberlain Lead Tracks = point of connection on Bridge 60 to end of track in Nay Aug Gorge approximately 2 miles.
- D. GRADE AND CONSTRUCTION: Mainline was built to significant and renowned DL&W standards and includes 800' Nay Aug Tunnel and 12 bridges mostly over Roaring Brook which have been rebuilt by the National Park Service during 1991-1993 period with over \$2 million in grant funds. The mainline has ruling grade of 1.5%. Four public grade crossings on mainline. Brady Lead track was rebuilt with \$330,000 grant in 1992 with 110 lb. rail and two rubberized grade crossings.
- E. SHIPPERS LIST:
Verrastro Beer Distributing
Poly HI Plastics
Chamberlain Manufacturing
Tobyhanna Army Depot

IV. MAP OF LINES OF RAILROAD



V. REQUIREMENTS FOR PROPOSALS

A. GENERAL REQUIREMENTS: The following general information is required in all proposals.

1. The full and correct legal name and principle address of the proposer.
2. Date of the prospective operator's incorporation, or organization, and the name of the political authority (state) under which it was incorporated or organized. If the proposer is a partnership, association, or other form of organization other than a private corporation, a full description of the organization including names of its officers must be furnished. If proposer has ever entered receivership, filed for reorganization or bankruptcy the proposer must provide any and all details of such event to LCRA.
3. Name, title, address and telephone number of the person who can answer questions regarding the proposal with authority for the prospective operator.
4. Proposers with previous railroad experience must provide financial and operating information relating to rail freight service provided by the proposer. This information must include:
 - a) For each of the last five (5) years, a report of carloadings on the other lines of railroad operated by proposer broken down by shipper.
 - b) For each of the last three (3) years, financial statements of the proposer, including balance sheets, income statements, and statement of cash flows and required footnotes for all.
5. New ventures with no financial history must state their source of financing and submit evidence of the availability of that financing. If the source of financing is to be personal assets of the proposer, personal financial statements and income tax returns for the past three (3) calendar years must be submitted.

B. SUBMISSION OF A COMPREHENSIVE PLAN: A Comprehensive Business Plan must be submitted based on the assumption of start of operations on August 26, 1993 with projections for three (3) years from that date.

The three (3) components of the Business Plan are as follows:

1. Marketing Plan

A projection of annual revenues and traffic in terms of carloadings is required. A general description of the steps proposed to be taken by the proposer to assure retention of existing traffic and attraction of new traffic is requested, covering the three (3) year period, with emphasis on the first year. →

In preparing the Marketing Plan, the proposer should describe the approach they would take to increase carloadings, specifically the personnel and their qualifications should be detailed. Also, an analysis of how this marketing approach has worked on proposer's other rail lines should be detailed in terms of carloads generated thereon. This Plan should also describe the procedures to be used to encourage and foster industrial development on the lines of railroad in order to successfully expand and increase the traffic base thereon.

2. Operating Plan

This should consist of a general description of the proposer's operating plans, including service schedule, locomotive and rolling stock type and availability, personnel assignments, maintenance of way and maintenance of facilities capability, car leasing arrangements, derailment clearing and repair capability, grade crossing protection equipment maintenance and repair capability, and security on the lines of railroad.

In addition to describing freight operations, the proposer must describe plans to perform other services such as car storage, car repair, car leasing, passenger excursions or other services which will generate additional revenues. Revenues and expenses from such activities must be projected and included in the financial plan. The operating plan should also include the names, titles, and resumes of executive personnel, operating and supervisory personnel, maintenance personnel, and others who will be engaged in the operation. Include the personnel's education and experience that would be pertinent in the operation and management of the lines of railroad.

The proposer must provide evidence of excursion passenger train operations experience over the last 3 years with detailed description of passengers carried and types of equipment owned and used and a description of excursion train operations.

The ability to work closely with and have a professional relationship with connecting railroads, shippers, government entities and the Steamtown National Historic Site is a vital component of successful operations and the LCRA may contact the proposer's connecting railroads, the proposer's shippers, government agencies and other sources to analyze and evaluate this component.

Completed

3. Financial Plan

A financial plan must be submitted consisting of pro form balance sheets and income statements for each of the first three (3) years of proposed operation. A cash flow projection should also be submitted, showing monthly projections of the first year and an annual projection for the second and third year. Current 1992 Gross Rail Freight Revenues are shown in Exhibit "A".

The financial plan should explain the assumptions upon which the projections are based. A description of the method of financing anticipated for the rolling stock or other equipment needed to provide the proposed levels of service is requested. Liability insurance coverage limits of \$5,000,000 per occurrence is required on the lines of railroad and the premiums for this coverage should be included in the financial plan.

C. TERMS AND CONDITIONS OF PROPOSALS

1. Response Date: To be considered, all proposers must notify the LCRA of their intention to respond to the RFP within two (2) weeks after receipt. The complete proposal must arrive at the LCRA's office on or prior to 4:30 PM, April 15, 1993. The LCRA cannot be responsible for delay in the mail, but postmarks on or prior to April 13, 1993 will be considered to be timely.

2. Term of Contract: It is anticipated that as a result of the RFP process and subsequent negotiations, the LCRA will enter into an operating contract with the party selected. The term of the contract will be for a period of between one (1) to five (5) years.

3. Rejection: The LCRA reserves the right to reject any or all proposals received in response to this request. The LCRA reserves the right to negotiate with any parties deemed capable of best meeting the LCRA's requirements. The LCRA assures all proposers that every proposal will be seriously considered before any or all are rejected.

4. Format: Each proposal must be submitted in ten (10) copies to the LCRA at its office. Proposers are not to distribute proposals elsewhere. Proposals must be signed by an officer of the firm properly authorized to bind the firm to provisions of its proposal. An affidavit attesting to this fact must be included. The proposal must state that it will remain valid for at least one hundred eighty (180) days. The contents of the proposal of the successful operator may become the basis for contractual obligations if a contract is negotiated and consummated. The business plan, as required by this RFP, must be included and submitted with the proposal.

5. Interview: Proposers who submit proposals may be required to present themselves for an interview, or interviews, at which time they would offer oral presentations of their proposal to the LCRA or its representatives. Such presentations would be intended to provide an opportunity for the

proposer to clarify his/her proposal, to insure mutual understanding, and to clarify the LCRA's interests. The LCRA or its representatives will schedule any such interviews.

6. Prime Proposer Responsibilities: The selected proposer will be required to assume responsibility for all services offered in his/her proposal whether or not they are produced by them or a subcontractor. The LCRA will consider the selected proposer the sole point of contact with regard to contractual matters.

7. Disclosure of Proposal Contents: All information provided in the proposal will be held in as much confidence as legally possible. All materials submitted will become the property of the LCRA and may be returned only at the LCRA's option. Proposals submitted to the LCRA may be reviewed and evaluated by persons other than competing proposers, such as consultants at the direction of the LCRA. The LCRA reserves the right to utilize any and all concepts presented by the proposer. The selection or rejection of the proposal does not affect the LCRA's right to negotiate the optimum contract with the optimum proposer.

If a proposer desires any information submitted not be released to the public, it must be specified and must set forth credible reasons why such information should not be released. The LCRA will respect any such request to the extent that it is legally required to do so as an Authority, but the LCRA cannot guarantee the public disclosure process can protect all such information.

8. Approvals: Proposers that intend to seek exemption from specific provisions of the Interstate Commerce Act must note which provisions they will seek to be exempted from. Proposers must also disclose any and all other approvals and consents they may require in order to operate these lines of railroad.

9. Supplemental Information: Prospective proposers seeking additional information or clarification should contact the LCRA clearly stating the matter or matters requiring clarification. Any substantive information so provided will be provided to all parties on record requesting the RFP if the LCRA determines that the information is vital to the preparation of the proposal. The LCRA reserves the exclusive right to determine what is substantive information. Should it appear from requests for information that a pre-proposal conference would be beneficial, all parties requesting the RFP will be notified of the time and place.

10. Address and Contact for LCRA: The RFP is issued by the Lackawanna County Railroad Authority (LCRA) and all proposals should be mailed to: Lawrence G. Malski, Executive Director & General Counsel, Lackawanna County Railroad Authority, 701 Wyoming Avenue, Scranton, PA 18509 - Phone Number 717-963-6676, FAX Number 717-963-6718. All contact with the Authority regarding this RFP or the proposal to be submitted should be made with the aforementioned representative of the LCRA.

11. LCRA may require on site inspection visits of proposer's other operating rail facilities.

VI. CRITERIA FOR SELECTION

A. All proposals submitted will be reviewed and analyzed by the LCRA assisted by representatives of other groups and consultants as designated by the LCRA.

B. The following selection criteria will be used in the following priority sequence:

1. EXPERIENCE IN MARKETING AND OPERATIONS OF SHORTLINE OR REGIONAL RAIL LINES

The proposer must demonstrate the requisite professional background, experience and qualifications to satisfy the requirements of assured safe and reliable continued operation and marketing on the LCRA owned rail lines. A comparative statistical analysis and evaluation of proposer's current rail operations and marketing programs will be performed by the LCRA. Examples of new rail using industries located on proposer's lines will be reviewed.

Interviews with shippers, government agencies, railroads, and other parties will be conducted to evaluate the proposer's record in operations and marketing performance.

LCRA may perform site inspections of proposer's other lines of railroad operated in order to ascertain the validity and credibility of proposer's marketing, operations and maintenance qualifications. This criteria must be addressed in the operating, marketing and financial plans submitted in the proposal.

A multi-discipline management/employee organization is a key criteria to a successful operation. A description and evidence of a successful management "team" and its ability to work with LCRA and other entities such as the Steamtown National Historic Site is vital to a successful operation of the LCRA owned lines of railroad.

2. EXPERIENCE IN MAINTENANCE OF SHORTLINE OR REGIONAL RAIL LINES

A full description of the maintenance levels (FRA Class) and maintenance programs employed in the proposer's other

lines of railroad must be provided. These maintenance programs must detail manpower, materials, and equipment utilized on track and facility programs over the last 3 years and any special programs such as installation of new track work or facilities to encourage new industrial development on the proposers lines of railroad.

The proposer must provide details of federal and state grant programs utilized on proposers lines of railroad over the past three years.

Proposer must also demonstrate qualifications and experience in the maintenance of automatic signal protection and in locomotive and rolling stock repair and maintenance.

3. EXPERIENCE IN PROVIDING EXCURSION PASSENGER TRAIN SERVICE OPERATIONS ON SHORTLINE OR REGIONAL RAIL LINES

A description of any and all tourist/excursion service passenger operations operated by proposer in the last three years must be provided. The marketing and administration involved in these activities should also be detailed including description of any special events or other programs that the proposer has been involved in relating to excursion/tourist passenger operations.

EXHIBIT "A"

1992 Revenue Carloads

Scranton to Carbondale Rail Line - 1510
Scranton to Mt. Pocono Rail Line - 666

1992 Gross Revenues

Scranton to Carbondale Rail Line - \$598,159.81
Scranton to Mt. Pocono Rail Line - \$231,052.00

1992 Average Gross Rail Freight Income per Car

Scranton to Carbondale Rail Line - \$396.13/car
Scranton to Mt. Pocono Rail Line - \$346.92/car

EXHIBIT "B"
OPERATING AGREEMENT

THIS AGREEMENT made this 26th day of August, 1993 by and between the Lackawanna County Railroad Authority (LCRA) and the (ABCD)

WITNESSETH

WHEREAS, the LCRA owns a line of railroad known as the Scranton to Carbondale Branch between M.P. 196.8 and M.P. 174.59 which was purchased from the Delaware and Hudson Railway Corporation in 1985; and

WHEREAS, the LCRA owns a line of railroad known as the Scranton to Mt. Pocono Branch between M.P. 134 and M.P. 101 and the Brady Lead Track which was purchased from the City of Scranton, Steamtown Foundation and Conrail in 1991; and

WHEREAS, the LCRA has selected the proposal of ABCD to operate and provide rail freight service on these lines of railroad for the benefit of shippers and communities.

NOW, THEREFORE, the parties intending to be legally bound agree as follows:

AGREEMENT

1. Use of the Lines of Railroad.

LCRA hereby agrees to provide ABCD access to and use of the lines of railroad which shall include, but not be limited to property of every kind and description, real, personal and mixed, including the right-of-way, roadbed, tracks, track materials, signals, and other facilities, and appurtenances located in the County of Lackawanna, Wayne and Monroe in the Commonwealth of Pennsylvania as is more fully described in Appendix A. ABCD shall have the right to use the lines of railroad for exclusive railroad freight service and to establish, operate and maintain freight rail service thereon during the term of this Agreement, or any extension, or renewal thereof, subject to the terms and conditions hereinafter contained. This Agreement shall not be construed as conveying any ownership interest to ABCD. LCRA reserves the right to award and contract for passenger service operations on the lines of railroad with other parties.

2. Term.

The term of this Operating Agreement shall be ____ () years from the effective date hereof unless terminated prior thereto in accordance with the provisions of this Agreement,

Provided that:

- (i) ABCD shall not be in default of any of its obligations hereunder;
- (ii) LCRA shall continue to own the lines of railroad;
- (iii) ABCD shall have the right, after giving written notice to LCRA at least 180 days prior to the expiration date of the initial term or any renewal term thereof, to terminate this Agreement or, to request a renewal term of this Agreement;
- (iv) LCRA will have the option to extend the existing contract for another term upon ninety (90) days written notice ABCD prior to August 26, 19 .

3. Operating Fees and Other Payments.

(A) Commencing on ABCD's operation and continuing through the term of this agreement, unless renegotiated pursuant to the terms of Section 16 of this Agreement, ABCD will pay LCRA ten (10%) percent of all ABCD rail freight operating revenues on a monthly basis for the use of the lines of railroad.

(B) ABCD shall also pay and discharge, on or before the last day on which payment may be made without penalty or interest, any tax, assessment, charge for public utilities, excise, license and permit fees, and other governmental impositions and charges which shall or may during the term hereof be charged, laid, assessed, imposed, become due and payable, become a lien upon, or arising in connection with the use or operation of the lines of railroad for freight service. ABCD shall have the right to contest any such taxes or other charges by appropriate legal proceedings, conducted at its own expense, providing the ABCD shall furnish to LCRA a surety bond or other security satisfactory to cover the amount of the contested item or items, with interest and penalty for the period which such proceedings may be expected to take.

(C) ABCD shall also pay, on or before the last day on which payment may be made without penalty or interest, all trackage rights fees or payments, all interchange agreement fees or payments, all track lease fees or payments, and any and all other fees or payments arising from or in connection with the common carrier obligations of providing freight service on the lines of the railroad.

4. Conditions of Railroad Premises.

ABCD has inspected the lines of railroad and accepts the same "as is, where is." LCRA makes no representation or warranty as to the physical condition of the lines of railroad or the condition of legal title (other than for railroad purposes). ABCD shall maintain and return the lines of railroad to the LCRA in no less than FRA CLASS I condition on the Scranton to Carbondale line of railroad and on the Brady Lead Track and no less than FRA Class II condition on the Scranton to Mt. Pocono line of railroad.

5. Provision of Additional Equipment and Facilities.

ABCD shall be responsible for providing all equipment and facilities required for operation of the lines of railroad and not part of the premises provided hereunder. Such equipment and facilities shall include, but shall not be limited to, locomotives, rolling stock, maintenance equipment, office space, a public unloading facility and such other facilities and equipment as are required to provide rail freight service over the lines of railroad as contemplated by this Agreement. Both parties agree that a public unloading facility is necessary for operation of freight service on the lines of railroad. ABCD agrees to cause such a facility to be constructed at its own expense and to amortize the cost thereof over the contract period.

6. ABCD Obligations.

ABCD agrees that it will at all times during the continuance of this Agreement:

- (A) Pay all charges herein requested to be paid by the LCRA under Paragraph 3 at such time as the same are due and payable;
- (B) Operate freight service in accordance with all federal, state, and local requirements and shall be responsible for obtaining all governmental approvals, authorizations, franchises, licenses and permits as may be prerequisite to the rendering of such service;
- (C) Observe and comply with any and all requirements of the constituted public authorities and with all federal, state and local statutes, ordinances, regulations and standards applicable to ABCD or its use of the lines of railroad;
- (D) Maintain and operate at its own expense the lines of railroad, including any structures or related facilities located thereon in good operating condition and repair in a manner consistent with sound, accepted engineering principles and maintain the track to FRA CLASS I Standards on the Scranton to Carbondale line of railroad and the Brady Lead Track and to FRA Class II Standards on the Scranton to Mt. Pocono line of railroad or to such higher standards should additional funds become available to the LCRA to upgrade track to a higher standard;
- (E) Repair or replace at its own expense, any rails, ties and other items of track structures or signaling equipment as may be necessary to keep the lines of railroad in good operating condition. In the event of any such replacement at the expense of ABCD the new property shall become the property of LCRA;
- (F) Operate freight service on the lines of railroad at such levels, and at such frequency to be acceptable to LCRA and the shippers and receivers of rail freight now or to be located on the lines of railroad;

(G) Fully indemnify, defend and hold harmless LCRA, its officers, agents, employees, successors and assigns, from and against all claims, suits, actions or judgments, based upon or arising out of damage, injuries or death to persons or property caused by the negligence of ABCD or its agents, employees, guests, invitees, contractors, suppliers of materials, or furnishers of services in the use and occupancy of the property and lines of railroad or D&H or Conrail property by the ABCD;

(H) Be liable, defend and indemnify the LCRA for any damages, harm or injury to the lines of railroad or D&H or Conrail property caused by the negligence of the ABCD, its agents or employees;

(I) Maintain a policy or policies of liability insurance to insure itself against liability for injury or damage to persons and property, which policies will be in the minimum amounts set forth below:

	<u>TYPE</u>	<u>LIMITS</u>
(i)	<u>Comprehensive General Liability</u>	For all claims \$5,000,000 per occurrence, \$25,000 deductible;
(ii)	<u>Federal Employer's Liability Act</u>	Covered by blanket policy noted in (i);
(iii)	<u>Cargo Legal Liability</u>	Covered by blanket policy noted in (i);
(iv)	<u>Foreign Rolling Stock</u>	Covered by blanket policy noted in (i);
(v)	<u>Automobile Liability</u>	Covered by blanket policy noted in (i).

(J) Cause LCRA to be named as an additional named insured under each such policy and furnish LCRA with appropriate certificates of such insurance which shall specifically state that the insurance company shall furnish to LCRA at least thirty (30) days notice of any lapse or material change in such insurance;

(K) Peacefully deliver up and surrender possession of the lines of railroad to LCRA at the expiration or other termination of this Agreement;

(L) Provide unencumbered minimum working capital of fifty thousand (\$50,000) dollars;

(M) Provide and maintain in escrow a reserve of twenty-five thousand (\$25,000) dollars at all times in addition to the minimum working capital requirements of this section for the purpose of payment of liability claims not

otherwise covered by insurance. The escrow may be reduced upon written approval by LCRA. Any withdrawal from escrow by ABCD for payment of claims shall be matched by an equal deposit by ABCD within thirty (30) days thereafter;

(N) ABCD shall be permitted only by written LCRA approval, to remove, replace, or relay elements of the track or structures on the lines of railroad in the interest of cost and/or operating efficiency, provided that a continuous and useful, rail transportation facility is maintained. Improvements made by ABCD to the track, right of way, structures or related facilities shall become the property of LCRA;

(O) ABCD shall allow officers of LCRA the opportunity to inspect any portion of the lines of railroad including permission to ride any and all trains operated by ABCD.

(P) ABCD will perform marketing and sales programs for the lines of railroad in order to increase the number of carloads per year on the lines of railroad.

(Q) On the 26th day of August of each year this agreement is in effect, ABCD shall provide LCRA with the following information: (1) a complete list of the names and addresses of all employees of ABCD, (2) a complete list of the names and addresses of all officers and directors of ABCD, and (3) a complete list of the names and addresses of all stockholders in ABCD and the total number of shares owned by each stockholder.

(R) ABCD hereby covenants and agrees to provide one hundred twenty (120) days written notice of any proposed change in stock ownership which would change control of the ABCD. Upon receipt of such notice to LCRA, LCRA shall have the right to terminate the operating contract with ABCD upon thirty (30) days written notice to ABCD.

7. Restrictions.

ABCD further agrees that it will not:

(A) Occupy the lines of railroad in any way or for any purpose unrelated to the operation of the lines of railroad;

(B) Assign, mortgage, pledge or encumber the lines of railroad, or any part thereof or assign its obligation under this Agreement without prior written consent of LCRA; or

(C) Handle hazardous, toxic or noxious commodities without requisite insurance and written approval of the LCRA which will not be unreasonably withheld.

8. Relationship between ABCD and LCRA.

The ABCD and LCRA shall meet at least monthly to review and discuss revenue, costs, operations, marketing, maintenance and service problems. ABCD shall inform the LCRA and affected shippers of any major action or event related to the lines of railroad which may affect rail freight service to those shippers as soon as such action or event is known to ABCD. The LCRA will inform ABCD of any problems or concerns related to the rail freight service. ABCD is a private corporation and is an independent contractor and is not an agent of the LCRA. Whenever a written approval is required by ABCD from LCRA, the signature of the Executive Director will suffice to validate such written approval. The LCRA will conduct an annual performance audit of marketing, operating, maintenance and other functions performed by the ABCD.

9. Rents from Non-Operating Properties.

LCRA shall receive any and all rents arising from any leases of non-operating properties presently outstanding or to be negotiated on any portion of the lines of railroad and any renewals thereof, including, but not limited to, rents, license fees, and other revenues paid by any party occupying a portion of the lines of railroad including but not limited to rentals and fees for pipe and wire crossings, utility crossings and occupations, signboards, platform locations, driveways, storage facilities, side tracks, parking lots, water rights, land rents, building rents and water tank rents, among other things. LCRA shall collect such monies as they become due. LCRA will determine which properties are classified as non-operating properties.

10. Road Crossings.

During the term of this Agreement or any renewal thereof, ABCD shall assume and be responsible for any obligation flowing to LCRA as a result of obligations formerly assigned to D&H or Conrail, or which may be imposed under the provisions of Pennsylvania Public Utility laws and any orders issued thereunder with respect to crossings of the lines of railroad by public highways, bridges or utilities.

11. Condemnation of the Lines of Railroad.

If the lines of railroad, or any portion thereof, are condemned or taken by any competent authority for public use, the award for payment of damages resulting therefrom, or any amount paid in settlement thereof, shall be paid to and retained by LCRA, except as hereinafter provided. If the entire lines of railroad are taken or such substantial part thereof as shall materially impair or interfere with ABCD's proper use and enjoyment thereof, this Agreement shall automatically terminate as of the date of the taking. If only such portion of the lines of railroad is taken as shall not materially impair or interfere with the ABCD's proper use and enjoyment thereof, this Agreement shall continue in full force and effect, and all proceeds of the condemnation award or payment shall first be used by LCRA as may be required for the restoration of the lines of

railroad in such a manner as will enable the continuing operation thereof by the ABCD as hereinabove provided.

12. Default.

If during the term of this Agreement there shall occur any of the following events ("Events of Default"):

(A) ABCD shall fail to pay any payments or fees provided for in this Agreement at such times as they are due and payable;

(B) ABCD shall fail to perform any of its other obligations hereunder, and shall not cure such default within thirty (30) days after written notice thereof shall have been given to ABCD by LCRA or if such default cannot be cured within such period, shall not commence to cure within such period and thereafter diligently proceed to complete the same;

(C) ABCD makes an assignment for the benefit of the creditors or files a voluntary petition under any bankruptcy or insolvency law or is adjudicated as bankrupt or insolvent in voluntary or involuntary proceedings or seeks reorganization or receivership, or similar relief, or

(D) A proceeding against ABCD seeking reorganization or receivership or similar relief is not dismissed or vacated or stayed on appeal within sixty (60) days;

(E) ABCD fails to maintain or operate the lines of railroad in accordance with the terms of this Agreement or fails to conduct its operation in a manner consistent with generally accepted railroad safety practices;

(F) Any conduct of its operations in such a manner so as to commit intentional waste of the lines of railroad;

(G) Fails to discharge any claims or liens for materials and services for which ABCD becomes obligated while providing freight rail transportation service under this Agreement, then and at any time thereafter while such Event of Default is continuing and has not been cured by ABCD within thirty (30) days after notification by the LCRA of such event, the LCRA may in addition to its other remedies at law or equity or as provided for in this Agreement, by notice to ABCD specifying the Event of Default, terminate this Agreement.

All remedies given to LCRA by this Agreement and all rights and remedies given to it by law or equity shall be cumulative and concurrent. No termination of this Agreement or recovery of the lines of railroad shall deprive LCRA of any of its remedies or actions against ABCD for rent and all other sums due at the time of termination of this Agreement, nor shall any action for operating fees, breach of covenant or resort to any other remedies for recovery of operating fees be deemed or construed a waiver of the right to obtain possession of the lines of railroad.

14. Failure of Cure Default.

If ABCD shall fail to perform any of its obligations hereunder and shall fail to cure any default upon the giving of written notice and upon the time period specified in this Agreement or if ABCD shall not commence to comply within such period and thereafter complete with due diligence, LCRA shall have the right, but not the obligation and in addition to all other remedies it may have hereunder, upon twenty-four hours written notice to ABCD to undertake the performance of such obligations and obtain reimbursement from ABCD thereof.

15. Financial Settlement on Termination and Termination Costs.

In any case of termination, each party shall bear its own expenses of termination.

16. Renegotiation.

Either party shall have the right to request renegotiation of this Agreement upon ninety (90) days' written notice to the other party. When notice of such request is served upon the other party, it shall specify the changes requested. Upon failure to reach agreement, either party may request arbitration pursuant to Section 23 or terminate the Agreement. During any period of negotiation, all existing terms shall remain in force. Any changes agreed upon will be retroactive to ninety (90) days from the date of this Notice for Renegotiation.

17. Waiver.

Any waiver by either party under this Agreement or any breach by any other party shall not effect similar rights subsequently arising nor operate as a waiver of subsequent breaches of the same or similar kinds nor as a waiver of the clause or condition under which said right arose or said breach occurred.

18. Notice.

Notice provided for herein shall be sufficient if sent by certified mail, postage prepaid, as follows:

To the LCRA at:
Lackawanna County Railroad Authority
701 Wyoming Avenue
Scranton, PA 18509
ATTN: Executive Director

To the ABCD at:

or such other address as either party may, from time to time designate to the other in writing.

19. Regulatory Agency.

(A) This Agreement is subject to the orders, rules and regulations of appropriate regulatory authorities having jurisdiction over ABCD.

(B) If any portion of this Agreement is determined to be unduly burdensome by such authority, the parties shall make such modifications as may be necessary or reasonable.

20. Access to Records.

(A) ABCD agrees to maintain and make available monthly carload and interchange records and reports and such other records and reports necessary to permit LCRA to fully verify statements of traffic, revenue, and expenditures furnished by ABCD on a monthly basis.

(B) LCRA shall have full access to these records and reports during normal business hours upon 48 hours written notice, duly given to ABCD.

(C) ABCD will deliver to LCRA a certified public audit of its financial reports to be performed by a certified public auditing firm no later than June 30, 1994 for the year ending December 31, 1993 and each year thereafter.

21. Force Majeure.

Neither party hereto shall be held responsible or liable, either directly or indirectly, or be deemed in default or breach of this Agreement for any loss, damage, injury, delay, failure, or inability to meet all or any portion of its commitments hereunder caused by or arising from any cause which is unavoidable or beyond its reasonable control, including without limitation, war, hostilities, invasion, insurrection, riot, the order of any competent civil or military government, explosion, fire, strikes, lockouts, AAR service orders, actions of other carriers which materially effect ABCD's operations, labor disputes, perils of water including floods; ice, breakdowns, Acts of God including storms or other adverse weather conditions, derailments, wrecks or other causes of a similar or dissimilar nature which wholly or partially prevent the Parties or either of them from carrying out the terms of this Agreement; provided that the Party experiencing such force majeure or partial force majeure promptly gives to the other Party written notice that the disabling effect of such force majeure shall be eliminated as soon as and to the extent reasonably possible and that each Party shall have the right to determine and settle any strike, lockout and labor dispute in which that Party may be involved in its sole discretion. In the event that one party's performance is suspended in whole or in part by force majeure, the other Party's obligation to perform hereunder shall be suspended or commensurately reduced for the duration of the force majeure and for such additional reasonable period as may be required because of the existence of the force majeure. In the event that one Party's performance hereunder is

suspended by force majeure and cannot be resumed within a reasonable period of time, either Party shall have the right to terminate this Agreement.

22. Labor Conditions.

If during the term of this Agreement or subsequent renewal thereof, any labor protective conditions should be imposed as a result of an ICC order or pursuant to the Railway Labor Act, ABCD agrees to fully indemnify and hold harmless LCRA from the costs of said labor protective conditions.

23. Arbitration.

Any claim or controversy arising out of or relating to this Agreement, shall be settled by arbitration in Scranton, Pennsylvania, in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof.

24. Successors and Assigns.

This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. However, this provision shall not be construed to confer on ABCD any right or authority to assign all or any part of this Agreement without the LCRA's prior consent.

25. Entire Agreement.

This Agreement contains the entire understanding of the parties with respect to its subject matter. No oral statement or prior written matter shall have any force or effect. The parties hereby acknowledge that they are not relying on any representations or agreements other than those contained in this Agreement. This Agreement shall not be modified except by a written instrument subscribed by both parties hereto.

26. Severability.

If any term, covenant, condition or provision (or part thereof) of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision (or remainder thereof) to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

27. Anti-Discrimination.

ABCD and LCRA will execute and comply with the non-discrimination clause attached hereto and incorporated herein as Appendix B.

28. Applicable Law.

This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

29. Extension of Terms and Conditions.

LCRA shall have the option to extend the terms and conditions of this agreement to any other LCRA owned or acquired lines of railroad which connect to these lines of railroad in order to avoid in whole or in part the duplication of existing enterprises performed by ABCD serving substantially the same purposes.

IN WITNESS WHEREOF, the parties hereto have caused this Operating Agreement to be executed by themselves or by their respective duly authorized officers as of the day and year first above written.

ATTEST

LACKAWANNA COUNTY
RAILROAD AUTHORITY

DOMINIC T. SURACE, Secretary

EDWIN E. ROGERS, Chairman

ATTEST

ABCD

Parcel 1. A tract, piece or parcel of land, with the buildings and improvements thereon, situate, lying, and being in Fell Township, the City of Carbondale, Carbondale Township, the Boroughs of Mayfield, Jermy, Archbald, Jessup, Olyphant, and Dickson City, and the City of Scranton, County of Lackawanna, and Commonwealth of Pennsylvania, containing a line of railroad known as a portion of the former main line of Delaware and Hudson Railway Company and extending between a line at right angles to the westerly line of this Parcel 1 and located at Mile Post A-174.59 in Fell Township on the north and two lines located at Mile Post A-191.42 in the City of Scranton on the south with the westerly of said two lines being located on the north line of Marion Street and the easterly of said two lines being located in the center line of Marion Street said last mentioned line also being the northerly line of the Vine Street Branch, all being more particularly described in Exhibit D&H, attached hereto and made a part hereof.

Parcel 2. A tract, piece, or parcel of land, with the buildings and improvements thereon, situate, lying, and being in the City of Scranton, County of Lackawanna, and Commonwealth of Pennsylvania, containing a line of railroad known as the Vine Street Branch of Delaware and Hudson Railway Company and extending between a line located at Mile Post A-191.42 in the center line of Marion Street on the north and a line which crosses the center line of track at Mile Post A-192.63 as said line is shown on Exhibit VINE, Sheet 1 on the south, and being more particularly described in said Exhibit VINE, attached hereto and made a part hereof.

Parcel 3. A tract, piece or parcel of land, with the buildings and improvements thereon, situate, lying, and being in the City of Scranton and the Borough of Moosic, County of Lackawanna, and Commonwealth of Pennsylvania, containing a line of railroad known as a portion of the former main line of Delaware and Hudson Railway Company and extending between a line located at Mile Post A-191.42, said line being the north line of Marion Street, in the City of Scranton on the north and a line at right angles to the center line of track in the Borough of Moosic on the

south and being more particularly described in Exhibit NC&I, attached hereto and made a part hereof.

TOGETHER WITH all of the right, title, and interest of the GRANTOR in and to the continuous lines of railroad trackage and facilities extending between the respective mile posts set forth respectively in the descriptions of Parcels 1, 2, and 3, above and in and to the various rail, highway, and bridge crossings of the lines of railroad trackage and facilities as shown on said Exhibits D&H, VINE, and NC&I.

EXCEPTING AND RESERVING to Delaware and Hudson Railway Company (D&H), its successors and assigns (1) all coal fill and coal fines located in, upon, and under the above described Parcels 1, 2, and 3, together with the right to enter and come upon said premises themselves and/or with their contractors and/or subcontractors, with equipment, for the purpose of removing said coal fill and coal fines, so long as such entry does not unreasonably interfere with the use of said premises by the successors in title of the said Delaware and Hudson Railway Company and so long as such entry and removal are preceded by reasonable notice to and consultation with the Chief Engineer of Lackawanna County Railroad Authority (LCRA) with respect to any portion of the said parcels 1, 2, and 3 to which title is uninterruptedly held by LCRA from the date of transfer of title thereto from D&H to LCRA to the date of such entry and (2) a longitudinal easement, with crossings where necessary above, below and on the surface of the above described Parcels 1, 2, and 3, for purposes of construction, operation and maintenance of a communications transmission system or communications transmission systems subject to the notice and consultation requirements as immediately set forth above with regard to any portion of said parcels 1, 2, and 3 to which title shall have uninterruptedly remained in LCRA, as aforesaid.

ALSO EXCEPTING AND RESERVING to Delaware and Hudson Railway Company, its successors and assigns, those areas in Parcel 1 shown by diagonal shading on Exhibit D&H.

APPENDIX A

DESCRIPTION OF SCRANTON TO MT. POCONO AND
BRADY LEAD AND CHAMBERLAIN LEAD
LINES OF RAILROAD

APPROXIMATELY 0.2 of a mile of the former Conrail Scranton Branch from Mile Post 134.0 at the D&H Railway right of way line to Mile Post 133.8 at Cliff Street; and 0.7 of a mile of the Brady Industrial Lead from Mile Post 0.0 at Cedar Avenue to Mile Post 0.7 being the north abutment of the bridge over Roaring Brook; and 0.6 of a mile of the Brady Industrial Lead between Cliff Street and Cedar Avenue; and 0.5 of a mile of the Chamberlain Lead between Cliff Street and South Washington Avenue, all in the City of Scranton, Lackawanna County, Pennsylvania and;

AS FURTHER DESCRIBED AS all that certain line of Railroad, being a portion of Consolidated Rail Corporation's Scranton Branch identified as Line Code 6201 in the records of the United States Railway Association and also being a portion of the former Erie Lackawanna Railway Company's line of Railroad known as the Erie Lackawanna Main Line (Line Code 6201) and further identified in the Recorder's Office of Lackawanna County, Pennsylvania in Book 954 at page 346; and beginning at about Railroad Mile Post 120.0 in the Township of Covington, County of Lackawanna and Commonwealth of Pennsylvania; and extending thence in a general northwesterly direction and passing through Covington Township, the Borough of Moscow, Roaring Brook Township, Borough of Elmhurst, Roaring Brook Township, Borough of Dunmore and in to the City of Scranton to a point of ENDING on the east line of Cliff Street, in said City of Scranton, County of Lackawanna and Commonwealth of Pennsylvania, opposite Railroad Mile Post 133.8, all as indicated by "PS" on Consolidated Rail Corporation's Case Plan No. 67880, sheets 1 through 14(c), which sheets are the same sheets attached to the August 13, 1985 Deed between Consolidated Rail Corporation and the Grantor, and recorded as Deed Book 1145, pages 528 through 545 in the office aforesaid, and;

AS FURTHER DESCRIBED AS all that certain portion of right of way and the buildings and improvements, thereon erected, of railroad of Consolidated Rail Corporation (formerly Erie Lackawanna Railway Company) known as the Scranton Branch and identified as Line Code 6201 in the records of the United States Railway Administration, situate in the Townships of Coolbaugh, Pocono and Tobyhanna,

APPENDIX A

County of Monroe, Pennsylvania; and further identified in the Monroe County, Pennsylvania Recorder's Office in Deed Book Volume 902 at Page 144, and also situated in the Township of Lehigh, County of Wayne; and further identified in the Wayne County, Pennsylvania Recorder's Office in Deed Book 351 at Page 688; and also situated in the Townships of Clifton and Covington, County of Lackawanna; and further identified in the Lackawanna County, Pennsylvania Recorder's Office in Deed Book 954 at Page 346; and beginning at Railroad Mile Post 101 in said Township of Coolbaugh, Monroe County, Pennsylvania and extending thence in a general northwesterly direction through Wayne County, Pennsylvania to the ENDING at Mile Post 120 in said Township of Covington, Lackawanna County, Pennsylvania, all as indicated as "PS" on the Grantors Case Plan No. 68388, sheets 1 through 22 and;

AS FURTHER DESCRIBED AS all that certain property of the Grantor, located at Mt. Pocono, with the improvements thereon, being adjacent to Grantor's former line of railroad known as the Scranton Branch and identified as Line Code 6201 in the Recorder's Office of Monroe County in Deed Book Volume 902 at page 144, also formerly known as the Mt. Pocono Automobile Unloading Terminal, situate partly in the Townships of Pecono, Tobyhanna and Coolbaugh, County of Monroe and Commonwealth of Pennsylvania, all as indicated by "PS" on Grantor's Case Plan No. 70139, dated September 4, 1991, being all that property at said location which lies northwest of said Scranton Branch and southeast of the westerly edge of the access road located within said property.

APPENDIX B
COMMONWEALTH NONDISCRIMINATION CLAUSE

During the term of this contract, Contractor agrees as follows:

1. Contractor shall not discriminate against any employe, applicant for employment, independent contractor, or any other person because of race, color, religious creed, ancestry, national origin, age, or sex. Contractor shall take affirmative action to insure that applicants are employed, and that employes or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places, available to employes, agents, applicants for employment, and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

2. Contractor shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, or sex.

3. Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.

4. It shall be no defense to a finding of noncompliance with this nondiscrimination clause that Contractor had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

5. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under this nondiscrimination clause, Contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.

6. Contractor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's noncompliance with the nondiscrimination clause of this contract or with any such laws, this contract may be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for further Department contracts, and other sanctions may be imposed and remedies invoked.

APPENDIX B

7. Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by, the contracting agency and the Office of Administration, Bureau of Affirmative Action, for purposes of investigation to ascertain compliance with the provisions of this clause. If Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Affirmative Action.

8. Contractor shall actively recruit minority subcontractors or subcontractors with substantial minority representation among their employees.

9. Contractor shall include the provisions of this nondiscrimination clause in every subcontract, so that such provisions will be binding upon each Subcontractor.

10. Contractor obligations under this clause are limited to the contractor's facilities within Pennsylvania or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35956

**READING, BLUE MOUNTAIN NORTHERN RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER**

**JOINT REPLY OF PENNSYLVANIA NORTHEAST REGIONAL RAILROAD
AUTHORITY AND SEDA-COG JOINT RAIL AUTHORITY**

Exhibit L

TO: Interested Rail Operators

FROM: Monroe County Railroad Authority

DATE: March 10, 1994

SUBJECT: Request for Proposals and Qualifications to Operate
a 17 mile line of railroad between Mt. Pocono and Analomink,
Pennsylvania.

The Monroe County Railroad Authority, hereinafter the MCRA hereby requests proposals and qualifications from potential rail operators to provide designated common carrier rail operations over the aforementioned line of railroad in Northeastern Pennsylvania.

REQUEST FOR
PROPOSALS AND QUALIFICATIONS
FROM THE
MONROE COUNTY RAILROAD AUTHORITY
TO OPERATE A
LINE OF RAILROAD
BETWEEN
MT. POCONO AND ANALOMINK, PENNSYLVANIA
MARCH 10, 1994

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I. BACKGROUND AND OVERVIEW

The Monroe County Railroad Authority (MCRA) acquired the 17 mile Mt. Pocono to Analomink rail line from Conrail in January, 1994. The rail line has been out of service since approximately 1980 and no carloads have moved on this rail line since that time.

The line of railroad begins at MP101 and ends at MP84.6. The rail line is the former DL & W mainline and predominately consists of 131/132 rails and grades of 1.5 per cent.

The primary and most heavily weighted criteria to be considered in the selection of the successful operator will be successful previous qualifications and experience in marketing, operations and maintenance of shortline or regional rail lines.

The most responsive proposer must demonstrate a record of having the ability to successfully expand and increase traffic, operations and industrial development on shortline or regional lines of railroad.

II. REQUIREMENTS OF PROPOSAL

A. GENERAL REQUIREMENTS: The following general information is required in all proposals.

1. The full and correct legal name and principle address of the proposer.

2. Date of the prospective operator's incorporation, or organization, and the name of the political authority (state) under which it was incorporated or organized. If the proposer is a partnership, association, or other form of organization other than a private corporation, a full description of the organization including names of its officers must be furnished. If proposer has ever entered receivership, filed for reorganization or bankruptcy, the proposer must provide any and all details of such event to MCRA.

3. Name, title, address and telephone number of the person who can answer questions regarding the proposal with authority for the prospective operator.

4. Proposers with previous railroad experience must provide financial and operating information relating to rail freight service provided by the proposer. This information must include:

a) For each of the last three (3) years, a report of carloadings on the other lines of railroad operated by proposer broken down by shipper.

b) For each of the last three (3) years, financial statements of the proposer, including balance sheets, income statements, and statement of cash flows and required footnotes for all.

5. New ventures with no financial history must state their source of financing and submit evidence of the availability of that financing. If the source of financing is to be personal assets of the proposer, personal financial statements and income tax returns for the past three (3) calendar years must be submitted.

B. SUBMISSION OF A COMPREHENSIVE PLAN: A Comprehensive Business Plan must be submitted based on the assumption of start of operations on March 1, 1994 with projections for three (3) years from that date.

Submission of a Comprehensive Plan, continued

The three (3) components of the Business Plan are as follows:

1. Marketing Plan

A projection of annual revenues and traffic in terms of carloadings is required. A general description of the steps proposed to be taken by the proposer to assure attraction of new traffic is requested, covering the three (3) year period, with emphasis on the first year.

In preparing the Marketing Plan, the proposer should describe the approach they would take to increase carloadings, specifically the personnel and their qualifications should be detailed. Also, an analysis of how this marketing approach has worked on proposer's other rail lines should be detailed in terms of carloads generated thereon. This Plan should also describe the procedures to be used to encourage and foster industrial development on the lines of railroad in order to successfully expand and increase the traffic base thereon.

2. Operating Plan

This should consist of a general description of the proposer's operating plans, including service schedule, locomotive and rolling stock type and availability, personnel assignments, maintenance of way and maintenance of facilities capability, car leasing arrangements, derailment clearing and repair capability, grade crossing protection equipment maintenance, and repair capability, and security on the lines of railroad.

In addition to describing freight operations, the proposer must describe plans to perform other services such as car storage, car repair, car leasing, passenger excursions or other services which will generate additional revenues. Revenues and expenses from such activities must be projected and included in the financial plan. The operating plan should also include the names, titles and resumes of executive personnel, operating and supervisory personnel, maintenance personnel, and others who will be engaged in the operation. Include the personnel's education and experience that would be pertinent in the operation and management of the lines of railroad.

The proposer must provide evidence of excursion passenger train operations experience over the last three (3) years with detailed description of passengers carried and types of equipment owned and used and a description of excursion train operations.

Operating Plan, continued

The ability to work closely with and have a professional relationship with connecting railroads, shippers, and government entities is a vital component of successful operations and the MCRA may contact the proposer's connecting railroads, the proposer's shippers, government agencies and other sources to analyze and evaluate the component.

3. Financial Plan

A financial plan must be submitted consisting of pro form balance sheets and income statements for each of the first three (3) years of proposed operation. A cash flow projection should also be submitted, showing monthly projections of the first year and an annual projection for the second and third year.

The financial plan should explain the assumptions upon which the projections are based. A description of the method of financing anticipated for the rolling stock or other equipment needed to provide the proposed levels of service is requested. Liability insurance coverage limits of \$5,000,000 per occurrence is required on the lines of railroad and the premiums for this coverage should be included in the financial plan.

C. TERMS AND CONDITIONS OF PROPOSALS

1. Response Date: To be considered, all Proposers must notify the MCRA of their intention to respond to the RFP within one (1) week after receipt. The complete proposal must arrive at the MCRA's office on or prior to 4:30 PM, April 8, 1994. The MCRA cannot be responsible for delay in the mail, but postmarks on or prior to April 7, 1994 will be considered to be timely.

2. Term of Contract: It is anticipated that as a result of the RFP process and subsequent negotiations, the MCRA will enter into an operating contract with the party selected. The term of the contract will be for a period of between one (1) to five (5) years.

3. Rejection: The MCRA reserves the right to reject any or all proposals received in response to this request. The MCRA reserves the right to negotiate with any parties deemed capable of best meeting the MCRA's requirements. The MCRA assures all Proposers that every proposal will be seriously considered before any or all are rejected.

Terms and Conditions of Proposal, continued

4. Format: Each proposal must be submitted in ten (10) copies to the MCRA at its office. Proposers are not to distribute proposals elsewhere. Proposals must be signed by an officer of the firm properly authorized to bind the firm to provisions of its proposal. An affidavit attesting to this fact must be included. The proposal must state that it will remain valid for at least one hundred eighty (180) days. The contents of the proposal of the successful operator may become the basis for contractual obligations if a contract is negotiated and consummated. The business plan, as required by this RFP, must be included and submitted with the proposal.

5. Interview: Proposers who submit proposals may be required to present themselves for an interview, or interviews, at which time they would offer oral presentations of their proposal to the MCRA or its representatives. Such presentations would be intended to provide an opportunity for the proposer to clarify his/her proposal, to insure mutual understanding, and to clarify the MCRA's interest. The MCRA or its representatives will schedule any such interviews.

6. Prime Proposer Responsibilities: The selected proposer will be required to assume responsibility for all services offered in his/her proposal whether or not they are produced by them or a subcontractor. The MCRA will consider the selected proposer the sole point of contact with regard to contractual matters.

7. Disclosure of Proposal Contents: All information provided in the proposal will be held in as much confidence as legally possible. All materials submitted will become the property of the MCRA, and may be returned only at the MCRA's option. Proposals submitted to the MCRA may be reviewed and evaluated by persons other than competing Proposers, such as consultants at the direction of the MCRA. The MCRA reserves the right to utilize any and all concepts presented by the proposer. The selection or rejection of the proposal does not affect the MCRA's right to negotiate the optimum contract with the optimum proposer.

If a proposer desires any information submitted not be released to the public, it must be specified and must set forth credible reasons why such information should not be released. The MCRA will respect any such request to the extent that it is legally required to do so as an Authority, but the MCRA cannot guarantee the public disclosure process can protect all such information.

8. Approvals: Proposers that intend to seek exemption from specific provisions of the Interstate Commerce Act must note which provisions they will seek to be exempted from. Proposers must also disclose any and all other approvals and consents they may require in order to operate these lines of railroad.

Terms and Conditions of Proposals, continued

9. Supplemental Information: Prospective Proposers seeking additional information or clarification should contact the MCRA clearly stating the matter or matters requiring clarification. Any substantive information so provided will be provided to all parties on record requesting the RFP if the MCRA determines that the information is vital to the preparation of the proposal. The MCRA reserves the exclusive right to determine what is substantive information.

10. Address and Contact for MCRA: The RFP is issued by the Monroe County Railroad Authority (MCRA) and all proposals should be mailed to Robert C. Hay, Chairman, Monroe County Railroad Authority, Monroe County Courthouse, Courthouse Square, Stroudsburg, Pennsylvania 18360 - Phone Number: (717) 839-8155, Fax Number: (717) 839-1105. All contact with the Authority regarding this RFP or the proposal to be submitted should be made with the aforementioned representative of the MCRA.

11. MCRA may require on-site inspection visits of proposer's other operating rail facilities.

III: CRITERIA FOR SELECTION

A. All proposals submitted will be reviewed and analyzed by the MCRA assisted by representatives of other groups and consultants as designated by the MCRA.

B. The following selection criteria will be used in the following priority sequence:

1. EXPERIENCE IN MARKETING AND OPERATIONS OF SHORTLINE OR REGIONAL RAIL LINES

The proposer must demonstrate the requisite professional background, experience and qualifications to satisfy the requirements of assured safe and reliable continued operation and marketing on the MCRA owned rail lines. A comparative statistical analysis and evaluation of the proposer's current rail operations and marketing programs will be performed by the MCRA. Examples of new rail using industries located on proposer's lines will be reviewed.

Interviews with shippers, government agencies, railroads, and other parties will be conducted to evaluate the proposer's record in operations and marketing performance.

Criteria for Selection, continued

MCRA may perform site inspections of Proposers other lines of railroad operated in order to ascertain the validity and credibility of Proposers marketing, operations and maintenance qualifications. This criteria must be addressed in the operating, marketing and financial plans submitted in the proposal.

A multi-discipline management/employee organization is a key criteria to a successful operation. A description and evidence of a successful management "team" and its ability to work with MCRA is vital to a successful operation of the MCRA owned lines of railroad.

2. EXPERIENCE IN MAINTENANCE OF SHORTLINE OR REGIONAL RAIL LINES

A full description of the maintenance levels (FRA Class) and maintenance programs employed in the Proposers other lines of railroad must be provided. These maintenance programs must detail manpower, materials, and equipment utilized on track and facility programs over the last three (3) years and any special programs such as installation of new track work or facilities to encourage new industrial development on the Proposers lines of railroad.

The proposer must provide details of federal and state grant programs utilized on Proposers lines of railroad over the past three years.

Proposer must also demonstrate qualifications and experience in the maintenance of automatic signal protection and in locomotive and rolling stock repair and maintenance.

3. EXPERIENCE IN PROVIDING EXCURSION PASSENGER TRAIN SERVICE OPERATIONS ON SHORTLINE OR REGIONAL RAIL LINES

A description of any and all tourist/excursion service passenger operations operated by proposer in the last three (3) years must be provided. The marketing and administration involved in these activities should also be detailed including description of any special events or other programs that the proposer has been involved in relating to excursion/tourist operations.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35956

**READING, BLUE MOUNTAIN NORTHERN RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER**

**JOINT REPLY OF PENNSYLVANIA NORTHEAST REGIONAL RAILROAD
AUTHORITY AND SEDA-COG JOINT RAIL AUTHORITY**

Exhibit M

IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY
CIVIL DIVISION - LAW

READING, BLUE MOUNTAIN & NORTHERN RAILROAD	:	No. 13-06796
	:	
Plaintiff	:	
v.	:	
	:	
PENNSYLVANIA NORTHEAST REGIONAL RAIL AUTHORITY and BOARD OF THE PENNSYLVANIA NORTHEAST REGIONAL RAIL AUTHORITY,	:	
	:	
Defendants	:	

AMENDED COMPLAINT

Plaintiff Reading, Blue Mountain & Northern Railroad, by and through its counsel, Frederick J. Fanelli, Esquire, brings this Amended Complaint for injunctive and declaratory relief and a writ of mandamus against Defendants Pennsylvania Northeast Regional Rail Authority and the Board of the Pennsylvania Northeast Regional Rail Authority, and in support thereof, avers as follows:

THE PARTIES

1. Plaintiff Reading, Blue Mountain & Northern Railroad ("RBM&N") is a Pennsylvania corporation with a registered office address of 1 Railroad Boulevard, P.O. Box 218, Port Clinton, Pennsylvania, 19549.
2. RBM&N owns rail lines located within Lackawanna County and is bringing this action as a landowner within the county and as a taxpayer of the Commonwealth of Pennsylvania, and on behalf of itself and all other taxpayers.

3. Defendant Pennsylvania Northeast Regional Rail Authority (“PNRRA”) is a municipal authority formed pursuant to the Municipality Authorities Act of 1945, Act of May 2, 1945, P.L. 382, as amended, now codified at 53 Pa. C.S. §§ 5601 et seq. (2013), located at 280 Cliff Street, Scranton, Lackawanna County, Pennsylvania, 18503.

4. PNRRA is operated by the Defendant Board of the PNRRA (“Board”), which consists of eight members, four appointed by Lackawanna County and four appointed by Monroe County, and which holds meetings to conduct the business of the PNRRA, in accordance with its bylaws.

JURISDICTION AND VENUE

5. Jurisdiction is based on the Pennsylvania Constitution, Article 5, Section 5; and 42 Pa.C.S.A. § 931(a), both of which confer broad original jurisdiction upon the Court of Common Pleas.

6. Venue in the Lackawanna County Court of Common Pleas is based upon 42 Pa.C.S.A. § 931(c) and Pa.R.C.P. 1006(c)(1), in that the written contract on which this action is based was entered into in Lackawanna County, and the PNRRA is located within Lackawanna County, Pennsylvania.

7. This Court has jurisdiction over this matter which involves the interpretation and application of the Municipality Authorities Act (“MAA”), 53 Pa. C.S. §§ 5301 et seq. and the competitive sealed bidding and proposal provisions for contracts for public works of 62 Pa. C.S. § 3901 et seq., rather than the Surface Transportation Board, which routinely declines to exercise jurisdiction over disputes involving state statutory and contractual matters. See, e.g.,

Lackawanna County Railroad Authority – Acquisition Exemption – F&L Realty, Inc., STB

Finance Docket No. 33905, and Delaware-Lackawanna Railroad Co., Inc. – Operation Exemption – Lackawanna County Railroad Authority, STB Docket No. 33906 (STB served Oct. 22, 2001); Indiana Northeastern Railroad Company – Change in Operators – Branch and St. Joseph Counties Rail Users Association, Inc., in Branch County, Michigan, STB Finance Docket No. 33760 (STB served Sept. 1, 1999).

FACTUAL BACKGROUND

8. PNRRA owns nearly 100 miles of rail lines located in Lackawanna, Monroe, Wayne and Northampton Counties, from Carbondale to Scranton through the Pocono region all the way to Delaware Water Gap, on which it provides freight service in four counties via a private common carrier rail operator, under contract to PNRRA.

9. PNRRA was formed for the purpose of acquiring, holding, constructing, improving, maintaining, operating, owning and leasing, either as a lessor or lessee, rights-of-way, trackage, sidings and other related rail transport facilities and to accept grants and borrow money from any authority, corporation or agency of the United States or from the Commonwealth of Pennsylvania for the purpose of acquiring and preserving rail transport facilities within the Commonwealth of Pennsylvania.

10. As a municipal agency, PNRRA is subject to the requirements of the Municipality Authorities Act (“MAA”), 53 Pa. C.S. §§ 5301 et seq. and the competitive sealed bidding and proposal provisions for contracts for public works of 62 Pa. C.S. § 3901 et seq.

11. The Delaware-Lackawanna Railroad Company, Inc. (“the DL”) is a Pennsylvania corporation with a registered business address of Suite 800 Connell Building, 129 North

Washington Avenue, Scranton, Lackawanna County, Pennsylvania, 18503 and a mailing address of 280 Cliff Street, Scranton, Lackawanna County, Pennsylvania, 18503.

12. On August 27, 2010, PNRRA through its Board entered into a contractual operating agreement with the DL (“DL Operating Agreement”), for the DL to operate and provide rail freight service on railroad lines known as the Carbondale Mainline, the Pocono Mainline, and the Laurel Line Mainline, including the Minooka Industrial Track. A true and correct copy of the DL Operating Agreement is attached hereto as Exhibit “A”.

13. The term of the DL Operating Agreement is five years and it expires on August 27, 2015. DL Operating Agreement, Ex. A at 2.

14. It is believed and therefore averred that PNRRA and its Board did not subject this operating agreement to a public bidding process as required by the MAA and 62 Pa. C.S. §§ 3901 et seq. prior to awarding the operating agreement to DL. In fact, the Board last sought any type of public bidding for the awarding of the Operating Agreement in 1993. Since 1993, the Board has not solicited any public bids or Request For Proposals before awarding the Operating Agreement.

15. On November 6, 2013, RBM&N sent a letter to PNRRA and its Board, asking for an opportunity to submit a bid to operate their rail lines, in anticipation of the August 27, 2015 expiration of the current DL Operating Agreement.

16. In that letter, RBM&N stated that it believed that it could offer superior service to PNRRA than is currently being offered under the existing DL Operating Agreement.

17. It is believed and therefore averred that in response to RBM&N’s letter, PNRRA, through its Board, at its next regularly scheduled meeting on November 19, 2013, went into

executive session to discuss topics currently unknown. The Board emerged from the executive session and voted to extend the current DL Operating Agreement for an additional five years, although the current DL Operating Agreement is not set to expire for another year and a half.

18. It is believed and therefore averred that PNRRA, through its Board, voted to extend the current DL Operational Agreement for another five years without any form of competitive bidding.

19. Subsequent to the meeting of November 19, 2013, RBMN, through its counsel, wrote to PNRRA and indicated that RBMN could offer a significant increase in fees paid to PNRRA if given an opportunity to bid or submit a proposal for the Operating Agreement.

20. The purpose and intent of the Pennsylvania Legislature in enacting the MMA is to benefit the people of the Commonwealth by, among other things, increasing their commerce, health, safety and prosperity, and to permit the authority to benefit the people. 53 Pa. C.S. § 5607(b)(2), (3).

21. One of the powers granted to the Authority in the MMA is the power to enter into contracts. 53 Pa. C.S. § 5607(d)(13), (14).

22. PNRRA's DL Operating Agreement is a contract subject to the requirements of 53 Pa. C.S. § 5614, in that it is a contract for work, including for the maintenance of those lines in an FRA Class I and Class II condition; for the maintenance of PNRRA's structures and related facilities and equipment located on the rail lines; for the repair or replacement of same; for the provision of working capital as well as a escrowed reserve; for the removal, replacement or improvement of the track and structures on the railroad lines; for security along the rail lines;

for marketing and sales work; for the provision of hirail inspection services; and any other work provided for in the DL Operating Agreement. DL Operating Agreement, Ex. A.

23. PNRRA's DL Operating Agreement is a contract subject to the requirements of 62 Pa. C.S. §§ 3901 et seq.

24. PNRRA's DL Operating Agreement exceeds \$18,500 in value and should have been subject to competitive bidding pursuant to 53 Pa. C.S. § 5614(a), which provides:

§ 5614. Competition in award of contracts.

(a) *Services.*

(1) Except as set forth in paragraph (2), all construction, reconstruction, repair or work of any nature made by an authority if the entire cost, value or amount, including labor and materials, exceeds a base amount of \$ 18,500, subject to adjustment under subsection (c.1), shall be done only under contract to be entered into by the authority with the lowest responsible bidder upon proper terms after public notice asking for competitive bids as provided in this section.

(2) Paragraph (1) does not apply to construction, reconstruction, repair or work done by employees of the authority or by labor supplied under agreement with a Federal or State agency with supplies and materials purchased as provided in this section.

53 Pa. C.S. § 5614(a) (2013).

25. To the extent that PNRRA seeks to avoid competitive bidding by asserting that the DL Operating Agreement is some sort of "special services" contract, it is noted that there is nothing unusual, peculiar, or special about providing rail freight contractor services over properties owned by a different entity.

26. As opposed to being a "special services" contract, these agreements/contracts are common. For example, numerous other freight railroads provide services for entities similar to PNRRA, such as North Shore Railroad over SEDA-COG, C&S and RBM&N Railroad over

Carbon County, DL Railroad over PNRRA and Genessee and Wyoming Railroad over Luzerne County Redevelopment Authority.

COUNT 1 – INJUNCTION

27. The averments of paragraphs 1 through 24 are incorporated herein as if set forth at length.

28. RBM&N has a clear right to equitable relief in having the opportunity to submit a bid to operate PNRRA's rail line, which PNRRA has avoided by renewing the DL Operating Agreement without public notice or seeking other bids, in violation of 53 Pa. C.S. § 5614(a) and 62 Pa. C.S. §§ 3901 et seq.

29. An injunction of PNRRA's renewal of the DL Operating Agreement is necessary to avoid an injury that cannot be compensated by damages, in that RBM&N will not have an opportunity to have its bid considered by PNRRA without an injunction preventing the renewed contract from becoming effective.

30. Greater injury will result of the Court does not grant an injunction, than if it does, because RBM&N will not have the opportunity to have its bid considered if an injunction does not issue; if this Court issues an injunction, PNRRA, will not suffer any harm and the status quo will be maintained until PNRRA gives public notice and accepts bids according to the requirements of 53 Pa. C.S. § 5614(a) and 62 Pa. C.S. §§ 3901 et seq. The current contract does expire until August 27, 2015, approximately eighteen months from now, giving PNRRA ample time to accept and consider competitive bids.

WHEREFORE, Plaintiff Reading, Blue Mountain & Northern Railroad respectfully requests that this Court enjoin Defendants Pennsylvania Northeast Regional Railroad Authority and its Board from acting upon or implementing the renewal of the existing DL Operating Agreement until the Defendant follows the public bidding requirements pursuant to 53 Pa. C.S. § 5614(a) and 62 Pa. C.S. §§ 3901 et seq., and award any other relief that this Court deems just and proper.

COUNT II – DECLARATORY ACTION

31. The averments of paragraphs 1 through 28 are incorporated herein as if set forth at length.

32. The Declaratory Judgments Act, 42 Pa. C.S. §§ 7531 et seq., provides in part:

Courts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.

42 Pa. C.S. § 7532.

33. It also provides:

Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise, and obtain a declaration of rights, status, or other legal relations thereunder.

42 Pa. C.S. § 7533.

34. PNRRA is a municipal authority subject to the provisions of the MAA and 62 Pa. C.S. §§ 3901 et seq.

35. Any contract for the operation of PNRRA's rail lines must be subjected to a public bidding process pursuant to 53 Pa. C.S. § 5614(a) and 62 Pa. C.S. §§ 3901 et seq.

36. Any contract entered into by PNRRA for the operation of its rail lines without having been subjected to a public competitive bidding process should be declared by this Court to be null and void.

WHEREFORE, Plaintiff Reading, Blue Mountain & Northern Railroad respectfully requests that this Court grant relief to Plaintiff and declare that Defendants Pennsylvania Northeast Regional Railroad Authority and its Board must follow the public notice and competitive bidding requirements of 53 Pa. C.S. § 5614(a) and 62 Pa. C.S. §§ 3901 et seq. for the operation of its rail lines, and that any operation agreements entered into by PNRRA and its Board without having been subjected to the competitive bidding requirements of 53 Pa.C.S. § 5614(a) and 62 Pa. C.S. §§ 3901 et seq. are deemed null and void, and award any other relief that this Court deems just and proper. .

COUNT III – MANDAMUS

37. The averments of paragraphs 1 through 34 are incorporated herein as if set forth at length.

38. RBM&N has a beneficial interest in the competitive bidding process and in submitting a bid for the right to contract to operate PNRRA's rail lines that is distinct from the general public.

39. PNRRA and its Board are presumed to act and make decisions for the public good.

40. The MAA requires PNRRA and its Board to act to the benefit of the public, the taxpayers. 53 Pa. C.S. § 5607.

41. The MAA requires an authority to use a public competitive bidding process for service contracts over \$18,500 in value. 53 Pa. C.S. § 5614(a).

42. Despite request by RBM&N to submit a bid for consideration by PNRRA, PNRRA and its Board rejected RBM&N's request by renewing the DL Operational Agreement one and a half years in advance, without soliciting or accepting other alternative bids for the work.

43. The renewal of the DL Operational Agreement and the failure to solicit or accept competitive bids was a violation of RBM&N's rights as well as a violation of the Board's duty to act in the best interests of the public's welfare.

44. RBM&N has a clear legal right to submit a bid for the operation of PNRRA's rail lines pursuant to 53 Pa. C.S. § 5614(a) and 62 Pa. C.S. §§ 3901 et seq.

45. PNRRA is subject to and has a duty to following the competitive bidding requirements of 53 Pa. C.S. § 5614(a) and 62 Pa. C.S. §§ 3901 et seq.

46. A writ of mandamus is required because there is no other appropriate and adequate remedy.

47. To the extent that PNRRA's actions through its Board are discretionary, PNRRA and its Board acted in an arbitrary or fraudulent manner, or with an erroneous legal basis, and abused its discretion in failing to follow the competitive bid requirements of 53 Pa. C.S. § 5614(a) and in renewing the DL Operational Agreement without considering other, possibly better and more competitive, bids.

WHEREFORE, Plaintiff Reading, Blue Mountain & Northern Railroad respectfully requests that this Court declare that Defendant Pennsylvania Northeast Regional Railroad Authority and its Board must follow the public notice and competitive bidding requirements of 53 Pa. C.S. § 5614(a) and 62 Pa. C.S. §§ 3901 et seq. for the operation of its rail lines and that any operation agreements entered into by PNRRA without having been subjected to the competitive bidding requirements of 53 Pa.C.S. § 5614(a) and 62 Pa. C.S. §§ 3901 et seq. are deemed null and void.

Respectfully submitted by:



FREDERICK J. FANELLI, ESQUIRE
Attorney I.D. #36672
Fanelli, Evans & Patel, P.C.
The Necho Allen
No. 1 Mahantongo Street
Pottsville, PA 17901
(570) 622-2455

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35956

**READING, BLUE MOUNTAIN NORTHERN RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER**

**JOINT REPLY OF PENNSYLVANIA NORTHEAST REGIONAL RAILROAD
AUTHORITY AND SEDA-COG JOINT RAIL AUTHORITY**

Exhibit N

CLERK OF COURT
JUDICIAL RECORDS

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CLERK OF COURT
JUDICIAL RECORDS

<p>READING, BLUE MOUNTAIN & NORTHERN RAILROAD, Plaintiff</p> <p style="text-align: center;">vs.</p> <p>PENNSYLVANIA NORTHEAST REGIONAL RAIL AUTHORITY and BOARD OF THE PENNSYLVANIA NORTHEAST REGIONAL RAIL AUTHORITY, Defendants</p>	<p>IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY</p> <p> </p> <p>CIVIL ACTION</p> <p>NO. 13-CIV-6796</p>
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OPINION

GEROULO, J.

On May 13, 2015, Plaintiff Reading, Blue Mountain & Northern Railroad filed an Emergency Application for a Preliminary Injunction, and Defendants Pennsylvania Northeast Regional Rail Authority and the Board of the Pennsylvania Northeast Regional Rail Authority filed an Answer. On May 13, 2015, the parties appeared before this court for a hearing on the application and this court heard argument from both sides and then continued the hearing until May 18, 2015 in order for the parties to submit briefs. On May 18, 2015, the defendants filed a brief; the plaintiff did not file a brief. A hearing was conducted and this court denied the application for a preliminary injunction. On May 29, 2015, the defendant filed a Notice of Appeal of this court's order to the Commonwealth Court of Pennsylvania. This opinion is filed

in compliance with Rule 1925(a) of the Pennsylvania Rules of Appellate Procedure.

I. BACKGROUND

The defendant, Pennsylvania Northeast Regional Railroad Authority, is a municipal authority which owns rail lines in Northeast Pennsylvania for the purpose of maintaining federal common carrier rail transportation along the rail lines. It and its predecessors were created in 1982 as a result of private railroads abandoning rail lines in the area. The defendant has had an operating agreement with the Delaware-Lackawanna Railroad Company, Inc. ("DL") since 1993 to operate and provide rail freight services on its lines. The federal Surface Transportation Board has approved the defendant's acquisition of the lines and DL's operation of the lines pursuant to the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10101 et seq. The plaintiff, Reading, Blue Mountain & Northern Railroad, is a private for-profit railroad company which acquired rail lines that run close to some of the defendant's lines in 1996.

The current operating agreement between the defendants and DL was signed on August 27, 2010 and expires on August 26, 2015. See Exhibit A to Plaintiff's Emergency Application for a Preliminary Injunction. The agreement provides that the defendants have the option to extend the agreement for another five-year term and must give 90 days written notice to DL prior to August 27, 2015. Id. In November 2013, the Board of the Pennsylvania Northeast Regional Railroad Authority voted to exercise this option and extend the term of the operating agreement for an additional five years.

On December 23, 2013, the plaintiff filed its initial complaint, and on January 28, 2014, filed a First Amended Complaint challenging the operating agreement. The parties engaged in some discovery, and on December 17, 2014, the plaintiff filed a Second Amended Complaint. In Count I of its Second Amended Complaint, the

plaintiff seeks a declaratory judgment that the defendants are violating 53 Pa.C.S. § 5607(b)(2) by competing with existing enterprises serving the same purpose and must refrain from doing so by divestiture of its rail freight business, and sale of the rights to freight traffic, and asks the court to declare that the operating agreement with DL is void. In Count II, the plaintiff seeks a declaratory judgment that the defendants have violated 53 Pa.C.S. § 5614 and 62 Pa.C.S. § 3901 by entering into an operating agreement without subjecting the operation of the lines to competitive bidding, and asks the court to declare that the current operating agreement with DL is null and void. The defendants have filed preliminary objections to the Second Amended Complaint, which are currently pending before Judge Braxton, asserting federal preemption, failure to state a cause of action on which relief can be granted and lack of subject matter jurisdiction because of the failure to join DL as an indispensable party.

On May 13, 2015, the plaintiff filed and presented this court with its Emergency Application for Preliminary Injunction, asking this court to enjoin the defendants from signing any extension of the current operating agreement until the merits of the controversy are decided, and to order that the current operating agreement remain in place until that time. The court heard argument from both sides and continued the hearing until May 18, 2015 for the parties to file briefs supporting their positions. The hearing was concluded on May 18, 2015 and the court denied the request for a preliminary injunction. On May 29, 2015, the plaintiff filed this appeal to the Commonwealth Court.

II. DISCUSSION

A. Plaintiff's Application

The plaintiff has not submitted a brief to this court as requested, but in its Application for the preliminary injunction argues: (1) in a situation like this where a plaintiff is seeking to require the defendant to comply with a statute, irreparable harm

is presumed; (2) if a municipality is enjoined from entering into a public contract, the court can require the existing contract to continue in place; (3) the plaintiff is likely to succeed on the merits and the right to relief is clear since the operating agreement is a contract for work and thus subject to the bidding requirements of 53 Pa.C.S. § 5614 and 62 Pa.C.S. § 3901 and the Surface Transportation Board does not require any particular qualifications when seeking authorization to be a freight rail operator; (4) the plaintiff has a clear right to relief in having the opportunity to submit a bid to operate the rail lines which the defendants have avoided by voting to renew the operating agreement with DL to the detriment of the taxpayers of Lackawanna County; (5) the plaintiff has a clear right to relief because the defendants are directly engaging in competition with a private enterprise in violation of 53 Pa.C.S. § 5607(b)(2); (6) greater injury will result if the court does not grant the preliminary injunction since the plaintiff and other railroads will not have the opportunity to have their bids considered for five more years and the defendants will continue to violate the law and the taxpayers will lose out on the opportunity for increased revenue; and (7) DL is obligated to continue to provide rail service until it is authorized by the Surface Transportation Board to discontinue operations even if the current operating agreement expires, so rail service will not be affected by an injunction, no harm will be suffered and the status quo will be maintained.

At the hearing, plaintiff's counsel argued that granting a preliminary injunction would not adversely affect the public interest because under federal rules, DL as the current rail provider is mandated to continue to provide service and would have no choice but to continue to operate even if the current contract expires. He argued that the defendants conceded that DL might drop their insurance or things to that effect, but the shippers along the rail will be provided service. He argued that before DL could abandon the lines it would have to get permission from the federal authorities

and that would not be granted. He argued that there is irreparable injury here because a violation of competitive bidding requirements constitutes irreparable harm, as do statutory violations. He argued that federal preemption is not an issue because the judge handling the underlying case denied the defendants' preliminary objection to the first complaint when they raised this issue and the federal government does not get involved in issues of awards of contracts or contract disputes. He argued that there is greater injury in refusing to grant the injunction because the defendants and DL have had a contract since 1993 and it will continue ad infinitum without competitive bidding in violation of the law. He argued that if the injunction is not granted then the court would be sanctioning the ongoing violation of state law. He argued that if the injunction is not granted, and the operating agreement is extended for another five years, if the plaintiff prevails in the underlying lawsuit, it would have no way to force DL off the line since the state court does not have that authority, only the federal government does, and the plaintiff would have to file proceedings in federal court to get them off the line. The plaintiff's attorney also argued that to resolve this, he had proposed that the defendants and DL extend the contract with a proviso that if after final judicial determination, the plaintiff prevails on the merits, the contract would terminate within six months and DL would abandon within six months but the defendants would not agree to this settlement.

B. Defendant's Response

In their brief, the defendants respond that the plaintiff has failed to meet any of the six elements necessary to issue a preliminary injunction. First, the defendants assert that the right to relief is not clear, since, as is being litigated in the underlying case, 53 Pa.C.S. § 5614 and § 5607(b)(2) do not apply to the operating agreement between the defendants and DL. The defendants provide several arguments to support this position, including that the operating agreement is a lease rather than a contract

for construction, public funds are not being expended under the agreement since DL is the party expending funds, there cannot be a "lowest possible bidder" for this kind of contract, the operating agreement is similar to a professional service contract which is not subject to bidding, the plaintiff came into existence and started competing with the defendants long after the defendants acquired the lines, and the plaintiff lacks standing. Second, the defendants assert, as they have in the pending preliminary objections, that there is not a clear right to relief since the court lacks subject matter jurisdiction because the plaintiff has not joined DL and DL is an indispensable party to the lawsuit since its rights are being litigated. Third, the defendants assert, as they have in the pending preliminary objections, that the right to relief is not clear because the plaintiff's claims are preempted under section 10501(B) of the Interstate Commerce Commission Termination Act since regulation of rail transportation is exclusive to the Surface Transportation Board and the relief sought by the plaintiff would violate this law. Fourth, the defendants assert that the plaintiff cannot demonstrate immediate and irreparable harm since it has not shown that the state statutes it claims are being violated apply here. They also argue that the remedy that the plaintiff is seeking in the underlying lawsuit is to have the operating agreement declared null and void, but it is asking here that the contract remain in place if the injunction is granted, so if it succeeds in the underlying suit, the injunction would have no effect since the plaintiff will be in the same position if the injunction is not granted and the operating agreement is extended. Thus, the defendants argue that extending the operating agreement another five years does not negatively affect the plaintiff in any way. Fifth, the defendants argue that greater injury will occur from granting the injunction than from denying it since if the operating agreement with DL is not renewed, there would no longer be an agreement in place and the contract governs many important terms, including revenues paid to the defendants by DL;

indemnification to the defendants; insurance for the protection of the defendants, shippers using the lines, and the public; and security for the protection of the defendants, shippers and the public. The defendants assert that this court cannot order the current operating agreement to remain in place beyond its term particularly in the absence of DL and that DL would also be harmed if it were required to keep operating without a contract in place. Sixth, the defendants assert that an injunction would adversely affect the public interest since if the option to renew the contract is not exercised, and the plaintiff is not successful in its underlying suit, the defendants will have lost the ability to compel the continuation of the contract with DL and the terms of the contract mentioned above (insurance, indemnification, security) would no longer be in place. Finally, the defendants assert that the requested injunctive relief would change the status quo since the status quo is the continued existence of the operating agreement between the defendants and DL, and if the option to extend the contract for five years is exercised, the same operating agreement remains in place.

C. Reasons for Court's Decision

Denial of a preliminary injunction is proper if any one of the six "essential prerequisites" for granting a preliminary injunction is not satisfied. Summit Towne Center, Inc. v. Shoe Show of Rocky Mount, Inc., 828 A.2d 995 (Pa. 2003). First, a party seeking a preliminary injunction must show that it is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages. Second, the party must show that greater injury would result from refusing an injunction than from granting it, and that issuance of an injunction will not substantially harm other interested parties. Third, the party must show that the injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct. Fourth, the party seeking the injunction must show that the activity it seeks to restrain is actionable, that its right to relief is clear,

and that the wrong is manifest, or in other words, must show that it is likely to prevail on the merits. Fifth, the party must show that the injunction it seeks is reasonably suited to abate the offending activity. Finally, the party seeking an injunction must show that a preliminary injunction will not adversely affect the public interest. *Id.* at 1001. An injunction that commands the performance of an affirmative act, a “mandatory injunction,” is the rarest form of injunctive relief and an extreme remedy. Hoffman v. Steel Valley School District, 107 A.3d 288 (Pa. Comwlth. 2015).

As this court found at the conclusion of the May 18, 2015 hearing, the plaintiff failed to establish several of these essential prerequisites here. The plaintiff has not established a clear right to relief. The defendants have made plausible arguments that the state statutes which the plaintiff claims are being violated do not even apply to the operating agreement between the defendants and DL. As the plaintiff’s attorney acknowledged at the hearing, the federal Surface Transportation Board does have authority over the rail lines at issue, and has authorized DL to operate the lines on the defendants’ behalf. In fact, one of the reasons that the plaintiff’s attorney argued that the injunction is necessary is that if the plaintiff is successful in the underlying lawsuit, but the operating agreement is still in place, the plaintiff would then have to file a lawsuit in federal court to stop DL from operating on the lines. For this court to find at this early stage of this case that the defendants and DL do not have a legal right to the lines and that federal law, which clearly comes into play here, does not preempt state law in this case would be premature, particularly since this same issue is pending before another judge who is considering preliminary objections.

Moreover, the plaintiff is asking this court to order DL, who has not been named a party to this lawsuit, to continue operating the lines, either without an operating agreement in place, or for this court to change the existing operating agreement to extend the termination date of the agreement indefinitely. When

declaratory relief is sought, as it is in this case, all persons who have any interest which would be affected by the declaratory action must be made parties to the lawsuit or the court lacks subject matter jurisdiction. City of Philadelphia v. Commonwealth, 838 A.2d 566 (Pa. 2003). This is another issue that the defendants have raised in the preliminary objections currently pending before Judge Braxton. Because it is not clear that this court has subject matter jurisdiction since an indispensable party has not been joined, nor that this court has the authority to modify the existing agreement between DL and the defendants to extend the termination date indefinitely if the operating agreement were to stay in place without DL as a party, the plaintiff's right to relief is not clear.

The plaintiff has not demonstrated that the injunction is necessary to prevent immediate and irreparable harm which cannot be compensated by damages. In its Application, the plaintiff is asking this court to enjoin the defendants from exercising the right to extend the current operating agreement, which expires on August 26, 2015, for another five years, but at the same time, is asking this court to keep the current operating agreement in place. The plaintiff is thus acknowledging that there will not be immediate and irreparable harm if the operating agreement remains in place while this lawsuit is pending. In fact, the plaintiff's attorney represented to the court that it was willing to resolve the matter by keeping the agreement in place through the course of the lawsuit, but adding a provision to the agreement that if the plaintiff prevailed, DL would vacate the rail lines within 6 months of such a ruling. Of course, DL is not a party to this lawsuit so it is not clear that this court could order DL to do anything. In any event, the plaintiff also argued that if the court did not extend the agreement beyond August 26, 2015, then DL would still have to continue to operate the lines under federal law even without an operating agreement in place. As discussed below, this is a risky proposition and unnecessary. The better remedy here is to deny the

injunction and allow the defendants to exercise the option to extend the existing operating agreement for another five years. The operating agreement will remain in place while the lawsuit is pending. If the plaintiff prevails, then the relief it is seeking in the underlying suit, to have the operating agreement declared null and void, will presumably be granted. The plaintiff argued that it would suffer irreparable harm because it would have to file a lawsuit in federal court to then get DL removed as the authorized operator of the rail lines. That the plaintiff would have to file suit in federal court does not constitute irreparable harm, and, in fact, appears to be something it would have to do whether the injunction is granted or not, since only the federal Surface Transportation Board can authorize a different rail operator.

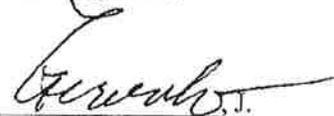
The plaintiff has also failed to show that the injunction will not adversely affect the public interest, and that greater injury will occur from refusing the injunction than from granting it. The plaintiff argued that if the defendant does not exercise the option to extend the operating agreement beyond August 26, 2015, and the operating agreement expires, under federal law, DL will still be required to operate the lines without an operating agreement. As the defendants argued, however, this would result in an adverse affect to the public interest because the operating agreement governs much more than just who operates the lines. Among many other requirements, the agreement also requires DL to pay the defendants a percentage of operating revenues, fully indemnify the defendants, maintain specific levels of insurance, maintain a certain level of working capital, provide security, perform marketing and sales, and take responsibility for public crossings. See Exhibit A to Plaintiff's Emergency Application for a Preliminary Injunction. If DL were to operate the rail lines without the operating agreement in place, none of this would be required at great detriment to the defendants, the shippers, the public and public safety. DL's rights under the contract would also be unenforceable, so its interests would be

compromised by an injunction as well. The plaintiff argues that greater injury will result if the court does not grant the preliminary injunction since there will not be bidding for another five years and taxpayers will lose out on increased revenue, but also concedes that there will be no bidding unless and until it is successful in its underlying suit and the operating agreement is declared null and void. Thus, an injunction at this time will not resolve this alleged injury since DL will remain the operator of the lines and only the remedy the plaintiff seeks in the underlying lawsuit would enable bidding.

Finally, denying the injunction maintains the status quo, while granting it would alter the status quo substantially. The plaintiff asks the court to keep the current operating agreement in place, but prevent the defendants from extending it beyond August 26, 2015. It is not clear how the court can require the defendants and DL to continue to operate under an expired contract indefinitely, particularly since DL is not a party to this lawsuit. To maintain the status quo, the defendants should be allowed to exercise their option to extend the operating agreement for another five years. If the plaintiff prevails in the underlying lawsuit, the agreement will be declared null and void, but while the lawsuit is pending, DL and the defendants will continue to operate under the agreement as they have since 1993. It is certainly not the status quo for DL to operate without an operating agreement in place.

For the foregoing reasons, the plaintiff has failed to establish the elements necessary to grant the extreme remedy of a preliminary injunction.

BY THE COURT:



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35956

**READING, BLUE MOUNTAIN NORTHERN RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER**

**JOINT REPLY OF PENNSYLVANIA NORTHEAST REGIONAL RAILROAD
AUTHORITY AND SEDA-COG JOINT RAIL AUTHORITY**

Exhibit O

ARTICLES OF INCORPORATION OF
SEDA-COG JOINT RAIL AUTHORITY

TO THE SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA:

In compliance with the provisions of the Municipality Authorities Act of 1945, approved May 2, 1945, P.L. 382, as amended and supplemented, the Counties of Centre, Columbia, Montour, Northumberland and Union political subdivisions under the laws of the Commonwealth of Pennsylvania, pursuant to an ordinance duly enacted and ordained by the Board of County Commissioners of said Counties, being the municipal authorities of said Counties and published in accordance with the law, hereby certifies that:

1. The name of the Authority shall be the SEA-COG Joint Rail Authority.

2. The Authority is formed under the Municipality Authorities Act of 1945, approved May 2, 1945, P.L. 382, as amended and supplemented.

3. No municipal authority has been organized by the Board of County Commissioners of said Counties under the Municipality Authorities Act of 1945, as amended and supplemented, or under the Act approved June 28, 1935, P.L. 463, as amended and supplemented, and is in existence in or for the incorporating municipality except as follows:

CENTRE COUNTY

Centre County Solid Waste Authority
Centre County Hospital Authority
Centre County Airport Authority (Jointly between county and
the boroughs of State College and Bellefonte)
Centre County Higher Education Authority
Centre County Housing Authority
Moshannon Valley Vector Control Authority

COLUMBIA COUNTY

Columbia County Redevelopment Authority
Columbia County Housing Authority

MONTOUR COUNTY

Montour County Housing Authority
Geisinger Medical Center Authority
Montour County Industrial Development Authority

NORTHUMBERLAND COUNTY

Northumberland County Industrial Development Authority
 Redevelopment Authority of the County of Northumberland
 Airport Advisory Board
 Northumberland County Housing Authority

UNION COUNTY

Union County Court House Authority
 Union County Housing Authority
 Union County Redevelopment Authority
 Union County Industrial Development Authority
 Union County Higher Education Facilities Financing Authority
 Union County Hospital Authority

4. The name of the incorporating municipalities are the Counties of Centre, Columbia, Montour, Northumberland and Union, situated in the Commonwealth of Pennsylvania, and the names and addresses of its municipal authorities, being the members of the Board of County Commissioners are as follows:

CENTRE COUNTY COMMISSIONERS

Commissioner Jeffrey M. Bower
 Commissioner John T. Saylor
 Commissioner John Glatz
 Centre County Court House
 Bellefonte, PA 16823

COLUMBIA COUNTY COMMISSIONERS

Commissioner Willard H. Kile, Sr.
 Commissioner Lucille B. Whitmire
 Commissioner George H. Gensemer
 Columbia County Court House
 P. O. Box 280
 Bloomsburg, PA 17815

MONTOUR COUNTY COMMISSIONERS

Commissioner Thomas E. Herman
 Commissioner Robert P. Burke
 Commissioner Edwin R. Kremer
 Montour County Court House
 29 Mill Street
 Danville, PA 17821

NORTHUMBERLAND COUNTY COMMISSIONERS

8343 425

Commissioner James P. Kelley
Commissioner Charles F. Lewis, Sr.
Commissioner Ned M. Stank
Northumberland County Court House
Second and Market Streets
Sunbury, PA 17801

UNION COUNTY COMMISSIONERS

Commissioner W. Sherman Doebler, II.
Commissioner Robert W. Donehower
Commissioner John R. Reichley
Union County Court House
St. Louis & Second Streets
Lewisburg, PA 17837

5. The following persons, each of whom is either a taxpayer in, maintains a businesses in or is a citizen of, the Counties, are hereby appointed members of the Board of the Authority with the following terms of office:

	<u>TERM</u>
Mark Mitchell, 573 Berkshire Drive, State College, PA 16801	5 yr
Mark Shuey, R.D.5, Box 536, Bellefonte, PA 16823	1 yr
Howard McKinnon, Shawnee Heights, Bloomsburg, PA 17815	1 yr
Nicholas Roll, 3120 G. Martzville Road, R.D.3, Berwick, PA 18603	5 yr
Richard Wesner, R.D.4, Box 279, Danville, PA 17821	4 yr
Terry Diener, R.D.3, Danville, PA 17821	2 yr
Alan Bubb, 313 Packer Street, Sunbury, PA 17801	3 yr
John Brennan, 1709 Raven Avenue, Shamokin, PA 17872	3 yr
Galen R. Reichley, R.D.1, Winfield, PA 17889	4 yr
Richard Sanders, R.D.3, Box 433, Lewisburg, PA 17837	2 yr

6. The incorporating municipalities have retained the right which exists in the Municipalities Authority Act of 1945, as amended or supplemented, to approve any plan of the Authority for the making of business improvements or providing administrative services.

WITNESS, the due execution of these Articles of Incorporation on this 28th day of June, 1983.

ATTEST:

Vicki L. Lumbarger
Commissioners

(COUNTY SEAL)

COUNTY OF CENTRE

by:

Jeff M. Bone
Chairman, Board of County

Jim Glaz
Commissioner

John T. Saylor
Commissioner

ATTEST:

Dennis Long

(COUNTY SEAL)

COUNTY OF COLUMBIA

by: William H. Hile Sr.
Chairman, Board of County
Commissioner

Lucille B. Whitmore
Commissioner

George H. Mensemer
Commissioner

ATTEST:

William H. Hile Sr.

(COUNTY SEAL)

COUNTY OF MONTOUR

by: Thomas S. Herman
Chairman, Board of County
Commissioners

Paul P. Burke
Commissioner

Edwin S. K...
Commissioner

ATTEST:

John W. Bennett

(COUNTY SEAL)

COUNTY OF NORTHUMBERLAND

by: James P. Kelley
Chairman, Board of County
Commissioners

Walter J. K...
Commissioner

W. H. ...
Commissioner

ATTEST:

Dennis Long

(COUNTY SEAL)

COUNTY OF UNION

by: William H. Hile Sr.
Chairman, Board of County
Commissioners

Robert W. ...
Commissioner

John E. ...
Commissioner

SECTION FOUR. The Articles of Incorporation of the proposed Authority, in substantially the form set forth in Section Three of this ordinance, shall be executed on behalf of the Counties by the Chairmen of the Board of County Commissioners and the seal of the Counties shall be affixed thereto and attested by the Chief Clerk, and such officers are hereby authorized, empowered and directed to do all the things necessary and appropriate to effect and establish said proposed Authority in conformity with the provisions of the Municipality Authorities Act of 1945, as amended and supplemented.

SECTION FIVE. In accordance with the provisions of Section 4A of said Act it is hereby specified that the projects to be undertaken by the proposed Authority are hereby limited and restricted to projects of the following kind and character:

The Authority may finance, construct or otherwise acquire, purchase, hold, lease or sub-lease, either in the capacity of lessee or lessor, land, rail lines, buildings or other facilities to be devoted wholly or partially for the operation of rail lines, for public uses, or for any other purpose permitted by said Act, whether said projects are situated in the Counties of Centre, Columbia, Montour, Northumberland or Union, or elsewhere in the Commonwealth.

SECTION SIX. The proposed Authority shall not pledge the credit or the taxing power of the Counties of Centre, Columbia, Montour, Northumberland, or Union or of any municipal subdivision thereof for the payment of any indebtedness and obligation of the proposed Authority, and all such indebtedness and obligations shall be payable only out of the receipts and revenues of the proposed Authority from the projects undertaken by it in accordance with the provisions of Section Five of this ordinance.

SECTION SEVEN. All ordinances or resolutions or parts of either thereof, which are inconsistent herewith, shall be and the same are hereby repealed to the extent of such inconsistency.

ORDAINED AND ENACTED into an ordinance on this 14th day of June, 1983.

ATTEST:

Vicki L. Bumbarger

COUNTY OF CENTRE

by:

Jeffrey M. Bower
Chairman, Board of
Centre County
Commissioners

I, Vicki L. Bumbarger, Chief Clerk of the Board of County Commissioners of Centre County, Pennsylvania, hereby certify that attached hereto is a true, correct and conformed copy of the Ordinance signifying the intention of the Board of County Commissioners to organize a Joint Authority, with the counties of Centre, Columbia, Montour, Northumberland and Union, setting forth and authorizing the execution of the Authority's Articles of Incorporation and designating the project to be undertaken by said Authority, all as duly enacted by the affirmative vote of a majority of the members of the Board of County Commissioners at a public meeting held the 14th day of June, 1983, and that the Ordinance has now been recorded in the Minutes of the Board of County Commissioners showing how each member voted thereon.

IN WITNESS WHEREOF, I have hereunto set my signature as such official and affixed the seal of Centre County, this 14th day of June, 1983.

Vicki L. Bumbarger

Chief Clerk
Board of County Commissioners

PROOF OF PUBLICATION

State of Pennsylvania }
 County of Centre } ss.

..... Bill Welch being
 duly sworn according to law, says that he is publisher, editor of The
 Centre Daily Times, a daily newspaper of general circulation, having its
 place of business at State College, Centre County, Pennsylvania, and
 having been established in the year 1898; that the advertisement, a
 printed copy of which is attached hereto, appeared in said newspaper on
 the 22nd day of June 1983

..... that affiant is not interested in the subject matter of the notice or
 advertisement; that all of the allegations contained herein relative to the
 time, place and character of the publication are true.

Sworn and subscribed to before
 me this 23rd day of
 June, A.D. 19 83

Patricia K. Reddington

Bill Welch

PATRICIA K. REDDINGTON, NOTARY PUBLIC
 COLLEGE TOWNSHIP, CENTRE COUNTY
 MY COMMISSION EXPIRES APRIL 21, 1986
 Member, Pennsylvania Association of Notaries

LEGAL NOTICE
 NOTICE IS HEREBY GIVEN that the Board of Commissioners of the County of Centre, Pennsylvania, on June 14, 1983, duly enacted an ordinance expressing the desire and intention of the Board of Commissioners of the County of Centre to organize a Joint Authority with the Counties of Columbia, Montour, Northumberland and Union under the Municipality Authorities Act of 1945, P.L. 382, as amended, and that Articles of Incorporation will be filed with the Secretary of the Commonwealth of Pennsylvania on June 30, 1983. The ordinance sets forth the proposed Articles of Incorporation, which, in substance, specify the name of the Authority shall be "SEDA-COG Joint Rail Authority."
 The ordinance also specifies by separate section that the projects to be undertaken by the Authority are to finance, construct or otherwise acquire, purchase, hold, lease or sublease, either in the capacity of lessee or lessor, land, rail lines, buildings or other facilities to be devoted wholly or partially for public uses, for or for revenue producing purposes, or for any other purpose permitted by said Act, whether said projects be situated in the Counties of Centre, Columbia, Montour, Northumberland and Union, or elsewhere in said Commonwealth and reserve the right in the municipality which exists under the Act to approve any plan of the Authority for the purpose of making business improvements or providing administrative services.
 By order of the Board of Commissioners of the County of Centre, Pennsylvania:
 CENTRE COUNTY
 COMMISSIONERS
 Vicki L. Bumbarger
 Chief Clerk
 6/22

PROOF OF PUBLICATION

Commonwealth of Pennsylvania }
County of Centre } ss.

..... John R. Miller Esq., being
duly sworn according to law, says that he is co-editor of The Centre County
Legal Journal, (The official legal newspaper of the 49th Judicial District, Centre
County), having its place of business at Bellefonte, Centre County, Pa., and
having been established in the year 1959; that the advertisement, a printed copy
of which is attached hereto, appeared in said Legal Journal

on the 22nd day of June, 1983

.....
that affiant is not interested in the subject matter of the notice or advertise-
ment; that all of the allegations contained herein relative to the time, place and
character of the publication are true.

Sworn and subscribed to before
me this 23rd day of
..... June A.D. 1983
.....
Daryl F. Rightnour

John R. Miller

DARYL F. RIGHTNOUR, NOTARY PUBLIC
BELLEFONTE BORO, CENTRE COUNTY
MY COMMISSION EXPIRES OCT. 4, 1984
Member, Pennsylvania Association of Notaries

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that the Board of Commissioners of the County of Centre, Pennsylvania, on June 14, 1983, duly enacted an ordinance expressing the desire and intention of the Board of Commissioners of the County of Centre to organize a Joint Authority with the Counties of Columbia, Montour, Northumberland and Union under the Municipality Authorities Act of 1945, P.L. 382, as amended, and that Articles of Incorporation will be filed with the Secretary of the Commonwealth of Pennsylvania on June 30, 1983. The ordinance sets forth the proposed Articles of Incorporation, which, in substance, specify the name of the Authority shall be "SEDA-COG Joint Rail Authority."

The ordinance also specifies by separate section that the projects to be undertaken by the Authority are to finance, construct or otherwise acquire, purchase, hold, lease or sublease, either in the capacity of lessee or lessor, land, rail lines, buildings or other facilities to be devoted wholly or partially for public uses, or for revenue producing purposes, or for any other purpose permitted by said Act, whether said projects be situated in the Counties of Centre, Columbia, Montour, Northumberland and Union, or elsewhere in said Commonwealth and reserve the right in the municipality which exists under the Act to approve any plan of the Authority for the purpose of making business improvements or providing administrative services.

By order of the Board of Commissioners of the County of Centre, Pennsylvania.
CENTRE COUNTY COMMISSIONERS
Vicki L. Bumbarger
Chief Clerk

STATE OF PENNSYLVANIA
COUNTY OF COLUMBIA

SS:

..... Paul R. Eyerly, III, being duly sworn according to law says that Berwick Enterprise is a newspaper of general circulation with its principal place of business in the Town of Berwick, County of Columbia and State of Pennsylvania established on the 6th day of April, 1903, and has been published daily (except Sunday and Holidays) continuously in said Town, County and State since the date of its establishment hereto attached is a copy of the legal notice or advertisement in the above entitled which appeared in the issue of said newspaper on
..... June 21,, 19⁸³ exactly as printed and that the affiant is one of the owners and publishers of said newspaper in which legal notice or notice was published; that neither the affiant nor Berwick Enterprise are interested in the subject matter of said notice and advertisement, and that all of the allegations in the statement as to time, place, and character of publication are true.

Paul R. Eyerly, III

Sworn and subscribed to before me this .. 22nd .. day of .. June ..

Matthew J. Creme
(Notary Public)

My Commission Expires
MATTHEW J. CREME NOTARY PUBLIC
BLOOMSBURG COLUMBIA COUNTY
MY COMMISSION EXPIRES JULY 5, 1985
Member, Pennsylvania Association of Notaries

And now, .., 19 .., I hereby certify that the advertising and publication charges amounting to \$.. for publishing the foregoing notice, and the fee for this affidavit have been paid in full.

NOTICE
NOTICE IS HEREBY GIVEN that the Board of Commissioners of the County of Columbia, Pennsylvania, on June 9, 1983, duly enacted an ordinance expressing the desire and intention of the Board of Commissioners of the County of Columbia to organize a Joint Authority with the Counties of Centre, Montour, Northumberland and Union under the Municipality Authorities Act of 1945, P.L. 382, as amended, and that the Articles of Incorporation will be filed with the Secretary of the Commonwealth of Pennsylvania on June 30, 1983. The ordinance sets forth the proposed Articles of incorporation, which, in substance, specify the name of the Authority shall be "SEDA-COG Joint Rail Authority". The ordinance also specifies by separate section that the projects to be undertaken by the Authority are to finance, construct or otherwise acquire, purchase, hold, lease or sublease, either in capacity of lessee or lessor, land, rail lines, buildings or other facilities to be devoted wholly or partially for public uses, for or for revenue producing purposes, or for any other purpose permitted by said Act, whether said projects be situated in the Counties of Centre, Columbia, Montour, Northumberland and Union, or elsewhere in said Commonwealth and reserve the right in the municipality which exists under the Act to approve any plan of the Authority for the purpose of making business improvements or providing administrative services.
By order of the Board of Commissioners of the County of Columbia, Pennsylvania.
WILLARD H. KILE, SR.
LUCILLE B. WHITMIRE
GEORGE H. GENSEMER
COLUMBIA COUNTY COMMISSIONERS
Attest: Harry R. Faux
Chief Clerk
June 21

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35956

**READING, BLUE MOUNTAIN NORTHERN RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER**

**JOINT REPLY OF PENNSYLVANIA NORTHEAST REGIONAL RAILROAD
AUTHORITY AND SEDA-COG JOINT RAIL AUTHORITY**

Exhibit P

READING BLUE MOUNTAIN & NORTHERN RAILROAD

HOME ABOUT US CONTACT BUSINESS DEVELOPMENT

REAL ESTATE CAREERS NEWS PASSENGER

The Reading Blue Mountain and Northern Railroad, with its corporate headquarters in Port Clinton, is a privately held railroad company serving major businesses in nine Eastern Pennsylvania counties, (Berks, Bradford, Carbon, Columbia, Lackawanna, Luzerne, Northumberland, Schuylkill and Wyoming). The railroad runs about 320 miles from Reading PA to Mehoopany PA and it also operates the 7 mile rail line from Towanda to Monroeton in Bradford County. We offer both freight services and passenger excursion operations and we currently employ over 150 employees.

The company began operations in September of 1983, starting as a 13 mile short line, operating a state-owned branch line between Hamburg and Temple PA. Named The Blue Mountain & Reading, we were successful in rehabilitating the line, and providing service to freight customers. A passenger excursion business was also developed.

Within a few years, the BM&R took on the operations of 3 more state-owned branch lines, to provide reliable freight service to many eastern Pennsylvania Industries.

In December 1990, Conrail was looking to sell off over 150 miles of branch lines in the Anthracite Coal Regions. The BM&R took on this challenge, and expanded the company, changing the name to Reading Blue Mountain and Northern. Operations began on December 15, 1990.

The first few years saw massive amounts of work to repair the badly neglected trackage, and to develop a steady pattern of service for the many industries that relied on rail service.

In July of 1992, Conrail sold some additional track near Hazelton, to serve the Jeddo Coal Company. This would allow the bulk of all remaining rail shipments of Anthracite coal to be funneled through Reading. At the same time RBMN also acquired the connection from East Mahanoy Jct. to Oneida and the line to Delano from Schuylkill County.

In order to have better control over the supply of empty hopper-cars for coal shipments, in 1995 RBMN began to purchase a fleet of cars, starting with 265 cars dedicated to Quebec Iron & Titanium Service. By the end of 2013, RBMN has purchased over 1000 freight cars.

The RBMN had been operating from several former Conrail offices around the system. In late 1995 these offices were combined into a new corporate headquarters at Port Clinton.

As Conrail continued their program of spinning off rail lines that did not fit into its core network, the Reading Blue Mountain & Northern expanded again. In August of 1996, RBMN acquired a portion of Conrail's Lehigh Division. Comprised of over one hundred miles of mostly ex- Lehigh Valley Railroad trackage, the Lehigh rail line stretches from the southern foot of the Pocono Mountains at Leighton through Wilkes-Barre and Scranton and onward to Wyoming County. To connect its two divisions, RBMN negotiated trackage rights over the Carbon-County owned 18-mile railroad between Hometown and Jim Thorpe.

In the fall of 1996 Conrail announced an intention to merge with CSX. After a fierce fight over the future of Conrail, CSX ultimately agreed to split Conrail with its main rival, Norfolk Southern Railway. On June 1, 1999, NS took over all of the portions of Conrail that connected with RBMN.

To meet the demands of this expanded traffic base, in 2001 RBMN purchased a fleet of high horsepower six-axle locomotives, and retired some of the older units that had begun to wear out. RBMN was now entirely an EMD powered railroad.

In August of 2001, RBMN completed negotiations with NS and Procter & Gamble to take over exclusive service to P&G's largest manufacturing facility, at Mehoopany, PA. Working with NS we were able to provide P&G with an excellent service and rate package, which ensured that inbound raw material continued to move by rail.

In November of 2001, RBMN reached an agreement to take over the ownership of the track within the Crestwood Industrial Park. With this agreement in place, we were able to guarantee good long-term rail service to the many customers located there.

Having worked to ensure a steady stream of customer business along our Lehigh Division, we turned our attention to reaching agreements for the use of the line as a key transportation corridor. Both Norfolk Southern and Canadian Pacific were interested in using the Lehigh Line as a north-south corridor for goods moving from the Northeast and Canada to the New York City market via Allentown, as well as points south and east of Reading. In June of 2002, we entered into a trackage rights agreement with NS, and in August 2002 we renewed a prior agreement with CP. Combined, these two carriers use the Lehigh Line to move over eighty thousand carloads a year.

In the summer of 2002, RBMN began a critical step to enable the direct physical connection of our two Divisions without the need to run over any foreign track. In July, we entered into a long-term lease of two abandoned railroad bridges over the Lehigh River from the Pennsylvania Department of Conservation and Natural Resources. With that agreement in place, we were able to turn our attention to restoration of the bridges and rail infrastructure, and

the necessary work along the Lehigh River to connect the railroads. The project would culminate in the opening of the bridge in November of 2003.

The two Divisions were now connected and the Lehigh Line had a solid business base from both on-line customers and overhead trackage rights revenues. RBMN had begun restoring the yard at Penobscot in 2000, which resulted in an agreement made in May of 2003 to have NS deliver inbound interchange cars there, allowing greatly improved car cycle time.

By the time RBMN celebrated its twentieth anniversary in the fall of 2003, we were a very successful shortline. We had built solid traffic bases on both our Lehigh and Reading Divisions, and we had put in place an excellent operation with upgraded track, locomotives, and freight cars. We were gaining a reputation for customer service and attention to detail. Evidence of our customer focus became clear to all when, in 2002, the rail industry publication *Railway Age* chose the Reading Blue Mountain & Northern Railroad as Regional Railroad of the Year. We won the award by creating an innovative sand/stone backhaul move, which involved three railroads and took thousands of trucks off the highway. We followed that up in 2004 when we were awarded a Marketing Award from the NS Agriculture Products Group for our outstanding business development.

In 2005, RBMN took a big step forward to expand its passenger excursion business. With the acquisition of the Lehigh Line and the new connections between Jim Thorpe and the Lehigh River Gorge, RBMN was now positioned to offer the region a quality tourist attraction. In May of 2005, the Lehigh Gorge Scenic Railway was born. Every weekend and holiday from May to Christmas, hundreds of visitors to Jim Thorpe board our passenger coaches for a ride into the Gorge.

As our operation and business expanded, the need to upgrade facilities grew as well. In the spring of 2006, we proudly opened our brand new Penobscot Yard office building.

As RBMN grew, so did its commitment to its employees. Along with regular pay increases and profit sharing checks, the Company decided to offer its employees the best health care plan in the region, and with no deductibles! RBMN also decided to go smoke-free and instituted a policy of not hiring smokers.

With a solid freight business in hand and a growing passenger operation underway, Andy Muller decided to begin the renovation of his steam engines. At the end of 2007, No. 425 was back in service, pulling passenger trains and occasionally the company Office Car Specials, to take thousands of guests on steam excursion trips throughout our operating territory.

The RBMN system expanded again in 2009, with the addition of the seven mile Towanda line near the New York state border. This line is located in the heart of the Marcellus Shale region.

In 2011 RBMN again was recognized by Railway Age as Regional Railroad of the Year for the development of port operations for the export of anthracite coal.

In 2012 Reading & Northern entered into an agreement with CAN DO to purchase the rail assets of the Humboldt Industrial Park in Hazleton, the region's largest rail-served industrial park. Reading & Northern is scheduled to take over service to Humboldt in 2017 at the latest.

The evolution of the Reading & Northern has been a wonderful ride. You can keep abreast of the latest RBMN developments by coming to this website, and by reading our quarterly newsletter.

Thanks for your interest and your support.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35956

**READING, BLUE MOUNTAIN NORTHERN RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER**

**JOINT REPLY OF PENNSYLVANIA NORTHEAST REGIONAL RAILROAD
AUTHORITY AND SEDA-COG JOINT RAIL AUTHORITY**

Exhibit Q

DEED

THIS DEED dated the 1st day of April, 1985 by
and between:

DELAWARE AND HUDSON RAILWAY COMPANY, a
Delaware corporation, with offices
located at Fifth Street, Watervliet,
New York 12189, hereinafter referred
to as the GRANTOR

and

LACKAWANNA COUNTY RAILROAD AUTHORITY, a
Pennsylvania municipal corporation, with
offices located at Court House Administration
Building, Room 611, 200 Adams Avenue,
Scranton, Pennsylvania 18503, hereinafter
referred to as the GRANTEE.

WITNESSETH, that in consideration of the sum of ONE MILLION
TWO HUNDRED SIXTY THOUSAND and 00/100 (\$1,260,000.00) DOLLARS
lawful money of the United States, to be paid by the GRANTEE,
the GRANTOR does hereby remise, release, and quitclaim unto the
GRANTEE, its successors and assigns forever, all of the right,
title and interest of the GRANTOR in and to the surface or right
of soil only to the following described real property:

Parcel 1. A tract, piece or parcel of land,
with the buildings and improvements thereon,
situate, lying, and being in Fell Township,
the City of Carbondale, Carbondale Township,
the Boroughs of Mayfield, Jermyn, Archbald,
Jessup, Olyphant, and Dickson City, and the
City of Scranton, County of Lackawanna, and
Commonwealth of Pennsylvania, containing a
line of railroad known as a portion of the
former main line of Delaware and Hudson
Railway Company and extending between a line
at right angles to the westerly line of this
Parcel 1 and located at Mile Post A-174.59 in
Fell Township on the north and two lines
located at Mile Post A-191.42 in the City of
Scranton on the south with the westerly of
said two lines being located on the north line
of Marion Street and the easterly of said two
lines being located in the center line of
Marion Street said last mentioned line also
being the northerly line of the Vine Street
Branch, all being more particularly described
in Exhibit D&H, attached hereto and made a
part hereof.

Parcel 2. A tract, piece, or parcel of land, with the buildings and improvements thereon, situate, lying, and being in the City of Scranton, County of Lackawanna, and Commonwealth of Pennsylvania, containing a line of railroad known as the Vine Street Branch of Delaware and Hudson Railway Company and extending between a line located at Mile Post A-191.42 in the center line of Marion Street on the north and a line which crosses the center line of track at Mile Post A-192.63 as said line is shown on Exhibit VINE, Sheet 1 on the south, and being more particularly described in said Exhibit VINE, attached hereto and made a part hereof.

Parcel 3. A tract, piece or parcel of land, with the buildings and improvements thereon, situate, lying, and being in the City of Scranton and the Borough of Moosic, County of Lackawanna, and Commonwealth of Pennsylvania, containing a line of railroad known as a portion of the former main line of Delaware and Hudson Railway Company and extending between a line located at Mile Post A-191.42, said line being the north line of Marion Street, in the City of Scranton on the north and a line at right angles to the center line of track in the Borough of Moosic on the south and being more particularly described in said Exhibit NC&I, attached hereto and made a part hereof.

TOGETHER WITH all of the right, title, and interest of the GRANTOR in and to the continuous lines of railroad trackage and facilities extending between the respective mile posts set forth respectively in the descriptions of Parcels 1, 2, and 3, above and in and to the various rail, highway, and bridge crossings on the lines of railroad trackage and facilities as shown on said Exhibits D&H, Vine, and NC&I.

EXCEPTING AND RESERVING to Delaware and Hudson Railway Company (D&H), its successors and assigns (1) all coal fill and coal fines located in, upon, and under the above described Parcels 1, 2, and 3, together with the right to enter and come upon said premises themselves and/or with their contractors and/or subcontractors, with equipment, for the purpose of removing said coal fill and coal fines, so long as such entry does not unreasonably interfere with the use of said premises by the successors in title of the said Delaware and Hudson Railway Company and so long as such entry and removal are preceded by reasonable notice to and consultation with the Chief Engineer of Lackawanna County Railroad Authority (LCRA) with respect to any portion of the said Parcels 1, 2, and 3 to which title is uninterruptedly held by LCRA from the date of transfer of title thereto from D&H to LCRA to the date of such entry and (2) a longitudinal easement, with crossings

where necessary above, below and on the surface of the above described Parcels 1, 2, and 3, for purposes of construction, operation and maintenance of a communications transmission system or communication transmission systems subject to the notice and consultation requirements as immediately set forth above with regard to any portion of said Parcels 1, 2, and 3 to which title shall have uninterruptedly remained in LCRA, as aforesaid.

ALSO EXCEPTING AND RESERVING to Delaware and Hudson Railway Company, its successors and assigns, those areas in Parcel 1 shown by diagonal shading on Exhibit D&H.

UNDER and SUBJECT, however, to;

- (1) zoning regulations and ordinances of the respective cities, townships, counties, or other municipalities in which the above described premises, and lines of railroad;
- (2) any state of facts which an inspection or an accurate survey would disclose;
- (3) covenants, conditions, easements, and restrictions of record;
- (4) the rights of the public and other railroad companies, to the use of any highways, roads, streets, alleys, bridges, or other public or private ways which may cross the premises, and lines of railroad, herein described;
- (5) any streams, rivers, creeks, or waterways passing under, across, over, or through the premises, and lines of railroad, herein described;
- (6) any pipes, wires, poles, cables, culverts, drainage courses or systems, or their appurtenances now existing and remaining in, on, over, under, across, and through the premises, and lines of railroad herein described, together with the right to maintain, repair, renew, replace, use and remove the same;
- (7) the rights and obligations of the GRANTOR, under the orders of the Pennsylvania Public Utility Commission (PUC) and any predecessor commissions, boards, or agencies;
- (8) the Agreement of Sale dated December 26, 1984 between the GRANTOR and the GRANTEE covering the above described premises, and lines of railroad.

REGISTER AND RECORDER

'91 SEP 17 PM 1 00

MONROE COUNTY, PA.

CASE NO. 70139

TO WHOM IT MAY CONCERN:

I HEREBY CERTIFY THAT BY THE AUTHORITY CONFERRED BY THE BOARD OF DIRECTORS OF CONSOLIDATED RAIL CORPORATION (CONRAIL) ON MARCH 18, 1988 TO THE CHAIRMAN AND CHIEF EXECUTIVE OFFICER TO CONDUCT THE BUSINESS AND AFFAIRS OF THE CORPORATION AND TO DELEGATE SUCH AUTHORITY AS HE MAY DEEM NECESSARY, THE CHAIRMAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER DID DELEGATE ON MARCH 19, 1991 TO THE SENIOR VICE PRESIDENT-DEVELOPMENT, WHO ON MAY 23, 1991 REDELEGATED TO THE ASSISTANT VICE PRESIDENT-ASSET DEVELOPMENT, AND WHO ON JUNE 26, 1991 REDELEGATED TO THE DIRECTOR-REAL ESTATE FIELD SERVICES AND DIRECTOR-MANAGEMENT SERVICES, OR ANY OF THEM, THE AUTHORITY TO EXECUTE AND DELIVER ON BEHALF OF CONRAIL ANY AND ALL DOCUMENTS NECESSARY TO COMPLETE THE SALE OF 41.476 ACRES, MORE OR LESS, OF THE CORPORATION'S PROPERTY, FORMERLY KNOWN AS THE MT. POCONO AUTOMOBILE UNLOADING TERMINAL, TOGETHER WITH THE IMPROVEMENTS THEREON, IN MT. POCONO, MONROE COUNTY, PENNSYLVANIA, FOR THE TOTAL CONSIDERATION OF \$1.00 TO LACKAWANNA COUNTY RAILROAD AUTHORITY, OR THE NOMINEE THEREOF.

Assistant Secretary
J. D. McGEHEAN

THIS INDENTURE, made the 12th day of *Sept* in the year of our Lord One Thousand Nine Hundred and Ninety-one (A.D. 1991)

BETWEEN CONSOLIDATED RAIL CORPORATION, a Corporation of the Commonwealth of Pennsylvania, having an office at Six Penn Center Plaza, Philadelphia, Pennsylvania, 19103, hereinafter referred to as the Grantor, and LACKAWANNA COUNTY RAILROAD AUTHORITY, a municipal authority established under the Pennsylvania Municipal Authorities Act of 1945, having a mailing address of 701 Wyoming Avenue, Scranton, Pennsylvania 18509, hereinafter referred to as the Grantee;

WITNESSETH: That the said Grantor, for and in consideration of the sum of ONE DOLLAR (\$1.00) lawful money of the United States of America, unto it well and truly paid by the said Grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released and quitclaimed and by these presents does remise, release and quitclaim unto the said Grantee, the successors and assigns of the said Grantee, all right, title and interest of the said Grantor of, in and to the following described Premises:

ALL THAT CERTAIN property of the Grantor, located at Mt. Pocono, with the improvements thereon, being adjacent to Grantor's former line of railroad known as the Scranton Branch and identified as Line Code 6201 in the Recorder's Office of Monroe County in Deed Book Volume 902 at page 144, also formerly known as the Mt. Pocono Automobile Unloading Terminal, situate partly in the Townships of Pocono, Tobyhanna and Coolbaugh, County of Monroe and Commonwealth of Pennsylvania, all as indicated by "PS" on Grantor's Case Plan No. 70139, dated September 4, 1991, which is attached hereto and made a part hereof; being further described as follows:

BEING all that property at said location which lies northwest of said Scranton Branch and southeast of the westerly edge of the access road located within said property.

CONTAINING 41.476 acres, more or less, of land.

BEING a part or portion of the same premises which Thomas F. Patton and Ralph S. Tyler, Jr., as Trustees of the Property of Erie Lackawanna Railroad Company, Debtor, by Conveyance Document No. EL-CRC-RP-62, dated March 31, 1976 and recorded on October 16, 1978, in the Recorder's Office of Monroe County, Pennsylvania, in Deed Book Volume 902 at page 139&c., granted and conveyed unto Consolidated Rail Corporation.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, its lessees, successors and assigns, permanent, perpetual and assignable easements and rights in, on, under, above, over, across and through the existing access road, located on the northwesterly portion of the Premises, as a means of unimpeded and immediate ingress and egress to and from Grantor's adjoining and adjacent property, and as indicated by "ER" on the aforementioned Grantor's Case Plan No. 70139.

UNDER and SUBJECT, however, to any easements or agreements of record or otherwise affecting the Premises, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, fiber optic lines, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the Premises; together with the right to maintain, repair, renew, replace, use and remove same.

THIS INSTRUMENT is executed and delivered by Grantor, and is accepted by Grantee, subject to the covenants set forth below, which shall be deemed part of the consideration of this conveyance and which shall run with the land and be binding upon, and inure to the benefit of, the respective legal representatives, successors and assigns of Grantor and Grantee. Grantee hereby knowingly, willingly, and voluntarily waives the benefit of any rule, law, custom, or statute of the Commonwealth of Pennsylvania now or hereafter in force with respect to the covenants set forth below.

(1) Grantee shall assume, and shall indemnify, hold harmless and defend Grantor from and against, any and all obligations, responsibilities, losses and liabilities in connection with any damage to or loss of any property or any personal injury to or wrongful death of any person, or any costs and expenses including costs of remedial action, containment, clean-up, repair or restoration, and any assessments, fees, fines, penalties, judgments, awards, orders and decrees, arising out of or in any way related to the presence on, in or under the Premises of any hazardous or contaminating substance, including responsibilities imposed by any order, judgment or decree of any court or regulatory agency relating to any hazardous or contaminating substance, from and after the date of delivery of this deed.

(2) Should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against the Grantor herein.

(3) As a further consideration for this conveyance, Grantor shall not, in any way, be liable for any costs or expenses associated with any maintenance, upkeep, repair, rehabilitation or renewal of the roadway.

TOGETHER with all and singular the tenements, hereditaments, improvements and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever, of, in and to the same and every part thereof, EXCEPTING and RESERVING and UNDER and SUBJECT and provided as aforesaid.

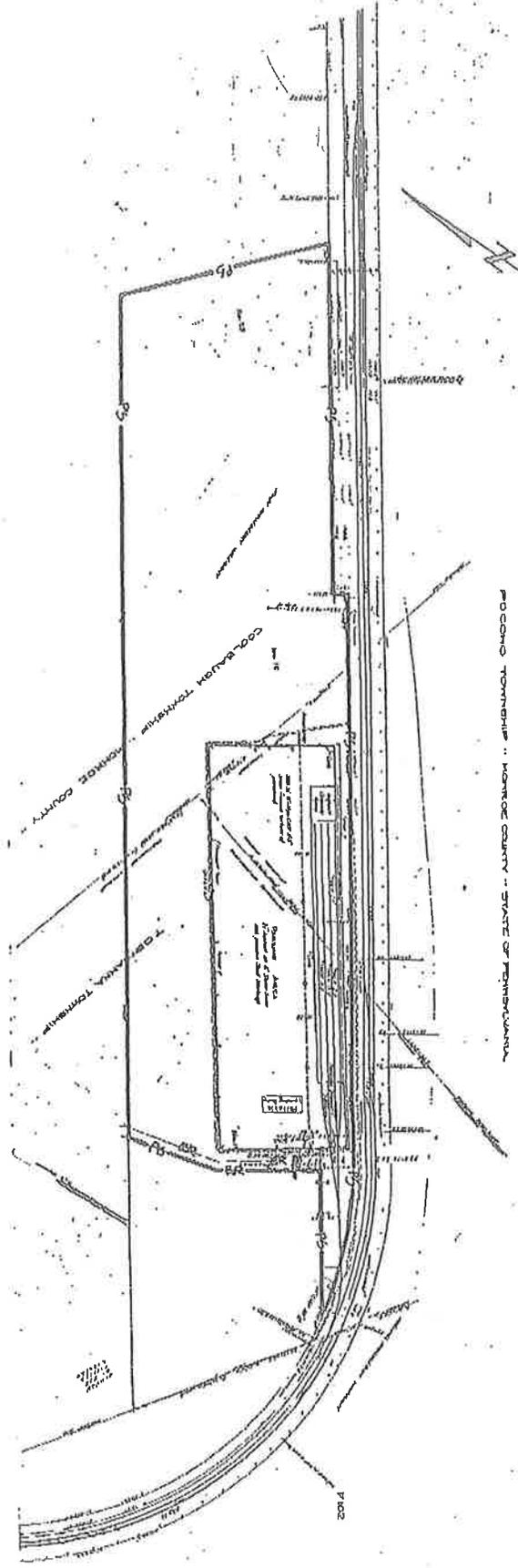
TO HAVE AND TO HOLD all and singular the said Premises, together with the improvements and appurtenances, unto the Grantee, the successors and assigns of the said Grantee forever, EXCEPTING and RESERVING and UNDER and SUBJECT and provided as aforesaid.

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include at all times and in all cases the legal representatives or successors and assigns of the Grantor and Grantee.

IN WITNESS WHEREOF, the said Grantor has caused this

CASE NO. 70139
V. 4. 21/31 32 V23 P3 F2
L.C. 0201

—P5— PROPERTY TO BE CONVEYED
BY
CONSOLIDATED RAIL CORPORATION
TO
LACRAWANNA COUNTY RAILROAD AUTHORITY
—ER— EASEMENT TO BE RESERVED



9/24/91

Indenture to be signed in its name and behalf by its Director-Management Services duly authorized thereunto and has caused its corporate seal to be hereunto affixed and attested by its Assistant Secretary the day and year first above written.

SEALED and DELIVERED
in the presence of us:

CONSOLIDATED RAIL CORPORATION
By:

Nancy B. Reynolds

M. Virginia Ebert
M. Virginia Ebert, Director-
Management Services

Attest:

Nancy B. Reynolds

J. D. McGEEHAN
Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF PHILADELPHIA)

ss

BEFORE ME, the undersigned, a Notary Public in and for said Commonwealth and County, personally appeared M. Virginia Ebert, as Director-Management Services and J. D. McGEEHAN its Assistant Secretary, respectively, of CONSOLIDATED RAIL CORPORATION, and severally acknowledged the execution of the foregoing Instrument to be the voluntary act and deed of said CONSOLIDATED RAIL CORPORATION, and their voluntary act and deed as such officers.

WITNESS my hand and notarial seal, this 12th day of September, A. D. 1991.

James W. Hartman, Jr.
Notary Public

Notary Seal
James W. Hartman, Jr. Notary Public
Philadelphia, Pennsylvania
My Commission Expires May 20, 1995
Member, Pennsylvania Association of Notaries

I HEREBY CERTIFY that the correct address of the within-named Grantee is:

701 Wyoming Ave, Scammon, PA 18509
Charles Wagner
on behalf of Grantee.

THIS INSTRUMENT PREPARED BY:

Nancy B. Reynolds
Consolidated Rail Corporation
Fifteenth Floor, Six Penn Center
Philadelphia, Pennsylvania 19103

:nls

Recorder of Deeds
RECORDED OF DEEDS

RECORDED IN THE OFFICE FOR RECORDING OF DEEDS, ETC.,
IN MONROE COUNTY, PA IN RECORD BOOK VOL 1794..PAGE 763
WITNESS MY HAND AND SEAL OF OFFICE THE17th.... DAY
OFSeptember A.D. 19..91

Dennis W. Deshler
RECORDER

RECORDER OF DEEDS
MONROE COUNTY, PA

7 0 1 3 9

D E E D

CONSOLIDATED RAIL CORPORATION

-to-

LACKAWANNA COUNTY RAILROAD AUTHORITY

Land situate partly in the
Townships of Pocono, Tobyhanna and
Coolbaugh, County of Monroe and
Commonwealth of Pennsylvania.

Prep:	Descp:
Chkd:	Compd:
Apvd:	

2519

Recorded in the office for Recorder of Deeds
and for Lackawanna County, Pennsylvania
Deed Book 1373 . Page 687-716 incl.
Witness my hand and seal of this office the
16th day September A.D. 1991

Anne Marie Legan

Recorder of Deeds

16-09-91 10:43F. BETTI 30560 946
DEED .63.00
WRIT FEE .0.50
ST .53.50
CHK .63.50
CG .0.00

RECORDER OF DEEDS
LACKAWANNA COUNTY JS
SCRANTON, PA 18503
ANNE MARIE LEGAN
CHK .63.50
30560

DEED

STEAMTOWN FOUNDATION

-to-

LACKAWANNA COUNTY RAILROAD
AUTHORITY

For: Scranton Branch (Line Code 6201)
From about Railroad Mile Post
101 at Mount Pocono, Monroe
County, Pennsylvania to about
Railroad Mile Post 120.0 at
Moscow, Lackawanna County,
Pennsylvania.

THIS INDENTURE, made the 12th day of September in the year of our Lord One Thousand Nine Hundred and Ninety-One (1991).

BETWEEN STEAMTOWN FOUNDATION, a Pennsylvania nonprofit corporation, having a mailing address of P.O. Box 234, Scranton, Pennsylvania, 18501, hereinafter referred to as Grantor, and the LACKAWANNA COUNTY RAILROAD AUTHORITY, a Pennsylvania municipal corporation, having an office at 701 Wyoming Avenue, Scranton, Pennsylvania, 18509, hereinafter referred to as the Grantee;

WITNESSETH: That the said Grantor, for and in consideration of the sum of ONE DOLLAR (\$1.00) lawful money of the United States of America, unto it well and truly paid by the said Grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released and quitclaimed and by these presents does remise, release and quitclaim unto the said Grantee, the heirs or successors and assigns of the said Grantee, all right, title and interest of the said Grantor of, in and to:

ALL THAT CERTAIN portion of right of way and the buildings and improvements, thereon erected, of railroad of Consolidated Rail Corporation (formerly Erie Railway Company) known as the Scranton Branch and identified as Line Code 6201 in the records of the United States Railway Administration, situate in the Townships of Coolbaugh, Pocono and Tobyhanna, County of Monroe, Pennsylvania; and further identified in the Monroe County, Pennsylvania Recorder's Office in Deed Book Volume 902 at Page 144, and also situated in the Township of Lehigh, County of Wayne; and further identified in the Wayne County, Pennsylvania Recorder's Office in Deed Book 351 at Page 688; and also situated the Townships of Clifton and Covington, County of Lackawanna; and further identified in the Lackawanna County, Pennsylvania Recorder's Office in Deed Book 954 at Page 346; and

BEGINNING about at Railroad Mile Post 101 in said Township of Coolbaugh, Monroe County, Pennsylvania and extending thence in a general northwesterly direction through Wayne County, Pennsylvania to the ENDING at Mile Post 120 in said Township of Covington, Lackawanna County, Pennsylvania, all as indicated by "PS" on the Grantor's Case Plan No. 68388, sheets 1 through 22, which sheets are attached hereto and made a part hereof.

BEING the same premises conveyed to The Steamtown Foundation for the Preservation of Steam And Railroad Americana by deed dated November 21, 1986 recorded in the Recorder of Deeds Office in and

BOOK 1373P 688

for Lackawanna County in Deed Book 1188 at Page 386, and in the Recorder of Deeds Office in and for Wayne County in Deed Book 455 at Page 200, and in the Recorder of Deeds Office in and for Monroe County in Deed Book 1524, at Page 1085. Steamtown Foundation is the surviving corporation of the merger between it and The Steamtown Foundation For the Preservation of Steam And Railroad Americana pursuant to Articles of Merger filed with the Corporation Bureau, Department of State, Commonwealth of Pennsylvania on October 30, 1987.

TOGETHER with a single line of railroad track and its appurtenances and all buildings, bridges and towers and their appurtenances, between the aforesaid Mile Posts.

UNDER and SUBJECT, however, to (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets crossing the premises herein described, (2) any streams, rivers and creeks passing under, across or through the premises herein described, (3) any easements or agreements of record or otherwise affecting the land hereby conveyed, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the herein conveyed premises, together with the right to maintain, repair, renew, replace, use and remove same, and (4) prior exceptions and reservations in the chain of title.

THIS INSTRUMENT is executed and delivered by Grantor, and is accepted by Grantee, subject to the covenants set forth below, which shall be deemed part of the consideration of this conveyance and which shall run with the land and be binding upon, and inure to the benefit of the respective heirs, personal representatives, successors and assigns of Grantor and Grantee. Grantee hereby knowingly, willingly, voluntarily waives the benefit of any rule, law, custom, or statute of the Commonwealth of Pennsylvania now or hereafter in force with respect to the covenants set forth below.

(1) No right or means of ingress, egress or passageway to or from the land hereinbefore described is hereby granted, expressly or by implication, and Grantor shall not be liable or obliged to provide or obtain for Grantee such means of ingress, egress or passageway.

(2) Should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against the Grantor herein.

(3) Said Grantor shall not be liable or obligated to provide for or supply directly or indirectly, for money or otherwise, any type of utility service to Grantee, even if the premises described hereinbefore are supplied utility service or services from or through Grantor owned or Grantor retained utility service facilities at the time said premises are conveyed to Grantee; and that if Grantor at its sole discretion elects to provide any utility service or services for money or otherwise to said premises during the period during which Grantee is arranging at Grantee's own expense for provision of utility service or services direct from public utilities, Grantee shall have no continuing right to use such service or expectation that Grantor must continue to

provide it.

(4) Grantee for itself, its successors and assigns, and by the acceptance and recordation of this Instrument, does hereby accept all existing and prospective responsibility for removal and/or restoration costs for any and all railroad bridges and grade crossings and their appurtenances that may be located on those lines of railroad intended herein to be conveyed to the said Grantee; and Grantee further covenants and agrees that it will also assume any obligation and/or responsibility as may have been or may hereafter be imposed on Grantor by any Public Utility Commission or any other governmental agency having jurisdiction for any and all bridge structures and grade crossings and their appurtenances, including but not limited to the removal, repairing or restoration of same in accordance with the requirements of said Commission or other governmental agency, and Grantee further agrees to indemnify, defend and hold Grantor harmless against all costs, penalties, expenses, obligations, responsibility and requirements associated with said bridge structures and grade crossings and their appurtenances.

(5) Grantee shall indemnify and defend Grantor against, and hold Grantor harmless from, all claims, actions, proceedings, judgments and awards, for death, injury, loss, or damage to any person or property, brought by any person, firm, corporation, or governmental entity, caused by, resulting to, arising from, or in connection with, the active or passive effects or existence of any physical substance of any nature or character, on, under, or in the land, water, air, structures, fixtures, or personal property comprising the land hereinbefore described, from and after the date of delivery of this deed.

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever, of, in and to the same in every part thereof, EXCEPTING and RESERVING and UNDER and SUBJECT as aforesaid.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances, unto the Grantee, the heirs or successors and assigns of the said Grantee forever, EXCEPTING and RESERVING and UNDER and SUBJECT as aforesaid.

NOTICE - "THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND IN THAT CONNECTION DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT." THIS NOTICE is set forth in the manner provided in Section 1 of the Act of September 10, 1965, P.L. 505, No. 255 (52 P.S. 1551).

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees," respectively,

whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include in all cases the heirs or successors and assigns of the respective parties.

THIS indenture is executed in three (3) counterparts for recording in the Counties of Monroe, Wayne and Lackawanna, Pennsylvania.

IN WITNESS WHEREOF, the said Grantor has caused this Indenture to be signed in its name and behalf by its Vice Chairman duly authorized thereunto and has caused its corporate seal to be hereunto official and attested by its duly designated Assistant Secretary the day and year first above written.

SEALED AND DELIVERED
in the presence of us:

STEAMTOWN FOUNDATION
By:

Brian Zeager

John Luciani
John Luciani, Vice Chairman

Attest:

Brian Zeager

Austin Burke
Austin Burke, Asst. Secretary

COMMONWEALTH OF PENNSYLVANIA)

: SS.

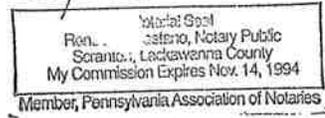
COUNTY OF LACKAWANNA)

On this 12th day of September, A.D. 1991, before me, the subscriber, Gene T. Gaetano, the undersigned officer, personally appeared John Luciani, who acknowledged himself to be Vice Chairman of STEAMTOWN FOUNDATION, a non-profit corporation, and that he as such Vice Chairman, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Vice Chairman.

BOOK 1373 692

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Bruce A. Mastan
Notary Public



I HEREBY CERTIFY that the correct address of the within-named Grantee is:

701 Wyoming Ave., Scranton, PA 18509

on behalf of Grantee

Recorded in the office for Recorder of Deeds
 in and for Lackawanna County, Pennsylvania
 in Deed Book 1374 Page 46-69 incl.
 Witness my hand and seal of this office the
 17th day Sept. A.D. 19 91

Anne Marie Legan

Recorder of Deeds

17-09-91 10:10J. MCNAL 30661

LACKAWANNA COUNTY 35
 SCRANTON, PA 18503
 ANNE MARIE LEGAN
 CHK 51.50

RECORDER OF DEEDS

#	1045
17-09-91 10:10J. MCNAL	30661
DEED	.51.00
WRIT FEE	.0.50
ST	.51.50
CHK	.51.50
CG	.0.00

1045

DEED

This Deed, made the 13th day of September, 1991, between

CITY OF SCRANTON, a municipal corporation organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, having a mailing address of Municipal Building, 340 North Washington Avenue, Scranton, Pennsylvania 18503, hereinafter referred to as the Grantor,

and

LACKAWANNA COUNTY RAIL AUTHORITY, a municipal authority organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, having a mailing address of Lackawanna County Administration Building, 200 Adams Avenue, Scranton, Pennsylvania 18503, hereinafter referred to as the Grantee,

Witnesseth, that the said Grantor, for and in consideration of the sum of One (\$1.00) Dollar lawful money of the United States of America, unto it well and truly paid by the said Grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, release and quitclaim unto the said Grantee, the heirs or successors and assigns of the said Grantee, all right, title and interest of the said Grantor of, in and to:

ALL THAT CERTAIN LINE of Railroad, being a portion of Consolidated Rail Corporation's Scranton Branch identified as Line Code 6201 in the records of the United States Railway Association and also being a portion of the former Erie Lackawanna Railway Company's line of Railroad known as the Erie Lackawanna Main Line (Line Code 6201) and further identified in the Recorder's Office of Lackawanna County, Pennsylvania in Book 954 at page 346; and

BEGINNING at about Railroad Mile Post 120.0 in the Township of Covington, County of Lackawanna and Commonwealth of Pennsylvania; and extending thence in a general northwesterly direction and passing through Covington township, the borough of Moscow, Roaring Brook Township, Borough of Elmhurst, Roaring Brook Township, Borough of Dunmore and in to the City of Scranton to a point of ENDING on the east line of Cliff Street, in said City of Scranton, County of Lackawanna and Commonwealth of Pennsylvania, opposite Railroad Mile Post 133.8, all as indicated by "PS" on Consolidated Rail Corporation's Case Plan No. 67880, sheets 1 through 14(c), which sheets are the same sheets attached to the August 13, 1985

BOOK 1374 PG 47

Deed between Consolidated Rail Corporation and the Grantor, and recorded as Deed Book 1145, pages 528 through 545 in the office aforesaid, and are attached hereto and made a part hereof.

THE Southerly property sale line between the East line of Webster Avenue and the West line of South Washington Avenue is located equidistant between the North and South receiver tracks and thence the Southerly property line continues from the West side of South Washington Avenue to the East side of Cliff Street and is located equidistant between Yard Track No. 2 and Yard Track No. 3; these sale lines are further identified in Eminent Domain Proceedings brought against Consolidated Rail Corporation by Grantor under Docket No. 84-CIV-296 in Lackawanna County, Pennsylvania.

BEING a part or portion of the same premises which Thomas F. Patton and Ralph S. Tyler, Jr., as Trustees of the Property of Erie Lackawanna Railway Company, Debtor, by Conveyance Document No. EL-CRC-RP-57 dated March 31, 1976 and recorded on September 6, 1978, in the Recorder's Office of Lackawanna County, Pennsylvania, in Deed Book 954 at page 340&c., granted and conveyed the aforesaid property unto Consolidated Rail Corporation.

AND BEING the same premises conveyed by Consolidated Rail Corporation to the Grantor herein by deed which deed is dated August 16, 1985 and recorded in the office aforesaid in Deed Book 1145 at page 523.

UNDER and SUBJECT, however, to (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets crossing the premises herein described, (2) any streams, rivers and creeks passing under, across or through the premises herein described, (3) any easements or agreements of record or otherwise affecting the land hereby conveyed, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the herein conveyed premises, together with the right to maintain, repair, renew, replace, use and remove same, and (4) the terms, conditions, and covenants set forth in deeds forming the chain of title.

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever, of, in and to the same and every part thereof, EXCEPTING and RESERVING and UNDER AND SUBJECT as aforesaid.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances, unto the Grantee, the successors and assignees of the said Grantee forever, EXCEPTING and RESERVING and UNDER and SUBJECT as aforesaid.

NOTICE - "THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND IN THAT CONNECTION DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT." THIS NOTICE is set forth in the manner provided in Section 1 of the Act of September 10, 1965, P.L. 505, No. 255 (52 P.S. 1551).

IN WITNESS WHEREOF, the said Grantor has caused this Deed to be executed by its proper officers, and its corporate seal to be affixed, the day and year first above written.

ATTEST:

THE CITY OF SCRANTON

Frank J. Naughton
City Clerk 9-13-91

By: James P. Connors
Mayor

APPROVED AS TO FORM:

BY: A. Leigh Redmon
1st Dist. City Solicitor

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF LACKAWANNA :

On this 13th day of September, 1991, before me, a Notary Public, personally appeared JAMES P. CONNORS, who acknowledged himself to be the Mayor of the CITY OF SCRANTON, a municipal corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

In Witness Whereof, I hereunto set my hand and official seal.

Dolores D'Amico
DOLORES D'AMICO, Notary Public
Scranton, Lackawanna County
My Commission Expires JULY 11, 1995

I hereby certify that the precise address of the Grantee is: Lackawanna County Administration Building, 200 Adams Avenue, Scranton, Pennsylvania 18503

Attorney for Grantee

4
BOOK 1374 PG 50

Recorded in the office for Recorder of Deeds
 in and for Lackawanna County, Pennsylvania
 in Deed Book 1377 Page 645-662 incl.
 Witness my hand and seal of this office the
 23rd day Oct. A.D. 19 91

Anne Marie Regan

 Recorder of Deeds E E D

LACKAWANNA RAILWAY, INC.

-to-

LACKAWANNA COUNTY RAILROAD AUTHORITY

For: Approximately 0.2 of a mile of the Scranton Branch from Mile Post 134.0 to the D&H Railway right of way line to Mile Post 133.8 at Cliff Street; and 0.7 of a mile of the Brady Industrial Lead from Mile Post 0.0 at Cedar Avenue to Mile Post 0.7 being the north abutment of the bridge over Roaring Brook; and also including all right, title and interest in Scranton Yard Tracks Nos. 3 and 4; and 0.6 of a mile of the Brady Industrial Lead between Cliff Street and Cedar Avenue; and 0.5 of a mile of the Chamberlain Lead between Cliff Street and South Washington Avenue, all in the City of Scranton, Lackawanna County, Pennsylvania.

for 23-10-91

#	1611
23-10-91 13:20J. MONAL	33448
DEED	.41.00
WRIT FEE	.0.50
ST	.41.50
CHK	.41.50
CG	.0.00
REORDER OF DEEDS	
LACKAWANNA COUNTY IS	
SCRANTON, PA 18503	
ANNE MARIE REGAN	
CHK	.41.50
23-10-91 13:20J. MONAL	33448

1611

BOOK 1377 645

THIS INDENTURE, made the 15th day of October in the year of our Lord One Thousand Nine Hundred and Ninety One (A.D. 1991)

BETWEEN LACKAWANNA RAILWAY, INC., a Pennsylvania corporation with offices in Scranton, Lackawanna County, Pennsylvania, hereinafter "Grantor"

AND

LACKAWANNA COUNTY RAILROAD AUTHORITY, a municipal authority of the Commonwealth of Pennsylvania, having a mailing address of 701 Wyoming Avenue, Scranton, PA hereinafter "Grantee";

WITNESSETH: That the said Grantor, for and in consideration of the sum of One Dollar (\$1.00) lawful money of the United States of America, unto it well and truly paid by the said Grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released and quitclaimed and by these presents does remise, release and quitclaim unto the said Grantee, the successors and assigns of the said Grantee, all right, title and interest of the said Grantor of, in and to the following described Premises:

ALL THAT CERTAIN property of the Grantor, together with all improvements and track material thereon, including Bridge No. 60 and the bridge over South Washington Avenue, being those portions of the lines of railroad known as the Scranton Cluster, situate in the City of Scranton, County of Lackawanna and Commonwealth of Pennsylvania, hereinafter referred to as "Premises" and described in Exhibit "A" and generally depicted in Exhibit "B" hereof.

TOGETHER with all and singular the tenements, hereditaments, bridges, track material, and their appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever, of, in and to the same and every part thereof, EXCEPTING and RESERVING and UNDER and SUBJECT and provided as aforesaid.

TO HAVE AND TO HOLD all and singular the said Premises, together with the bridges, track material, and their appurtenances, unto the Grantee, the successors and assigns of he said Grantee forever, EXCEPTING and RESERVING and UNDER and SUBJECT and provided as aforesaid.

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether

singular or plural, such words shall be deemed to include at all times and in all cases the legal representatives or successors and assigns of the Grantor and Grantee.

IN WITNESS WHEREOF, the said Grantor has caused this Indenture to be signed in its name and behalf by its President duly authorized thereunto and has caused its corporate seal to be hereunto affixed and attested by its Secretary the day and year first above written.

ATTEST:

LACKAWANNA RAILWAY, INC.
By:

WP Burt
Secretary

Steven May
Steven May, President

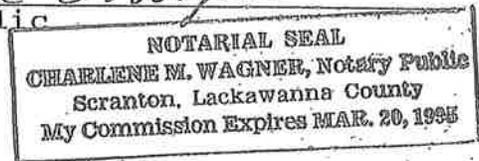
COMMONWEALTH OF PENNSYLVANIA)
: S
COUNTY OF LACKAWANNA)

BEFORE ME, the undersigned, a Notary Public in and for said Commonwealth and County, personally appeared Steven May as President of Lackawanna Railway, Inc. and WP Burt its Secretary, respectively, of LACKAWANNA RAILWAY, INC., and severally acknowledged the execution of the foregoing Instrument to be the voluntary act and deed of said LACKAWANNA RAILWAY, INC., and their voluntary act and deed as such officers.

WITNESS my hand and notarial seal, this 27th day of October A.D. 1991.

Charlene M. Wagner
Notary Public

I HEREBY CERTIFY that the correct address of the within-named Grantee is:



701 Wyoming Avenue, Scranton, PA 18509

on behalf of Grantee

REGISTER & RECORDER

1994 JAN 31 PM 2:14

MONROE COUNTY, PA.

70864

DEED

CONSOLIDATED RAIL CORPORATION

-to-

MONROE COUNTY RAILROAD AUTHORITY

Land known as the Scranton Branch and
situate in the County of Monroe and
Commonwealth of Pennsylvania.

Prep: Descp:
Chkd: Compd:
Apvd:

AFFIDAVITS FILED

THIS INDENTURE, made the 24TH day of JANUARY
in the year of our Lord One Thousand Nine Hundred and Ninety-four
(A.D. 1994)

BETWEEN CONSOLIDATED RAIL CORPORATION, a
Corporation of the Commonwealth of Pennsylvania, having an office at
Two Commerce Square, 2001 Market Street, Philadelphia,
Pennsylvania, 19101-1419, hereinafter referred to as the Grantor, and
MONROE COUNTY RAILROAD AUTHORITY, a Municipal
Authority established under the Pennsylvania Municipal Authorities
Act, having a mailing address of Monroe County Court House,
Stroudsburg, Pennsylvania 18360, hereinafter referred to as the
Grantee;

WITNESSETH: That the said Grantor, for and in consideration of
the sum of ONE DOLLAR (\$1.00) lawful money of the United States of
America, unto it well and truly paid by the said Grantee, at or before the
sealing and delivery of these presents, the receipt whereof is hereby
acknowledged, Grantor has remised, released and quitclaimed and by
these presents does remise, release and quitclaim unto the said Grantee,
the heirs or successors and assigns of the said Grantee, all right, title and
interest of the said Grantor of, in and to the following described

Premises:

ALL THAT CERTAIN property of the Grantor, together with all
of the improvements thereon, being a portion of the line of railroad
known as the Scranton Branch and identified as Line Code 6201, situate *
in the County of Monroe and Commonwealth of Pennsylvania, being
generally described in Exhibit "A" and generally indicated by "PS" in
Exhibit "B" hereof, herein referred to as "Premises".

UNDER and SUBJECT, however, to (1) whatever rights the
public may have to the use of any roads, alleys, bridges or streets
crossing the Premises, (2) any streams, rivers, creeks and water ways
passing under, across or through the Premises, and (3) any easements or
agreements of record or otherwise affecting the Premises, and to the
state of facts which a personal inspection or accurate survey would
disclose, and to any pipes, wires, poles, cables, culverts, drainage
courses or systems and their appurtenances now existing and remaining
in, on, under, over, across and through the Premises, together with the
right to maintain, repair, renew, replace, use and remove same.

THIS INSTRUMENT is executed and delivered by Grantor, and is
accepted by Grantee, subject to the covenants set forth below, which

*Townships of Stroud, Barret, Paradise,¹
and Coolbaugh

shall be deemed part of the consideration of this conveyance and which shall run with the land and be binding upon, and inure to the benefit of, the respective legal representatives, successors and assigns of Grantor and Grantee. Grantee hereby knowingly, willingly, and voluntarily waives the benefit of any rule, law, custom, or statute of the Commonwealth of Pennsylvania now or hereafter in force with respect to the covenants set forth below.

(1) Grantor shall neither be liable or obligated to construct or maintain any fence or similar structure between the Premises and adjoining land of Grantor nor shall Grantor be liable or obligated to pay for any part of the cost or expense of constructing or maintaining any fence or similar structure, and Grantee hereby forever releases Grantor from any loss or damage, direct or consequential, that may be caused by or arise from the lack or failure to maintain any such fence or similar structure.

(2) No right or means of ingress, egress or passageway to or from the Premises is hereby granted, expressly or by implication, and Grantor shall not be liable or obliged to provide or obtain for Grantee any such means of ingress, egress or passageway.

(3) Should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against the Grantor herein.

(4) Grantee by the acceptance of this Instrument, does hereby accept all existing and prospective responsibility for removal and/or restoration costs for any and all railroad bridges and grade crossings and their appurtenances that may be located on, over or under the Premises; and Grantee further covenants and agrees that it will also assume any obligation and/or responsibility as may have been or may hereafter be imposed on Grantor by any Public Utility Commission or any other governmental agency having jurisdiction for any and all bridge structures and grade crossings and their appurtenances, including but not limited to the removal, repairing or restoration of same in accordance with the requirements of said Commission or other governmental agency; and Grantee further agrees to indemnify, defend and hold Grantor harmless against all costs, penalties, expenses, obligations, responsibility and requirements associated with said bridge structures and grade crossings and their appurtenances.

(5) Grantor shall not be liable or obligated to provide for or supply directly or indirectly, for money or otherwise, any type of utility service to Grantee, even if the Premises are supplied utility service or services from or through Grantor owned or Grantor retained utility service facilities at the time said Premises are conveyed to Grantee; and that if Grantor at its sole discretion elects to provide any utility service or services for money or otherwise to said Premises during the period during which Grantee is arranging at Grantee's own expense for

provision of utility service or services direct from public utilities, Grantee shall have no continuing right to use such service or expectation that Grantor must continue to provide it. It is further understood that Grantee's use of any utilities that are supplied through Grantor's utilities or billed to Grantor by any public utility for Grantee's use shall be at the sole cost and expense of Grantee and if Grantee fails to relocate or arrange for a separation of utility services, Grantor may arrange for a separation of the utility services at Grantee's sole cost and expense.

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever, of, in and to the same and every part thereof, UNDER and SUBJECT and provided as aforesaid.

TO HAVE AND TO HOLD all and singular the said Premises, together with the appurtenances, unto the Grantee, the heirs or successors and assigns of the said Grantee forever, UNDER and SUBJECT and provided as aforesaid.

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include at all times and in all cases the successors and assigns of the Grantor and Grantee.

IN WITNESS WHEREOF, the said Grantor has caused this

Indenture to be signed in its name and behalf by its Senior Vice President-Development duly authorized thereunto and has caused its corporate seal to be hereunto affixed and attested by its Assistant Secretary the day and year first above written.

SEALED and DELIVERED in the presence of us: CONSOLIDATED RAIL CORPORATION By:

Nancy B. Reynolds NANCY B. REYNOLDS Charles N. Marshall, Senior Vice President-Development

Attest:

Nancy B. Reynolds NANCY B. REYNOLDS Assistant Secretary J. D. McGEEHAN

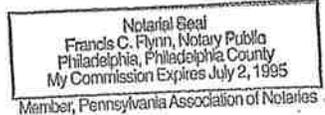
COMMONWEALTH OF PENNSYLVANIA) COUNTY OF PHILADELPHIA)

On this 24th day of JANUARY A.D. 1995, before me, the subscriber, the undersigned officer, personally appeared Charles N. Marshall, who acknowledged himself to be the Senior Vice President-Development of CONSOLIDATED RAIL CORPORATION, a corporation, and that he as such Senior Vice President-Development, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Senior Vice President-Development.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Francis C. Flynn Notary Public

I HEREBY CERTIFY that the correct address of the within-named Grantee is:



Monroe County Courthouse Stroudsburg, Penna 18360 on behalf of Grantee.

THIS INSTRUMENT PREPARED BY: Francis C. Flynn Consolidated Rail Corporation 19-B, Two Commerce Square 2001 Market Street Philadelphia, Pennsylvania 19101-1419 :nls

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35956

**READING, BLUE MOUNTAIN NORTHERN RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER**

**JOINT REPLY OF PENNSYLVANIA NORTHEAST REGIONAL RAILROAD
AUTHORITY AND SEDA-COG JOINT RAIL AUTHORITY**

Exhibit R

SEDA-COG JOINT RAIL AUTHORITY
REQUEST FOR PROPOSALS – OPERATION OF FIVE SHORT LINE RAILROADS

I. INTRODUCTION AND PURPOSE OF RFP

This Request for Proposals (the "RFP") is issued by the SEDA-COG Joint Rail Authority (the "JRA") for the purpose of seeking a railroad operator to enter into an agreement with the JRA for the operation of the JRA's rail lines for rail freight service. The JRA invites proposals from experienced railroad operators capable of providing the specialized, professional services required for operation of the JRA's rail lines. The railroad operating services sought by the JRA pursuant to this RFP will commence July 1, 2017.

The JRA desires to obtain first-class, high-quality operating services that meet the needs of the railroad customers on the JRA's rail lines. The intent of this RFP is to engage an operator that is deemed most capable of providing such services as a contractor of the JRA. Specifically, the JRA seeks an operator that will:

- manage and operate the JRA's rail lines in a high quality and efficient manner;
- operate the JRA rail lines in a manner so as to enhance rail revenues while ensuring that the JRA's rail lines remain economically competitive;
- properly maintain and safeguard the JRA's investment in its railroad properties through the exercise of highest standards of maintenance in accordance with JRA requirements and, where approved by the JRA, recommend or undertake capital improvements to improve the rail lines;
- maximize the economic impact to the central Pennsylvania region and the utilization of rail in the region;
- implement appropriate marketing activities to attract new customers to be served by JRA rail lines; and
- accomplish all objectives required of the operator in a professional manner, in compliance with best railroad industry practices and applicable laws and ordinances.

In order to satisfy the JRA's requirements and meet the JRA's goals mentioned above, proposers must agree to provide all of the services sought by the JRA under this RFP. At the conclusion of the RFP process, and upon the execution of an operating agreement between the selected proposer and the JRA, the selected proposer will have responsibility for the operation of the JRA's rail lines for rail freight services.

II. BACKGROUND OF JRA

In the early 1980s, Consolidated Rail Corporation (Conrail) began pursuing an expedited abandonment of its rail lines, after several federal laws were enacted that enabled Conrail to eliminate unprofitable lines. In central Pennsylvania, the potential impact of these rail line abandonments greatly concerned industries that relied on Conrail for rail service. In particular, the rail line known as the Bloomsburg Branch (traversing Northumberland-Danville-Bloomsburg-Berwick) and rail lines in Centre County (the Bellefonte Branch, Pleasant Gap Industrial Track and portions of the Bald Eagle Branch) were all targets for abandonment. This abandonment would have affected approximately 80 miles of rail lines, and would have left a significant void in rail service for industry throughout central Pennsylvania.

In response to this potential loss of rail service, the concerned shippers banded together into "shipper groups." These groups contacted the SEDA-Council of Governments ("SEDA-COG") for assistance in developing a solution for the potential rail line abandonment and loss of rail service. SEDA-COG, a public development organization, is an eleven-county council of governments that provides a wide-range of services to its member counties, including economic and community development services, transportation projects and similar activities.

SEDA-COG coordinated a series of meetings of the shipper groups to address the concerns related to potential rail line abandonment. At some point during these meetings, the idea of purchasing the subject rail lines from Conrail was raised. Although the idea sparked interest, there was no immediate consensus on a possible purchaser. There was concern that a private acquisition without public oversight or involvement would potentially result in yet another rail line abandonment, should profitably again become a concern as it was with Conrail. It was therefore decided that public oversight would be necessary to preserve rail service in central Pennsylvania.

Thus was born the concept of the public-private partnership to both take ownership of the rail lines (public) and provide rail operation on the failing rail lines (private). The participant shippers all agreed that the lines needed local ownership, and a public owner provided the stability necessary to ensure long-term preservation of the rail lines. Initially, SEDA-COG was considered as the possible "public" purchaser of the rail lines from Conrail. However, due to a recognized need to separate rail activities from the other activities conducted by SEDA-COG, it was proposed that a multi-county joint municipal authority be formed to take ownership of the rail lines from Conrail.

Consequently, on June 30, 1983, the JRA was incorporated as a joint municipal authority under the Pennsylvania Municipality Authorities Act, 53 Pa. C.S. § 5601 et seq. (the "Act"). As set forth in the relevant ordinances of the five initial member counties which established the JRA (Centre, Columbia, Montour, Northumberland, and Union), the JRA was formed to:

[F]inance, construct or otherwise acquire, purchase, hold, lease or sub-lease, either in the capacity of lessee or lessor, land, rail lines, buildings or other facilities to be devoted wholly or partially for the operation of rail lines, for public uses, or for any other purpose permitted by said Act, whether said projects are situated in the Counties of Centre, Columbia, Montour, Northumberland or Union, or elsewhere in the Commonwealth.

Accordingly, the JRA was formed for the purpose of acquiring, owning and maintaining various railroad properties throughout central Pennsylvania, and its primary mission has been to preserve rail freight service and foster economic development and job creation in the region through the improvement and expansion of

rail infrastructure. After its incorporation, the JRA successfully acquired and ultimately rehabilitated the 80 miles of rail line from Conrail, through various funding sources including the Commonwealth of Pennsylvania, the United States Economic Development Administration, and the Federal Railroad Administration. The JRA now consists of eight member counties, including the Counties of Centre, Clinton, Columbia, Lycoming, Mifflin, Montour, Northumberland, and Union.

Despite its authorized public purposes of owning and maintaining the rail lines, the JRA's authorized purposes do not include operation of the rail lines. Therefore, since its formation, the JRA has contracted with a private railroad operator for the operation of rail freight service on the JRA's rail lines. There is currently an operating agreement in effect for rail freight services on the JRA rail lines, which will expire June 30, 2017. This RFP, therefore, seeks a new operating agreement for rail freight services on JRA rail lines to commence July 1, 2017.

Further information concerning the background of the JRA is available in the JRA's 30th anniversary booklet entitled "Preserving Rail Freight in Central Pennsylvania for 30 Years," which is available as a .pdf file on the JRA website at: http://www.sedacograil.org/Documents/RailBk2014_RcvwCover.pdf. This includes a listing of customers and commodities handled on the JRA rail lines. A printed copy of that file can be obtained by contacting Ms. Kay Aikey at kaikey@seda-cog.org or by calling 570-522-7333.

III. JRA MISSION STATEMENT/STRATEGIC GOALS AND OBJECTIVES

On August 8, 2012, the JRA adopted a comprehensive five-year strategic plan (the "Strategic Plan"). This is a very detailed document containing significant information about the JRA and its railroad properties. The Strategic Plan included a review and evaluation of the JRA's public/private partnership model and identified goals and potential action to be taken by the JRA, many of which involve rail operations on the JRA's rail lines. Specifically, the following are a few objectives relating to rail freight operations that will be pursued by the JRA as part of the Strategic Plan:

- Expand and maintain the JRA's strong rail system preservation and maintenance program through its successful public-private partnership (P3) business model.
- Proactively identify new industrial properties to facilitate new rail freight service dependent upon industrial development opportunities.
- Develop and maintain an effective continuity of operations program to effectively sustain rail service in central Pennsylvania.
- Continue to improve and build upon the JRA and Operator's strong rail operations.

On the following page is an excerpt from the Executive Summary of the Strategic Plan.

<p>SEDA-COG Joint Rail Authority</p> <p>Vision: To provide Central Pennsylvania with a world-class railroad enterprise that affords its customers and partners with the most reliable, efficient, and safest short line system.</p>		
<p>Mission: To preserve and foster rail service in Central Pennsylvania and to further economic development through the retention, improvement, and expansion of the infrastructure and the rail service it supports.</p>		
<p>Core Values:</p> <ul style="list-style-type: none"> • Excellence • Stewardship • Safety • Integrity • Leadership 	<p>Core Functions:</p> <ul style="list-style-type: none"> • Rail System Preservation and Improvement • Economic Development • Collaboration 	<p>Guiding Principles:</p> <ul style="list-style-type: none"> • Plan and implement regional rail system projects with member county needs, private shipper needs, Rail Service Operator and other stakeholder interests in balance • Conduct open public JRA Board meetings with a public forum agenda item at every meeting • Adhere to state Right-to-Know Laws • Exercise ethical procurement standards and procedures that go beyond that required by the Commonwealth • Commit to a professional Code of Conduct and Ethics Policy for Board Members, Staff and Operator • Maintain a culture of cooperative problem-solving and partnership with our local governments, utilities, shippers, economic development agencies and property owners

In many instances, the railroad operator is identified as the lead entity responsible for carrying out identified recommendations to meet those objectives. As such, proposers are encouraged to review the Strategic Plan in order to clearly understand the JRA's goals for future rail operations. A copy of the Strategic Plan may be downloaded at www.sedacograil.org. A printed copy of the Strategic Plan can be obtained by contacting Ms. Kay Ailkey at kailkey@seda-cog.org or by calling 570-522-7333.

IV. JRA RAIL PROPERTIES SUBJECT TO THIS RFP

The JRA owns railroad properties throughout nine counties in central Pennsylvania. The railroad properties which are the subject of this RFP include five short lines and line segments,¹ as follows:

Track Segments in Blair-Centre-Clinton Counties (currently referred to as the "Nittany & Bald Eagle Rail Line"):

Bald Eagle Branch from M.P. 1.0W to M.P. 54.3 (Lock Haven to Tyrone)
Gray Yard adjacent to M.P. 222.2 to M.P. 223.2 (Norfolk Southern Pittsburgh line M.P. numbers)
Lock Haven Yard adjacent to M.P. 194.3 to M.P. 195.1 (Norfolk Southern Buffalo line M.P. numbers)
Pleasant Gap Industrial Track from M.P. 0.0 to M.P. 3.0
Bellefonte Branch from M.P. 30.8 to M.P. 42.5 (Milesburg to Lemont)
Bellefonte Sunnyside Yard M.P. 32.4 to M.P. 33.1
"Shop" Track from M.P. 0.0 to M.P. 1.0
All operating remnants of the Mill Hall Industrial Track (N&BE main line M.P. 51.9)
Mill Hall Industrial Track - starting at M.P. 13 (Draketown) and extending east 1.9 miles to end of track (Castanea)...

Track Segments in Northumberland-Montour-Columbia-Luzerne Counties (currently referred to as the "North Shore Rail Line"):

North Shore Railroad from M.P. 213.45 to M.P. 176.97
Berwick Yard M.P. 178.7
BIDA Complex from NSHR M.P. 176 up the Hill Track to and including all track within the BIDA Complex

Track Segments in Northumberland County (currently referred to as the "Shamokin Valley Rail Line"):

Shamokin Valley Main from M.P. 0.0 to M.P. 25.2
Carbon Run Branch from M.P. 0.0 to M.P. 1.5
SAIC Industrial Park Track from M.P. 0.0 to M.P. 1.0

Track Segments in Clinton-Lycoming Counties (currently referred to as the "Lycoming Valley Rail Line"):

Grunman Lead from M.P. 199 to M.P. 200
Lycoming Secondary from M.P. 199.8 to M.P. 181.1
Newberry Yard M.P. 181.1 to M.P. 179.4
Avis branch from M.P. 179.4 to M.P. 166.0 at Avis
All operating remnants of the Williamsport Industrial Track
Antlers Running Track M.P. 179.4 to M.P. 178.7

Track Segments in Mifflin County (currently referred to as the "Juniata Valley Rail Line"):

Lewistown Yard M.P. 0.2
Maitland Industrial Track from M.P. 0.0 to M.P. 7.4

¹ The JRA controls a sixth short line known as the White Deer and Reading (WDR) line in Union County, which is not included in the rail lines to be operated under this RFP. The WDR line is a four-mile line segment that extends from White Deer to a point just north of Allenwood. The northerly 2.5 miles, more or less, of this line segment is owned by the JRA. The southern segment (approximately 1.57 miles) is leased by the JRA from the Central Pennsylvania Chapter of the National Railway Historical Society. This WDR line does not directly connect to Norfolk Southern or any other Class I railroad. The WDR line extends north to a major industrial park owned by the County of Union, known as Great Stream Commons. The WDR line connects at its southern end with the rail line owned by the West Shore Railroad.

Burnham Branch from M.P. 0.0 to M.P. 4.0

MCIDC Plaza Track

West Park Track - Granville Township from the NS Pittsburgh Main north to and including all track within the MCIDC West Park

The JRA may include additional rail lines and properties to the Operating Agreement for the services sought by this RFP, as set forth more specifically in the Operating Agreement.

V. MAPS OF LINES/RAIL LINE DATA AND INFRASTRUCTURE INVESTMENTS

All JRA rail system and individual rail line maps are available for downloading at www.sedacograil.org. Each of these individual rail line maps shows current rail customer locations and aggregate rail traffic volumes for the past ten years on the line. Each individual rail line has an additional map which documents the investments and expansions made on that line by the JRA, customers and/or other partners in economic development.

Track charts for the rail lines above are available at for downloading at www.sedacograil.org.

VI. CURRENT OPERATIONS

Typical operations for each of the lines are shown below.

Juniata Valley Railroad

<i>Line Segment</i>	<i>Frequency</i>
Lewistown Yard	M-W-F
Maitland Industrial Track	As needed
Burnham Branch	M-W-F
West Park Track	M-W-F

Lycoming Valley Railroad

<i>Line Segment</i>	<i>Frequency</i>
Lycoming Secondary	M-W-F
Newberry Yard	M-T-W-Th-F- Sa-Su
Avis Branch	M-T-W-Th-F
Antlers Running Track	M-T-W-Th-F- Sa-Su
Grumman Lead	M-W-F

Nittany & Bald Eagle Railroad

<i>Line Segment</i>	<i>Frequency</i>
Nittany Main Line	M-T-W-Th-F
Gray Yard (Tyrone)	M-(T)-W-(Th)- F
Lock Haven Yard	M-T-W-Th-F
Pleasant Gap Industrial Track	M-T-W-Th-F

Bellefonte Branch	M-T-W-Th-F
Shop Track (Coleville)	M-T-W-Th-F
Mill Hill Industrial Track	M-T-W-Th-F

North Shore Railroad

<i>Line Segment</i>	<i>Frequency</i>
North Shore Railroad	M-W-F
Berwick Yard	M-W-F
Hill Track/BIDA	M-W-F

Shamokin Valley Railroad

<i>Line Segment</i>	<i>Frequency</i>
Shamokin Valley Main	Tues
Carbon Run Branch	N/A
SAIC Industrial Park Track	Tues

VII. INTERCHANGES

Active Class 1 interchanges are:

Norfolk Southern (NS)

Northumberland

Lock Haven

Tyrone

Lewistown

Canadian Pacific (CP)

Sunbury *limited*

VIII. PROPOSED OPERATING AGREEMENT

At the conclusion of the RFP process, the JRA and the selected proposer will enter into an agreement for the operation of rail freight services on the JRA's rail lines (the "Operating Agreement"). See Appendix "A" for the proposed Operating Agreement, which will take effect on July 1, 2017.

The term of the Operating Agreement shall be seven years, with a possible renewal term of five years. Under the Operating Agreement, the selected proposer will have exclusive use of the JRA's rail lines for rail freight services in exchange for payment of an operating fee, which will be determined as part of the RFP process, and fulfillment of other requirements set forth in the Operating Agreement. Thus, the Operating Agreement contains all duties and responsibilities expected to be observed and performed by the selected proposer in its day-to-day operations of the JRA rail lines. By way of example and not limitation, the Operating Agreement requires the operator to do the following:

- make various reports to the JRA, including reports relating to financial performance, operations, marketing, and maintenance of way;

- maintain the JRA rail lines in accordance with the JRA's track maintenance standards and asset guidelines;
- furnish all required management, supervision, and other services required in the performance of rail operations;
- meet certain customer service standards and operator and maintenance expenditure thresholds as determined by an independent JRA consultant;
- cooperate with the JRA in carrying out its mission of preserving rail freight service and fostering economic development and job creation in the region through the improvement and expansion of rail infrastructure;
- provide and maintain required insurance for its operations; and
- indemnify the JRA for liabilities arising from the rail operations.

As the Operating Agreement provides the relevant rights and responsibilities of the JRA and the railroad operator, proposers are advised to review the proposed Operating Agreement with legal counsel. The Operating Agreement is incorporated by reference into this RFP, and any conflict in terms between this RFP and the Operating Agreement shall be resolved in favor of the conflicting term in the Operating Agreement.

IX. PASSENGER EXCURSIONS

This RFP does not encompass rail passenger services. By way of supplemental information, on October 22, 2010, the JRA entered into a three-party Agreement for Rail Passenger Excursion Service with Susquehanna Union Railroad Company and its subsidiary operating companies, and Penn Valley Railroad, LLC for the provision of rail passenger excursions on JRA rail lines (the "Passenger Excursions Agreement"). The Passenger Excursions Agreement provides for the operation of certain public passenger excursions, which are annually operated at nine locations on the JRA rail lines, through the contribution of various services by the involved parties. The Passenger Excursions Agreement continues until June 30, 2017. For purposes of this RFP, no assumption should be made on whether the Passenger Excursions Agreement will remain in effect beyond June 30, 2017, or that a similar successor agreement will be executed. The JRA nonetheless recognizes the benefit that these excursions provide for the public and intends to examine all options to ensure that these excursions can continue beyond June 30, 2017.

X. OVERVIEW OF RFP PROCESS: TWO PHASES

The JRA desires to ensure that first-class rail operations are provided on its rail lines. The intent of this RFP is, therefore, to ensure that an appropriate level of review of proposals is undertaken in order to select a rail operator that the JRA deems best suited to provide rail freight service operations on its rail lines.

The JRA will employ a two-phase review process in its selection of an operator, which involves this RFP being divided into two phases. The first phase of this RFP shall be referred to as Phase 1 (Request for Qualifications (RFQ)). (Although there will be two phases in this process, this RFP document will cover both phases – there will be no additional RFQ or RFP document issued.) Phase 1 will involve an examination and evaluation of the qualifications of proposers. The JRA will assess each proposer's approach to operations, qualifications and experience, financial capability and other areas described below. There will be no restriction to the number of proposers that may participate in Phase 1. From the responses received, the JRA will utilize a scoring system in order to select the top three candidates to proceed to the next phase,

known as Phase 2 (Detailed RFP). More details concerning Phases 1 and 2, and the requirements for submission for each phase of the process, are listed below.

A mandatory pre-Phase 1 (RFQ) proposers' meeting will be held by the JRA at June 5, 2014, at 10:00 a.m. at the Union County Government Center, 155 North 15th Street, Lewisburg, Pennsylvania 17837. At this meeting, proposers will have the opportunity to ask questions about the JRA, the RFP process, the requirements of the RFP, the history of revenue derived from operation of JRA rail lines, and other items relevant to this RFP. Interested proposers are required to attend this meeting. Failure to attend this meeting in person may constitute grounds for removal of the proposer from consideration.

Based upon the results obtained from Phase 1, the JRA Board of Directors, upon recommendation of the JRA Operating Agreement Committee with the assistance of JRA's consultants, staff, and solicitor, will select the top three candidates to be invited to participate in Phase 2 of the RFP process. Phase 2 (Detailed RFP) will involve a more detailed evaluation of the three remaining proposers by the JRA's Operating Agreement Committee. The Operating Agreement Committee shall base its review and evaluation upon multiple criteria discussed below and shall score the three remaining proposers in accordance with a scoring system. The Operating Agreement Committee shall, at the conclusion of its review and evaluation in this second phase, recommend the best proposal for an Operating Agreement for rail freight services to the JRA Board.

XI. PHASE 1 AND PHASE 2 OF RFP: GENERAL INSTRUCTIONS FOR ALL PROPOSALS

This section explains the procedure that will be followed by all proposers. Proposers should carefully read and follow the procedures required by this section. Material deviations from these requirements may cause rejection of proposals.

Each proposer must submit one (1) original signed proposal and a cover letter, each signed in ink, and six (6) unbound hard copies to the JRA at the following address:

SEDA-COG Joint Rail Authority
201 Furnace Road
Lewisburg, PA 17837
570-524-4491

In addition, all proposers must submit an electronic .pdf copy of their proposal. The .pdf must be a single document and not broken into multiple files. If the file size of the .pdf exceeds 12 MB, the proposer must contact the JRA to get instructions for FTP or Dropbox file transfers. Such communications shall be directed to Mr. Jeffery K. Stover at jstover@седа-cog.org – mobile phone number: 570-847-9503.

The first time an email is sent from an outside email address the sender will receive a response from a SEDA-COG computer program that is designed to filter spam emails. Proposers must follow the instructions that are automatically generated by this software, and then the email will go directly into Mr. Stover's email inbox. Otherwise, the email will go to a spam filter. Proposers are therefore urged not to wait until the last few minutes to comply with the deadline. Timely submission of proposals is the sole responsibility of the proposer. Late proposals after the deadline will not be considered. The JRA reserves the right to determine the timeliness of all submissions.

In addition, all proposers must submit one additional unbound copy of their proposal with any redacted sections "blacked out," for a total of seven (7) unbound copies. The "blacked out copy" should only redact information deemed confidential and proprietary and will be used to response to requests under the Pennsylvania Right to Know Law. More details on this procedure are set forth later in this RFP.

Proposers should be clear, concise and direct in their submissions. Elaborate or lengthy proposals beyond those needed to provide a clear response to all requirements are not encouraged. Unclear, incomplete, or inaccurate documentation may not be considered. Falsification of any information may result in disqualification from the selection process, or in termination of the Operating Agreement if later discovered that the award of the agreement was made as a result of false information submitted in response to this RFP.

Submitted materials will not be returned to the sender after the proposals have been opened.

To be responsive, a proposal must be submitted in writing. All applicable documents, including attachments and exhibits, must be included with the proposal. Each page of the proposal should be numbered sequentially at the bottom of the page. Proposals must be submitted in the English language and must be at least 12 point font size, have at least one inch margins on all sides, and be on plain white paper.

Each proposal must be accompanied by a cover letter limited to one page that references the title of this RFP and includes the following information:

- (1) Full legal name of the proposer;
- (2) Legal business status (individual, partnership, corporation, limited liability company, etc.), address, telephone number, fax number, and email address of the authorized representative(s) of the proposer;
- (3) State in which, in the case of an individual, the individual is domiciled, or in the case of an entity, the entity is organized or incorporated.
- (4) Name, title, email address, telephone number and mailing address of the person(s) authorized to be the primary contact and represent the proposer in the RFP process.

The JRA, or its solicitor, reserves the right to seek additional information or clarifications from any proposers. The JRA may elect to interview any or all of the proposers.

All costs of preparation of a proposal shall be borne by the proposer. The JRA shall not be liable for any expenses incurred by proposers in the preparation and/or submission of proposals.

Proposals may be withdrawn by written request of the authorized representative of the proposer on letterhead at any time prior to the submission deadline.

XII. PHASE 1 (RFQ): SPECIFIC INFORMATION REQUIRED FROM PROPOSERS

The JRA will accept submissions for the Phase 1 (RFQ) until 3:00 p.m. on August 1, 2014. Initial responses for Phase 1 shall be in narrative form and shall include the information required in this section. Proposers shall not submit proposals to address Phase 2 of the RFP process unless they are selected by the JRA to proceed to that phase. Failure to adhere to these requirements may be cause for rejection of the proposal as non-responsive.

To ensure a uniform review process and to ensure an appropriate level of comparability, initial responses by proposers for Phase 1 (RFQ) must be organized as follows:

1. *Approach to Operations.* In this section, each proposer should include the following:
 - a preliminary statement or summary of its overall approach or philosophy concerning the operation of short line railroads, including strategies or business practices that address the scope of services sought by this RFP;
 - a list of all railroads owned or operated by the proposer, along with an identification of any Class I railroad connections;
 - a description of its existing marketing activities employed in its rail operations to attract rail customers and otherwise market the proposer's business;
 - a description of the proposer's policies and procedures for operating its business, including policies and procedures relating to customer service, employee matters, risk management, and accounting and financial management;
 - a description of the proposer's approach to maintenance of rail lines;
 - a description of any pending, threatened, or concluded litigation involving the proposer or any of the proposer's directors, officers, or other key personnel, or otherwise involving any railroads owned or operated by proposer, for the past seven (7) years;
 - a description of any pending, threatened, or concluded investigation or proceeding instituted by any government agency against the proposer, including any citations or fines levied, for the past seven (7) years;
 - a summary of track inspections conducted by the Federal Railroad Administration (FRA) on any rail lines owned or operated by the proposer and a list of any violations or fines imposed by the FRA concerning same; and
 - a list of any contracts relating to rail operation services that were terminated or not renewed within the past ten (10) years, including reasons for termination or non-renewal.
2. *Qualifications and Experience.* In this section, each proposer should include the following:
 - a statement of its qualifications and experience and number of years managing and operating short line railroads;

- a minimum of five customer references, including name, mailing address, email address, and telephone number of the reference;
- if the proposer is a business entity (e.g., corporation, limited liability company, partnership), the proposer should detail the experience and qualifications of the proposer's management team; and
- a description of any operations specifically involving a public-private partnership, including an identification of the entities involved.

3. *Financial Capability.* In this section, each proposer should include the following:

- audited financial statements for the prior three years prepared in accordance with generally accepted accounting principles, including notes to financial statements;
- balance sheets for the prior three years;
- statements of income and expenses for the prior three years;
- corporate/partnership federal income tax returns for the last completed tax year;
- a credit report (e.g., Dun & Bradstreet report); and
- its most recent quarterly financial statement.

4. *Effect of Other Operations on JRA Lines.* In this section, each proposer should include the following:

- a description of any facts bearing upon any possible interests, direct or indirect, that the proposer believes any member, director, officer, employee or agent of the JRA presently has, or will have, in the performance of the Operating Agreement by the proposer; and
- a statement concerning whether proposer presently has or may in the future have an interest, direct or indirect, which would conflict in any manner with the performance of its obligations under the Operating Agreement or that is adverse or potentially adverse to the JRA (e.g., operation of other rail lines that may adversely affect rail operations of the JRA rail lines).

XIII. PHASE 1 (RFQ): SELECTION CRITERIA TO BE USED BY THE JRA

The JRA Operating Agreement Committee will review and evaluate the information received from Phase 1 of the process. Each response will first be reviewed and analyzed to determine overall responsiveness and completeness. Failure to comply with the instructions above may result in the proposal being deemed non-responsive and may, at the discretion of the JRA, be eliminated from further consideration.

The JRA Operating Agreement Committee will then assess each proposer's Phase 1 response through the use of a scoring system. The proposers receiving the top three scores (which may, in the event of a tie, be more than three proposers) will advance from Phase 1 to the more detailed Phase 2 of the RFP process described below. The remaining proposers who do not advance will be removed from further consideration.

The scoring system is as follows: Each proposer will receive a single score of between zero (0) and twenty (20) points (twenty being the highest score) in the following categories:

- *Approach to Operations*
- *Qualifications and Experience*
- *Financial Capability*

The Operating Agreement Committee may then deduct points based on the response in the section entitled "Effect of Other Operations on JRA Lines."

The proposers with the three highest scores out of sixty points will be invited to proceed to Phase 2. The JRA Operating Agreement Committee will thoroughly review all responses in the Phase 1 (RFQ); however, the Committee may request additional information from proposers or conduct additional investigation to verify the responses submitted by proposers in Phase 1. For example, the JRA may conduct interviews with federal, state, and local government agencies and/or Class I railroads that connect with lines operated by the proposer. Each proposer consents to any such additional investigation by the JRA.

At the conclusion of Phase 1, which is expected to occur within 60 days after the deadline for Phase 1 submissions, the JRA's Operating Agreement Committee will recommend to the JRA Board of Directors the top scoring proposers who shall be invited to proceed to Phase 2 of the RFP process, which will involve submission of a second, more detailed response. The JRA, at its option, may reject any and all proposals submitted in response to this RFP at any time during this process.

XIV. PHASE 2 (DETAILED RFP): SPECIFIC INFORMATION REQUIRED FROM INVITED PROPOSERS

Shortly after the conclusion of Phase 1, the top three scoring proposers will be formally invited by the JRA to proceed to Phase 2 of this RFP. In Phase 2, the invited proposers will be asked to submit a more detailed proposal following the same general instructions for all proposals. Each proposal shall be in narrative form and shall include the specific information required in this section. Failure to adhere to these requirements may be cause for rejection of the proposal as non-responsive.

The following information should be included in each Phase 2 proposal from the invited proposers:

1. *Background information.* Proposer should include a more detailed description of its background than provided in its initial Phase 1 response, including historical information, specific awards and recognitions that the proposer has won (including from Class I railroads), information about its business approach to the extent not covered in its Phase 1 response, and other items deemed relevant to proposer's railroad operations.

2. *Operations plan.* Proposer should provide an operational plan that describes proposer's planned approach to operating the JRA rail lines, including approaches relating to labor and supplier management, customer service, maintenance of way, and other items. This plan should specifically include:

- planned training programs for personnel relating to rail safety and operations;
- risk and safety management plans and programs;
- personnel management and administrative policies and procedures;
- a description of proposer's management and accounting systems;
- an organizational chart that outlines the proposed staffing plan for operations of the JRA rail lines, including descriptions of the functional responsibilities of each staff

member and an identification of the proposed individual who will have overall responsibility for day-to-day operations;

- a description of the proposed staffing of train crews, maintenance of way crews, and rolling stock;
- resumes outlining the experience, education and performance record of individuals who will have supervisory authority over day-to-day operations;
- a succession plan for management;
- a description of existing locomotives, rolling stock, and other equipment owned or leased by the proposer, including locomotive listing model, dates and descriptions of major repairs or improvements to such equipment;
- an administrative support plan;
- plans to provide cooperation to the JRA in support of its mission;
- a local service plan outlining the proposed operations to service all of the JRA lines; and
- a description of proposed interchange relationships with Class I railroads, whether handling line agreements, interline settlement system agreements, or otherwise, and a statement concerning how each such proposed relationship will keep JRA rail lines economically competitive during the term of the proposed Operating Agreement.

3. *Maintenance Plan.* Proposer should include a plan for maintenance of track and bridges on the JRA lines.

4. *Marketing Plan.* Proposer should include a marketing plan outlining proposer's planned marketing activities and programs for retention of existing customers on JRA rail lines and generation of new customers. This plan should include proposed expenditures for marketing activities.

5. *Financial Plan.* Proposer should include a financial plan that includes the following:

- an estimated financial pro forma for operations for the first five years of the Operating Agreement term, which should itemize estimated revenues and expenses by major line item and include supporting assumptions;
- proposer's strategy for maximizing annual operating revenues and minimizing operating expenses;
- an operating fee proposal or other proposal for compensating the JRA for use of the rail lines and other property available for use under the Operating Agreement (Note: Proposers are directed to Exhibit "C" of the Operating Agreement, attached at Appendix "A" to this RFP, for guidance in developing a fee proposal); and
- a proposal for sharing any federal or state tax credits or other special incentives afforded to operating railroads.

XV. PHASE 2 (DETAILED RFP): SELECTION PROCESS FOR AWARD OF CONTRACT

The JRA will employ a more comprehensive review and evaluation of the proposals received in Phase 2. Each proposal will first be reviewed and analyzed to determine overall responsiveness and completeness. Failure to comply with the instructions of this RFP may result in the proposal being deemed non-responsive and may, at the discretion of the JRA, be eliminated from further consideration.

In Phase 2 of the RFP, the JRA anticipates conducting an in-depth investigation to verify proposals received. Proposers consent to such additional investigation. This may include the following:

- an inspection of other rail lines operated by proposer by JRA staff and consultants, including a review of track inspection reports of the Pennsylvania Public Utilities Commission and the Federal Railroad Administration for such lines;
- a survey conducted by JRA of the proposer's customers of other lines operated by the proposer.
- an interview of proposer's current Class I connecting railroads and state and federal regulatory agencies concerning proposer's performance; and
- a review of safety records and track inspection reports for proposer.

The proposers will also have the opportunity to inspect the JRA's rail lines in Phase 2 at a date and time to be determined.

The JRA Operating Agreement Committee will thoroughly review the proposals received in Phase 2 of the RFP. The JRA Operating Agreement Committee will then rank each proposal through the use of another scoring system.

The scoring system shall be as follows: Each proposer will receive a single score of between zero (0) and twenty (20) points (twenty being the highest score) in the following categories:

- *Commitment to Track Maintenance*
- *Commitment to Safe Operations*
- *Soundness and Sustainability of Operating, Marketing, and Financial Plans*
- *Commitment to Public-Private Partnership*
- *Commitment to Economic Development*

The Operating Agreement will be awarded to the proposer who obtains the highest score in Phase 2 of the RFP process. The JRA reserves the right to make the award of the Operating Agreement contingent upon the satisfactory completion by the proposer of certain conditions. The Operating Agreement shall contain the same terms and conditions set forth in Appendix "A" set forth herein, unless otherwise agreed by the JRA.

The JRA reserves the right to reject any and all proposals, waive informalities and irregularities in proposals received and to accept any portion of any proposal if deemed in the best interests of the JRA.

XVI. PROPOSAL ACCEPTANCE

Each proposal is submitted with the understanding that the JRA's written acceptance of the offer of proposer to provide the services described herein, shall be the foundation for the Operating Agreement between the proposer and the JRA. Submission of a proposal shall therefore bind the proposer to furnish and deliver the services and related components in accordance with conditions of the proposal.

XVII. PROPOSAL OWNERSHIP AND CONFIDENTIALITY

All proposals, including attachments, supplementary material, addenda, etc., shall become the property of the JRA and will not be returned to the sender. The JRA has the right to use any or all ideas presented in the proposal without limitation. All proposals will be considered public documents, subject to review and inspection by the public at the JRA's discretion, in accordance with the Pennsylvania Right-To-Know Law, 65 P.S. § 67.101 et. seq (the "RTK Law"). The JRA acknowledges that proposals may contain proprietary, financial or other data, the disclosure of which could cause substantial injury to the proposer's business. Proposers must therefore specifically identify the pages of a response or proposal that contain confidential information and provide a statement that such information is considered confidential by proposer and disclosure of such information would cause substantial injury to proposer. Proposers are also asked to provide a redacted unbound copy of any response or proposal with confidential information blacked out or removed from the text. This copy will be subject to public disclosure.

In the event a request for a response or proposal is received by the JRA, the JRA will advise the proposer of the request and ask the proposer to immediately submit a detailed statement indicating the proposer's legal basis for treating the information as confidential or otherwise seeking exemption from disclosure under federal, state or local law. The JRA will exercise care in applying this procedure, but will not be held liable for any damage or injury that may result from any disclosure that may occur. If proposer requests that the JRA resist disclosure of any records provided to the JRA by the proposer, and the JRA does withhold disclosure at the request of proposer, then proposer agrees to indemnify, defend, and hold JRA and its members, officers, employees, and directors harmless from any claim, liability, damages, losses, judgments, awards, costs or expenses that may be incurred by the JRA or arise out of its denial of a request for such records or withholding of such records from disclosure, and proposer will defend any action brought against the JRA for its denial of such records from disclosure as confidential or proprietary information to any person making a request for such records. Failure to agree to indemnify and defend the JRA as aforesaid shall constitute a waiver of the proposer's right to exemption from disclosure.

XVIII. GENERAL CONDITIONS, RESERVATIONS, AND DISCLAIMERS

In addition to any other conditions, reservations, or disclaimers set forth in this RFP, the following section sets forth general conditions, reservations, and disclaimers which apply to this RFP.

- The JRA reserves the right to extend any submission deadline should doing so be in the interest of the JRA. Proposers shall have the right to revise their proposals in the event that a deadline is extended. In the event a deadline is extended, the JRA shall provide notice of same on its website at www.sedacograil.org.
- The JRA reserves the right to withdraw this RFP at any time without prior notice. The JRA makes no representation that an Operating Agreement will be awarded to any proposer responding to this RFP. The JRA reserves the right to reject any or all proposals.
- If an inadequate number of proposals are received or the proposals received are deemed to be non-responsive, the JRA may, in its sole discretion, reissue the RFP or execute a sole-source agreement for rail freight operations with any individual or entity.
- The JRA will review and rate submitted proposals as described in this RFP. Proposers may not make any changes or additions after the deadline for receipt of proposals. The JRA reserves the right to request additional information or documentation from proposers as it deems necessary or appropriate.

- The JRA reserves the right to verify information in any response or proposal. If the information cannot be verified, the JRA reserves the right to reduce the score awarded to the response or proposal.
 - The JRA may require interviews with any proposer.
 - The JRA reserves the right to waive minor defects in any response or proposal.
 - This RFP does not represent a commitment or offer by the JRA to enter into an agreement with a proposer or to pay any costs incurred in the preparation of a response or proposal. The proposer assumes all costs associated with responding to this RFP.
 - The JRA reserves the right to seek new proposals when such a request is in the best interest of the JRA and to reasonably request such additional information or clarification of information provided in a proposal without changing the RFP.
 - This RFP and a proposer's response to the RFP may become a part of the Operating Agreement between the selected proposer and the JRA resulting from this RFP process.
 - No proposer shall offer any favor or anything of pecuniary value to any JRA Board member, staff member, consultant or any other individual with an interest in this RFP process for the purposes of influencing the outcome of the RFP selection process.
 - Should any question arise as to the proper interpretation of the terms and conditions contained in this RFP, the JRA's decision shall be final.
-  The JRA reserves the right not to award the Operating Agreement or to award an Operating Agreement to one or more proposers as it deems to be in the best interest of the JRA.

XIX. QUESTIONS AND COMMUNICATIONS PROTOCOL

The following communications protocol shall apply throughout the RFP process.

- All discussions by proposers with JRA consultants and JRA Board members during the RFP process are prohibited.
- There will be one individual at the JRA with whom proposers may communicate or direct questions. The sole point of contact for proposers is:

Jeff Stover
Executive Director
SEDA-COG Joint Rail Authority
201 Furnace Road
Lewisburg, PA 17837
570-524-4491 (office)
570-847-9503 (cell)
jstover@sedacog.org
www.sedacograil.org

- Each proposer shall direct all communications or questions concerning this RFP or existing rail operations on the JRA rail lines to Mr. Stover.

- Each proposer shall receive the same information concerning the RFP at substantially the same time as all other proposers.
- To ensure fair and consistent distribution of information, all proposer questions will be answered in a "Q&A" format in a document to be provided to all proposers. No individual answers will be given.
- After the submittal of proposals and until the award of the Operating Agreement, all JRA personnel will be directed not to hold or participate in any meetings, conferences or technical discussions with any proposer concerning the RFP except as provided in the RFP. Proposers shall not initiate communication in any manner with JRA personnel regarding this RFP during this period unless authorized in advance by the JRA. Failure of a proposer to comply with this requirement may result in removal of the proposer's proposal from consideration.

XX. TIMELINE

The tentative timeline for the RFP submissions, review, selection and operating agreement award will be available on the JRA's website at www.sebdacograil.org. This timeline is subject to change by the JRA, in its sole discretion.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35956

**READING, BLUE MOUNTAIN NORTHERN RAILROAD COMPANY -
PETITION FOR DECLARATORY ORDER**

**JOINT REPLY OF PENNSYLVANIA NORTHEAST REGIONAL RAILROAD
AUTHORITY AND SEDA-COG JOINT RAIL AUTHORITY**

Exhibit S



GPS & Telematics Leaders
Connected to Serve Rail






Progressive RAILROADING

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8/19/2014

Short Lines & Regionals Article
Reading & Northern lands Pennsylvania grant to build \$14 million bridge

Short Lines & Regionals

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The Reading, Blue Mountain & Northern Railroad Co. (RBMN)

recently won a \$10 million state grant to build a new railroad bridge over the Lehigh River near Nesquehoning, Pa.

The bridge will provide the regional railroad an efficient and safe north/south route connecting the Philadelphia region to New England and eastern Canada, RBMN officials said in a press release. The railroad plans to offer the use of the route to Canadian Pacific and Norfolk Southern Railway, both of which already use part of RBMN's mainline.

It will be the fastest and most economical route into the Marcellus Shale in northeast Pennsylvania, and will assist in the development of the Port of Philadelphia, enabling unit trains of double-stack containers to flow in and out of the port while heading to points in the northeastern U.S. and Canada, RBMN officials said.

Under the grant's terms, the state funds will be made available in fiscal years 2014 and 2015, with \$5 million released each year. RBMN will cover the remainder of the \$14 million project, which will take about 18 months to complete.

"I have been working for almost two decades to bring this bridge and resulting new route to fruition. This bridge will enable us to better serve our customers and it will bring economic development and jobs to northeastern Pennsylvania," said RBMN Chief Executive Officer Andrew Muller Jr., who owns the regional.

The largest privately owned railroad in Pennsylvania, RBMN operates about 320 miles of track in the eastern part of the state.

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