

Before the  
**SURFACE TRANSPORTATION BOARD**

ENTERED  
Office of Proceedings  
October 20, 2014  
Part of  
Public Record

STB Docket No. FD 35316

**ALLIED ERECTING AND DISMANTLING, INC.  
AND ALLIED INDUSTRIAL DEVELOPMENT CORPORATION  
- PETITION FOR DECLARATORY ORDER -  
RAIL EASEMENTS IN MAHONING COUNTY, OHIO**

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**REPLY OF RESPONDENTS TO  
MOTION OF ALLIED ERECTING AND DISMANTLING, INC.  
AND ALLIED INDUSTRIAL DEVELOPMENT CORPORATION FOR LEAVE TO  
FILE COMMENTS TO SUPPLEMENTAL REPLY**

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Attorneys for Respondents

Dated: October 20, 2014

Before the  
**SURFACE TRANSPORTATION BOARD**

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By decision served August 6, 2014 (the “*August 2014 Decision*”), the Board directed the Railroad Respondents to supplement their Reply to Allied’s Petition to Reopen the final decision issued by the Board on December 20, 2013 (the “*December 2013 Decision*”) and to respond to the supplemental evidence Allied has proposed to introduce and to Allied’s arguments with respect to the import of the supplemental evidence. Respondents filed their Supplemental Reply (“Respondents’ Supplemental Reply”) on September 15, 2014.<sup>1</sup> A further reply by Allied is clearly not permitted under 49 CFR 1104.13(c). Nonetheless, Allied has filed a motion seeking permission to file additional comments, as well as the proposed comments (the “Allied Proposed Comments”). As set forth below, Respondents request that the Board deny the motion and should not admit the Allied Proposed Comments into the record. In the event that the Board accepts the Allied Proposed Comments, then Respondents request that in the interest of having a complete record, the Board accept the responses set forth herein.

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<sup>1</sup> Capitalized terms not otherwise defined herein, including the references to the parties, have the meanings set forth in Respondents’ Supplemental Reply.

## Discussion

### **1. The Board should deny the Allied motion to file comments in response to Respondents' Supplemental Reply.**

The Board's regulations at 49 CFR 1104.13(c) are meant to control its docket, and to establish an end to filings so that a decision can be issued. *Waterloo Railway Company – Adverse Abandonment – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, Maine (“Waterloo Railway”)*, STB Docket No. AB-124 (Sub-No. 2) (served May 6, 2003), slip op. at 3 (“the pleading process ends with the reply, and replies to replies are not permitted”). While the Board will allow additional replies, and sur-replies if necessary, for “good cause” or when additional information is necessary to provide a complete factual record, *id.*, Allied's proposed reply adds nothing to the record – it merely rehashes and reargues the arguments made several times previously in this proceeding. Its factual references are either to matters already to the record, or are unsupported and unverified conclusory statements that are not supported or supportable by the record. *See Peter Pan Bus Lines, Inc. – Pooling – Greyhound Lines, Inc.*, STB Docket Nos. MC-F-20904, *et al* (served April 20, 2011), slip op. at 3 (record not incomplete based on representations / alleged misstatements in other party's reply; repetition of same arguments made in Petition rejected). *See also Waterloo Railway, supra.*

Allied asserts in its motion that Respondents have mischaracterized the primary issue in this proceeding, and that as such it seeks the opportunity to respond. However, Respondents have not mischaracterized the issue. The essential question referred by the State Court to the Board in this proceeding was whether the LTV easement permitted the LTV Tracks across Allied's property to be used by MVRV (or the other Railroad Respondents) for the stopping, storing and staging of cars. The Board answered in the affirmative. With respect to Allied's

Petition to Reopen, the question is not whether there was an error in the interpretation of the ICC 1982 decision regarding MVRVY's authority to operate as a carrier, but whether if there was any error, it was "material," *i.e.*, would the Board's decision regarding the permitted use of the tracks have been different. In the Supplemental Reply, Respondents acknowledged that it now appears that the 1982 ICC decision regarding MVRVY's operating rights did not cover the tracks at issue in this proceeding (Supplemental Reply at 4-5); however, in the Supplemental Reply, Respondents set forth the basis on which the Board could reasonably still find that the tracks were being used as main line tracks, and alternatively, the reasons why the Board's decision should be the same even if the tracks were found to be ancillary spur tracks. Even if the tracks are not main line tracks, the Board clearly still has jurisdiction (despite Allied's claims to the contrary) and the specialized knowledge to advise the State Court on what constitutes "transportation" and whether the LTV Tracks can be used for stopping storing and staging as part of the transportation services being provided by MVRVY. As such, any error in the interpretation of the 1982 ICC decision was not "material" to the Board's decision, and the motion to reopen should be denied.

The Allied Proposed Comments merely reargue why it believes the error is material, and why it disagrees with the arguments of Respondents. Since Allied is merely seeking to repeat previous arguments, the Board should deny Allied's motion and should not admit the Allied Proposed Comments into the record.

**2. If the Board were to accept the Allied Proposed Comments, then it should similarly allow Respondents to respond thereto.**

If the Board were to grant Allied's motion and accept the Allied Proposed Comments, then in the interest of having a complete record, the Board should also accept the limited responses of Respondents set forth herein.

**A. There is sufficient evidence in the record to determine that the LTV Tracks were being used as main line tracks.**

Respondents acknowledge that the tracks east of the Center Street Bridge may have been ancillary spur tracks when LTV acquired Republic Steel and MVRV became the rail operator. However, as explained in the Supplemental Reply, the use changed over time, and by 1990 when MVRV obtained trackage rights from Conrail through Haselton Yard, MVRV was using the tracks to handle traffic from shippers east of Allied's property, across the easement tracks, to the "trail track" used for interchange with CSX Transportation, Inc. ("CSXT"). Supplemental Reply at 5-8.

Allied disputes the import of the Conrail trackage rights by claiming that they were never filed with the ICC. Allied Proposed Comments, at pp. 8-9. However, that claim is erroneous. MVRV did file the trackage rights agreements with the ICC. Attached as Exhibit A hereto is a copy of the exemption notice filed by MVRV, and the ICC's notice of exemption, as provided by the Board's librarian. Pursuant to the ICC's regulations at that time, the trackage rights became effective one week after the filing of the exemption notice. 49 CFR 1180.2(d)(7), 1180.4(g) [1990].<sup>2</sup> By the time LTV sold the property to Allied, and Allied granted back the easement for the tracks and for MVRV's use thereof, the LTV Tracks were being used to provide service to LTV and also to provide service to other customers located off the property. Moreover, Summit View showed the easement tracks as lines of railroad of MVRV in the petition for exemption that it filed with the STB in 2001 to acquire control of MVRV. *See* Supplemental Reply at 6-7.

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<sup>2</sup> The ICC's notice mistakenly describes the trackage rights only as set forth in the original agreement and does not include the general description set forth in the supplemental agreement or the draft notice provided by MVRV. Regardless of the error, as noted, the supplemental trackage rights became effective seven days after the filing with the ICC.

To the extent the Board were to find that the previous filings by MVRV and Summit View do not establish that the LTV Tracks were being used as main line tracks, then as Allied notes, the Board should determine the status of tracks based on their use by MVRV. Allied Proposed Comments at 12. *See also Central California Traction Company – Petition for Declaratory Order – City of Lodi*, STB Finance Docket No. 32776, 1996 STB LEXIS 334 (1996) at \*6-7. The ICC long held that through the expansion of service, a track can lose its spur status and become a line of railroad. *The Atchison, Topeka and Santa Fe Railway Company – Abandonment Exemption – In Lyon County, KS*, ICC Docket No. AB-52 (Sub-No. 71X), 1991 ICC LEXIS 134 (1991) at \*7. Examining the service provided by MVRV beginning in 1991 handling traffic for customers in the CASTLO industrial park and LTV across the LTV Tracks for interchange with CSXT, the Board should find that the LTV Tracks became a line of railroad. *Central California Traction, supra*, 1996 STB LEXIS 334 at \*8-9 (branch used to carry through trains between points of shipment and delivery is a line of railroad).

**B. Ancillary spur tracks are not outside the jurisdiction of the STB.**

Allied continues to argue that ancillary spur tracks are beyond the Board's authority because they are subject to 49 USC 10906. Allied Proposed Comments at 2. However, the Board has repeatedly held to the contrary, including in the *December 2013 Decision*. *See* Supplemental Reply at 9. Section 10906 merely holds that the Board will not exercise its jurisdiction over the acquisition, operation or abandonment of such tracks. Indeed, 49 USC 10501(b) makes it clear that the Board's jurisdiction over spur tracks is exclusive even if the tracks are located within one state. As Respondents have argued since the beginning of this proceeding, even if the tracks are found to be ancillary spur tracks, the state court litigation

brought by Allied would be preempted. *See* Reply of Respondents dated February 22, 2011, at 19-21 (and cases cited therein).

**C. There is nothing in the LTV easement that limits rail service solely to LTV.**

Allied summarily states that the LTV easement did not contemplate service to any entity other than LTV. Allied Proposed Comments at 13. However, Allied cites to no specific provisions of the easement that reflect such limitations. The Transportation Services Agreement entered into between LTV and MVRVY at the time Summit View acquired control of MVRVY reflects the service being provided at that time by MVRVY, and contemplates MVRVY providing service interchanging LTV traffic with other carriers and service for third parties, as well as in-plant services for LTV. *See* Supplemental Reply at 7. Further, Allied cites to no specific provisions of the LTV easement that limit the transportation services that MVRVY can provide, including the stopping, storing and staging of cars.<sup>3</sup>

**Conclusion**

Because Allied's Proposed Comments are merely a rehash of argument and facts previously presented in the Petition to Reopen, they would not serve to create a more complete record. Accordingly, Allied's motion should be denied, and the Allied Proposed Comments should not be admitted into the record. Even if the Board were to accept the Allied Proposed Comments, and the responses included herein, the Board should find that (1) Allied has not shown that any reliance on the ICC's 1982 decision resulted in any material error in the *December 2013 Decision* or in the findings that the LTV easement does not prohibit the stopping, storing or staging of cars by Respondent Railroads on the LTV Tracks, and (2) the

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<sup>3</sup> As acknowledged by Allied's witness Spiker and discussed in the Supplemental Reply at 8 (fn 9), such uses would certainly be a common usage of ancillary spur tracks.

Petition to Reopen should be denied.

Respectfully submitted,



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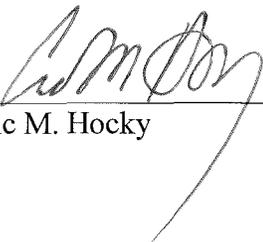
Dated: October 20, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that on October 20, 2014, a copy of the foregoing Reply of Respondents to Petition to Reopen was served upon the following persons by email:

Richard H. Streeter, Esq.  
5255 Partridge Lane, NW  
Washington, DC 20016  
[rhstreeter@gmail.com](mailto:rhstreeter@gmail.com)

Christopher R. Opalinski, Esq.  
F. Timothy Grieco, Esq.  
Jacob C. McConrailea, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
44th Floor, 600 Grant Street  
Pittsburgh, PA 15219  
[copalinski@eckertseamans.com](mailto:copalinski@eckertseamans.com)  
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Eric M. Hocky

# EXHIBIT A

WEINER, McCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C.

ATTORNEYS AT LAW

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WASHINGTON, D.C. 20005-4797

(202) 628-2000

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PATRICIA L. PAYNE  
JAY A. STEPHENS  
OF COUNSEL

December 14, 1990

DEC 17 9 20 AM '90  
NOTION OPERATIONS UNIT

VIA HAND DELIVERY

The Honorable Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
12th Street & Constitution Avenue, N.W.  
Washington, D.C. 20421

Re: Verified Notice of Exemption of The Mahoning Valley  
Railway Company (Finance Docket No. 31773)

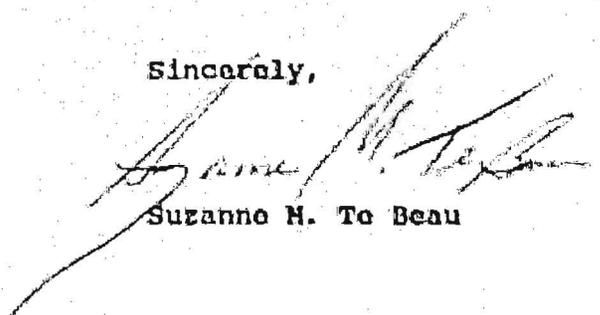
Dear Mr. Strickland:

Enclosed you will find the original and ten copies of the Verified Notice of Exemption of The Mahoning Valley Railway Company filed pursuant to 49 C.F.R. § 1180.2(d)(7), the original and one copy of the Trackage Rights Agreement and Supplement to the agreement ("Agreement").

Please return the original Agreement and Supplement to the undersigned.

We have also enclosed a check in the amount of \$650.00 for the filing fee.

Sincerely,

  
Suzanne M. To Beau

Enclosures

TLR454.LET\4700\3

0-352F011

INTERSTATE COMMERCE COMMISSION

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 31773

THE MAHONING VALLEY RAILWAY COMPANY  
-- TRACKAGE RIGHTS --  
CONSOLIDATED RAIL CORPORATION

Dec 17 3 19 PM '90  
NOTICE - RECEIVED

Consolidated Rail Corporation ("Conrail") has agreed to grant overhead trackage rights to The Mahoning Valley Railway Company ("MVRV") between approximately M.P. 59.5 and approximately M.P. 61.4 in Conrail's Hazelton Yard, Youngstown, OH. The trackage rights will be effective on December 21, 1990.

This Notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. §10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Commission:

Sidney L. Strickland, Jr.  
Secretary

FILED  
DEC 17 1990

THE MAHONING VALLEY RAILWAY COMPANY

AND

CONSOLIDATED RAIL CORPORATION

VERIFIED NOTICE OF EXEMPTION

PURSUANT TO 49 C.F.R. § 1180.2(d)(7)

Pursuant to an Agreement and a Supplement to the Agreement ("Supplement") by and between Consolidated Rail Corporation ("Conrail") and The Mahoning Valley Railway Company ("MVR"), Conrail will grant to MVR overhead trackage rights on Conrail's rail line generally between approximately M.P. 59.5± (Wabash Yard) and approximately M.P. 61.4± ("Graham" Interlocking), including the Youngstown Secondary Track, the Graham Running Track, and all sidings, yard tracks and industrial lead tracks connecting thereto as may be necessary and required to afford MVR an access route between the welded and seamless mills of LTV Steel Tubular Products Company, Inc. The subject rail line is identified on a map attached hereto as Exhibit 1. A copy of the Agreement and the Supplement is attached hereto as Exhibit 2.

All correspondence or questions with respect to this Notice should be addressed to the Interstate Commerce Commission with a copy to:

Suzanna H. Ta Beau, Esq.  
Weiner, McCaffroy, Brodsky,  
Kaplan & Levin, P.C.  
Suite 800  
1350 New York Avenue, N.W.  
Washington, D.C. 20005-4797  
(202) 628-2000

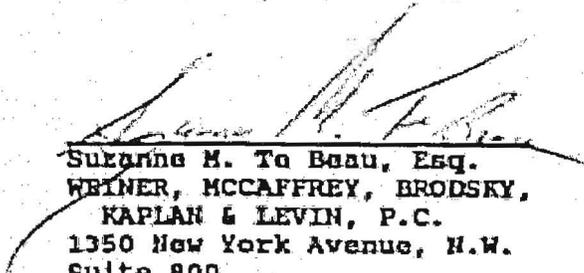
The transaction is expected to be consummated on or about December 21, 1990. The purpose of the transaction is to permit MVRV more efficient access to steel mills of LTV Steel Tubular Products Company, Inc., in Castle Industrial Park, Youngstown, Ohio. Conrail operates in Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, West Virginia, Ohio, Michigan, Indiana, Illinois and Kentucky. MVRV operates in Ohio.

Any employees affected by the trackage rights will be protected pursuant to Norfolk & Western Railway Company -- Trackage Rights -- Burlington Northern Railroad Co., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry, Inc. -- Lease and Operation, 360 I.C.C. 653 (1980).

The undersigned hereby certifies that MVRV has complied with the reporting requirements of 49 C.F.R. § 1105.11

(Exhibit 3), in connection with this Verified Notice of  
Exemption.

Respectfully submitted,

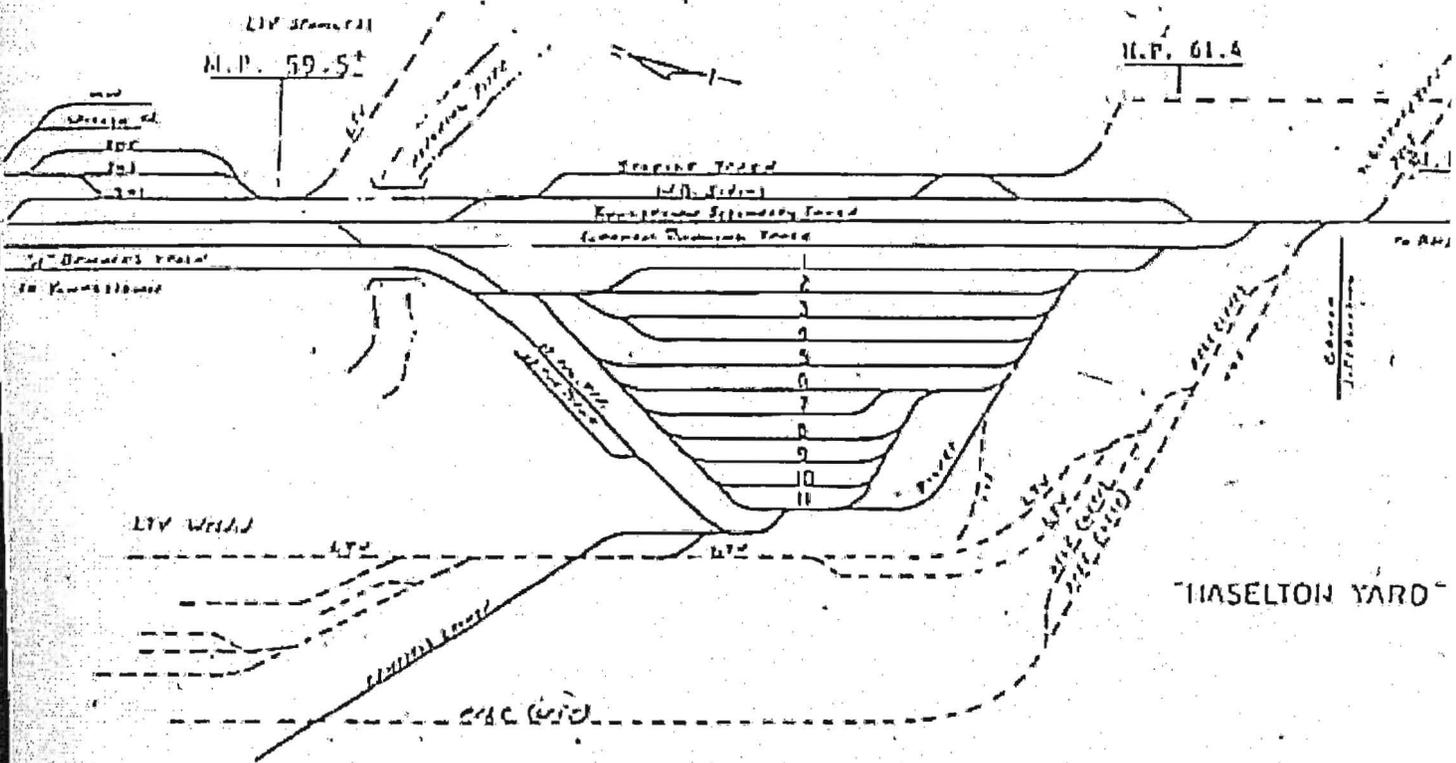


Suzanne M. To Beau, Esq.  
WEINER, MCCAFFREY, BRODSKY,  
KAPLAN & LEVIN, P.C.  
1350 New York Avenue, N.W.  
Suite 800  
Washington, D.C. 20005-4797  
(202) 628-2000

Dated: December 14, 1990

TLR465.BRF\4700\3

Exhibit 1



KEY  
 \_\_\_\_\_ CONRAIL TRACKAGE  
 - - - - - OTHER TRACKAGE

CONTRACT ADMINISTRATION  
 PHILADELPHIA, PA  
 OCTOBER 29, 1990

AGREEMENT

Dated as of September 14, 1990

between

CONSOLIDATED RAIL CORPORATION ("Owner")

and

MAHONING VALLEY RAILWAY COMPANY ("User")

Relating to Trackage Rights Over Any and/  
or All of Owner's Tracks Located Between  
Milepost 59.5 (Wabash Yard) and Milepost 61.5  
(South of "Graham" Interlocking)  
To Afford User An Access Route Between The  
Walded and Seamless Steel Mills Of LTV Steel  
Company, Inc. at Youngstown, Ohio.

## A G R E E M E N T

THIS AGREEMENT, entered into as of this 14th day of September, 1990, by and between CONSOLIDATED RAIL CORPORATION (hereinafter referred to as "Owner") and MAHONING VALLEY RAILWAY COMPANY, (hereinafter referred to as "User").

WHEREAS, on January 19, 1989, The LTV Corporation, Jones & Laughlin Steel, Inc. and Republic Steel Corporation, their subsidiaries and affiliates (collectively "LTV"), on the one hand, and Owner entered into an Agreement in settlement of certain claims then pending between them; and

WHEREAS, User desires to operate over Owner's track located between LTV's welded and seamless steel mills in Youngstown, Ohio; and

WHEREAS, pursuant to the above referenced Settlement Agreement Conrail is willing to grant User such rights.

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

### SECTION 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the segment of Owner's railroad shown on the plan attached hereto, made a part hereof and marked "Exhibit I" (hereinafter referred to as the "Subject Trackage"):

Over any and/or all of Owner's tracks located between Milepost 59.5+ (Wabash Yard) and Milepost 61.5+ (south of "Graham" Interlocking),

including the Youngstown Secondary Track, the Graham Running Track, and all Sidings, Yard Tracks, and Industrial Lead Tracks connecting thereto, between the Mileposts aforesaid, as may be necessary and required to afford User an access route between the welded and seamless mills of LTV Steel Company, Inc. The actual trackage to be utilized from time to time shall be subject to agreement of the Local Transportation Officers of the parties, and shall provide User a convenient and practicable access route without undue interference with the Operations of Owner.

**SECTION 2. GENERAL CONDITIONS - FORM A**

Except as otherwise may be provided below, this Agreement is subject to and shall be governed by the "General Conditions - Form A", of even date herewith attached hereto, made a part hereof and incorporated herein by reference with the same force and effect as if set forth at length herein.

**SECTION 3. COMPENSATION**

As compensation for the Trackage Rights herein granted, User agrees to pay Owner the sum of One Dollar (\$1.00) per year for a period of five (5) years.

**SECTION 4. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS**

(a) Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under such agreements or practices, excepting "Graham" Interlocking, which shall be governed by a separate Remote Controlled Interlocking Agreement to be entered into by the parties hereto.

(b) Any additional connections to the Subject Trackage which may be required shall be constructed, maintained, repaired, and renewed as follows:

(i) User shall furnish all labor and material and shall construct, maintain, repair, and renew at its sole cost and expense such portions of the tracks located on the right-of-way of User which connect the respective lines of the parties hereto; and

(ii) Owner shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost and expense of User such portions of the tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto.

SECTION 5. NOTICE

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

(a) If to Owner:  
c/o Senior Vice President-Operations  
Consolidated Rail Corporation  
Six Penn Center Plaza  
Philadelphia, PA 19103-2959

(b) If to User:  
c/o R. L. McCombs  
Vice President-Operations  
Mahoning Valley Railway Company  
1920 Poland Avenue  
Youngstown, OH 44502

(c) Either party may provide changes in the above addresses to the other party by personal service or certified mail.

SECTION 6. RESTRICTION ON USE

The Trackage Rights herein are granted for the sole purpose of User using same for bridge traffic only between LTV's welded and seamless steel mills in Youngstown, Ohio, and User shall not perform any local freight service whatever at any point located on the Subject Trackage.

SECTION 7. TERM

(a) This Agreement shall continue in full force and effect for a period of five (5) years from the Commencement Date, as hereinafter defined; provided, however, that User shall have the right to terminate this Agreement upon giving thirty (30) days' advance written notice to Owner. Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

(b) User shall have the right to renew this Agreement for an additional term not to exceed five (5) years, subject to User's above-stated right to terminate, by giving written notice thereof to Owner not more than twelve (12) months and not less than six (6) months prior to expiration of the initial term of this Agreement.

(c) Upon the giving by User of the notice referred to in paragraph (b) above, the parties shall, in good faith, renegotiate the terms and conditions of this Agreement, and shall adjust such terms and conditions as may be reasonable and equitable in light of any changed circumstances during the initial term of this Agreement. In the event the parties fail to reach agreement upon such renegotiation, then such failure shall not

constitute a breach of this Agreement and the terms and conditions of this Agreement shall remain in full force and effect for the remainder of the initial term and shall be set by binding arbitration conducted by the American Arbitration Association for any renewed term of this Agreement.

**SECTION 8. LABOR PROTECTION**

User shall assume and release, indemnify, defend, protect and save harmless Owner and its directors, officers, agents and employees from and against any and all claims and expenses arising as a result of Owner's granting User the trackage rights under this Agreement, or the activities of the parties thereunder, whether such claims and expenses are as a result of the collective bargaining agreements between User and its respective labor organizations, or incurred as a result of any labor protection obligations imposed by the Interstate Commerce Commission, Labor Protection obligations of Owner, or are predicated on the Railway Labor Act or labor agreements.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

WITNESS:

CONSOLIDATED RAIL CORPORATION

John J. Carmue

By: L. E. White  
General Superintendent-Contracts

WITNESS:

MAHONING VALLEY RAILWAY COMPANY

James P. Hupp

By: R. H. Maloney  
Vice President-Operations

GENERAL CONDITIONS-FORM A

DATED: SEPTEMBER 14, 1990

TO TRACKAGE RIGHTS AGREEMENT DATED AS OF September 14 1990 BETWEEN CONSOLIDATED RAIL CORPORATION ("Owner") AND MAHONING VALLEY RAILWAY COMPANY ("User") relating to trackage rights over any and/or all of Owner's Tracks located between Milepost 59.5 (Wabash Yard) and Milepost 61.5 (South of "Graham" Interlocking) to afford User an access route between the Welded and Seamless Steel Mills of LTV Steel Company, Inc., at Youngstown, Ohio.

ARTICLE 1. USE OF SUBJECT TRACKAGE

(a) User's use of the Subject Trackage shall in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the right to grant to other persons rights of any nature in the Subject Trackage.

(b) User shall not use any part of the Subject Trackage for the purpose of switching, storage of cars, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary track as may be designated by Owner for such purpose.

(c) Owner shall have exclusive control of the management and operation of the Subject Trackage.

(d) Unless otherwise stated in the Agreement which these conditions pertain, User shall have the right operate in either direction over the Subject Trackage.

ARTICLE 2. ADDITIONS, RETIREMENTS AND ALTERATIONS

(a) Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

(b) If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communications or signal facilities, for purposes beyond that required for Owner's operation, Owner shall have the option:

(i) to make such changes in or additions and betterments to the Subject Trackage and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities; or,

(ii) to deny such request.

ARTICLE 3. MAINTENANCE OF SUBJECT TRACKAGE

(a) Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. Furthermore, except as may be otherwise provided in Article 7 hereof, User shall

not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against Owner or its directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.

(b) Owner shall also perform, at the expense of User, such additional maintenance as User may request.

#### ARTICLE 4. MANAGEMENT AND OPERATION

(a) User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of User to comply with its obligations in this regard.

(b) User in its use of the Subject Trackage will comply in all respects with the operating rules and regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the

width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its directors, officers, agents and employees from and against all liabilities when attributable solely to the failure of User to comply with the provisions of this subarticle.

(c) User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives, cars, and equipment over the Subject Trackage qualified for operation thereover, and User shall pay to Owner, promptly upon receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

(d) In the event Owner conducts an investigation or hearing concerning the violation of any operating rule or practice of Owner by an employee or employees of User, User shall be notified in advance of any such investigation or hearing and such investigation or hearing may be attended by any official designated by User and shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to said employee or employees.

(e) Owner shall have the right to exclude from the Subject Trackage any employee of User, except officers,

determined by Owner, as the result of such investigation or hearing described above, to be in violation of Owner's rules, regulations, orders, practices, or instructions issued by Timetable or otherwise. User shall release, indemnify, defend, and save harmless Owner and its directors, officers, agents, and employees from and against any and all claims and expenses resulting from such exclusion.

(f) The trains, locomotives, cars, and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic.

(g) If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

(h) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner and User shall reimburse Owner for the cost thereof.

(i) In the event Owner and User agree that Owner should provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

ARTICLE 5. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

ARTICLE 6. CLEARING OF WRECKS

Whenever User's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track, and structures. The cost and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be apportioned in accordance with the provisions of Article 7 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to it.

ARTICLE 7. LIABILITY

The responsibility of the parties hereto as between themselves for loss of, damage to, or destruction of any property whatsoever or injury to or death of any person or persons whomsoever, resulting from, arising out of,

incidental to, or occurring in connection with the Trackage Rights granted in this Agreement, shall be determined as follows:

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, User being involved, without the trains, locomotives, cars, or equipment of, or in the account of, Owner being involved, User shall assume all liability therefor and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Article 6 hereof, and shall forever protect, defend, indemnify, and save harmless Owner and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Owner or its directors, officers, agents or employees.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, Owner being involved, without the trains, locomotives, cars, or equipment of, or in the account of, User being involved, Owner shall assume all liability therefor, and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Article 6 hereof, and shall forever protect, defend, indemnify, and save harmless User

and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of User or its directors, officers, agents, or employees.

(c) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both Owner and User being involved, Owner and User shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars (including without limitation lading), and equipment operated by each of them and for injury to and death of each of their directors, officers, agents, and employees, and persons in each of their care and custody. All liability, cost, and expense for injury to and death of any other person or persons whomsoever, for loss of, damage to, or destruction of all other property (including without limitation the Subject Trackage) and for any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, so occurring shall be borne equally by Owner and User, including without limitation all cost and expense referred to in Article 6 hereof. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure,

negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.

(d) Notwithstanding the foregoing provisions, whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both parties to this Agreement being so involved, without the trains, locomotives, cars, or equipment of, or in the account of, any other user being involved, and such loss, damage, destruction, injury, or death is attributable to the sole negligence of the employee(s) on the train(s), locomotive(s), car(s), or caboose(s) of, or in the account of, only one of the parties to this Agreement where such sole negligence is the active or proximate cause of such loss, damage, destruction, injury, or death, the party hereto whose employee(s) was (were) solely negligent shall assume and bear all liability, cost, and expense in connection with the loss, damage, destruction, injury, and death so occurring, including without limitation all cost and expense referred to in Article 6 hereof, and said party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against any such liability, cost, and expense.

(e) In every case of death or injury suffered by an employee of either User or Owner, when compensation to such employee or employee's dependants is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required

to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(f) For purposes of this Article 7, pilots furnished by Owner to User pursuant to Article 4(c) of this Agreement shall be considered as the employees of User while such pilots are on board or getting on or off trains of User.

(g) Notwithstanding the provisions of Article 13(f) of this Agreement, for the purposes of this Article 7 the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

#### ARTICLE 8. INVESTIGATION

(a) Except as provided in Subarticle (b) hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

(b) Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11707 or 49 C.F.R. Section

1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10713.

(c) In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

(d) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time claim agents, full-time attorneys, and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.

(e) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11707 or 49 C.F.R. Section 1005, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds Ten Thousand Dollars (\$10,000).

(f) It is understood that nothing in this Article shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Article 7 hereof.

#### ARTICLE 9. PAYMENT OF BILLS

(a) All payments called for under this Agreement shall be made by User within sixty (60) days after receipt of bills therefor. No payments shall be withheld because of

any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party.

(c) Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 3 hereof, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed by Owner.

#### ARTICLE 10. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail, and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

#### ARTICLE 11. REGULATORY APPROVAL

Should implementation of this Agreement require the taking of any action by User and/or the Interstate Commerce Commission under 49 U.S.C. Sections 10505, 11343 or 11344, User at its own cost and expense will initiate and thereafter diligently prosecute such action and this Agreement shall take effect on the date User commences

operations over the Subject Trackage (herein referred to as the "Commencement Date"). The Commencement Date shall be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto. In the event action under such sections is not required, the Commencement Date shall be the date agreed upon by the parties hereto as evidenced by an exchange of correspondence referred to above. Owner will assist and support efforts of User to meet the requirements of the aforesaid sections.

ARTICLE 12. ABANDONMENT OF SUBJECT TRackage

Notwithstanding the provisions of Section 7 of this Agreement, Owner may abandon the Subject Trackage during the term of this Agreement, or any renewals thereof, upon giving User not less than one hundred twenty (120) days notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage. Owner and User will exercise the abandonment and discontinuance authority within thirty (30) days from the date Owner and User obtain the aforementioned regulatory authority. Upon the date established by Owner for abandonment of the Subject Trackage by its aforesaid notice to User or upon the above-specified date of exercise of the regulatory authority to abandon and discontinue operations, whichever is later, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. The foregoing provisions shall govern the parties hereto, notwithstanding the provisions of

49 U.S.C. Sections 10905-10906 or any other provisions of law, and User hereby expressly waives any rights it may possess to subsidize operations on the Subject Trackage or to acquire the Subject Trackage pursuant to said provisions of law. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

ARTICLE 13. GENERAL PROVISIONS

(a) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

(b) All Section and Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(c) This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

(d) No term or provision of this Agreement may be amended, waived or discharged, except by an instrument in writing signed by both parties to this Agreement.

(e) As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars, or

equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.

(f) All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

#### ARTICLE 14. ARBITRATION

Any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through binding arbitration by a sole, disinterested arbitrator to be selected jointly by the parties. If the parties fail to select such arbitrator within sixty (60) days after demand for arbitration is made by either party hereto, then they shall jointly submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the parties hereto.

#### ARTICLE 15. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the parties hereto. User hereby expressly waives any right to transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation.



SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT, entered into as of this 10<sup>th</sup> day of December, 1990, by and between CONSOLIDATED RAIL CORPORATION (hereinafter referred to as "Owner") and MAHONING VALLEY RAILWAY COMPANY (hereinafter referred to as "User").

WHEREAS, pursuant to the terms of a Trackage Rights Agreement dated September 14, 1990 (hereinafter referred to as "Agreement") between Owner and User, User currently enjoys trackage rights over any and/or all of Owner's tracks located between Milepost 59.5+ (Wabash Yard) and Milepost 61.5+ (south of "Graham" Interlocking), (hereinafter referred to as "Subject Trackage"), Youngstown, Ohio, to afford User an access route between the welded and seamless steel mills of LTV Steel Company, Inc., and

WHEREAS, User has requested the right to exit and re-enter the Subject Trackage for the sole purpose of serving the Castlo Industrial Park, Youngstown, Ohio; and

WHEREAS, Conrail is agreeable to permitting User to exit and re-enter the Subject Trackage; and

WHEREAS, the parties hereto hereby agree to amend the aforesaid Agreement to permit the exit and re-entry of the Subject Trackage by User.

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

1. Section 6 of the Agreement is hereby amended to permit User the right to exit and re-enter Owner's trackage at approximately Milepost 61.4+ ("Graham" Interlocking), as shown on

"Exhibit II" dated October 29, 1990, attached hereto and made a part hereof.

2. The traffic involved shall be limited and restricted for the sole purpose of exit and re-entry of loaded and empty freight cars to and from Castle Industrial Park.

3. There will be no charge for User's rights covered by this Supplemental Agreement.

4. This Supplemental Agreement shall take effect in accordance with the provisions of paragraph 5 below and will continue in force and effect until terminated by either party upon sixty (60) days' written notice to the other party. Termination of this Supplemental Agreement shall not relieve, release or excuse User from any liability which User may have incurred or any obligation which may have accrued under any provisions of this Supplemental Agreement prior to the effective date of termination.

5. Should implementation of this Supplemental Agreement require the taking of any action by User and/or the Interstate Commerce Commission under 49 U.S.C. Sections 10505, 11343 or 11344, User, at its own cost and expense, will initiate and thereafter diligently prosecute such action and this Supplemental Agreement shall become effective on the date User commences operating over the Subject Trackage for the purpose of accessing Castle Industrial Park (hereinafter referred to as the "Commencement Date"). The Commencement Date shall be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto. In the event action under such sections is not required, the Commencement Date shall be the date agreed upon by the parties hereto as evidenced by an exchange of correspondence referred to above. Owner will assist and support efforts of User to meet the requirements of the aforesaid sections.

6. Except as herein modified or supplemented, the September 14, 1990 Agreement shall remain in full force and effect.

7. User agrees to assume and hold Owner harmless from any employee claims predicated on loss of, or adverse impact on, compensation, benefits, or working conditions arising from this Supplemental Agreement or the activities of the parties thereunder, whether such claims are based on conditions imposed by the Interstate Commerce Commission or are predicated on the Railway Labor Act or Labor agreements.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement to be duly executed as of the date first above written.

WITNESS:

John J. Conroy

WITNESS:

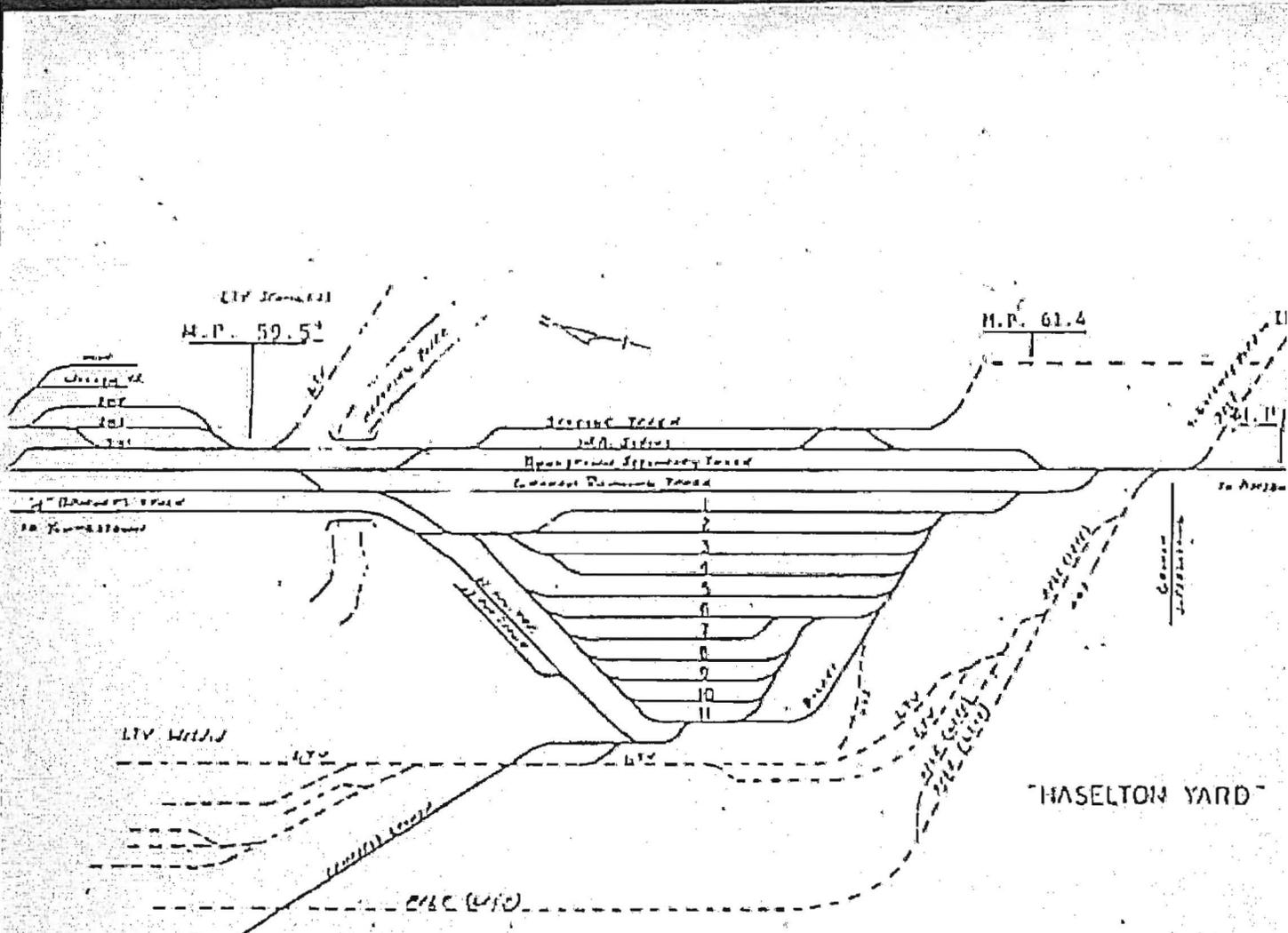
J. J. Hupperts

CONSOLIDATED RAIL CORPORATION

BY: C. I. Pulett  
General Superintendent -  
Contracts

MAHONING VALLEY RAILROAD COMPANY

BY: R. L. Malcomb  
Vice President - Operations



KEY  
 \_\_\_\_\_ CONRAIL TRACKAGE  
 - - - - - OTHER TRACKAGE

"EXHIBIT II"  
 CONTRACT ADMINISTRATION  
 PHILADELPHIA, PA  
 OCTOBER 29, 1990

THE MAHONING VALLEY RAILWAY COMPANY  
1600 Second Avenue  
Pittsburgh, PA 15219

December 14, 1990

Governor  
State of Ohio  
State House  
Columbus, OH 43215

Re: Environmental Notice

TO WHOM IT MAY CONCERN:

Simultaneous with this letter we are filing with the Interstate Commerce Commission a notice to exempt a transaction from regulation pursuant to 49 C.F.R. 1180. A description of the filing and maps of the affected areas are provided in an attachment to this letter. The purpose of this letter is to raise relevant environmental and energy matters.

Areas of concern, which you and other interested state and local agencies are invited to address, include but are not limited to the following:

- (1) Local land use plans.
- (2) The existing transportation system, including alternative transportation modes.
- (3) Energy consumption.
- (4) Air emissions, ambient conditions, and relevant federal, state, and local standards.
- (5) Bodies of water and overall water quality.
- (6) Terrestrial and aquatic ecosystems, limited to unique resources and threatened or endangered species.

- (7) Ambient noise levels.
- (8) Existing or potential safety hazards.
- (9) Cultural, historic, or archaeological sites listed or eligible for inclusion in the National Register of Historic Places.
- (10) Potential for use for other public purposes or any property proposed for abandonment, including rights-of-way. A request for a public use condition under 49 U.S.C. 10906 must be in writing and set forth: (1) The condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the imposition of the time period. A copy of the request shall be mailed to the applicant.
- (11) Prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 C.F.R. 1152.29.

We are providing this notice so that you may inform interested state and local agencies of the proposal, and so that you or they may investigate the affected area and provide the commission with necessary information in timely fashion. This request for environmental information, however, is not related to any agency's rights to file administrative protests or appeals, which are governed by separate procedures.

Because the applicable statutes impose stringent deadlines for processing this action, response within two weeks would be appreciated. Please address the original of any comments directly to the Section of Energy and Environment, Room 4143, Interstate Commerce Commission, Washington, D.C. 20423, and forward a copy to our representative at the address listed below.

The information provided will be considered by the Commission together with other material received in evaluating the overall environmental and energy impact of the contemplated action. If there are any questions concerning the affected area or other matters related to the proposal, please contact our representative directly.

Governor of Ohio

-3-

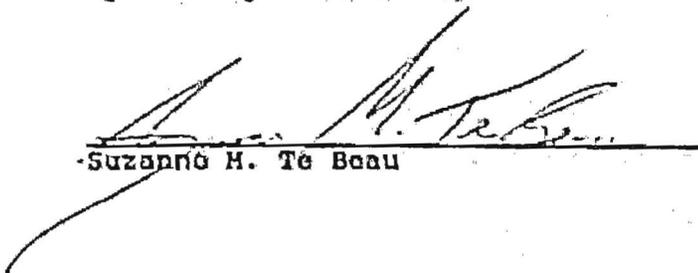
December 14, 1990

Questions regarding the form or content of any response to the notice should be referred to the Section of Energy and Environment at the above address. In any communication, please refer to the docket number assigned to this action: Finance Docket No. 31773. Our representative in this matter is Suzanne H. Te Beau, Weiner, McCaffrey, Brodsky, Kaplan & Levin, P.C., who may be contacted by telephone at (202) 628-2000 or by mail at Suite 800, 1350 New York Avenue, N.W., Washington, D.C. 20005-4797.

Sincerely,

THE MAHONING VALLEY RAILWAY COMPANY,

By its representative,

  
Suzanne H. Te Beau

TLR467.BRF\4700\J

WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C.

ATTORNEYS AT LAW

SURE BOND

1350 NEW YORK AVENUE, N.W.  
WASHINGTON, D.C. 20005-4797

(202) 628-2000

TELECOMEX (202) 628-2011

December 17, 1990

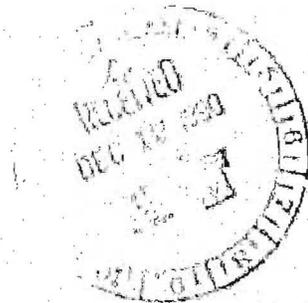
HARVEY E. WEINER  
H. LAWRENCE MCCAFFREY, JR.  
JAMES A. BRODSKY  
PETER E. KAPLAN  
IRVING P. WANG  
MARK H. LEVIN  
PETER A. GILBERTSON  
MARK H. SOUMAN  
L. MARK WINSTON  
THOMAS A. BRODSKY  
RICHARD J. MELNICK  
MITCHELL H. RIDER

PATRICIA L. PATNE  
JAY A. STEPHENS  
OF COUNSEL

LAURENCE R. LATOURETTE  
RANDAL D. BRIDGES  
RICHARD J. ANDREANO, JR.  
CHRISTOPHER E. HAGERUP  
C. A. AYRAKOTOS  
STEPHEN D. HILES  
JEFFREY A. SOLLE  
THOMAS LAWRENCE III  
PAUL A. MONDOR  
JILL M. HARRIS  
JONATHAN L. RITZ  
STEPHEN W. McVEARRY

VIA HAND DELIVERY

The Honorable Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
12th Street & Constitution Avenue, N.W.  
Washington, DC 20423



Re: Verified Notice of Exemption of the Mahoning Valley  
Railway Company (Finance Docket No. 31773)

Dear Mr. Strickland:

Please find enclosed the original Verification page and 10  
copies which inadvertently was not filed with the original  
Notice and Verified Notice in the above referenced docket on  
Friday, December 14, 1990.

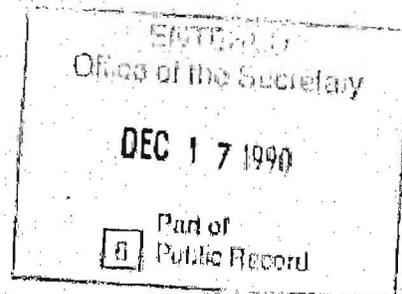
If you have any questions regarding this filing please  
call me.

Thank you for your assistance in this matter.

Sincerely,

*Suzanne M. To Beau*  
Suzanne M. To Beau

4700\311pr434.tot



THE MAHONING VALLEY RAILWAY COMPANY

P. O. BOX 589, CAMPBELL, OH 44105-0024

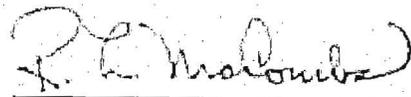
VERIFICATION

I, R. L. McCombs, verify under penalty of perjury that the information contained in the foregoing Verified Notice of Exemption is true and correct to the best of my knowledge, information and belief. I further certify that I am qualified and authorized to file this Verified Notice of Exemption.

Dated: 12/14, 1990

THE MAHONING VALLEY RAILWAY COMPANY

By:



R. L. McCombs  
Vice President-Operations



FR-7035-01  
DO

SERVICE DATE

JAN 3 1991

INTERSTATE COMMERCE COMMISSION

NOTICE OF EXEMPTION

[Finance Docket No. 31773]

THE MAHONING VALLEY RAILWAY COMPANY--  
TRACKAGE RIGHTS EXEMPTION--CONSOLIDATED RAIL CORPORATION

Consolidated Rail Corporation (Conrail) has agreed to grant overhead trackage rights to The Mahoning Valley Railway Company (MVRV) between approximately milepost 59.5 and approximately milepost 61.4 in Conrail's Hazelton Yard, Youngstown, OH, including the Youngstown Secondary Track, the Graham Running Track, and all sidings, yard tracks, and industrial load tracks connecting thereto as may be necessary to afford MVRV an access route between the welded and seamless mills of LTV Steel Tubular Products Company, Inc. The trackage rights were to become effective on December 21, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Suzanne M. Te Beau, Esq., Suite 800, 1350 New York Avenue, NW, Washington, DC 20005-4797.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected

Finance Docket No. 11773

pursuant to Norfolk and Western Ry. Co.—Trackage Rights—  
BN, 154 I.C.C. 605 (1978), as modified in Mandocino Const  
Ry., Inc.—Lease and Operate, 160 I.C.C. 653 (1980).

Dated: December 26, 1990

By the Commission, Joseph H. DeLuca, Acting Director, Office  
of Proceedings.

Sidney L. Strickland, Jr.  
Secretary

(SEAL)