

UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD

+ + + + +

ORAL ARGUMENT

-----X
 IN THE MATTER OF: :
 :
 ALLEGHENY VALLEY RAILROAD :
 COMPANY PETITION FOR :
 DECLARATORY ORDER :
 :
 PETITIONER, : Finance
 : Docket
 : 35239
 - V. - :
 :
 THE BUNCHER COMPANY, :
 :
 RESPONDENT. :
 :

-----X

Tuesday,
January 26, 2010

Surface Transportation Board
Hearing Room
395 E Street, S.W.
Washington, D.C.

The above-entitled matter came on
for hearing, pursuant to notice, at 9:30 a.m.

BEFORE:
 DANIEL ELLIOTT, III Chairman
 FRANCIS MULVEY Vice Chairman
 CHARLES NOTTINGHAM Member

Reported By James Salandro

APPEARANCES:

On Behalf of Allegheny Valley Railroad
Company, Petitioner:

RICHARD R. WILSON, ESQ.

518 N. Center Street, Ste. 1

Ebensburg, PA 15931

(814)-419-8152

On Behalf of the Buncher Company,

Respondent:

EDWARD J. FISHMAN, ESQ.

of: K&L Gates, LLP

1601 K Street, NW

Washington, DC 20006

(202)-778-9456

I-N-D-E-X

ORAL ARGUMENTS

MR. WILSON. 5

MR. FISHMAN 18

MR. WILSON, Rebuttal. 44

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

P-R-O-C-E-E-D-I-N-G-S

(10:22 a.m.)

CHAIRMAN ELLIOTT: We will now turn to the argument in Allegheny Valley. Counsel for AVR, you have -- oh, you have to get up here first. Oh, no problem.

Counsel for AVR, you have 20 minutes. Please state any time you are reserving for rebuttal. In addition, AVR has asked to present an easel-sized version of certain maps that were submitted as part of the record to aid in the discussion.

We ask counsel that you refer -- as you refer to the maps in your presentation, you reference each by its respective designated exhibit number in the proceeding so that the reporter will have an accurate record. Thank you.

MR. WILSON: I will do that, sir. Good morning. My name is Richard Wilson, and I represent the Petitioner in this proceeding, Allegheny Valley Railroad Company. With me

1 this morning is Mr. Russell Peterson, who is
2 the CEO and owner of the Allegheny Valley
3 Railroad.

4 In a 1983 -- and, oh, I have
5 reserved five minutes for rebuttal.

6 CHAIRMAN ELLIOTT: Sure.

7 MR. WILSON: In a 1983 conveyance
8 to the Buncher Company, Conrail retained a
9 permanent rail easement over a 1,500-foot-by-
10 90-foot parcel between 16th and 21st Streets in
11 the Pittsburgh Strip District, and in 1995,
12 Conrail conveyed that easement to the
13 Allegheny Valley Railroad Company as part of
14 AVRR's line of railroad pursuant to ICC
15 acquisition authority in Finance Docket 32783.

16 Allegheny Valley Exhibit D, on the
17 lower right-hand corner of the first exhibit,
18 is a copy of the track charts and valuation
19 maps that were attached to the deed from
20 Conrail to Allegheny Valley, and they
21 explicitly describe and indicate the easement
22 to be conveyed by Conrail to Allegheny Valley

1 as part of that acquisition proceeding.

2 Allegheny Valley Railroad Exhibit
3 2, which is immediately to the left of Exhibit
4 D, is an aerial photograph that is a little
5 difficult to see, but it attempts to depict
6 the location of the easement parcel and its
7 relationship to adjacent buildings, primarily
8 the Pittsburgh Produce Terminal and the 16th
9 Street Bridge and 21st Street.

10 As I've indicated, these exhibits
11 are in the record, and they, I think, give an
12 indication of the parcel that's in dispute in
13 this proceeding. Buncher now contends that
14 AVRR's right to reinstitute freight and
15 passenger rail service over this easement
16 between 16th and 21st Street is somehow in
17 doubt.

18 In the Board's December 1, 2009
19 Order, you asked that we address whether the
20 Board has jurisdiction to consider this
21 dispute in light of the recent DC Circuit
22 Court of Appeals decision in Harsimus, and we

1 have submitted briefs indicating that Harsimus
2 is distinguishable both on the facts and the
3 law from the case that's before you today. In
4 Harsimus, that case involved a piece of
5 railroad called the embankment, which was six
6 separate blocks, elevated blocks of right-of-
7 way, as the Board is well aware.

8 In the Harsimus case, one of the
9 pertinent distinctions is that unlike the
10 situation in the Buncher proceeding, Conrail
11 retained no permanent rail easement over the
12 embankment line. It clearly indicates that
13 they did not see this as a line which they had
14 continuing expectations to provide rail
15 service over.

16 The issue in the Harsimus case
17 that was agreed to by both parties was whether
18 or not the embankment track segment was part
19 of a line of railroad which Conrail had
20 received under the final System Plan known as
21 the Harrison-Jersey City Line, which was
22 identified in the final System Plan as Line

1 Code 1420, and the Board found that it was a
2 line of railroad, and, accordingly, Conrail
3 required abandonment jurisdiction or
4 abandonment approval and authority before they
5 could sell it to a private developer.

6 In reviewing that decision, the DC
7 Circuit Court of Appeals in Harsimus said,
8 "Wait a minute. This requires an
9 interpretation of the Final System Plan. Only
10 the Special Court has jurisdiction to review
11 those plans, and since we don't have a Special
12 Court, that jurisdiction now falls to the DC
13 District Court, and that was the decision
14 which we face in Harsimus.

15 We think, and we've explained in
16 our brief, there are some legal analytical
17 problems with the decision of the DC Circuit
18 Court of Appeals in Harsimus, but for purposes
19 of the Allegheny Valley petition for
20 declaratory order, the Board doesn't need to
21 address those.

22 The Harsimus decision specifically

1 indicates that there are many occasions when
2 the determination of the status of a rail line
3 will not require reference to the Final System
4 Plan or to a Conrail conveyance deed.

5 CHAIRMAN ELLIOTT: Mr. Wilson, in
6 this instance, wouldn't it be helpful to look
7 at the FSP to determine when the actual
8 transfer took place to Conrail, whether or not
9 it was transferred as a main line of rail or
10 a piece of yard track or interchange track?

11 MR. WILSON: No, sir, we don't
12 believe so, because if you look at the record
13 that we have presented to the Board, there
14 were significant changes in the way Conrail
15 operated these lines between 1976 and 1983-84,
16 when they created the interests which are in
17 dispute at this point in time. You don't have
18 to go back to the Final System Plan to
19 evaluate those.

20 CHAIRMAN ELLIOTT: How was the line
21 operated from `76 to `84?

22 MR. WILSON: Yes, `76 to `84.

1 CHAIRMAN ELLIOTT: How was it
2 operated? Was it operated as a main line? Is
3 that your --

4 MR. WILSON: No, it was not. In
5 1976, the Penn Central trustees retained
6 property in the estate between 16th Street and
7 11th Street, never was transferred to Conrail.
8 That, in effect, truncated the Railroad Street
9 line that we have in dispute at 16th Street,
10 and it was never a through railroad route
11 after that.

12 It simply terminated the Conrail
13 branch line that provided services to shippers
14 at the Pittsburgh Product Terminal between
15 16th and 21st Street. This is -- this gets
16 extremely complicated.

17 CHAIRMAN ELLIOTT: So what you're
18 saying is once the truncation occurred -- I
19 assume that was as a result of the abandonment
20 that occurred in the early seventies -- that
21 that piece of line -- the piece of line at
22 issue had become a piece of yard trackage. Is

1 that what you're saying?

2 MR. WILSON: It was the end of the
3 Conrail branch line that came into the
4 Pittsburgh Produce Terminal yard, but that
5 terminal yard after 1976, when Conrail -- and
6 this is the piece north of 16th Street. That
7 yard was dismantled, leaving only track number
8 8, which was the Railroad Street track and the
9 track on which the easement was created, and
10 Conrail --

11 But Conrail continued to provide
12 origination and termination services into the
13 Pittsburgh Produce Terminal between 16th and
14 21st Street up until 1993. That's what's
15 shown on Exhibit H, which is the Conrail zone
16 track service map that shows that Conrail
17 continued to provide service.

18 CHAIRMAN ELLIOTT: I guess I'm a
19 little confused, because I think the argument
20 that you were making in your briefs was that
21 this piece of -- the subject line was main
22 line, and, as a result, it required some type

1 of formal abandonment, and maybe I'm
2 misunderstanding what you're saying here, that
3 this track was yard track and then was pulled
4 up, and then it wouldn't seem subject to
5 authority.

6 MR. WILSON: The track, we
7 maintain, was main line or branch line track
8 that came into the yard, continued to be used
9 for that purposes, and was never removed from
10 the STB's jurisdiction. Now, Buncher argues
11 that in 1984, in Abandonment Docket AB
12 167558N, that Conrail abandoned track that
13 included this easement, and we argue -- and in
14 support of that, they go back and try to
15 invoke the Final System Plan as an indication
16 that there was only a single line of railroad,
17 and they argue that you can go back and look
18 at the Final System Plan or have to go back
19 and look at the Final System Plan in order to
20 identify what tracks Conrail had for
21 abandonment in 1984. There's at least five
22 separate reasons why that is not a correct

1 argument.

2 CHAIRMAN ELLIOTT: So from 1976 to
3 '84, you're arguing that it is a main line
4 piece of track --

5 MR. WILSON: Yes.

6 CHAIRMAN ELLIOTT: -- and that --
7 and do you have any -- and that means what
8 you're saying is we don't have to look back at
9 the FSP, because it was operated as a main
10 line. Do you have any evidence that you can
11 point to in the record that demonstrates that
12 it was operated in such a manner?

13 MR. WILSON: Well, for example,
14 once Conrail abandoned the track under the
15 Fort Wayne Bridge, the lower deck of the Fort
16 Wayne Bridge, and the track connecting that
17 Fort Wayne Bridge track up Smallman Street,
18 which was the only track that Conrail
19 abandoned in 1984, they changed their
20 operations.

21 And Exhibit F is the Conrail track
22 chart from the 1984 Abandonment Docket, and it

1 shows that there are two pieces of track that
2 Conrail abandoned. The first one is the lower
3 deck of the Fort Wayne Bridge and then a
4 connecting track from the Fort Wayne Bridge to
5 21st Street, which, at that time, the only
6 track that existed that went between those two
7 points was the Smallman Street track, and what
8 prompted that abandonment --

9 CHAIRMAN ELLIOTT: How do you say
10 that, that it was the only track that extended
11 between those two points?

12 MR. WILSON: Because that's the
13 track that Conrail identified for abandonment,
14 and Buncher has argued that, "Oh, also
15 included within that Abandonment Docket is the
16 easement on the opposite side of the Produce
17 Terminal Building," which Conrail had reserved
18 in 1983, just six months before.

19 CHAIRMAN ELLIOTT: That's --

20 MR. WILSON: Now, the change in
21 operations is shown -- can be seen on AVRR
22 Exhibit A6. What happened is that after

1 Conrail abandoned those pieces of track, it no
2 longer had access into the Produce Terminal
3 yard via the lower deck of the Fort Wayne
4 Bridge. What it did, it transferred its
5 traffic to the upper deck, ran it out along
6 the Pittsburgh-Harrisburg main line.

7 You can't --

8 CHAIRMAN ELLIOTT: Believe it or
9 not, I understand what you just did. Thank
10 you.

11 MR. WILSON: The change in
12 operations enabled Conrail to run the track --
13 its traffic up their main line to Harrisburg
14 and Philadelphia and then switch off on the
15 Brilliant Branch and come over and reconnect
16 on the railroad, what I refer to as the
17 Railroad Street track, bring it down along the
18 river into the Pittsburgh Strip District and
19 down to the track that ran between 16th and
20 21st Street, track 8 for the -- as long as
21 that track was in service and even until 1993
22 to be able to serve the Pittsburgh Produce

1 Terminal building.

2 VICE CHAIRMAN MULVEY: So track 8
3 was operable then until 1993, and there was
4 traffic going over track --

5 MR. WILSON: The record isn't
6 clear. There was track, obviously, in 1983,
7 when Conrail reserved the easement. When that
8 track actually was covered over by Buncher or
9 others is not clear on the record, but clearly
10 it was operable, I think, by 1984, and in any
11 event, by 1983 Conrail was still operating, as
12 indicated by their track chart, over other
13 track in that area.

14 VICE CHAIRMAN MULVEY: What year,
15 again, did Conrail convey the Eastern to AVRR?

16 MR. WILSON: 1995.

17 VICE CHAIRMAN MULVEY: 1995. So
18 the presumption would be in 1995 that there
19 was an easement over an operating track.

20 MR. WILSON: In 1995, very clearly
21 this piece of track, which begins at -- I
22 should say this piece of railroad right-of-

1 way, because I think it's conceded by --

2 MEMBER NOTTINGHAM: Mr. Chairman,
3 could I just ask one follow-up question?

4 CHAIRMAN ELLIOTT: Sure.

5 MEMBER NOTTINGHAM: Mr. Wilson, if
6 I could, just one question. What specific
7 evidence in the record can you point to, to
8 support your claim that there was actual rail
9 service being provided in the early eighties,
10 or another way to ask that question would be
11 what's the most recent year that you can point
12 to, sworn statements, visual sightings, or any
13 other evidence in the record that would give
14 us comfort in agreeing with you that there was
15 actually rail service in that year?

16 MR. WILSON: Well, for one, you
17 have the Conrail tariffs and the Allegheny
18 Valley tariffs, which contain the legal
19 holding out of common carrier service to
20 provide service to the Pittsburgh Produce
21 Terminal. Those are in the record.

22 There is also the verified

1 statement of James Street, which is the
2 current President for Allegheny Valley
3 Railroad, who was at that time a Conrail train
4 master who describes the routes that were used
5 and the service that was provided from 43rd
6 Street yard into the Pittsburgh Produce
7 Terminal between 16th and 21st Street.

8 So, I think if you will look
9 through the record, there is lots of
10 indication that service was provided and
11 continues to be provided to this day to
12 shippers located between 16th and 21st Street.

13 CHAIRMAN ELLIOTT: Thank you, Mr.
14 Wilson. Counsel for the Buncher Company will
15 now proceed. You've been allotted 20 minutes
16 for your presentation. Please step up to the
17 podium, introduce yourself for the record, and
18 begin.

19 MR. FISHMAN: Good morning,
20 Chairman Elliott, Vice Chairman Mulvey,
21 Commissioner Nottingham. Thank you for this
22 opportunity to present the position of the

1 Buncher Company. My name is Ed Fishman, and
2 I represent the Buncher Company in this
3 matter.

4 I think it's very important to
5 focus on the property in dispute and the track
6 in dispute that used to be on this property.
7 That track, track number 8, was taken up 20,
8 25 years ago.

9 We submitted a verified statement
10 to the effect that track number 8 was removed
11 between 1984, shortly after the Conrail
12 abandonment in 1988. That track has not
13 existed for 20, 25 years. There's been no
14 service between 16th and 21st Street for more
15 than 25 years.

16 With all due respect to Mr.
17 Wilson, I think that both in his pleadings and
18 here today before you in argument, there is a
19 tendency to sort of mix and match between the
20 specifics of what was happening on the Buncher
21 property and the general activities that were
22 going on in the Strip District.

1 The notion that Conrail was still
2 serving customers between 16th and 21st Street
3 up until 1995 is just not true. I mean, there
4 is no evidence to support that. The track was
5 removed.

6 I was a little concerned when I
7 got the letter from Mr. Wilson indicating that
8 there would be exhibits presented today. I
9 know the Board's notice actually said
10 something about no further exhibits, but I
11 actually think these help us.

12 So while it's a little bit
13 difficult to review these in any standard
14 evidentiary matter, I think I'd like to focus
15 on Exhibit H, which is this 1993 Conrail ZTS
16 map, and it clearly shows that track 8 no
17 longer exhibited. The track that's coming in,
18 the one that they show coming in and adjacent
19 to the fruit auction building is actually a
20 completely different track. I think it's
21 labeled here as the fruit auction track.

22 Let me just get this right. It's

1 track number 3, fruit auction. That's not our
2 track. That's not the track that existed on
3 the Buncher property. The track that existed
4 on the Buncher property was removed shortly
5 after Conrail filed for abandonment.

6 Let's talk about the abandonment.
7 Conrail filed for abandonment in 1984 on the
8 Valley Industrial Track between mile post 0.0
9 and mile post 0.6. That covered the exact
10 parameters of the property we're talking about
11 here. It covered the Buncher property between
12 mile post 0.3, mile post 0.6, same mile post,
13 same description, same name, Valley Industrial
14 Track.

15 It covered the same boundaries,
16 16th Street and 21st Street. Our position is
17 Conrail abandoned this line.

18 CHAIRMAN ELLIOTT: Is that -- is
19 that the piece of track that -- I know they're
20 both supposedly called Valley Industrial
21 Track. Is that the one that is also labeled
22 as the Allegheny Branch?

1 MR. FISHMAN: The Conrail
2 abandonment, if you look at the abandonment
3 filing, it just describes the track as the
4 Valley Industrial Track. It says nothing
5 about Smallman Street or Railroad Street. It
6 says nothing about there being two different
7 lines of railroad in this area, so we don't
8 subscribe to this theory that there were
9 actually two different lines of railroad.

10 CHAIRMAN ELLIOTT: No, I understand
11 that, believe me, but would you agree that
12 this is the branch that has been described as
13 the Allegheny Branch?

14 MR. FISHMAN: Yes. I think
15 generally, if you look at the Final System
16 Plan, which is the starting point for
17 understanding what Conrail got, Line Code 2229
18 as defined in the Final System Plan is
19 described as the portion of the Allegheny
20 Branch starting at 11th Street, and that first
21 segment, the segment that we're concerned
22 about, extends to 57th Street, so this clearly

1 is the Allegheny Branch.

2 Now, I do think Conrail may have
3 redesignated this part of their system as the
4 Allegheny Secondary at some point, and the
5 track mats that we submitted into evidence
6 actually show that later on they started
7 calling this the Allegheny Secondary, but they
8 weren't calling anything else separately the
9 Allegheny Branch.

10 So, again, this theory that there
11 was an Allegheny Secondary and an Allegheny
12 Branch and that there were two separate lines
13 of railroad, there is no independent evidence
14 for that, and that's our position.

15 CHAIRMAN ELLIOTT: Okay. Here's
16 where I get a little confused. The way I see
17 this abandonment, as you describe it, is it
18 goes from the bridge all the way up through
19 that branch, up to, I guess, 21st Street.

20 MR. FISHMAN: That's correct.

21 CHAIRMAN ELLIOTT: And I looked in
22 one of your briefs, and in 1972 you reference

1 an abandonment, which apparently relates, I
2 think, to the same piece of line on the --
3 where it was truncated back in the seventies.
4 Would that be an accurate description of the
5 1972 abandonment?

6 MR. FISHMAN: I believe that's
7 correct. I believe the 1972 abandonment,
8 which was the Penn Central Transportation
9 Company abandonment, applied to the line
10 between mile post 0 and 0.2.

11 CHAIRMAN ELLIOTT: And that would
12 have been between 12th and 14th Streets?

13 MR. FISHMAN: Roughly, yes.

14 CHAIRMAN ELLIOTT: Now, this is the
15 part that gets me. Why, in 1984, would they
16 go back and apparently abandon the same piece
17 of track?

18 MR. FISHMAN: Well, I think -- I
19 think the answer lies in what Conrail got. I
20 mean, basically, when the Final System Plan
21 was developed and a conveyance to Conrail took
22 place, it's almost like it was a reset. It

1 was a clean slate, and Conrail, you've got to
2 look to what Conrail got. Line Code 2229
3 started, basically, I think, from that end of
4 that first abandonment.

5 Now, there may be a discrepancy in
6 the mile posts, and I can't completely
7 reconcile it, either, but I think you have to
8 start with what Conrail got. And Conrail
9 basically got from 11th Street on, and I think
10 that it's clear that the 1984 abandonment
11 takes that entire part of their system out.

12 It takes out from the Fort Wayne
13 Street Bridge to 21st Street out of their
14 system, and in subsequent maps you see a gap.
15 Conrail is no longer operating in that part.

16 That part of their network is
17 gone, and I think the other important thing to
18 realize, and you can see this on some of these
19 maps, there are more than 30 tracks in this
20 area. I mean, we're not just talking about,
21 you know, one track.

22 There are multiple tracks, and so

1 we need to focus in on the track that existed
2 on the Buncher property, and clearly it seems
3 to have been abandoned as a result of -- the
4 totality of the facts and circumstances here
5 make it clear that that track was taken out of
6 the Conrail network.

7 VICE CHAIRMAN MULVEY: Mr. Fishman?

8 MR. FISHMAN: Yes?

9 VICE CHAIRMAN MULVEY: If I could,
10 I want to make sure I understand your
11 statement that there was only one track, the
12 so-called Railroad Street track. Are you
13 saying that the record does not demonstrate
14 that at some point in time there was a track
15 running along Smallwood Street that was also
16 generally referred to as the Allegheny Valley
17 Rail Track or part of the AVR?

18 MR. FISHMAN: Let me clarify.

19 There were multiple tracks in this area, and
20 my statement was intended to describe the
21 track that existed on the Buncher property in
22 dispute, which is a rectangular strip of land

1 90 feet in width, and there actually were
2 three tracks on that parcel, so let me just
3 first clarify that.

4 There were tracks 6, 7, and 8 on
5 that parcel that was sold to the Buncher
6 Company. Track 6 and 7 were actually sold
7 outright to Buncher, full title to those
8 tracks sold.

9 Conrail did reserve what I call a
10 track easement, not a railroad right-of-way,
11 but a track easement on track number 8, so the
12 relevant track for purposes of this dispute is
13 described in the reservation that Conrail made
14 in the 1983 transaction with Buncher as the
15 Valley Industrial Track, part of Line Code
16 2229.

17 Now, your question goes to whether
18 there is a separate track emanating from
19 Smallman Street that is also called the Valley
20 Industrial Track. I have not seen that
21 anywhere in the record.

22 VICE CHAIRMAN MULVEY: You have not

1 seen the Smallman track -- the maps that show
2 track along Smallman Street?

3 MR. FISHMAN: Clearly, there's
4 track along Smallman Street, but I have not
5 see anything which says that was the Valley
6 Industrial Track. The only thing that we have
7 in the record that describes the track as the
8 Valley Industrial Track is the reservation
9 that Conrail made in the 1983 transaction with
10 Buncher and describes that piece of track as
11 the Valley Industrial Track.

12 So I can't say that the track that
13 was along Smallman Street was also referred to
14 as the Valley Industrial Track. I mean, it's
15 all very confusing, but I think we need to
16 focus on what the evidence shows, what the
17 independent evidence shows, and there is
18 nothing in the record that says there were two
19 separate Valley Industrial tracks, one on
20 Railroad Street, one on Smallman Street, both
21 lines of railroad, and that's our position.

22 VICE CHAIRMAN MULVEY: The 1983

1 sale to Buncher by Conrail, and, as you say,
2 Conrail had a reservation reserving an
3 easement over that line.

4 MR. FISHMAN: Right.

5 VICE CHAIRMAN MULVEY: Was that an
6 indicator that they eventually intended to
7 restore service and that the line, therefore,
8 should not be paved over -- because the line
9 was paved over at some point.

10 MR. FISHMAN: We believe that that
11 reservation -- and we submitted a verified
12 statement to this effect. We believe the
13 reservation was made because Conrail thought
14 Buncher might be interested in receiving rail
15 service, and Buncher is a company, a real
16 estate development company, that actually had
17 some other operations outside of the downtown
18 area that receive rail service, so I think
19 that's one reason why Conrail may have
20 reserved this easement.

21 The second reason is they hadn't
22 abandoned the track yet, and so it makes sense

1 to me that they would reserve an easement, and
2 it's important to recognize the narrow scope
3 of the easement. It's not a railroad right-
4 of-way easement. It's an easement to use and
5 continue to operate on the existing Valley
6 Industrial Track.

7 In my mind, that's very different
8 from reserving an easement for perpetual
9 common carrier operations, but back to your
10 point, we think that was reserved because they
11 thought Buncher might be interested in rail
12 service and also because they conveyed the
13 property before eliminating the common carrier
14 obligation.

15 Now, two months after conveying
16 the property to Buncher and reserving the
17 easement, they filed a Notice of Insufficient
18 Revenues under NERSA to initiate the
19 abandonment process that they used and then
20 shortly after that filed their abandonment
21 application, which was granted in May, 1984.

22 MEMBER NOTTINGHAM: And at that

1 point, you could then pave over it?

2 MR. FISHMAN: At that point, the
3 track was removed, and let's remember that
4 this track had always been surrounded by
5 concrete pads, which I think is another
6 indication of the way that service was
7 provided in that area, but the track was
8 removed. The area was paved, and since 1984,
9 maybe the time period between '84 and '88,
10 that track -- that property has been paved
11 over, and Conrail has never objected.

12 MEMBER NOTTINGHAM: That track was
13 removed by Conrail or by Buncher?

14 MR. FISHMAN: We don't actually
15 know. I mean, this goes back more than 20
16 years, and, unfortunately, the institutional
17 knowledge, the people who were around in the
18 Buncher Company at that point, actually don't
19 know whether Buncher physically removed it.

20 I mean, certainly it would have --
21 someone would have hired a contractor, we
22 think, to take that track out. We don't know

1 if it was Buncher, if it was Conrail, if it
2 was both of them. We don't know who got the
3 scrap value. We just couldn't find any
4 records.

5 MEMBER NOTTINGHAM: That was my
6 next question. Who got the scrap value of the
7 rail?

8 MR. FISHMAN: We don't know. We
9 don't know. Unfortunately, we did not find
10 the documentation which explained who got it.
11 What we do know is the track was removed.

12 Let's remember, Conrail, you know,
13 kept track in that area. It's not like
14 Conrail completely disappeared from the area
15 between 16th and 21st Street, but their track
16 starts at 21st Street, and that's the track
17 they conveyed to AVRR, so they're still in the
18 area.

19 They made -- they never made any
20 attempt to attract rail service to that
21 region, to indicate to Buncher that they were
22 continuing to use this property for rail, to

1 preserve it in any way. At a certain point,
2 the fruit auction building, which used to be
3 served by rail many years ago for produce, now
4 it's all truck service.

5 At a certain point in time, the
6 trucks were continually driving over the
7 Buncher property, and that forced the Buncher
8 Company to basically put up Jersey barriers,
9 again, demarcating this was this property. No
10 one ever objected to that, either.

11 So, I mean, I think the totality
12 of the facts and circumstances here clearly
13 demonstrate that Conrail's intent clearly
14 manifested that it abandoned this property.
15 There was no intention to preserve its ability
16 to provide rail service at any point in time.

17 CHAIRMAN ELLIOTT: Another question
18 regarding the abandonment. In your final
19 brief regarding Harsimus, you make a very
20 strong argument why Harsimus would apply here
21 and why we don't have jurisdiction and that it
22 is subject to the Special Court's

1 jurisdiction.

2 If that, in fact, is the case, how
3 would that argument apply to the 1984
4 abandonment in this instance when that --
5 wouldn't we, if your argument goes, wouldn't
6 we be without jurisdiction have made that
7 decision in '84?

8 MR. FISHMAN: I'm not sure how to
9 address the point of looking back at the '84
10 abandonment. What I do think is important, I
11 think it's important to recognize that to the
12 extent -- Harsimus is clear that to the extent
13 the Board relies substantially on Final System
14 Plan evidence, then, in order to make a
15 determination in this case, then that's an
16 issue that's within the exclusive jurisdiction
17 of the Special Court.

18 But I actually think that the
19 Board can reach a resolution in this case and
20 determine that the property was abandoned
21 without actually relying on Final System Plan
22 evidence. I think there is enough here if you

1 look at the '84 abandonment on its face, if
2 you look at the Conrail track charts, if you
3 look at what happened in the area.

4 The track was removed. The
5 admission seems to be it was never a line of
6 railroad, which is a little bit different from
7 the position AVRR, I thought, took in the
8 briefs, but I think the totality again is that
9 this track was taken out of the rail network.

10 There was never any common carrier
11 obligation that was preserved, and so I think
12 there is a way the Board can actually resolve
13 this case in our favor without getting into
14 the Harsimus issues by not necessarily relying
15 just on the Final System Plan evidence. I
16 think there is additional evidence.

17 CHAIRMAN ELLIOTT: Would that run
18 counter to your argument that you made?

19 MR. FISHMAN: I think it's a little
20 bit of a clarification. We indicated in the
21 pleadings that we thought there was sufficient
22 evidence before the Board to rule on this

1 case. The reason why we thought Harsimus
2 would control is because of the argument that
3 AVRR is making that there are two lines of
4 railroad.

5 I think, if you believe that's
6 credible and you have to rebut that argument,
7 you look to the Final System Plan, but I
8 actually think there is enough evidence in the
9 record outside of the Final System Plan, which
10 would allow the Board to make the
11 determination here without getting into that
12 issue.

13 VICE CHAIRMAN MULVEY: Mr.
14 Fishman, if we --

15 MR. FISHMAN: Yes, sir.

16 VICE CHAIRMAN MULVEY: If we were
17 to decide that there is a rail easement still
18 in existence, what happens then? Where do you
19 -- where do you locate that? How do you find
20 out where the location, that easement, might
21 be on the Buncher property?

22 The property, as I understand it,

1 has been described as somewhat like a parking
2 lot right now, kind of a paved open space. Is
3 that a fair description?

4 MR. FISHMAN: That is correct. I
5 believe that currently the entire rectangular
6 strip of parcel at issue is paved over and is
7 being used for parking.

8 MEMBER NOTTINGHAM: There is no
9 evidence or markings or anything that would
10 tell us where the actual track, if there was
11 a rail easement still in existence, where that
12 would actually be located.

13 MR. FISHMAN: I believe that's
14 correct. I think you would have to actually
15 get a surveyor out onto the property to figure
16 out where the track formerly existed, and
17 then, again, we dispute that there is an
18 easement.

19 We also dispute the scope of the
20 easement. I mean, the easement clearly, when
21 it was reserved, only applied to the existing
22 track and has created what looked like a 36

1 foot in width envelope, basically.

2 AVRR's position is it covers the
3 entire 90 feet, and we vehemently dispute
4 that. We vehemently dispute that they have
5 the ability to construct passenger rail
6 platforms and tunnels and other things for the
7 service. But, to your point, we don't know
8 where the -- I mean, you have to figure out
9 where the track is.

10 MEMBER NOTTINGHAM: That dispute,
11 if there is -- if it is in dispute, would be
12 taken up, I assume, in state or local court,
13 be a property type dispute.

14 MR. FISHMAN: Certainly, a state
15 court would have jurisdiction to interpret the
16 scope of the easement.

17 MEMBER NOTTINGHAM: How narrowly do
18 you define this easement? I mean, if Buncher
19 or some unknown third party in the middle of
20 the night had just, back in the seventies or
21 eighties, had just gone up and torn up the
22 track, and, all of a sudden, the next day

1 there was no track, would you be saying that
2 with the track went the easement?

3 MR. FISHMAN: No, we're not saying
4 that, and I don't think that's our case. I
5 mean, clearly this was not a track that was
6 removed by vandals. I mean, this was track
7 that was removed by design. I just,
8 unfortunately, cannot tell you who.

9 We cannot submit evidence that
10 says the Buncher Company pulled it up or
11 Conrail pulled it up, because we just don't --
12 we don't have the records, and we don't have
13 the people around anymore to -- who actually
14 have actual knowledge, but we do know that the
15 track was pulled up with everyone's consent
16 and authorization, and so I think that's not
17 our case.

18 I think this was, you know,
19 understood, and look at the context. Again,
20 Buncher owns a lot of property. We're focused
21 on this one strip, but Buncher owns much of
22 the property in that Strip District area

1 between 16th and 21st Street.

2 All the trackage is gone. If you
3 look back at the old maps which have been
4 submitted into the evidence, there are
5 hundreds of tracks there. They're all gone.

6 VICE CHAIRMAN MULVEY: So the issue
7 of abandonment centers on the railroad's
8 intent, and sometimes we get a letter saying
9 that we're formally abandoning it. Without a
10 letter, there has to be certain actions, so
11 what actions do you proffer are determinative
12 of Conrail's intent to abandon: the 1984
13 letter? That seems to be unclear as to
14 exactly what was included in that. Is there
15 any ambiguity there that you see?

16 MR. FISHMAN: I don't think so. I
17 think that it's important to focus on the fact
18 this was a NERSA abandonment, and under the
19 Township of Bethel decision in the Third
20 Circuit, NERSA abandonments effectively become
21 -- become effective when the IC issued the
22 certificate. There was no further need to

1 file a Notice of Consummation.

2 I mean, the law is clear on that,
3 and let's also remember why NERSA was enacted,
4 to expedite Conrail's abandonment process. I
5 think that the subsequent actions that were
6 taken clearly show an intent to abandon common
7 carrier service in this part of its system.

8 There was no holding out. There
9 was no attempt by Conrail to ever provide
10 service in this area, to ever indicate that it
11 still was interested in retaining this track
12 or this property as part of its system.

13 MEMBER NOTTINGHAM: Mr. Chairman,
14 if I -- if you have a question, by all means.

15 CHAIRMAN ELLIOTT: I have one quick
16 question, and you can follow up.

17 MEMBER NOTTINGHAM: Just quickly,
18 and I will give Mr. Wilson notice. I'm going
19 to ask both counsel the same question: is
20 there any evidence in the property records, in
21 the deeds or recordation books of this
22 easement being recorded so that Buncher --

1 Ideally, in property law, when you
2 go to look at buying a property, we hope that
3 the records are clear. You go down to the
4 county courthouse or City Hall, and you pull
5 up the land record, and you say, "Wow, it's
6 burdened by an easement. Okay." Maybe we pay
7 a different price for that property than if
8 it's not. Any evidence in the record of any
9 such documentation?

10 MR. FISHMAN: Well, I believe that
11 the real property records were recorded, and
12 I think the important point is -- you're
13 getting to expectation. The important point
14 is that the Buncher Company acquired other
15 properties in this area, and Conrail actually
16 reserved some track easements in those other
17 properties, too, and there is correspondence.

18 The very interesting thing is
19 there is correspondence where we didn't submit
20 it into the record, because it really wasn't
21 germane to this property, but there's
22 correspondence where Buncher was notified that

1 once Conrail pulls up the track, the easement
2 rights expire. That was the expectation that
3 the Buncher Company was under, and I think
4 that's very normal.

5 I mean, this is 20, 25 years ago.
6 There was a reservation of a specific -- to
7 continue the use of a specific track. That
8 track was removed. There was never any
9 attempt until recently, when AVRR came out
10 with its plans to provide passenger rail
11 service. There was never any indication that
12 anyone was reserving any further rights to
13 that property.

14 CHAIRMAN ELLIOTT: One last
15 question. In 1995, when, I guess, this
16 transaction took place, were you aware that
17 Allegheny Valley was seeking these rights to
18 operate over this line?

19 MR. FISHMAN: No. Speaking on
20 behalf of the Buncher Company, I wasn't
21 representing them in 1995.

22 CHAIRMAN ELLIOTT: Right.

1 MR. FISHMAN: But I don't -- I
2 don't believe they were aware of the fact
3 that, a seven-day wonder in those days, if a
4 Notice of Exemption was filed in 1995 with the
5 ICC. Remember, also, that the map attached to
6 that notice clearly shows the line dead ends
7 at 21st Street, no indication in that notice
8 that there was any attempt to obtain authority
9 to operate on track between 16th Street and
10 21st Street.

11 CHAIRMAN ELLIOTT: So you, as the
12 owner of the land, weren't aware that this, to
13 the best of your knowledge, that this was
14 going on at the Board?

15 MR. FISHMAN: That's correct.

16 CHAIRMAN ELLIOTT: Okay.

17 MR. FISHMAN: Thank you.

18 CHAIRMAN ELLIOTT: Mr. Wilson, you
19 have five minutes, I believe, for rebuttal.

20 MR. WILSON: Thank you, Your Honor.
21 Let me respond to the questions that
22 Commissioner Nottingham posed. Yes, there is

1 a survey. We can identify the precise
2 location of the easement tract. It can be
3 identified through surveying marks out. There
4 is a metes and bounds description that is
5 available.

6 Second, when you look at what
7 Conrail describes as the Valley Industrial
8 Track in its 1984 abandonment application, you
9 can look in that abandonment application, and
10 it indicates quite clearly that the easement
11 property between 16th and 21st Street was not
12 included in that abandonment application.

13 In the first place, there is a
14 description of the track to be abandoned that
15 describes it as overhead track with no
16 originating or terminating traffic. That
17 describes only the track that ran up Smallman
18 Street and was used by Conrail to get to the
19 53rd Street yard to bring traffic back down
20 into the Strip District. The track that we
21 are talking about, the track 8 on the
22 easement, that was a track that was used to

1 originate or terminate traffic.

2 Finally, Conrail states in its
3 abandonment application that it has no
4 property interest in the connecting track, and
5 that's because that track lay in a public
6 right-of-way, or portions of it had been sold
7 to the Pittsburgh Urban Redevelopment
8 Authority when they acquired the produce
9 terminal. Conrail would not have represented
10 to the Board that it had no property interest
11 in the track it was seeking abandonment for
12 when six months before it had retained a
13 permanent rail easement.

14 Next, we would contest strongly
15 that this was --

16 CHAIRMAN ELLIOTT: Mr. Wilson, is
17 that -- is the survey that you mention in the
18 record?

19 MR. WILSON: It's -- I don't know
20 whether we submitted it in the record or not,
21 but it can be identified.

22 CHAIRMAN ELLIOTT: If you did not,

1 can you please submit it for the record?

2 MR. WILSON: Yes, I will provide a
3 copy for the Board. The other -- so we
4 believe that the abandonment application on
5 its face, read in its totality, describes only
6 what we call the Smallman Street track between
7 mile post 0.0 and the north side of 21st
8 Street.

9 We would also argue that the
10 easement, which Conrail retained in 1983 and
11 then transferred to Allegheny Valley Railroad
12 in 1995, is not just a track easement. We
13 note in our pleadings and as pointed out by
14 opposing counsel, there are other indications
15 where Conrail retained an easement and
16 specifically stated in the easement that upon
17 cessation of use of that line, the easement
18 would terminate.

19 That is not the language contained
20 in the easement retained by Conrail over the
21 Buncher parcel, so Conrail and Buncher clearly
22 could specify when they created a so-called

1 track easement, as distinguished from what we
2 believe is shown in the 1983 deed as a
3 permanent rail easement.

4 There is no language in that deed
5 that indicates there was any intent of the
6 parties to terminate the easement when that
7 track was removed. Finally, that easement was
8 recorded.

9 CHAIRMAN ELLIOTT: With respect to
10 that deed, the same question I was asking Mr.
11 Fishman. Did you provide Buncher notice of
12 this proceeding, that traveling over the --
13 getting the right to operate over this line?

14 MR. WILSON: I don't know whether
15 explicit notice was provided to the Buncher
16 Company by Conrail or AVRR when they filed
17 their Notice of Exemption, because I didn't
18 represent them at that time.

19 The Notice of Exemption itself
20 identifies the mile post numbers for the track
21 in question, and the mile post numbers for the
22 line of railroad which was approved for

1 acquisition by the ICC in '95 start with mile
2 post 0.3, which is identified as the north
3 side of 16th Street. That's in the original
4 document.

5 CHAIRMAN ELLIOTT: I understand you
6 abided by what was required to put it and mark
7 the mile posts down, but don't you think it's
8 strange that Buncher wouldn't be provided
9 notice as the landowner?

10 MR. WILSON: I don't -- I don't
11 know whether that was done, and I don't know
12 whether that was explicitly required at the
13 time.

14 VICE CHAIRMAN MULVEY: Does the
15 sale in 1995 of the easement to AVRR by
16 Conrail somewhat imply that Conrail did not
17 intend to abandon that in 1984? Otherwise,
18 Conrail is selling something it no longer had
19 the right to sell, correct?

20 MR. WILSON: We certainly think
21 that indicates that Conrail believed they had
22 a permanent rail easement for future railroad

1 use, and they conveyed it to AVRR at that
2 time. I think that's very strong indication
3 of Conrail's intent not to abandon that.

4 VICE CHAIRMAN MULVEY: So at least
5 what you're saying is at least for the last 15
6 years, Conrail had sold something, or 15 years
7 ago Conrail sold something it believed it
8 still had -- it still had the authority to do.

9 MR. WILSON: Yes, I believe so,
10 sir.

11 VICE CHAIRMAN MULVEY: And your
12 position is that they sold something that they
13 did not have the authority to sell, because
14 they had abandoned it effectively in 1984.

15 MR. WILSON: Yes.

16 MR. FISHMAN: May I address that?

17 VICE CHAIRMAN MULVEY: Yes.

18 MR. FISHMAN: Certainly, that is
19 their position. I also think that what
20 happened is the Conrail Real Estate Department
21 looked back and said, "What do we have? Let's
22 give whatever we have," but it was a quit

1 claim, so they could only quit claim what they
2 had, and our position is legally they had no
3 easement. Thank you.

4 VICE CHAIRMAN MULVEY: And you were
5 not aware of that at the time?

6 MR. FISHMAN: That's correct.

7 VICE CHAIRMAN MULVEY: Okay. Thank
8 you.

9 CHAIRMAN ELLIOTT: Thank you very
10 much for your excellent arguments, and the
11 meeting is now adjourned.

12 (Whereupon, the foregoing matter
13 was adjourned at 11:09 a.m.)

14
15
16
17
18
19
20
21
22

A				C
AB 12:11	aerial 6:4	arguments 3:12	50:9	call 27:9 47:6
abandon 24:16	ago 19:8 33:3 43:5	51:10	believed 49:21 50:7	called 7:5 21:20
40:12 41:6 49:17	50:7	asked 4:10 6:19	best 44:13	27:19
50:3	agree 22:11	asking 48:10	Bethel 40:19	calling 23:7,8
abandoned 12:12	agreed 7:17	assume 10:19	bit 20:12 35:6,20	carrier 17:19 30:9
13:14,19 14:2	agreeing 17:14	38:12	blocks 7:6,6	30:13 35:10 41:7
15:1 21:17 26:3	aid 4:12	attached 5:19 44:5	Board 1:1,17 6:20	case 7:3,4,8,16 34:2
29:22 33:14 34:20	Allegheny 1:6 2:2	attempt 32:20 41:9	7:7 8:1,20 9:13	34:15,19 35:13
45:14 50:14	4:4,22 5:2,13,16	43:9 44:8	34:13,19 35:12,22	36:1 39:4,17
abandoning 40:9	5:20,22 6:2 8:19	attempts 6:5	36:10 44:14 46:10	Center 2:7
abandonment 8:3	17:17 18:2 21:22	attract 32:20	47:3	centers 40:7
8:4 10:19 12:1,11	22:13,19 23:1,4,7	auction 20:19,21	Board's 6:18 20:9	Central 10:5 24:8
12:21 13:22 14:8	23:9,11,11 26:16	21:1 33:2	books 41:21	CEO 5:2
14:13,15 19:12	43:17 47:11	authority 5:15 8:4	boundaries 21:15	certain 4:11 33:1,5
21:5,6,7 22:2,2	allotted 18:15	12:5 44:8 46:8	bounds 45:4	40:10
23:17 24:1,5,7,9	allow 36:10	50:8,13	branch 10:13 11:3	certainly 31:20
25:4,10 30:19,20	ambiguity 40:15	authorization	12:7 15:15 21:22	38:14 49:20 50:18
33:18 34:4,10	AMERICA 1:1	39:16	22:12,13,20 23:1	certificate 40:22
35:1 40:7,18 41:4	analytical 8:16	available 45:5	23:9,12,19	cessation 47:17
45:8,9,12 46:3,11	answer 24:19	AVR 4:5,7,9 26:17	bridge 6:9 13:15,16	Chairman 1:22,22
47:4	anymore 39:13	AVRR 14:21 16:15	13:17 14:3,4 15:4	4:3 5:6 9:5,20
abandonments	apparently 24:1,16	32:17 35:7 36:3	23:18 25:13	10:1,17 11:18
40:20	Appeals 6:22 8:7	43:9 48:16 49:15	brief 8:16 33:19	13:2,6 14:9,19
abided 49:6	8:18	50:1	briefs 7:1 11:20	15:8 16:2,14,17
ability 33:15 38:5	APPEARANCES	AVRR's 5:14 6:14	23:22 35:8	17:2,4 18:13,20
able 15:22	2:1	38:2	Brilliant 15:15	18:20 21:18 22:10
above-entitled 1:19	application 30:21	aware 7:7 43:16	bring 15:17 45:19	23:15,21 24:11,14
access 15:2	45:8,9,12 46:3	44:2,12 51:5	building 14:17 16:1	26:7,9 27:22
accurate 4:17 24:4	47:4	a.m 1:20 4:2 51:13	20:19 33:2	28:22 29:5 33:17
acquired 42:14	applied 24:9 37:21	A6 14:22	buildings 6:7	35:17 36:13,16
46:8	apply 33:20 34:3		Buncher 1:12 2:12	40:6 41:13,15
acquisition 5:15	approval 8:4	B	5:8 6:13 7:10	43:14,22 44:11,16
6:1 49:1	approved 48:22	back 9:18 12:14,17	12:10 14:14 16:8	44:18 46:16,22
actions 40:10,11	area 16:13 22:7	12:18 13:8 24:3	18:14 19:1,2,20	48:9 49:5,14 50:4
41:5	25:20 26:19 29:18	24:16 30:9 31:15	21:3,4,11 26:2,21	50:11,17 51:4,7,9
activities 19:21	31:7,8 32:13,14	34:9 38:20 40:3	27:5,7,14 28:10	change 14:20 15:11
actual 9:7 17:8	32:18 35:3 39:22	45:19 50:21	29:1,14,15 30:11	changed 13:19
37:10 39:14	41:10 42:15	barriers 33:8	30:16 31:13,18,19	changes 9:14
addition 4:9	argue 12:13,17	basically 24:20	32:1,21 33:7,7	CHARLES 1:23
additional 35:16	47:9	25:3,9 33:8 38:1	36:21 38:18 39:10	chart 13:22 16:12
address 6:19 8:21	argued 14:14	begins 16:21	39:20,21 41:22	charts 5:18 35:2
34:9 50:16	argues 12:10	behalf 2:2,12 43:20	42:14,22 43:3,20	Circuit 6:21 8:7,17
adjacent 6:7 20:18	arguing 13:3	believe 9:12 15:8	47:21,21 48:11,15	40:20
adjourned 51:11	argument 1:4 4:4	22:11 24:6,7	49:8	circumstances 26:4
51:13	11:19 13:1 19:18	29:10,12 36:5	burdened 42:6	33:12
admission 35:5	33:20 34:3,5	37:5,13 42:10	buying 42:2	City 7:21 42:4
	35:18 36:2,6	44:2,19 47:4 48:2		

claim 17:8 51:1,1	13:14,18,21 14:2	24:7 37:4,14	33:13	documentation
clarification 35:20	14:13,17 15:1,12	44:15 49:19 51:6	demonstrates	32:10 42:9
clarify 26:18 27:3	16:7,11,15 17:17	correspondence	13:11	doubt 6:17
clean 25:1	18:3 19:11 20:1	42:17,19,22	Department 50:20	downtown 29:17
clear 16:6,9 25:10	20:15 21:5,7,17	counsel 4:4,7,13	depict 6:5	driving 33:6
26:5 34:12 41:2	22:1,17 23:2	18:14 41:19 47:14	describe 5:21 23:17	due 19:16
42:3	24:19,21 25:1,2,8	counter 35:18	26:20	D.C 1:18
clearly 7:12 16:9	25:8,15 26:6 27:9	county 42:4	described 22:12,19	
16:20 20:16 22:22	27:13 28:9 29:1,2	court 6:22 8:7,10	27:13 37:1	E
26:2 28:3 33:12	29:13,19 31:11,13	8:12,13,18 34:17	describes 18:4 22:3	E 1:18
33:13 37:20 39:5	32:1,12,14 35:2	38:12,15	28:7,10 45:7,15	early 10:20 17:9
41:6 44:6 45:10	39:11 41:9 42:15	courthouse 42:4	45:17 47:5	easel-sized 4:10
47:21	43:1 45:7,18 46:2	Court's 33:22	description 21:13	easement 5:9,12,21
Code 8:1 22:17	46:9 47:10,15,20	covered 16:8 21:9	24:4 37:3 45:4,14	6:6,15 7:11 11:9
25:2 27:15	47:21 48:16 49:16	21:11,15	design 39:7	12:13 14:16 16:7
come 15:15	49:16,18,21 50:6	covers 38:2	designated 4:16	16:19 27:10,11
comfort 17:14	50:7,20	created 9:16 11:9	determination 9:2	29:3,20 30:1,3,4,4
coming 20:17,18	Conrail's 33:13	37:22 47:22	34:15 36:11	30:8,17 36:17,20
Commissioner	40:12 41:4 50:3	credible 36:6	determinative	37:11,18,20,20
18:21 44:22	consent 39:15	current 18:2	40:11	38:16,18 39:2
common 17:19	consider 6:20	currently 37:5	determine 9:7	41:22 42:6 43:1
30:9,13 35:10	construct 38:5	customers 20:2	34:20	45:2,10,22 46:13
41:6	Consummation		developed 24:21	47:10,12,15,16,17
company 1:7,12	41:1	D	developer 8:5	47:20 48:1,3,6,7
2:3,12 4:22 5:8,13	contain 17:18	D 5:16 6:4	development 29:16	49:15,22 51:3
18:14 19:1,2 24:9	contained 47:19	DANIEL 1:22	different 20:20	easements 42:16
27:6 29:15,16	contends 6:13	day 18:11 38:22	22:6,9 30:7 35:6	Eastern 16:15
31:18 33:8 39:10	contest 46:14	days 44:3	42:7	Ebensburg 2:8
42:14 43:3,20	context 39:19	DC 2:19 6:21 8:6	difficult 6:5 20:13	Ed 19:1
48:16	continually 33:6	8:12,17	disappeared 32:14	EDWARD 2:16
completely 20:20	continue 30:5 43:7	dead 44:6	discrepancy 25:5	effect 10:8 19:10
25:6 32:14	continued 11:11,17	December 6:18	discussion 4:12	29:12
complicated 10:16	12:8	decide 36:17	dismantled 11:7	effective 40:21
conceded 17:1	continues 18:11	decision 6:22 8:6	dispute 6:12,21	effectively 40:20
concerned 20:6	continuing 7:14	8:13,17,22 34:7	9:17 10:9 19:5,6	50:14
22:21	32:22	40:19	26:22 27:12 37:17	eighties 17:9 38:21
concrete 31:5	contractor 31:21	deck 13:15 14:3	37:19 38:3,4,10	either 25:7 33:10
confused 11:19	control 36:2	15:3,5	38:11,13	elevated 7:6
23:16	convey 16:15	declaratory 1:8	distinctions 7:9	eliminating 30:13
confusing 28:15	conveyance 5:7 9:4	8:20	distinguishable 7:2	Elliott 1:22 4:3 5:6
connecting 13:16	24:21	deed 5:19 9:4 48:2	distinguished 48:1	9:5,20 10:1,17
14:4 46:4	conveyed 5:12,22	48:4,10	District 5:11 8:13	11:18 13:2,6 14:9
Conrail 5:8,12,20	30:12 32:17 50:1	deeds 41:21	15:18 19:22 39:22	14:19 15:8 17:4
5:22 7:10,19 8:2	conveying 30:15	define 38:18	45:20	18:13,20 21:18
9:4,8,14 10:7,12	copy 5:18 47:3	defined 22:18	Docket 1:9 5:15	22:10 23:15,21
11:3,5,10,11,15	corner 5:17	demarcating 33:9	12:11 13:22 14:15	24:11,14 33:17
11:16 12:12,20	correct 12:22 23:20	demonstrate 26:13	document 49:4	35:17 41:15 43:14

43:22 44:11,16,18 46:16,22 48:9 49:5 51:9 emanating 27:18 embankment 7:5 7:12,18 enabled 15:12 enacted 41:3 ends 44:6 entire 25:11 37:5 38:3 envelope 38:1 ESQ 2:6,16 estate 10:6 29:16 50:20 evaluate 9:19 event 16:11 eventually 29:6 everyone's 39:15 evidence 13:10 17:7,13 20:4 23:5 23:13 28:16,17 34:14,22 35:15,16 35:22 36:8 37:9 39:9 40:4 41:20 42:8 evidentiary 20:14 exact 21:9 exactly 40:14 example 13:13 excellent 51:10 exclusive 34:16 Exemption 44:4 48:17,19 exhibit 4:16 5:16 5:17 6:2,3 11:15 13:21 14:22 20:15 exhibited 20:17 exhibits 6:10 20:8 20:10 existed 14:6 19:13 21:2,3 26:1,21 37:16 existence 36:18 37:11 existing 30:5 37:21 expectation 42:13	43:2 expectations 7:14 expedite 41:4 expire 43:2 explained 8:15 32:10 explicit 48:15 explicitly 5:21 49:12 extended 14:10 extends 22:22 extent 34:12,12 extremely 10:16	32:8 34:8 35:19 36:14,15 37:4,13 38:14 39:3 40:16 42:10 43:19 44:1 44:15,17 48:11 50:16,18 51:6 five 5:5 12:21 44:19 focus 19:5 20:14 26:1 28:16 40:17 focused 39:20 follow 41:16 follow-up 17:3 foot 38:1 forced 33:7 foregoing 51:12 formal 12:1 formally 40:9 formerly 37:16 Fort 13:15,15,17 14:3,4 15:3 25:12 found 8:1 FRANCIS 1:22 freight 6:14 fruit 20:19,21 21:1 33:2 FSP 9:7 13:9 full 27:7 further 20:10 40:22 43:12 future 49:22	41:18 44:14 Good 4:20 18:19 granted 30:21 guess 11:18 23:19 43:15	28:17 indicate 5:21 32:21 41:10 indicated 6:10 16:12 35:20 indicates 7:12 9:1 45:10 48:5 49:21 indicating 7:1 20:7 indication 6:12 12:15 18:10 31:6 43:11 44:7 50:2 indications 47:14 indicator 29:6 Industrial 21:8,13 21:20 22:4 27:15 27:20 28:6,8,11 28:14,19 30:6 45:7 initiate 30:18 instance 9:6 34:4 institutional 31:16 Insufficient 30:17 intend 49:17 intended 26:20 29:6 intent 33:13 40:8 40:12 41:6 48:5 50:3 intention 33:15 interchange 9:10 interest 46:4,10 interested 29:14 30:11 41:11 interesting 42:18 interests 9:16 interpret 38:15 interpretation 8:9 introduce 18:17 invoke 12:15 involved 7:4 issue 7:16 10:22 34:16 36:12 37:6 40:6 issued 40:21 issues 35:14 I-N-D-E-X 3:10
	F		H	
	F 13:21 face 8:14 35:1 47:5 fact 34:2 40:17 44:2 facts 7:2 26:4 33:12 fair 37:3 falls 8:12 favor 35:13 feet 27:1 38:3 figure 37:15 38:8 file 41:1 filed 21:5,7 30:17 30:20 44:4 48:16 filing 22:3 final 7:20,22 8:9 9:3,18 12:15,18 12:19 22:15,18 24:20 33:18 34:13 34:21 35:15 36:7 36:9 Finally 46:2 48:7 Finance 1:9 5:15 find 32:3,9 36:19 first 4:6 5:17 14:2 22:20 25:4 27:3 45:13 Fishman 2:16 3:14 18:19 19:1 22:1 22:14 23:20 24:6 24:13,18 26:7,8 26:18 28:3 29:4 29:10 31:2,14	five 5:5 12:21 44:19 focus 19:5 20:14 26:1 28:16 40:17 focused 39:20 follow 41:16 follow-up 17:3 foot 38:1 forced 33:7 foregoing 51:12 formal 12:1 formally 40:9 formerly 37:16 Fort 13:15,15,17 14:3,4 15:3 25:12 found 8:1 FRANCIS 1:22 freight 6:14 fruit 20:19,21 21:1 33:2 FSP 9:7 13:9 full 27:7 further 20:10 40:22 43:12 future 49:22	41:18 44:14 Good 4:20 18:19 granted 30:21 guess 11:18 23:19 43:15	28:17 indicate 5:21 32:21 41:10 indicated 6:10 16:12 35:20 indicates 7:12 9:1 45:10 48:5 49:21 indicating 7:1 20:7 indication 6:12 12:15 18:10 31:6 43:11 44:7 50:2 indications 47:14 indicator 29:6 Industrial 21:8,13 21:20 22:4 27:15 27:20 28:6,8,11 28:14,19 30:6 45:7 initiate 30:18 instance 9:6 34:4 institutional 31:16 Insufficient 30:17 intend 49:17 intended 26:20 29:6 intent 33:13 40:8 40:12 41:6 48:5 50:3 intention 33:15 interchange 9:10 interest 46:4,10 interested 29:14 30:11 41:11 interesting 42:18 interests 9:16 interpret 38:15 interpretation 8:9 introduce 18:17 invoke 12:15 involved 7:4 issue 7:16 10:22 34:16 36:12 37:6 40:6 issued 40:21 issues 35:14 I-N-D-E-X 3:10
	G		I	
	gap 25:14 Gates 2:17 general 19:21 generally 22:15 26:16 germane 42:21 getting 35:13 36:11 42:13 48:13 give 6:11 17:13 41:18 50:22 go 9:18 12:14,17,18 24:16 42:2,3 goes 23:18 27:17 31:15 34:5 going 16:4 19:22	gap 25:14 Gates 2:17 general 19:21 generally 22:15 26:16 germane 42:21 getting 35:13 36:11 42:13 48:13 give 6:11 17:13 41:18 50:22 go 9:18 12:14,17,18 24:16 42:2,3 goes 23:18 27:17 31:15 34:5 going 16:4 19:22	41:18 44:14 Good 4:20 18:19 granted 30:21 guess 11:18 23:19 43:15	28:17 indicate 5:21 32:21 41:10 indicated 6:10 16:12 35:20 indicates 7:12 9:1 45:10 48:5 49:21 indicating 7:1 20:7 indication 6:12 12:15 18:10 31:6 43:11 44:7 50:2 indications 47:14 indicator 29:6 Industrial 21:8,13 21:20 22:4 27:15 27:20 28:6,8,11 28:14,19 30:6 45:7 initiate 30:18 instance 9:6 34:4 institutional 31:16 Insufficient 30:17 intend 49:17 intended 26:20 29:6 intent 33:13 40:8 40:12 41:6 48:5 50:3 intention 33:15 interchange 9:10 interest 46:4,10 interested 29:14 30:11 41:11 interesting 42:18 interests 9:16 interpret 38:15 interpretation 8:9 introduce 18:17 invoke 12:15 involved 7:4 issue 7:16 10:22 34:16 36:12 37:6 40:6 issued 40:21 issues 35:14 I-N-D-E-X 3:10
			I	
			IC 40:21 ICC 5:14 44:5 49:1 Ideally 42:1 identified 7:22 14:13 45:3 46:21 49:2 identifies 48:20 identify 12:20 45:1 III 1:22 immediately 6:3 imply 49:16 important 19:4 25:17 30:2 34:10 34:11 40:17 42:12 42:13 included 12:13 14:15 40:14 45:12 independent 23:13	41:18 44:14 Good 4:20 18:19 granted 30:21 guess 11:18 23:19 43:15

J	10:21 11:3,21,22 12:7,7,16 13:3,10 15:6,13 21:17 22:17 24:2,9 25:2 27:15 29:3,7,8 35:5 43:18 44:6 47:17 48:13,22	mark 49:6 markings 37:9 marks 45:3 master 18:4 match 19:19 mats 23:5 matter 1:5,19 19:3 20:14 51:12 mean 20:3 24:20 25:20 28:14 31:15 31:20 33:11 37:20 38:8,18 39:5,6 41:2 43:5 means 13:7 41:14 meeting 51:11 Member 1:23 17:2 17:5 30:22 31:12 32:5 37:8 38:10 38:17 41:13,17 mention 46:17 metes 45:4 middle 38:19 mile 21:8,9,12,12 21:12 24:10 25:6 47:7 48:20,21 49:1,7 mind 30:7 minute 8:8 minutes 4:8 5:5 18:15 44:19 misunderstanding 12:2 mix 19:19 months 14:18 30:15 46:12 morning 4:20 5:1 18:19 multiple 25:22 26:19 Mulvey 1:22 16:2 16:14,17 18:20 26:7,9 27:22 28:22 29:5 36:13 36:16 40:6 49:14 50:4,11,17 51:4,7	N 2:7 name 4:20 19:1 21:13 narrow 30:2 narrowly 38:17 necessarily 35:14 need 8:20 26:1 28:15 40:22 NERSA 30:18 40:18,20 41:3 network 25:16 26:6 35:9 never 10:7,10 12:9 31:11 32:19 35:5 35:10 43:8,11 night 38:20 normal 43:4 north 11:6 47:7 49:2 note 47:13 notice 1:20 20:9 30:17 41:1,18 44:4,6,7 48:11,15 48:17,19 49:9 notified 42:22 notion 20:1 Nottingham 1:23 17:2,5 18:21 30:22 31:12 32:5 37:8 38:10,17 41:13,17 44:22 number 4:16 11:7 19:7,10 21:1 27:11 numbers 48:20,21 NW 2:18	oh 4:5,6 5:4 14:14 Okay 23:15 42:6 44:16 51:7 old 40:3 once 10:18 13:14 43:1 open 37:2 operable 16:3,10 operate 30:5 43:18 44:9 48:13 operated 9:15,21 10:2,2 13:9,12 operating 16:11,19 25:15 operations 13:20 14:21 15:12 29:17 30:9 opportunity 18:22 opposing 47:14 opposite 14:16 ORAL 1:4 3:12 order 1:8 6:19 8:20 12:19 34:14 original 49:3 originate 46:1 originating 45:16 origination 11:12 outright 27:7 outside 29:17 36:9 overhead 45:15 owner 5:2 44:12 owns 39:20,21
K	LLP 2:17 local 38:12 locate 36:19 located 18:12 37:12 location 6:6 36:20 45:2 long 15:20 longer 15:2 20:17 25:15 49:18 look 9:6,12 12:17 12:19 13:8 18:8 22:2,15 25:2 35:1 35:2,3 36:7 39:19 40:3 42:2 45:6,9 looked 23:21 37:22 50:21 looking 34:9 lot 37:2 39:20 lots 18:9 lower 5:17 13:15 14:2 15:3	mark 49:6 markings 37:9 marks 45:3 master 18:4 match 19:19 mats 23:5 matter 1:5,19 19:3 20:14 51:12 mean 20:3 24:20 25:20 28:14 31:15 31:20 33:11 37:20 38:8,18 39:5,6 41:2 43:5 means 13:7 41:14 meeting 51:11 Member 1:23 17:2 17:5 30:22 31:12 32:5 37:8 38:10 38:17 41:13,17 mention 46:17 metes 45:4 middle 38:19 mile 21:8,9,12,12 21:12 24:10 25:6 47:7 48:20,21 49:1,7 mind 30:7 minute 8:8 minutes 4:8 5:5 18:15 44:19 misunderstanding 12:2 mix 19:19 months 14:18 30:15 46:12 morning 4:20 5:1 18:19 multiple 25:22 26:19 Mulvey 1:22 16:2 16:14,17 18:20 26:7,9 27:22 28:22 29:5 36:13 36:16 40:6 49:14 50:4,11,17 51:4,7	oh 4:5,6 5:4 14:14 Okay 23:15 42:6 44:16 51:7 old 40:3 once 10:18 13:14 43:1 open 37:2 operable 16:3,10 operate 30:5 43:18 44:9 48:13 operated 9:15,21 10:2,2 13:9,12 operating 16:11,19 25:15 operations 13:20 14:21 15:12 29:17 30:9 opportunity 18:22 opposing 47:14 opposite 14:16 ORAL 1:4 3:12 order 1:8 6:19 8:20 12:19 34:14 original 49:3 originate 46:1 originating 45:16 origination 11:12 outright 27:7 outside 29:17 36:9 overhead 45:15 owner 5:2 44:12 owns 39:20,21	
L	labeled 20:21 21:21 land 26:22 42:5 44:12 landowner 49:9 language 47:19 48:4 law 7:3 41:2 42:1 lay 46:5 leaving 11:7 left 6:3 legal 8:16 17:18 legally 51:2 letter 20:7 40:8,10 40:13 let's 21:6 31:3 32:12 41:3 50:21 lies 24:19 light 6:21 line 5:14 7:12,13,19 7:21,22 8:2 9:2,9 9:20 10:2,9,13,21	mark 49:6 markings 37:9 marks 45:3 master 18:4 match 19:19 mats 23:5 matter 1:5,19 19:3 20:14 51:12 mean 20:3 24:20 25:20 28:14 31:15 31:20 33:11 37:20 38:8,18 39:5,6 41:2 43:5 means 13:7 41:14 meeting 51:11 Member 1:23 17:2 17:5 30:22 31:12 32:5 37:8 38:10 38:17 41:13,17 mention 46:17 metes 45:4 middle 38:19 mile 21:8,9,12,12 21:12 24:10 25:6 47:7 48:20,21 49:1,7 mind 30:7 minute 8:8 minutes 4:8 5:5 18:15 44:19 misunderstanding 12:2 mix 19:19 months 14:18 30:15 46:12 morning 4:20 5:1 18:19 multiple 25:22 26:19 Mulvey 1:22 16:2 16:14,17 18:20 26:7,9 27:22 28:22 29:5 36:13 36:16 40:6 49:14 50:4,11,17 51:4,7	oh 4:5,6 5:4 14:14 Okay 23:15 42:6 44:16 51:7 old 40:3 once 10:18 13:14 43:1 open 37:2 operable 16:3,10 operate 30:5 43:18 44:9 48:13 operated 9:15,21 10:2,2 13:9,12 operating 16:11,19 25:15 operations 13:20 14:21 15:12 29:17 30:9 opportunity 18:22 opposing 47:14 opposite 14:16 ORAL 1:4 3:12 order 1:8 6:19 8:20 12:19 34:14 original 49:3 originate 46:1 originating 45:16 origination 11:12 outright 27:7 outside 29:17 36:9 overhead 45:15 owner 5:2 44:12 owns 39:20,21	
M	main 9:9 10:2 11:21 12:7 13:3,9 15:6,13 maintain 12:7 making 11:20 36:3 manifested 33:14 manner 13:12 map 11:16 20:16 44:5 maps 4:11,14 5:19 25:14,19 28:1 40:3	mark 49:6 markings 37:9 marks 45:3 master 18:4 match 19:19 mats 23:5 matter 1:5,19 19:3 20:14 51:12 mean 20:3 24:20 25:20 28:14 31:15 31:20 33:11 37:20 38:8,18 39:5,6 41:2 43:5 means 13:7 41:14 meeting 51:11 Member 1:23 17:2 17:5 30:22 31:12 32:5 37:8 38:10 38:17 41:13,17 mention 46:17 metes 45:4 middle 38:19 mile 21:8,9,12,12 21:12 24:10 25:6 47:7 48:20,21 49:1,7 mind 30:7 minute 8:8 minutes 4:8 5:5 18:15 44:19 misunderstanding 12:2 mix 19:19 months 14:18 30:15 46:12 morning 4:20 5:1 18:19 multiple 25:22 26:19 Mulvey 1:22 16:2 16:14,17 18:20 26:7,9 27:22 28:22 29:5 36:13 36:16 40:6 49:14 50:4,11,17 51:4,7	oh 4:5,6 5:4 14:14 Okay 23:15 42:6 44:16 51:7 old 40:3 once 10:18 13:14 43:1 open 37:2 operable 16:3,10 operate 30:5 43:18 44:9 48:13 operated 9:15,21 10:2,2 13:9,12 operating 16:11,19 25:15 operations 13:20 14:21 15:12 29:17 30:9 opportunity 18:22 opposing 47:14 opposite 14:16 ORAL 1:4 3:12 order 1:8 6:19 8:20 12:19 34:14 original 49:3 originate 46:1 originating 45:16 origination 11:12 outright 27:7 outside 29:17 36:9 overhead 45:15 owner 5:2 44:12 owns 39:20,21	
N	mark 49:6 markings 37:9 marks 45:3 master 18:4 match 19:19 mats 23:5 matter 1:5,19 19:3 20:14 51:12 mean 20:3 24:20 25:20 28:14 31:15 31:20 33:11 37:20 38:8,18 39:5,6 41:2 43:5 means 13:7 41:14 meeting 51:11 Member 1:23 17:2 17:5 30:22 31:12 32:5 37:8 38:10 38:17 41:13,17 mention 46:17 metes 45:4 middle 38:19 mile 21:8,9,12,12 21:12 24:10 25:6 47:7 48:20,21 49:1,7 mind 30:7 minute 8:8 minutes 4:8 5:5 18:15 44:19 misunderstanding 12:2 mix 19:19 months 14:18 30:15 46:12 morning 4:20 5:1 18:19 multiple 25:22 26:19 Mulvey 1:22 16:2 16:14,17 18:20 26:7,9 27:22 28:22 29:5 36:13 36:16 40:6 49:14 50:4,11,17 51:4,7	oh 4:5,6 5:4 14:14 Okay 23:15 42:6 44:16 51:7 old 40:3 once 10:18 13:14 43:1 open 37:2 operable 16:3,10 operate 30:5 43:18 44:9 48:13 operated 9:15,21 10:2,2 13:9,12 operating 16:11,19 25:15 operations 13:20 14:21 15:12 29:17 30:9 opportunity 18:22 opposing 47:14 opposite 14:16 ORAL 1:4 3:12 order 1:8 6:19 8:20 12:19 34:14 original 49:3 originate 46:1 originating 45:16 origination 11:12 outright 27:7 outside 29:17 36:9 overhead 45:15 owner 5:2 44:12 owns 39:20,21	P	
	main 9:9 10:2 11:21 12:7 13:3,9 15:6,13 maintain 12:7 making 11:20 36:3 manifested 33:14 manner 13:12 map 11:16 20:16 44:5 maps 4:11,14 5:19 25:14,19 28:1 40:3	objected 31:11 33:10 obligation 30:14 35:11 obtain 44:8 obviously 16:6 occasions 9:1 occurred 10:18,20 of-way 30:4	PA 2:8 pads 31:5 parameters 21:10 parcel 5:10 6:6,12 27:2,5 37:6 47:21 parking 37:1,7 part 4:11 5:13 6:1 7:18 23:3 24:15 25:11,15,16 26:17 27:15 41:7,12 parties 7:17 48:6 party 38:19 passenger 6:15	

38:5 43:10 pave 31:1 paved 29:8,9 31:8 31:10 37:2,6 pay 42:6 Penn 10:5 24:8 people 31:17 39:13 period 31:9 permanent 5:9 7:11 46:13 48:3 49:22 perpetual 30:8 pertinent 7:9 Peterson 5:1 petition 1:7 8:19 Petitioner 1:9 2:3 4:21 Philadelphia 15:14 photograph 6:4 physically 31:19 piece 7:4 9:10 10:21,21,22 11:6 11:21 13:4 16:21 16:22 21:19 24:2 24:16 28:10 pieces 14:1 15:1 Pittsburgh 5:11 6:8 10:14 11:4,13 15:18,22 17:20 18:6 46:7 Pittsburgh-Harri... 15:6 place 9:8 24:22 43:16 45:13 Plan 7:20,22 8:9 9:4,18 12:15,18 12:19 22:16,18 24:20 34:14,21 35:15 36:7,9 plans 8:11 43:10 platforms 38:6 pleadings 19:17 35:21 47:13 please 4:8 18:16 47:1 podium 18:17 point 9:17 13:11	17:7,11 22:16 23:4 26:14 29:9 30:10 31:1,2,18 33:1,5,16 34:9 38:7 42:12,13 pointed 47:13 points 14:7,11 portion 22:19 portions 46:6 posed 44:22 position 18:22 21:16 23:14 28:21 35:7 38:2 50:12 50:19 51:2 post 21:8,9,12,12 21:12 24:10 47:7 48:20,21 49:2 posts 25:6 49:7 precise 45:1 present 4:10 18:22 presentation 4:14 18:16 presented 9:13 20:8 preserve 33:1,15 preserved 35:11 President 18:2 presumption 16:18 price 42:7 primarily 6:7 private 8:5 problem 4:6 problems 8:17 proceed 18:15 proceeding 4:16,21 6:1,13 7:10 48:12 process 30:19 41:4 produce 6:8 11:4 11:13 14:16 15:2 15:22 17:20 18:6 33:3 46:8 Product 10:14 proffer 40:11 prompted 14:8 properties 42:15 42:17 property 10:6 19:5	19:6,21 21:3,4,10 21:11 26:2,21 30:13,16 31:10 32:22 33:7,9,14 34:20 36:21,22 37:15 38:13 39:20 39:22 41:12,20 42:1,2,7,11,21 43:13 45:11 46:4 46:10 provide 7:14 11:11 11:17 17:20 33:16 41:9 43:10 47:2 48:11 provided 10:13 17:9 18:5,10,11 31:7 48:15 49:8 public 46:5 pull 42:4 pulled 12:3 39:10 39:11,15 pulls 43:1 purposes 8:18 12:9 27:12 pursuant 1:20 5:14 put 33:8 49:6 P-R-O-C-E-E-D-... 4:1	43:10 46:13 48:3 49:22 railroad 1:6 2:2 4:22 5:3,13,14 6:2 7:5,19 8:2 10:8,10 11:8 12:16 15:16 15:17 16:22 18:3 22:5,7,9 23:13 26:12 27:10 28:20 28:21 30:3 35:6 36:4 47:11 48:22 49:22 railroad's 40:7 ran 15:5,19 45:17 reach 34:19 read 47:5 real 29:15 42:11 50:20 realize 25:18 really 42:20 reason 29:19,21 36:1 reasons 12:22 rebut 36:6 rebuttal 3:16 4:9 5:5 44:19 receive 29:18 received 7:20 receiving 29:14 recognize 30:2 34:11 reconcile 25:7 reconnect 15:15 record 4:12,18 6:11 9:12 13:11 16:5,9 17:7,13,21 18:9 18:17 26:13 27:21 28:7,18 36:9 42:5 42:8,20 46:18,20 47:1 recording 41:21 recorded 41:22 42:11 48:8 records 32:4 39:12 41:20 42:3,11 rectangular 26:22 37:5	redesignated 23:3 Redevelopment 46:7 refer 4:13,14 15:16 reference 4:15 9:3 23:22 referred 26:16 28:13 regarding 33:18,19 region 32:21 reinstitute 6:14 relates 24:1 relationship 6:7 relevant 27:12 relies 34:13 relying 34:21 35:14 remember 31:3 32:12 41:3 44:5 removed 12:9 19:10 20:5 21:4 31:3,8,13,19 32:11 35:4 39:6,7 43:8 48:7 Reported 1:24 reporter 4:17 represent 4:21 19:2 48:18 represented 46:9 representing 43:21 require 9:3 required 8:3 11:22 49:6,12 requires 8:8 reservation 27:13 28:8 29:2,11,13 43:6 reserve 27:9 30:1 reserved 5:5 14:17 16:7 29:20 30:10 37:21 42:16 reserving 4:9 29:2 30:8,16 43:12 reset 24:22 resolution 34:19 resolve 35:12 respect 19:16 48:9 respective 4:15
		<hr/> Q <hr/> question 17:3,6,10 27:17 32:6 33:17 41:14,16,19 43:15 48:10,21 questions 44:21 quick 41:15 quickly 41:17 quit 50:22 51:1 quite 45:10		
		<hr/> R <hr/> R 2:6 rail 5:9 6:15 7:11 7:14 9:2,9 17:8,15 26:17 29:14,18 30:11 32:7,20,22 33:3,16 35:9 36:17 37:11 38:5		

respond 44:21	25:14,18 28:5	sir 4:19 9:11 36:15	15:17,20 18:1,6,7	35:15 36:7,9 41:7
Respondent 1:13	40:15	50:10	18:12 19:14 20:2	41:12
2:14	seeking 43:17	situation 7:10	21:16,16 22:5,5	S.W 1:18
restore 29:7	46:11	six 7:5 14:18 46:12	22:20,22 23:19	
result 10:19 11:22	seen 14:21 27:20	slate 25:1	25:9,13,13 26:12	T
26:3	28:1	Smallman 13:17	26:15 27:19 28:2	take 31:22
retained 5:8 7:11	segment 7:18 22:21	14:7 22:5 27:19	28:4,13,20,20	taken 19:7 26:5
10:5 46:12 47:10	22:21	28:1,2,4,13,20	32:15,16 40:1	35:9 38:12 41:6
47:15,20	sell 8:5 49:19 50:13	45:17 47:6	44:7,9,10 45:11	takes 25:11,12
retaining 41:11	selling 49:18	Smallwood 26:15	45:18,19 47:6,8	talk 21:6
Revenues 30:18	sense 29:22	sold 27:5,6,8 46:6	49:3	talking 21:10 25:20
review 8:10 20:13	separate 7:6 12:22	50:6,7,12	Streets 5:10 24:12	45:21
reviewing 8:6	23:12 27:18 28:19	somewhat 37:1	strip 5:11 15:18	tariffs 17:17,18
Richard 2:6 4:20	separately 23:8	49:16	19:22 26:22 37:6	tell 37:10 39:8
right 6:14 20:22	serve 15:22	sort 19:19	39:21,22 45:20	tendency 19:19
29:4 30:3 37:2	served 33:3	so-called 26:12	strong 33:20 50:2	terminal 6:8 10:14
43:22 48:13 49:19	service 6:15 7:15	47:22	strongly 46:14	11:4,5,13 14:17
rights 43:2,12,17	11:16,17 15:21	space 37:2	subject 11:21 12:4	15:2 16:1 17:21
right-hand 5:17	17:9,15,19,20	Speaking 43:19	33:22	18:7 46:9
right-of 7:6 16:22	18:5,10 19:14	Special 8:10,11	submit 39:9 42:19	terminate 46:1
right-of-way 27:10	29:7,15,18 30:12	33:22 34:17	47:1	47:18 48:6
46:6	31:6 32:20 33:4	specific 17:6 43:6,7	submitted 4:11 7:1	terminated 10:12
river 15:18	33:16 38:7 41:7	specifically 8:22	19:9 23:5 29:11	terminating 45:16
Room 1:17	41:10 43:11	47:16	40:4 46:20	termination 11:12
Roughly 24:13	services 10:13	specifics 19:20	subscribe 22:8	Thank 4:18 15:9
route 10:10	11:12	specify 47:22	subsequent 25:14	18:13,21 44:17,20
routes 18:4	servicing 20:2	standard 20:13	41:5	51:3,7,9
rule 35:22	seventies 10:20	start 25:8 49:1	substantially 34:13	theory 22:8 23:10
run 15:12 35:17	24:3 38:20	started 23:6 25:3	sudden 38:22	thing 25:17 28:6
running 26:15	seven-day 44:3	starting 22:16,20	sufficient 35:21	42:18
Russell 5:1	shippers 10:13	starts 32:16	support 12:14 17:8	things 38:6
	18:12	state 4:8 38:12,14	20:4	think 6:11 8:15
S	shortly 19:11 21:4	stated 47:16	supposedly 21:20	11:19 16:10 17:1
Salandro 1:24	30:20	statement 18:1	sure 5:6 17:4 26:10	18:8 19:4,17
sale 29:1 49:15	show 20:18 23:6	19:9 26:11,20	34:8	20:11,14,20 22:14
saying 10:18 11:1	28:1 41:6	29:12	Surface 1:1,17	23:2 24:2,18,19
12:2 13:8 26:13	shown 11:15 14:21	statements 17:12	surrounded 31:4	25:3,7,9,17 28:15
39:1,3 40:8 50:5	48:2	states 1:1 46:2	survey 45:1 46:17	29:18 30:10 31:5
says 22:4,6 28:5,18	shows 11:16 14:1	status 9:2	surveying 45:3	31:22 33:11 34:10
39:10	20:16 28:16,17	STB's 12:10	surveyor 37:15	34:11,18,22 35:8
scope 30:2 37:19	44:6	Ste 2:7	switch 15:14	35:11,16,19 36:5
38:16	side 14:16 47:7	step 18:16	sworn 17:12	36:8 37:14 39:4
scrap 32:3,6	49:3	strange 49:8	system 7:20,22 8:9	39:16,18 40:16,17
second 29:21 45:6	sightings 17:12	Street 1:18 2:7,18	9:3,18 12:15,18	41:5 42:12 43:3
Secondary 23:4,7	significant 9:14	6:9,9,16 10:6,7,8	12:19 22:15,18	49:7,20 50:2,19
23:11	simply 10:12	10:9,15 11:6,8,14	23:3 24:20 25:11	third 38:19 40:19
see 6:5 7:13 23:16	single 12:16	13:17 14:5,7	25:14 34:13,21	thought 29:13

30:11 35:7,21 36:1 three 27:2 time 4:8 9:17 14:5 18:3 26:14 31:9 33:5,16 48:18 49:13 50:2 51:5 title 27:7 today 7:3 19:18 20:8 torn 38:21 totality 26:4 33:11 35:8 47:5 Township 40:19 track 5:18 7:18 9:10,10 11:7,8,9 11:16 12:3,3,6,7 12:12 13:4,14,16 13:17,18,21 14:1 14:4,6,7,10,13 15:1,12,17,19,20 15:21 16:2,4,6,8 16:12,13,19,21 19:5,7,7,10,12 20:4,16,17,20,21 21:1,2,2,3,8,14,19 21:21 22:3,4 23:5 24:17 25:21 26:1 26:5,11,12,14,17 26:21 27:6,10,11 27:11,12,15,18,20 28:1,2,4,6,7,8,10 28:11,12,14 29:22 30:6 31:3,4,7,10 31:12,22 32:11,13 32:15,16 35:2,4,9 37:10,16,22 38:9 38:22 39:1,2,5,6 39:15 41:11 42:16 43:1,7,8 44:9 45:8 45:14,15,17,20,21 45:22 46:4,5,11 47:6,12 48:1,7,20 trackage 10:22 40:2 tracks 12:20 25:19 25:22 26:19 27:2	27:4,8 28:19 40:5 tract 45:2 traffic 15:5,13 16:4 45:16,19 46:1 train 18:3 transaction 27:14 28:9 43:16 transfer 9:8 transferred 9:9 10:7 15:4 47:11 Transportation 1:1 1:17 24:8 traveling 48:12 truck 33:4 trucks 33:6 true 20:3 truncated 10:8 24:3 truncation 10:18 trustees 10:5 try 12:14 Tuesday 1:15 tunnels 38:6 turn 4:3 two 14:1,6,11 22:6 22:9 23:12 28:18 30:15 36:3 type 11:22 38:13	Valley 1:6 2:2 4:4 4:22 5:2,13,16,20 5:22 6:2 8:19 17:18 18:2 21:8 21:13,20 22:4 26:16 27:15,19 28:5,8,11,14,19 30:5 43:17 45:7 47:11 valuation 5:18 value 32:3,6 vandals 39:6 vehemently 38:3,4 verified 17:22 19:9 29:11 version 4:10 Vice 1:22 16:2,14 16:17 18:20 26:7 26:9 27:22 28:22 29:5 36:13,16 40:6 49:14 50:4 50:11,17 51:4,7 visual 17:12	16:5,16,20 17:5 17:16 18:14 19:17 20:7 41:18 44:18 44:20 46:16,19 47:2 48:14 49:10 49:20 50:9,15 wonder 44:3 wouldn't 9:6 12:4 34:5,5 49:8 Wow 42:5	10:6,9,15 11:6,13 15:19 18:7,12 19:14 20:2 21:16 32:15 40:1 44:9 45:11 49:3 1601 2:18 167558N 12:12 18 3:14 1972 23:22 24:5,7 1976 9:15 10:5 11:5 13:2 1983 5:4,7 14:18 16:6,11 27:14 28:9,22 47:10 48:2 1983-84 9:15 1984 12:11,21 13:19,22 16:10 19:11 21:7 24:15 25:10 30:21 31:8 34:3 40:12 45:8 49:17 50:14 1988 19:12 1993 11:14 15:21 16:3 20:15 1995 5:11 16:16,17 16:18,20 20:3 43:15,21 44:4 47:12 49:15	
26:21 27:6,10,11 27:11,12,15,18,20 28:1,2,4,6,7,8,10 28:11,12,14 29:22 30:6 31:3,4,7,10 31:12,22 32:11,13 32:15,16 35:2,4,9 37:10,16,22 38:9 38:22 39:1,2,5,6 39:15 41:11 42:16 43:1,7,8 44:9 45:8 45:14,15,17,20,21 45:22 46:4,5,11 47:6,12 48:1,7,20 trackage 10:22 40:2 tracks 12:20 25:19 25:22 26:19 27:2	U unclear 40:13 understand 15:9 22:10 26:10 36:22 49:5 understanding 22:17 understood 39:19 unfortunately 31:16 32:9 39:8 UNITED 1:1 unknown 38:19 upper 15:5 Urban 46:7 use 30:4 32:22 43:7 47:17 50:1	W Wait 8:8 want 26:10 Washington 1:18 2:19 wasn't 42:20 43:20 way 7:7 9:14 17:1 17:10 23:16,18 31:6 33:1 35:12 Wayne 13:15,16,17 14:3,4 15:3 25:12 went 14:6 39:2 weren't 23:8 44:12 we're 21:10 22:21 25:20 39:3,20 40:9 we've 8:15 width 27:1 38:1 Wilson 2:6 3:13,16 4:19,20 5:7 9:5,11 9:22 10:4 11:2 12:6 13:5,13 14:12,20 15:11	X x 1:5,14	Y yard 9:10 10:22 11:4,5,7 12:3,8 15:3 18:6 45:19 year 16:14 17:11 17:15 years 19:8,13,15 31:16 33:3 43:5 50:6,6	Z zone 11:15 ZTS 20:15
V V 1:10	0 0 24:10 0.0 21:8 47:7 0.2 24:10 0.3 21:12 49:2 0.6 21:9,12	1 1 2:7 6:18 1,500-foot-by 5:9 10:22 4:2 11th 10:7 22:20 25:9 11:09 51:13 12th 24:12 14th 24:12 1420 8:1 15 50:5,6 15931 2:8 16th 5:10 6:8,16	2 2 6:3 20 4:7 18:15 19:7 19:13 31:15 43:5 20006 2:19 2009 6:18 2010 1:15 202 2:20 21st 5:10 6:9,16 10:15 11:14 14:5 15:20 18:7,12 19:14 20:2 21:16 23:19 25:13 32:15 32:16 40:1 44:7 44:10 45:11 47:7 2229 22:17 25:2 27:16		

25 19:8,13,15 43:5
26 1:15

3

3 21:1
30 25:19
32783 5:15
35239 1:10
36 37:22
395 1:18

4

419-8152 2:9
43rd 18:5
44 3:16

5

5 3:13
518 2:7
53rd 45:19
57th 22:22

6

6 27:4,6

7

7 27:4,6
76 9:21,22
778-9456 2:20

8

8 11:8 15:20 16:2
 19:7,10 20:16
 27:4,11 45:21
814 2:9
84 9:21,22 13:3
 31:9 34:7,9 35:1
88 31:9

9

9:30 1:20
90 27:1 38:3
90-foot 5:10
95 49:1