

June 2, 2009

BY HAND DELIVERY

225205



The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street SW
Washington, DC 20423-00001

ENTERED
Office of Proceedings

JUN - 2 2009

Part of
Public Record

Re: STB Finance Docket No. 35239, Allegheny Valley Railroad Company – Petition for Declaratory Order

Dear Acting Secretary Quinlan:

Enclosed for filing are the original and ten copies of The Buncher Company's Reply To Allegheny Valley Railroad Company's Petition For Declaratory Order. Also enclosed is a disc containing the enclosed filings.

Please time and date stamp the extra copy of the filing and return it with our messenger.

If you have any questions, please contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Peter W. Denton'.

Peter W. Denton

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35239

ALLEGHENY VALLEY RAILROAD COMPANY –
PETITION FOR DECLARATORY ORDER

THE BUNCHE COMPANY'S
REPLY TO ALLEGHENY VALLEY RAILROAD COMPANY'S
PETITION FOR DECLARATORY ORDER

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**ATTORNEYS FOR
THE BUNCHE COMPANY**

Dated: June 2, 2009

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SURFACE TRANSPORTATION BOARD

Finance Docket No. 35239

ALLEGHENY VALLEY RAILROAD COMPANY –
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PETITION FOR DECLARATORY ORDER

Pursuant to 49 C.F.R. § 1112.2 and the decision served in this proceeding on May 13, 2009, The Buncher Company (“Buncher”) hereby submits this Reply to Allegheny Valley Railroad Company’s Petition for Declaratory Order (“Reply”). For the reasons set forth herein, Buncher strenuously objects to the claims made by the Allegheny Valley Railroad Company (“AVRR”) and respectfully requests that the Surface Transportation Board (“Board”) issue an order declaring that it has no jurisdiction over the property owned by Buncher between 16th Street and 21st Street in the City of Pittsburgh, Pennsylvania.

I. Summary of Argument

In its Petition for Declaratory Order (“Petition”), AVRR asks the Board to declare that AVRR has the right to construct track, install passenger rail platforms and commence passenger and freight rail service over a parcel of land owned by Buncher between 16th Street and 21st Street in the Strip District in downtown Pittsburgh. AVRR claims to have acquired from Consolidated Rail Corporation (“Conrail”) in 1995 a “rail easement” over the land formerly occupied by Conrail’s Valley Industrial Track between MP 0.3 (16th Street) and MP 0.6 (21st Street). AVRR repeatedly asserts in its Petition that neither AVRR nor Conrail ever filed for abandonment of this purported easement.

Contrary to AVRR's claims, Conrail filed for and received abandonment authority on this portion of the Valley Industrial Track in 1984, soon after it sold the underlying property to Buncher. In a decision served on May 18, 1984, the Interstate Commerce Commission ("ICC") issued a certificate authorizing Conrail to abandon the Valley Industrial Track between milepost 0.0 (near the Fort Wayne Bridge) and milepost 0.66 (at the north side of 21st Street).¹ Within a few years thereafter, and several years prior to AVRR's transaction with Conrail, all of the Conrail trackage on the Buncher property between 16th and 21st Street had been removed and the entire parcel was filled, graded and prepared for non-railroad use. There has been no trackage on this property for more than 20 years and no rail service has been provided on this property for more than 25 years as a result of Conrail's abandonment.

Conrail's receipt of abandonment authority from the ICC with respect to the Valley Industrial Track released Conrail from any common carrier obligation over the property that it sold to Buncher in 1983. The abandonment authority was granted unconditionally under the Northeast Rail Services Act of 1981 ("NERSA"). Pursuant to the holding in Lucas v. Township of Bethel, 319 F.3d 595 (3rd Cir. 2003), the ICC's jurisdiction over such property ended upon issuance of such abandonment authority and without regard to whether Conrail exercised such abandonment authority. Nonetheless, the subsequent removal of track and lack of objection by Conrail to the filling and grading of the property confirmed Conrail's intent to abandon that portion of its system. Such actions also extinguished, under Pennsylvania law, the easement that Conrail had reserved over this portion of property, thereby precluding Conrail from conveying any such easement or common carrier rights to AVRR in 1995.

¹ The abandoned segment included the portion of the Valley Industrial Track on Buncher's property between MP 0.3 (16th Street) and MP 0.6 (21st Street).

As a result of the foregoing, Buncher respectfully requests that the Board issue a declaratory order confirming that the parcel of land formerly occupied by the Valley Industrial Track between 16th Street and 21st Street is not a "line of railroad" subject to the Board's jurisdiction.

II. Background

The parcel of land in question, between 16th Street and 21st Street in Pittsburgh's Strip District,² was once part of a complicated network of terminal railroad tracks on the southeast side of the Allegheny River near downtown Pittsburgh. This network of tracks (including yard ladder tracks, industrial tracks and sidings) formed part of the former Pennsylvania Railroad's Allegheny Branch.³ The trackage generally extended in a northeasterly direction, roughly parallel to the Allegheny River, from the southern end of the Fort Wayne Bridge at 11th Street through an area historically referred to as the Pittsburgh Produce Yards that was adjacent to the former Pennsylvania Railroad's Fruit Auction and Terminal Building ("Fruit Auction Building"). The Allegheny Branch then continued beyond that terminal area to points northeast of Pittsburgh. A map which shows the historical location of various tracks in this area is attached as Exhibit A to the Verified Statement of Joseph M. Jackovic, Executive Vice President and General Counsel of Buncher ("Jackovic V.S.", which is attached hereto and incorporated by reference herein).

² AVRR describes the Strip District in the Verified Statement of Russell A. Peterson ("Peterson V.S.") at 2.

³ The Pennsylvania Railroad acquired the Allegheny Branch from the former Allegheny Valley Railway Company in the early 1900's. AVRR is not a legal successor to the Allegheny Valley Railway Company.

Starting in the late 1970's and continuing through the 1980's, the land underlying the Pittsburgh Produce Yards area was sold by the Pennsylvania Railroad's successors to Buncher, The Urban Redevelopment Authority of Pittsburgh ("URA") or the Pennsylvania Department of Transportation ("PennDOT").⁴ By the late 1980's, all of the trackage within the Strip District between the Fort Wayne Bridge at 11th Street and the eastern endpoint of Buncher's property at 21st Street had been removed because the railroads had by that point completely ceased operations in that area. AVRR's railroad trackage, which it acquired from Conrail in 1995, begins at a point east of 21st Street and the Fruit Auction Building and continues from that point northeast to New Kensington, PA. An aerial map of the relevant property as it looks today is attached to the Jackovic V.S. as Exhibit B. The map shows that all of the former trackage west of 21st Street no longer exists.

A. Cessation of Railroad Operations in the Terminal Area

As noted in AVRR's Petition, with the expansion of grocery store chains and the shift to truck transportation in the 1950's, rail service to the produce merchants in the Pittsburgh Produce Yards area began to decline. By the early 1970's, the Pennsylvania Railroad and its successors began the process of abandoning operations and selling off property in the area between the Fort Wayne Bridge and 21st Street.⁵ By the mid-to-late 1980's, all of the railroad operations in the

⁴ Buncher acquired most of the property in the Pittsburgh Produce Yards area between 11th and 21st Streets. URA acquired the Fruit Auction Building and some property adjacent thereto. PennDOT acquired certain land necessary to construct the I-579 Veterans Bridge, which was completed in 1987 and provides vehicular access across the Allegheny River at a point near 13th Street.

⁵ For example, on April 18, 1972, the ICC approved an application by the Penn Central Transportation Company ("PCTC") to abandon the 0.2-mile portion of the Allegheny Branch, together with associated side tracks, between 12th Street and 14th Street. See ICC Finance Docket No. 26942, attached to the Jackovic V.S. as Exhibit C.

Strip District adjacent to the Allegheny River between 11th and 21st Street had ceased and all trackage had been removed.⁶

B. The 1978 Conveyance from PCTC to Buncher

Following the bankruptcy filing of the Penn Central Transportation Company ("PCTC," a successor to the Pennsylvania Railroad), the U.S. Railway Association ("USRA") in its Final System Plan of 1975 directed PCTC to convey to Conrail the following portions of the Allegheny Branch that were identified by USRA as Line Code 2229:

- Pittsburgh 11th Street to Pittsburgh 57th Street: MP 0.2-4.6
- Pittsburgh 57th Street to New Kensington: MP 4.6-18.6
- New Kensington to Arnold: MP 18.6-19.5

In 1976, PCTC conveyed to Conrail the above-listed portions of the Allegheny Branch but reserved and excepted from the sale a large parcel of land adjacent to the Allegheny River in the Strip District between 16th Street and 21st Street. The Penn Central Corporation ("PCC," a successor to PCTC) conveyed a significant portion of this parcel (approximately 10.5 acres) to Buncher in 1978.

C. The 1983 Conveyance from Conrail to Buncher

In a July 20, 1983 deed (the "1983 Deed," attached to the Jackovic V.S. as Exhibit D), Conrail conveyed to Buncher a rectangular strip of land (the "1983 Parcel") that Conrail had acquired from PCTC in the 1976 transaction. The 1983 Parcel was immediately to the southeast of and adjacent to the larger parcel acquired by Buncher from PCC in 1978.⁷ It is this

⁶ The rail siding that previously provided direct rail access to the Fruit Auction Building, and which was located on property later purchased by the URA, was removed during this time period.

⁷ Exhibit E to the Jackovic V.S. is a map which shows the distinction between the 1978 and the 1983 conveyances.

rectangular strip of property that Buncher acquired from Conrail in 1983 that is the subject of this proceeding.

The parcel is described in the 1983 Deed as a portion of the Allegheny Branch identified as USRA Line Code 2229, between 91.59 feet and 89.94 feet in width and between 1402.57 feet and 1541.56 feet in length, containing an area of approximately 3.21 acres and extending between 16th and 21st Streets. Jackovic V.S. Exhibit E at 2. At the time of the conveyance, the parcel contained Track No. 6, Track No. 7, and the Valley Industrial Track, running generally parallel to each other.⁸

The 1983 Deed also conveyed to Buncher "all the right, title and interest of [Conrail] in and to 3,000 lineal feet of railroad track and appurtenances thereto, being Track No. 6 and Track No. 7, located on the above described premises." Jackovic V.S. Exhibit D at 2. The 1983 Deed contained the following reservation:

... unto [Conrail], its successors and assigns, the permanent right and easement to continue to operate over and maintain its so-called Valley Industrial Track which traverses the land hereinbefore described, together with the right of nonexclusive access to said track for the purposes aforesaid; it being expressly understood and agreed by and between the parties hereto that [Buncher] will not construct any improvements over said track or within eighteen (18) feet of the centerline thereof or conduct any work or otherwise occupy a strip of land twelve (12) feet in width on either side of said track as measured from the centerline thereof, or construct or permit any crossings, at grade, of said track. Id.

Thus, the 1983 Deed conveyed to Buncher a strip of land approximately 90 feet in width and extending between 16th and 21st Streets, lying immediately to the south of the larger parcel that Buncher acquired in 1978 and immediately to the north of the property that the URA acquired from the Pennsylvania Railroad or its successors around the same general time period.

See Jackovic V.S. at 4. In the 1983 Deed, Buncher also acquired all of Conrail's right, title and

⁸ The Valley Industrial Track is also referred to as Track No. 8 in various maps from that early 1980's period, which is logical given its location north of Tracks 6 and 7.

interest in and to Track No. 6 and Track No. 7, which were removed from the property soon after Buncher's acquisition.

As noted above, Conrail reserved from the 1983 conveyance to Buncher an easement "to operate over and maintain its so-called Valley Industrial Track." At the time of the conveyance, the Valley Industrial Track was also referred to as Track No. 8 and traversed the rectangular parcel of property in a general straight-line direction paralleling Tracks No. 6 and 7. Buncher believes that Conrail may have retained this easement over the property because it thought at the time that Buncher might want to receive rail service at that location. See Jackovic V.S. at 5.⁹ However, when it was determined that Buncher had no interest in receiving rail service, the trackage was soon thereafter removed from the property once Conrail filed for and obtained abandonment authority.

D. Conrail's 1984 Abandonment of the Valley Industrial Track

Approximately two months after conveying the 1983 Parcel between 16th and 21st Street to Buncher subject to the retained easement, Conrail filed a Notice of Insufficient Revenue ("NIR") with the ICC for the relevant portion of the Valley Industrial Track.¹⁰ On February 3, 1984, after waiting the requisite 90 days following the filing of its NIR, Conrail filed an Application under the Northeast Rail Services Act ("NERSA") for abandonment of relevant

⁹ Conrail also may have retained the easement because it had not yet filed for abandonment on that portion of its system.

¹⁰ As noted in Conrail's 1984 Application for Abandonment which is attached as Exhibit F to the Jackovic V.S., the portion of the Valley Industrial Track between milepost 0.0 and milepost 0.66 generated no revenues or expenses at that time. It was no longer being used.

portions of the Valley Industrial Track and the connecting Fort Wayne Industrial Track. A copy of this Application is attached to the Jackovic V.S. as Exhibit F.¹¹

In a decision served May 18, 1984, in ICC Docket No. AB-167 (Sub-No. 588N), attached to the Jackovic V.S. as Exhibit G, the ICC issued a certificate authorizing Conrail to abandon:

a total of 1.46 miles of rail line of the Fort Wayne Connecting Track (including the lower level of the Fort Wayne Bridge) from a point in Pittsburgh on the east side of Sandusky Street where Conrail's line connects with the Conemaugh Main Line (approximately milepost 0.8) to its junction with the Valley Industrial Track (approximately MP 0.0) and the Valley Industrial Track from its connection with the Fort Wayne Connecting Track in Pittsburgh (approximately MP 0.0) to the north side of 21st Street (approximately MP 0.66) in Allegheny County, PA. (emphasis added)

This abandoned portion of the Valley Industrial Track from MP 0.0 to MP 0.66 (between the lower level of the Fort Wayne Bridge and the north side of 21st Street) encompasses the former portion of the Valley Industrial Track between MP 0.3 (16th Street) and MP 0.6 (the south side of 21st Street) that AVRR wrongly claims is still a line of railroad subject to Board jurisdiction.¹²

At some point between Conrail's receipt of abandonment authority in 1984 and 1988, all of the trackage of the former Valley Industrial Track west of 21st Street (including the relevant portion between 16th and 21st Street) was removed and the entire area was filled, graded and otherwise prepared for non-railroad use. See Jackovic V.S. Exhibit H. In more recent years, Buncher has defined the boundaries of its property between 16th and 21st Street with concrete jersey barriers to prevent the trucks serving the Fruit Auction Building from traversing its property. See Jackovic V.S. at 5-6.

¹¹ There appears to be a typographical error on the year shown on the Application transmittal letter, but the ICC Office of Proceedings stamp reflects the filing date as February 3, 1984.

¹² The abandonment of the Fort Wayne Connecting Track severed the Allegheny Branch from its previous connection across the Allegheny River at the Fort Wayne Bridge. The connecting track and all associated trackage and ramps from the Fort Wayne Bridge east to the Pittsburgh Produce Yards area were removed many years ago. See Jackovic V.S. at 5-6.

E. The 1995 Transaction Between AVRR and Conrail

Pursuant to an October 27, 1995 quitclaim deed (the “1995 Deed,” attached to the Jackovic V.S. as Exhibit D), Conrail conveyed to AVRR “the line of railroad known as the Allegheny Branch (a.k.a. the Valley Industrial Track and the Coleman Secondary) and identified as Line Code 2229 . . .” Jackovic V.S. Exhibit I at 1. The 1995 Deed described this line of railroad, in part, as “beginning at approximately Railroad Mile Post 0.6, being the centerline of 21st Street . . . thence extending in a general northeasterly direction to approximately Railroad Mile Post 4.7 . . .” Id. The 1995 Deed also describes the other segments of the so-called Valley Industrial Track and Coleman Secondary, which generally equate to the portion of Line 2229 that Conrail acquired from PCTC in the 1976 transaction between Pittsburgh 57th Street and New Kensington.

The 1995 Deed also purported to convey to AVRR the following:

[Conrail’s] right, title, and interest in and to the easement to operate over and maintain the Valley Industrial Track between Railroad Mile Post 0.3, more or less, at the northeasterly side of 16th Street and Railroad Mile Post 0.6, more or less, at the centerline of 21st Street, all in the City of Pittsburgh and being the beginning of the above described Premises, as indicated by “PS” on sheet 1 of 27 of Exhibit “C”, said right and easement reserved in a July 20, 1983 deed from [Conrail] to the Buncher Company...¹³

As described in the quotation above, Sheet 1 of 27 of Exhibit C to the 1995 Deed contains a “PS” notation along a parcel of land of between 16th Street and 21st Street marked as approximately MP 0.3 to MP 0.6 and captioned “EASEMENT ONLY TO BE CONVEYED.”

As explained further below, Buncher does not believe that Conrail had any easement rights that

¹³ The 1995 Deed contained a cross-reference to the original easement language from the 1983 Deed, but then proceeded to recite language with no apparent relation to the purported easement. A deed dated November 26, 2008 from Conrail to AVRR corrected this error and recited the accurate language from the 1983 Deed.

could have been conveyed to AVRR in 1995 and also disputes AVRR's interpretation of the width of this easement.

F. AVRR's 1995 Acquisition and Operation Exemption Filing

On October 23, 1995, AVRR filed with the ICC a Notice of Exemption in Finance Docket No. 32783 (attached to the Jackovic V.S. as Exhibit J) to acquire and operate the lines of railroad conveyed to AVRR by Conrail in the 1995 Deed. These "rail lines" are described by AVRR in its 1995 notice filing as including the portion of the Valley Industrial Track "between MP 0.3 and MP 4.7." Although AVRR's notice description included the portion of the Valley Industrial Track between MP 0.3 and MP 0.6, the Map attached to its Notice of Exemption correctly stated that the "Line Dead-Ends At 21st St., Pittsburgh." See Jackovic V.S. Exhibit J at 8.

G. AVRR Operations Since 1995

Since 1995, AVRR's operations on the Valley Industrial Track have commenced at 21st Street. AVRR has not operated over any portion of the Valley Industrial Track between MP 0.3 (16th Street) and MP 0.6 (21st Street) because there has been no trackage there for more than 20 years. According to its Petition, AVRR serves three produce shippers in the vicinity of the Pittsburgh Produce Yards area from its public delivery team track on the north side of 21st Street and another shipper from a private siding north of Railroad Street.

According to its Petition, AVRR now wants to construct new track over Buncher's property between 16th and 21st Streets for the following purposes: (1) to provide commuter rail passenger service between New Kensington and Pittsburgh during and after the reconstruction of State Route 28, and (2) to provide head and tail room to facilitate its freight switching operations on the public team track at 21st Street. AVRR does not claim that it wants to serve new freight

customers over that easement, because it knows that the underlying and adjacent land owner (Buncher) is not interested in receiving rail service at that location. See Jackovic V.S. at 8.

In its May 13, 2009 decision instituting this proceeding, the Board describes AVRR's commuter rail proposal as "part of a wider plan envisioned by various public entities." Buncher disagrees with the Board's suggestion that there is a wide level of public support for AVRR's passenger rail proposal. In fact, Buncher is not aware of any public authority with jurisdiction over the Strip District which has endorsed AVRR's proposal. Buncher and other key stakeholders are participating in a master planning study funded by the URA that is studying possible development options in the Strip District and the neighboring community of Lawrenceville. This planning group has not supported AVRR's proposal. No funding has been committed to AVRR's commuter rail proposal and it is not included in any state or local transportation plans at this point. In effect, it is just an idea that has failed to attract widespread public support.

Buncher believes that the commuter rail proposal has failed to attract such support for various reasons, many of which were identified in the portions of the 2003 Eastern Corridor Transit Study that are attached as Exhibit K to the Peterson V.S. Assuming AVRR even had rights to establish such commuter rail service over Buncher's property (which Buncher denies),¹⁴ the proposed service would not provide direct access into downtown Pittsburgh. Instead, it would terminate in the Strip District and require passengers to find other transportation options

¹⁴ The easement Conrail reserved from the 1983 conveyance to Buncher refers only to use and maintenance of the then-existing Valley Industrial Track, and did not provide Conrail with rights to establish passenger rail platforms and associated infrastructure over the Buncher property.

(such as bus service) to get downtown.¹⁵ Similarly, it is not evident how passenger service between New Kensington and the Strip District on the southeast slope of the Allegheny River would alleviate traffic congestion resulting from the temporary rehabilitation of State Route 28, which is on the opposite side of the river and serves different communities. Finally, as noted in the 2003 Transit Study, the proposed service would require new maintenance yards and facilities, land for parking lots and a significant level of both capital funding (approximately \$258 million in 2003 dollars) and ongoing operating and maintenance funding that is not available today. See Jackovic V.S. at 8-9.

III. Argument

A. The Alleged Easement Property Is No Longer Subject to Board Jurisdiction

AVRR asserts repeatedly throughout its Petition that “[n]either Conrail nor AVRR have ever sought abandonment authorization from the ICC or the STB for the Valley Industrial Track between 21st Street and 16th Street.” See, e.g., Petition Legal Argument at 6. This is plainly incorrect. The abandonment authority sought by Conrail and granted by the ICC on May 14, 1984 in ICC Docket No. AB-167 (Sub-No. 588N) released Conrail, and its successors and assigns, from any common carrier rights or obligations over the Valley Industrial Track between MP 0.0 (the junction of the Valley Industrial Track and the Fort Wayne Bridge Connecting Track at approximately 11th Street) and MP 0.66 (at the north side of 21st Street). This abandonment included the portion of the Valley Industrial Track which previously extended across Buncher’s property between 16th and 21st Streets.

¹⁵ Moreover, such passengers would not have rights to trespass on Buncher’s surrounding property and therefore would have to traverse over property encumbered by any valid railroad easement in order to exit the area.

The ICC authorized this abandonment pursuant to section 308 of the Regional Rail Reorganization Act of 1973, which was added by NERSA and provided expedited abandonment procedures for Conrail given its precarious financial condition at the time. 45 U.S.C. § 748. Section 308(a) provides that any abandonment application filed with the ICC by Conrail under NERSA shall be governed by section 308, and not the standard abandonment requirements found in 49 U.S.C. Chapter 109. Id. at § 748(a).

Under currently applicable regulations, a railroad that obtains abandonment authority from the Board under Chapter 109 must file a notice of consummation within one year of obtaining such authority unless legal barriers to consummation remain in place. See 49 C.F.R. § 1152.29(e)(2). This requirement, however, did not exist at the time of Conrail's receipt of the abandonment certificate from the ICC under NERSA for the relevant portion of the Valley Industrial Track. Therefore, Conrail was not required to file a letter of consummation with the ICC in order to perfect the exercise of its abandonment authority.¹⁶

Since Conrail obtained abandonment authority for the relevant portion of the Valley Industrial Track under NERSA, and the abandonment was not conditioned on any environmental or other conditions, the ICC's jurisdiction over the track ended upon the ICC's issuance of the abandonment certificate in May 1984. Lucas v. Township of Bethel, 319 F.3d 595 (3rd Cir. 2003) ("Township of Bethel"). As the Third Circuit concluded in Township of Bethel, an unconditional grant of abandonment authority under NERSA concludes the agency's jurisdiction

¹⁶ The ICC's May 1984 abandonment certificate asked Conrail to advise the ICC in writing of the date on which the abandonment actually took place. We have not found any evidence yet that Conrail provided such written notice to the ICC. However, we understand from a discussion with the STB's records department that such a letter may not necessarily have been placed in the public docket that is available for review today. Moreover, proof of the existence of such a notice letter is not required to establish that the ICC's jurisdiction over the property ceased upon issuance of the abandonment certificate under NERSA. See Lucas v. Township of Bethel, 319 F.3d 595 (3rd Cir. 2003).

and makes it clear that any remaining property dispute may be resolved in accordance with state property law.

Moreover, through its actions prior and subsequent to receiving abandonment authority from the ICC, Conrail made clear its intent to exercise such abandonment authority and sever the portion of the Valley Industrial Track between MP 0.3 and MP 0.6 from its interstate rail network. Conrail's request for abandonment authority under the expedited 90-day procedure provided under NERSA was part and parcel of its effort to sell off property no longer used for active rail operations. Prior to filing for abandonment authority, and only a few months after selling the underlying property to Buncher, Conrail filed a Notice of Insufficient Revenue which reflected the fact that the relevant portion of the Valley Industrial Track was dormant and generated no revenues or expenses. See Exhibit F to the Jackovic V.S. at 2.

Within a few years after Conrail obtained the abandonment certificate from the ICC, all of the relevant portions of the Valley Industrial Track were removed from the Buncher property between 16th and 21st Street and the entire area was filled and graded for non-railroad use.¹⁷ In more recent years, Buncher has defined the boundaries of its property with concrete jersey barriers. Conrail never objected to Buncher's occupancy of the entirety of its property, and never attempted to reconstruct track or recommence rail service in this area. By 1993, two years prior to Conrail's transaction with AVRR, the portion of its system that used to exist between 16th and 21st Street was no longer reflected in Conrail's Customer Service Guide. See Exhibit H to Peterson V.S. (showing Valley Industrial Track stub-ending at 21st Street).

¹⁷ Although Buncher cannot determine with certainty when the tracks were removed and the land was filled and graded, it has determined from a review of aerial photographs and its knowledge of the area that this occurred at some point between issuance of the May 1984 abandonment certificate and 1988.

In summary, the ICC's issuance of unconditional abandonment authority with respect to the portion of the Valley Industrial Track between MP 0.3 and MP 0.6 ended federal regulatory jurisdiction over such property. Moreover, the track removal and lack of objection to the filling and grading of the property for non-railroad use shortly after receiving ICC abandonment authorization further evidenced Conrail's intent to abandon the rail line and easement in question. Conrail's abandonment means that, as of 1984, the Valley Industrial Track from MP 0.0 to MP 0.66 was no longer a line of railroad subject to ICC or STB jurisdiction. Because Conrail extinguished its common carrier rights over this portion of former track and severed such property from the interstate rail network, Conrail did not and could not convey such common carrier rights to AVRR in the 1995 Deed. Therefore, AVRR currently has no common carrier rights or obligations over the strip of land owned by Buncher which previously contained the portion of the Valley Industrial Track between MP 0.3 (16th Street) and MP 0.6 (21st Street).¹⁸

B. AVRR Wrongly Asserts that Conrail Reserved a 90-Foot-Wide Easement Over Buncher's Property

AVRR further claims that Conrail conveyed to AVRR through the 1995 Deed a 90-foot-wide easement over Buncher's property between 16th and 21st Street. See Peterson V.S. at 5. AVRR claims that this purported 90-foot-wide easement includes a 60-foot-wide section

¹⁸ The fact that AVRR referenced the non-existent segment of the Valley Industrial Track between MP 0.3 and MP 0.6 in its 1995 Notice of Exemption did not reimburse such property with jurisdictional status. AVRR has never operated over this property, never had any ability to operate over this property without reconstructing tracks across Buncher's property, and at most can claim that it received a quitclaim conveyance of limited easement rights over this property from Conrail which had been extinguished after Conrail received ICC abandonment authority. AVRR's failure to disclose these facts in its 1995 Notice of Exemption makes its reference to acquiring and operating the segment of the Valley Industrial Track between MP 0.3 and MP 0.6 false, misleading and therefore *void ab initio*.

comprised of a 32-foot “no build” zone¹⁹ and an additional 24-foot “no work or occupancy” zone. Id. AVRR claims that, in addition to this purported 60-foot section, the “balance of the 90 foot wide permanent rail easement remains subject to AVRR’s nonexclusive access rights to the Valley Industrial Track and tracks 6 and 7 for operational and maintenance purposes as confirmed by Map Sheet 1 of 27 appended to the 1995 Conrail-AVRR deed.” Id.

AVRR’s contention that it has a 90-foot-wide easement over Buncher’s property is incorrect. The 1983 Deed from Conrail to Buncher created a “no build” zone within 18 feet of the centerline of the then-existing Valley Industrial Track and a separate and contiguous “no work or occupancy” zone within 12 feet of the same centerline. See Jackovic V.S. Exhibit D at 2. These zones are not cumulative. At most, the Buncher property once encumbered by this now-extinguished easement held by Conrail was only 36 feet wide.

AVRR contends that its 1995 Deed from Conrail created an additional 30-foot-wide easement of “nonexclusive access rights to the Valley Industrial Track and tracks 6 and 7 for operational and maintenance purposes.” Peterson V.S. at 5. Conrail could not have conveyed to AVRR in the 1995 Deed any easement rights that Conrail did not reserve in its 1983 transaction with Buncher. Because the 1983 Deed only reserved for Conrail these two separate and limited 18-foot “no build” and 12-foot “no work or occupancy” zones, Conrail did not convey any additional 30-foot easement to AVRR in the 1995 Deed. The non-exclusive access rights claimed by AVRR are not synonymous with easement rights. In addition, these non-exclusive access rights only applied to the Valley Industrial Track (Track No. 8), because Buncher

¹⁹ AVRR’s claim of a 32-foot “no build” zone is a miscalculation. The purported easement calls for a “no build” zone within 18 feet of the centerline of the Valley Industrial Track, which would create a 36-foot zone. Jackovic V.S. Exhibit E at 2.

acquired full ownership of Tracks No. 6 and 7 from Conrail in the 1983 Deed. See Jackovic V.S. Exhibit D at 2.²⁰

C. AVRR's Reliance on the Effingham Decision Is Misplaced

AVRR claims that “[t]he acquisition of any rail line that becomes the entire line of a new common carrier railroad is subject to STB jurisdiction because, notwithstanding the use made of the tracks by the prior owner, the newly acquired tracks comprised AVRR’s entire line of railroad on which it offers through rail freight service.”²¹ In the instant case, this argument is inapplicable because AVRR acquired a series of contiguous rail line segments from Conrail between 21st Street and New Kensington that comprise the “lines of railroad” on which AVRR offers through rail freight service. Unlike the situation in Effingham and related cases, AVRR is not operating solely on trackage within an industrial park that constitutes its entire system.²²

D. AVRR Has Not Been Holding Itself Out To Provide Common Carrier Service Over Buncher's Property

AVRR further claims that, because it lists the “Pittsburgh Produce Terminal” in its current freight tariff, it has been holding itself out to provide common carrier service pursuant to its alleged easement rights over the Buncher property between 16th and 21st Streets. This is not

²⁰ AVRR also claims, in a footnote, that “rail carriers are entitled to a presumption that their entire right-of-way is necessary for safe and effective transportation.” Petition Legal Argument at 4, note 2. Such a presumption, which may be relevant in situations where a railroad owns and operates over the entire width of its right-of-way and is objecting to an encroachment for non-railroad use, does not prove that Conrail reserved a 90-foot easement over Buncher’s property when the specific terms of the easement only applied to a strip of property 36-feet in width.

²¹ Petition Legal Argument at 7, citing to Effingham R.R. Co. – Petition for Declaratory Order, 2 STB 606 (1997).

²² If AVRR’s line of reasoning was taken to its logical conclusion, it would mean that every piece of track on AVRR’s system would be a line of railroad subject to STB abandonment jurisdiction. This is not the case, as AVRR owns numerous tracks (including the siding that serves the private customer at 21st Street and various other sidings or double-tracked locations on various portions of its system) that would qualify as excepted tracks under 49 U.S.C. § 10906.

true. As AVRR explained in its Petition, it has been serving three customers in the vicinity of the Pittsburgh Produce Yards area from its public team track at 21st Street. In addition, it has been serving a private customer from a siding that branches off from that team track near 21st Street. The reference to the Pittsburgh Produce Terminal in AVRR's tariff (and in the Open and Prepay Station List which AVRR also refers to in its Petition) reflects this existing service at 21st Street. Such references do not establish that AVRR has been holding itself out to provide common carrier service between 16th and 21st Street. As AVRR knows, it would have to reconstruct track over the Buncher property in order to provide such service, and the only customer that would have access to such track (Buncher, which owns the underlying and adjacent property) is not interested in receiving rail service.

E. Conrail's Easement Over the Buncher Property Was Extinguished When The Tracks Were Removed and the Property Was Filled and Graded

AVRR acknowledges that the extinguishment of common carrier rights over the Valley Industrial Track would alter the alleged "perpetual" nature of the easement that Conrail once reserved over Buncher's property. AVRR claims that the easement rights "were intended by the parties to be perpetual so long as the Valley Industrial Track was owned and used for current or future common carrier railroad purposes." Petition Legal Argument at 2. Because the relevant portion of the Valley Industrial Track was abandoned by Conrail, the easement lost its purportedly perpetual nature.

The track's abandonment and removal, and the filling and grading of the underlying property for non-railroad use without objection from Conrail, extinguished under Pennsylvania law any easement that Conrail reserved over this property in the 1983 transaction with Buncher. In its 1995 transaction with AVRR, Conrail could only quitclaim whatever easement rights that it had at the time. Although the Board has no jurisdiction to determine state law property issues,

Buncher believes that Conrail extinguished all such rights under Pennsylvania law prior to its 1995 transaction with AVRR through its stated intention to abandon use of the easement and receipt of such abandonment authority from the ICC, coupled with removal of the track facilities and acquiescence in the access restrictions of the formerly burdened land which were imposed thereafter by Buncher. The Board should confirm that all federal regulatory jurisdiction over the relevant property was extinguished upon Conrail's receipt of abandonment authority in May 1984, thus enabling the parties to resolve any remaining property disputes under state law.

IV. Conclusion

For the foregoing reasons, Buncher respectfully requests that the Board issue a declaratory order confirming that the Board no longer has jurisdiction over the property owned by Buncher between 16th and 21st Streets in Pittsburgh, Pennsylvania.

Respectfully submitted,



Edward J. Fishman
Peter W. Denton
K&L Gates LLP
1601 K Street NW
Washington, D.C. 20006
(202) 778-9000

**ATTORNEYS FOR
THE BUNCHER COMPANY**

Dated: June 2, 2009

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2009, I caused the foregoing **The Buncher Company's Reply To Allegheny Valley Railroad Company's Petition For Declaratory Order** to be served via first class mail, postage prepaid, on all parties of record and on the following:

Richard R. Wilson, Esq.
518 North Center Street, Suite 1
Ebensburg, PA 15931



Peter W. Denton

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35239

**ALLEGHENY VALLEY RAILROAD COMPANY –
PETITION FOR DECLARATORY ORDER**

VERIFIED STATEMENT OF JOSEPH M. JACKOVIC

My name is Joseph M. Jackovic and I am the Executive Vice President and General Counsel of The Buncher Company (“Buncher”). My business address is Penn Liberty Plaza I, 1300 Penn Avenue, Suite 300, Pittsburgh, PA 15222-4211. I am authorized to make this Verified Statement on behalf of Buncher.

Buncher is a privately-held real estate development and services company based in Pittsburgh, PA. Buncher owns several parcels of property that were formerly used by the Pennsylvania Railroad and its successors in an area within the Second Ward of the City of Pittsburgh known as the Strip District. The parcel of land at issue in this proceeding – between 16th Street and 21st Street – was once part of a complicated network of terminal railroad tracks on the southeast side of the Allegheny River near downtown Pittsburgh. This network of tracks (including yard ladder tracks, industrial tracks and sidings) formed part of the former Pennsylvania Railroad’s Allegheny Branch. The trackage generally extended in a northeasterly direction, roughly parallel to the Allegheny River, from the southern end of the Fort Wayne Bridge at 11th Street through an area historically referred to as the Pittsburgh Produce Yards that was adjacent to the Pennsylvania Railroad’s Fruit Auction and Terminal Building (“Fruit Auction Building”). The Allegheny Branch then continued beyond that terminal area to points

northeast of downtown Pittsburgh. A map which shows the historical location of various tracks in this area is attached as Exhibit A.

Starting in the late 1970's and continuing through the 1980's, the land underlying the Pittsburgh Produce Yards area was sold by the Pennsylvania Railroad's successors to Buncher, The Urban Redevelopment Authority of Pittsburgh ("URA"), or the Pennsylvania Department of Transportation ("PennDOT"). Buncher acquired most of the property in the Pittsburgh Produce Yards area between 11th and 21st Streets. URA acquired the Fruit Auction Building and some property adjacent thereto. PennDOT acquired certain land necessary to construct the I-579 Veterans Bridge, which was completed in 1987 and provides vehicular access across the Allegheny River at a point near 13th Street.

As noted in AVRR's Petition, with the expansion of grocery store chains and the shift to truck transportation in the 1950's, rail service to the produce merchants in the Pittsburgh Produce Yards area began to decline. By the early 1970's, the Pennsylvania Railroad and its successors began the process of abandoning operations and selling off property in the area between the Fort Wayne Bridge and 21st Street. On April 18, 1972, the ICC approved an application by the Penn Central Transportation Company ("PCTC") to abandon the 0.2-mile portion of the Allegheny Branch, together with associated side tracks, between 12th Street and 14th Street. See ICC Finance Docket No. 26942, attached hereto as Exhibit C.

By the late 1980's, all of the trackage within the Strip District between the Fort Wayne Bridge at 11th Street and the eastern endpoint of Buncher's property at 21st Street had been removed because the railroads had by that point completely ceased operations in that area. AVRR's railroad trackage, which it acquired from the Consolidated Rail Corporation ("Conrail") in 1995, begins at a point east of 21st Street and the Fruit Auction Building and continues from

that point northeast to New Kensington, PA. An aerial map of the relevant property as it looks today is attached hereto as Exhibit B. By the mid-to-late 1980s, all of the railroad operations in the Strip District adjacent to the Allegheny River between 11th and 21st Streets had ceased and all trackage had been removed. The map shows that all of the former trackage west of 21st Street no longer exists.

Following the bankruptcy filing by the Penn Central Transportation Company (“PCTC”), a successor to the Pennsylvania Railroad, the U.S. Railway Association (“USRA”) in its Final System Plan of 1975 directed PCTC to convey to Conrail the following portions of the Allegheny Branch that were identified by USRA as Line Code 2229:

- Pittsburgh 11th Street to Pittsburgh 57th Street: MP 0.2-4.6
- Pittsburgh 57th Street to New Kensington: MP 4.6-18.6
- New Kensington to Arnold: MP 18.6-19.5

In 1976, PCTC conveyed to Conrail the above-listed portions of the Allegheny Branch but reserved and excepted from the sale a large parcel of land adjacent to the Allegheny River in the Strip District between 16th Street and 21st Street. The Penn Central Corporation (“PCC,” a successor to PCTC), conveyed a significant portion of this parcel (approximately 10.5 acres) to Buncher in 1978.

In a July 20, 1983 deed (the “1983 Deed,” attached hereto as Exhibit D), Conrail conveyed to Buncher a rectangular strip of land (the “1983 Parcel”) that Conrail had acquired from PCTC in the 1976 transaction. The 1983 Parcel was immediately to the southeast of and adjacent to the larger parcel acquired by Buncher from PCC in 1978.¹ It is this rectangular strip of property that Buncher acquired from Conrail in 1983 that is the subject of this proceeding.

¹ Exhibit E is a map which shows the distinction between the 1978 and the 1983 conveyances.

The parcel is described in the 1983 Deed as a portion of the Allegheny Branch identified as USRA Line Code 2229, between 91.59 feet and 89.94 feet in width and between 1402.57 feet and 1541.56 feet in length, containing an area of approximately 3.21 acres and extending between 16th and 21st Streets. Exhibit D at 2. At the time of the conveyance, the parcel contained Track No. 6, Track No. 7, and the Valley Industrial Track, running generally parallel to each other.²

The 1983 Deed also conveyed to Buncher “all the right, title and interest of [Conrail] in and to 3,000 lineal feet of railroad track and appurtenances thereto, being Track No. 6 and Track No. 7, located on the above described premises.” Exhibit D at 2. The 1983 Deed contained the following reservation:

. . . unto [Conrail], its successors and assigns, the permanent right and easement to continue to operate over and maintain its so-called Valley Industrial Track which traverses the land hereinbefore described, together with the right of nonexclusive access to said track for the purposes aforesaid; it being expressly understood and agreed by and between the parties hereto that [Buncher] will not construct any improvements over said track or within eighteen (18) feet of the centerline thereof or conduct any work or otherwise occupy a strip of land twelve (12) feet in width on either side of said track as measured from the centerline thereof, or construct or permit any crossings, at grade, of said track. Id.

In 1983, the URA acquired from the Pennsylvania Railroad or its successors property immediately to the south of the 1983 Parcel (including the Fruit Auction Building). Thus, the 1983 Deed conveyed to Buncher a strip of land approximately 90 feet in width and extending between 16th and 21st Streets, lying immediately to the south of the larger parcel that Buncher acquired in 1978 and immediately to the north of the property that the URA acquired from the Pennsylvania Railroad or its successors in 1983. In the 1983 Deed, Buncher also acquired all of

² The Valley Industrial Track is also referred to as Track No. 8 in various maps from that early 1980's period, which is logical given its location north of Tracks 6 and 7.

Conrail's right, title and interest to Track No. 6 and Track No. 7, which were removed from the property soon after Buncher's acquisition.

As noted above, Conrail reserved from the 1983 conveyance to Buncher an easement "to operate over and maintain its so-called Valley Industrial Track." At the time of the conveyance, the Valley Industrial Track was also referred to as Track No. 8 and traversed the rectangular parcel of property in a general straight-line direction paralleling Tracks No. 6 and 7. Buncher believes that Conrail may have retained this easement over the property because it thought at the time that Buncher might want to receive rail service at that location. However, when it was determined that Buncher had no interest in receiving rail service, and once Conrail filed for and obtained abandonment authority, the trackage was soon thereafter removed from the property.

Approximately two months after conveying the 1983 Parcel between 16th and 21st Street to Buncher subject to the retained easement, Conrail filed a Notice of Insufficient Revenue ("NIR") with the ICC for the relevant portion of the Valley Industrial Track. On February 3, 1984, after waiting the requisite 90 days following the filing of its NIR, Conrail filed an Application under the Northeast Rail Services Act ("NERSA") for abandonment of relevant portions of the Valley Industrial Track and the connecting Fort Wayne Industrial Track. A copy of this Application is attached hereto as Exhibit F.

In a decision served May 18, 1984, in ICC Docket No. AB-167 (Sub-No. 588N), attached hereto as Exhibit G, the ICC issued a certificate authorizing Conrail to abandon:

a total of 1.46 miles of rail line of the Fort Wayne Connecting Track (including the lower level of the Fort Wayne Bridge) from a point in Pittsburgh on the east side of Sandusky Street where Conrail's line connects with the Conemaugh Main Line (approximately milepost 0.8) to its junction with the Valley Industrial Track (approximately MP 0.0) and the Valley Industrial Track from its connection with the Fort Wayne Connecting Track in Pittsburgh (approximately MP 0.0) to the north side of 21st Street (approximately MP 0.66) in Allegheny County, PA. (emphasis added)

This abandoned portion of the Valley Industrial Track from MP 0.0 to MP 0.66 (between the lower level of the Fort Wayne Bridge and the north side of 21st Street) encompasses the former portion of the Valley Industrial Track between MP 0.3 (16th Street) and MP 0.6 (the south side of 21st Street). The abandonment of the Fort Wayne Connecting Track severed the Allegheny Branch from its previous connection across the Allegheny River at the Fort Wayne Bridge. The connecting track and all associated trackage and ramps from the Fort Wayne Bridge east to the Pittsburgh Produce Yards area were removed many years ago.

At some point between Conrail's receipt of abandonment authority in 1984 and 1988, all of the trackage of the former Valley Industrial Track west of 21st Street (including the relevant portion between 16th and 21st Street) was removed and the entire area was filled, graded, and otherwise prepared for non-railroad use. See aerial maps of the relevant area attached hereto as Exhibit H. In more recent years, Buncher has defined the boundaries of its property between 16th and 21st Street with concrete jersey barriers to prevent the trucks serving the Fruit Auction Building from traversing its property.

Pursuant to an October 27, 1995 quitclaim deed (the "1995 Deed," attached hereto as Exhibit D), Conrail conveyed to AVRR "the line of railroad known as the Allegheny Branch (a.k.a. the Valley Industrial Track and the Coleman Secondary) and identified as Line Code 2229 . . ." Exhibit I at 1. The 1995 Deed described this line of railroad, in part, as "beginning at approximately Railroad Mile Post 0.6, being the centerline of 21st Street . . . thence extending in a general northeasterly direction to approximately Railroad Mile Post 4.7 . . ." Id. The 1995 Deed also describes the other segments of the so-called Valley Industrial Track and Coleman Secondary, which generally equate to the portion of Line 2229 between Pittsburgh 57th Street and New Kensington that Conrail acquired from PCTC in the 1976 transaction.

The 1995 Deed also purported to convey to AVRR the following:

[Conrail's] right, title, and interest in and to the easement to operate over and maintain the Valley Industrial Track between Railroad Mile Post 0.3, more or less, at the northeasterly side of 16th Street and Railroad Mile Post 0.6, more or less, at the centerline of 21st Street, all in the City of Pittsburgh and being the beginning of the above described Premises, as indicated by "PS" on sheet 1 of 27 of Exhibit "C", said right and easement reserved in a July 20, 1983 deed from [Conrail] to the Buncher Company...³

As described in the quotation above, Sheet 1 of 27 of Exhibit C to the 1995 Deed contains a "PS" notation along a parcel of land of between 16th Street and 21st Street marked as approximately MP 0.3 to MP 0.6 and captioned "EASEMENT ONLY TO BE CONVEYED."

On October 23, 1995, AVRR filed with the ICC a Notice of Exemption in Finance Docket No. 32783 (attached hereto as Exhibit J) to acquire and operate the lines of railroad conveyed to AVRR by Conrail in the 1995 Deed. These "rail lines" are described by AVRR in its 1995 notice filing as including the portion of the Valley Industrial Track "between MP 0.3 and MP 4.7." Although AVRR's notice description included the portion of the Valley Industrial Track between MP 0.3 and MP 0.6, the Map attached to its Notice of Exemption correctly stated that the "Line Dead-Ends At 21st St., Pittsburgh." See Exhibit J at 8.

Since 1995, AVRR's operations on the Valley Industrial Track have commenced at 21st Street. AVRR has not operated over any portion of the Valley Industrial Track between MP 0.3 (16th Street) and MP 0.6 (21st Street) because there has been no trackage there for more than 20 years. According to its Petition, AVRR serves three produce shippers in the vicinity of the Pittsburgh Produce Yards area from its public delivery team track on the north side of 21st Street and another shipper from a private siding north of Railroad Street.

³ The 1995 Deed contained a cross-reference to the original easement language from the 1983 Deed, but then proceeded to recite language with no apparent relation to the purported easement. A deed dated November 26, 2008 from Conrail to AVRR corrected this error and recited the accurate language from the 1983 Deed.

According to its Petition, AVRR now wants to construct new track over Buncher's property between 16th and 21st Streets for the following purposes: (1) to provide commuter rail passenger service between New Kensington and Pittsburgh during and after the reconstruction of State Route 28, and (2) to provide head and tail room to facilitate its freight switching operations on the public team track at 21st Street. Buncher, the underlying and adjacent landowner of the parcel of land in question, is not interested in receiving rail service over this purported easement.

In its May 13, 2009 decision instituting this proceeding, the Board describes AVRR's commuter rail proposal as "part of a wider plan envisioned by various public entities." Buncher disagrees with the Board's suggestion that there is a wide level of public support for AVRR's passenger rail proposal. In fact, Buncher is not aware of any public authority with jurisdiction over the Strip District which has endorsed AVRR's proposal. Buncher and other key stakeholders participate with the URA in a planning group that is studying possible development options in the Strip District. This planning group has not supported AVRR's proposal. No funding has been committed to AVRR's commuter rail proposal and it is not included in any state or local transportation plans at this point.

Buncher believes that the commuter rail proposal has failed to attract such support for various reasons, many of which were identified in the portions of the 2003 Eastern Corridor Transit Study that are attached as Exhibit K to the Peterson V.S. Assuming AVRR even had rights to establish such commuter rail service over Buncher's property (which Buncher denies), the proposed service would not provide direct access into downtown Pittsburgh. Instead, it would terminate in the Strip District and require passengers to find other transportation options (such as bus service) to get downtown. Such passengers would have no right to trespass on Buncher's surrounding property and therefore would have to traverse property encumbered by

any valid railroad easement in order to exit the area. Similarly, it is not evident how passenger service between New Kensington and the Strip District on the southeast slope of the Allegheny River would alleviate traffic congestion resulting from the temporary rehabilitation of State Route 28, which is on the opposite side of the river and serves different communities. Finally, as noted in the 2003 Transit Study, the proposed service would require new maintenance yards and facilities, land for parking lots and a significant level of both capital funding (approximately \$258 million in 2003 dollars) and ongoing operating and maintenance funding that is not available today.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35239

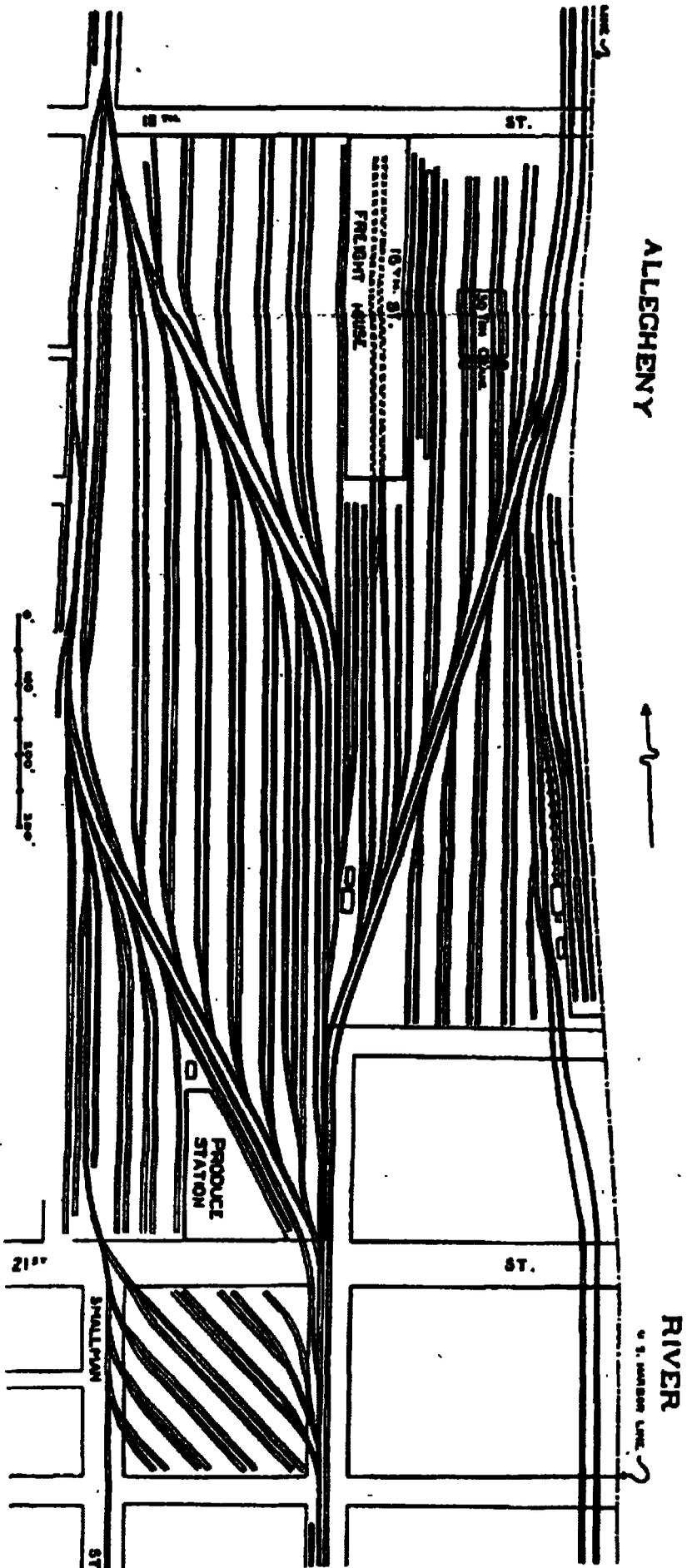
**ALLEGHENY VALLEY RAILROAD COMPANY –
PETITION FOR DECLARATORY ORDER**

**VERIFIED STATEMENT OF JOSEPH M. JACKOVIC
EXHIBITS A – J**

EXHIBIT	DESCRIPTION
Exhibit A	Map of the historical location of various tracks in the Pittsburgh Produce Yards area
Exhibit B	Aerial map of the relevant property
Exhibit C	ICC Finance Docket No. 26942 -- George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz, Trustees of the Property of Penn Central Transportation Company, Debtor, Abandonment Portion of its Allegheny Branch, Pittsburgh, Allegheny County, Pennsylvania
Exhibit D	Deed dated July 20, 1983 Deed between Conrail to Buncher
Exhibit E	Map showing the distinction between the 1978 and 1983 conveyances
Exhibit F	ICC Finance Docket No. AB 167 (Sub No. 558N) -- Application of Consolidated Rail Corporation Pursuant to Section 308(c) of the Regional Rail Reorganization Act of 1973, As Amended by Section 1156 of the Northeast Rail Services Act of 1981, for Approval of the Abandonment of the Valley Industrial Track in Allegheny County, Pennsylvania

Exhibit A

Map of the historical location of various tracks in the Pittsburgh Produce Yards area



Plan of Produce Yard and 16th Street Freight Station (c. 1923)

Exhibit B

Aerial map of the relevant property

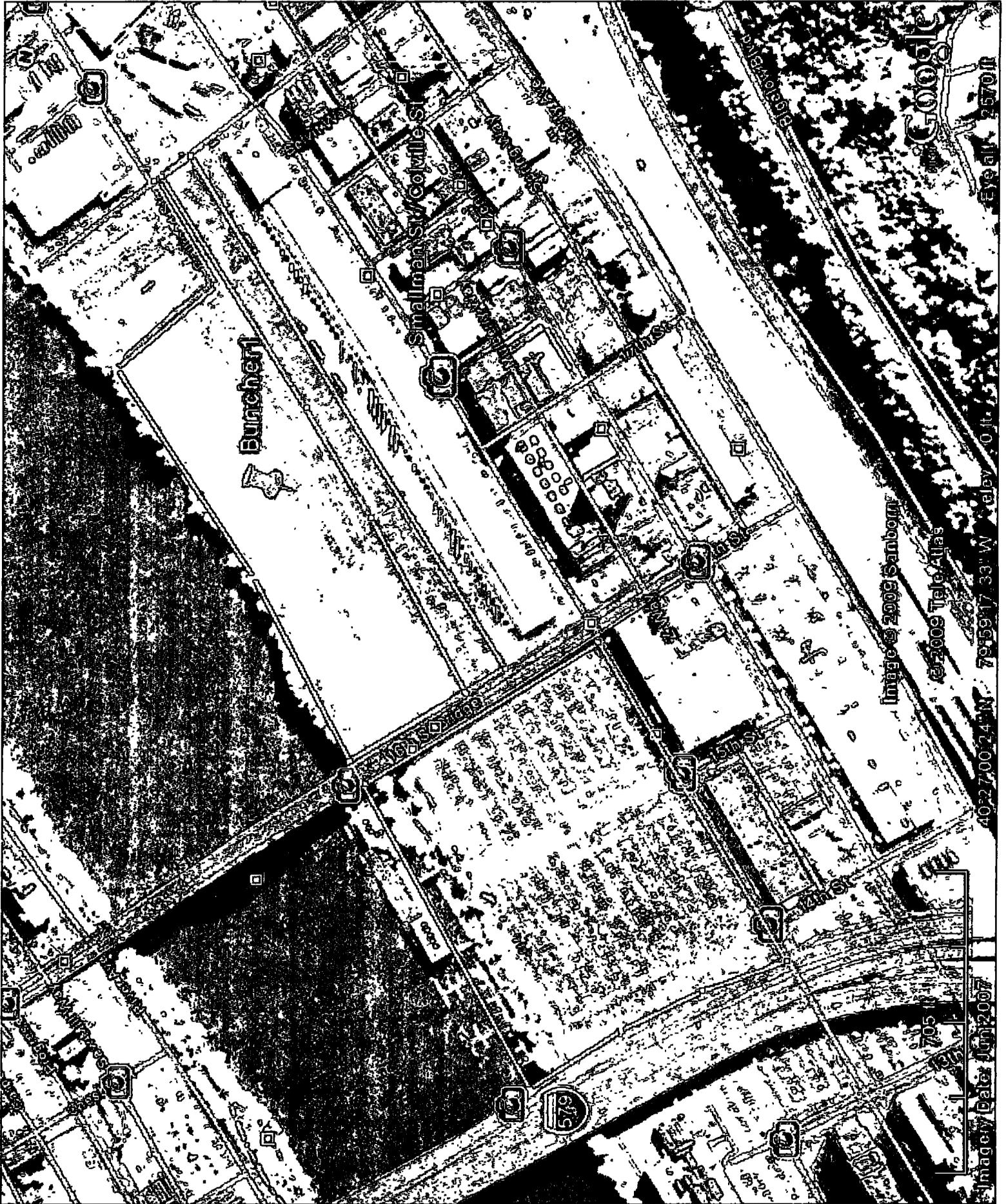


Image © 2009 Sanborn

© 2009 Tele Atlas

Image Date: Jun 2007

40° 27' 00.24" N

79° 59' 17.33" W

Eye Alt: 1570 ft

Google

Exhibit C

**ICC Finance Docket No. 26942 -- George P. Baker, Richard C. Bond, Jervis Langdon, Jr., and Willard Wirtz,
Trustees of the Property of Penn Central Transportation Company, Debtor, Abandonment Portion of its Allegheny
Branch, Pittsburgh, Allegheny County, Pennsylvania**

FD-26942

SERVICE DATE
MARCH 15, 1972

CERTIFICATE AND ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Review Board Number 5, held at its office in Washington, D. C., on the 24th day of February, 1972.

Finance Docket No. 2694.

GEORGE P. BAKER, RICHARD C. BOND, JERVI LANGDON, JR., AND WILLARD WIRTZ, TRUSTEES OF THE PROPERTY OF PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR, ABANDONMENT PORTION OF ITS ALLEGHENY BRANCH, PITTSBURGH, ALLEGHENY COUNTY, PENNSYLVANIA

Upon consideration of the application filed under section 1(i8) of the Interstate Commerce Act, on December 6, 1971, by the Penn Central Transportation Co., Debtor, a carrier by railroad subject to part 1 of the Act, for permission to abandon a portion of the Allegheny branch between Valuation Station 10+00 and 10+56, a distance of 0.2 miles, together with associated sidetracks, located in the city of Pittsburgh, Allegheny County, Pennsylvania; and

It appearing, That the interest of employees will be protected by the imposition of appropriate conditions; that road improvements requires the abandonment of this portion of the Allegheny branch; that service will be provided at nearby public delivery tracks; that no shipper or stations will be affected, and that continued operation of the branch under the circumstances would impose an undue and unnecessary burden on both applicant and interstate commerce.

It is hereby certified, That, subject to the same conditions for the protection of employees as set forth in Chicago, B. & Q. R. Co., Abandonment, 257 I.C.C. 700, the present and future public convenience and necessity permit the abandonment by the Penn Central Transportation Co., debtor, of the line of railroad described above.

It is ordered, That this certificate and order shall take effect and be in force from and after 35 days from the date of service hereof, and that tariffs applicable to the line herein permitted to be abandoned may be canceled upon notice to this Commission and to the general public by not less than 10 days' filing and posting in a manner prescribed in section 6 of the Interstate Commerce Act;

It is further ordered, That, when filing schedules canceling tariffs applicable to said line, the applicant shall in such schedules refer to this certificate and order by date and docket number;

It is further ordered, That, if the authority granted is exercised, applicant shall submit for the consideration of this Commission, within 60 days thereof, two copies of the journal entries showing the retirement of the line from service, and shall advise this Commission in writing, immediately after abandonment of the line of railroad, the date on which the abandonment actually took place; and

It is further ordered, That if the authority granted in this certificate and order is not exercised within one year from its effective date, it shall be of no further force or effect.

By the Commission, Review Board Number 5.

ROBERT L. OSWALD,
Secretary

(SEAL)

Exhibit D

Deed dated July 20, 1983 Deed between Conrail to Buncher

9-D-225 ✓

9-D-225
BLOCK & LOT NO.
COUNTY
CITY
STATE

THIS AGREEMENT, made the 20th day of July in the
Year of our Lord One Thousand Nine Hundred and Eighty-three

BETWEEN THE CONSOLIDATED RAIL CORPORATION, a Corporation of the
State of Pennsylvania, having an office at Six Penn
Center Plaza, Philadelphia, Pennsylvania, 19103, hereinafter
referred to as the Grantor, and THE BUNCHER COMPANY, a
Corporation of the Commonwealth of Pennsylvania, whose mailing
address is 5600 Forward Avenue, Pittsburgh, Pennsylvania 15217,
hereinafter referred to as the Grantee;

WITNESSETH: That the said Grantor, for and in
consideration of the sum of SIXTY THOUSAND DOLLARS (\$60,000.00)
lawful money of the United States of America, unto it well and
truly paid by the said Grantee, at or before the sealing and
delivery of these presents, the receipt whereof is hereby
acknowledged, has remise, released and quitclaimed and by these
presents does remise, release and quitclaim unto the said
Grantee, the heirs or successors and assigns of the said
Grantee, all right, title and interest of the said Grantor of,
in and to

ALL THAT CERTAIN piece or parcel of land situate in the
Second Ward, City of Pittsburgh, County of Allegheny and
Commonwealth of Pennsylvania, being more particularly bounded
and described in accordance with a Plat of Survey prepared by
Lladis Engineering and Surveying, Inc., Drawing No. 1378-C dated
March 17, 1983, revised March 21, 1983, as follows:

BEGINNING at a point on the Easterly line of 16th Street
(varied width) at the dividing line of lands of The Buncher
Company and the Consolidated Rail Corporation (formerly
Cleveland and Pittsburgh) known as the Allegheny Branch and
identified as Line Code 2229 in the records of the United States
Railway Association, said point being North 42° 10' 20" West a
distance of 322.45 feet from the intersection of the Northerly
line of Smallman Street (60.07 feet wide) and the Easterly line
of 16th Street; thence from said point of beginning along the
line of lands of The Buncher Company the following three courses
and distances: (1) North 50° 46' 40" East a distance of 729.33
feet to a point; (2) along a curve to the left having a radius
of 2844.79 feet an arc distance of 138.20 feet to a point, said
property line having a chord bearing of North 49° 23' 10" East
and a chord distance of 138.18 feet; and (3) North 47° 59' 40"
East a distance of 663.24 feet to a point on the Westerly line
of 21st Street (60.07 feet wide); thence along the Westerly line
of 21st Street South 42° 41' 50" East a distance of 89.94 feet
to a point on the line of lands of The Urban Redevelopment
Authority of Pittsburgh; thence along said line of lands of The
Urban Redevelopment Authority the following two courses and
distances: (1) South 47° 55' 55" West a distance of 722.85 feet

VL6700 MC 286

CITY OF PITTSBURGH
DEED TRANSFER TAX
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1900
CITY TREAS.

to a point; and (2) South 59° 40' 55" West a distance of 818.71 feet to a point on the Easterly line of 16th Street; thence along the Easterly line of 16th Street North 42° 10' 20" West a distance of 91.55 feet to the place of beginning.

CONTAINING an area of 139,831 square feet (3.21 acres), more or less.

BEING designated as Block No. 9-D, Lot No. 225 in the Deed Registry Office of Allegheny County, Pennsylvania.

BEING a part of the premises which the Trustees of the Property of the Penn Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-RP-173 dated March 30, 1976 and recorded in Allegheny County, Pennsylvania in Deed Book Volume 8001 at page 591, granted and conveyed unto Consolidated Rail Corporation.

TOGETHER with all the right, title and interest of the said Grantor of, in and to 3,000 lineal feet of railroad track and appurtenances thereto, being Track No. 6 and Track No. 7, located on the above described premises.

RESERVING, however, unto the said Grantor, its successors and assigns, the permanent right and easement to continue to operate over and maintain its so-called Valley Industrial Track which traverses the land hereinbefore described, together with the right of nonexclusive access to said track for the purposes aforesaid; it being expressly understood and agreed by and between the parties hereto that the Grantee will not construct any improvements over said track or within eighteen (18) feet of the centerline thereof or conduct any work or otherwise occupy a strip of land twelve (12) feet in width on either side of said track as measured from the centerline thereof, or construct or permit any crossings, at grade, of said track.

SUBJECT, however, to (1) any easements or agreements of record or otherwise affecting the land hereby conveyed; (2) any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the herein conveyed premises, together with the right to maintain, repair, renew, replace, use and remove same; and (3) the state of facts disclosed by survey made by Lladis Engineering and Surveying, Inc., Pittsburgh, Pennsylvania dated March 17, 1983 and revised March 22, 1983.

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well as law as in equity or otherwise howsoever, of, in and to the same and every part thereof, SUBJECT and RESERVING as aforesaid.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances, unto the Grantee, the heirs or successors and assigns of the said Grantee forever, SUBJECT and RESERVING as aforesaid.

THIS INSTRUMENT is executed, delivered and accepted upon the understanding and agreement:

(1) that the said Grantee shall not have or assert to have any claim or demand whatsoever for compensation for damages, whether said damages be direct or consequential, to the land hereinbefore described or to any buildings or improvements now or hereafter erected thereon, or to the contents thereof, which

may be caused by the operation, maintenance, repair or renewal of Grantor's railroad or which may be caused by vibration resulting from the operation, maintenance, repair or renewal thereof; and the said Grantee hereby expressly releases the said Grantor from liability for any such damages;

(2) that in the event the tracks of the railroad of Grantor are elevated or depressed, or the grades of any streets, avenues, roads, lanes, highways or alleys over said railroad in the vicinity of the land hereinbefore described are changed so that they shall pass overhead or underneath the said tracks and railroad, or in the event any grade crossing is vacated and closed, the said Grantee, as owner of the land hereinbefore described, shall not ask, demand, recover or receive any compensation whatsoever for any damage of whatsoever nature caused by or in any manner growing out of the separation or change of grades of said railroad and/or said streets, avenues, roads, lanes, highways or alleys or out of the vacation and closing of any grade crossing; and

(3) that should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against the Grantor herein.

NOTICE - "THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND IN THAT CONNECTION DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT." THIS NOTICE IS SET FORTH IN THE MANNER PROVIDED IN SECTION 1 OF THE ACT OF SEPTEMBER 10, 1965, P.L. 588, NO. 288 (51 P.S. 1551).

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include in all cases the heirs or successors and assigns of the respective parties.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE
REALTY
TRANSFER
TAX
600.00
A

IN WITNESS WHEREOF, the said Grantor has caused this inden-

ture to be signed in its name and behalf by its Assistant Vice President-Real Estate duly authorized thereunto and has caused its corporate seal to be hereunto affixed and attested by its Assistant Secretary the day and year first above written.

SEALED and DELIVERED
in the presence of us:

George R. Stevenson

CONSOLIDATED RAIL CORPORATION

By: *Lawrence A. Huff*
Lawrence A. Huff, Assistant
Vice President-Real Estate

Julius R. Byrnes

Attest: *Julius R. Byrnes*
Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF PHILADELPHIA) SS

On this 20TH day of JULY, A. D. 1983, before me, the subscriber, Joseph L. Keeley, the undersigned officer, personally appeared Lawrence A. Huff, who acknowledged himself to be the Assistant Vice President-Real Estate of CONSOLIDATED RAIL CORPORATION, a corporation, and that he as such Assistant Vice President-Real Estate, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Assistant Vice President-Real Estate.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Joseph L. Keeley
Notary Public

I HEREBY CERTIFY that the correct address of the within-named Grantee is:
5600 Forward Avenue
Pittsburgh, PA 15217

Margaret Urcita
on behalf of Grantee.

THIS INSTRUMENT PREPARED BY:
George R. Stevenson
Consolidated Rail Corporation
Ninth Floor, 1538 Walnut Street
Philadelphia, Pennsylvania 19102

smah

STATE OF PENNSYLVANIA)
COUNTY OF ALLEGHENY) S.S.

RECORDED IN THE OFFICE FOR THE RECORDING OF
DEEDS, ETC. IN AND FOR THE SAID COUNTY, ON THE
DAY OF JULY A. D., 1993... IN DEED.....
BOOK VOL. 6700. PAGE. 29 WITNESS MY HAND AND
SEAL OF SAID OFFICE, THIS DAY AND YEAR AFORESAID.

Michael J. White RECORDER



CONSOLIDATED RAIL CORPORATION

THE BUNCHER COMPANY

-to-

FILED
MAY 27 1993
DEEDS
REGISTER

Land situate in Pittsburgh,
Allegheny County, Pennsylvania

MAIL TO:

John E. White, Esq.

P.O. Box 2009

Pittsburgh, PA 15230

Prep: *[Signature]*
Apvd: *[Signature]*
Chkd: *[Signature]*

J 355567

062 24 0700 290

RECORDS OF DEEDS
ALLEGHENY COUNTY, PA
MAY 25 3 21 PM '93

062 24 0700 290

Pp 2428

00000

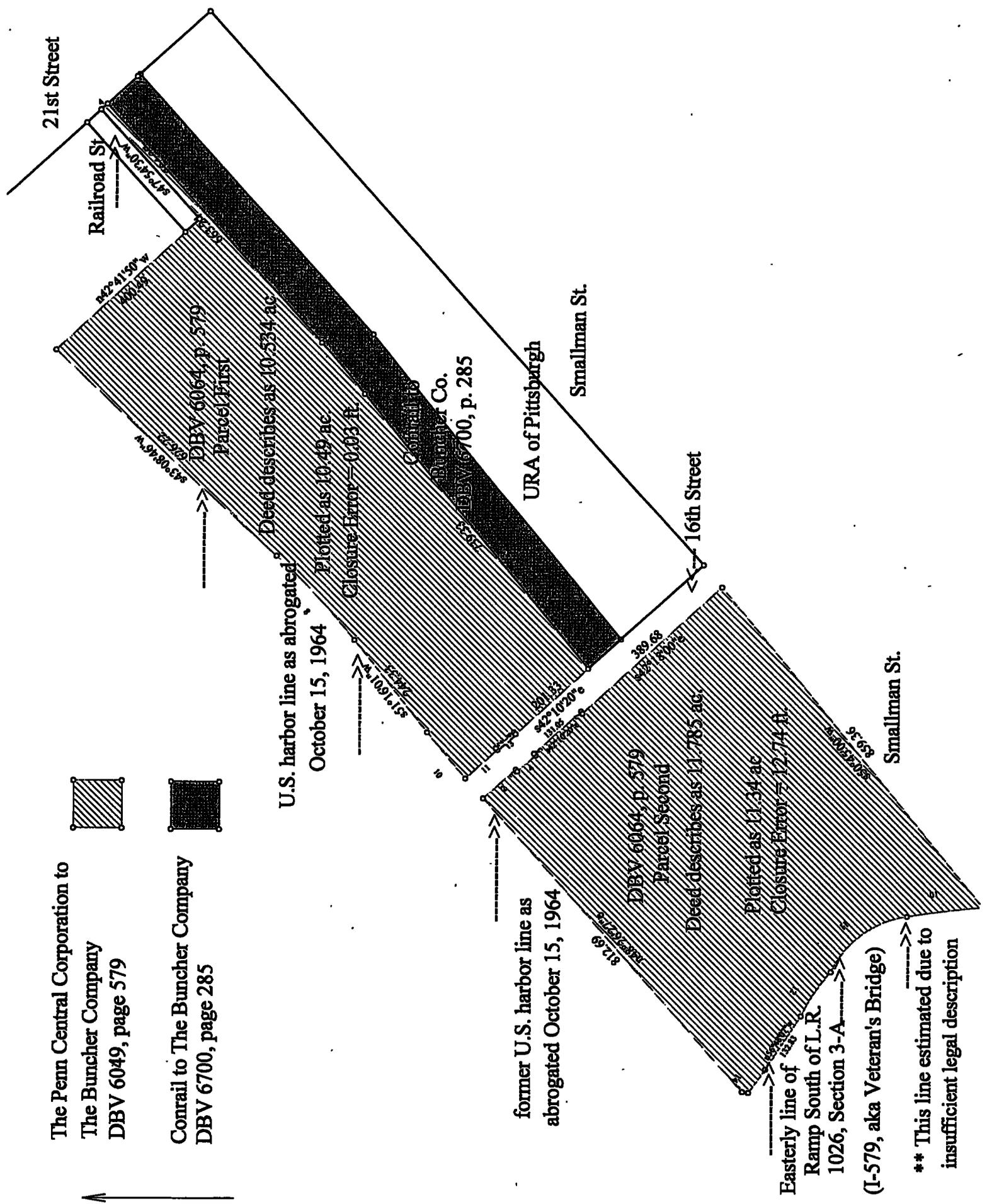
DEED

Exhibit E

Map showing the distinction between the 1978 and 1983 conveyances

The Penn Central Corporation to
 The Buncher Company
 DBV 6049, page 579

Conrail to The Buncher Company
 DBV 6700, page 285



Easterly line of
 Ramp South of L.R.
 1026, Section 3-A
 (I-579, aka Veteran's Bridge)

** This line estimated due to
 insufficient legal description

Exhibit F

ICC Finance Docket No. AB 167 (Sub No. 558N) -- Application of Consolidated Rail Corporation Pursuant to Section 308(c) of the Regional Rail Reorganization Act of 1973, As Amended by Section 1156 of the Northeast Rail Services Act of 1981, for Approval of the Abandonment of the Valley Industrial Track in Allegheny County, Pennsylvania

CONRAIL

February 3, 1983

Mr. James H. Bayne
Acting Secretary
Interstate Commerce Commission
Room 1312
12th and Constitution Avenues, NW
Washington, D.C. 20423

Re: Application Under Section 308(c) of the Regional
Rail Reorganization Act of 1973, as enacted by
Section 1156 of the Northeast Rail Service Act of
1981, for abandonment of the Fort Wayne Connecting
Track and the Valley Industrial Track in
Allegheny County, Pennsylvania
Docket No. AB 167 (Sub No. 558N)

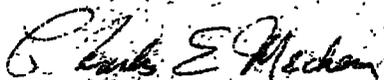
Dear Mr. Bayne:

Enclosed for filing with the Commission are the original
and six copies of the above described application. This
application is submitted under Section 308(c) of the Regional
Rail Reorganization Act of 1973, as enacted by Section 1156
of the Northeast Rail Service Act of 1981. Notice of Insuf-
ficient Revenue was filed September 26, 1982.

Copies of the application have been served on the
agencies designated on the attachment to this letter. No
shippers are affected.

Please stamp and return the enclosed extra copy of this
letter to acknowledge receipt.

Very truly yours,


Charles E. Mechem
Senior General Attorney
1138 Six Penn Center Plaza
Philadelphia, Pa. 19104
(215) 577-5917

EM/AM

BEFORE THE
INTERSTATE COMMERCE COMMISSION

APPLICATION OF CONSOLIDATED RAIL CORPORATION PURSUANT TO SECTION 308(c) OF THE REGIONAL RAIL REORGANIZATION ACT OF 1973, AS AMENDED BY SECTION 1156 OF THE NORTHEAST RAIL SERVICE ACT OF 1981, FOR APPROVAL OF THE ABANDONMENT OF THE FORT WAYNE CONNECTING TRACK AND THE VALLEY INDUSTRIAL TRACK IN ALLEGHENY COUNTY, PENNSYLVANIA : DOCKET NO. AB 167 (SUB NO. 558N)

Charles E. Mechem
General Attorney
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5017

FEBRUARY 1 1984

BEFORE THE
INTERSTATE COMMERCE COMMISSION

APPLICATION OF CONSOLIDATED RAIL CORPORATION PURSUANT TO SECTION 308(c) OF THE REGIONAL RAIL REORGANIZATION ACT OF 1973, AS AMENDED BY SECTION 1156 OF THE NORTHEAST RAIL SERVICE ACT OF 1981, FOR APPROVAL OF THE ABANDONMENT OF THE FORT WAYNE CONNECTING TRACK AND THE VALLEY INDUSTRIAL TRACK IN ALLEGHENY COUNTY, PENNSYLVANIA

DOCKET NO. AB 167
(SUB NO. 558N)

TO THE INTERSTATE COMMERCE COMMISSION, WASHINGTON, DC

1. The name of applicant is Consolidated Rail Corporation (Conrail). Correspondence relating to this application should be addressed to Charles E. Mechem, General Attorney, 1138 Six Penn Center, Philadelphia, Pennsylvania 19103.

2. Applicant is a common carrier by railroad subject to the Northeast Rail Service Act of 1981 (NERSA).

3. Conrail files this application pursuant to Section 308(c) of the Regional Rail Reorganization Act of 1973 (RRR Act), as amended by Section 1156 of NERSA. A copy of said statute is attached hereto as Exhibit A.

4. By this application Conrail requests the Commission's approval of the abandonment of the lines of rail

approximately 1.46 miles in length described below and situated in Allegheny County, Pennsylvania:

- (1) The Fort Wayne Connecting Track (including the lower level of the Fort Wayne Bridge) from a point in Pittsburgh on the east side of Sandusky Street where Conrail's line connects with the Conemaugh Main Line (approximately Milepost 0.8) to its junction with the Valley Industrial Track (approximately Milepost 0.0); and
- (2) The Valley Industrial Track from its connection with the Fort Wayne Connecting Track in Pittsburgh (approximately Milepost 0.0) to the north side of 21st Street (approximately Milepost 0.66).

The above-described lines will hereafter be referred to as the Subject Lines.

5. Attached as Exhibit B is a map showing the location of the Subject Lines.

6. Attached hereto as Exhibit D is an estimate of the value of the Subject Lines. Pursuant to Section 308(d) of the RRR Act the aforesaid valuation estimate will be furnished, on request, to any responsible person other than a recipient of this application who seriously desires to consider making an offer of financial assistance. Because the Lines generate no revenues or expenses Conrail has not undertaken to calculate, and could not estimate, the revenues that would be required for a hypothetical future operation.

7. Conrail does not hold title to the underlying right of way.

8. All requests for information specified above as well as offers of financial assistance should be made in writing to C. E. Mechem, Room 1138 Six Penn Center, Philadelphia, PA 19103. Copies of such requests and offers, including the applicable docket number, should be sent to the Office of the Secretary, Case Control Branch, Room 1312, Interstate Commerce Commission, Washington, DC 20423. The following notation should be typed in bold face type at the lower left hand corner of envelopes containing offers: "Rail Section AB-OFA."

9. Recipients of this application are advised that any person requesting information or assistance with respect to the abandonment provisions of the Northeast Rail Service Act or the requirements and procedures governing offers of financial assistance (including proof of financial responsibility) may contact the ICC Office of Proceedings, Rail Section (telephone 202-275-7245).

WHEREFORE, Applicant requests that the Commission, within 90 days after the filing hereof, approve the abandonment of the Subject Lines identified in Paragraph 4 above.

Respectfully submitted,


Charles E. Mechem
General Attorney
1138 Six Penn Center Plaza
Philadelphia, PA 19106
(215) 977-5017

§ 104. Abandonment

(a) General. The Corporation may, in accordance with this section, file with the Commission an application for abandonment of a line of rail service which is part of the system of the Corporation. Any such application shall be processed by the Commission and shall not, except as specifically provided in this section, be subject to the provisions of chapter 109 of title 49, United States Code (49 U.S.C. §§ 10901 et seq.).

(b) Application for abandonment. Any application for abandonment shall be filed by the Corporation under this section before December 1, 1981, and shall be processed by the Commission after the date set by application to that effect, which shall be filed by the Corporation in accordance with section 104(c) of this title. The Commission shall not be bound by the provisions of section 104(c) of this title in the event of such an application.

(c) Notice of abandonment. (1) The Corporation may, prior to November 1, 1981, file with the Commission a notice of abandonment for any line which is part of the system of the Corporation.

(2) At any time after the 90-day period beginning with the filing of a notice of abandonment for a line, the Corporation may file an application for abandonment for such line. An application for abandonment filed by the Corporation under this section for a line for which a notice of abandonment was filed under paragraph (1) shall be processed by the Commission within 90 days after the date such application is filed with the Commission. (3) If the Corporation files a notice of abandonment under this section, it shall file with the Commission a notice of abandonment for such line within 90 days after the date such application is filed with the Commission. (4) If the Corporation files a notice of abandonment under this section, it shall file with the Commission a notice of abandonment for such line within 90 days after the date such application is filed with the Commission. (5) If the Corporation files a notice of abandonment under this section, it shall file with the Commission a notice of abandonment for such line within 90 days after the date such application is filed with the Commission.

(d) Status of abandoned subsection. (1) The provisions of section 10904(c)(2) of title 49, United States Code (49 U.S.C. § 10904(c)(2)) (including the filing requirements of subsection (c) of this section), shall apply to any of the following subsections under subsection (b) or (c) of this section: (2) The Corporation shall provide any person that demands to make an offer of financial subsection under subsection (b) or (c) of this section with such information as the Commission may require.

(e) Application. (1) If any application for abandonment is granted under subsection (b) of this section, the Commission shall, as soon as practicable, apply the net liquidation value of the line to be abandoned, and shall publish notice of such approval in the Federal Register.

(2) Application under paragraph (1) shall not be applicable.

(3) If, within 120 days after the date on which an approval is published in the Federal Register under paragraph (1), the Corporation files a notice of abandonment for the line, the Commission shall, as soon as practicable, apply the net liquidation value of the line to be abandoned, and shall publish notice of such approval in the Federal Register.

(4) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission. (5) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission. (6) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission.

(f) If the publisher under paragraph (b)(4) of this subsection of any line of the Corporation demands that the line be paid into the general fund of the Treasury of the United States, the Commission shall file with the general fund of the Treasury of the United States, for the Corporation, the amount of such demand. (g) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission. (h) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission.

(i) If, within 12 days after the publication required in subsection (c) of this section, the Commission files such an application, the Commission shall, as soon as practicable, apply the net liquidation value of the line to be abandoned, and shall publish notice of such approval in the Federal Register. (j) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission.

(k) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission. (l) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission.

(m) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission. (n) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission.

(o) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission. (p) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission.

(q) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission. (r) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission.

(s) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission. (t) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission.

(u) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission. (v) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission.

(w) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission. (x) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission.

(y) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission. (z) If the Corporation files a notice of abandonment for a line under paragraph (1), within such 120-day period, the Corporation may not abandon or discontinue the line as it appears, including rail, trolley, and other rail facilities for 120 days thereafter. The Secretary (not any other person) shall determine the net liquidation value of the line, and shall file such determination with the Commission.

EXHIBIT B
LOCATION AND MAP

At Pittsburgh

FT. WAYNE CONNECTING TRACK*

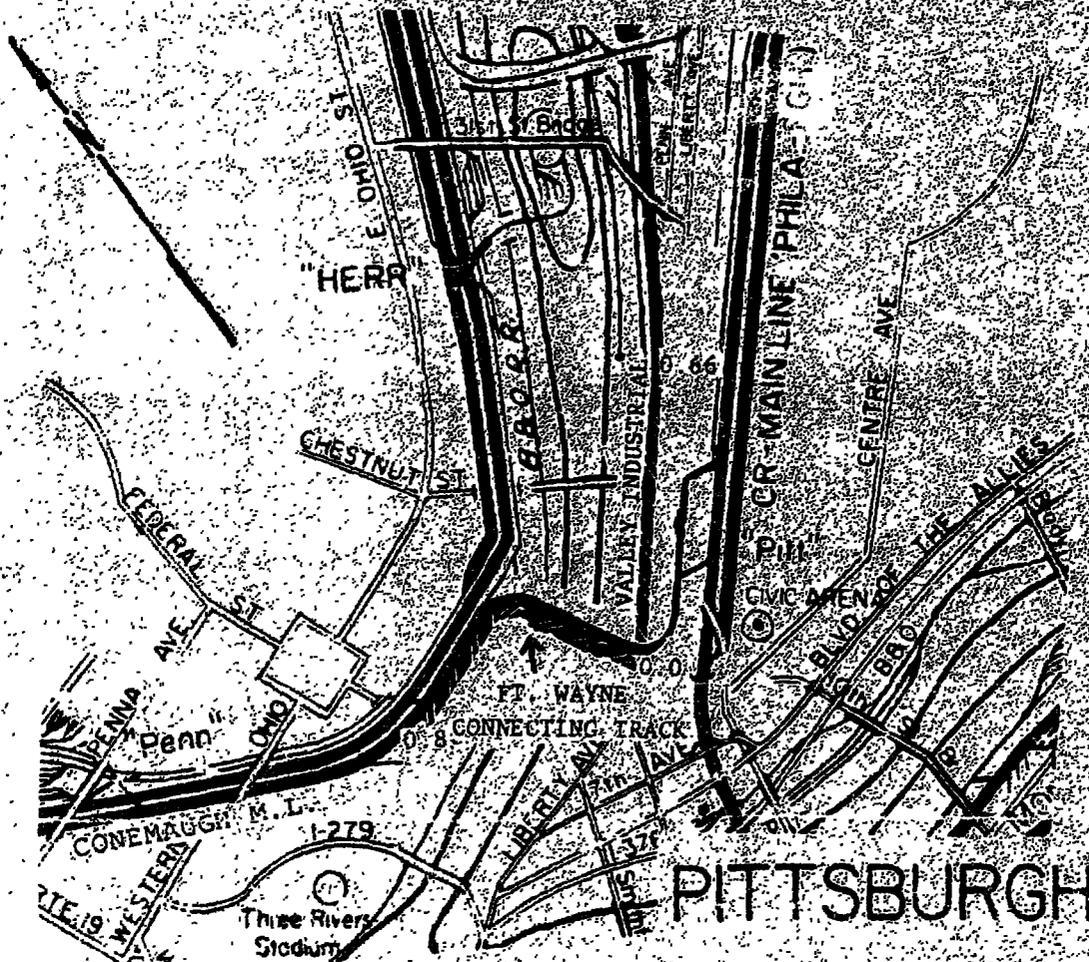
Jct. with Conemaugh M.L. - E. Side of Sandusky St. (Approx. M.P. 0.8) to
Jct. with Valley Ind. Track (Approx. M.P. 0.0)

VALLEY INDUSTRIAL TRACK

(Formerly Allegheny Sec.)

Jct. with Ft. Wayne Conn. Track (Approx. M.P. 0.0) to N. Side of 21st St. (Approx. M.P. 0.66)

State(s): PA Counties: Allegheny



* Including the Lower Level of the Fort Wayne Bridge.

EXHIBIT C

REVENUE AND COST DATA

FT. WAYNE CONNECTING TRACK

VALLEY INDUSTRIAL TRACK

Line No		Base Yr 1982	Est Sub 1982	Proj Sub 1982
1	Frt Rev Orig/Term _____ C/L's			
2	All Other Rev and Income			
3	Total Revenues Attributable			
4A	Maint. of Way & Structures	Former Overhead Route. No originating or terminating traffic during last 12 months.		
B	Maintenance of Equipment			
C	Transportation			
D	General Administration			
E	Freight Car Costs			
F	Revenue Taxes			
G	Property Taxes			
	Total On-Branch Costs			
5	Off Branch Costs			
6	Total Avoidable Costs			
	Subsidization Costs	////		
7	Rehabilitation	////		
8	Administrative Costs	////		
9	Casualty Reserve Account	////		
10	Total Subsidization Costs	////		
	Return on Valuation	////		
11A	Working Capital	////		
B	Net Salvage Value	////		
C	Estimated Value of Real Estate	////		
	Total Valuation of Property	////		
12	Rate of Return	////		
13	Total Return on Value	////		
14A	Avoidable Loss From Operations		////	////
B	Opportunity Costs		////	////
C	Total Avoidable Loss		////	////
15	Estimated Subsidy	////		

Exhibit G

ICC Finance Docket No. AB 167 (Sub No. 558N) -- Conrail Abandonment in Allegheny County, PA

HB

SERVICE DATE

INTERSTATE COMMERCE COMMISSION

MAY 18 1984

CERTIFICATE AND DECISION

Docket No. AB-167 (Sub-No. 558M)

CONRAIL ABANDONMENT IN ALLEGHENY COUNTY, PA

Decided: May 14, 1984

On February 9, 1984, Consolidated Rail Corporation (Conrail) filed an application pursuant to section 308 of the Regional Rail Reorganization Act of 1973^{1/} to abandon a total of 1.46 miles of rail line of the Fort Wayne Connecting Track (including the lower level of the Fort Wayne Bridge) from a point in Pittsburgh on the east side of Sandusky Street where Conrail's line connects with the Conemaugh Main Line (approximately milepost 0.8) to its junction with the Valley Industrial Track (approximately milepost 5.0) and the Valley Industrial Track from its connection with the Fort Wayne Connecting Track in Pittsburgh (approximately milepost 9.0) to the north side of 21st Street (approximately milepost 0.66) in Allegheny County, PA.

Under section 308(c) the Commission must grant any application for abandonment filed by Conrail within 90 days after the date such application is filed unless an offer of financial assistance is made pursuant to section 308(d) during that 90-day period.

The time for the filing of offers of financial assistance has expired without a bona fide offer. In the absence of such an offer, an appropriate certificate and decision should be entered.

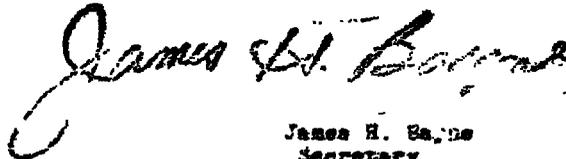
It is certified: Conrail is authorized to abandon the line described above.

It is ordered:

(1) This certificate and decision is effective upon service.

(2) If the authority granted by this certificate and decision is exercised, Conrail shall advise this Commission in writing, immediately after abandonment of the line of railroad, of the date on which the abandonment actually took place.

By the Commission, the Review Board, Members Joyce, Fortier and Sewell.



James H. Burns
Secretary

(SRAL)

^{1/} This section was added by the Northeast Rail Service Act of 1981. Pub. L. 97-55.

Exhibit H

Historical aerial maps of the relevant property

INQUIRY #: 2504851.1

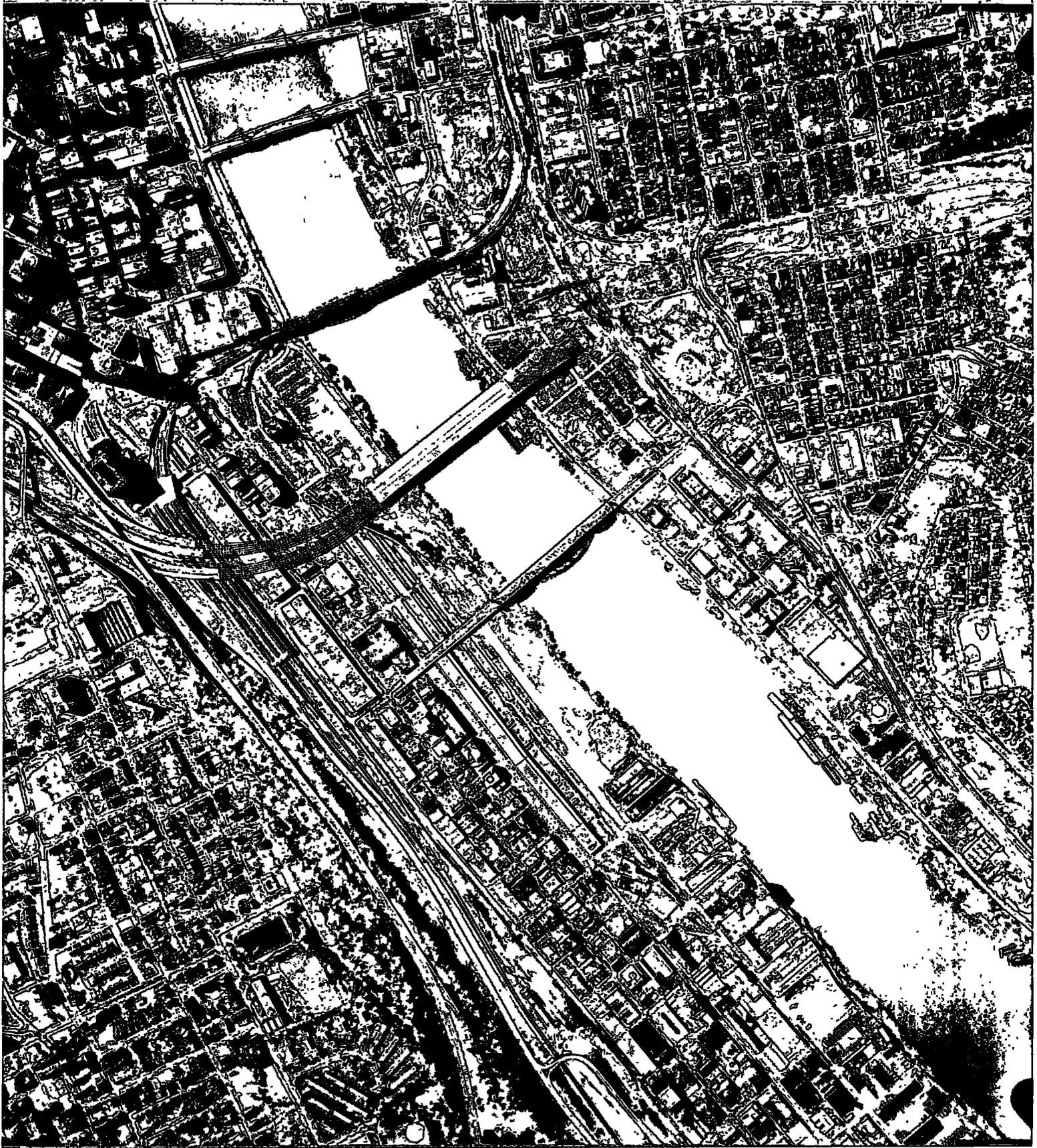
YEAR: 1967

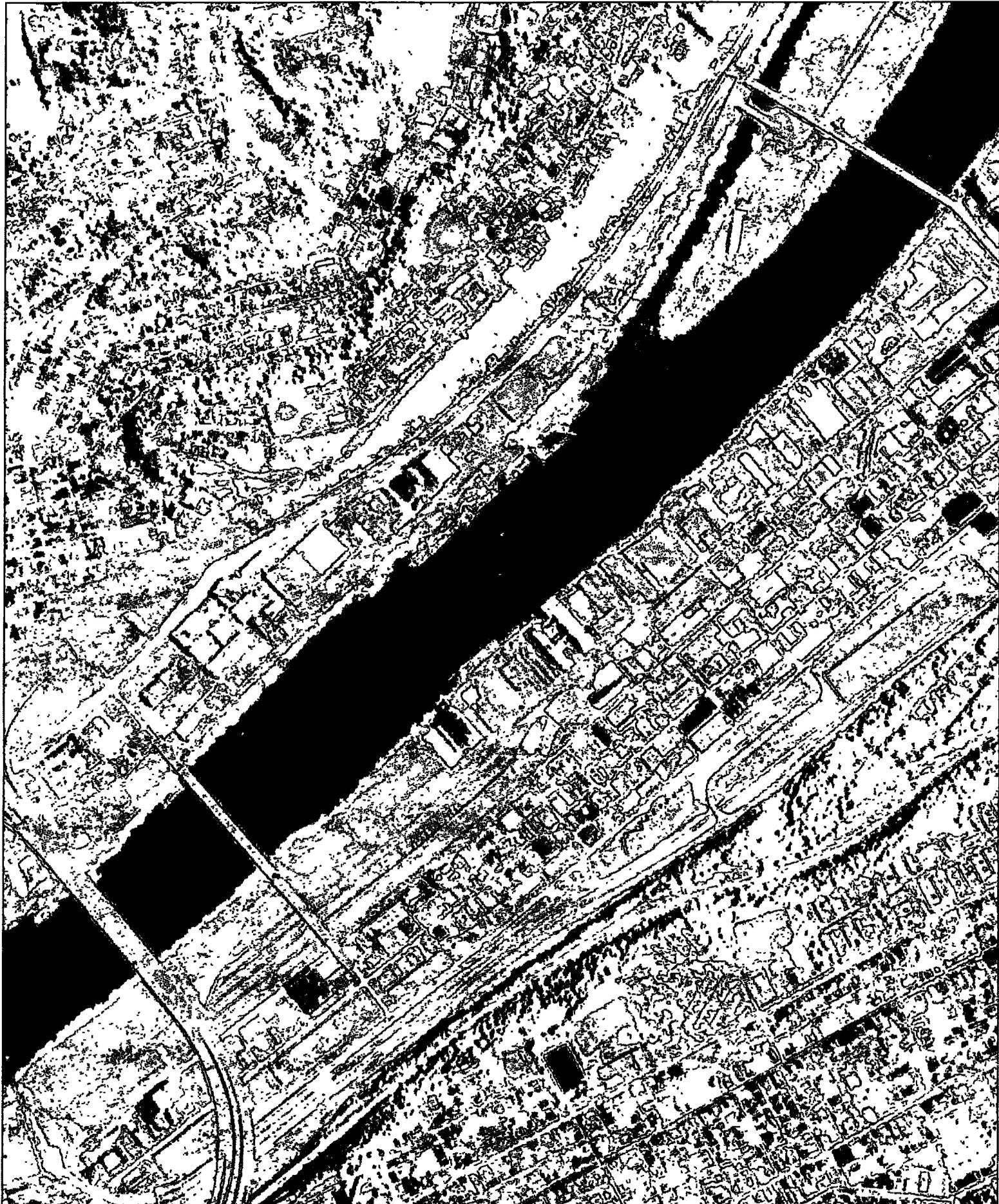


— = 500'



1986





INQUIRY #: 2504851.1

YEAR: 1988

— = 750'





INQUIRY #: 2504851.1

YEAR: 1993

— = 750'





INQUIRY #: 2504851.1

YEAR: 2005

| = 486'



Exhibit I

Deed dated October 27, 1995 between Consolidated Rail Corporation and Allegheny Valley Railroad Company



INSTRUMENTS
DEPT REGS:

IN: THIS INDENTURE, made the 27th day of October in the year of our Lord One Thousand Nine Hundred and Ninety-five (A.D. 1995)

BETWEEN: CONSOLIDATED RAIL CORPORATION, a Corporation of the Commonwealth of Pennsylvania, having an office at Two Commerce Square, 2001 Market Street, Philadelphia, Pennsylvania, 19101-1419, hereinafter referred to as the Grantor, and ALLEGHENY VALLEY RAILROAD COMPANY, a Corporation of the Commonwealth of Pennsylvania, having a mailing address of 2391 Whispering Brook Lane, Grove City, Ohio 43123, hereinafter referred to as the Grantee:

WITNESSETH: That the said Grantor, for and in consideration of the sum of ONE DOLLAR (\$1.00) lawful money of the United States of America, unto it well and truly paid by the said Grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Grantor has remised, released and quitclaimed and by these presents does remise, release and quitclaim unto the said Grantee, the successors and assigns of the said Grantee, all right, title and interest of the said Grantor of, in and to the following described Premises:

ALL THAT CERTAIN property of the Grantor, together with the appurtenances and improvements thereon, being those strips or parcels of land known as the Valley Cluster, and which strips or parcels of land are situate in the Counties of Allegheny and Westmoreland and the Commonwealth of Pennsylvania, generally described in Exhibit "A" and generally indicated by "PS" on Grantor's Case Plan No. 71703, sheets 1 through 27, dated August 22, 1995 and revised September 6, 1995, which are attached hereto in Exhibit "C", herein referred to as "Premises".

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, all right, title and interest in and to any and all minerals, materials and fossil fuels, including but not limited to all coal, gas and oil (hereafter referred to as "minerals"), located in, on, through, under and beneath the Premises/Easement Areas, and together with the rights and easements of immediate and unimpeded ingress and egress on, across and over said Premises/Easement Areas for the purpose of testing and removing said minerals; and together with the right to lay pipes in, on, and under the surface of said Premises/Easement Areas to

0095710204

Exhibit B1



effectuate such removal; and further together with the right to sell and collect any and all rents, profits and royalties from said minerals.

EXCEPTING AND RESERVING, further and unto the Grantor those rights as provided for in Exhibit "A" and Exhibit "B" and which are generally indicated in Exhibit "C" hereof.

UNDER and SUBJECT, however, to (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets crossing the Premises/Easement Areas, (2) any streams, rivers, creeks and water ways passing under, across or through the Premises, (3) Fiber Optic easement rights granted from Grantor to CRC Properties, Inc. by Indenture dated September 15, 1995; and (4) any easements or agreements of record or otherwise affecting the Premises/Easement Areas, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the Premises/Easement Areas, together with the right to maintain, repair, renew, replace, use and remove same.

THIS INSTRUMENT is executed and delivered by Grantor, and is accepted by Grantee, subject to the covenants set forth below, which shall be deemed part of the consideration of this conveyance and which shall run with the Premises and Easement Areas and be binding upon, and inure to the benefit of, the respective legal representatives, successors and assigns of Grantor and Grantee. Grantee hereby knowingly, willingly, and voluntarily waives the benefit of any rule, law, custom, or statute of the Commonwealth of Pennsylvania now or hereafter in force with respect to the covenants set forth below.

(1) Grantor shall neither be liable or obligated to construct or maintain any fence or similar structure between the Premises, Easement Areas and adjoining land of Grantor nor shall Grantor be liable or obligated to pay for any part of the cost or expense of constructing or maintaining any fence or similar structure, and Grantee hereby forever release Grantor from any loss or damage, direct or consequential, that may be caused by or arise from the lack or failure to maintain any such fence or similar structure.

(2) No right or means of ingress, egress or passageway to or from the Premises and Easement Areas is hereby granted, expressly or by implication, and Grantor shall not be liable or obliged to provide or obtain for Grantee any such means of ingress, egress or passageway.

(3) Should a claim adverse to the title hereby quitclaimed or granted be asserted and/or proved, no recourse shall be had against the Grantor herein.

(4) Grantee by the acceptance of this Instrument, does hereby accept all existing and prospective responsibility for removal and/or restoration costs for any and all railroad bridges and grade crossings and their appurtenances that may be located on, over or under the Premises and Easement Areas and Grantee further covenants and agrees that it will also assume any obligation and/or responsibility as may have been or may hereafter be imposed on Grantor by any Public Utility Commission or any other governmental agency having jurisdiction for any and all bridge structures and grade crossings and their appurtenances, including but not limited to the removal, repairing or restoration of same in accordance with the requirements of said Commission or other governmental agency; and Grantee further agrees to indemnify, defend and hold Grantor harmless against all costs, penalties, expenses, obligations, responsibility and requirements associated with said bridge structures and grade crossings and their appurtenances.

(5) Grantor shall not be liable or obligated to provide for or supply directly or indirectly, for money or otherwise, any type of utility service to Grantee, even if the Premises or Easement Areas are supplied utility service or services from or through Grantor owned or Grantor retained utility service facilities; at the time said Premises or Easement Areas are conveyed to Grantee; and that if Grantor at its sole discretion elects to provide any utility service or services for money or otherwise to said Premises or Easement Areas during the period during which Grantee is arranging at Grantee's own expense for provision of utility service or services direct from public utilities, Grantee shall have no continuing right to use such service or expectation that Grantor must continue to provide it. It is further understood that Grantee's use of any utilities that are supplied through Grantor's utilities or billed to Grantor by any public utility for Grantee's use shall be at the sole cost and expense of Grantee and if Grantee fails to relocate or arrange for a separation of utility services, Grantor may arrange for a separation of the utility services at Grantee's sole cost and expense.

(6)(a) Grantee recognizes that, in selling the Premises and Easement Areas, Grantor is enabling Grantee to interchange with one or more third parties traffic that originates or terminates or otherwise moves over the Premises or Easement Areas, and as to which Grantor, prior to this conveyance, could or did participate as a carrier for a portion of the movement that occurred or could occur on Grantor's lines other than the Premises and Easement Areas. In consideration thereof, Grantee agrees that, should Grantee (at its own option or that of the shipper or consignee) interchange such traffic with a carrier other than Grantor, it will pay Grantor \$900 per loaded car of such traffic. Said amounts shall be adjusted year to year under the RCAF (unadjusted) as published by the Interstate Commerce Commission and/or its successor entity.

(b) Grantee agrees that Grantor's rights under covenant (6) hereof shall constitute a covenant which shall run with the Premises and Easement Areas and shall be binding upon its successors, assigns, and upon any party for which it may grant any operating rights over the Premises and Easement Areas.

(c) The amounts set forth herein shall be paid to Grantor out of Grantee's settlements with other carriers on the first of each month. In order to maintain the confidentiality of this process, Grantee may have the amounts paid hereunder audited. Any corrections to amounts paid as a result of the settlement process set forth herein shall be settled by Grantor within thirty (30) days of said audit.

(7)(a) While Grantor is conveying certain interests in the Premises and Easement Areas, Grantee recognizes that Grantor may in the future wish to use portions of the Premises and Easement Areas as an alternative to its present route through Pittsburgh. In such event, Grantee agrees that it will, within 30 days after notice by Grantor, quitclaim to Grantor all Grantee's right, title and interest in and to those portions of the Premises and Easement Areas requested by Grantor for use as an alternative route.

(b) The consideration for any bridge located on the Premises and Easement Areas shall be \$1.00, and the consideration for the Premises and Easement Areas shall be based on the net liquidation value of the Premises and Easement Areas to be quitclaimed to Grantor, as of the date of Grantor's request.

(c) Grantor may retain sufficient rights over the Premises and Easement Areas to continue local service on the Premises and Easement Areas and to maintain access to the interchange with Grantor.

(d) Grantee agrees that Grantor's rights under this covenant (7) shall constitute a covenant which shall run with the Premises and Easement Areas and shall be binding upon its successors, assigns and upon any party for which it may grant any operating rights over the Premises and Easement Areas.

(e) Failure of the Grantee to abide by the terms of covenants (6) and (7) hereof will constitute a breach of the Purchase and Sales Agreement between Grantor and Grantee, and will entitle Grantor to recover any and all damages resulting from such breach.

TOGETHER with all and singular the tenements, hereditaments, and appurtenances therunto belonging, or in any wise appertaining and the reversion and reversions, remainders and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever, of, in and to the same and every part thereof.

EXCEPTING and RESERVING and UNDER and SUBJECT and as provided herein.

TO HAVE AND TO HOLD all and singular the said Premises, together with the appurtenances, unto the Grantee, the successors and assigns of the said Grantee forever, EXCEPTING and RESERVING and UNDER and SUBJECT and as provided herein.

AND the said Grantor, for the aforesaid consideration and insofar as its right and title permits, does further grant unto the said Grantee easement rights as further described in Exhibit "B" and generally indicated by "AE" and "ET" on Grantor's Case Plan 71703, sheet 26 of 27 which is attached hereto in Exhibit "C", and which herein are referred to as "Easement Areas".

THE easements herein granted are subject to any facilities which may be located on or within the Easement Areas; and the Grantor reserves for itself and its successors and assigns, the right to use said Easement Areas or any part or parts thereof for any and all other purposes which are not inconsistent with or which do not unreasonably interfere with or impair the rights herein granted.

AS further consideration for the easements herein granted, Grantee hereby covenants and agrees with the Grantor herein that:

(a) The rights hereby granted are subordinate to the paramount right of the Grantor to use and occupy all or any portion of the Easement Areas in any manner whatsoever, provided, however, that any such use or occupancy shall not interfere unreasonably with the exercise by Grantee of the right herein granted.

(b) All costs and expenses in connection with Grantee's use of the Easement Areas and the installation, maintenance, repair, renewal, rehabilitation and removal of Grantee's improvements and its facilities and appurtenances located on the Easement Areas shall be borne entirely by the Grantee.

(c) Grantee covenants and agrees that it will at all times indemnify, protect and save harmless the said Grantor from and against all cost or expense resulting from any and all losses, damages, detriments, suits, claims, demands, costs and charges which it may directly or indirectly suffer, sustain or be subjected to by reason or on account of the construction, presence, use, maintenance, or removal of any of Grantee's improvements, its facilities and appurtenances in, on, over, above, under, across or through the Easement Areas, whether such losses or damages be suffered or sustained by the Grantor directly or by its employees, patrons, licensees and agents or be suffered or sustained by

other persons or corporations, including but not limited to the Grantee, its employees, licensees, or agents who may seek to hold the Grantor liable therefor, and whether attributable to the fault, failure or negligence of the Grantor or otherwise.

(d) If and when the Easement Areas or any part thereof shall cease to be used by the Grantee for the purpose hereinbefore mentioned, then the easements and rights hereby granted shall immediately cease and terminate as to so much of the land which shall so cease to be used for the purposes herein intended; and such easements and rights shall revert to the Grantor with the same force and effect as if these presents had never been made.

(e) Grantee covenants and agrees that no assessments, taxes or charges of any kind shall be made against Grantor by reason of the easement and rights granted to Grantee; and Grantee further covenants and agrees to pay Grantor promptly upon bills rendered therefore the full amount of any assessments, taxes or charges of any kind whatsoever which may be levied, charged, assessed or imposed against Grantor to its property by reason of the aforesaid easements.

TO HAVE AND TO HOLD the Easement Areas herein granted, unto the Grantee, for the uses and purposes aforesaid, **UNDER** and **SUBJECT** and as provided herein.

NOTICE - "THIS DOCUMENT DOES NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN AND THE OWNER OR OWNERS OF SUCH COAL. MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND IN THAT CONNECTION DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT." THIS NOTICE IS SET FORTH IN THE MANNER PROVIDED IN SECTION 1 OF THE ACT OF SEPTEMBER 10, 1965, P.L. 505, No. 255 (52 P.S. 1551).

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include at all times and in all cases the successors and assigns of the Grantor and Grantee.

IN WITNESS WHEREOF, the said Grantor has caused this

Indenture to be signed in its name and behalf by its Assistant Vice President-Real Estate duly authorized thereunto and has caused its corporate seal to be hereunto affixed and attested by its Assistant Secretary the day and year first above written.

SEALED and
DELIVERED in the
presence of us:

CONSOLIDATED RAIL CORPORATION
By:

Nancy B. Reynolds M Virginia Ebert
NANCY B. REYNOLDS M. Virginia Ebert,
Assistant Vice President-Real Estate

Attest:

Nancy B. Reynolds Wilberta C Jackson
NANCY B. REYNOLDS Assistant Secretary
WILBERTA C JACKSON

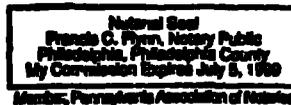
COMMONWEALTH OF PENNSYLVANIA)
: SS
COUNTY OF PHILADELPHIA)

On this 27th day of October A.D. 1995, before me, the subscriber, the undersigned Officer, personally appeared M. Virginia Ebert, who acknowledged herself to be the Assistant Vice President-Real Estate of CONSOLIDATED RAIL CORPORATION, a corporation, and that she as such Assistant Vice President-Real Estate, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by herself as Assistant Vice President-Real Estate.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Francis C. Flynn
Notary Public

I HEREBY CERTIFY that the correct address of the within-named Grantee is:
Allegheny Valley Railroad Company



209 West 34th Street, Philadelphia, PA 19104
by Francis C. Flynn, Notary Public
on behalf of Grantee.

THIS INSTRUMENT PREPARED BY:

Francis C. Flynn
Consolidated Rail Corporation
19-B, Two Commerce Square
2001 Market Street
Philadelphia, Pennsylvania 19101-1419
:nl:

CASE NO. 71703

DEED TO

ALLEGHENY VALLEY RAILROAD COMPANY

EXHIBIT "A"

Allegheny County, Pennsylvania

Valley Industrial Track and Coleman Secondary, Line Code 2229

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as the Allegheny Branch (a.k.a. the Valley Industrial Track and the Coleman Secondary) and identified as Line Code 2229 in the Recorder's Office of Allegheny County, Pennsylvania in Deed Book Volume 6001 at page 606, situate in the County of Allegheny and Commonwealth of Pennsylvania, herein referred to as "Premises" and being further described as follows:

BEGINNING at approximately Railroad Mile Post 0.6, being the centerline of 21st Street, in the City of Pittsburgh, as indicated on sheet 1 of 27 of Exhibit "C"; thence extending in a general northeasterly direction to approximately Railroad Mile Post 4.7, being the end of a portion of the Valley Industrial Track and the beginning of the Coleman Secondary (at approximately Railroad Mile Post 2.5), in the City of Pittsburgh, as indicated on sheet 5 of 27 of Exhibit "C"; thence continuing, in a general easterly direction, to approximately Railroad Mile Post 0.0, the end of the Coleman Secondary and the beginning of the second portion of the Valley Industrial Track at approximately Railroad Mile Post 2.7 (a.k.a. Mile Post 7.2, more or less), in the City of Pittsburgh, as indicated on sheet 8 of 27 of Exhibit "C"; thence continuing in a general easterly and northerly direction, passing through the Township of Penn Hills, the Borough of Verona, Oakmont, the Township of Plum, Barking and Logan's Ferry to the County Line, the County of Allegheny on the south and the County of Westmoreland on the north, at approximately Railroad Mile Post 11.5 (a.k.a. Mile Post 17.08), as indicated on sheet 18 of 27 of Exhibit "C".

TOGETHER with Grantor's right, title and interest in and to the easement to operate over and maintain the Valley Industrial Track between Railroad Mile Post 0.3, more or less, at the northeasterly side of 16th Street and Railroad Mile Post 0.6, more or less, at the centerline of 21st Street, all in the City of Pittsburgh and being the beginning of the above described Premises, as indicated by "PS" on sheet 1 of 27 of

THIS EXHIBIT "A" CONTAINS 10 PAGES, OF WHICH THIS IS
PAGE 1 OF 10.

DE09:7170211

Exhibit "C", said right and easement reserved in a July 20, 1983 deed from Grantor to The Buncher Company and is recited as follows:

"EXCEPTING AND RESERVING, thereout and therefrom an exclusive easement and right for all right, title and interest in and to the railroad track and its appurtenances located along the northwesterly side of Parcel No. 2 hereof from the easterly right of way line of 43rd Street to course North 57° 56' 10" West, as indicated on the aforesaid Plan of Survey dated April 21, 1986; together with the right and easement to use, operate, maintain, repair, replace, renew and remove the aforesaid railroad track and its appurtenances and the right to operate its locomotives, engines, trains, cars and railroad equipment over said track and the right and easement of unimpeded and immediate ingress and egress to and from the aforesaid parcel of land for the aforesaid purposes for so long as said track is used to serve McConway Torley, but not any successors or assigns of McConway Torley; when the track has been abandoned and removed by Grantor, this right and easement shall extinguish."

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, all right, title and interest of, in and to that certain piece or parcel of land, situate on the northeasterly side of 43rd Street and the southeasterly side of the Allegheny River, in the City of Pittsburgh, as indicated by cross-hatched lines on sheet 3 of 27 of Exhibit "C"; together with easements and rights for access on, over, across and through 43rd Street for ingress and egress purposes to and from this piece or parcel of land and the necessary easement rights in, on, over, across and through the Premises that are necessary for any utilities needed for this piece or parcel of land.

CONTAINING 2.75 acres, more or less.

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, all right, title and interest of, in and to that certain piece or parcel of land, Beginning at the County Line, the County of Allegheny on the south and the County of Westmoreland on the north, and as generally indicated as Mile Post 11.5 (a.k.a. Mile Post 17.08) on sheet 18 of 27 of Exhibit "C"; thence extending in a general southeasterly direction to the ENDING on the westerly right of way line of Grantor's line of railroad known as the Allegheny Branch (a.k.a. the Valley Industrial Track), and which line of railroad is now or about to be conveyed to the Allegheny Valley Railroad Company; all in the Borough of Plum, Allegheny County, Pennsylvania, as indicated by cross-hatched lines on sheet 18 of 27 of Exhibit "C".

CONTAINING 0.50 of an acre, more or less.

THIS EXHIBIT "A" CONTAINS 10 PAGES, OF WHICH THIS IS PAGE 2 OF 10.

DB 29571 PG 212

BEING a part or portion of the same premises which Robert W. Blanchette, Richard C. Bucci and John H. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-RP-173, dated March 30, 1976 and recorded on September 12, 1978, in the Recorder's Office of Allegheny County, Pennsylvania, in Deed Book Volume 5201 at page 591 &c., granted and conveyed unto Consolidated Rail Corporation.

THIS EXHIBIT "A" CONTAINS 10 PAGES, OF WHICH THIS IS PAGE 3 OF 10.

DB0957176213

CASE NO. 71703

EXHIBIT C

DEED

and

GRANT OF EASEMENT

to

ALLEGHENY VALLEY RAILROAD COMPANY

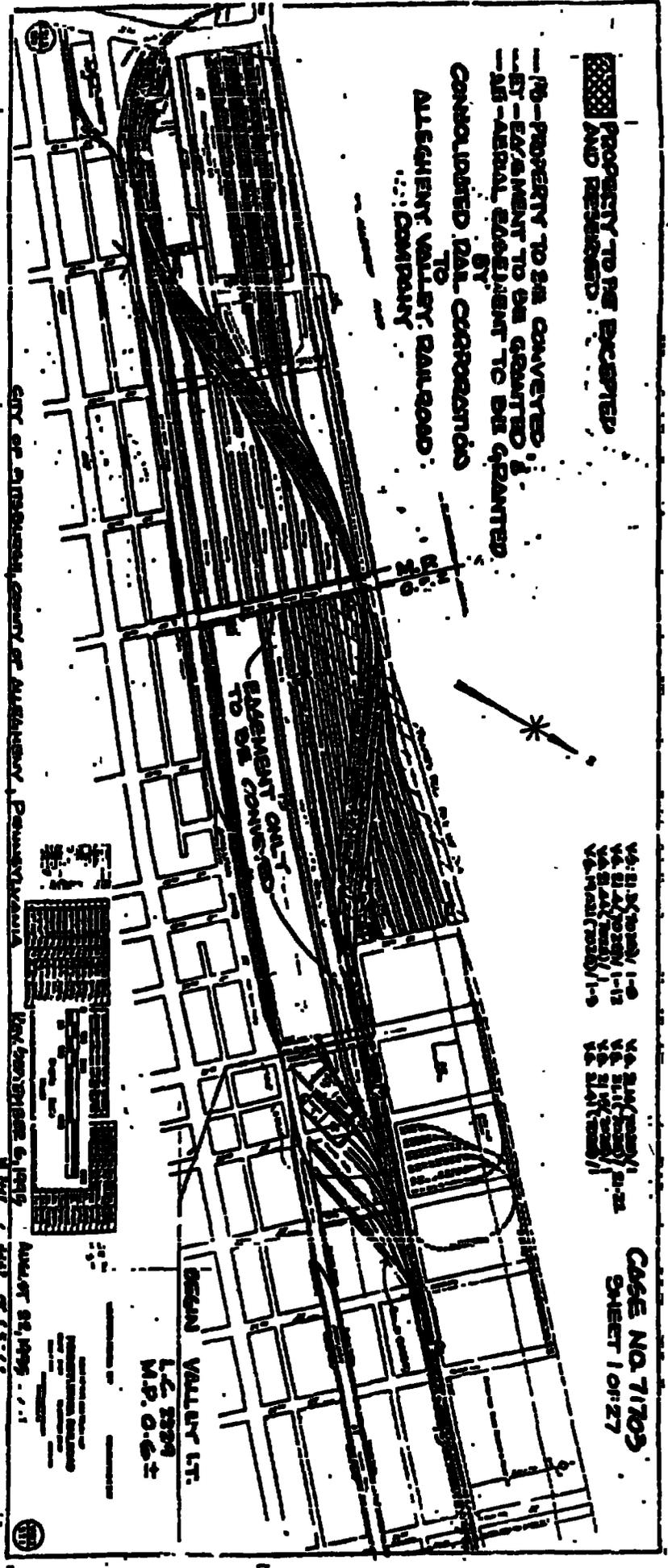
MAP AC CENDUM

THIS EXHIBIT "C" CONTAINS 27 MAPS.

030957116222

PROPERTY TO BE EXCEPTED
AND RESERVED

PROPERTY TO BE CONVERTED
--EASEMENT TO BE GRANTED
--AS AERIAL EASEMENT TO BE GRANTED
BY
CONSOLIDATED VAL. CORPORATION
TO
ALLEGHENY VALLEY RAILROAD
CO. COMPANY



VA 21-3 (2000) / 1-8
VA 21-4 (2000) / 1-12
VA 21-5 (2000) / 1-9
VA 21-6 (2000) / 1-9

VA 21-7 (2000) / 21-21
VA 21-8 (2000) / 21-21
VA 21-9 (2000) / 21-21

CASE NO. 71703
SHEET 1 OF 27

EASEMENT ONLY
TO BE CONSIDERED

500' OF AIRSPACE, GROUND OF ALLEGHENY, PENNSYLVANIA

Box 500, State 6, 19119

August 28, 1995

ALLEGHENY VALLEY R.T.

L.C. 2304
M.P. 0.6+

DB 09571 PG 223

Exhibit J

**Notice of Exemption, ICC Finance Docket No. 32783 -- Allegheny Valley Railroad Company -- Acquisition and
Operation Exemption -- For Certain Lines of Consolidated Rail Corporation**

ALLEGHENY VALLEY RAILROAD COMPANY

P.O. Box 28096, Columbus, Ohio 43228

Telephone: (614) 871-7290

Fax: (614) 539-0352

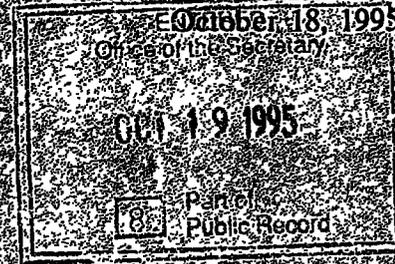
ENTERED
Office of the Secretary

OCT 19 1995

OCT 23 1995

WEST STATE
COMMUNICATIONS DIVISION

Mr. Vernon Williams
Acting Secretary
Interstate Commerce Commission
12th and Constitution Ave., N.W.
Washington, DC 20423



Re: F.D. No. s 32783 & 32784;
Allegheny Valley Railroad Company, Acquisition & Operation Exemption;
Russell A. Peterson, et. al, Continuance in Control Exemption.

Dear Mr. Williams:

Please find the following items enclosed:

1. The original and eleven (11) copies of Allegheny Valley Railroad Company's Notice of Exemption for the Acquisition & Operation of Certain Lines of Conrail.
2. The original and eleven (11) copies of the Notice of Exemption for Continuance in Control submitted by Phillip C. Larson, Russell A. Peterson and Dennis E. Larson, Petitioners.
3. Check No. 1601 in the amount of \$950 in payment of the fee for the filing of item 1 above.
4. Check No. 1602 in the amount of \$700 in payment of the fee for the filing of item 2 above.
5. A pre-stamped, self-addressed return envelope.

Kindly file the original and ten copies of each of the subject documents with the Commission and return one file-stamped copy of each to the sender in the enclosed envelope.

Vernon Williams
October 18, 1995
Page 2

Please call with any questions. Thank you for your assistance in this matter.

Respectfully,



Dennis E. Larson
VP Administration & Law
Allegheny Valley Railroad
Company
P.O. Box 28096
Columbus, Ohio 43228
Tele: (614) 871-7290

0100820053
7 950.00

BEFORE THE
INTERSTATE COMMERCE COMMISSION

VERI NOTICE OF EXEMPTION
PURSUA .O 49 C.F.R. §1150.31

FINANCE DOCKET NO. 32783

ALLEGHENY VALLEY RAILROAD COMPANY
-- ACQUISITION AND OPERATION EXEMPTION --
FOR CERTAIN LINES OF CONSOLIDATED RAIL CORPORATION

FILED

OCT 19 1995

INTERSTATE
COMMERCE COMMISSION

ENTERED
Office of the Secretary
OCT 19 1995
Part of
Public Record

ENTERED
Office of the Secretary
OCT 23 1995
Part of
Public Record

Dennis E. Larson
VP Administration & Law
Allegheny Valley Railroad
Company
P. O. Box 28096
Columbus, Ohio 43228
Tele: 614-871-7290

For: Allegheny Valley
Railroad Company

Date: October 19, 1995

REPORT THE
INTERSTATE COMMERCE COMMISSION

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. §1150.31

FINANCE DOCKET NO. 32783

ALLEGHENY VALLEY RAILROAD COMPANY
-- ACQUISITION AND OPERATION EXEMPTION --
FOR CERTAIN LINES OF CONSOLIDATED RAIL CORPORATION

Comes now the Allegheny Valley Railroad Company, a non-carrier, and pursuant to the provisions of 49 C.F.R. §1150.31, hereby submits the following information in support of its Notice of Exemption:

I. Full Name and Address of Applicant:

Allegheny Valley Railroad Company
P.O. Box 28096
Columbus, Ohio 43228
Telephone No.: (614) 871-7290

II. Name, Address, & Telephone Number of Contact Representative:

Dennis E. Larson
VP Administration & Law
Allegheny Valley Railroad Company
P.O. Box 28096
Columbus, Ohio 43228
(or: 2391 Whispering Brook Lane, Grove City, Ohio 43123)
Telephone No.: (614) 871-7290

III. Status of the Purchase & Sale Agreement:

The parties executed a Purchase and Sales Agreement on October 23, 1995, and intend to close on or before October 25, 1995.

IV. The Operators of the Acquired Properties:

The Allegheny Valley Railroad shall operate the acquired properties as the common carrier thereon.

V. Summary of the Transaction:

A. Name and Address of Selling Railroad:

Consolidated Rail Corporation ("Conrail")
Two Commerce Square
2001 Market Street
Philadelphia, Pennsylvania 19101-1449

B. Target Consummation Date of This Transaction:

The parties anticipate closing on or before October 27, 1995, with the Allegheny Valley Railroad assuming operating responsibility on October 28, 1995.

C. Mile Posts of Transferred Properties:

- i. Valley Industrial Track: MP 0.3 - MP 4.7
- ii. Coleman Secondary Track: MP 0.0 - MP 2.5
- iii. Valley Industrial Track: MP 2.7 - MP 13.8
- iv. Valley Industrial Track: MP 1.8 - MP 2.7
- v. Valley Industrial Track: MP 0.7 - MP 2.3
- vi. Indian Run Industrial Track: MP 0.0 - MP 0.7
- vii. Brilliant Industrial Track: MP 2.3 - MP 3.0
- viii. Brilliant Industrial Track: MP 0.0 - MP 0.5
- ix. Plum Creek Industrial Track: MP 0.0 - MP 0.25

D. Total Route Miles:

Approximately 22.65 route miles.

E. Declaration of Common Control:

As a newly established Class III shortline railroad, the Allegheny Valley Railroad ("AVR") will purchase and operate the above-described rail lines that serve Pittsburgh, Verona, Oakmont, New Kensington, and Arnold, Pennsylvania, travelling through parts of Allegheny and Westmoreland Counties, Pennsylvania. The parties have agreed to conduct interchange between them at Conrail's Island Avenue Yard, near Pittsburgh. The AVR currently conducts no other rail operations subject to the Commission's jurisdiction.

The shareholders of the AVR, as individuals, do own significant positions in other, non-contiguous

Class III shortline railroads. AVR's sole shareholders, Phillip C. Larson, Russell A. Peterson and Dennis E. Larson, also control all shares of the Southwest Pennsylvania Railroad Company (Youngwood, Pennsylvania) and the Camp Chase Industrial Railroad Corporation (Columbus, Ohio), in varying combinations of share distributions. Also, AVR shareholder Russell A. Peterson owns a significant position in Gulf Coast Rail Service, Inc. (d/b/a: Orange Port Terminal Railway, Orange, Texas).

Pursuant to the requirements of 49 C.F.R. §1180.2(D)(2), the matter of control is detailed in the concurrently filed notice of exemption for continuance in control, F.D.No. 32784, Phillip C. Larson, Russell A. Peterson, and Dennis E. Larson - Continuance in Control Exemption - Allegheny Valley Railroad Company.

VI. System Map:

Attached as Exhibit A.

VII. Certification of Revenues:

The Allegheny Valley Railroad Company certifies that revenues projected as a result of this transaction will not exceed those that would qualify it as a Class III carrier.

VIII. Environmental & Historical Reporting Requirements:

This proceeding is exempt from environmental review under the provisions of 49 C.F.R. §1105.6(C)(2)(i) because the proposed action will cause no operating changes that exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) & (5) and otherwise will not result in an action that would normally require environmental documentation.

Additionally, this proceeding is exempt from historic review under the provisions of 49 C.F.R. §1105.8(b)(1) because rail operations will continue on the affected lines and because Interstate Commerce Commission approval is required before service can be abandoned and there are no plans to dispose of or alter properties subject to such Commission jurisdiction.

IX. Verification

I, Dennis E. Larson, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am

qualified and authorized to file this Notice of Exemption for
Acquisition and Operation. Executed on October 18, 1995.

Respectfully Submitted
For the Allegheny Valley
Railroad Company



by: Dennis E. Larson
VP Administration & Law
Allegheny Valley Railroad
Company
P.O. Box 28096
Columbus, Ohio 43228
(614) 871-7290

Filing Date: October 19, 1995

BEFORE THE
INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 32783

ALLEGHENY VALLEY RAILROAD COMPANY
-- ACQUISITION AND OPERATION EXEMPTION --
CERTAIN LINES OF CONSOLIDATED RAIL CORPORATION

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. §1150.31

The Allegheny Valley Railroad Company ("AVR"), a newly established Class III shortline railroad, filed a notice of exemption to acquire and operate certain lines of Consolidated Rail Corporation ("Conrail"), as herein described.

Valley Industrial Track: MP 0.3 - MP 4.7; Coleman Secondary Track: MP 0.0 - MP 2.5; Valley Industrial Track: MP 2.7 - MP 13.8; Valley Industrial Track: MP 1.8 - MP 2.7; Valley Industrial Track: MP 0.7 - MP 2.3; Indian Run Industrial Track: MP 0.0 - MP 0.7; Brilliant Industrial Track: MP 2.3 - MP 3.0; Brilliant Industrial Track: MP 0.0 - MP 0.5; and Plum Creek Industrial Track: MP 0.0 - MP 0.25 (Total: approximately 22.65 route miles).

AVR's shareholders, Phillip C. Larson, Russell A. Peterson, and Dennis E. Larson, as owners of significant shares of the Southwest Pennsylvania Railroad Company, and the Camp Chase Industrial Railroad Corporation, both non-contiguous Class III carriers and Russell A. Peterson, as a significant shareholder in Gulf Coast Rail Service, Inc. (d/b/a Gulf Coast Rail Service, Inc., also non-contiguous) also filed, concurrent with this transaction, a Verified Notice of Exemption for Continuance in Control, F.D. No. 32784, pursuant to the provisions of 49 C.F.R. §1180.2(d)(2).

AVR expects to consummate these transactions simultaneously on October 26, 1995.

Comments must be filed with the Commission and served on Dennis E. Larson, VP Administration & Law, Allegheny Valley Railroad Company, P.O. Box 28096, Columbus, Ohio 43228 (office: 2391 Whispering Brook Lane, Grove City, Ohio 43123) and on John Paylor, Esq., Law Department, Conrail, Two Commerce Square, 2001 Market Street, Philadelphia, Pennsylvania 19101-1419.

This Notice is filed under the provisions of 49 C.F.R. §1150.31. If it contains false or misleading information, the exemption is void ab initio. 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 automatically stay the transaction.

Dated: October 19, 1995

By the Commission

Vernon A. Williams
Secretary