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October 9, 2009

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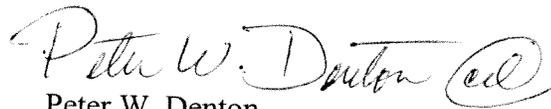
The Honorable Anne Quinlan
Acting Secretary
Surface Transportation Board
395 E Street SW
Washington, DC 20423-00001

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

Dear Acting Secretary Quinlan:

Enclosed for e-filing in the above-captioned proceeding is **The Buncher Company's Response to Request for Additional Briefing**. If you have any questions, please contact me.

Respectfully submitted,


Peter W. Denton

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35239

ALLEGHENY VALLEY RAILROAD COMPANY –
PETITION FOR DECLARATORY ORDER

THE BUNCHEM COMPANY'S
RESPONSE TO REQUEST FOR ADDITIONAL BRIEFING

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**ATTORNEYS FOR
THE BUNCHEM COMPANY**

Dated: October 9, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35239

ALLEGHENY VALLEY RAILROAD COMPANY –
PETITION FOR DECLARATORY ORDER

THE BUNCHER COMPANY'S
RESPONSE TO REQUEST FOR ADDITIONAL BRIEFING

Pursuant to the decision served in this proceeding on September 17, 2009, The Buncher Company (“Buncher”) hereby submits this Response to address how the June 26, 2009 decision of the United States Court of Appeals for the District of Columbia Circuit in Consolidated Rail Corp. v. Surface Transportation Board, 571 F.3d 13 (D.C. Cir. 2009) (“Harsimus”) affects this proceeding. For the reasons set forth herein, Buncher believes that the Harsimus decision requires the Surface Transportation Board (the “Board” or “STB”) to issue an order dismissing this proceeding because an antecedent, threshold issue – whether Conrail acquired Track No. 8 as a line of railroad or excepted track – is vested within the exclusive jurisdiction of the United States District Court for the District of Columbia, as successor to the Regional Rail Reorganization Act Special Court.

I. Factual Background

In its Petition for Declaratory Order (“Petition”), Allegheny Valley Railroad Company (“AVRR”) asked the Board to declare that AVRR has common carrier rights through an alleged easement over a parcel of property owned by Buncher between 16th Street and 21st Street in the

Strip District of Pittsburgh, PA.¹ Buncher acquired this property from Conrail in 1983. The property was once a small part of a complicated network of freight yard tracks and facilities which collectively formed the western end of the former Pennsylvania Railroad's Allegheny Branch.² At the time of Buncher's acquisition, the parcel of land contained three yard or industrial tracks that have been referred to in this proceeding as Track Nos. 6, 7, and 8.³ All of these railroad tracks were removed from the Buncher property by the mid to late 1980's, and there has been no rail service in the entire area of the Strip District west of 21st Street for more than 20 years.⁴

In 1970, Penn Central Transportation Company ("PCTC"), then owner of the parcel of land at issue, filed for bankruptcy. In response to the PCTC bankruptcy and the contemporaneous collapse of other major railroads, Congress enacted the Regional Rail Reorganization Act of 1973 ("3R Act")⁵ to reorganize the bankrupt railroads into a single "economically viable" system owned by a new entity known as Consolidated Rail Corporation

¹ Allegheny Valley Railroad Company—Petition for Declaratory Order, STB Finance Docket No. 35239 (filed April 23, 2009).

² See The Buncher Company's Reply to Allegheny Valley Railroad Company's Petition for Declaratory Order, 4-5 (filed June 2, 2009) ("Buncher June 2 Reply").

³ See id. at 6-7; see also The Buncher Company's Motion to File Supplemental Evidence, 2-4 (filed Aug. 4, 2009) ("Buncher August 4 Motion"). Track No. 8 is also referred to in certain conveyance documents as part of the "Valley Industrial Track." We use the term Track No. 8 herein for convenience.

⁴ The Board's September 17th decision in this proceeding, in its opening paragraph, notes that "[b]etween 1984 and 1988, most of the railroad track within the [alleged] easement area not embedded in concrete had been removed or covered." The evidence submitted by Buncher in this proceeding has established that all of the track was embedded in concrete and all of the track was removed between 1984 and 1988.

⁵ Pub.L. No. 93-236, 87 Stat. 985 (1974) (codified as amended at 45 U.S.C. §§ 701 *et seq.*).

("Conrail").⁶ In order to undertake this massively complex task, the 3R Act created the United States Railway Association ("USRA"), and charged the USRA with deciding which "rail properties" the bankrupt railroads would convey to Conrail.⁷ The 3R Act defined "rail properties" as the "assets or rights owned, leased, or otherwise controlled by a railroad which are used or useful in rail transportation service."⁸

In 1975, pursuant to the 3R Act, the USRA published a Final System Plan ("FSP") that designated for transfer to Conrail certain "rail lines,"⁹ which, "[u]nless otherwise specified, . . . include[] all rail properties . . . connected with, controlling or in any way pertaining to or used by the designee in connection with the rail line designated including . . . connecting spur and storage tracks."¹⁰ The 3R Act also created the "Special Court," a United States district court composed of three judges that, among other duties, implemented the FSP by ordering the conveyance of FSP-designated rail properties to Conrail.¹¹

The FSP directed PCTC to transfer to Conrail "Line Code 2229," which the FSP described as a portion of the "Allegheny Branch" running from "Pittsburgh 11th Street" at milepost "0.2" to "Pittsburgh 57th Street" at milepost "4.6."¹² The Special Court issued its

⁶ Id. § 101(b), 87 Stat. at 986.

⁷ Id. § 201, 87 Stat. at 988-89.

⁸ Id. § 102(10), 87 Stat. at 987.

⁹ FSP at 261. Relevant portions of the FSP are attached as Exhibit B to the Verified Statement of Joseph M. Jackovic in Response to the Rebuttal of Allegheny Valley Railroad Company ("Jackovic Second V.S.," filed June 25, 2009 with The Buncher Company's Response to Allegheny Valley Railroad Company's Rebuttal ("Buncher June 25 Response")).

¹⁰ FSP at 241, the relevant portion of which is attached hereto as **Exhibit A**.

¹¹ 3R Act §§ 209(b), (c), 303(b)(1), 87 Stat. at 999-1000, 1006.

¹² FSP at 274. See Buncher June 2 Reply at 6; Buncher June 25 Response at 7-9.

Conveyance Order on March 25, 1976.¹³ Pursuant to the Conveyance Order, the PCTC trustees conveyed to Conrail through Conveyance Document No. PC-CRC-RP-173, *inter alia*, the following rail property:

Situate in the County of Allegheny, Commonwealth of Pennsylvania, and being the [PCTC's] line of railroad known as the Allegheny Branch, and being all the real property in the County lying in, under, above, along, contiguous to, adjacent to or connecting to such line.

Such line originates in the County near 11th Street in Pittsburgh, connecting to another line of railroad known as Philadelphia-Pittsburgh Main Line, passes through Nadine and Oakmont and leaves the County near Logans Ferry.

The line of railroad described herein is identified as Line Code 2229 in the records of the [USRA].”¹⁴

Attached to the 1976 Deed are detailed Valuation Maps denoting rail properties that PCTC conveyed to Conrail.¹⁵ Valuation Map V.21.3/ST-1 shows the parcel of land at issue in this proceeding as one of numerous Line Code 2229 “rail properties” conveyed through the 1976 Deed from PCTC to Conrail.¹⁶ As noted above, the FSP defined “rail properties” to include both

¹³ Order of Conveyance to Trustees of Railroads in Reorganization in the Region, Misc. No. 75-3(A), at 8-9 (Reg'l Rail Reorg. Ct. Mar. 25, 1976), attached hereto as **Exhibit B**.

¹⁴ Deed Between Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor and Consolidated Rail Company at A-11 (executed March 30, 1976) (“1976 Deed”). Relevant portions of the 1976 Deed are attached as Exhibit C to the Jackovic Second V.S.

¹⁵ USRA used the Valuation Maps prepared by all steam railroads following surveys conducted during 1915-1920 as “the basis for the conveyance of real property.” Harsimus, 571 F.3d at 16 (citing a verified statement of Victor Hand, the USRA director of facilities planning). The deeds transferring property to Conrail conveyed all the transferor’s rail property except for parcels of property marked on the Valuation Maps. Id.

¹⁶ This Valuation Map is attached as Exhibit A to the Jackovic Second V.S. The parcel at issue in this proceeding was neither listed in Exhibit B to the 1976 Deed as property excepted by PCTC nor marked on the Valuation Map attached to the 1976 Deed as “excluded” property, and was therefore transferred to Conrail.

lines of railroad and associated spur, yard and other ancillary trackage. See Harsimus, 571 F.3d at 19.

Through a Deed dated July 20, 1983, Conrail conveyed to Buncher the parcel of land at issue in this proceeding.¹⁷ The 1983 Deed describes the parcel as a portion of the Allegheny Branch, “identified as Line Code 2229 in the records of the [USRA],” and “a part of the premises which [PCTC], by Conveyance Document No. PC-CRC-RP-173 . . . granted and conveyed unto [Conrail].”¹⁸ In addition to conveying title to the underlying real estate, Conrail 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.”¹⁹ Conrail also reserved an easement “to continue to operate over and maintain its so-called Valley Industrial Track which traverses the land hereinbefore described.”²⁰

Soon after this 1983 conveyance and Conrail’s May 1984 receipt of a certificate from the Interstate Commerce Commission (“ICC”) to abandon its common carrier rights over the portion of the Valley Industrial Track between 16th and 21st Street, Tracks No. 6, 7, and 8 were removed from the Buncher property, and the entire parcel of land was filled, graded and prepared for non-railroad use.²¹ There has been no trackage on this Buncher property for more than 20

¹⁷ Indenture Between Consolidated Rail Corporation and The Buncher Company (executed July 20, 1983) (“1983 Deed”). The 1983 Deed is attached as Exhibit A to the April 23, 2009 Verified Statement of Russell A. Peterson, submitted with AVRR’s Petition (“Peterson First V.S.”). See also Buncher June 2 Reply at 6-8.

¹⁸ 1983 Deed at 1-2.

¹⁹ Id.; see also Buncher June 2 Reply at 7.

²⁰ 1983 Deed at 2; see also Buncher June 2 Reply at 7 (quoting the easement language). As noted above, this track has been referred to in this proceeding for convenience as Track No. 8.

²¹ The portion of Track No. 8 on Buncher’s property was surrounded by concrete pads, for the track was used for loading and unloading purposes and therefore the concrete pads allowed

years. Moreover, Conrail never objected to the use of the Buncher parcel for non-railroad purposes and never attempted to assert that it had continuing easement rights after receipt of the 1984 ICC abandonment certificate.

II. Legal Argument

In its Petition for Declaratory Order, AVRR claims that Conrail in 1995 transferred to AVRR an alleged rail easement over Buncher's property between 16th and 21st Street. AVRR contends that this purported easement allows AVRR to construct track, install passenger rail platforms and commence common carrier passenger and freight rail service over the entirety of Buncher's property and without the consent of Buncher or any other interested stakeholders.²² Despite AVRR's claims, Buncher has demonstrated in this proceeding that any easement rights Conrail retained in its 1983 transaction with Buncher over Track No. 8 were abandoned by Conrail many years before its 1995 transaction with AVRR, as a result of the 1984 abandonment proceeding, subsequent removal of the track from Buncher's property and Conrail's non-objection to Buncher's use of the property for non-railroad purposes.

A central issue before the Board in this proceeding is whether Conrail acquired Track No. 8 in 1976 as a line of railroad, as AVRR contends, or as an excepted track not subject to the Board's abandonment jurisdiction, as Buncher contends. Although Buncher believes that it has submitted sufficient evidence before the Board to prevail on this issue, the Harsimus decision

trucks to pull up right alongside railcars stored on the track. See Supplemental V.S. of Joseph Jackovic, filed with Buncher's August 4 Motion, at 2. The concrete pads are shown on Valuation Map V.21.3/ST-1 and provide further evidence that Track No. 8 was excepted track rather than a line of railroad.

²² Even assuming that AVRR had any easement rights over Buncher's property, which Buncher strenuously disputes, the scope of any such easement would not cover the entire 90-foot width of Buncher's property (as AVRR claims). In its 1983 transaction with Buncher, Conrail only reserved an easement for operating and maintaining its then-existing Track No. 8 and sold all rights to Track Nos. 6 and 7 to Buncher. See Buncher's June 2 Reply at 16-18.

requires the District Court (rather than the Board) to decide the regulatory status of Track No. 8 because it requires an interpretation of the conveyance documents associated with Conrail's formation in 1976.

Buncher has submitted evidence indicating that, at the time of the 1976 transfer from PCTC to Conrail pursuant to the Conveyance Order, Track No. 8 was not a "line of railroad" subject to ICC jurisdiction. Track No. 8 (along with Tracks No. 6 and 7) was one of many excepted yard and industrial tracks in the Pittsburgh Produce Yards area that PCTC transferred to Conrail as part of the Allegheny Branch "rail properties" identified by USRA in the FSP as part of Line Code 2229.²³

The Board has abandonment jurisdiction over a line of railroad under 49 U.S.C. § 10903, but does not have authority over the abandonment of spur, industrial, switching, yard or other ancillary trackage under 49 U.S.C. § 10906. For purposes relevant here, a "line of railroad" has been defined as a:

line[] designed and used for continuous transportation service by through, full trains between different points of shipment or travel, and [excluding] all that mass of 'tracks' (as distinguished from 'lines') naturally and necessarily designed and used for loading, unloading, switching, and other purposes connected with, and incidental to, but not actually and directly used for, such transportation service.²⁴

At the time of its transfer to Conrail in 1976, the portion of Track No. 8 on Buncher's property was used as a loading, unloading and car storage track surrounded by concrete padding.²⁵ All of the trackage and associated adjacent property west of 16th Street was sold by the PCTC Trustees

²³ Id. at 4.

²⁴ Nicholson v. Interstate Commerce Commission, 711 F.2d 364, 367-368 (D.C. Cir. 1983)(quoting Detroit and M. Ry. v. Boyne City, G. & A.R.R., 286 F. 540, 546 (E.D. Mich. 1923).

²⁵ See Buncher August 4 Motion at 4.

to Buncher and other non-railroad interests and was not conveyed to Conrail (as shown by the hatch marks on Valuation Map V.21.3/ST-1). Therefore, Track No. 8 could not and did not serve as a continuous through track for trains operating between different points subsequent to the 1976 Conrail transaction. This confirms that, as Buncher contends, USRA did not designate Track No. 8 as a “line of railroad” for transfer to Conrail but instead as excepted yard or industrial track that was “incidental to, but not actually part of . . . line-haul transportation service” and therefore “considered to be excepted track that is not subject to abandonment jurisdiction.”²⁶

Buncher also has submitted evidence establishing that, even assuming that Track No. 8 was conveyed to Conrail as a “line of railroad” in the FSP and the subsequent Conveyance Order, Conrail obtained ICC authority in 1984 to abandon all of its common carrier rights over the rail properties conveyed to Conrail by PCTC as part of Line Code 2229 between 16th and 21st Streets.²⁷ This abandonment extinguished any common carrier rights that may have attached to the portion of Track No. 8 which previously existed on the parcel of land at issue in this proceeding, which property has its eastern boundary at 21st Street and thus would have been encompassed within the scope of the 1984 abandonment.

AVRR claims that Conrail’s 1984 abandonment did not extinguish any purported common carrier rights over the relevant parcel of land, but rather over a separate, parallel line of railroad (also, according to AVRR, called the “Valley Industrial Track”) that allegedly existed

²⁶ See Union Pac. R.R. Co.—Operation Exemption—In Yolo, County, CA, STB Finance Docket No. 34252 (STB served Dec. 5, 2002)(“Yolo County”); see also Buncher August 4 Motion at 4.

²⁷ See Conrail Abandonment in Allegheny County, PA, ICC Docket No. AB-167 (Sub-No. 558N) (ICC served May 18, 1984). This decision was attached to the Verified Statement of Joseph M. Jackovic (“Jackovic First V.S.,” filed June 2, 2009 with Buncher June 2 Reply). See also Buncher June 2 Reply at 13-16.

one block south of this parcel along the same coordinates between 16th and 21st Street.²⁸

Because Conrail obtained all its rail properties in this area from PCTC pursuant to the Conveyance Order, this AVRR allegation presupposes that PCTC transferred two separate lines of railroad in this same area to Conrail through the 1976 Deed (even though, as Buncher has shown, this other line of railroad was not identified by USRA in its FSP and does not appear on subsequent Conrail track charts).

Although Buncher believes that the Board has sufficient evidence before it to determine that the 1984 Conrail abandonment encompassed the portion of Track No. 8 on Buncher's property, AVRR's argument with respect to the 1984 abandonment is premised on an issue that is within the exclusive jurisdiction of the District Court – i.e., whether the PCTC Trustees conveyed two separate “lines of railroad,” both between 16th and 21st Streets in the Strip District, to Conrail pursuant to the FSP, the Conveyance Order and the 1976 Deed.

Although AVRR's position on the jurisdictional issues is less than clear, AVRR appears to have acknowledged in this proceeding that the portion of Track No. 8 on Buncher's property was not used as line of railroad by the Pennsylvania Railroad or the PCTC prior to 1976. Specifically, AVRR confirms that “Conrail's predecessors used alternative operating tracks in the Produce Yard for through train operations.”²⁹ AVRR's position appears to be that, after Conrail's 1984 abandonment of the Ft. Wayne Bridge and the Valley Industrial Track between

²⁸ See Buncher June 25 Response at 4-7.

²⁹ See Verified Statement of Russell A. Peterson in Response to the Buncher Company's Motion to File Supplemental Evidence, filed with AVRR's August 13, 2009 Reply to the Buncher Company's Motion to File Supplemental Evidence, at 2 (“Peterson Third V.S.”).

16th and 21st Street (which AVRR claims is a different track than Track No. 8), Conrail began using the Allegheny Branch trackage in a different manner.³⁰

However, Buncher has submitted evidence demonstrating that Track No. 8 was removed from the Buncher property at some point between February 1984 (when Conrail obtained ICC abandonment authority) and 1988. Thus, at most, any purported change in the usage of Track No. 8 by Conrail would have been for a very brief period of time³¹ and would not have been sufficient to change the regulatory status of the track from excepted ancillary track to a line of railroad.³² In fact, Conrail never sought ICC authority after 1984 to operate Track No. 8 as a line of railroad – for understandable reasons, since use of Track No. 8 did not extend Conrail’s operations into new territory or otherwise implicate the jurisdiction factors identified in Yolo County.³³ Moreover, AVRR cites no precedent in support of its theory that any change in the

³⁰ In making this and other arguments, AVRR continues to refer to the nature and use of the “Strip District rail facilities” in general terms, and never specifically avers whether Conrail changed its use of the specific portion of Track No. 8 on Buncher’s property. See Peterson Reply V.S. at 2.

³¹ AVRR’s assertion in the Peterson Third V.S. that “[f]rom 1983 to present, the line between 16th and 21st Streets continued to be used by Conrail and then by AVRR as the western terminus of the line of railroad over which interstate rail shipments were or could again be delivered or originated in the Pittsburgh Strip District long after various Produce Yard tracks were removed” – is patently misleading. See Peterson Third V.S. at 2. AVRR never operated over any relevant trackage between 16th and 21st Streets, and Conrail at most operated over such trackage for a brief period between its 1984 abandonment and the removal of the tracks.

³² See Yolo County, slip. op. at 3 (“A line is subject to our regulation under section 10901 if the effect of the trackage is to extend the line of a carrier into new territory, if it is used for continuous transportation service by through trains between different points, or if the trackage constitutes the entirety of a carrier’s line.”)

³³ Even if it were necessary to evaluate whether Conrail in fact changed its usage of Track No. 8 after 1984 to a degree sufficient to convert the track into a regulated line of railroad, the regulatory status of the track prior to any such conversion (i.e. at the time of the 1976 creation of Conrail) must first be determined. Thus, even under AVRR’s theory on this point, the threshold issue remains one within the exclusive jurisdiction of the District Court.

nature of Conrail's usage of Track No. 8 would have been sufficient to convert it from excepted track into a line of railroad.³⁴

III. The Harsimus Decision

In Harsimus, the D.C. Circuit confronted facts very similar to those found in this proceeding, and determined that the Board had no jurisdiction to consider a petition for declaratory order where resolution of the dispute involved "substantial questions with respect to the interpretation of the FSP and [the Special Court's] conveyance orders themselves."³⁵

The 3R Act, as amended, provides that:

The original and exclusive jurisdiction of the special court shall include any action, whether filed by any interested person or initiated by the special court itself, to interpret, alter, amend, modify, or implement any of the [conveyance] orders entered by such court . . . in order to effect the purposes of this chapter or the goals of the final system plan.³⁶

Congress abolished the Special Court as of January 7, 1997, and transferred "all jurisdiction and other functions" of the Special Court to the United States District Court for the District of Columbia.³⁷

In interpreting the above jurisdictional authority of the District Court *qua* the Special Court, the D.C. Circuit in Harsimus relies heavily on earlier Special Court decisions. In Penn Central, the Special Court "concluded that it had exclusive jurisdiction of an action seeking a

³⁴ See The Atchison, Topeka and Santa Fe Ry. Co. – Abandonment Exemption – In Lyon County, KS, ICC Docket No. AB-52 (Sub-No. 71X), slip op. at 3 (ICC served June 17, 1991) (railroad's "unilateral decision to change [the] use of [a] track segment over time" does not transform the track segment from a line of railroad to an excepted track).

³⁵ Harsimus, 571 F.3d at 19 (quoting Consol. Rail Corp. v. Pittsburgh and Lake Erie R.R. Co., 459 F.Supp. 1013 (Reg'l Rail Reorg. Ct. 1978) ("P & LE").

³⁶ 45 U.S.C. § 719(e)(2).

³⁷ Id. § 719(b)(2).

declaratory judgment that its conveyance order ‘conveyed to Conrail all of [PCTC’s] right, title and interest in a lease of certain railroad equipment.’”³⁸ Harsimus quoted approvingly from Penn Central, where the Special Court held that “‘interpretation of a conveyance order is clearly within [its] exclusive jurisdiction’” and that the Court had “‘jurisdiction to consider at least some aspects of [the conveyance document]’ because ‘it involves the implementation of [the] conveyance order.’”³⁹ Harsimus also upheld the Penn Central and P & LE holdings that the Special Court has “‘exclusive jurisdiction where resolution of the dispute involves the court’s ‘central functions,’”⁴⁰ and that “‘interpreting conveyance documents ‘so as to give effect to the intention formulated by USRA and approved by Congress is within ‘the central functions’ of [the Special] Court.’”⁴¹

In applying these rules to abandonment proceedings and interpretations thereof, Harsimus held that “[o]nly in proceedings in which the Board’s authority is challenged and an interpretation of the FSP or the Special Court’s conveyance order under 45 U.S.C. § 719(e)(2) is required does the Board lack jurisdiction to resolve the question of the nature of the trackage sought to be abandoned.”⁴² Accordingly, in abandonment proceedings, “the district court *qua* the Special Court retains its exclusive jurisdiction to decide the antecedent question if it arises,

³⁸ Harsimus, 571 F.3d at 18 (quoting Consol. Rail Corp. v. Penn Central Corp., 533 F.Supp. 1351, 1352 (Reg’l Rail Reorg. Ct. 1982) (“Penn Central”).

³⁹ Harsimus, 571 F.3d at 18 (quoting Penn Central, 533 F.Supp. at 1353-54).

⁴⁰ Harsimus, 571 F.3d at 18 (quoting Penn Central, 533 F.Supp. at 1353 (quoting P & LE, 459 F.Supp. at 1017)).

⁴¹ Harsimus, 571 F.3d at 18 (quoting P & LE, 459 F.Supp. at 1017-18).

⁴² Harsimus, 571 F.3d at 20.

namely, whether the trackage was conveyed by the FSP as ‘part of [the rail carrier’s] railroad lines.’”⁴³

In the current proceeding, the Board is faced with these very same “antecedent question[s].” In order to reach the ultimate question of whether AVRR holds a common carrier easement over Buncher’s parcel of land, the Board must first determine whether Track No. 8 was conveyed to Conrail in 1976 as a “line of railroad” or as ancillary yard or industrial track that is not subject to the Board’s abandonment jurisdiction. This determination requires an interpretation of the FSP, the Conveyance Order, the 1976 Deed and the valuation maps attached thereto.⁴⁴

This current proceeding, therefore, “raises substantial questions with respect to the interpretation of the FSP and the Special Court’s conveyance orders themselves, and, accordingly, the petition falls within the original and exclusive jurisdiction of the United States District Court for the District of Columbia as successor to the Special Court to interpret an order entered by the Special Court.”⁴⁵ For this reason, the Board must conclude here that it is without jurisdiction to consider AVRR’s Petition for Declaratory Order.

If the Special Court determines that Conrail did not acquire Track No. 8 as a “line of railroad” in the 1976 Deed, then the relief sought by AVRR must be denied because the Buncher property would not have been subject to the abandonment jurisdiction of the ICC or the Board.

If the Special Court determines that Conrail did acquire Track No. 8 as a “line of railroad” in

⁴³ Id. (quoting 49 U.S.C. § 10903, which grants authority to the Board to approve or deny applications for abandonment).

⁴⁴ The Special Court considers documents issued pursuant to a Conveyance Order, like the 1976 Deed and the attached valuation maps, to be “conveyance documents.” See, e.g., Penn Central, 533 F.Supp. at 1353-54. The D.C. Circuit agreed with this approach in Harsimus.

⁴⁵ Harsimus, 571 F.3d at 19 (internal quotations and citations omitted).

1976, it also must determine whether Conrail acquired a separate “line of railroad” parallel to Track No. 8 along Smallman Street as part of the 1976 transaction. This determination would be relevant to AVRR’s contention that Conrail’s 1984 abandonment authority does not encompass Track No. 8, and necessarily would turn on interpretations of the FSP, Conveyance Order and 1976 Deed.

Thus, a central threshold issue raised by AVRR’s Petition for Declaratory Order is the regulatory status of Track No. 8 at the time of the conveyance to Conrail in 1976. This necessarily requires an interpretation of the FSP, the Conveyance Order and the 1976 Deed. The Harsimus decision makes it clear that such an interpretation is within the exclusive jurisdiction of the U.S District Court for the District of Columbia, as successor to the Special Court. For these reasons, Buncher believes the Board must issue an order dismissing this proceeding.

Respectfully submitted,



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**ATTORNEYS FOR
THE BUNCHER COMPANY**

Dated: October 9, 2009

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SURFACE TRANSPORTATION BOARD

Finance Docket No. 35239

ALLEGHENY VALLEY RAILROAD COMPANY –
PETITION FOR DECLARATORY ORDER

THE BUNCHER COMPANY'S
RESPONSE TO REQUEST FOR ADDITIONAL BRIEFING

EXHIBITS A – B

EXHIBIT

Exhibit A

DESCRIPTION

USRA Final System Plan of 1975 (pages 241-42)

Exhibit B

Order of Conveyance to Trustees of Railroads in
Reorganization in the Region, Misc. No. 75-3(A) (Reg'l Rail
Reorg. Ct. Mar. 25, 1976)

EXHIBIT A

USRA Final System Plan of 1975 (pages 241-42)

rights that support such activity are not crucial since the very fact that a railroad has operated along the rail line for years is evidence that it possesses enough rail properties to support its operations. And the Act, of course, contemplates the transfer of such properties.

Under section 303(b) of the Act, the railroads in re-organization will convey all their right and interest in rail lines designated for transfer free and clear of any liens and encumbrances. This makes unnecessary, at least for designation and conveyance purposes, the large expenditure of time and money required to survey the land and search title records.

National, state and local needs are best served by honoring existing utility easements, crossing agreements, trackage right and other operating and joint facility agreements insofar as they relate to the particular property designated. These arrangements are therefore generally preserved in the designations under the FSP. It is not intended by these designations, however, to foreclose in any way the exercise by any designee of any termination or renegotiation rights pertaining to such agreements whether arising through operation of law or from the agreement itself.

Inventory of Rail Lines and Related Facilities.—The estates' valuation and real-estate records did not provide a basis for developing an inventory of the railroads' rail lines adequate for USRA's use.

The most complete existing inventory was found to be the Penn Central Engineering Department records, which assign a unique four-digit code, called a line code, to each individual railroad line. Using this system as a basis, USRA and its consultants developed unique line code designations for lines of the other railroads under study which could be easily used with the Penn Central's system.

The line-code descriptions then were compared with existing reference tools, including track charts, valuation maps, United States Geodetic Survey maps, operating timetables and interlocking diagrams.⁴⁰ In some instances physical inspections were used to verify these descriptions. The most useful tool was the railroads' track charts which depict the route of each line of railroad including milepost⁴¹ locations, highway grade crossings, grade crossings with other lines of railroad, connections to other lines of railroad, overhead bridges and other engineering data.

USRA created a computerized file ("User File") listing each individual line of railroad for each estate and showing line-code designations as contained in the Penn Central's Engineering Department records or as design-

nated for other railroad lines,⁴² including origin and destination (by milepost, geographic reference and branch name). Milepost and line-code locations have been recorded for most facilities installed along the rail line and have been correlated with the User File. While this data base represents a more complete inventory of the estates' rail lines than previously existed, it is not perfect and does not purport to contain a complete inventory of facilities and buildings along the rail lines.

Milepost designations are not always precise and, therefore, milepost designations in the appendix are necessarily approximate. The valuation maps generally reflect historical designations which were made when the lines were built. Through the years, portions of lines have been relocated, and mileposts on some lines have been renumbered. Milepost designations contained in the track charts do not always correlate with the valuation maps, although these discrepancies have been minimized to the extent possible. Further, milepost designations in operating timetables may not always reflect either track charts or valuation maps, particularly where two formerly separate lines are now used as a part of one through route. And, in a few instances, the physical mileposts on the ground may not correspond to any of the above records. There also may be instances where a few small lines now operate as a part of a yard or as an industrial track and may not have been assigned a unique line code.

Designation of Rail Lines.—This FSP designates for transfer to ConRail, for offer to profitable railroads, for acquisition by Amtrak and for option to transportation authorities, the rail lines along the routes specified respectively, for operation by each in Chapter 1, "Industry Structure", and Chapter 2, "Passenger Service."

Unless otherwise specified, each such rail line includes all rail properties (as defined in section 102(10) of the Act) connected with, controlling or in any way pertaining to or used or usable by the designee in connection with the rail line designated including, but not limited to, minerals and mineral rights, franchises, permits, certificates of convenience and necessity, connecting spur and storage tracks, land,⁴³ grading,⁴⁴ tunnels and sub-

⁴⁰ The line codes originally used for Penn Central are those which existed as of January 1, 1974. In a few cases, Penn Central subsequently changed those code designations; however, the USRA data base used the same line code number under which the line was studied originally. Further, in some specific instances, USRA revised line codes in creating its computerized data base to accommodate a few unique circumstances.

⁴¹ Land means such properties which can be carried in Account 2 and includes land, roadway, office, shop, and other grounds; for ingress to or egress from such grounds; for borrow pits, waste banks, snow fences, sand fences, and other railway appurtenances; and for storage of material adjoining the rail line; land for wharves and docks and the riparian or water rights necessary therefore.

⁴² Grading means such properties which can be carried in Account 3 and includes berm ditches, breakwaters, bulkheading, dikes (including those of eastern construction which are intended to function indefinitely), ditches, dressing slopes, excavation for conversion of tunnels into open cuts, filling, grading outfalls, grubbing land, material taken from borrow pits, retaining walls, revetments, riprap, spoil banks, temporary trellising for fills, tools for grading, and wing dams.

⁴³ Interlocking diagrams are detailed maps showing all lines of railroad and switches associated with an interlocking. An interlocking is a switch or group of switches interconnected and signal controlled to allow the passage of trains from one track to another in proper sequence.

⁴⁴ Mileposts are number markers placed approximately every mile along the line which denote the distance from a given location—usually a former key passenger station.

ways,⁴⁰ bridges, trestles and culverts,⁴¹ elevated structures,⁴² tics,⁴³ rails,⁴⁴ engineering supplies,⁴⁵ other track material,⁴⁶ ballast,⁴⁷ fences, snowheds and signs,⁴⁸ communications systems,⁴⁹ signals and interplant ma-

chinery,⁵⁰ powerplants,⁵¹ power transmission systems and power plant machinery,⁵² whether in place, on- or not yet installed.

⁴⁰Tunnels and cutways means such properties which can be carried in Account 5 and includes tunnels and cutways for the passage of trains, including apparatus for ventilating and heating and safety devices thereto, other than signals.

⁴¹Bridges, trestles and culverts means such properties which can be carried in Account 6 and includes substructure and superstructure of bridges, trestles, and culverts which carry the tracks of the carrier over watercourses, ravines, public and private highways, and other railways, including abutments, bridge signs, cofferdams, concrete and masonry ends for culverts, cuts, decking, including gypis for fire protection, dike protection, drainage systems, drain protection, dewatering, engines and machinery, false work, guard timbers, ice breakers, painting (except repainting), pier protection, piers and foundations, pipe culverts, retaining walls, riprap around abutments, riprap at culvert ends, supports, water channels, water-protection, wing dams and wing walls.

⁴²Elevated structures means such properties which can be carried in Account 7 and includes elevated structures and foundations of elevated railway systems, and structures other than earthwork which are for the purpose of elevating tracks above the grade of streets, and which are not properly classifiable as bridges or trestles.

⁴³Ties means such properties which can be carried in Account 8 and includes cross, switch, bridge and other wood or metal track ties used in the construction of tracks for the movement or storage of locomotives and cars (including trucks in shops, fuel stations, supply yards, etc.).

⁴⁴Rails means such properties which can be carried in Account 9 and includes rails used in the construction of tracks for the movement or storage of locomotives and cars (including trucks in shops, fuel stations, supply yards, etc.).

⁴⁵Engineering supplies means such properties which can be carried in Account 1 and includes atlases and maps, barometers, books for office use, compasses, surveying equipment, chairs for surveyors, drawing boards, drawing instruments, field glasses, furniture repairs and repairs, magnets and magnifiers, blueprint paper, periodicals and newspapers, photographic supplies, printing and stationery, provisions for business men, rods for surveyors, sextants and slide rules, and triangles and tripods.

⁴⁶Other track materials means such properties which can be carried in Account 10 and includes angle bars, anti-rumpers, bumping posts, compression joints, connecting rods, including foundations or beam connections, cranks, draw bars, frog blocking, frog, guard-rail blocking, guard-rail clamps, guard-rail fasteners, switch guard rails and other, main rods, set bolts, sets, steel bolts, rail braces, rail chairs, rail clips, rail joint rail rods, rail chime, rail splices, splice bars, stop chains, switch chairs, switch crossings, switch lamps, switch locks and keys, switch points, switch stands, switch targets, switches, tie plates, tie plugs, tie rods, track bolts, track insulators, and track splices.

⁴⁷Ballast means such properties which can be carried in Account 11 and includes gravel, stone, slag, cinders, sand, and like material used in ballasting tracks (including trucks in shops, fuel stations, supply yards, etc.).

⁴⁸Fences, snowheds and signs means such properties which can be carried in Account 12 and includes such fences as right-of-way fences and mow and sand fences, farm gates, cattle guards, wing fences, aprons, and hedges, as property not previously covered, excluding those around stockyards, fuel stations, cisterns and sheep grounds, and building sites; snowheds, such signs as boundary signs, bridge-caution signs, crossing signs, curve and elevation markers, dykes-limit signs, Mississippi monuments, safety-limit signs at crossings, section limit signs, slow to stop signs, tunnel-caution signs, white signs and yard-limit signs.

⁴⁹Communication systems means such properties which can be carried in Account 13 and includes telegraph, telephony, radio, radar, electric train communication, and other communication systems, including terminal equipment, including such terminal equipment as batteries, relays, cables, and wires, interior conductors, connecting wires, current transformers, electric generators and motors, electric meters, electrical devices, fuses and mechanical protectors, resistors, rheostats, and recording instruments, switchboards, telegraph repeaters, telephony repeaters, telephony relays, testing outfits, transformers, and other electrical apparatus; aerial attachments, braces, brackets, cable supports, and other apparatus; aerial cables and wires, conductors and apparatus for electric power and mechanical devices for cables, guy wires, and other apparatus; and other electrical apparatus, including connections, and other apparatus.

connections, and such details of radio, radar, and inductive communication equipment as cables, or antennas and other buildings or towers used exclusively for wireless, control units, generating, converting, or supply equipment, radar console and related equipment, readable or office equipment for all wireless operated on special channels between trains and trains, trains and offices, or between city and shore, specialized testing and equipment, transmitters and receivers, including mobile units.

⁵⁰Signals and interlocks means such properties which can be carried in Account 17 and includes interlocking and other apparatus for governing the movements of locomotives, cars, and for the protection of traffic at crossings, including buildings, other buildings, furniture, fixtures, and machinery in connection with; roadway installations for train control and revenue buildings and machinery of power plants used primarily for the detection of power for the operation of signals and interlocking such items as automatic-train control devices other than coast-and-hill systems along track to call in flagmen, electric call-car-retarder systems, centralized traffic control, crossing signal signals, highway and railway crossing gates, crossing signal crossing warning signals, interlock buildings and machinery, apparatus primarily for the operation of signals and interlocking, distribution lines primarily for the operation of signals and locks, signal buildings, signal machinery, poles and foundations, train-order signals.

⁵¹Power plants means such properties which can be carried in Account 20 and includes power-plant and substation buildings; all those other than those special to particular machines and apparatus and also dams, canal, pipe lines, and accessories devoted to the production of water for power, gas and sewer pipes and their other fixtures (including wiring) for lighting and heating, and for miscellaneous fixtures and such power plant structure (such as logs, coal bunkers, pockets and trashes, tanks (other than right boundary tanks), fixtures for lighting (including wiring) and power-plant buildings, foundations (except special foundation machines and other apparatus), fuel-oil tanks, furniture, and appliances for protecting buildings against fire, pavement with limits, permanent rights in water supply, platforms, cranes and machines and their foundations where distinct from and not including boilers, water, sewer, gas, and drainage pipes and connections (but not pumps); and such dam, canal, and pipeline items as locks, bridges, fences (other than right-of-way boundary fences), flood reservoirs, roadways, sluices, valves, and water rights.

⁵²Power transmission systems means such properties which can be carried in Account 21 and includes systems for conveying electricity and compressed air from producing plants to place of use where used; also conductors and poles, cross arms, insulator pins, etc., and other pole fixtures, and other structures for power transmission and distribution systems, including those for electric transmission, and lighting systems for general lighting purposes, all items as air pipelines in car yards, compressed air pipelines, compressed air storage tanks (not at power houses or shops), cut-outs, power houses and substations, overhead trolley wires, rail-line devices, steam-heating pipelines in car yards, switchboards, power houses and substations, third-rail insulation and pyro transformers (not at power houses and substations), under power tubes, braces and other supports for holding poles to brackets, cross arms, and other pole fixtures, conductors for wire cables, cutting and trimming trees, guy staves and wires, wire poles and towers, screw traps, and stranding or painting pole numbers on poles.

⁵³Power plant machinery means such properties which can be carried in Account 22 and includes machinery and other apparatus in plants and substations for generating and other apparatus for the operation of trains and cars or to furnish power, but not light for stations, shops, and general purposes, and also the foundations special to particular machines or other apparatus, all items as air, compressors, ash-conveying machinery, battery-charging apparatus, boiler-room appliances and tests, boilers and fittings, breakers and furnaces, lubricating devices, mechanical stackers, stacks on boilers, rubberizing machinery and apparatus, rollers, rollers, screw connections for machinery, coal-conveying machinery, conveyors, cranes, draft machinery, dynamo, engine-room cranes and tools, feed water heaters, special foundations for machinery, distribution systems within the plant switchboards, tanks, trailers, and trucks, permanently assigned to the power plants, formers, turbines, water meters, and well pumps.

EXHIBIT B

Order of Conveyance to Trustees of Railroads in Reorganization in the Region, Misc. No. 75-3(A) (Reg'l Rail Reorg. Ct. Mar. 25, 1976)

Handwritten notes:
K...
10/10/77

*see PC-CRC-RP-101
for complete court order*

FILED
Mar. 25, 1977
JAMES F. DAVI
CLEI

SPECIAL COURT

REGIONAL RAIL REORGANIZATION ACT OF 1973

In the Matter of
Regional Rail Reorganization Proceedings

) Special Court 0061
) Misc. No. 75-3(A)
)
)
)

ORDER OF CONVEYANCE TO TRUSTEES OF
RAILROADS IN REORGANIZATION IN THE REGION

...consideration that --

A. On March 12, 1976, the United States Railway Association ("Association"), pursuant to Section 209(c) of the Regional Rail Reorganization Act of 1973, as amended ("Rail Act"), certified to this Court which rail properties of railroads in reorganization in the region are to be transferred to Consolidated Rail Corporation ("Corporation") and which rail properties of such railroads are to be conveyed to certain profitable railroads as defined in the Rail Act ("Profitable Railroads"), and advised this Court which rail properties of such railroads are to be conveyed to States or responsible persons in accordance with Section 208(d)(2) of the Rail Act; and

B. on March 24, 1976, the Association filed with this Court a document supplementing and perfecting its March 12, 1976, certification of which rail properties of railroads in reorganization in the region are to be transferred to the Corporation and which rail properties of such railroads are to be conveyed to Profitable Railroads, States or responsible persons; and

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C. on March 22, 1976, the Corporation and the Association, pursuant to Sections 303(a)(1) and 306(a), respectively, of the Rail Act, deposited with this Court all of the stock and other securities of the Corporation and all of the Certificates of Value of the Association designated in the Final System Plan that are to be exchanged for the rail properties being transferred to the Corporation; and

D. on March 22, 1976, each Profitable Railroad, State or responsible person, pursuant to Section 303(a)(2) of the Rail Act, deposited with this Court the compensation designated in the Final System Plan to be paid for the purchase of the rail properties being conveyed to such Profitable Railroad, State or responsible person; and

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E. the unusually large and complex conveyancing that will occur pursuant to this Order can be expected to result in a need for corrections, amendments or supplements to the Conveyance Documents (as hereinafter defined) and to this Order in order to carry out the intent of the Final System Plan, of such Conveyance Documents and of this Order:

NOW THEREFORE, pursuant to Section 303(b)(1) of the Rail Act, it is hereby ordered:

Section 1. Definitions

As used in this Order:

A. "Certification" shall mean the Certification (including all Appendices and documents submitted therewith and made a part thereof) filed with this Court by the Association on March 12, 1976, and on file in the office of the Clerk of this Court at the United States Courthouse in Washington, D.C.

B. "Certification Supplement" shall mean the Certification Supplement (including all Appendices and documents submitted therewith and made a part thereof) filed with this Court by the Association on March 24,

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the office of the Clerk of this Court at the United States Courthouse in Washington, D.C.

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C. "Conveyance Document Addendum" shall mean the collection of documents denominated "Conveyance Document Addendum," which was submitted to this Court by the Association with and as a part of the Certification and Certification Supplement and is on file in the office of the Clerk of this Court at the United States Courthouse in Washington, D.C.

D. "Conveyance Documents" shall mean the documents listed in the Conveyance Document Schedules (as hereinafter defined), except that the Conveyance Documents shall not include any document or part thereof filed with the Certification that has been superseded by any such document filed with the Certification Supplement. All maps referred to in the Conveyance Documents are contained in the Map Addendum (as hereinafter defined). All computer printouts of rolling stock and equipment inventory referred to in the Conveyance Documents are contained in the Rolling Stock and Equipment Addendum (as hereinafter defined).

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E. "Conveyance Document Schedules" shall mean the Schedules contained in Appendices I-A, II-A and IV of the Certification and Certification Supplement, which Schedules identify the Conveyance Documents.

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F. "Final System Plan" shall mean the Plan prepared by the Association which became effective on November 9, 1975, pursuant to Section 208(a) of the Rail Act (a certified copy of which was filed with this Court as Appendix O-A to the Certification), together with the Supplemental Report to the Plan dated September 18, 1975, described in Section 208(d)(1) of the Rail Act (a certified copy of which was filed with this Court as Appendix O-B to the Certification), the Official Errata Supplement to the Plan dated December 1, 1975, described in Section 208(d)(1) of the Rail Act (a certified copy of which was filed with this Court as Appendix O-C to the Certification), the Notice containing further designations to the Plan, dated February 25, 1976, described in Section 208(d)(3) of the Rail Act (a certified copy of which was filed with this Court as Appendix O-D to the Certification), and the document filed as Appendix O-E to the Certification, which document contains the further designations of rail properties described in Section 208(d)(2) of the Rail Act.

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G. "Transferor" shall mean the person or persons identified as the Transferor, Grantor or Assignor in a Conveyance Document.

H. "Transferee" shall mean the person or persons identified as the Transferee, Grantee or Assignee in a Conveyance Document.

I. "Map Addendum" shall mean the collection of maps denominated "Map Addendum" which was submitted to this Court by the Association with and as a part of the Certification and Certification Supplement and is on file in the office of the Clerk of this Court at the United States Courthouse in Washington, D.C. Copies of maps from the Map Addendum which are referred to in the Conveyance Documents relating to a particular Transferor are also on file with the United States District Court having jurisdiction over such Transferor.

J. "Rolling Stock and Equipment Addendum" shall mean the collection of rolling stock and equipment inventory computer printouts denominated "Rolling Stock and Equipment Addendum" which was submitted on March 12, 1976, to this Court by the Association with and as a part of the Certification and is on file in the office of the

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Clerk of this Court at the United States Courthouse in Washington, D.C. Copies of computer printouts from the Rolling Stock and Equipment Addendum which are referred to in the Conveyance Documents relating to a particular Transferor are also on file with the United States District Court having jurisdiction over such Transferor.

K. "Option" shall mean a Conveyance Document which grants to the Transferee identified therein the right to acquire designated rail properties from the Transferor identified therein in accordance with the terms and conditions set forth in such Document. For purposes of determining the period within which an Option may be exercised, the effective date of this Order shall be deemed to be 12:01 a.m. on April 1, 1976.

L. "Acknowledgment of Receipt and Acceptance of Conveyance Document(s)" shall mean the instruments, copies of which are attached to this Order as Addenda I and II, that are to be executed by the Transferees and delivered to the appropriate Transferors in accordance with the terms of this Order.

M. "Conveyance Date" shall mean 12:01 a.m. on April 1, 1976, except that, in the case of property acquired pursuant to the exercise of an Option,

"Conveyance Date," for purposes of paragraphs A(1) and A(2) of Section 4 of this Order, shall mean the date on which such property is conveyed to the Transferee pursuant to the exercise of such Option.

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Section 2. Execution and Delivery of Conveyance Documents

The trustee or trustees of each Transferor identified in each Conveyance Document shall execute (and, where indicated, shall acknowledge) and on or before the Conveyance Date shall deliver such Conveyance Document to the Transferee identified therein -- such delivery to be effective as of the Conveyance Date. Any such Conveyance Document (or any Conveyance Document delivered pursuant to the exercise of an Option) may be executed, acknowledged, and delivered on behalf of the trustee or trustees by any person or persons who has or have been authorized to perform such acts on behalf of the trustee or trustees by the United States District Court or other court having jurisdiction over the Transferor identified in such Conveyance Document. Execution, acknowledgment and delivery of any Conveyance Document in which The Connecting Railway Company is identified as Transferor shall be made by The Connecting Railway Company as Debtor in possession of its properties

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("Connecting"). The execution and delivery of any Conveyance Document by or on behalf of a trustee or trustees or Connecting pursuant to this Order shall not constitute a waiver of any right that such trustee or trustees or Connecting may have to object to or challenge, in whole or in part, the conveyance of the property identified in such Conveyance Document or the terms and conditions of any such conveyance or Conveyance Document. The conveyance of all properties pursuant to this Section shall be subject to all applicable terms and conditions of the Conveyance Documents, the Rail Act and this Order, and each Transferor and Transferee shall faithfully and expeditiously comply with and fulfill all such terms and conditions.

Section 3. Acknowledgment of Receipt and Acceptance of Conveyance Document(s)

Concurrently with delivery from a Transferor of any Conveyance Document or Documents pursuant to this Order, the Transferee shall execute and deliver to such Transferor and forthwith file with the Clerk of this Court an Acknowledgment of Receipt and Acceptance of Conveyance Document(s) in the form attached hereto as Addendum I; except that when a Conveyance Document is delivered pursuant to the exercise of an Option, the

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Acknowledgment of Receipt and Acceptance of Conveyance Document(s) shall be in the form attached hereto as Addendum II and shall specify the time at which such Conveyance Documents were actually delivered. In any case in which a Transferee receives more than one Conveyance Document from a particular Transferor, the Transferee may deliver and file a single Acknowledgment of Receipt and Acceptance of Conveyance Documents referring to all of the Conveyance Documents received from such Transferor. The execution of any Conveyance Document or the execution and delivery of any Acknowledgment of Receipt and Acceptance of Conveyance Document(s) by any Transferee pursuant to this Order, or the execution and delivery of any other document pursuant to the terms of such Acknowledgment of Receipt and Acceptance of Conveyance Document(s), shall not constitute a waiver of any right that such Transferee may have to object to or challenge, in whole or in part, the obligations and conditions imposed on such Transferee by the terms of any Conveyance Document or the terms and conditions of the conveyance of the property identified in such Conveyance Document.

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Section 4. Certain Terms and Conditions of Conveyance

Each conveyance of property pursuant to this Order shall, where applicable, be subject to the following terms and conditions:

A. Allocation of Taxes, Assessments, Rents, License Fees, User Fees and Other Charges

(1) Allocation Over Time. As between the Transferor and Transferee identified in any Conveyance Document with respect to rail property conveyed to a Transferee pursuant to this Order, the obligation, if any, for payment of

(a) any tax, assessment, license fee, or other charge imposed by a governmental authority on or with respect to any such property or any use thereof or thereon for any period of time or term within which the Conveyance Date falls, or

(b) any rent, license fee, user fee or other charge imposed under or by virtue of any lease, license,

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easement, encumbrance or other agreement that continues to attach to such property after the Conveyance Date,

shall be adjusted on a pro rata basis to the Date of Conveyance so that

(i) the Transferor is obligated for any such payment as is attributable to that portion of such period or term preceding the Conveyance Date, and

(ii) the Transferee is obligated for any such payment as is attributable to the balance of such period or term.

(2) Allocation in the Case of Subdivided or Aggregated Property. In the case of any rail property referred to in the preceding subdivision (1) that:

(a) is part of a parcel of property or an aggregation of property that has been or is taxed, assessed or otherwise charged as a unit for

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a period of time or term within which the Conveyance Date falls, or

(b) is part of a parcel of property or an aggregation of property that is subject to one or more leases, licenses, easements, encumbrances or other agreements that continue to attach to such parcel or aggregation of property after the Conveyance Date,

the obligation for payment of any tax, assessment, rent, license fee, user fee or other charge that is or becomes payable with respect to such parcel or aggregation of property for that part of such period of time or term as follows the Conveyance Date shall be allocated to such Transferee in the proportion that the value of such property conveyed to such Transferee bears to the total value of such parcel or aggregation of property, determined as of the Conveyance Date; provided that, if any such tax, assessment, rent, license fee, user fee or other charge is attributable to the parts constituting such parcel or aggregation of property on a basis other than the

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relative values of such parts, such allocation shall be made on such other basis. If the parties are unable to agree on the basis or method for allocating any such tax, assessment, rent, license fee, user fee or other charge, either or both of such parties may apply to this Court for an order determining the basis or method to be used for such allocation.

B. Pre-Recording Protection of Transferors and Transferees

In the case of real property conveyed, or reserved and excepted from conveyance, in any Conveyance Document, on and after the Conveyance Date and until such Conveyance Document shall have been filed for record with respect to such property in each local jurisdiction in which such property is situated, no Transferor or Transferee identified in such Conveyance Document shall transfer or convey such property, in whole or in part, or create any lien or encumbrance on or with respect to such property, unless the instrument effecting such transfer or conveyance or creating such lien or encumbrance provides that such property is subject to any easement, encumbrance, right or benefit that may have been created or recognized in or by such Conveyance Document.

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C. Resignations of Representatives of the Trustees

On and after Conveyance Date, the trustee or trustees of each Transferor and Connecting shall, upon the request of a Transferee, use his, their or its best efforts to cause any person who is serving at the request of such Transferor as a director or officer of another corporation, partnership, joint venture, or other enterprise, the stock ownership or other corporate interest in which is conveyed from such Transferor to such Transferee pursuant to this Order, to resign from, or otherwise act in accordance with the lawful directions of the Transferee with respect to, such person's position as such director or officer; provided, however, that nothing herein shall be deemed a restraint upon the ability of any such person otherwise to resign from such position as director or officer.

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Section 5. Correction of Errors

A. Correction of Errors by or on Application of Transferors and Transferees

To the extent necessary to

- (a) carry out the intent of a Conveyance Document or to perfect a designation contained in the Final System Plan, or
- (b) record or otherwise perfect any Conveyance Document delivered pursuant to this Order under any applicable statute, ordinance, rule or regulation,

each Transferor or Transferee shall perform, execute, acknowledge, endorse and deliver any and all such further acts, deeds, transfers, assignments, certificates and other instruments as may be reasonably requested by any Transferor or Transferee in order to convey, reconvey, confirm, clarify, identify or more precisely describe the properties designated to be conveyed in the Final System Plan or the properties conveyed or reserved and excepted from conveyance in any Conveyance Document (or intended

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so to be). If such parties are unable to agree upon or effectuate such action as should be taken pursuant to this paragraph or the division of costs incident to such action, such party or parties may apply to this Court for such relief as may be appropriate; provided that no person shall apply to this Court for an order or other action under this paragraph A without concurrently serving the Association with notice of such application.

B. Retention of Jurisdiction

This Court retains jurisdiction under Section 209(e) of the Rail Act.

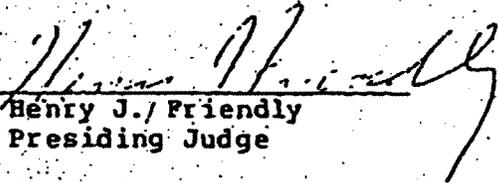
Section 6. Certification of Documents to Transferors and Transferees

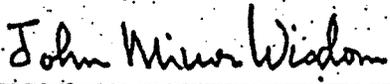
Promptly after the entry of this Order, the Association shall deliver to each Transferor and Transferee a copy of the Conveyance Documents to which such Transferor or Transferee is a party together with each map and rolling stock and equipment inventory computer printout referred to in such Conveyance Documents and shall certify that such Conveyance Documents, maps, and printouts are true copies of the Conveyance Documents, maps, and printouts certified by

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noon on March 29, 1976, and shall attest that each such set contains true copies of all such Conveyance Documents certified to this Court by the Association.


Henry J. Friendly
Presiding Judge


John Minor Wisdom
Judge


Roszel C. Thomsen
Judge

Date: March 15, 1976

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Addendum I

Acknowledgment of Receipt and
Acceptance of Conveyance Document(s)

Pursuant to the provisions of Order No. _____
entered on March __, 1976, by the Special United States
District Court established pursuant to Section 209(b) of
the Regional Rail Reorganization Act of 1973 (Pub. L. 93-
236, 87 Stat. 985), as amended;

_____, the Transferee
(hereafter, "Transferee") specified in Conveyance
Document Schedule No. _____
("Schedule") of the Certification and/or Certification
Supplement submitted to the Special Court on March 12 and
March 24, 1976, respectively, by the United States
Railway Association, hereby acknowledges receipt and
acceptance from _____, the Transferor
(hereafter, "Transferor") specified in the Schedule, of
the following Conveyance Documents listed in the
Schedule, unexecuted copies of which were contained in
the Conveyance Document Addendum submitted with the
Certification and Certification Supplement.

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<u>Conveyance Document No.</u>	<u>Location of Property or Description of Document</u>
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The Transferee hereby acknowledges that it received delivery of the foregoing Conveyance Documents as of 12:01 a.m. on April 1, 1976.

The Transferee hereby agrees for itself and its successors and assigns to perform and observe each of the obligations and conditions imposed on the Grantee, Transferee or Assignee by the terms of the foregoing Conveyance Documents; provided that the Transferee does not assume any obligation or liability that arises after the date of delivery of the foregoing Conveyance Documents out of any event, act or failure to act that occurred prior thereto, and, where an obligation or liability is related to a period that is both before and after such date, the Transferee assumes only that portion of the obligation or liability which is reasonably allocable to the part of the period after such date.

Where reasonably requested by the Transferor, in order to remove any uncertainty as to the effectiveness of this document, the Transferee will execute and deliver

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in recordable form a separate Acknowledgment of Receipt and Acceptance of Conveyance Document with respect to any Conveyance Document.

IN WITNESS WHEREOF, _____, has caused this Acknowledgment of Receipt and Acceptance of Conveyance Document(s) to be executed in its corporate name by _____, its _____, duly authorized so to do, attested by _____, its Assistant Secretary, and its corporate seal to be hereunto affixed as of this ____ day of _____, 1976, and does hereby constitute and appoint said _____ its true and lawful attorney in fact for it and in its name to acknowledge this Acknowledgment of Receipt and Acceptance of Conveyance Document(s) as its act and deed.

Signed, attested and acknowledged in the presence of the following witnesses:

[Insert Transferee's Name]

By: _____

Attest: _____
Assistant Secretary

[Corporate Seal]

District of Columbia, ss:

On this ___ day of ___, 1976, before me, a Notary Public authorized to take acknowledgments and proofs in the District of Columbia, personally appeared _____, personally known to me to be the person named in the foregoing Acknowledgment of Receipt and Acceptance of Conveyance Document(s), bearing the same date as this certificate of acknowledgment, as attorney in fact to acknowledge the same for and in the name of _____, and acknowledged himself to be such attorney in fact and that the foregoing Acknowledgment of Receipt and Acceptance of Conveyance Document(s) is the free act and deed of _____ for the purposes therein contained.

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

3286 752

0084

Addendum II

Acknowledgment of Receipt and
Acceptance of Conveyance Document(s)

Pursuant to the provisions of Order No. _____
entered on March __, 1976, by the Special United States
District Court established pursuant to Section 209(b)
of the Regional Rail Reorganization Act of 1973 (Pub. L.
93-236, 87 Stat. 985), as amended;

_____, the Transferee
(hereafter, "Transferee") specified in Conveyance
Document Schedule No. _____
("Schedule") of the Certification and/or Certification
Supplement submitted to the Special Court on March 12 and
March 24, 1976, respectively, by the United States
Railway Association hereby acknowledges receipt and
acceptance from _____, the Transferor
(hereafter, "Transferor") specified in the Schedule, of
the following Conveyance Documents listed in the
Schedule, unexecuted copies of which were contained in
the Conveyance Document Addendum submitted with the
Certification and Certification Supplement.

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<u>Conveyance Document No.</u>	<u>Location of Property or Description of Document</u>
--------------------------------	--

The Transferee hereby acknowledges that it received delivery of the foregoing Conveyance Documents as of ____ a.m. (p.m.) on _____, 1976.

The Transferee hereby agrees for itself and its successors and assigns to perform and observe each of the obligations and conditions imposed on the Grantee, Transferee or Assignee by the terms of the foregoing Conveyance Documents; provided that the Transferee does not assume any obligation or liability that arises after the date of delivery of the foregoing Conveyance Documents out of any event, act or failure to act that occurred prior thereto, and, where an obligation or liability is related to a period that is both before and after such date, the Transferee assumes only that portion of the obligation or liability which is reasonably allocable to the part of the period after such date.

Where reasonably requested by the Transferor, in order to remove any uncertainty as to the effectiveness of this document, the Transferee will execute and deliver

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in recordable form a separate Acknowledgment of Receipt and Acceptance of Conveyance Document with respect to any Conveyance Document.

IN WITNESS WHEREOF, _____, has caused this Acknowledgment of Receipt and Acceptance of Conveyance Document(s) to be executed in its corporate name by _____, its _____, duly authorized so to do, attested by _____, its Assistant Secretary, and its corporate seal to be hereunto affixed as of this ___ day of _____, 1976, and does hereby constitute and appoint said _____ its true and lawful attorney in fact for it and in its name to acknowledge this Acknowledgment of Receipt and Acceptance of Conveyance Document(s) as its act and deed.

Signed, attested and acknowledged in the presence of the following witnesses:

_____ [Insert Transferee's Name]

By: _____

Attest: _____ Assistant Secretary

[Corporate Seal]

District of Columbia, ss:

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On this ___ day ___, 1976, before me, a Notary Public authorized to take acknowledgments and proofs in the District of Columbia, personally appeared _____, personally known to me to be the person named in the foregoing Acknowledgment of Receipt and Acceptance of Conveyance Document(s), bearing the same date as this certificate of acknowledgment, as attorney in fact to acknowledge the same for and in the name of _____, and acknowledged himself to be such attorney in fact and that the foregoing Acknowledgment of Receipt and Acceptance of Conveyance Document(s) is the free act and deed of _____ for the purposes therein contained.

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

United States District Court
for the District of Columbia
A TRUE COPY

JAMES F. DAVEY, CLERK

By *Francis Smith*
Deputy Clerk

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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2009, I caused the foregoing **The Buncher Company's Response to Request for Additional Briefing** to be served via first class mail, postage prepaid, on the following:

Office of Mayor Luke Ravenstahl
City of Pittsburgh
City County Building, Fifth Floor
414 Grant Street
Pittsburgh, PA 15219

George Spector, City Solicitor
Law Department
313 City County Building
414 Grant Street
Pittsburgh, PA

Rob Stephany, Executive Director
The Urban Redevelopment Authority of
Pittsburgh
200 Ross Street
Pittsburgh, PA 15219-2016

Sharon O'Neill, Asst. General Counsel
The Urban Redevelopment Authority of
Pittsburgh
200 Ross Street
Pittsburgh, PA 15219-2016

Mr. Dan Onarato
Office of the County Executive
Courthouse
436 Grant Street, Rm. 101
Pittsburgh, PA 15219

Michael H. Wojick, County Solicitor
Allegheny County Law Dept.
Fort Pitt Commons
445 Fort Pitt Boulevard, Suite 300
Pittsburgh, PA 15219

Westmoreland County Board of
Commissioners
Main Office
2 North Main Street, Suite 101
Greensburg, PA 15601

Mr. Chuck DiPietro, Transportation Dir.
Southwestern Pennsylvania Commission
425 Sixth Avenue, Suite 2500
Pittsburgh, PA 15219-1852

Larry J. Larese, Executive Dir.
Westmoreland County IDC
40 N PA Avenue, Fifth Floor, Suite 520
Greensburg, PA 15601

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



Peter W. Denton