

STB FD 33388 (SUB 69) 9-20-99 D 195671

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STB FD-33388(Sub 69) 9-20-99 D

ID-195671

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Office of the Secretary

**ARNOLD & PORTER**

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September 20, 1999

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**BY HAND DELIVERY**

The Honorable Vernon A. Williams  
Secretary, Surface Transportation Board  
Mercury Building, Room 700  
1925 K Street, N.W.  
Washington, D.C. 20423

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Re: **Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation (Sub-No. 69)**

195671

Dear Secretary Williams:

Our letter to you of Friday, September 17, 1999, on behalf of CSX Corporation and CSX Transportation, Inc., neglected to state the last day of the 45-day period of the Board's "withholding action" requested therein. We calculate the forty-fifth day as falling on Monday, November 1, 1999.

We regret the omission.

Respectfully yours,

Dennis G. Lyons  
Counsel for CSX Corporation  
and CSX Transportation, Inc.

cc:

Counsel for Canadian Pacific Parties  
Counsel for New York State  
Department of Transportation  
Counsel for New York City  
Economic Development Corporation

STB

FD

33388

(SUB 69)

9-17-99

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STB FD-33388(Sub 69) 9-17-99 D

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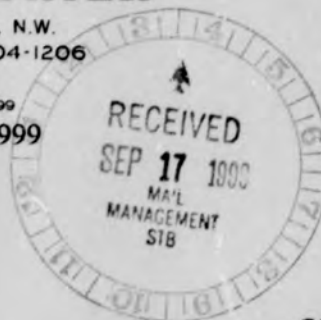
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September 17, 1999

NEW YORK  
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Re: **Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation (Sub-No. 69)**

Dear Secretary Williams:

This refers to the "Canadian Pacific Parties' Petition to Enforce Trackage and Switching Rights Imposed by the Board," filed by Canadian Pacific Railway Company and its affiliates (collectively, "CP") (CP-32) on July 27, 1999, and the Reply to it filed on behalf of our clients, CSX Corporation and CSX Transportation, Inc. (collectively, "CSX"), on August 16, 1999 (CSX-184).

CP and CSX have agreed to engage in negotiations in an effort to resolve the disputes which are the subject matter of CP's Petition and CSX's Reply. We have been authorized by CSX, and by counsel for CP, to request that the Board withhold any action on the Petition in abeyance for a period of 45 days, that is, until October \_\_, 1999, in order to facilitate negotiations between the parties. CSX and CP believe that this course of action would substantially assist the negotiations by giving an adequate, but not excessive, period of time in which to explore the possibility of a resolution of the disputes.

CSX and CP would appreciate an indication from the Board, either formal or informal, of its disposition of the request made herein.

Respectfully yours,

Dennis G. Lyons  
Counsel for CSX Corporation  
and CSX Transportation, Inc.

**ARNOLD & PORTER**

Hon. Vernon A. Williams  
September \_\_, 1999  
Page 2

cc:

Counsel for Canadian Pacific Parties  
Counsel for New York State  
Department of Transportation  
Counsel for New York City  
Economic Development Corporation

STB FD-33388 (Sub 69) 8-13-99 D ID-195360

19536

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AUG 16 1999

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August 13, 1999

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VIA HAND DELIVERY

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
Case Control Branch  
ATTN: STB Finance Docket 33388  
1925 K Street, N.W.  
Washington, D.C. 20423-0001



Re: F.D. No. 33388, CSX Corporation, Et Al. -- Control and Operating Leases/Agreements -- Conrail Inc., Et Al., and F.D. No. 33388 (Sub-No. 69), The State of New York, By and Through its Department of Transportation - Trackage Rights Over Lines of Consolidated Rail Corporation

Dear Secretary Williams:

Enclosed for filing in the referenced proceeding please find an original and 25 copies of the Reply Of The State Of New York and the New York City Economic Development Corporation in Support of Petition to Enforce Trackage and Switching Rights, together with a WordPerfect 8.0 diskette containing the pleading.

Thank you for your attention to this matter.

Sincerely,

Kelvin J. Dowd  
An Attorney for the  
State of New York

KJD/cbh  
Enclosures



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BEFORE THE  
SURFACE TRANSPORTATION BOARD



195360

CSX CORPORATION AND CSX  
TRANSPORTATION, INC., NORFOLK  
SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY  
COMPANY -- CONTROL AND OPERATING  
LEASES/AGREEMENTS -- CONRAIL, INC.  
CONSOLIDATED RAIL CORPORATION

Finance Docket No. 33388

RESPONSIVE APPLICATION -- STATE  
OF NEW YORK, BY AND THROUGH ITS  
DEPARTMENT OF TRANSPORTATION,  
AND THE NEW YORK CITY ECONOMIC  
DEVELOPMENT CORPORATION

Finance Docket No. 33388  
(Sub-No. 69)

REPLY OF THE STATE OF NEW YORK AND THE NEW  
YORK CITY ECONOMIC DEVELOPMENT CORPORATION  
IN SUPPORT OF PETITION TO ENFORCE  
TRACKAGE AND SWITCHING RIGHTS

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Dated: August 13, 1999

Attorneys for the State of New York

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



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CSX CORPORATION AND CSX	)	
TRANSPORTATION, INC., NORFOLK	)	
SOUTHERN CORPORATION AND	)	Finance Docket No. 33388
NORFOLK SOUTHERN RAILWAY	)	
COMPANY -- CONTROL AND OPERATING	)	
LEASES/AGREEMENTS -- CONRAIL, INC.	)	
CONSOLIDATED RAIL CORPORATION	)	

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RESPONSIVE APPLICATION -- STATE	)	
OF NEW YORK, BY AND THROUGH ITS	)	Finance Docket No. 33388
DEPARTMENT OF TRANSPORTATION,	)	(Sub-No. 69)
AND THE NEW YORK CITY ECONOMIC	)	
DEVELOPMENT CORPORATION	)	

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**REPLY OF THE STATE OF NEW YORK AND THE NEW YORK CITY  
ECONOMIC DEVELOPMENT CORPORATION IN  
SUPPORT OF PETITION TO ENFORCE  
TRACKAGE AND SWITCHING RIGHTS**

The State of New York, acting by and through the New York State Department of Transportation ("New York") and the New York City Economic Development Corporation ("NYCEDC"), pursuant to 49 C.F.R. Part 1104.13(a), hereby reply to the Petition To Enforce Trackage and Switching Rights Imposed By the Board ("Petition") filed by the Canadian Pacific Parties<sup>1</sup> on or about July 27, 1999. For the reasons set forth herein, New York and

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<sup>1</sup>"Canadian Pacific Parties" or "CP" refer collectively to Canadian Pacific Railway Company, Delaware & Hudson Railway Company, Inc., Soo Line Railroad Company and St. Lawrence & Hudson Railway Company Limited.

NYCEDC support the relief sought by the Petition, and urge that it be granted.

### **INTRODUCTION**

In its Decision approving the acquisition and division of Consolidated Rail Corporation ("Conrail") between CSX Transportation, Inc. ("CSX") and Norfolk Southern Corporation, the Board imposed conditions sought by New York and NYCEDC in a Joint Responsive Application, requiring CSX to grant CP unrestricted trackage or haulage rights over the Conrail line between Albany and Fresh Pond Junction, New York (the "Hudson Line"). See Decision No. 89 at 177. The Board found this condition mandated by the public interest in restoration of "a modicum of the competition that was lost in the financial crisis that led to the formation of Conrail." Id. at 83. Because CSX and CP were unable to reach agreement on the terms to govern CP access to the Hudson Line within the time originally allotted, the Board imposed various implementing terms (including trackage rights and switching service compensation) in its subsequent Decision No. 109 and Decision No. 123, served December 18, 1998 and May 20, 1999, respectively.

CP commenced operations over the Hudson Line on July 12, 1999. At present, CP provides line-haul service between Albany and Oak Point Yard in the Bronx (located on the east side



of the Harlem River), and reaches other shippers in the New York City terminal area through switching service provided by CSX. CP line-haul service takes place over former Conrail trackage between Albany and Poughkeepsie, and between Mott Haven Junction and Oak Point Yard, pursuant to the Board's prescribed terms. The service also involves operations over two (2) other segments of the Hudson Line owned (directly or indirectly) by New York, through bilateral agreements negotiated by CP with New York and/or its appropriate subdivisions. These segments are a 75-mile line controlled by Metro North Commuter Railroad between Poughkeepsie and Mott Haven Junction,<sup>2</sup> and the Oak Point Link -- a short, elevated bypass track that connects Mott Haven Junction with the east side of the Harlem River (and the Hudson Line) at Harlem River Yard.<sup>3</sup>

While CP service to New York City shippers via the Hudson Line is underway, CP points to two (2) new obstacles that have been interposed by CSX which would prevent CP from fully implementing the Board's Hudson Line conditions, to the detriment of the intended recipients of dual carrier service. According to

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<sup>2</sup>Finance Docket No. 33775, Delaware & Hudson Railway Company, Inc. -- Trackage Rights Exemption -- Metro North Commuter Railroad Co., Notice of Exemption served July 21, 1999.

<sup>3</sup>Finance Docket No. 33776, Delaware & Hudson Railway Company, Inc. -- Trackage Rights Exemption -- New York State Department of Transportation, Notice of Exemption served July 21, 1999.

CP, CSX has (1) blocked CP access to Harlem River Yard by refusing to dispatch most CP trains into and out of the yard; and (2) refused to switch cars for CP's account to and from the Hunts Point Market Terminal, a major produce distribution facility served via Oak Point Yard. See Petition at 3. CP seeks a Board order affirming CP's right to use Harlem River Yard subject to its negotiation of an acceptable agreement with New York (which owns the yard); and clarifying that CP's prescribed right of access "to all shippers in the Bronx and Queens" includes the produce distributors and other shippers that use the Hunts Point Terminal. Id.; citing Decision No. 109 at 7.

New York and NYCEDC respectfully submit that CP's Petition is meritorious and in full accord with the Board's prior orders respecting the Hudson Line. New York and NYCEDC urge that the Petition be granted.

#### ARGUMENT

A. CP Should Have Unimpaired  
Access to Harlem River Yard

Harlem River Yard is situated on the Hudson Line south of Oak Point Yard, on the east bank of the Harlem River. The yard is owned by New York, and is managed by Harlem River Yard Ventures (HRYV), a contractor/lessee. It is accessible via the Oak Point Link, which also is owned by New York.

CP and CSX each operate over the Oak Point Link pursuant to nearly-identical license agreements with New York. Their rights are co-equal, though CSX dispatches trains over the Link in the interests of operational convenience and order. Only CSX presently operates trains in the Harlem River Yard, as successor to a non-exclusive lease granted to Conrail in 1996. (See the Verified Statement of John F. Guinan, attached hereto). As the Board noted in Decision No. 123, however, HRYV "has advised CP of its willingness to lease one and perhaps more tracks for car storage and switching." Id. at 14.

Earlier in this proceeding, CP asked the Board to clarify CP's right to use the Harlem River Yard without interference by CSX. The Board's response was succinct:

No clarification is necessary with regard to the first item, use of the Harlem River Yard. CSX does not own the Harlem River Yard. CP is free to work out whatever arrangements it can with the State of New York, which owns the facility. Our intervention in that process is not appropriate, or even within our authority.

Decision No. 123 at 14. As Mr. Guinan testifies, New York (through HRYV) is prepared to grant and intends CP to have full access to the Harlem River Yard, for pick-up and delivery of freight without restriction as to scope or commodity. See V.S. Guinan at 2. As recited in CP's Petition, however, CSX seeks to restrict CP's direct access to the yard to a narrow range of freight and equipment, and otherwise require CP to include a CSX

switch to or from Oak Point Yard in every other CP movement to or from the Harlem River Yard. See Petition at 5-8, 12. These restrictions add both time and cost to the service that CP can offer affected shippers, and would impair its ability to compete effectively. Id. at 12-14.

New York and NYCEDC agree with the Board's ruling in Decision No. 123 that CP's rights to access and use the Harlem River Yard should be the exclusive province of a negotiated agreement between CP and New York. Once granted, those rights should be fully exercisable according to their terms, without outside interference either through direct obstruction or indirectly through dispatching procedures or other means. Based upon CP's Petition, however, it is necessary for the Board to reaffirm its ruling once again, and clarify that the Hudson Line condition's mandate for CP access "not restricted as to commodity or geographic scope"<sup>4</sup> is not to be eroded or compromised through implementing rules or practices. See Petition at 16-17.

B. CP Access to the Hunts Point Market and  
Terminal Should Be Reaffirmed by the Board

The pro-competitive condition imposed by the Board in Decision No. 89 directed CSX to grant CP trackage or haulage rights "not restricted as to commodity or geographic scope," to serve all shippers in the greater New York City metropolitan area

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<sup>4</sup>Decision No. 89 at 83.



accessible via the Hudson Line. Id. at 83. Later, in Decision No. 109, the Board further specified that "CP will be permitted to access all shippers in the Bronx and Queens via a [ ] per car switch performed by CSX, including the use of Oak Point Yard as necessary to efficiently perform this switching service." Id. at 7. No exceptions were carved from this broad mandate, to which CSX itself acquiesced in its proposal for implementation of the Hudson Line condition. Id.

The Hunts Point Terminal, accessed by rail through Oak Point Yard, serves produce shippers and distributors based in the Bronx and Queens, as well as other New York City boroughs and adjacent regions. Owned by the City of New York with loading tracks leased to CSX, the Terminal and its constituents fall squarely within the scope of the Board's condition and prior orders. As CP describes, however, a dispute has arisen over CP access to the Terminal and its shippers via CSX switching. See Petition at 17. New York and NYCEDC support CP's request that the Board clarify that the Hunts Point shippers are within the class of rail customers who are intended beneficiaries of the Hudson Line conditions.

The New York/NYCEDC Joint Responsive Application specifically included Bronx produce shippers among those intended to be served by the competitive rail alternative advanced by New York and NYCEDC and ultimately approved by the Board. See NYS-

11/NYC-10 at 8-9; Decision No. 89 at 314. The cause of Hunts Point Market shippers and distributors was advocated even more specifically in New York's Comments, which included testimony by Hunts Point Market Traffic Committee Chairman Stephen D'Arrigo as to the adverse impact of the original Conrail division plan on his company and other Hunts Point shippers, and the effectiveness of the relief sought in the Joint Responsive Application to ameliorate that harm. See NYS-10, V.S. D'Arrigo at 2-4; Argument at 15, 19-20. Plainly, this major staging point for Hudson Line rail traffic is within the ambit of "all yards, terminals, other facilities and shippers, present and future, located in the Bronx and Queens," to which CP has been granted access by the Board. See Decision No. 109 at 7.

#### CONCLUSION

For the reasons set forth herein, and based upon the evidence and argument previously presented by New York and NYCEDC in these proceedings, CP's Petition to Enforce Trackage and Switching Rights should be granted.

Respectfully submitted,

THE NEW YORK CITY  
ECONOMIC DEVELOPMENT CORPORATION

THE STATE OF NEW YORK BY AND  
THROUGH ITS DEPARTMENT OF  
TRANSPORTATION

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Washington, D.C. 20036  
(202) 347-7170

Dated: August 13, 1999

Attorneys and Practitioners

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of August, 1999, I caused copies of the foregoing Reply of The State of New York and the New York City Economic Development Corporation In Support of Petition to Enforce Trackage and Switching Rights to be served upon counsel for CSX and CP by hand delivery, and upon all other parties requesting service hereof by first-class mail, postage prepaid.

A handwritten signature in dark ink, appearing to read 'Kelvin J. Dowd', is written over a horizontal line.

Kelvin J. Dowd



**VERIFIED STATEMENT  
OF  
JOHN F. GUINAN**

My name is John F. Guinan. I am Assistant Commissioner for Passenger and Freight Transportation of the New York State Department of Transportation. I have submitted testimony previously in this proceeding, on behalf of the State of New York. I am making this Statement in order to provide the Board with certain information regarding current and intended future rail freight operations within the Harlem River Yard in the Bronx.

Harlem River Yard is located south of Oak Point Yard on the former Conrail line known as the Hudson Line. It is owned by New York, and managed by a contractor -- Harlem River Yard Ventures (HRYV) -- under an agreement with the State. In 1996, HRYV entered into an agreement with Consolidated Rail Corporation, giving Conrail certain rights with respect to the use of the yard. Recently, CSX Transportation, Inc. succeeded to Conrail's operating rights. A copy of the agreement is attached to my Statement as Exhibit \_\_\_\_ (JFG-2). As the agreement shows, Conrail's (now CSX's) rights to use of the Harlem River Yard are non-exclusive.

Under conditions granted by the Board at the behest of New York and the New York City Economic Development Corporation,

Canadian Pacific Railway recently commenced rail operations over the Hudson Line between Albany and Oak Point Yard. In this service, CP operates over the Oak Point Link, an elevated rail line traversing the Harlem River that is owned by New York. The east end of the Link connects to Harlem River Yard.

With New York's support, HRYV has offered CP use rights on a par with those currently enjoyed by CSX. It is New York's intent and expectation that consistent with the goals of the Board's Hudson Line conditions, CP and CSX will have full use of the Harlem River Yard on a co-equal competitive basis, for the ultimate benefit of all New York City shippers and receivers.

Contract Number \_\_\_\_\_

THIS AGREEMENT, made and effective as of APRIL 30  
1996, by and between CONSOLIDATED RAIL CORPORATION, Two Commerce  
Square, 2000 Market Street, Philadelphia, Pennsylvania 19101-1400,  
("Conrail"), and Harlem River Yard Ventures, Inc.  
c/o Rotterdam Ventures, Inc.  
Bldg. 6 East Road  
Rotterdam Industrial Park  
Schenectady, NY 12306  
("HRYV")

WHEREAS, Harlem River Yard Ventures, has requested track facilities at Harlem River Transportation and Distribution Center, County of Bronx, State of New York, described as follows:  
Existing tracks located at Mile Post 0.6 on the Freemont Secondary. Line Code 4219, and extending in a southwesterly direction with lengths totalling 24,800 feet as shown on Exhibit "A" dated March 1996, last revised None, attached as "Exhibit A," such track facilities and the underlying right-of-way being collectively referred to as the "Sidetrack."

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

Section 1. Term

1.1 This Agreement shall continue in force until terminated by either party, with or without cause, on sixty (60) days prior written noticed to the other party. In the event Conrail is unable to locate HRYV, such notice may be posted on or near the Sidetrack and this Agreement shall terminate 30 days after such posting. Any obligation assumed and any liability which may have risen or been incurred prior to such termination by either party shall survive termination of the Agreement.

1.2 Upon termination of this Agreement, Conrail shall have the right to enter upon property leased to or owned, controlled or maintained by HRYV and remove any and all material owned by Conrail.

1.3 HRYV hereby grants to Conrail the right of passage over the Sidetrack for the purpose of providing rail service to the intermodal terminal and the tenants and occupants in the Harlem River Transportation and Distribution Center.

Section 2. Construction and Maintenance

2.1 HRYV, at its sole cost and expense, shall:

(i) erect and maintain fences and highway-railroad grade crossing protection devices that may be required by public authorities with respect to that portion of the Sidetrack owned or maintained by HRYV.

(ii) maintain, replace, renew, and remove the Sidetrack as follows:

Those portions of the Sidetrack 18,510 feet in length marked with ---RR--- Type C on Exhibit "A", shall be maintained by the HRYV.

All maintenance shall be to a minimum of Federal Railroad Administration Class I track standards.

2.2. (i) As to portions of Sidetrack marked with ===== Type B on Exhibit "A" parties agree that responsibility for maintenance of such portion shall be addressed outside the scope of this agreement and is a matter that Conrail and the State of New York will resolve.



2.3. The parties recognize that some public authorities may not have jurisdiction over HRYV as to clearances, bridges or highway-railroad crossings affecting the Sidetrack and such bodies may direct Conrail, as a result of jurisdiction over Conrail to take actions regarding such matters. Any reasonable expense incurred by Conrail in complying with such directions shall be billed to HRYV which shall reimburse Conrail. This Section 2.3 shall survive termination of this Agreement.

### Section 3. Ownership

The rail, ties, and fittings in the Sidetrack shall be owned as follows:

That portion of the Sidetrack marked with ~~TTTT~~ Type A on Exhibit "A", shall have title and ownership vested in Conrail. Those portions of the Sidetrack marked with ---RR--- Type C and Type B ~~TTTT~~ on Exhibit "A" shall have title and ownership vested in the State of New York and are leased by HRYV.

### Section 4. Use

4.1 Conrail shall have the right to use the Sidetrack, but may not unreasonably interfere with the use thereof by HRYV.

4.2 Conrail shall not permit use of the Sidetrack by any other person or firm without the prior written consent of HRYV. Conrail may construct and use additional switch connections on that portion of the Sidetrack on Conrail's property.

4.3 The parties shall comply with (1) all applicable federal, state, and local laws, rules, regulations or orders pertaining to shipments originating or terminating on the Sidetrack, and (ii) Conrail's Engineering and Operating Criteria for Industrial Sidings.

4.4 HRYV shall not grant any rights to establish vehicular or pedestrian grade crossings over the Sidetrack without the prior written consent of Conrail. Such consent shall not be unreasonably withheld. Conrail hereby approves the grade crossings to be constructed over the Sidetrack as described on Exhibit "A".

4.5 Conrail may enter upon HRYV's property at any time for the purpose of inspecting, repairing or operating over the sidetrack, but Conrail shall have no duty to engage in such activities except as otherwise herein provided.

4.6 At no time shall Conrail store rail cars for any extended period of time on any of the referenced side tracks.

#### Section 5. Changes

HRV shall not make any changes in the Sidetrack without the prior written consent of Conrail. Such consent shall not be unreasonably withheld. Changes in the Sidetrack necessary to comply with the requirements of a public authority shall, following receipt of 60 days written notice from Conrail, be made at HRYV's sole expense. If Conrail incurs any reasonable expense in connection with any such change, such expense shall be billed to HRYV which shall reimburse Conrail. If such change is solely for the benefit of Conrail, Conrail will bear the expense thereof.

#### Section 6. Clearances

6.1 HRYV shall not construct or permit any tenant or licensee to construct any obstruction over the Sidetrack less than the then applicable statutory limit or 22'0" above top of rail, whichever is

greater, or alongside thereof less than the statutory limit or 8'6" from center of track, whichever is greater, then applicable with the necessary additional clearances on curves, without the prior written approval, which consent shall not be unreasonably withheld, of Conrail and any public authority having jurisdiction.

6.2 The minimum clearances specified in Section 6.1 may be changed by Conrail to meet applicable legal requirements and HRYV shall, to the extent reasonably practical under the circumstances, at its sole expense, following receipt of 30 days written notice from Conrail, make such changes in the Sidetrack owned by HRYV as may be necessary. HRYV shall have the right to appeal. Conrail shall be solely responsible for changes in the Sidetrack owned by Conrail.

#### Section 7.     Liability

7.1 Except as otherwise provided in Section 7.2, responsibility for claims as between parties shall be borne as follows:

- (i) Conrail shall be responsible for Claims arising from its negligence and for its failure to comply with its obligations under this Agreement.
- (ii) HRYV shall be responsible for Claims arising from its negligence and for its failure to comply with its obligations under this Agreement.
- (iii) The parties shall share equal responsibility for all Claims arising from their joint or concurring negligence in such proportions as they may agree upon or as may be judicially determined.

(iv) Each party shall be responsible for Claims arising from the presence of trespassers, vandals or other unauthorized persons on the portion of the Sidetrack leased to or owned, controlled or maintained by it.

(v) For the purposes of this Section 7.1, there shall be a rebuttable presumption that damage caused to equipment owned by, leased to or on the account of Conrail while such equipment is in the sole possession and control of HRYV was caused by the negligence of HRYV.

7.2 HRYV should be responsible for Claims arising from any non-standard conditions as such non-standard conditions are listed in Section 6.1 hereof, now or hereafter existing, irrespective of any negligence on the part of Conrail, including without limitation the following: None noted at this time.

7.3 The negligence of any tenant, invitee, licensee or grantee of HRYV other than Conrail, its agents and contractors occurring on property leased to or owned, controlled or maintained by HRYV shall be deemed the negligence of HRYV; provided, however, if there shall be a separate written agreement between Conrail and any tenant or licensee of HRYV, or written agreement for the benefit of Conrail, and a copy furnished to Conrail, containing protections for Conrail with respect to the negligent acts of such tenant or licensee similar to those contained in this section, then the negligence of any such tenant or licensee shall not be deemed the negligence of HRYV.

7.4 Except as otherwise provided in Section 7.1, the party which is responsible shall release the other party from all responsibility for such Claims and shall defend, indemnify, protect, and save harmless the other party and its directors, officers, agents, and employees from and against all such Claims. HRYV waives any constitutional, statutory or decisional immunity which would invalidate HRYV's obligation to indemnify Conrail with



respect to Claims asserted by employees of HRYV.

7.5 The word "Claims" as used in this Section 7 shall mean all claims, liabilities, demands, actions at law and equity, judgments, settlements, losses, damages, and expenses of every character for any injury to or death of any person or persons, for any damage to or loss of destruction of property of any kind, and for any damage to the environment, caused by, arising out of or occurring in connection with the construction, use, maintenance, replacement, presence or removal of the Sidetrack.

#### Section 8. Discontinuance

Conrail shall not be responsible for any loss or damage sustained by HRYV in consequence of any temporary or permanent elimination of the Sidetrack, or service thereover, due to circumstances beyond Conrail's reasonable control. Conrail may suspend rail service in the event HRYV breaches any of the covenants of this Agreement, but HRYV shall be given 60 days notice and an opportunity to cure such breach, and HRYV shall have the right to cure such breach or take reasonable action to cure such breach within that 60 days, or if such breach is not reasonably susceptible of cure within such 60 days but HRYV commences curing its breach within such 60 days, HRYV shall have such additional time as shall be reasonable under the circumstances within which to cure such breach. If HRYV fails to do so, such suspension shall take effect and shall continue until the breach is remedied.

#### Section 9. Payment

9.1 All monies due and owing under this Agreement shall be paid by the applicable party within 30 days after receipt of bills. The records of HRYV relating to payments due under this Agreement shall be open at all reasonable times for inspection by Conrail. The records of Conrail relating to payments due on this Agreement,

shall be open at all reasonable times for inspection by HRYV.

9.2 Except for payment required by Section 2.2, all bills by Conrail shall include direct labor and material costs, together with Conrail standard surcharges for fringe benefits, overhead, material handling costs and equipment rentals at rates specified by Conrail's Vice President and Controller.

9.3 If Conrail performs any work or satisfies any responsibility or liability which under this Agreement HRYV is obligated to perform or satisfy, HRYV shall reimburse Conrail for all costs and expenses in accordance with this Section. It is agreed that Conrail will do no work which is the responsibility of HRYV, except in an emergency, without first obtaining the approval of HRYV.

#### Section 10. General Provisions

10.1 A determination that any part of this Agreement is invalid shall not affect the validity or enforceability of any other part of this Agreement.

10.2 This Agreement shall be governed by the law of the State in which the Sidetrack is located.

10.3 As used in this Agreement, the words "Conrail", "HRYV", and "party" shall include the respective successors and assigns of Conrail and/or HRYV, as appropriate.

10.4 This Agreement is for the exclusive benefit of the parties and the licensees, grantees and tenants of HRYV and not for the benefit of any other party.

10.5 Section headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

10.6 This Agreement contains the entire agreement of the parties and supersedes any prior written or oral understandings, agreements or representations.

10.7 This Agreement may not be amended, waived or discharged except by an instrument in writing signed by the parties.

10.8 All words, terms, and phrases used in this Agreement shall be construed in accordance with their generally applicable meaning in the railroad industry.

10.9 Except as otherwise provided in this Agreement, all notices to be sent from one party to the other shall be in writing and hand delivered or mailed by United States certified mail, postage prepaid. Notices directed to Conrail shall be addressed to Senior Vice President-Operations, Consolidated Rail Corporation, Two Commerce Square, 2001 Market St., Philadelphia, PA., 19101-1400. Notices directed to HRYV shall be sent to the address listed for HRYV in the preamble of this Agreement.

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

WITNESS:

CONSOLIDATED RAIL CORPORATION

Smayling

BY:

[Signature]

WITNESS:

HARLEM RIVER YARD VENTURES, INC.

Beverly Anderson

BY:

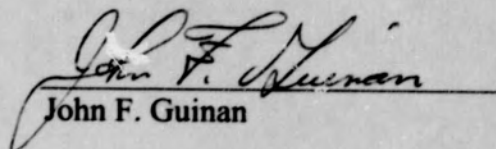
[Signature]




VERIFICATION

State of New York       )  
                                  )  
                                  )       ss:  
                                  )  
County of Albany        )

John F. Guinan, being duly sworn, deposes and says that he has read the foregoing Verified Statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.

  
John F. Guinan

Subscribed and sworn to  
before me this 9  
day of August, 1999.

  
Notary Public

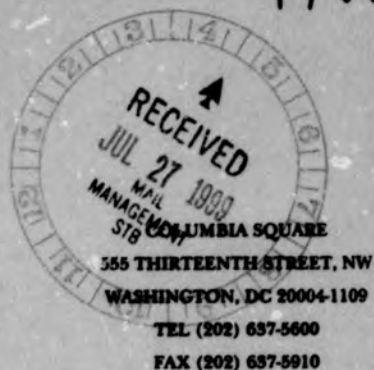
My Commission Expires: 1-31-2001

CHARLOTTE BELAK  
Notary Public, State of New York  
No. 4812518  
Qualified in Rensselaer County  
Commission Expires 1-31-2001

STB FD-33388 (Sub 69) 7-27-99 ID-195098

19509

**HOGAN & HARTSON**  
**L.L.P.**



**GEORGE W. MAYO, JR.**  
PARTNER  
(202) 637-5679  
GWMAYO@HHLLAW.COM

July 27, 1999

**BY HAND DELIVERY**

The Honorable Vernon A. Williams  
Secretary, Surface Transportation Board  
Case Control Branch  
ATTN: STB Finance Docket No. 33388  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423-0001

ENTERED  
Office of the Secretary

JUL 28 1999

Part of  
Public Record

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

**Finance Docket No. 33388 (Sub No. 69), Responsive  
Application -- State of New York, By and Through Its  
Department of Transportation, and The New York City Economic  
Development Corporation**

Dear Secretary Williams:

Enclosed for filing in the above-referenced dockets are an original and twenty-five copies of Canadian Pacific Parties' Petition To Enforce Trackage and Switching Rights Imposed by the Board (CP-32). Also enclosed is a 3.5-inch diskette, formatted for WordPerfect 7.0, containing the pleading.

Thank you for your assistance.

Sincerely,

*George W. Mayo, Jr. (h.s.v.s.)*

George W. Mayo, Jr.  
Attorney for Canadian Pacific Railway  
Company, Delaware and Hudson Railway  
Company, Inc., Soo Line Railroad  
Company, and St. Lawrence & Hudson  
Railway Company Limited

GWM:jms

Enclosures

cc: Counsel for Parties Required To Be Served

BRUSSELS BUDAPEST LONDON MOSCOW PARIS\* PRAGUE\* WARSAW

BALTIMORE, MD COLORADO SPRINGS, CO DENVER, CO LOS ANGELES, CA McLEAN, VA NEW YORK, NY ROCKVILLE, MD

\\DC - 66673/1 - 0377213.70

\*Affiliated Office

ENTERED  
Office of the Secretary

JUL 28 1999

Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388



CSX CORPORATION AND CSX TRANSPORTATION, INC.,  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY  
-- CONTROL AND OPERATING LEASES/AGREEMENTS --  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

STB Finance Docket No. 33388 (Sub-No. 69)

RESPONSIVE APPLICATION--STATE OF NEW YORK,  
BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION,  
AND THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

**CANADIAN PACIFIC PARTIES'**  
**PETITION TO ENFORCE TRACKAGE AND SWITCHING**  
**RIGHTS IMPOSED BY THE BOARD**

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Hudson Railway Company Inc., Soo  
Line Corp., and St. Lawrence &  
Hudson Railway Company Limited

July 27, 1999



## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION .....	1
BACKGROUND TO PETITION .....	4
ARGUMENT .....	10
1. CP Should Be Permitted Efficiently To Utilize Harlem River Yard .....	10
2. Via CSX Switching, CP Is Entitled To Access All Shippers Served through the Hunts Point Terminal ...	17
CONCLUSION .....	19
Attachment A (Trackage Rights Agreement)	
Attachment B (Switching Agreement)	
Enforcement Verified Statement of Paul D. Gilmore	
Enforcement Verified Statement of Mario LaBarbera	
Verified Statement of Randy R. Leaders	

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

STB Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY  
-- CONTROL AND OPERATING LEASES/AGREEMENTS --  
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RESPONSIVE APPLICATION--STATE OF NEW YORK,  
BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION,  
AND THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

---

**CANADIAN PACIFIC PARTIES'**  
**PETITION TO ENFORCE TRACKAGE AND SWITCHING**  
**RIGHTS IMPOSED BY THE BOARD**

**INTRODUCTION**

Pursuant to 49 C.F.R. §§ 1115.4 and 1117.1 and the  
Board's retention of ongoing jurisdiction in this matter, the  
Canadian Pacific Parties 1/ hereby petition for enforcement of

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1/ "Canadian Pacific Parties" or "CP" refer collectively to  
Canadian Pacific Railway Company, Delaware and Hudson Railway  
Company Inc., Soo Line Railroad Company and St. Lawrence & Hudson  
Railway Company Limited.

the trackage and switching rights imposed by the Board in Decision Nos. 109 and 123 of this proceeding.

On July 12, 1999, CP commenced its "east-of-the-Hudson" trackage rights operations, but was compelled to do so pursuant to incomplete trackage rights and switching agreements with CSX. 2/ The agreements are incomplete because CSX has refused to include provisions allowing CP to exercise two important rights that the Board granted in its earlier rulings. These rights -- which CSX appears committed to curtailing and which CP here seeks

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2/ CSX Corporation and CSX Transportation, Inc. are collectively referred to as "CSX". CSX is operating the subject east-of-the-Hudson line pursuant to an operating agreement with New York Central Lines LLC ("NYC"), which acquired the line from Consolidated Rail Corporation ("Conrail"). NYC is also a party to the incomplete trackage and switching agreements entered into by CP and CSX.

CP has also negotiated a trackage rights agreement with Metro-North Commuter Railway Company, Inc. ("Metro-North") (a notice of exemption was filed in Finance Docket No. 33775) in regard to those segments of the east-of-the-Hudson line between approximately milepost 6.6 and milepost 75.8, and an agreement with the State of New York (a notice of exemption was filed in Finance Docket No. 33776) in regard to the Oak Point Link component of that line.



to enforce -- are of critical importance to CP's ability to afford competitive rail service to the New York area. 3/

Specifically, CP is asking the Board to enter an order enforcing its earlier decisions to the effect that: (1) with respect to Harlem River Yard, "CP is free to work out whatever arrangements it can with the State of New York which owns the facility" (Decision No. 123 at 14), and that CSX may not interfere with such right by refusing to allow the dispatch of CP trains into and out of Harlem River Yard when required by CP as part of its normal train operations using the Oak Point Link (also owned by the State of New York); and (2) pursuant to CP's right "to access all shippers in the Bronx and Queens via a [\$128.10] switch performed by CSX" (Decision No. 109 p. 7; see Decision 123 at 13), CP is entitled to access to shippers served by means of the tracks CSX has leased within the Hunts Point

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3/ Although CP believes that a petition to enforce is the appropriate vehicle to seek relief in these circumstances, if the Board prefers to treat this petition as a petition to reopen pursuant to 49 C.F.R. § 1115.4, such reopening is warranted by new evidence and substantially changed circumstances. The parties' inability to reach agreement on necessary terms satisfies both standards.



Terminal area of the Bronx and which are used for bulk transfer purposes.

#### **BACKGROUND TO PETITION**

In Decision No. 89, the Board agreed with the various New York parties that shippers east of the Hudson should have the same advantages of two-carrier rail competition as shippers west of the Hudson would have following consummation of the CSX/NS acquisition of Conrail. Id. at 79. The Board ordered CSX to negotiate with CP either a haulage or trackage rights agreement over the east-of-the-Hudson line "not restricted as to commodity or geographic scope." Id. at 83.

Because the parties were unable to reach agreement, it ultimately fell to the Board to establish the terms that would govern CP's trackage rights operations over the east-of-the-Hudson line. In Decision No. 109, the Board explained the "[t]he purpose of our east-of-the-Hudson condition is to restore to New York City some of the rail competition that was lost when Conrail was created." In awarding east-of-the-Hudson trackage rights to CP, the Board's focus was on "enhancing the competitive presence of a second carrier for New York City traffic" and to achieve this result, placing CP in a position "to efficiently provide service to shippers within New York City." Id. at 6. Consistent

with this objective, the Board ruled that "CP will be permitted to access all shippers in the Bronx and Queens" via a CSX switch, and "use of Oak Point Yard as necessary to efficiently perform this switching service." Id. at 7.

Following the parties' petitions for reconsideration and clarification on various issues, the Board entered Decision No. 123 which addressed, among other things, CP's request for clarification related to its proposed Harlem River Yard operations. As discussed in greater detail below, the Board ruled that CP was free to work out whatever arrangement it wished with the third-party operator of the Harlem River Yard, and held that CP would owe CSX no switching charge for traffic that was not switched by CSX (because it did not use CSX's Oak Point Yard). Id. at 14.

When CP attempted to negotiate a trackage rights agreement and a switching agreement with CSX to implement the Board's decisions, CSX sought to block CP's use of the Harlem River Yard for pick-up and set-out of cars while in route between Albany and Oak Point Yard, and for the origination and

termination of unit trains. 4/ CSX further refused to allow CP switching access to shippers served through the CSX trackage within the Hunts Point Terminal (located in the Bronx) employed for bulk transfer purposes. Because CP was committed to instituting its already delayed trackage rights on July 12, 5/ it entered into agreements with CSX which left these matters unresolved, on the understanding that it would submit them to the Board for resolution.

The trackage rights agreement (pp. 6-7) entered into between the parties provides as follows in regard to the Harlem River Yard: 6/

The parties do not agree on the  
correct interpretation of the Orders of

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4/ Even though CSX owns neither Harlem River Yard nor the Oak Point Link (in fact it is a co-permittee with CP), it has the physical ability to deny CP access to those facilities because it effectively controls the dispatching of those lines.

5/ CP had originally intended to institute its trackage rights operation on June 21, the first business date after those rights became effective pursuant to Decision No. 123. Because CSX had not given appropriate labor notices in regard to the trackage rights, CP had to delay its initiation of trackage rights operations until CSX had exhausted its notice obligations.

6/ CP is submitting a copy of the trackage rights agreement (filed under seal pursuant to the protective order in this proceeding) as Attachment A hereto.



the STB (viz. Decisions No. 89, 109 and 123) insofar as they relate to the Harlem River Yard. CPR maintains that those Decisions grant it the right to operate directly between milepost 160 and Harlem River Yard. CSXT maintains that those Decisions grant CPR the right to operate only in a direct, continuous movement between milepost 160 and Oak Point Yard, without any right for CPR to operate into Harlem River Yard, and that CSXT is required to switch cars between Oak Point Yard and Harlem River Yard on CPR's behalf. The parties have considered litigating the issue before the STB but, for their own independent reasons, have agreed to the following temporary arrangement:

CPR shall have the right of temporary access to Harlem River Yard to pick up and/or set off blocks of Intermodal Traffic (defined as conventional containers on flat cars or trailers on flat cars carrying commodities other than municipal solid waste, not to include Roadrailer or similar "non-conventional" equipment), or to run entire intermodal trains into or out of the terminal.

Regarding access to Harlem River yard from the Oak Point Link track, the parties agree CSXT will control the operations of all freight trains using the Oak Point Link, either to access Harlem River Yard or to make through movements between MNCR [Metro-North Commuter Railroad] and Oak Point Yard. CSXT will maintain fluidity and operating efficiency over the Oak Point Link track by requiring trains to operate within established schedules, keeping main line and running tracks



clear, and following other local procedures developed from time to time to support efficient use of the Oak Point Link. 7/

With respect to CP's right of switching access to shippers served through the Hunts Point Terminal, the parties' switching agreement affords CP broad switching access to customers in the Bronx and Queens with no exception for Hunts Point Terminal shippers. 8/ Nonetheless, CSX unilaterally takes the position that CP's rights do not extend to such access, and it refuses to switch CP traffic to the CSX bulk transfer tracks at Hunts Point Terminal.

CP seeks to obtain enforcement of its rights both at Harlem River Yard and at the CSX bulk transfer tracks in the Hunts Point Terminal area as rapidly as possible. CSX is clearly taking competitive advantage of the CSX-caused delays CP has experienced in initiating its trackage rights operations, and can

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7/ As explained below, the restrictions on the types of traffic CP can handle out of Harlem River Yard under this temporary arrangement are quite significant, and largely nullify the rights purportedly granted.

8/ A copy of the switching agreement (filed under seal pursuant to the protective order in this proceeding) is being submitted as Attachment B hereto.

be expected to do the same in regard to the two issues presented in this petition until such time as they are resolved by the Board.

For example, CSX has refused to provide switching services from Oak Point Yard to the CSX bulk transfer tracks at the Hunts Point Terminal for ConAgra cars (containing flour) moved by CP under its east-of-the-Hudson trackage rights. CSX advised ConAgra that it would only deliver shipments to the Hunts Point Terminal that were routed via CSX. In its negotiations with ConAgra over potential handling of this traffic, CSX proposed that ConAgra agree not to utilize any other bulk transfer facility within 50 miles of New York City. ConAgra declined, explaining that it could not agree to such a restriction since it would interfere with ConAgra's ability to use any of the three Norfolk Southern Railway Company ("NS") transfer facilities in the New York City area for shipments from NS origins. Then, when opting to use CP competitive service in lieu of CSX east-of-the-Hudson service, ConAgra found that it would be denied access to the Hunts Point Terminal on which it places extensive reliance in serving its customers. See Verified Statement of Randy R. Leaders (appended).

CSX's efforts to lock up major parts of the New York City market before CP can provide an effective competitive response are fundamentally at odds with the Board's intention to afford New York City shippers with a competitive alternative to CSX rail service on the east side of the Hudson. CP urges the Board, through this proceeding, to afford CP with the level competitive playing field intended by the Board as expeditiously as possible.

#### **ARGUMENT**

**1. CP Should Be Permitted Efficiently  
To Utilize Harlem River Yard**

In Decision No. 123 (at 14), the Board noted the following in regard to CP's request for clarification related to its use of Harlem River Yard:

CP had sought the right to use this yard for pickup, delivery, storage and any other purpose (subject to agreement with the yard's third-party operator). CSX had expressed its agreement with this proposal. The operator of the yard (who has leased it from New York State) has advised CP of its willingness to lease one and perhaps more tracks for car storage and switching.

The Board held that CP was "free to work out whatever arrangements it can with the State of New York, which owns the

facility," and that its "intervention in that process is not appropriate, or even within our authority." Id.

The Board went on to rule that it was not obviating the "necessity for CP's traffic to move through the Oak Point Yard," that it was not granting CP "direct access to shippers in the Bronx and Queens," and that it granted CP trackage rights to and from Oak Point Yard and reciprocal switching to permit CP to use that interchange point to receive and deliver traffic to all parts of the Bronx and Queens. Id. The Board then elaborated that "[i]f CSX provides a switching service in connection with these movements, it is entitled to compensation," and that "[i]f it provides no such service, then no compensation is required." Id.

Taken together, the Board's rulings clearly allow CP to use Harlem River Yard for "pickup, delivery, storage and any other purpose ([pursuant] to agreement with the yard's third-party operator)," and as to traffic handled by CP through its use of the yard, CP would owe CSX no switching charge because CSX would "provide[] no [switching] service." Thus, for example, CP is not required to have traffic originating in Harlem River Yard backhauled to Oak Point Yard via a CSX switch; nor is it required to have traffic terminating in Harlem River Yard pass through the



yard and move to Oak Point Yard, only then to have it switched back to Harlem River Yard by CSX.

The Board's rulings do not require CP to bear the operational inefficiencies and additional costs that would be associated with this type of backhaul operation via Oak Point Yard. It is particularly appropriate that the traffic handled via Harlem River Yard not be subjected to this type of backhauling. That traffic is typically time-sensitive, thin-margin intermodal traffic that can ill afford the delays attendant to handling through Oak Point Yard and the costs of an entirely unnecessary CSX switch. 2/ See Enforcement Verified Statement of Paul D. Gilmore ("Gilmore E.V.S.") (appended).

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2/ For example, it makes no operating or commercial sense to require a CP intermodal shipment inbound to Harlem River Yard to pass through that yard and go to the Oak Point Yard, there be subjected to the delays of reclassification by CSX, and then be switched by CSX at a charge of \$128.10 per car back to the same Harlem River Yard that the shipment had passed by hours earlier. Given CSX's complaint that the switching charge being paid by CP is inadequate (see CSX-169 at 15-17), logic would suggest that CSX should want to minimize the extent of its switching activity for CP. Yet CSX is nonetheless insistent that Harlem River Yard traffic be needlessly switched through Oak Point Yard. Obviously, CSX regards its interests to be advanced through maximizing the amount of switching it does of the Harlem River Yard traffic, both in terms of undercutting CP's ability to serve

[Footnote continued]

Under the incomplete trackage rights agreement entered into by the parties, CSX agrees to allow CP to use Harlem River Yard temporarily to pick up and set off blocks of intermodal traffic and to run intermodal trains in and out of the yard so long as conventional containers on flat cars or trailers on flat cars are used, the commodities carried are other than solid municipal waste, and the equipment used is neither Roadrailer or similar "non-conventional" equipment. As explained by CP's Mr. Gilmore in his accompanying verified statement, the exceptions effectively render these "rights" meaningless.

First, although CSX's temporary use arrangement would permit CP to directly access Harlem River Yard using double-stack equipment, such equipment cannot operate over the east-of-the-Hudson line because it cannot clear parts of the Metro-North trackage, and so the right to use this equipment into and out of the Harlem River Yard is, as CSX knows, meaningless. CP has always planned to handle intermodal traffic originating and

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[Footnote continued]

that traffic competitively and in generating switching revenue for itself.

terminating at Harlem River Yard as part of its "short-haul intermodal" service, which moves in specially designed flat cars (double stacks are not used). <sup>10/</sup> These flat cars are "non-conventional" equipment under CSX's definition. Hence, CSX would bar CP from directly accessing the Harlem River Yard with this equipment, and would instead would require CP to route all Harlem River Yard traffic using this equipment through the Oak Point Yard.

Second, CSX's limitations would prohibit CP from employing Roadrailer equipment in exercising its direct access rights to Harlem River Yard. Rather, under CSX's scheme, shipments in this equipment -- like shipments in the "non-conventional" intermodal flatcars -- would have to move through Oak Point Yard using a CSX switch. This would preclude the possibility of CP moving Roadrailers to or from New York City in cooperation with Norfolk Southern, and would therefore deny the New York City market possible competitive alternatives.

Third, under CSX's temporary use authority, shipments of municipal solid waste -- one of the significant markets CP

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<sup>10/</sup> See CP-28, Gilmore Reconsideration V.S. at 2.

plans to develop using the Harlem River Yard -- cannot be handled by CP on a direct basis, but rather must employ a CSX switch and move through Oak Point Yard.

These artificial limitations would impair CP's ability to compete with CSX just as effectively as the commodity restrictions contained in the original settlement agreement between CP and CSX. The City and State of New York argued that the commodity restrictions meant that the CP/CSX settlement would not provide the competition that was needed east of the Hudson River, and the Board agreed. In granting CP commercial access to the New York market via the east side of the Hudson, the Board intended to eliminate such artificial constraints on CP's ability to provide competitive rail service. See Decision No. 89 at 83.

Yet through the terms that CSX seeks to dictate for the trackage rights and switching agreements, CSX is attempting to reintroduce the discredited commodity restrictions and thus defeat the Board's purpose in granting trackage rights to CP. If CP were required to handle Harlem River Yard traffic through Oak Point Yard, the concomitant delays and associated CSX switching charge would materially impair CP's ability to compete with CSX for this traffic. That reduction in competition is clearly the objective that CSX is seeking to achieve.



It is particularly objectionable that CSX is attempting to achieve its anticompetitive goals by narrowly limiting CP's direct access to the Harlem River Yard where CSX does not even own the line CP would use to obtain that access. The Oak Point Link is owned by the State of New York. CSX operates over the Oak Point Link pursuant to a permit granted by the State, just as CP does. Nothing in the permit grants CSX exclusive use of the Oak Point Link. Indeed, CSX's rights on the line are identical to those granted to CP. Compare NYC-23/NYS-32, Guinan Supp. V.S., Ex. \_\_ (JFG-02) (Conrail/CSX permit), with Finance Docket No. 33776 (notice of exemption regarding CP trackage rights permit). Yet CSX is attempting to use New York State's own rail line to undercut the procompetitive objectives the State sought to achieve in pursuing the CP east-of-the-Hudson trackage rights in the first place.

Plainly, there is no valid justification for CSX's efforts to hobble CP's ability to be an effective competitor for Harlem River Yard traffic by requiring that that traffic inefficiently and at critical additional expense be routed through the Oak Point Yard. CP urges the Board to enforce its prior rulings and direct CSX to allow CP to use Harlem River Yard

in accordance with its agreement with the yard's operator, so that CP can move traffic directly in and out of the yard.

**2. Via CSX Switching, CP Is Entitled To Access All Shippers Served through the Hunts Point Terminal**

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The Board's decisions in this proceeding granted CP "access to all shippers in the Bronx and Queens" via CSX switching. Decision No. 109 at 7; accord, Decision No. 123 at 14-15. The decisions made no exception for shippers served through the CSX trackage located at the Hunts Point Terminal used for bulk transfer purposes. These tracks lie within the Bronx, and shippers served by them clearly fall within the scope of the rights awarded to CP. See Gilmore E.V.S., Ex. 1 (a map which shows the location of the Hunts Point Terminal in the Bronx).

CSX is taking the position that CP can have no access to these shippers, because the CSX bulk transfer tracks constitute a "CSX facility" that is somehow off limits to CP. CSX's argument, taken to its logical extreme, would mean that CP could have access to no shippers in the Bronx and Queens, because that access can only be obtained through use of CSX facilities. Clearly, the Board granted access to CP via CSX switching to Hunts Point Terminal shippers, like all other Bronx and Queens shippers.

The Hunts Point Terminal is owned by the City of New York and leased to the Hunts Point Co-op. The Co-op, which is made up of fresh fruit and vegetable wholesalers, has in turn leased four tracks to CSX (Conrail was the pre-merger lessee). CSX uses the tracks as a bulk transfer point where cars are spotted either for off-loading onto trucks, or for loading from trucks onto the cars. CSX contracts with a company called Bulkmatic to perform the off-loading and on-loading service. See Enforcement Verified Statement of Mario LaBarbera ("LaBarbera E.V.S.") (appended).

The Hunts Point Terminal is a major source of east-of-the-Hudson traffic, serving a broad range of shippers that require transloading from rail to truck and vice-versa. CP needs switching access to the CSX bulk transfer trackage at Hunts Point Terminal to serve not only ConAgra (whose flour traffic CP is already handling), but also shippers of such commodities as plastics, sweeteners, and other bulk-type movements. See Gilmore E.V.S. (appended). Bulkmatic has advised CP that it is prepared to perform the same services for CP that it is performing for CSX. See LaBarbera E.V.S. (appended).

To permit CP to be an effective competitor for movement of traffic served through the Hunts Point Terminal, CP urges the

Board to enforce its earlier decisions so that CP is given access via switching to CSX's bulk transfer trackage in that terminal.

**CONCLUSION**

For the reasons set forth above, CP's petition for enforcement should be granted.

Respectfully submitted,



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Attorneys for Canadian Pacific  
Railway Company, Delaware and  
Hudson Railway Company, Inc., Soo  
Line Railroad Company, and  
St. Lawrence & Hudson Railway  
Company Limited

July 27, 1999

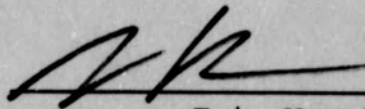


CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of July, 1999, I served by the means indicated below a copy of the foregoing Canadian Pacific Parties' Petition To Enforce Trackage and Switching Rights Imposed by the Board on the following:

Counsel for CSX, NYCEDC and NYDOT  
(by hand)

Counsel for all parties requesting a copy  
(by first-class mail or by hand where requested)



---

Eric Von Salzen

**ATTACHMENT A**

Attachment A, the east-of-the-Hudson trackage rights agreement between CSX and CP, contains confidential information and is being filed with the Board under seal pursuant to the protective order in this proceeding

**ATTACHMENT B**



Attachment B, the Oak Point Yard switching agreement between CSX and CP, contains confidential information and is being filed with the Board under seal pursuant to the protective order in this proceeding

**ENFORCEMENT VERIFIED STATEMENT OF  
PAUL D. GILMORE**

**ENFORCEMENT VERIFIED STATEMENT OF  
PAUL D. GILMORE**

My name is Paul D. Gilmore. I am Vice President Eastern Operations of the Canadian Pacific Railway Company ("CPR"). 1/ I submitted two verified statements in the opening phase of this proceeding, one in the reply phase, and two in the reconsideration phase. In this enforcement verified statement, I address two issues: (1) the operating inefficiencies associated with CSX's position that CP must utilize CSX switching via the Oak Point Yard in order to access the privately operated Harlem River Yard, a position which ignores the fact that CP trains pass the Harlem River Yard en route to and from the Oak Point Yard and the related fact that operating convenience and cost effective service to shippers mandate that CP should use the Harlem River Yard for direct pick-up and set-out of cars as well as the origination and termination of trains where appropriate; and (2) the adverse competitive consequences associated with CSX's position that CP cannot access (via CSX switching) shippers in

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1/ This statement is being submitted on behalf of CPR, Delaware and Hudson Railway Company, Inc. ("D&H"), Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited (collectively, including CPR, referred to as "Canadian Pacific Parties" or "CP"). I continue to use in this statement the abbreviated terms, such as CSX and east-of-the-Hudson line, defined in my earlier verified statements.

the Hunts Point Market area of the Bronx, as well as the illogic of CSX's position in light of the Board's decision granting CP access to all shippers in the Bronx and Queens.

**I. CP Should Not Have To Use CSX Oak Point Yard-Based Switching in Order To Access the Harlem River Yard**

As shown on Exhibit 1 hereto, the Harlem River Yard is located adjacent to New York State's Oak Point Link (over which CP has obtained trackage rights by agreement with the State of New York); thus, to obtain access to the yard, CP does not have to utilize any CSX trackage. A CP train that terminates at Oak Point Yard passes by the Harlem River Yard shortly before it arrives at the Oak Point Yard; similarly, a CP train originating at Oak Point Yard passes by the Harlem River Yard shortly after departing the Oak Point Yard.

CSX has no ownership interest in the Harlem River Yard, which is owned by the State of New York and leased to a third-party operator; similarly, CSX has no ownership interest in the Oak Point Link, the line which provides access to the Harlem River Yard and which like the Yard is owned by the State of New York. But CSX controls CP's access to the Harlem River Yard because it effectively controls dispatching of movements over the Oak Point Link.



The Harlem River Yard plays a critically important role in CP's ability to develop a competitive east-of-the-Hudson service. First, CP expects it to be a major origination and termination point for intermodal traffic, and anticipates among other things handling "short-haul intermodal" traffic (using specially designed CP equipment) and Roadrailer traffic through the yard; CP also plans to compete with CSX for the handling of substantial waste movements that originate at the yard. Second, the yard will be used by CP for storage of locomotives and cars.

In order to compete effectively for traffic movements that originate or terminate at Harlem River Yard, CP must be able to handle those movements directly from the yard. Thus, for example, where a CP train is terminating at Oak Point Yard, it must be able to set-out cars destined for Harlem River Yard as it passes by the yard using the Oak Point Link. Similarly, where an entire train originates at Harlem River Yard, CP must be able to move that train from the yard along the east-of-the-Hudson line to Schenectady.

As an operational matter, it makes no sense to require CP to route all of its Harlem River Yard traffic through Oak Point Yard in circumstances where CP's operating rights take it directly by Harlem River Yard. Back-hauling traffic via CSX switching to and from Harlem River Yard so that all CP traffic is

handled at Oak Point Yard adds an unjustifiable layer of inefficiency and costs to CP's operations, and threatens the competitive effectiveness of those operations. Moreover, it adds unnecessary congestion to the Oak Point Yard, which CSX complains is already congested.

It is particularly inappropriate to subject the CP traffic handled via Harlem River Yard to the type of backhauling insisted upon by CSX. That traffic is typically time-sensitive, thin-margin intermodal traffic that cannot afford the delays associated with handling through Oak Point Yard and the costs of an entirely unnecessary CSX switch.

Under the east-of-the-Hudson trackage rights agreement entered into between CSX and CP, CSX agrees to allow CP to use Harlem River Yard temporarily to pick up and set off blocks of intermodal traffic and to run intermodal trains in and out of the yard so long as conventional containers on flat cars or trailers on flat cars are used, the commodities carried are other than solid municipal waste, and the equipment used is neither Roadrailer or similar "non-conventional" equipment. The exceptions established by CSX effectively nullify the rights CSX purports to grant.

First, although CSX's temporary use arrangement would permit CP to directly access Harlem River Yard using double-stack

equipment, such equipment cannot operate over the east-of-the-Hudson line because it cannot clear parts of the Metro-North trackage and so the right to use this equipment into and out of the Harlem River Yard is, as CSX knows, meaningless. CP has always planned to handle intermodal traffic originating and terminating at Harlem River Yard as part of its "short-haul intermodal" service, which moves in specially designed flat cars (double stacks are not used). These flat cars are "non-conventional" equipment under CSX's definition. Hence, CSX would bar CP from directly accessing the Harlem River Yard with this equipment, and would instead require CP to route all Harlem River Yard traffic using this equipment through the Oak Point Yard.

Second, CSX's limitations would prohibit CP from employing Roadrailer equipment in exercising its direct access rights to Harlem River Yard. Rather, under CSX's scheme, shipments in this equipment -- like shipments in the "non-conventional" intermodal flatcars -- would have to move through Oak Point Yard using a CSX switch. This would preclude the possibility of CP moving Roadrailers to or from New York City in cooperation with Norfolk Southern, and would therefore deny the New York City market possible competitive alternatives.

Third, under CSX's temporary use authority, shipments of municipal solid waste -- one of the significant markets CP



plans to develop using the Harlem River Yard -- cannot be handled by CP on a direct basis, but rather must employ a CSX switch and move through Oak Point Yard.

These limitations effectively undercut CP's ability to compete with CSX for traffic served through the Harlem River Yard. There should be no limitations on CP's use of the Harlem River Yard. Rather, CP should be permitted to use Harlem River Yard (subject to the agreement of the yard's operator) to pick-up and set-out cars, to originate and terminate trains, and for any other purpose, and should not be shackled to the inefficiencies and costs of having to utilize of Oak Point Yard for every movement.

**II. CP Should Be Permitted To Utilize CSX Switching To Access Shippers in the Hunts Point Market Area**

CSX is taking the position that shippers served through the Hunts Point Terminal are off limits to CP. Disregarding the fact that the terminal is within the Bronx and that the Board granted CP access to all shippers in the Bronx through use of CSX switching, CSX nonetheless asserts that the terminal is somehow different from the rest of the Bronx. In fact, there is no difference. CP's right of access extends to all CSX rail



facilities in the Bronx, and the Hunts Point Terminal is no different from the rest of those facilities. 2/

Contrary to the Board's decisions, CSX is attempting to be the exclusive provider of rail service to all shippers served through the Hunts Point Terminal. These shippers include not only Conagra (whose traffic CP is already handling, but CSX is refusing to switch into the terminal), but also shippers of other bulk-type commodities such as plastics and sweeteners. The volume of traffic handled through the terminal is quite substantial. CP is anxious to compete for this traffic.

CP urges the Board, consistent with its earlier decisions, to require CSX to extend to CP access to the Hunts Point Terminal, using CSX switching to achieve such access.

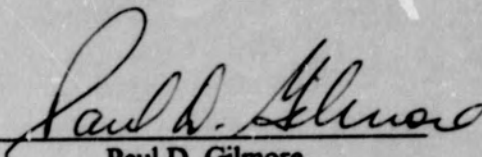
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2/ As shown in Exhibit 1 hereto, the Hunts Point Terminal is in the Bronx and but one of a network of CSX rail facilities serving shippers in that borough.

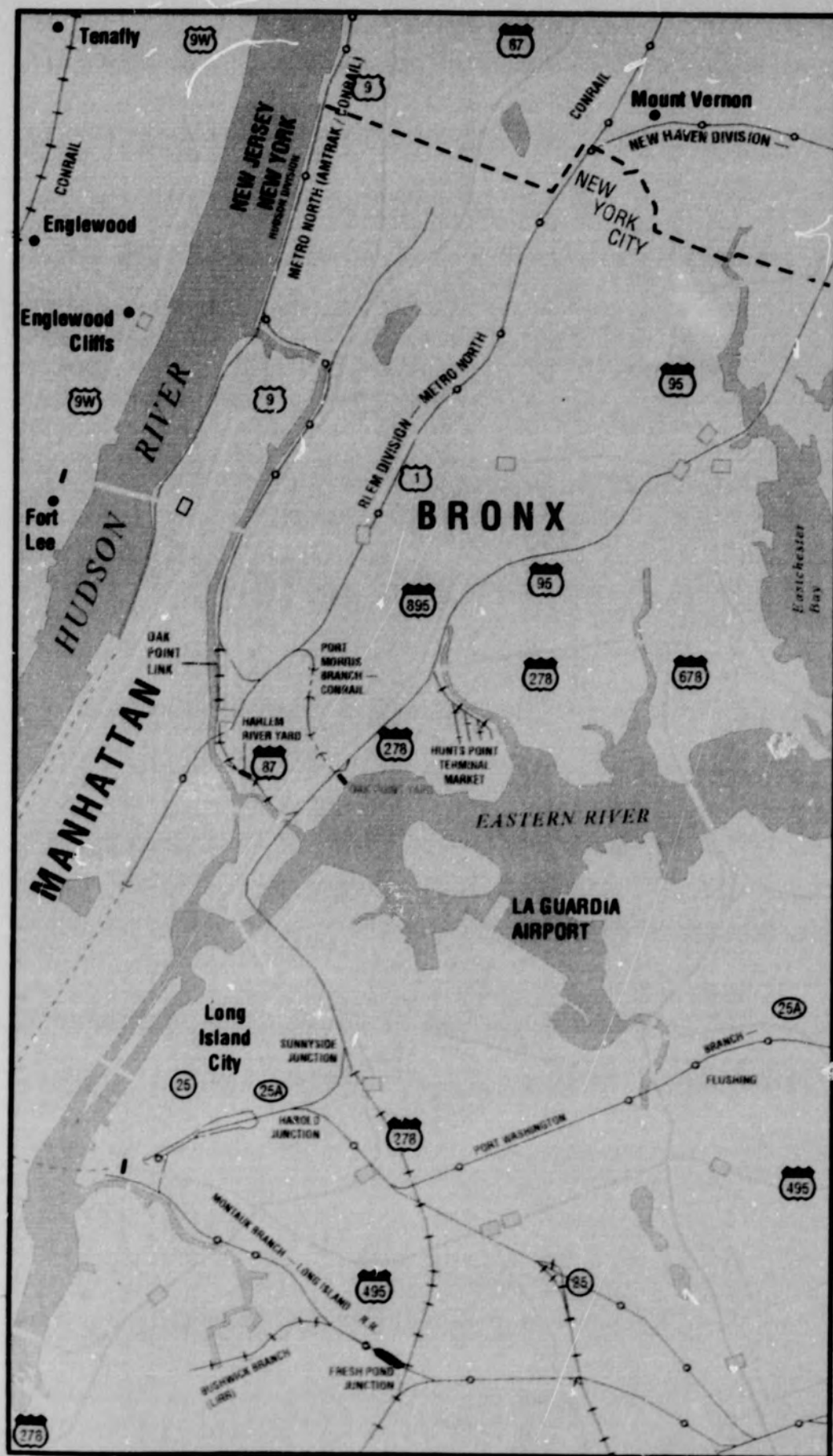
**VERIFICATION**

I, Paul D. Gilmore, declare under penalty of perjury  
that the foregoing is true and correct to the best of my  
knowledge and belief. Further, I certify that I am qualified  
and authorized to file this verified statement.

Executed on July 19, 1999.

  
\_\_\_\_\_  
Paul D. Gilmore

**EXHIBIT 1**





**ENFORCEMENT VERIFIED STATEMENT OF  
MARIO LABARBERA**

**ENFORCEMENT VERIFIED STATEMENT OF  
MARIO LABARBERA**

My name is Mario LaBarbera. I am currently Director - Asset Management of the Canadian Pacific Railway Company ("CPR"), a position I have held since January 1999. 1/ Before joining CPR, I held a variety of positions with Consolidated Rail Corporation ("Conrail"), beginning in 1984, including Special Accounts Manager (Montreal), Project Coordinator (Philadelphia), Area Manager - Industrial Development (Selkirk, NY), Manager - Canadian Development (Montreal), Manager - Canadian Sales and Development (Montreal), and Manager - Canadian Sales (Montreal).

As a result of my job responsibilities at Conrail, I am familiar with the northeastern United States markets that CP seeks to serve through its "east of the Hudson" trackage rights.

I understand that CSX has been required by the Surface Transportation Board to provide CP with switching access to

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1/ This statement is being submitted on behalf of CPR, Delaware and Hudson Railway Company, Inc. ("D&H"), Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited (collectively, including CPR, referred to as "Canadian Pacific Parties" or "CP"). I use in this statement the same abbreviated terms, such as CSX and east-of-the-Hudson line, are employed in the accompanying Enforcement Verified Statement of Paul D. Gilmore.

shippers in the Bronx and Queens in order to improve rail competition in that area. I further understand that CSX has refused to switch CP traffic (through the Oak Point Yard) that either originates or terminates at the Hunts Point Terminal in the Bronx. In connection with my current job responsibilities at CP, I have become familiar with the nature of CSX's rail operations in the Hunts Point Terminal area.

The Hunts Point Terminal is owned by the City of New York and is located in the Bronx. The terminal area has been leased by the City to the Hunts Point Co-op, which is made up of fresh fruit and vegetable wholesalers. The Co-op has in turn licensed four tracks to CSX (actually, the license ran to Conrail, and now CSX has succeeded to it). CSX uses these four tracks as a bulk transfer point. Cars are spotted on the tracks for off-loading of their contents onto trucks. CSX contracts with a company called Bulkmatic to perform the actual offloading and onloading service.

CP is handling traffic for the ConAgra Flour Milling Company which it has attracted away from CSX and which, when handled by CSX, has used the CSX Hunts Point Terminal tracks for bulk transfer onto trucks. Now that CP is moving this traffic, CP wants to use these same CSX tracks for bulk transfer purposes.

Bulkmatic has indicated to CP that it is prepared to perform the same services for CP that it is now performing for CSX. But CSX is refusing to switch the CP ConAgra cars to the CSX Hunts Point Terminal tracks. CSX has made it clear that this refusal will extend to any traffic CP wishes to originate or terminate at CSX's Hunts Point Terminal track.


This refusal has forced CP to make alternative arrangements on a temporary emergency basis. CP's ConAgra cars are switched by CSX to the Harlem River Yard, and CP has entered into a temporary arrangement with Bulkmatic to off-load the cars onto trucks there. This arrangement has been significantly less efficient than using the CSX Hunts Point Terminal tracks for bulk transfer purposes and is not a viable long-term option, for several reasons. The primary focus of CP's operations at Harlem River Yard is intended to be intermodal business and the transfer of municipal waste to containers. Once this intermodal and municipal waste business is fully developed, there will be insufficient capacity at Harlem River Yard for the bulk transfer business. Moreover, Hunts point is a food products and food grade terminal, whereas Harlem River Yard is oriented toward non-food products.



Given that, as I understand it, the Board granted CP the right to access all CSX facilities in the Bronx via CSX switch, there is no valid reason for CSX to refuse to switch CP's cars to and from CSX's Hunts Point Yard tracks.

VERIFICATION

I, Mario LaBarbera, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file this verified statement. Executed on July 27, 1999.

  
Mario LaBarbera

**VERIFIED STATEMENT OF  
RANDY R. LEADERS**

Before the  
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388 (Sub-No. 69)

RESPONSIVE APPLICATION- STATE OF NEW YORK,  
BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION,  
AND THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

VERIFIED STATEMENT

OF

RANDY R. LEADERS

1. My name is Randy R. Leaders and my business address is ConAgra Grain Processing Companies, Nine ConAgra Drive, Omaha, Nebraska, 68102-5009.
2. I am Director of Transportation for ConAgra Flour Milling Company ("ConAgra").
3. I make this declaration based on personal knowledge gained in the performance of my duties and records maintained by ConAgra in the ordinary course of business.
4. ConAgra is one of the Nation's largest producers and suppliers of flour. Our customers include commercial bakers.



5. Many commercial bakers prefer to receive flour by truck. In some instances, they prefer truck delivery because receiving flour in truckload quantities enables them to minimize inventory costs. In some instances bakers simply do not have the necessary facilities to receive rail cars.

6. In order to be able to provide responsive, timely and cost effective services to our customers we rely heavily on bulk transfer facilities that transfer flour from rail cars to trucks.

7. A bulk transfer facility on which we rely extensively in serving our customers, in the New York metropolitan area is located at Hunts Point in the Borough of Bronx.

8. The Hunts Point bulk transfer facility ("Hunts Point Terminal") is operated by Bulkmatic. Until June 1, 1999 it was served by Conrail. Since that date, it is served by CSX Transportation, Inc. ("CSXT").

9. Because of the importance of the Hunts Point Terminal to our ability to serve our customers in the New York metropolitan area, we followed with interest the above-captioned proceeding and were pleased when the Board granted to Canadian Pacific Railway Company ("CP") trackage rights to serve facilities in the Bronx.

10. Early in June we negotiated rates with CP for the delivery of a multiple carload shipment of flour to the Hunts Point Terminal.

11. CSXT informed us on June 17, 1999 that it would not deliver car flour to the Hunts Point Terminal. CSXT informed us that it has leased the Hunts Point Terminal which makes it a CSXT facility rather than a "customer" facility subject to CP trackage rights.

12. CSXT informed us that it will deliver carload shipments to the Hunts Point Terminal *only* if they are routed via CSXT. In attempting to negotiate competitive rates via CSXT, they proposed that we agree not to utilize any other transfer facility within 50 miles of

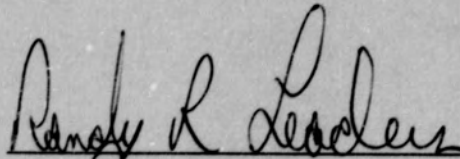
New York City. We advised CSXT that we could not agree to such a restriction since it would, among other things, interfere with our ability to use any of the three Norfolk Southern Railway Company ("NS") transfer facilities in the New York City area for shipments from NS origins.

13. On June 1, 1999 we made a shipment to the Hunts Point Terminal via CP. Upon arrival in the Bronx, CSXT refused to allow the shipments to be unloaded. CP had to take the shipment to the Oak Point Yard in Northern New Jersey thereby adding one additional day of transit time.

14. The inability to route CP cars through the Hunts Point Terminal or to obtain competitive rates from CSXT without agreeing to a restriction against using any other bulk transfer facility within 50 miles of New York City is seriously interfering with our ability to serve our customers in the New York metropolitan area.

**VERIFICATION**

I, Randy R. Leaders, verify under penalty of perjury that the foregoing Verified Statement is true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file this Verified Statement.

  
\_\_\_\_\_  
Randy R. Leaders

Executed: July 19, 1999

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(Sub 69)

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ENTERED  
Office of the Secretary

JUN 23 1999

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Public Record

**HOGAN & HARTSON**  
LLP.

ERIC VON SALZEN  
PARTNER  
DIRECT DIAL (202) 637-5718

June 19, 1999

COLUMBIA SQUARE  
555 THIRTEENTH STREET, NW  
WASHINGTON, DC 20004-1109  
TEL (202) 637-5600  
FAX (202) 637-5910

**BY HAND DELIVERY**

The Honorable Vernon A. Williams  
Secretary, Surface Transportation Board  
Case Control Branch  
ATTN: STB Finance Docket No. 33388  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423-0001



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

Finance Docket No. 33388 (Sub No. 69), Responsive Application – State of  
New York, By and Through Its Department of Transportation, and The New  
York City Economic Development Corporation

Dear Secretary Williams:

Pursuant to the fourth ordering paragraph of Surface Transportation Board  
("Board" or "STB") Decision No. 123, served May 20, 1999, modifying Decision No. 109, served  
December 18, 1998, Canadian Pacific Railway Company, Delaware and Hudson Railway  
Company, Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company  
Limited (collectively "CP") hereby inform the Board that CP intends to exercise the rights  
granted by the Board in Decision No. 89, served July 23, 1998, and in Decisions Nos. 109 and  
123.

Sincerely,

Eric Von Salzen  
Attorney for Canadian Pacific Railway Company,  
Delaware and Hudson Railway Company, Inc., Soo  
Line Railroad Company, and St. Lawrence &  
Hudson Railway Company Limited

EVS/cmd

cc: Counsel for Parties Required To Be Served

STB FD 33388 (Sub 69) 2-16-99 D 193344

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Office of the Secretary

FEB 16 1999

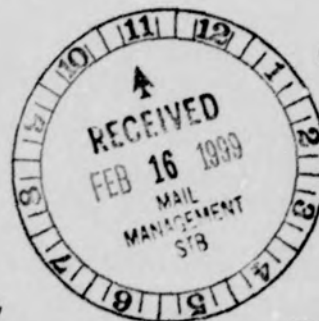
ARNOLD & PORTER

DENNIS G. LYONS  
(202) 942-5858

Part of  
Public Record

555 TWELFTH STREET, N.W.  
WASHINGTON, D.C. 20004-1206  
(202) 942-5000  
FACSIMILE (202) 942-5999

February 16, 1999



NEW YORK  
DENVER  
LOS ANGELES  
LONDON

The Honorable Vernon A. Williams  
Secretary, Surface Transportation Board  
Mercury Building, Room 700  
1925 K Street, N.W.  
Washington, D.C. 20423

Sub 69

Re: **Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation (Sub-No. 69)**

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of CSX-177, "Response of CSX Corporation and CSX Transportation, Inc. to Amtrak's Motion for Leave to File Appended Verified Statement of Richard D. Simonen," for filing in the above-referenced docket.

Please note that a 3.5-inch diskette containing a WordPerfect 5.1 formatted copy of the filing is also enclosed.

Thank you for your assistance in this matter. Please contact me if you have any questions.

Respectfully yours,

Dennis G. Lyons  
Counsel for CSX Corporation  
and CSX Transportation, Inc.

Enclosures  
via hand delivery

cc: All Parties to the Service List  
in Sub-No. 69

ENTERED  
Office of the Secretary

FEB 16 1999

Part of  
Public Record

**SURFACE TRANSPORTATION BOARD**

**FINANCE DOCKET NO. 33388**

**CSX CORPORATION AND CSX TRANSPORTATION, INC.,  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY  
— CONTROL AND OPERATING LEASES/AGREEMENTS —  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION**

**STB Finance Docket No. 33388  
(Sub-No. 69)**

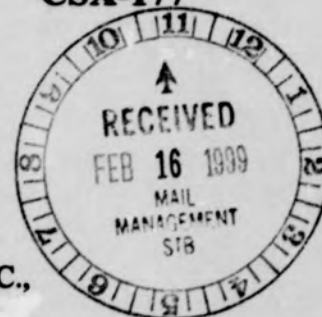
**RESPONSIVE APPLICATION — STATE OF NEW YORK, BY AND THROUGH ITS  
DEPARTMENT OF TRANSPORTATION, AND  
THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**

**Response of CSX Corporation and CSX Transportation, Inc.  
to Amtrak's Motion for Leave to File  
Appended Verified Statement of Richard D. Simonen**

CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") hereby respond to NRPC-15, Amtrak's Motion for Leave to File Appended Verified Statement of Richard D. Simonen.

CSX has no objection to the filing of Mr. Simonen's Verified Statement. As indicated in the attached Verified Statement of R. Paul Carey, the Simonen Verified Statement in fact does point out an error in Mr. Carey's Verified Statement filed in CSX-175, for which Mr. Carey (and we) apologize.

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**CSX-177**



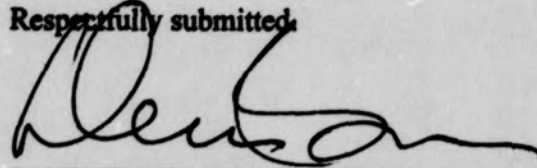


In point of fact, on the Stuyvesant to Schenectady/Hoffmans segment, Conrail does pay Amtrak a fixed amount per track mile, adjusted annually for inflation, in respect of the maintenance services performed by Amtrak on that segment. Since the amounts that Amtrak owes Conrail for Amtrak's operations over the segment exceed the amounts payable to Amtrak, the result is an offset with a net payment coming to Conrail.

CSX does not believe that this misstatement alters or affects the point made in Part IV of CSX-175, its reply to the CP Petition for Reconsideration and Clarification of Decision No. 109. The point there made was that to the extent any activities of CP in its use of the trackage rights cause out-of-pocket expenses to CSX in regard to CSX's relationship to Amtrak, of a sort that would not have occurred but for that use, those expenses should be paid as a separate item of trackage rights compensation. CSX-175 at 17-18. Amtrak is not and will not be in privity of contract with CP and so, presumably, Amtrak will not be paid anything by CP. Thus, there could be no "offset," accordingly, of amounts payable by CP to Amtrak against amounts payable to CP to CSX, or vice versa, as was suggested in CP-28 at 16-18. In any event, it is plain that none of these extra costs could in any way affect the interest rental element or the trackage rights fees, since any amounts payable to Amtrak would be "below the wheel"-related amounts. We note that the Verified Statement of Mr. Simonen is in agreement with Mr. Carey that the activities of CP might furnish an occasion for Amtrak to seek additional payments in respect of both of the segments which will be used by CP.

There is no reason for the Board to pass judgment on this issue at this time, and it will suffice if the Board simply notes the issue and declines to declare valid the "offset" requested by CP of its alleged "payments" to Amtrak against the trackage rights fee payable to CSX.

Respectfully submitted,



**Samuel M. Sipe, Jr.**  
**David H. Coburn**  
STEPTOE & JOHNSON LLP  
1330 Connecticut Ave., N.W.  
Washington, D.C. 20036-1795  
(202) 429-3000

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**Sharon L. Taylor**  
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**Peter J. Shudtz**  
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**P. Michael Giftos**  
**Paul R. Hitchcock**  
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Speed Code J-120  
Jacksonville, FL 32202  
(904) 359-3100

*Counsel for CSX Corporation and  
CSX Transportation, Inc.*

February 16, 1999

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**FINANCE DOCKET NO. 33388  
(Sub-No. 69)**

---

**CSX CORPORATION AND CSX TRANSPORTATION, INC.  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY CORPORATION  
--CONTROL AND OPERATING LEASES/AGREEMENTS--  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION**

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**VERIFIED STATEMENT OF  
R. PAUL CAREY**

My name is R. Paul Carey; my present position is General Manager – Contracts with Consolidated Rail Corporation. I have previously given Verified Statements in this matter, most recently in CSX-175, "Reply of CSX Corporation and CSX Transportation, Inc. to Canadian Pacific Parties' Petition for Reconsideration and Clarification of Decision No. 109," which was filed on January 27, 1999.

I have had called to my attention, and have read, NRPC-15, "Amtrak Motion for Leave to File Appended Verified Statement of Richard D. Simonen," and that Verified Statement of Mr. Simonen.

Mr. Simonen has in fact identified a mistake, for which I apologize to the Board, in my Verified Statement in CSX-175. Although it is true that Conrail does *not* make any

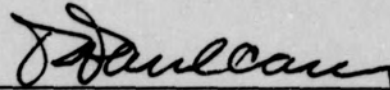
"*payment*" to Amtrak for the Stuyvesant-Schenectady/Hoffmans segment maintained by Amtrak, under the terms of the P-H Agreement, as modified by the Agreement dated April 10, 1996, Conrail accepts a *net payment* from Amtrak which is *reduced* by the amount owed to Amtrak for Conrail's share of the maintenance costs over that Amtrak-maintained segment. Mr. Simonen correctly describes the underlying apportionment of costs applicable to the Amtrak-maintained segments.

While I am glad to correct the record in this regard, it is my belief that this misstatement on my part does not affect the point that was made in CSX-175 (Part IV at 17-18), based on my statement, namely, that if there are out-of-pocket costs to CSX caused by CP's activities on the segments over which CP will operate, that should be borne by CP.



**VERIFICATION**

I, R. Paul Carey, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on February 12, 1999.

A handwritten signature in cursive script, appearing to read "R. Paul Carey", is written over a horizontal line.

R. Paul Carey

## **CERTIFICATE OF SERVICE**

I, Dennis G. Lyons, certify that on February 16, 1999, I have caused to be served a true and correct copy of the foregoing CSX-177, "Response of CSX Corporation and CSX Transportation, Inc. to Amtrak's Motion for Leave to File Appended Verified Statement of Richard D. Simonen," to the following parties, by first-class mail, postage prepaid, or by more expeditious means:

George Mayo, Jr., Esq.  
HOGAN & HARTSON L.L.P.  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004-1109  
*Counsel for Canadian Pacific Railway Company,  
Delaware and Hudson Railway Company, Inc.,  
Soo Line Railroad Company and  
St. Lawrence & Hudson Railway Company Limited*

Charles A. Spitulnik, Esq.  
HOPKINS & SUTTER  
888 Sixteenth Street, N.W.  
Washington, D.C. 20006  
*Counsel for New York Department of Transportation  
and New York City Economic Development Corporation*

Kelvin J. Dowd, Esq.  
SLOVER & LOFTUS  
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*Counsel for New York Department of Transportation*

L. John Osborn, Esq.  
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*Counsel for APL Limited*

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The Honorable Jerrold Nadler  
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Washington, D.C. 20515

A handwritten signature in black ink, appearing to read "Dennis G. Lyons", written over a horizontal line.

DENNIS G. LYONS



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(Sub 69)

2-12-99

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HOGAN & HARTSON  
L.L.P.

February 12, 1999

GEORGE W. MAYO, JR.  
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BY HAND DELIVERY

The Honorable Vernon A. Williams  
Secretary, Surface Transportation Board  
Case Control Branch  
ATTN: STB Finance Docket No. 33388  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423-0001



0

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

193324

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Office of the Secretary

FEB 12 1999

Public Record

Finance Docket No. 33388 (Sub No. 69), Responsive  
Application -- State of New York, By and Through Its  
Department of Transportation, and The New York City Economic  
Development Corporation

193325

Dear Secretary Williams:

Enclosed for filing in the above-referenced dockets are an  
original and twenty-five copies of Canadian Pacific Parties' Reply in  
Opposition to CSX Motion To Supplement the Record. Also enclosed is a  
3.5-inch diskette, formatted for WordPerfect 7.0, containing the  
pleading.

Thank you for your assistance.

Sincerely,

George W. Mayo, Jr  
Attorney for Canadian Pacific Railway  
Company, Delaware and Hudson Railway  
Company, Inc., Soo Line Railroad  
Company, and St. Lawrence & Hudson  
Railway Company Limited

GWM:jms

Enclosures

cc: Counsel for Parties Required To Be Served

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY  
-- CONTROL AND OPERATING LEASES/AGREEMENTS --  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION



STB Finance Docket No. 33388 (Sub-No. 69)

RESPONSIVE APPLICATION--STATE OF NEW YORK,  
BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION,  
AND THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

CANADIAN PACIFIC PARTIES' REPLY IN OPPOSITION TO  
CSX MOTION TO SUPPLEMENT THE RECORD

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Company, Delaware and Hudson Railway  
Company Inc., Soo Line Corp., and St.  
Lawrence & Hudson Railway Company  
Limited

February 12, 1990

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY  
-- CONTROL AND OPERATING LEASES/AGREEMENTS --  
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---

STB Finance Docket No. 33388 (Sub-No. 69)

RESPONSIVE APPLICATION--STATE OF NEW YORK,  
BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION,  
AND THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

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CANADIAN PACIFIC PARTIES' REPLY IN OPPOSITION TO  
CSX MOTION TO SUPPLEMENT THE RECORD

CSX 1/ claims that the Canadian Pacific Parties 2/ have surreptitiously and arbitrarily "changed the assumptions" used to calculate interest rental for the east-of-the-Hudson line, by assuming "that an interchange with another carrier occurred in the Albany area". CSX-176 at 1-2. This accusation is false.

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1/ CSX Corporation and CSX Transportation, Inc. are collectively referred to as "CSX".

2/ "Canadian Pacific Parties" or "CP" refer collectively to Canadian Pacific Railway Company, Delaware and Hudson Railway Company Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited.



## DISCUSSION

The Canadian Pacific Parties' witness, Joseph J. Plaistow, explained in his Reconsideration Reply Verified Statement that he was correcting CSX witness Whitehurst's "line segment cost calculations by determining the variable costs of each traffic movement directly rather than using a mileage pro-rate of STB determined costs." Plaistow Reconsideration R.V.S. at 12. Mr. Plaistow also explained that "In determining costs, I have used costing procedures identical to those used by the STB in developing the Costed Waybill Sample." *Id.* at 8. Although his verified statement did not describe every detail of the determination of the variable costs of each movement, all those details were laid out in his electronic workpapers, which were filed with the Board and served on CSX at the time that CP-29 was filed.

Mr. Plaistow's variable cost calculations had to reflect the fact that traffic on the east-of-the-Hudson line has to be physically handled -- each car is removed from one train and placed into another train -- in the Albany area. This activity, referred to as an "I & I switch" ("intertrain and intratrain switch"), is similar to the process of switching cars from one railroad to another (an "interchange switch"). The

question is: How much does it cost to perform this "I & I switch" activity for east-of-the-Hudson traffic?

On a system-wide basis, Mr. Plaistow's Costed Waybill Sample methodology assumes that an I & I switch occurs every 200 miles and requires about 2.22 switch engine minutes per car. The east-of-the-Hudson line, however, is a low density line, so efficiencies of density that can reduce unit switching cost -- for example, through pre-blocking of trains and run-through operations -- are not available. Furthermore, traffic on the east-of-the-Hudson line requires a switch after much less than the 200-mile system average. Ignoring these realities, CSX witness Whitehurst, in his verified statement in CSX-176, applied an I & I switching cost that assumed that each east-of-the-Hudson car could be switched in about one minute.

Based on his experience in numerous switching studies, Mr. Plaistow concluded that a better estimate of the time required for an I & I switch for the east-of-the-Hudson line traffic would be 5.9 minutes per loaded car, and this is what he used.

Mr. Plaistow's estimate of north-end I & I switching costs, based on 5.9 minutes per switch, comes to about \$30 per loaded car, \$25 higher than Mr. Whitehurst's figure based on his

assumption of one minute per switch. See Plaistow Supp. V.S. at 5 n. 13. Although this is a significant difference, Mr. Plaistow's I & I switching cost is far less than the \$250 per car switching charge that CP would pay CSX for switching services in New York City, or even the \$85.40 per car system-average switching cost advocated by CSX witness Whitehurst earlier in these proceedings.

There is nothing mysterious about the fact that this cost element was not part of Mr. Plaistow's earlier calculations in CP-25 and CP-28. The earlier calculations were made on the basis of a straight mileage pro-rate. CSX witness Whitehurst criticized that methodology, and said that the most accurate way to allocate costs is the Board's Costed Waybill methodology. Whitehurst V.S. at 11-12. Therefore, in his CP-29 filing Mr. Plaistow made a direct calculation of variable costs using that methodology, as he expressly stated. Plaistow Reconsideration R.V.S. 8, 12 and Revised Ex. No. (JJP-2.4).

Mr. Plaistow's attached Supplemental Verified Statement explains these calculations in greater detail.

#### **CONCLUSION**

Thus, every ground on which CSX seeks leave to supplement the record is wrong: Mr. Plaistow did not assume that

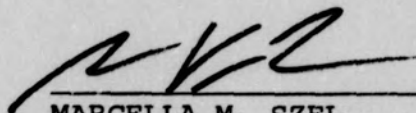
there were interchanges with other carriers at Albany, he did disclose that his CP-29 cost calculations used a different methodology than his two previous calculations, and CP did not "silently inflict [ ]" "a distorted presentation . . . on the Board." CSX Motion To Supplement at 6. Mr. Plaistow's estimate of 5.9 minutes per loaded car switched is far more realistic than Mr. Whitehurst's unsupported assumption of about one minute per loaded car.

Nevertheless, the CSX motion to supplement serves a useful purpose, in that it highlights the sensitivity of the SSW Compensation methodology to in-put assumptions. If the Albany area handling costs are underestimated as CSX has done, the trackage rights charge would be inflated by \$0.43 per car mile. Although CP believes that Mr. Plaistow's switching cost estimate is reasonable and well-supported, the fact is that the precise amount of the cost is necessarily a matter of estimation. This is why CP proposes a "true-up" procedure to adjust all aspects of the trackage rights calculation based on actual operating experience.



For the reasons set forth above, the Board should deny  
CSX's motion to supplement the record.

Respectfully submitted,



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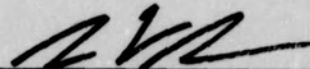
February 12, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February, 1999, I served by the means indicated below a copy of the foregoing Canadian Pacific Parties' Reply In Opposition To CSX Motion To Supplement The Record on the following:

Counsel for CSX, NYCEDC and NYDOT  
(by hand)

Counsel for all parties requesting a copy  
(by first-class mail or by hand where requested)



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Eric Von Salzen

**SUPPLEMENTAL  
VERIFIED STATEMENT  
OF  
JOSEPH J. PLAISTOW**

**Supplemental  
Verified Statement  
of  
Joseph J. Plaistow**

**I. Introduction and Summary**

My name is Joseph J. Plaistow.<sup>1/</sup> I have been asked by CP to respond to CSX's claims that "...without advising the Board...", in my Reconsideration Reply Verified Statement (CP-29, Jan. 27, 1999) I "arbitrarily changed the assumptions under which..." I "...calculated the expenses of Conrail in determining the segment net earnings of the line in the study year, 1995."<sup>2/</sup> CP has also asked me to respond to Mr. Whitehurst's verified statement, in which he says that "... Mr. Plaistow has taken a new approach in his calculations and there is no disclosure in [Mr. Plaistow's] statement or exhibits or the narrative of the filing which reveals or suggests the change in methodology."<sup>3/</sup>

I will show:

- 1) That I fully disclosed the cost estimation procedures I used,
- 2) That I included all the data necessary for the STB or Mr. Whitehurst to evaluate and reproduce my calculations, and
- 3) That the procedures I used produce the best estimates of actual costs.

That points 1) and 2), above, are correct is evident from the fact that Mr. Whitehurst based all the calculations in his February 5, 1999 verified statement on my machine-readable workpapers, which CP served on CSX and filed with the STB. Obviously, I disclosed the bases of my calculations.

With respect to point 3), which is the only substantive issue raised by CSX and Mr. Whitehurst, the procedures I applied to estimate the cost of switching carloads of traffic from trains traversing the "east-of-the-Hudson" line segment to connecting trains are much more thorough and realistic than Mr. Whitehurst's assumptions.

Both Witness Whitehurst and I know that cars in trains that operate over the "east-of-the-Hudson" line do not stay in those same trains from origin to destination. Cars are switched out of the originating train and placed into other trains at the north end of the trackage rights line segment. Mr. Whitehurst used a mileage block pro-rate procedure to allocate costs to the trackage rights line, so he did not have to concern himself with actual operations

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<sup>1/</sup> A statement of my qualifications is included in Section I of my December 10, 1998 Reply Verified Statement in this proceeding. I am a Vice President and principal of L.E. Peabody & Associates, Inc., an economic consulting firm in Alexandria, Virginia.

<sup>2/</sup> CSX-176 at page 1.

<sup>3/</sup> Whitehurst Verified Statement, February 5, 1999, page 2.



and the locations of specific operating activities. He conceded, however, that a more accurate cost allocation could be made using variable cost data in accordance with the STB Costed Waybill Sample procedures. Whitehurst Jan. 7, 1999 V.S. at 11. In my January 27, 1999 verified statement, I costed each carload handled over the trackage rights line segment specifically and individually. I had to focus on what operating activities took place to provide customers service and where those operating activities were performed. I included the cost of switching each car out of the trackage rights line segment train and into the connecting train (or vice versa). This operation took place at the north end of the trackage rights line segment in the Albany area.

The real question is, "What is the best way to cost the operation of switching the carload out of the originating train and into the connecting train?" In his February 5, 1999 verified statement, Mr. Whitehurst uses "I & I" (intertrain and intratrain) switch costs to approximate the associated operating costs. I will show that Mr. Whitehurst allows approximately 1 minute per loaded car switched to perform the required switching operation at the end of the line segment. In my procedure, I have allowed 5.9 minutes per car switched for this operation. As explained in this statement, my procedure yields a result much closer to actual operating requirements than the Whitehurst estimate.<sup>4/</sup>

## **II. I Fully Disclosed the Cost Estimation Procedure I Used**

At pages 7-8 of my January 27, 1999 Reconsideration Reply Verified Statement, I responded to Mr. Whitehurst's criticisms of my use of a mileage pro-rate procedure to estimate the revenues and costs of the "east-of-the-Hudson" line. I explained that, because the STB had limited CP to overhead trackage rights, it was possible to use a mileage block revenue allocation, as Mr. Whitehurst proposed. However, I noted that for expenses, Mr. Whitehurst failed to apply what he himself acknowledged was the most accurate allocation procedure.<sup>5/</sup> I stated,

"I will correct Witness Whitehurst's cost allocation approximations with direct cost determinations for every one of the traffic movements to which CP gains access. In determining costs, I have used costing procedures identical to those used by the STB in developing the Costed Waybill Sample."

Thus, I made clear that in my January 27, 1999 statement I was not following the mileage pro-rate procedure that I had used in my earlier statements. CSX's claim that I changed my methodology without saying so is simply wrong.

As the foregoing also makes clear, CSX is wrong to claim that I did not disclose the methodology that I was using in my January 27, 1999 statement. Obviously, the STB fully understands the procedures it applies to develop

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<sup>4/</sup> Switching a carload out of Train A and into Train B is called an "I & I" switch if the same railroad operates both trains. It is called an interchange switch if the trains are operated by different railroads. Operationally, the switch at issue is an "I & I" switch, but my objective is accurate costing. In my judgment, because of the light traffic volume on the "east-of-the-Hudson" line, the costs of this switch are more closely approximated by URCS interchange costs, not URCS "I & I" costs.

<sup>5/</sup> Mr. Whitehurst had used a mileage block pro-rate to approximate line segment costs. He should have calculated those costs directly and specifically as I did.

its Costed Waybill Sample. Evidently, Mr. Whitehurst understands those procedures also because he applied them in his Exhibits WWW-33 and WWW-34 of his February 5, 1999 verified statement. As Mr. Whitehurst states, from a costing perspective, utilizing my procedure applies costs substantially in excess of system average URCS "I & I" costs. Actually, my procedure estimates the cost of this "I & I" switch operation by using the URCS cost of an interchange plus an allowance for system average URCS "I & I" costs. I show below why my procedure produces a superior estimate of the cost of operation.

Mr. Whitehurst also points out that I fully disclosed all the data necessary to apply the STB's procedures. At page 1 of 8 of Exhibit WWW-33, Mr. Whitehurst states:

"In the workpapers to [Restated Exhibit No. (JJP-2.4)], Mr. Plaistow provides a copy of file CSX.TXT used as input to the URCS Phase III batch process (discussed in Chapters 6, 7, and 8 of the Uniform Railroad Costing System Phase III Movement Costing Program User's Manual ('URCS Phase III User's Manual') at pages 36-53) in order to produce output variable costs for each movement in file CSX.PRN."

Mr. Whitehurst then proceeds to apply the operating characteristics I had disclosed in those workpapers to the cost of each of the operations. In doing that, Mr. Whitehurst confirms that I provided all the data and explanation needed for an analyst to understand and test my calculations. Thus, there is no basis for CSX's claim that I did not disclose the bases for my calculations. As discussed below, my calculations are correct.

### **III. My Procedures Produce a Superior Estimate of the Actual Costs of the Associated Operations**

Today's railroads are more profitable than in the past in large part because they have become more efficient since the passage of the Staggers Act. Improvements in switching efficiency have been a focus of improvements in operations.<sup>6/</sup> Railroads have spent tens of millions of dollars to construct modern switching yards optimally located to minimize switching. At these yards, blocks of cars are assembled, and these blocks can be moved as a unit to destination with a minimum of additional required switching. The process of creating train blocks is the heart of an efficient "I & I" switching function. It is most cost efficient when large blocks of cars destined for the same city can be assembled.

The trackage rights line segment lacks the traffic volume and density to support the creation of large car blocks that could reduce the "I & I" costs per carload to system average levels. This is particularly true for trackage rights traffic, which is only 23% of the total traffic on the "east-of-the-Hudson" line.<sup>7/</sup> Cost efficiencies cannot be developed under these low-volume operations circumstances. No cost analyst knowing these facts of operations would cost this switching operation at system average "I & I" costs as Witness Whitehurst has done.

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<sup>6/</sup> The acquisition of Conrail by CSX and NS produces substantial switching efficiencies through the elimination of the required interchange switch between Conrail and CSX or NS for all the cars previously interchanged between the carriers (in some instances, an "I & I" switch may still be necessary at these locations).

<sup>7/</sup> The 23% is developed by dividing the 13,140 total carloads subject to the trackage rights from Exhibit WWW-34, page 12 of 13 of Witness Whitehurst's February 5, 1999, Verified Statement by the 56,416 total carloads available from Exhibit No. (JJP-2.4) of my December 10, 1998 Verified Statement.

URCS assumes that an "I & I" switch occurs every 200 miles. Over the years, this mileage interval between "I & I" switches has probably increased substantially above the 200 miles that approximated average operations decades ago. While only actual operations information will tell the cost analyst what the mileage between "I & I" switch events really is, everyone knows that traffic handled over the "east-of-the-Hudson" line incurs higher than average switching costs and lower than average miles between "I & I" switch events. The task facing the cost analyst is finding the best way to approximate these costs in the absence of actual operations statistics.

At page 3 of 8 of Exhibit WWW-33, Mr. Whitehurst lists the costs per switch engine minute at \$3.5721 at the 1995 URCS cost level. I agree. He also lists my switch engine minutes per switch as 8.874075, 4.880745, and 2.218515 for industry, interchange, and "I & I" switches, respectively.

Witness Whitehurst used his incorrect version of the mileage block pro-rate <sup>8/</sup> to approximate the line segment costs. I estimate that his methodology assumed that an "I & I" switching operation requires only 1 minute per loaded car switched (see Exhibit No. (JJP-11) for my derivation of this estimate <sup>9/</sup>). This means that Mr. Whitehurst is assuming that less than one "I & I" switch per car will take place on the trackage rights line segment. I disagree.

Switching cars from the trackage rights line segment train to the connecting train (or vice versa) will take a lot longer than 1 minute. I have participated in many switching studies and know that these operations cannot be carried out that quickly unless a substantial number of cars are being switched at one time. I also know that for the trackage rights line segment, there will not be sufficient volume to realize the cost efficiencies coincident with high volume, multiple car switching.

The end result of my and Mr. Whitehurst's analyses of this end-of-the-trackage-rights-line segment switch can be compared on the basis of the switch engine minutes included in our respective costs. For cars handled over the trackage rights line segment to Schenectady, I used 5.9 minutes per loaded car switched <sup>10/</sup> between trains, and I believe that is a conservative estimate of the actual time required to perform this switch operation at the north end of the trackage rights line segment. <sup>11/</sup> Mr. Whitehurst's assumption that this operation can be accomplished in about 1 minute is unrealistic and unsupported by any analysis. By charging the line segment earnings with only 1 minute per car switched, witness Whitehurst has dramatically understated the time requirement and cost associated with this switching operation, in my judgment. This error in estimating the time required to perform this switching operation

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<sup>8/</sup> See pages 8 and 9 of my January 27, 1999 Reconsideration Reply Verified Statement.

<sup>9/</sup> For this demonstration, I selected a movement from Buffalo to the Bronx, one of the more common "east-of-the-Hudson" moves.

<sup>10/</sup> For this operation my batch URCS Costed Waybill Sample procedure attributed 4.9 minutes from the interchange switch cost category and 0.9 minutes from the "I & I" switching cost category, for a total of 5.9 minutes per loaded car as the approximation of the time required for this "I & I" switch operation.

<sup>11/</sup> The cost characteristics of this "I & I" switch are more closely approximated by URCS system average interchange switching costs because of the light traffic density of the line.

caused him to overstate the interest rental fee by 205%! <sup>12/</sup>

**IV. The Necessity to Adopt a "True-up" Procedure and the Need to Verify the Reasonableness of SSW Compensation Results**

In my January 7, 1999 Reconsideration Verified Statement, I recommended adopting a "true-up" procedure to correct for the difference between the actual and estimated costs of operating the trackage rights line segment. Mr. Whitehurst's February 5, 1999 Verified Statement highlights the necessity for adopting this "true-up" because it emphasizes the sensitivity of the SSW Compensation procedure to cost and revenue estimates.

Even though Mr. Whitehurst's understatement of switching costs only amounts to about \$25 per loaded car, <sup>13/</sup> that small amount is enough to overstate the interest rental portion of the trackage rights fee by 205%. As I said in my Reconsideration Reply Verified Statement, January 27, 1999, at pages 13-15, under circumstances such as those that apply to the "east-of-the-Hudson" trackage rights line segment, the reasonableness of SSW Compensation results should be verified by comparison to market-based information, such as trackage rights fees negotiated in the free market.

**V. Conclusions**

I confirm that the interest rental portion of the trackage rights fee is \$0.21 per car-mile and that the overall trackage rights fee is \$0.34 per car-mile. I disagree with Mr. Whitehurst. The implication of his cost estimation procedure is that an "I & I" switch at the Albany end of the trackage rights line segment can be completed in 1 minute per loaded car switched. In my judgment, Mr. Whitehurst's estimate dramatically understates the switch engine minutes required. My estimate of 5.9 minutes per loaded car switched is conservative.

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<sup>12/</sup> This is derived by dividing  $(\$0.641 - \$0.21)/\$0.21$  from page 4 of Mr. Whitehurst's February 5, 1999 Verified Statement.

<sup>13/</sup> This is calculated from Exhibit WWW-33, page 3 of 8 as 4.880745 minutes per loaded car times \$3.5721 per SEM (switch engine minute) times the constant cost markup ratio of 1.43676. Using 5.9 minutes per switch, the correct cost for an "I & I" switch at the north end of the trackage rights line segment is about \$30 per loaded car.



Comparison of I&I Switching Minutes Included by Whitehurst Vs. CP

<u>Item</u> (1)	<u>Source</u> (2)	<u>Whitehurst</u> (3)	<u>CP</u> (4)
<b><u>Buffalo - Bronx Movement</u></b>			
1. Movement Distance	Waybill Sample	425.8	79
2. Switching Unit Costs (OPR + DL)	1995 CR URCS 1/	\$3.57	\$3.57
3. Switching Unit Costs (Including ROI)	1995 CR URCS 1/	\$3.92	\$3.92
4. Circuity	URCS Phase III	1.126	1.164
5. Loaded I&I Minutes	URCS Phase III	3.6	5.9
6. Make-Whole Minutes	STB Procedures	0.8	0
7. Total Movement Minutes	Line 5 + Line 6	4.4	5.9
8. Minutes Assigned to Segment	2/ , 3/	1.3	5.9

1/ Whitehurst February 5, 1999 VS, WWW-33, page 3 of 8

2/ Whitehurst: Line 7 x (100 mile block + 79 miles) / (200 mile blocks + 426 miles)

3/ CP: Line 7 Minutes were specifically estimated for the segment

## VERIFICATION

COMMONWEALTH OF VIRGINIA )  
 )  
CITY OF ALEXANDRIA )

JOSEPH J. PLAISTOW, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof and that the same are true as stated.

*Joseph J. Plaistow*  
Joseph J. Plaistow

Sworn to and subscribed  
before me, this 11th day  
of February, 1999.

**Witness my hand and official seal.**

Carol J. Hollen  
My Commission Expires July 31, 2007

STB

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33388

(Sub 69)

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**ARNOLD & PORTER**

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**ENTERED**  
**Office of the Secretary**

January 27, 1999

NEW YORK  
DENVER  
LOS ANGELES  
LONDON

JAN 28 1999

Part of  
**Public Record**

**VIA HAND DELIVERY**

The Honorable Vernon A. Williams  
Secretary, Surface Transportation Board  
Mercury Building, Room 700  
1925 K Street, N.W.  
Washington, D.C. 20423



Sub 69

Re: **Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Co. of Inc. and Consolidated Rail Corporation (Sub-No. 69)**

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of CSX-175, "Reply of CSX Corporation and CSX Transportation, Inc. to Canadian Pacific Parties' Petition for Reconsideration and Clarification of Decision No. 109" (the "Reply"), for filing in the above-referenced docket. Associated with this filing are three Reply Verified Statements, one being the Reply Verified Statement of William W. Whitehurst, Jr. Certain parts of the Reply itself and of the Whitehurst Reply Verified Statement and its accompanying exhibits contain Highly Confidential information. Such Highly Confidential information, and/or various of the documents in question containing Highly Confidential material, are submitted in a separate, sealed and appropriately labeled envelope.

The Reply contains an executed certificate of service; the Highly Confidential material (and/or various of the documents in question containing Highly Confidential material) will be served only on those parties that have executed the undertaking under the Protective Order.

Please note that a 3.5-inch diskette containing a WordPerfect 5.1 formatted copy of the public version of the Reply and the text of the Carey, Potter and Whitehurst Reply



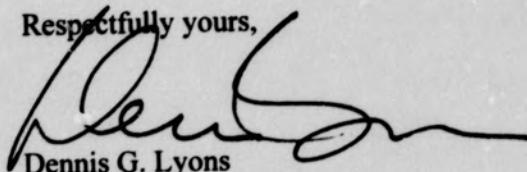
ARNOLD & PORTER

The Hon. Vernon A. Williams  
January 27, 1999  
Page 2

Verified Statements, plus the public, nonconfidential exhibits to the Whitehurst Verified Statement in Excel format, is enclosed. Also enclosed is a 3.5-inch diskette containing the Highly Confidential materials in like formats.

Thank you for your assistance in this matter. Please contact me if you have any questions.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Dennis G. Lyons", written over the typed name.

Dennis G. Lyons  
Counsel for CSX Corporation  
and CSX Transportation, Inc.

Enclosures  
*via hand delivery*

cc: All Parties to the Service List  
in Sub-No. 69

CSX-175

**SURFACE TRANSPORTATION BOARD**

**FINANCE DOCKET NO. 33388**



**CSX CORPORATION AND CSX TRANSPORTATION, INC.,  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY  
— CONTROL AND OPERATING LEASES/AGREEMENTS —  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION**

**STB Finance Docket No. 33388 (Sub-No. 69)**

ENTERED  
Office of the Secretary

**RESPONSIVE APPLICATION — STATE OF NEW YORK, BY AND THROUGH ITS  
DEPARTMENT OF TRANSPORTATION, AND  
THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**

JAN 28 1999  
Part of  
Public Record

**Reply of CSX Corporation and CSX Transportation, Inc.  
to Canadian Pacific Parties' Petition for Reconsideration  
and Clarification of Decision No. 109**

***PUBLIC VERSION***

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**January 27, 1999**

## TABLE OF CONTENTS

INTRODUCTION AND SUMMARY.....	1
I. THE PLAISTOW VERIFIED STATEMENT ONLY INTRODUCES FURTHER ERRORS.....	3
II. PERIODIC REVISIONS OF TRACKAGE RIGHTS FEE.....	10
III. THE GILMORE VERIFIED STATEMENT USES AN INAPPROPRIATE COMPARISON AND IS NOT PROBATIVE ON ANY PERTINENT ISSUE .....	11
IV. CP'S PROPOSED TREATMENT OF FEES PAYABLE TO AMTRAK IS BASED ON FALSE PREMISES AND IS INCORRECT.....	17
V. THE CP REQUESTS FOR CLARIFICATION .....	18

**Reply of CSX Corporation and CSX Transportation, Inc.  
to Canadian Pacific Parties' Petition for Reconsideration  
and Clarification of Decision No. 109**

Pursuant to 49 C.F.R. § 1115.3, CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") submit this reply to the "Canadian Pacific Parties' Petition for Reconsideration and Clarification" (CP-28), filed on January 7, 1999.

**INTRODUCTION AND SUMMARY**

I. In an effort to partially rehabilitate something resembling his original (albeit tardy) Verified Statement filed in CP-25, CP's witness Plaistow has filed a new statement producing a trackage rights fee of \$0.36 per car-mile (i) by eliminating moves on CP's original access routes 2 and 3 and movements between the Albany area otherwise than to and from New York City, and (ii) by inventing a new asset called "merger benefits and synergies," a close relative of "acquisition premium," which he claims must be eliminated from the calculation of the base of the "interest rental" portion of the trackage rights fee. In response:

A. CSX presents a further Verified Statement from William W. Whitehurst, Jr., (i) correcting the Plaistow calculations regarding the errors he previously committed, which are discussed in CSX-173 and the Whitehurst statement there contained, and (ii) correcting additional errors introduced in the latest Plaistow V.S.; and

B. CSX demonstrates that there is no basis in the Board's precedents for adjusting the purchase price CSX paid, or the values of the assets for which it did pay, for



"merger benefits" or "synergies" as Plaistow has done; and Whitehurst demonstrates that, even if one were to do that in a technically correct way, a trackage rights fee of \$2.027 per car-mile would result, much above the concessionary rate of \$1.215 with an interest rental based on capitalization of the overall Conrail system earnings, which CSX indicated in CSX-173 it would accept as an initial concessionary fee for CP to pay.

II. CP suggests that there should be regular periodic recalculations of the trackage rights fee. CSX supports that request and proposes that after the first full calendar year of operations after the Split Date there be a prospective recalculation of the trackage rights fee, based only on the line segment in question, under principles established by the Board in Decision No. 109 as that Decision may be amended as a result of the Petitions for Reconsideration. A similar prospective revision should be made every three years thereafter on the request of either party, subject to any other methods of updating mutually agreed upon.

III. CP, through a Verified Statement of its officer Gilmore, makes an attempt to demonstrate that the trackage rights fee determined in Decision No. 109 would make CP noncompetitive against CSX for traffic between Montreal and New York City. CSX demonstrates in reply that Gilmore's analysis is flawed and without meaning because it makes the wrong comparison.

IV. In a somewhat baffling argument, based on false premises, CP for the first time introduces an issue as to the interplay between charges made by Amtrak on the line between Schenectady and Poughkeepsie and the trackage rights fee to be paid by CP to

CSX; the discussion seems to assume that Conrail is paying Amtrak such fees. The Verified Statement of R. Paul Carey points out that there are no such fees, and it and the text in Part IV below indicate the proper rule if CP's operations on the segment cause CSX to incur charges to Amtrak or other pecuniary loss; namely, that CP pays the same as an additional item of trackage rights compensation.

V. CSX responds to the requests for clarification made by CP, expressing its belief that the Board's failure to permit CP access without switching to shipper and other facilities in the Bronx and Queens was the Board's intentional response to CP's effort to obtain that right without paying the cost thereof. CSX, however, agrees with CP that if there is a failure to agree on fees for the unpriced rights identified by the Board as available to CP for its operations in the Bronx and Queens, the Board is to resolve the issues pertinent to that failure to agree.

#### **I. THE PLAISTOW VERIFIED STATEMENT ONLY INTRODUCES FURTHER ERRORS**

A. As set forth in the Introduction, the first of the two revisions to the Plaistow V.S. in CP-25 (as corrected by the Board in Decision No. 109) that is made by Plaistow in CP-28 is to eliminate, in the segment earnings base for computation of the interest rental, (a) use of the track involved only in old access routes 2 and 3 (in CP-24), not awarded by the Board, and (b) the relatively minor amount of revenues that are derived from movements between the Albany area and destinations on the line north of the Bronx, since no local service rights were given CP except in New York City. CSX

agrees in principle with recalculation (a), and indeed most of that recalculation was already performed in the Whitehurst R.V.S. submitted with CSX-173. As to recalculation (b), while logically arguments could be made on both sides, there is Board precedent supporting the elimination of such movements and their related revenues (SSW Compensation, 4 I.C.C.2d 668, 684 (1987)).

We must note that there is a conflict between that proposition — that earnings on local traffic ought to be excluded from the base for capitalization — and the fundamental concept that what is to be paid for is not what the taker gets but what the owner loses; a through movement takes as much from the owner in terms of use of its property as does a local movement. See page 9, subpart B of this Part I, below. All of the CP movements will go to or from New York City and accordingly will use the same route segments on the line as are used by CSX to serve local customers, with the exception of branching industrial tracks. Physically, the CP movements thus use the line which has a value determined by capitalizing all its earnings; the compensation payable is for the use of property, namely, the line; it is not compensation to CSX for CP's acquiring the privilege of competing with CSX for customers.<sup>1</sup> Thus, it seems more logical to say that the local movements, with their revenues and expenses, should be included in the capitalizable earnings (and, as a divisor later in the process, their car-miles should be used in the

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<sup>1</sup> "Loss of an anticipated business profit is not generally regarded as an element of damage or compensation in condemnation proceedings." Use By Erie of Niagara Junction Ry. Co. Terminals, 278 I.C.C. 425, 431 (1950) ("Use By Erie") (citing Supreme Court precedents).

calculation of the dollar per car-mile figure).<sup>2</sup> Nonetheless, for the purpose of the present, initial determination, CSX accepts their exclusion.

The Whitehurst R.V.S. annexed hereto adjusts Plaistow's calculations for the errors pointed out in CSX-173 and for certain fresh errors introduced by Plaistow in CP-28 and identified by Whitehurst. The result, which accepts the exclusion of access routes 2 and 3 and local traffic earnings otherwise than from the Bronx, Queens and the NY&A interchange, is an interest rental of \$2.49 or an overall fee of \$2.695 per car-mile, still much higher than the \$1.215 concessionary initial fee which CSX is willing to accept.<sup>3</sup>

B. In a mutant of contentions made by various parties during the main part of the case, and emphatically rejected by the Board, CP and its witness Plaistow next contend that a portion of the purchase price paid by CSX (and by necessary implication, by NS) should be disallowed for purposes of computing the line values used for the capital basis on which the interest rental portion of trackage rights fees is to be computed. CP-28 at 3, 9-11. It is claimed that an "acquisition premium" (a term not defined) was paid by the Applicants to acquire Conrail, and that the Applicants purchased "merger benefits," "synergies," and "economies," not just Conrail and its assets as they purported to do. Accordingly, it is claimed that, by one means or another — here, by reducing the

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<sup>2</sup> See also Whitehurst R.V.S. at 9-11.

<sup>3</sup> Whitehurst R.V.S. at 3-9, Ex. WWW-22. Whitehurst also has calculated the line segment capitalizable earnings and total car-miles involved if those local movements were included in the earnings base for the interest rental. *Id.* at 9-11, Ex. WWW-23.



earnings multiplier applied by the Board to construct the capital value of the line segments under the capitalized earnings ("CE") method — the effect of the purchase of these "merger benefits," "synergies," and "economies" ought to be wrung out so as to leave only the good old traditional value of the Conrail assets — presumably when they were in Conrail's hands, since there is no apparent proposal to go back to Commodore Vanderbilt's time.

A close cousin of this argument — that a portion of the purchase price of Conrail ought to be disallowed for the purposes of maximum rate regulation under 49 U.S.C. § 10701 *et seq.* — was flatly rejected by the Board in Decision No. 89. Said the Board:

That relief would be inappropriate, and will not be granted. The Board's Uniform System of Accounts (USOA), adopted in conformity with generally accepted accounting principles (GAAP), requires that the former Conrail assets be valued based on their recent acquisition cost, not upon Conrail's book value. Indeed, the ICC's decision to follow the recommendation of the Railroad Accounting Principles Board (RAPB) to use acquisition cost, not book value, in this precise context, supported by NITL and others, was judicially affirmed. See Association of American Railroads v. ICC, 978 F.2d 737 (D.C. Cir. 1992).

What happened in the Transaction, in plain English, is as follows: CSX and NS perceived that they had better use for Conrail's assets than Conrail did, and accordingly they were willing to pay more for those assets than Conrail's book value and to pay a price after competitive bidding that the competitive public market required them to pay. They perceived that they would be able to make better economic use of Conrail's properties by integrating them into their own systems, and thereby making the Conrail assets not only part of a predominantly East/West system but part also of a North/South

system. They perceived that by doing so they could increase the revenues earned by Conrail's assets ("merger benefits") by replacing truck movements by rail and intermodal movements, and could effect savings ("synergies" or "economies") by integrating the Conrail assets into a larger enterprise and eliminating duplicative facilities and management positions. They did not "buy" "savings" or "efficiencies" or "merger benefits" as assets, and none of those will be found on their books. Plaistow treats a portion of the purchase price for Conrail as if it were the purchase of an insurance company annuity — an "annuity of merger benefits" — which came in a sort of little box with Conrail, and which is one of the assets which CSX and NS bought. See CP-28, Plaistow V.S. Revised Exhibit No. JJP-2.2, line 5.<sup>4</sup> This nonexistent "annuity" started paying in the days of the "old" Conrail, and that imaginary sum was added to the actual Conrail earnings by Plaistow; this is in order to have the purchase price (paid in real money, not in imaginary annuities) paid for Conrail represent a lower multiple of Conrail's earnings — that is, by adding non-existent earnings to them. But there was no such little box or annuity at Conrail at the time it was bought; CSX did not buy an annuity but bought railroad property in the hope and expectation that in its hands that property would yield additional railroad earnings through the years. All of those railroad earnings would involve the use of rail lines. What CSX and NS purchased in a competitive market, indeed in an auction involving the two of them, which reflected the

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<sup>4</sup> Plaistow does this by adding an annual annuity payment of these merger benefits to Conrail's earnings and claiming that part of the purchase price was paid for the capital value of that annuity, as well as for the real GAAP Conrail assets.

value to them — which was higher than the value to Conrail — was Conrail's assets. Whether one assumes under negotiating "games theory" that the value of the expectancy of the improved use of the assets was split 50/50 between seller and buyer in the negotiations, or whether it is ascribed (irrationally) as being realized 100% by the seller — as does Plaistow in order to maximize the decrease in the CE multiplier — any adjustment is inappropriate.

The procedures followed by the Board in adjusting Plaistow's calculations in Decision No. 109 quite accurately and precisely gave effect to what in fact happened. They are harmonious with the prior decisions of the Board and its predecessor. Plaistow's calculations and invention of "merger benefits and synergies" as a purchased asset are all without precedential support. The Board, following its and its predecessor's decided cases, employed the CE method. The Board worked with the historic Conrail earnings because there are no actual earnings for the Conrail routes as part of the CSX or NS system; those are yet to be. In doing so, the Board eliminated the portion of the purchase price that was paid for assets other than for the routes, applying traditional methods. As its multiplier, the Board did not apply the earnings multiplier that was implicit in Conrail's stock price as an independent company or what Conrail "paid" the bankrupt estates for the routes at its 1976 creation. That is because CP had never sought, and had never been awarded, trackage rights over Conrail; if it had done so in the early 1990s, then-current Conrail costs or values might have been an appropriate method of deriving an interest rental. Rather, the trackage rights to be granted CP are to be imposed on NYC/CSX. The value of Conrail's assets was higher to CSX, and CSX was, in the

auction, required to pay that value. Under the accounting principles laid down by the Board and its predecessor from the 1980s and quoted above (and consistent with 49 U.S.C. § 11164), the cost that CSX paid was the appropriate cost to be reported. See Union Pacific Corp. et al. — Control and Merger — Southern Pacific Rail Corp. et al., F.D. No. 32760, Decision No. 44, served Aug. 12, 1996 (“UP/SP”) at 141. The way to reach that cost was to apply a multiplier consistent with what was paid.<sup>5</sup>

CP never ventures to say, as some of the parties in the main part of the case said, that CSX or NS paid “too much” for Conrail. On the contrary, the Board has already concluded that the price CSX did pay must be recognized for rate regulation purposes. Despite that, in participating in “taking” an interest in CSX’s property, CP does not want to have that property fairly valued — on the basis of what CSX paid for it at arm’s length — but to acquire it at a 1990 price or a 1976 price, based on its cost or value to Conrail. A basic principle of valuation in condemnation law is that: “[T]he question is what the owner has lost not what the taker has gained.” (Friendly, J., in In Re Valuation Proceedings, 445 F. Supp. 994, 1013 (Special Ct. 1977) (quoting Holmes, J., in Boston Chamber of Commerce v. Boston, 217 U.S. 189, 195 (1910))). What NYC and CSX will

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<sup>5</sup> To be sure, just as the Board pointed out in Decision No. 89 (at page 64), the trackage rights tenant will obtain benefit from the increased efficiencies and synergies. To the extent that the savings reduce the “below the wheel” costs on the segments in question, that element of the per car-mile fee will be reduced. And to the extent that the merger benefits include improved transit times and other attractions to shippers who currently use truck rather than rail over the line in question, and as a result the total car-miles on the segments increase, the interest rental allocable to each car-mile will be reduced, as part of the frequent revaluations of the trackage rights fee which CP supports (CP-28 at 13) and with which CSX is in agreement. See part II below.



lose is an interest in property for which CSX paid, under the Board's calculations, an earnings multiplier of 24.54. "Merger benefits" do not come "in gross"; "merger benefits" are not property or assets; they are an element in reaching the value of property in terms of an acquiror's study to determine the price it can sensibly pay. You cannot have the benefits of adding railroad properties to your system without buying those railroad properties, and what CSX bought was the properties.

Accordingly, the Board should reject, root and branch, Plaistow's calculations based on creating mythical assets called "benefits" and "synergies," allocating a price to them, and thus pretending that CSX and NS paid less for Conrail's assets than they paid. The benefits and synergies are real, but they were not Conrail assets. To be sure, as the Whitehurst R.V.S. demonstrates,<sup>6</sup> if Plaistow's theory, heretical as it is, were recognized and the rest of his errors corrected, an interest rental of \$1.82 per car-mile would still result. But since Plaistow's theory is incorrect and inconsistent with the Board's precedents, including Decision No. 89, that comparison is only an academic exercise.

## **II. PERIODIC REVISIONS OF TRACKAGE RIGHTS FEE**

CP requests (CP-28 at 12-13) that there be regular periodic recalculations of the trackage rights fee. CSX supports that request and proposes that after the first full calendar year of operations after the Split Date, there be a prospective recalculation of the trackage rights fee, based only on the line segment in question, under principles

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<sup>6</sup> At 11-17, Exs. WWW-24 through WWW-30.

established by the Board in Decision No. 109 as adjusted for any changes made as a result of the present Petitions for Reconsideration. A prospective revision should be made every three years thereafter on the request of either party, subject to any other methods of updating mutually agreed upon. Thus, the temporary expedient, as a concession to CP, of an interest rental based on Conrail systemwide average line earnings can be brought to a close and a more appropriate permanent formula can be applied.

### **III. THE GILMORE VERIFIED STATEMENT USES AN INAPPROPRIATE COMPARISON AND IS NOT PROBATIVE ON ANY PERTINENT ISSUE**

In an effort to demonstrate, contrary to the Board's view,<sup>7</sup> that the level of trackage rights approved by the Board in Decision No. 109 will make competition with CSX impossible for it, CP presents a verified statement of its Vice President, Paul D. Gilmore. Gilmore presents a "comparative" exhibit in an effort to show that it would be about five percent more expensive to ship a boxcar of newsprint from Montreal to the Bronx using the trackage rights granted by Decision No. 109 from the Albany area to New York City than it would be to do so by way of what, presumably, Gilmore views as the pertinent competitive means. The competitive means posited is not, however, competition by CSX "all the way" from Montreal over the Conrail lines being allocated to it. Rather, Gilmore, as his comparison movement, uses a movement by CP for its own account from Montreal via Rouses Point to the Albany area and on to New York City on

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<sup>7</sup> See Decision No. 109 at 9.

CSX in connection with the use of CP's independent ratemaking authority, granted under the October 1997 Settlement Agreement. Under that settlement, CP may use CSX's services to move certain truck-competitive shipments to the Bronx or Queens. No other comparative computations are presented by Gilmore or otherwise in CP-28.

Gilmore thus ignores the precept of the Board, in Decision No. 109 (at page 8), that "[a]ny compensation established in this proceeding must put the tenant in the same competitive position as the owning carrier." (Citing SSW Compensation, 1 I.C.C.2d at 786.) Gilmore presents no data as to what the full cost to CSX would be for the same movement, that is, from Montreal to the Bronx, over CSX's own lines. In fact, given CP's control of the best route from Montreal to the Albany area (the CSX route via Massena and Syracuse, NY, is much more circuitous),<sup>8</sup> CP may well have a cost advantage. Clearly, the Gilmore V.S. does not demonstrate the contrary.

The Gilmore presentation is fatally flawed, even beyond the fact that it uses the wrong comparison. The [\$\$\$] revenue requirement specified in the Settlement Agreement was a concessionary rate, granted by CSX in order to buy peace in a major case, at a time when CP was an adversary in that overall case. Since the movements under the independent ratemaking authority would, to a large part, be accomplished by adding CP's cars to CSX trains that would be moving in any event, the marginal costs to

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<sup>8</sup> CP's route using its Rouses Point line and the trackage rights is 370.5 miles and the CSX route is 530 miles — a circuitry of 43%. Potter R.V.S. at 4.

CSX would be relatively slight, and CSX could grant such a concessionary rate without substantial real loss and indeed at a marginal profit. See Potter R.V.S. at 3-4.<sup>9</sup>

Further vitiating the "comparison" engaged in by Gilmore, as CP itself points out,<sup>10</sup> the independent ratemaking authority in the October 1997 Settlement Agreement does not apply to all commodities, and a number of commodities which are particularly suited for transportation by rail, such as intermodal shipments, coal, coke, iron ore and motor vehicles, were excluded, although a protocol was established for including intermodal shipments at a later date.<sup>11</sup> Indeed, even on such defined "Merchandise Traffic," there is a restriction which requires that the traffic be truck competitive.<sup>12</sup>

It makes no sense to compare the cost of an operation conducted by CP, on its own schedules using its own equipment and as its own master, to a service provided as part of a settlement agreement by another carrier on the basis of CP adding cars to be pulled in CSX's own trains, at marginal costs. The only fair basis of comparison would be on the basis of full cost to full cost by one carrier against the other on the same movement — Montreal to the Bronx or Queens.<sup>13</sup> Once the owner and the tenant are put on an equal footing in this way, they may, of course, price below fully-allocated costs in

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<sup>9</sup> To answer the new evidence brought forward in CP-28, the Potter R.V.S. is appropriate, as is the Whitehurst R.V.S.

<sup>10</sup> CP-28, Gilmore V.S. at 4 n.5.

<sup>11</sup> CSX-167, Potter V.S., Ex. 3 at 3 (§ 5.A(i)).

<sup>12</sup> *Id.* Ex. 3 at 2, § 3.

<sup>13</sup> *Cf. UP/SP* at 143, denouncing reliance on variable cost analysis in a ratemaking situation.



order to attract marginal business. CP had the burden of providing a comparative analysis between movements all the way from Montreal to New York City by CSX and by CP but did not provide it.<sup>14</sup>

Other difficulties surround the "comparison," even putting to one side the irrationality of the comparison and the unavailability of movements under the independent ratemaking authority for many commodities. The Whitehurst R.V.S. (at 19-24, Exs. WWW-31 and WWW-32) points out numerous errors, some of them quantifiable and others not, in Gilmore's Exhibit. The quantifiable ones by themselves are sufficient to reverse the alleged lower cost of the use of the October 1997 Settlement Agreement so that the use of the trackage rights becomes less costly to CP than the independent ratemaking moves. Errors or no errors, the difference between the costs of a round trip between Montreal and New York City using the trackage rights and using the independent ratemaking authority in Gilmore's Exhibit is only about five percent. So small differences in actual cost experience — commonplace when reality supplants spreadsheet work — could easily negate the difference. Second, the comparison model assumes zero back-haul and, in effect, that all of the cars that CP carries to the Bronx on the trackage rights are taken back empty on trains containing only empty cars, all the way

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<sup>14</sup> While rates higher than \$0.71 would produce greater than a 5% delta difference, the increment would be slight. The use of the \$1.215 rate proposed in CSX-173 would add only \$42.52 each way or \$85.04 round trip with empty back-haul on Gilmore's model — about 8%. But the fundamental point is that Gilmore's model does not make a proper comparison — it compares CP's movements with CSX's concessionary movements and never attempts to compare fully-costed movements all the way between any common CP/CSX location and the Bronx.

to Montreal. If only a relatively small percentage of potential back-haul movements -- such as back-haul of cars used to transport intermodal boxes or trailers -- was to take place, again the 5% differential would vanish.<sup>15</sup>

CP wished to have its own presence in New York City and to operate in and out of New York City on trackage rights. CP-24 at 7. CSX is entitled to just compensation for the use of its trackage under the principles established by the Board.<sup>16</sup>

Notwithstanding this, CSX has proposed a temporary concessionary rate in order to accommodate CP in introducing its service. CP cannot complain if it is required to pay the charges necessary for it to have that sort of presence in New York City. That CP's cars could be taken there on a marginal cost basis, for certain commodities, by CSX as a settlement, for slightly less, has nothing to do with the matter or with the competitive implications of the trackage rights fees. The only thing the comparison really teaches is that it would be in the public interest to remove CP's potential for being distracted from developing its own service by the exercise of the independent ratemaking authority it has under the October 1997 Settlement Agreement. So the Board ought to grant the prayer for relief in CSX's Petition for Reconsideration (CSX-173 at 17-19) and override that

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<sup>15</sup> How much back-haul would be necessary would depend on the revenue amount. Note that the example chosen by Gilmore, boxcar movements, is one on which the URCS costing system assumes almost a 50% loaded back-haul for generic boxcars. See Whitehurst R.V.S. at 24-25. On intermodal movements, which Gilmore is particularly interested in (Gilmore V.S. at 4-5), the URCS costing system assumes close to a 100% loaded back-haul. *Id.*

<sup>16</sup> Note that the Board's valuation of \$15,186,822 for the line, which includes 84 miles from Schenectady to Poughkeepsie and 7 miles in the Bronx and Queens, averages well under \$200,000 per mile, an obviously trivial fraction of replacement cost.

grant of independent ratemaking authority insofar as it relates to movements "East of the Hudson."

Having failed to show that CP cannot compete against CSX if it pays a fair interest rental for its trackage rights under the Board's precedents, Gilmore contends that CP cannot compete with trucks if CP charges more than \$1 per car-mile for short-haul intermodal traffic. Gilmore V.S. at 4-5. No basis for the \$1 per car-mile barrier is given, and it should be noted that it is very much lower than the [\$\$\$ ] requirement of CSX under CP's independent ratemaking for the approximately 140-mile movement between Selkirk and the Bronx<sup>17</sup> — a figure which Gilmore claims is low enough to permit CP to compete with CSX. Indeed, a review of Gilmore's Exhibit 1 on boxcar movements seems to suggest that CP could not perform an intermodal movement from New York City to Montreal for \$1.00 a car-mile, even if the "CSX Trackage Charges" and "Amtrak Trackage Charges" were zero. Gilmore furnishes no alternative exhibit for intermodal moves, so we can only speculate. Gilmore's \$1 threshold is arbitrary and his case unproven, and, given the requirement of just compensation, irrelevant.

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<sup>17</sup> Indeed it appears from Gilmore's Exhibit that it is only 370.5 or 407 miles from Montreal to the Bronx, depending on interchange or transit point, on a movement using CP's route over Rouses Point to the Albany area and the CSX route into the Bronx.

#### **IV. CP's PROPOSED TREATMENT OF FEES PAYABLE TO AMTRAK IS BASED ON FALSE PREMISES AND IS INCORRECT**

In a somewhat baffling argument, based on false factual premises, CP for the first time introduces an issue as to the interplay between charges made by Amtrak on the line between Schenectady and Poughkeepsie and the trackage rights fees to be paid by CP. CP-28 at 15-16 and Gilmore V.S. at 6-7. The discussion assumes that CSX is paying Amtrak such fees. In response, the Reply Verified Statement of R. Paul Carey points out that there are no such fees, and the Carey R.V.S. and the text below indicate the proper rule if CP's operations on the segment cause CSX to incur pecuniary loss to Amtrak.<sup>18</sup>

As Carey develops, Conrail does not, and CSX will not, pay any charges to Amtrak for its use either of the segment between Hoffmans/Schenectady and Stuyvesant or that between Stuyvesant and Poughkeepsie. Amtrak is not the fee owner of either of the segments, is not a lessee on the Poughkeepsie to Stuyvesant segment, and its leasehold arrangements on the Stuyvesant to Hoffmans segment do not give it the right to grant freight trackage rights or to collect fees for Conrail's or CSX's freight movements over the line. Thus, the discussion in CP-28 at 15-16 is completely misguided and beside the point.

As Carey points out, CP's activities over the Schenectady to Poughkeepsie line could cause out-of-pocket costs of one sort or another to CSX, and should that occur, CSX will seek reimbursement from CP, pursuant to the Board's precedents. Variable

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<sup>18</sup> Carey's evidence is responsive to the new issue as to the so-called Amtrak charges introduced for the first time in CP-28.



costs incurred by an owner as a result of the trackage rights tenant's operations have been, as they logically should be, recognized by the Board's predecessor as an element in trackage rights compensation. See SSW Compensation, 1 I.C.C.2d 776, 782 (1984).<sup>19</sup> See also, treating this as an item of compensation, id., 4 I.C.C.2d 668, 670 (1987); id., 8 I.C.C.2d at 82. Cf. Use By Erie, 278 I.C.C. at 432 (compensation for out-of-pocket costs of effects of tenant's operations).

## V. THE CP REQUESTS FOR CLARIFICATION

We address here requests for clarification made at CP-28 at 16-18 and Gilmore V.S. at 7-9:

A. CP seeks the right to serve all facilities and shippers directly, without switch, in the crowded Bronx and Queens area. It acknowledges that it did not propose to pay for those rights in either of its two initial filings (CP-24 and CP-25) but now, chastised by the Board for that (Decision No. 109 at 7 (second para.)), CP appears willing to pay. It will be remembered that CSX's initial proposal in CSX-176 was that the Bronx and Queens be declared a terminal facility with a joint facilities agreement to be established, with CSX as the terminal facilities operator; CP objected to that (CP-25 at 10-13), and the Board did not grant CSX's request. Decision No. 109 at 7.

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<sup>19</sup> At the place cited, the Board listed the factor of the variable costs incurred by the owner as a result of the tenant's operations as a third element, the other two being (i) the "below the wheel" costs and (ii) the interest rental. Indeed, the tenant in that contested case recognized and proposed, and the owner, of course, agreed, that the variable costs to the owner of the tenant's operations would be an element of the compensation.

The opening position of CP in CP-24 was that "it will be more efficient and less disruptive of CSX's operations for CSX to provide switching services to CP at particular locations." *Id.* at 15. Those were to include "all shippers served through the Oak Point Yard or any other rail facility in the Bronx Borough of New York City." *Id.* A switching charge payable to CSX was suggested for this. No request for direct service was made, and accordingly no fee was suggested in connection with it. In its later CP-25 filing (to which CSX had no right of reply), CP unveiled its new discovery that: "[T]o compete effectively with CSX, CP will need the right of direct access to all customers and facilities in the Bronx and Queens." CP-25 at 11. CP objected to the terminal joint facility proposal of CSX but did not suggest that it would pay more than a 29¢ per car-mile fee for the use, for movements for its own account, of CSX's facilities and track in a crowded urban area. No operating plan was proposed as to how two freight carriers would operate switching and local movements in that crowded area with extraordinarily numerous passenger trains involved on material segments of the area.

The Board remarked on CP's failure to provide for compensation beyond the trackage rights fee. Decision No. 109 at 7. And, carefully distinguishing direct access without switch to the New York City shippers and facilities<sup>20</sup> from other arrangements for which it prescribed that CP or NY&A would have rights over CSX upon the working out of suitable compensation arrangements, the Board provided only for CP's access to

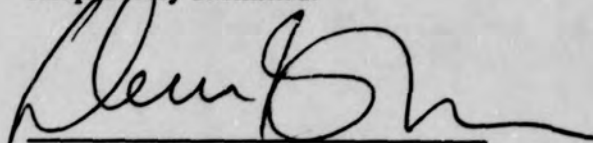
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<sup>20</sup> This would include those at the Harlem River Yard facility particularly mentioned as item "First" by CP. *See* CP-28 at 16-17.

the Bronx and Queens facilities and shippers via CSX switch, for the switching fee of \$250, subject to cost-based redetermination. Compare the second and third full paragraphs at 7, Decision No. 109. The "clarification" sought by CP seems accordingly to be inappropriate and would authorize movements which were not claimed by CP in its opening presentation and the practicality of which has not been demonstrated.

B. Finally, in another request for clarification (CP-28 at 18), CP requests that the Board declare that it will maintain jurisdiction over any "failures to agree" as to the matters in Decision No. 109, as to which the Board stated that CP or NY&A would have certain rights upon the working out of "suitable compensation arrangements with CSX." CSX agrees that the Board would have that jurisdiction to make a determination in the case of such a failure to agree. Such determinations, CSX assumes, would be based on the appropriate measures of compensation for involuntary imposition of rights in favor of a railroad upon an owning railroad as established in Decision No. 109, as the same may be modified by the Board in response to the petitions for reconsideration now pending.

Respectfully submitted.



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January 27, 1999





REPLY VERIFIED STATEMENT  
OF  
WILLIAM W. WHITEHURST, JR.

My name is William W. Whitehurst, Jr. I am President of W. W. Whitehurst & Associates, Inc., an economic consulting firm specializing in cost accounting, financial analyses, and other economic regulatory issues involving the railroad industry. The firm's offices are located at 12421 Happy Hollow Road, Cockeysville, Maryland 21030. For more than 30 years, I have provided economic consulting services to a variety of freight-hauling railroads, inter-city and commuter train services, shippers, and public bodies on railroad operating, cost, finance, and valuation matters.

On behalf of Applicants CSX Corporation and CSX Transportation, Inc. (jointly "CSX"), I submitted a verified statement included in the FD No. 33388 Railroad Consolidation Application filed in June 1997. A description of my background and professional qualifications was included as Appendix A to that verified statement. On behalf of Applicants CSX and NS (Norfolk Southern Corporation and Norfolk Southern Railway Company), I submitted a rebuttal verified statement included in Applicants' Rebuttal filing of December 1997. On behalf of CSX, I submitted a verified statement ("VS") as part of the CSX Petition for Reconsideration in FD No. 33388 (Sub-No. 69) filed January 7, 1999.

I have been asked by CSX to analyze and respond to the Plaistow and Gilmore reconsideration verified statements ("RVS") included in the Canadian Pacific Parties' Petition for Reconsideration and Clarification filing of January 7, 1999 in this FD No. 33388 (Sub-No. 69) proceeding. In this verified statement, I describe my analyses,

findings, and corrections regarding the Plaistow RVS and the Gilmore RVS. My response is presented under the following topic headings:

- ¶ "Below-the-Wheel" Costs
- ¶ Line Segment Earnings
- ¶ Capitalized Earnings Multiple
- ¶ Interest Rental and Trackage Rights Fee Per Car-Mile
- ¶ Switching Charges
- ¶ Mr. Gilmore's Cost Analyses

#### "BELOW-THE-WHEEL" COSTS

As demonstrated in my VS of January 7, 1999, the Conrail fully allocated cost of \$0.46 per car-mile computed by the Surface Transportation Board ("STB") in FD No. 33388 Decision No. 89 (at 141) using Conrail's 1995 Uniform Railroad Costing System ("URCS") data includes a "below-the-wheel" rate of \$0.196 per car-mile. This rate is at the 1995 level. Adjusting to the 1997 level by using the GDP deflator between 1995 and 1997 of 4.461% as provided by the STB in its Decision No. 109 results in a "below-the-wheel" rate of \$0.205.

#### LINE SEGMENT EARNINGS

The line segment earnings which Mr. Plaistow computes in his January 7, 1999 RVS are based on a traffic universe which excludes traffic originating or terminating on the line at points north of the Bronx and Queens. In support of this exclusion, Mr. Plaistow points out that the STB granted overhead, not full service, rights as to points north of the Bronx and Queens. Since CP<sup>1</sup> cannot reach this traffic to compete for it, Mr.

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<sup>1</sup> CP refers collectively to Canadian Pacific Railway Company, Delaware and Hudson Railway Company Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company, Limited.

Plaistow concludes that it should be excluded in computing line segment earnings. Mr. Plaistow bases his position on text in one of the ICC decisions in the SSW Compensation cases, specifically 4 I.C.C. 2d at 684, 693-694. Mr. Plaistow's treatment of traffic on the line segment originating or terminating north of the Bronx and Queens raises the threshold question of whether this is a correct application of SSW Compensation case principles in the facts of the present situation.

Rather than attempt to resolve this question before conducting my analysis of Mr. Plaistow's line segment earnings computations, I have chosen to first assume that his interpretation is accurate and make my corrections on that basis. Then, second, I have made corrections assuming that traffic on the line segment north of the Bronx and Queens (but not originating or terminating in the Bronx or Queens (or by interchange with the New York and Atlantic Railroad ("NY&A"))) should also be included.

In addition to excluding such traffic originating or terminating on the line at points north of the Bronx and Queens, Mr. Plaistow has made several other adjustments in arriving at the figure of \$163,008 which he asserts are the line segment earnings. First, he has adjusted his traffic universe and mileages to reflect the fact that CP has been granted trackage rights for operations only over Route 1, which excludes, *inter alia*, the Selkirk Branch. My analyses of Mr. Plaistow's line segment earnings conform to this aspect of his adjustments, including his assumption of traffic routing splits at Stuyvesant between the Selkirk Branch and the Chicago Line via Rensselaer<sup>2</sup>. However, as discussed subsequently, I find some errors in the specifics of his procedures and in his mileage assumptions.

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<sup>2</sup> Mr. Plaistow assumed that approximately 80% of movements north of Stuyvesant would be over the Selkirk Branch while 20% of movements north of Stuyvesant would be over the Chicago Line.



Second, Mr. Plaistow has adjusted the 1995 level amounts he uses as his base to incorporate traffic growth and inflation<sup>3</sup>. He states that these adjustments are intended to incorporate: (a) prospective merger benefits allocable to this line segment; and (b) inflation from 1995 to 1997.

Mr. Plaistow's traffic growth adjustment is designed to help support the manner in which he computes his capitalized earnings multiple. Stated relatively simply, Mr. Plaistow attempts to increase historical Conrail earnings by the total of merger benefits projected by CSX and NS, thereby reducing the capitalized earnings multiple. He then asserts that, for consistency between total earnings and line segment earnings, he will also increase the traffic on the line segment as a surrogate for merger benefits allocable to the line segment. As discussed in a subsequent section of this verified statement, Mr. Plaistow's incorporation of prospective merger benefits in the historic earnings used to compute a capitalized earnings multiple is in direct conflict with both the Interstate Commerce Commission ("ICC")/STB SSW Compensation<sup>4</sup> method in general and the method which the STB is using here. Therefore, I have isolated and identified separately the 8% (13/12) traffic growth figure Mr. Plaistow applies to incorporate merger benefits.

Turning to Mr. Plaistow's inflation adjustment, upon examining the mechanics of his computations, I find that he applies the adjustment in a manner inconsistent with both the STB's development in FD No. 33388 (Sub-No. 69) Decision 109 and his own development of a capitalized earnings multiple. Summarized briefly, Mr. Plaistow

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<sup>3</sup> At pages 4-5 of his text, Mr. Plaistow says: "However, CSX projected an increase for East-of-the-Hudson line from 12 to 13 million gross tons per year (page 469 of CSX/NS-20, CR Traffic Densities - Estimated Changes in Millions of Gross Tons for Poughkeepsie to Stuyvesant). I conclude that this increase in traffic fairly incorporates the merger benefits allocable to this line segment. Therefore, I have adjusted my line segment earnings accordingly. I also adjusted line segment earnings by 4.461% for inflation as called for by the STB."

<sup>4</sup> St. Louis Southwestern Railway Company - Trackage Rights Over Missouri Pacific Railroad Company - Kansas City to St. Louis, 1 I.C.C.2d 776 (1985) (SSW Compensation).

applies his inflation adjustment to revenues rather than to earnings, thereby misstating the change in earnings from 1995 to 1997. Therefore, in the corrections which follow, I have also corrected this mechanical error in Mr. Plaistow's inflation adjustment.

Whether traffic originating or terminating north of the Bronx and Queens is excluded or included, Mr. Plaistow's development of earnings for the line segment, which he characterizes as adjusted earnings of the trackage rights segment, contains several categories of errors. My analysis which identified these errors, and the adjustments I made to arrive at the correct line segment earnings amount, are described in this section of my statement.

Corrections to Mr. Plaistow's  
Treatment of Switching Costs

I addressed Mr. Plaistow's treatment of switching costs, pointed out the errors in his cost construction, and corrected those errors at pages 6-9 of my January 7, 1999 VS. Mr. Plaistow has treated switching costs in the same manner in his January 7, 1999 RVS as he did in his reply verified statement of December 10, 1998. That is, he continues to substitute the switching charge of \$250 per car which CP proposes to pay to Conrail for Conrail's URCS system average switching cost. (See Exhibit No. (JJP-2.4) of January 7, 1999 at page 2 of 7)<sup>5</sup>. Consequently, the same corrections to his errors are in order.

On Exhibit WWW - 19, I have corrected Mr. Plaistow's erroneous treatment of switching charges (as well as his mechanical error in applying an inflation adjustment). As a consequence of these corrections, line segment earnings (including Mr. Plaistow's traffic growth factor) increase from the \$163,008 claimed by Mr. Plaistow to \$493,100.

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<sup>5</sup> Mr. Plaistow has now increased the impact of his switching charge "switch" by assuming that 30% of the traffic he addresses is affected, whereas he previously assumed that 20% of the traffic was affected. (See Exhibit No. (JJP-2.4) of January 7, 1999 at page 1 of 7.) This change in assumption has the effect of further reducing the line segment earnings amount Mr. Plaistow computes.

Excluding Mr. Plaistow's traffic growth factor, line segment earnings are \$456,574. Car-miles on the line segment are not affected, remaining at 1,297,368.

Corrections to Mr. Plaistow's Apportionment of  
Revenues and Costs to the Trackage Rights Segment

I addressed Mr. Plaistow's apportionment of total revenues and costs to the trackage rights segment, pointed out the errors in his apportionment procedure, and corrected those errors at pages 9-12 of my January 7, 1999 VS. Mr. Plaistow has used the same apportionment procedure in his January 7, 1999 RVS as he did in his reply verified statement of December 10, 1998. That is, he continues to apply a straight mileage pro-rate<sup>6</sup>, thereby ignoring the added costs associated with originating or terminating a shipment and the recognition of this situation in the assignment of revenues. (See Exhibit No. (JJP-2.4) of January 7, 1999 at page 2 of 7). Consequently, the same corrections to his errors are in order.

In addition, Mr. Plaistow has introduced a slight bias into his earnings data attributable to the procedures he used to apportion movements north of Stuyvesant among the Selkirk Branch and the Chicago Line. Instead of applying his 80/20 apportionment split evenly on a probabilistic basis to each move, he has followed the truncating general practice of assigning four moves to the Selkirk Branch, followed by one move to the Chicago Line. This procedure has the effect of slightly understating the number of movements which will use the Chicago Line. To correct this bias, I have computed the weighted average route mileage for each movement using Mr. Plaistow's 80/20 factors.

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<sup>6</sup> Computing the percentage of total movement miles on the trackage rights line segment and then multiplying this percentage times the total earnings for the movement to estimate earnings applicable to the line segment.

On Exhibit WWW - 20<sup>7</sup>, I have incorporated the same corrections as in Exhibit WWW - 19, and have corrected Mr. Plaistow's apportionment of total revenues and costs to the trackage rights segment as well as his apportionment of traffic between the Selkirk Branch and the Chicago Line. As a consequence of these corrections, line segment earnings (including Mr. Plaistow's traffic growth factor) increase from the \$163,008 claimed by Mr. Plaistow to \$974,210. Excluding Mr. Plaistow's traffic growth factor, line segment earnings are \$902,046. Car-miles on the line segment are corrected from 1,297,368 to 1,323,433.

Corrections to Mr. Plaistow's  
Route Mileages on the Trackage Rights Segment

In the course of analyzing Mr. Plaistow's testimony and (revised) Exhibit No. (JJP-2.4), I discovered that he has introduced an error into his statement of route mileages on the trackage rights line segment. It appears that this error arose when Mr. Plaistow was restating mileages to reflect the fact that all movements would be via Route 1. At page 5 of his text, Mr. Plaistow says: "My December 10, 1998 Reply Verified Statement assumed that CP movements would travel 78 miles over the trackage rights segment through Selkirk. However, over Route 1 this mileage must be reduced to exclude the final 37 miles over the Stuyvesant-Selkirk-Schenectady line, which is not part of the Route 1 trackage rights line".

The problem with this statement is that the 78 miles Mr. Plaistow refers to is the distance to "VO" on the Selkirk Branch, which is the point of connection between CP and CSX/Conrail under CP's Route 2 and Route 3 trackage rights request, whereas 37 miles is the approximate distance from Stuyvesant (CP 125) to Schenectady via Rensselaer on the Chicago Line, which is the STB approved Route 1 routing. The

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<sup>7</sup> Exhibit WWW - 20 contains highly confidential material. Therefore, there is both a redacted and a highly confidential version.



distance from Stuyvesant (CP 125) to "VO" via Selkirk on the Selkirk Branch, which was CP's proposed Route 2 and Route 3 routing, is approximately 21 miles, not 37 miles. Hence, Mr. Plaistow's 37 mile reduction leads to an understatement of trackage rights line segment miles for the movements Mr. Plaistow analyzes.

To provide a correct statement of mileages for use in this proceeding, I have consulted Conrail Operating Timetables and operating/engineering department personnel. Using these inputs, I have constructed mileages on a segment by segment basis to eliminate subtraction errors and provide a reference table applicable to the various origin and destination points on the line. This table of correct mileages is provided on Exhibit WWW - 21.

On Exhibit WWW - 22<sup>8</sup>, I have incorporated the same corrections as in Exhibit WWW - 20, and have corrected the line segment mileages which Mr. Plaistow uses in his computations. As a consequence of these corrections, line segment earnings (including Mr. Plaistow's traffic growth factor) increase from the \$163,008 claimed by Mr. Plaistow to \$1,102,064. Excluding Mr. Plaistow's traffic growth factor, line segment earnings are \$1,020,429. Car-miles on the line segment are corrected from 1,297,368 to 1,759,425.

At this point, I would like to take a moment to point out the implications of the corrections I make in Exhibit WWW - 22 as compared to Exhibit WWW - 20. Observe that earnings increase, but car-miles on the line segment also increase. And, as a consequence of increased car miles on the line segment, the impacts of origin and destination weighting corrections introduced in Exhibit WWW - 20 are reduced. The result is that the Exhibit WWW - 22 adjustment to correct line segment mileages has the effect of producing lower line segment earnings on a per car-mile basis. Remembering

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<sup>8</sup> Exhibit WWW - 22 contains highly confidential material. Therefore, there is both a redacted and a highly confidential version.

that, at the end of this process, interest rental is stated on a per car-mile basis, the consequence of the corrections I am making is a lower interest rental rate than would otherwise be payable to CSX. (The comparative earnings per car-mile, including Mr. Plaistow's traffic growth factor, are \$0.7361 from Exhibit WWW - 20 (\$974,210/1,323,433) and \$0.626 from Exhibit WWW - 22 (\$1,102,064/1,759,425)).

Using historical line segment earnings of \$1,020,429 (which are indexed from 1995 to 1997 levels, but exclude Mr. Plaistow's projected traffic growth factor) and 1,759,425 car-miles on the line segment, both as developed on Exhibit WWW - 22, the interest rental rate is \$2.49<sup>9</sup> per car-mile, and the overall trackage rights fee, including the \$0.205 "below-the-wheel" costs, is \$2.695.

Trackage Rights Line Segment  
Earnings including Local Traffic

In relying on the ICC's SSW Compensation decision in 4 I.C.C. 2d at 684, 693-694 as a basis for excluding local traffic, CP and Mr. Plaistow have apparently assumed that the conclusion which the ICC reached in the specific circumstances of that trackage rights situation (St. Louis Southwestern Railway Company ("SSW" or "SP/SSW") overhead trackage rights on the Missouri Pacific Railroad Company ("MP") line between Kansas City and St. Louis) established as a general matter, for all trackage rights compensation situations, the proper treatment of local traffic when access is restricted to overhead trackage rights. However, both the position taken by the ICC and STB elsewhere and logical limits to this traffic exclusion construct suggest that the better approach is to evaluate the proper treatment of local traffic in overhead trackage rights compensation situations on a case-by-case basis. Reasoning in support of a case-by-case approach includes the following considerations.

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<sup>9</sup> \$1,020,429 \* 24.54 \* 0.175 / 1,759,425 = \$2.49.

First, in the same ICC FD No. 30,000 proceeding which gave rise to the SSW Compensation method, the ICC decided differently on how to treat local traffic in another instance where it granted overhead trackage rights, namely the overhead trackage rights granted to the Denver and Rio Grande Western Railroad Company ("DRGW") over the line of the MP between Pueblo, CO and Kansas City, MO. The ICC, in its FD 30,000 (Sub-No. 16, 18, and 25) Trackage Rights Compensation decision of August 20, 1984 (served August 30, 1984) concluded that "the only MP traffic remaining on this line three years after consolidation will be originating and terminating traffic and a nominal amount of traffic interchanged with DRGW at Pueblo" (Slip Opinion at 12). This is the traffic for which the ICC developed net revenues from railway operations (i.e. pre-tax earnings).

Second, reflection on how system level trackage rights rates are constructed, as in STB Finance Docket No. 32760<sup>10</sup>, the recent UP/SP merger proceeding, will reveal that these rates encompass local as well as overhead traffic, whether the trackage rights granted include or exclude local access. In that proceeding, the trackage rights rate was stated on a per gross ton-mile ("GTM") basis. Referring back to Exhibit WWW - 17 to my January 7, 1999 verified statement in this present proceeding, the interest rental base for SP real property was divided by SP system total GTM to arrive at the return element of 2.40 mills per gross ton-mile rate adopted by the STB in Decision No. 44 of FD No. 32760. System total GTM include all traffic of the railroad, both GTM generated by overhead (or bridge) movements and GTM generated by local movements.

Third, there are logical limits to the general approach of excluding local traffic. Assume, for example a rail line which has the following characteristics with regard to

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<sup>10</sup> STB Finance Docket No. 32760 Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company - - Control and Merger - - Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company. Decision No. 44 (Slip Opinion at 140 - 142).

the landlord railroad's operations. All of the landlord's traffic over the line either originates, or terminates (or both) on the line. The landlord railroad does not use the line itself for any bridge traffic. That is, the landlord does not handle any traffic which passes over the line but neither originates nor terminates on the line. Now, add the tenant railroad operating over the line with overhead trackage rights only. What traffic of the landlord will be used in computing the interest rental charge payable by the tenant? If traffic originating or terminating on the line is excluded, then there is no traffic which classifies for use in computing line segment earnings, and hence there are no line segment earnings. This then leads to the illogical conclusion that the interest rental rate should be zero.

For these reasons, I suggest that the STB should evaluate how to treat local traffic in an overhead trackage rights compensation situation on a case-by-case basis. Therefore, on Exhibit WWW - 23<sup>11</sup>, to demonstrate the alternative approach of including local traffic in the earnings base for the capitalized earnings ("CE") process, I have incorporated the same corrections as in Exhibit WWW - 22, and have included the local traffic on Route 1 which Mr. Plaistow excludes in his computations. As a consequence of these corrections and additions, line segment earnings (including Mr. Plaistow's traffic growth factor) increase from the \$163,008 claimed by Mr. Plaistow to \$4,503,269. Excluding Mr. Plaistow's traffic growth factor, line segment earnings are \$4,169,694. Car-miles on the line segment increase from 1,297,368 to 3,320,148.

#### CAPITALIZED EARNINGS MULTIPLE

At pages 2-3 of his January 7, 1999 RVS, Mr. Plaistow describes his revised development of a capitalized earnings multiplier. In this development, he adjusts various minor aspects of his prior (December 10, 1998) procedure to conform to the

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<sup>11</sup> Exhibit WWW - 23 contains highly confidential material. Therefore, there is both a redacted and a highly confidential version.



STB's Decision No. 109 in FD No. 33388 (Sub-No. 69), but also incorporates a major departure from the capitalized earnings method established in SSW Compensation and used by the STB in this present proceeding.

Mr. Plaistow's major departure from the ICC/STB SSW Compensation capitalized earnings method lies in the system-wide Conrail earnings which he uses in computing the capitalized earnings multiple. As he says at page 2 of his RVS: "In calculating the 'Conrail' earnings which served as the justification for the \$16.2 billion that CSX and NS paid to acquire Conrail, I added to historical Conrail earnings the merger benefits projected by CSX and NS." In Exhibit No. (JJP-2.2), he titles this addition an "Annuity of Merger Benefits". Mr. Plaistow's addition of merger benefits to historical earnings is in direct conflict with both the ICC/STB SSW Compensation method in general and the method which the STB is using here. As Decision 109 directly states: "Therefore, we have excluded merger benefits. In keeping with the procedure used in SSW Compensation, we have adjusted Conrail's 1995 earnings upward to account for inflation between 1995 and 1997." (STB FD No. 33388 (Sub-No. 69) Decision No. 109 at 10).

Moreover, in addition to ignoring the STB's express language on what earnings should be included in computing the CE multiplier, Mr. Plaistow has got his numbers wrong and used the wrong cost of capital in his computations. Accordingly, to counter the erroneous "Annuity of Merger Benefits" amount which Mr. Plaistow states, I have corrected these errors. As noted above, however, my making these corrections should not be taken to imply that including an "Annuity of Merger Benefits" in the capitalized earnings computation conforms to the ICC/STB SSW Compensation method.

Mr. Plaistow's errors are threefold, even accepting his premise that one can add prospective benefits to historic earnings in the "CE" process. First, he has erroneously assumed that the incremental earnings representing merger benefits can be taken

directly from the Summary of Benefits Exhibits of CSX and NS. Second, he has erroneously used the after tax cost of capital rather than the pre-tax cost of capital in his discounting computations. Third, he has arbitrarily assumed that all of the merger benefits were captured by the Seller (Conrail) in the purchase price and that none accrued to the Buyers (CSX and NS).

As a framework for demonstrating Mr. Plaistow's errors, I provide as Exhibit WWW - 24 a letter from Hogan & Hartson (counsel to CP) to Arnold & Porter (counsel to CSX) with an attached errata workpaper showing Mr. Plaistow's (now revised) calculation of the "Annuity of Merger Benefits". The errata in Mr. Plaistow's "Annuity of Merger Benefits" will have impacts on both Revised Exhibit No. (JJP-2.2) and Revised Exhibit No. (JJP-2.3). For purposes of the corrections and comparisons which follow, I present as Exhibit WWW - 25 a copy of Revised Exhibit No. (JJP-2.2) and Revised Exhibit No. (JJP-2.3) with the errata and errata impacts penciled in.

The first aspect of Mr. Plaistow's workpaper I note is that he is referring to the CSX Summary of Benefits Exhibit (Appendix A to the FD No. 33388 Railroad Control Application) and the NS Summary of Benefits Exhibit (Appendix B to the FD No. 33388 Railroad Control Application) for quantification of the incremental earnings attributable to the merger. These amounts are not the same as those shown in the CSX/Conrail Pro Forma Income Statement (Appendix D to the FD No. 33388 Railroad Control Application) and the NS/Conrail Pro Forma Income Statement (Appendix H to the FD No. 33388 Railroad Control Application). The amounts shown on these sources are compared for each year of the projection horizon on Exhibit WWW - 26.

There are various reasons for numerical differences between the amounts shown for each of CSX and NS, including, for example, the fact that the expenses on the Pro Forma Income Statements include depreciation expense, while those on the Summary of Benefits Exhibits do not. The proper source for quantification of merger benefits for use

in the capitalized earnings computation is the Pro Forma Income Statements, in order to provide compatibility with both historical system earnings and the ICC/STB SSW Compensation capitalized earnings method. Both the STB and Mr. Plaistow utilize historical system earnings from the Conrail Income Statement (CR R-1, Schedule 210). This can be seen most quickly right on Mr. Plaistow's Revised Exhibit No. (JJP-2.2) in the "Source" column.

As can be seen on Exhibit WWW - 26, the Summary of Benefits amounts Mr. Plaistow has used in his "Annuity of Merger Benefits" computation uniformly overstate the additional merger-related earnings he claims to be reflecting.

The second aspect of Mr. Plaistow's workpaper I note is that he is using the after tax cost of capital. This is confirmed by footnote 1 of Revised Exhibit No. (JJP-2.2), which includes the statement that Mr. Plaistow is computing his "Annuity of Merger Benefits" using the "1997 after tax cost of capital for the railroad industry as published by the STB in Ex Parte No. 558". The STB, and the ICC before it, has stated that capitalized earnings method computations should use the pre-tax, rather than the after tax cost of capital. (See, for example STB FD No. 32760 Decision No. 44, Slip Opinion at 141: "the ICC consistently found that the pre-tax cost of capital should be used to reflect the cost of income taxes.") Note that the historical Conrail system total earnings which Mr. Plaistow presents on his Revised Exhibit No. (JJP-2.2) are before provisions for income taxes. In fact, one need look no further than the STB's FD No. 33388 (Sub-No. 69) Decision 109 itself (at 11) to see that the STB is using the pre-tax cost of capital.

In using the after tax cost of capital, Mr. Plaistow is uniformly overstating the "Annuity of Merger Benefits" he claims to present.

The third aspect of Mr. Plaistow's workpaper I note is that he has included 100% of the annualized merger benefits in the earnings which he uses to compute his

capitalized earnings multiple. In so doing, he has implicitly asserted that Conrail, the Seller in this transaction, has captured all of the synergies available from the merger in the purchase price and that none have been allotted to CSX and NS, the Buyers in this transaction. The merger synergies reflect benefits that cannot be achieved by Conrail on a stand-alone basis, but which can be achieved when shares of the business of Conrail are combined respectively with CSX and NS.

Mr. Plaistow's implicit assertion is an inaccurate characterization of the way purchase negotiations and transactions work both as a matter of economics and based on my personal professional experience in merger negotiations. As a matter of economics, the reason that the buyer is willing to acquire the selling company for more than its stand-alone value is that the buyer can realize economic benefits through the combination that the seller cannot realize on a stand-alone basis and that the buyer cannot realize on a stand-alone basis. The more the purchase price the buyer pays the seller exceeds the seller's stand-alone value, the more of these synergies the buyer implicitly gives up. When the purchase price rises to the point that the values of all synergies have been given up by the buyer, there is no longer any economic incentive for him to "do the deal" (i.e. make the acquisition). This general economic construction is validated by my own experiences in merger and acquisition negotiations. Generally speaking, some of the biggest issues between buyer and seller involve quantifying the synergies available through the combination and negotiating what portion of those synergies will accrue to the seller in the purchase price.

In assigning 100% of the merger synergies to Conrail, Mr. Plaistow has effectively asserted that, after taking into account the purchase price, there was no net economic benefit to CSX and NS in the acquisition and division of Conrail. Lacking specific knowledge, the more reasonable course would be to follow typical practice in such situations and assume that the merger synergies were shared between buyer and seller on a 50-50 basis as a consequence of purchase negotiations.



On Exhibit WWW - 27, I have restated Mr. Plaistow "Annuity of Merger Benefits" using the pre-tax cost of capital and earnings from the Pro Forma Income Statements, of course without agreeing that Mr. Plaistow's entire exercise as to "Merger Benefits" is appropriate. The thus corrected "Annuity of Merger Benefits" amount is \$545,021,000.

On Exhibit WWW - 28, I have restated Mr. Plaistow's capitalized earnings multiple calculation using 100% of the "Annuity of Merger Benefits" which I developed in Exhibit WWW - 27, of course without agreeing that Mr. Plaistow's entire exercise as to "Merger Benefits" is appropriate. The thus corrected capitalized earnings multiple on this basis is 12.56.

On Exhibit WWW - 29, I have restated Mr. Plaistow's capitalized earnings multiple calculation using 50% of the "Annuity of Merger Benefits" which I developed in Exhibit WWW - 27, of course without agreeing that Mr. Plaistow's entire exercise as to "Merger Benefits" is appropriate. The earnings multiple developed in Exhibit WWW - 29 assumes that the merger synergies were shared between buyer and seller on a 50-50 basis as a consequence of purchase negotiations. The thus corrected capitalized earnings multiple on this basis is 16.62.

#### INTEREST RENTAL AND TRACKAGE RIGHTS FEE PER CAR-MILE

On Exhibit WWW - 30, I show interest rental computations based on line segment earnings of \$1,102,064, as developed in Exhibit WWW - 22 (including Mr. Plaistow's traffic growth), using three alternative values for the capitalized earnings multiplier. I once again remind the reader that, although I include an "Annuity of

Merger Benefits" in these capitalized earnings, such inclusion is not in accordance with the ICC and STB SSW Compensation method.

First, as a reference point, I use the capitalized earnings multiplier of 9.64 which Mr. Plaistow would apply from his Revised Exhibit No. (JJP-2.3) as corrected by his January 19, 1999 errata (see Exhibit WWW - 25). I also remind the reader that this ratio is in error for the reasons discussed above. Nevertheless, using this CE multiplier, the interest rental rate is \$1.057 per car-mile, which, in combination with the \$0.205 per car-mile "below-the-wheel" cost produces a total trackage rights compensation charge of \$1.262.

Second, I use the capitalized earnings multiplier developed on Exhibit WWW - 28. Using this CE multiplier, the interest rental rate is \$1.377 per car-mile, which, in combination with the \$0.205 per car-mile "below-the-wheel" cost produces a total trackage rights compensation charge of \$1.582.

Third, I use the capitalized earnings multiplier developed on Exhibit WWW - 29. Using this CE multiplier the interest rental rate is \$1.822 per car-mile, which, in combination with the \$0.205 per car-mile "below-the-wheel" cost produces a total trackage rights compensation charge of \$2.027.

These three iterations are subject to the caveats already expressed; they build on the material in the Plaistow RVS that is contrary to SSW Compensation.

#### SWITCHING CHARGES

CP has not petitioned for reconsideration on the issue of switching charges. Nevertheless, Mr. Plaistow addresses this topic and presents per car rates in his RVS at pages 7-8 and revised Exhibit No. (JJP-6). Neither this version nor his earlier December

10, 1998 version of Exhibit No. (JJP-6) provide cost per car rates that are a relevant basis for assessing either the \$250 switch charge or the actual cost incurred by the landlord in providing the service. Shortcomings and irrelevancies of the switch cost per car materials Mr. Plaistow presents include the following.

1.- Use of variable costs rather than full costs. In Revised Exhibit No. (JJP-6) of 1/7/99 (which uses the 1997 CSXT URCS), Mr. Plaistow computes both variable costs and full (i.e. fully allocated) costs; both include CSXT historical return on investment ("ROI"). But in his text (at 7-8) he points only to the variable cost number. In his original Exhibit No. (JJP-6) of 12/10/98 (which uses the 1995 CSXT URCS), Mr. Plaistow computed the URCS switching cost at the full cost level (excluding ROI) and discussed full costs in his text (at 15).

2.- Use of CSXT URCS rather than Conrail URCS or CSXT/Conrail combined URCS. Mr. Plaistow's use of the 1997 CSXT URCS is not relevant for either historical pre-acquisition costs or post-acquisition costs. As of 1997, the Bronx and Queens area is part of Conrail territory, not CSXT territory. In the future it will be CSXT/Conrail territory.

3.- Treatment of ROI. In his 12/10/98 Exhibit No. (JJP-6), Mr. Plaistow *excludes* ROI, whereas in his 1/7/99 Exhibit No. (JJP-6) he *includes* ROI. The ROI amount is CSXT 1997 historical, and hence does not reflect the post-acquisition investment base of the combined CSXT-Conrail.

4.- System average versus site specific costs. URCS costs necessarily reflect system average unit costs and service units. Only a special switching study, as provided for in the STB's Decision No. 109 will produce location specific costs.

## MR. GILMORE'S COST ANALYSES

CP witness Paul D. Gilmore, at Exhibit 1 of his January 7, 1999 RVS, presents what he purports to be an analysis of "the cost of moving a representative boxcar (of news print) from Montreal to New York City using the trackage rights awarded by the Board and assuming a \$0.71 per car mile charge" compared to the cost of this same movement "if CP were to use its CSX haulage rights for the movement" (Gilmore RVS at 3). This analysis and comparison is shown at page 1 of his Exhibit 1. Mr. Gilmore then makes the same comparison using a \$0.36 per car mile charge at page 3 of his Exhibit 1. Pages 2 and 4 of Mr. Gilmore's Exhibit 1 purport to set forth the assumptions used in the analyses presented on pages 1 and 3 respectively.

I have several observations at the outset of my analysis of Mr. Gilmore's Exhibit 1. First, Mr. Gilmore does not explain or justify why the trackage rights versus haulage (actually, according to Potter VS Exhibit 3 in CSX-167, independent rate-making authority over an interline movement) comparisons he shows are relevant in terms of CP's competitive position in the market he addresses. As I see it, Mr. Gilmore's comparisons are between two alternative internal options CP might exercise to handle the traffic. His comparisons say nothing about how either one of the options would stack up competitively against another railroad or mode of transportation for the same movement - - either in terms of cost, or trip time, or level of service. Second, upon reviewing the numerical content of Mr. Gilmore's Exhibit 1 together with the associated electronic spreadsheet, I find that there are no workpapers showing the derivation of the unit costs used; the derivation of some of the service units to which they are applied is also lacking. Third, even taking Mr. Gilmore's Exhibit 1 amounts at face value, the trackage rights charge he addresses represents a small portion of the total movement cost and the difference introduced by \$0.71 vs. \$0.36 per car-mile is even smaller, representing only about five percent of the total movement cost.



Turning to the numerology of Exhibit 1, "Grand Total Costs" are the sum of "Train Costs" (which reflect line haul activities) and "Terminal Charges" (which reflect switching activities). The costs Exhibit 1 develops in both of these areas contain errors which render the comparisons meaningless, even for the purposes claimed. In the subsections below, I describe the errors I have identified in each of these areas and then show their combined impact. Lacking workpapers showing the derivation of Exhibit 1 unit costs, I have been unable to determine if further errors lurk in the unit costs.

#### Errors in Development of Line Haul Costs

Mr. Gilmore's categorization of line haul cost components (which are referred to in Exhibit 1 as "Train Costs") is somewhat different from those used in URCS, which makes item-by-item comparisons difficult. Even using the Exhibit 1 cost component groupings, however, I have found various computational errors in the comparative development of line haul costs. These include: (a) computation of labor fringes; (b) locomotive cost calculations; and (c) GTM-based calculations.

Computation of labor fringes: The first lines of pages 2 and 4 of Exhibit 1 show "Round Trip" (with a value of 2), "Wages", "cars per train", and "Fringe Rate". The "Labor" cost on pages 1 and 3 is computed on a per car basis as "Wages" divided by "cars per train" times "Round Trip". The spreadsheet computation multiplies this amount by the "Fringe Rate". So far, so good. However, to calculate the "Fringe" amount on pages 1 and 3, the spreadsheet computation then also doubles this amount, apparently to take into account the empty return, or "Round Trip". In so doing, the spreadsheet computation has double counted the round trip as far as "Fringes" is concerned. This error affects each route segment of pages 1 and 3 except the Selkirk-New York route segment column of the CSXT Haulage option. The error is highlighted when one observes that, for each affected route segment, the "Fringe" amount exceeds the "Labor" amount. The impact of correcting this error is to reduce total trackage rights

option costs by [\$\$\$ ] per car and haulage option costs by [\$\$\$ ] per car<sup>12</sup>.

The net impact is to reduce trackage rights option costs vis-a-vis haulage option costs by \$10.16 per car.

Locomotive cost calculations: The problem here is changing computation procedures in midstream. Costs for "Locomotives" are included for the Montreal-Saratoga, Saratoga-New York, and Montreal-Selkirk route segments. For two of these route segments the computation is shown as "Loco cost/mile" times "Total Miles" times "Round Trip". However, in the third column the computation is "HP" times "HPH Rate" times "Locomotive Hours" times "Round Trip" divided by "cars per train". This latter formulation produces a higher locomotive cost than the one used for the other two route segments. Correcting the aberrant formulation to conform to the loco cost used elsewhere reduces total costs for the trackage rights option by \$36.19 per car.

GTM-based calculations: Here, although I have insufficient information to make corrections, the values shown are mutually inconsistent. Therefore, the costs developed based on them contain consequent errors. To demonstrate, the distances ("Total Miles") and "GTMiles" values by route segment shown on pages 2 and 4 of Exhibit 1 are as follows: Montreal-Saratoga [ [ [ ] ] ] total miles and [ [ [ ] ] ] GTMiles; Saratoga-New York [ [ [ ] ] ] total miles and [ [ [ ] ] ] GTMiles; and Montreal-Albany [ [ [ ] ] ] total miles and [ [ [ ] ] ] GTMiles. It is maddeningly strange that the GTMiles for Saratoga-New York and Montreal-Albany are exactly the same, while the total miles for one route segment are 50% longer than the other route segment. Equally strange, the GTMiles for Montreal-Saratoga are less than the GTMiles for Saratoga-New York - - but the Montreal-Saratoga distance is greater than the Saratoga-New York distance.

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<sup>12</sup> Since Exhibit 1 is labeled Highly Confidential, computations deriving these amounts and others in this section of my VS are shown in my workpapers, rather than being presented in the text of or an exhibit to this VS.

### Errors in Development of Terminal Costs

Mr. Gilmore's categorization of switching activities and costs (which are referred to in Exhibit 1 as "Terminal Charges") permits more ready comparison with those in URCS than is the case for line haul costs. Therefore, in evaluating the appropriateness of Exhibit 1 unit costs per switching event, I have first referred to those in URCS. Unit costs per switching event in URCS are computed as the number of minutes required to perform the switching activity involved times the cost per switch engine minute. For purposes of evaluating "Terminal Charges", I have compared them to those stated in the 1995 URCS of: (a) the SOO Line Railroad Company, CP's US Class I railroad entity<sup>13</sup>; and (b) Conrail. These comparisons are shown on Exhibit WWW - 31<sup>14</sup>.

Reviewing the Exhibit WWW - 31 comparisons, one can see that the cost per industry switch per Exhibit 1 is approximately the same as for Conrail, but is only 40% of the cost for SOO. For Inter & Intra train ("I & I") switches, the URCS cost per event is one-fourth the cost of an industry switch, but Exhibit 1 uses an I & I switch cost equal to its industry switch cost. Exhibit 1 provides no cost per interchange switch, even though, as will be seen below, an interchange event needs to be taken into account in the trackage rights option versus haulage option costing comparisons. Given these anomalies and shortcomings in the Exhibit 1 switching costs, together with the close conformance of the Exhibit 1 industry switch charge to that of Conrail, I have imputed the Conrail interchange switch cost and I & I switch cost to the activities of Exhibit 1 in the corrections that follow.

Turning to the switching activities identified and costed on Exhibit 1, I find the following. First, the haulage option will require an interchange switch between CP and

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<sup>13</sup> The Delaware and Hudson Railway Company ("D & H") is not a Class I U. S. carrier.

<sup>14</sup> Exhibit WWW - 31 contains highly confidential material. Therefore, there is both a redacted and a highly confidential version.

CSX at Selkirk. The CSX side of the interchange switch should already be accounted for in what Mr. Gilmore calls the haulage rate, but the CP side of the interchange is not. Exhibit 1 does not include any amount for this activity. Second, the URCS cost per switch event reflects one instance of the activity by one railroad. To take into account handling of the empty car associated with the loaded movement, the cost per event must be multiplied by the empty-to-loaded ratio. The Exhibit 1 "Terminal Costs" only include one switch event in each instance, and hence do not include the empty return movement. Exhibit 1 uses a "Round Trip" factor of 2, which equates to 100% empty return, or an empty/loaded factor of 2. However, in the case of the \$250 reciprocal switch charge, which Exhibit 1 uses for the trackage rights option, reciprocal switching charges cover both placing (or spotting) the load and pulling the empty; therefore one doesn't need to incorporate empty return for that situation.

To correct the "Terminal Charges" portion of the Exhibit 1 comparisons, I have incorporated the omitted switching events identified above and have used Conrail URCS variable costs per switching event where noted. These corrections increase the trackage rights option cost by [\$\$\$ ] per car and the so-called haulage option cost by [\$\$\$ ] per car. The net impact is to reduce trackage rights option costs vis-a-vis haulage option costs by \$33.94 per car.

#### Restatement of Exhibit 1

On Exhibit WWW - 32<sup>15</sup>, I have restated the \$0.71 per car mile charge portion of Mr. Gilmore's Exhibit 1 to incorporate the corrections identified above, where I was able to quantify them. As I have mentioned above, Exhibit 1 does not include workpapers showing the derivation of unit costs which would permit me to check for other errors.

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<sup>15</sup> Exhibit WWW - 32 contains highly confidential material. Therefore, there is both a redacted and a highly confidential version.



As a consequence of the corrections shown on Exhibit WWW - 32, the comparative outcome is reversed. At page 3 of his RVS Mr. Gilmore states that, with a \$0.71 per car mile charge, "the trackage rights movement would be approximately \$53 more expensive for CP than the haulage movement". In fact, however, Exhibit WWW - 32 demonstrates that the trackage rights movement, again with a \$0.71 per car mile charge, would be about \$27 less expensive than the haulage movement (\$53 - \$10.16 - \$36.19 - \$33.94).

### Empty Return Ratios

I have also briefly considered the fact that Exhibit 1 uses a "Round Trip" value of 2, which builds in the assumption that there is no opportunity for a loaded movement in the reverse direction. To evaluate the reasonableness of this assumption, especially in the case of box car traffic, I have reviewed empty return ratios from the Conrail URCS for potentially relevant equipment types. These are listed below. The empty return ratio is computed as one plus the ratio of empty carmiles ("CM") to loaded carmiles for the equipment type in question ( $1.0 + (\text{empty CM}/\text{loaded CM})$ ). Hence an 100% empty return situation would produce a ratio of 2.0.

<u>Equipment Type</u>	<u>Empty/Loaded Ratio</u>			<u>URCS Source</u>
	<u>1995</u>	<u>1996</u>	<u>1997</u>	
Box Car - 50 ft.	1.506	1.517	1.462	WT E2 Part 1, L.102, C. 4
Box Car - Equipped	2.025	2.023	2.003	WT E2 Part 1, L.103, C. 4
Flat Car - TOFC	1.053	1.052	1.054	WT E2 Part 1, L.111, C. 4
Average freight car	1.649	1.634	1.621	WT E2 Part 1, L.118, C. 4

In addition, the Conrail average number of trailer or container units ("TCU's") per flat car is shown as 1.777 (WT E2 Part 2, L.202, C. 1) in each of 1995, 1996, and 1997.

These empty return ratios illustrate that a loaded movement in the reverse direction is a frequent occurrence for equipment types that might be used on the route studied by Mr. Gilmore. To the extent that such a loaded move in the reverse direction is associated with the representative boxcar movement of Exhibit 1, the cost per car computed in that exhibit is substantially overstated. This overstatement occurs because most of the costs in Exhibit 1 are doubled to reflect the assumption that the loaded move from Montreal to New York City must generate sufficient revenues to cover return of the boxcar to Montreal empty.

# VERIFICATION

I, William W. Whitehurst, Jr., declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file this statement.

William W. Whitehurst Jr  
William W. Whitehurst, Jr.

Executed on: JANUARY 26, 1999

**Exhibits to  
WHITEHURST R.V.S.**

***PUBLIC VERSION***



**Correction of Plaistow Exhibit No. (JJP-2.4) for  
Erroneous Treatment of Switching Charges and Inflation Adjustment**

Entire Movement											Trackage Rights Line Segment			
Line No.	Description	No. of Movements (2)	Adjusted Revenues (3)	Adjusted Variable Costs (4)	Full Costs (5)	Conrail	Full Cost	20.60%	Adj Cost Excl ROI & Switching (9)	Total Adjusted Earnings (10)	Earnings on Trackage Rights Excl Switching (11)	Switching for CP at \$250/Car Terminal Switch Fee on 30% of Moves (12)	Adjusted Earnings (13)	Car Miles (14)
						Switching Costs on 30% of Moves (6)	Net of CRC Switching on 30% of Moves (7)	ROI Incl in Full Cost Net of Switching (8)			Switching	Switching	Switching	
							(5) - (6)	(8)	(7) - (8)	(3) - (9)			(11) - (12)	
			(g)	(h)	(i)	(j)			(k)	(l)	(n)	(o)	(p)	
1	Plaistow Exhibit No. (JJP-2.4) Overhead Movements Over STB Granted Trackage Rights Territory <sup>1</sup>	232	\$ 50,913,300	\$ 33,754,794	\$ 48,497,551	\$ 136,302	\$ 48,361,249	\$ 9,963,430	\$ 38,397,819	\$ 12,515,481	\$ 562,019	\$ 399,011	\$ 163,008	1,297,368
2	Correction of Switching Cost to Restore Actual CRC URCS Cost in Lieu of CP's Proposed "Terminal Switch Fee" of \$250 per car <sup>2</sup>							\$ 136,302 * \$ 562,019 / \$ 12,515,481 =	\$ 6,121	⇒	6,121	399,011	(392,890)	
3	Correction of Inflation <sup>3</sup>										99,324	0	99,324	
4	Overhead Moves with CRC Switch Charge and Inflation Adjustment Corrected (L.1 - L.2 - L.3)										\$ 456,574	\$ 0	\$ 456,574	1,297,368
5	Total Increased by Projected Traffic Growth (8%)												\$ 493,100	1,297,368

<sup>1</sup> Source: CP-28, Plaistow Reconsideration Verified Statement, Revised Exhibit No. (JJP-2.4), page 6.

<sup>2</sup> With regard to switching costs, Mr. Plaistow arrived at Adjusted Earnings for the trackage rights line segment by subtracting from costs the 1995 CRC URCS fully-allocated terminal switching cost of \$85.40 on 30% of the traffic for the entire movement and substituting a proposed switching fee of \$250 per car on 30% of the movements over trackage rights. In order to restore costs to the procedure used in the STB Costed Waybill Sample, we: (1) deducted the \$250 per car switching fee inserted by Mr. Plaistow; and, (2) added back the CRC URCS fully-allocated terminal switching cost of \$85.40 on 30% of the entire movement. Then, following the procedure by which Mr. Plaistow applied a mileage pro-rate to develop the amount applicable to "East-of-the-Hudson," we calculated the CRC switching cost adjustment in column 11 from line 5 amounts as: CRC switching cost adjustment \* trackage rights pro-rate, or (col. 6 \* col 11 / col 10), or  $(\$136,302 * \$562,019 / \$12,515,481) = \$6,121$ .

<sup>3</sup> Correction to Mr. Plaistow's calculation of inflation to apply to line segment earnings instead of line segment revenues.

Restatement of Revised Plaistow Exhibit No. (JJP-2.4)  
to Apply STB Costed Waybill Sample Revenue Apportionment Procedures to Total Revenues and Total Variable Costs,  
Selkirk/Chicago Line Apportionment Corrections,  
Switching Charge Corrections, and Inflation Adjustment Correction

Line No.	OFSAC (a)	TFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g) Note 2	Adjusted Variable Cost (h) Note 3	Trkg Rgts Miles (m) Note 4	Corrected Trackage Rights Segment Prorate					Car Miles (6) (e) * (m) * 2
										Adj Revenue (1) Note 5	Adj Variable Cost (2) Note 6	Conrail ROI <sup>1</sup> (3) (2) * 0.206	Conrail Full Cost (4) ((2)-(3)) * 1.43676	Conrail <sup>II</sup> Earnings (5) (1) - (4)	

Restatement of Revised Plaistow Exhibit No. (JJP-2.4)  
to Apply STB Costed Waybill Sample Revenue Apportionment Procedures to Total Revenues and Total Variable Costs,  
Selkirk/Chicago Line Apportionment Corrections,  
Switching Charge Corrections, and Inflation Adjustment Correction

Line No.	OFSAC (a)	IFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g) Note 2	Adjusted Variable Cost (h) Note 3	Trkg Rgts Miles (m) Note 4	Corrected Trackage Rights Segment Prorate					Car Miles (6) (e) * (m) * 2
										Adj Revenue (1) Note 5	Adj Variable Cost (2) Note 6	Conrail RQ1 (3) (2) * 0.206	Conrail Full Cost (4) ((2)-(3)) * 1.43676	Conrail Earnings (5) (1) - (4)	

Restatement of Revised Plaistow Exhibit No. (JJP-2.4)  
to Apply STB Costed Waybill Sample Revenue Apportionment Procedures to Total Revenues and Total Variable Costs,  
Selkirk/Chicago Line Apportionment Corrections,  
Switching Charge Corrections, and Inflation Adjustment Correction

Line No.	OFSAC (a)	TFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g) Note 2	Adjusted Variable Cost (h) Note 3	Trkg Rgts Miles (m) Note 4	Corrected Trackage Rights Segment Prorate					Car Miles (6) (e) * (m) * 2
										Adj Revenue (1) Note 5	Adj Variable Cost (2) Note 6	Conrail ROI <sup>1</sup> (3) (2) * 0.206	Conrail Full Cost (4) ((2)-(3)) * 1.43676	Conrail Earnings (5) (1) - (4)	



Restatement of Revised Plaistow Exhibit No. (JJP-2.4)  
to Apply STB Costed Waybill Sample Revenue Apportionment Procedures to Total Revenues and Total Variable Costs,  
Selkirk/Chicago Line Apportionment Corrections,  
Switching Charge Corrections, and Inflation Adjustment Correction

Line No.	OFSAC (a)	TFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g) Note 2	Adjusted Variable Cost (h) Note 3	Trkg Rgts Miles (m) Note 4	Corrected Trackage Rights Segment Prorate					Car Miles (6) (e) * (m) * 2
										Adj Revenue (1) Note 5	Adj Variable Cost (2) Note 6	Conrail ROI <sup>1</sup> (3) (2) * 0.206	Conrail Full Cost (4) ((2)-(3)) * 1.43676	Conrail Earnings (5) (1) - (4)	

Restatement of Revised Plaistow Exhibit No. (JJP-2.4)  
**to Apply STB Costed Waybill Sample Revenue Apportionment Procedures to Total Revenues and Total Variable Costs,**  
**Selkirk/Chicago Line Apportionment Corrections,**  
**Switching Charge Corrections, and Inflation Adjustment Correction**

Line No.	OFSAC (a)	TFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g) Note 2	Adjusted Variable Cost (h) Note 3	Trkg Rgts Miles (m) Note 4	Corrected Trackage Rights Segment Prorate					Car Miles (6) (e) * (m) * 2
										Adj Revenue (1) Note 5	Adj Variable Cost (2) Note 6	Conrail ROI <sup>1</sup> (3) (2) * 0.206	Conrail Full Cost (4) ((2)-(3)) * 1.43676	Conrail Earnings (5) (1) - (4)	

STB FD 33388 (Sub 69) 1-27-99 D 193162 2/4

Restatement of Revised Plaistow Exhibit No. (JJP-2.4)  
to Apply STB Costed Waybill Sample Revenue Apportionment Procedures to Total Revenues and Total Variable Costs,  
Selkirk/Chicago Line Apportionment Corrections,  
Switching Charge Corrections, and Inflation Adjustment Correction

Line No.	OFSAC (a)	TFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g) Note 2	Adjusted Variable Cost (h) Note 3	Trkg Rgts Miles (m) Note 4	Corrected Trackage Rights Segment Prorate					Car Miles (6) (e) * (m) * 2
										Adj Revenue (1) Note 5	Adj Variable Cost (2) Note 6	Conrail ROI (3) (2) * 0.206	Conrail Full Cost (4) ((2)-(3)) * 1.43676	Conrail Earnings (5) (1) - (4)	



Restatement of Revised Plaistow Exhibit No. (JJP-2.4)  
to Apply STB Costed Waybill Sample Revenue Apportionment Procedures to Total Revenues and Total Variable Costs,  
Selkirk/Chicago Line Apportionment Corrections,  
Switching Charge Corrections, and Inflation Adjustment Correction

Line No.	OFSAC (a)	TFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g) Note 2	Adjusted Variable Cost (h) Note 3	Trkg Rgts Miles (m) Note 4	Corrected Trackage Rights Segment Prorate					Car Miles (6) (e) * (m) * 2
										Adj Revenue (1) Note 5	Adj Variable Cost (2) Note 6	Conrail ROI <sup>1</sup> (3) (2) * 0.206	Conrail Full Cost (4) ((2)-(3)) * 1.43676	Conrail Earnings (5) (1) - (4)	
232	Total	xxx		297,710.4	14,217	1,025,879	\$ 47,141,945	\$ 32,648,700	45.8	2,999,017.90	1,838,227.52	378,713.24	2,096,971.83	902,046	1,323,433
	Total Increased by Projected Traffic Growth (8%)														974,210

<sup>1</sup> Conrail 1995 URCS Variable ROI ratio developed by Mr. Plaistow in Exhibit No. (JJP-2.4), footnote 3.

<sup>2</sup> 1995 Costed Waybill Sample Revenue times 4.461% inflation from 1995 to 1997.

<sup>3</sup> 1995 Costed Waybill Sample Variable Cost times 4.461% inflation from 1995 to 1997.

<sup>4</sup> Calculated on a probabilistic basis as 20% of Mr. Plaistow's mileage to Schenectady via Rensselaer + 80% of Mr. Plaistow's mileage to Stuyvesant (Selkirk Yard moves).

<sup>5</sup> For moves originating or terminating in the trackage rights segment, revenue prorate is calculated as:  $(g) * ((m)+100) / ((d)+200)$ .

For NYA overhead moves, trackage rights segment revenue prorate is calculated as:  $(g) * (m) / ((d)+200)$ .

<sup>6</sup> For moves originating or terminating in the trackage rights segment, variable cost prorate is calculated as:  $(h) * ((m)+100) / ((d)+200)$ .

For NYA overhead moves, trackage rights segment variable cost prorate is calculated as:  $(h) * (m) / ((d)+200)$ .

**CP Trackage Rights Mileages Over Conrail - Proceeding North-to-South  
Correction of Plaistow 01/07/99 Mileages**

Line No.	Locations		Source or Computation	Mile Posts		Mileage (4) - (5)
	From/To (1)	To/From (2)		From (4)	To (5)	
<b><u>North End (Albany Area) Mileages:</u></b>						
<b><u>Route 1</u></b>						
1	Schenectady (CP-160)	W. Albany	CRC Timetable - Chicago Line	159.9	146.9	13.0
2	W. Albany	Albany-Rensselaer	CRC Timetable - Chicago Line	146.9	142.1	4.8
3	Albany-Rensselaer	Albany	CRC Timetable - Hudson Line	142.1	140.5	1.6
4	Albany	Castleton-on-Hudson	CRC Track Chart - Hudson Line	140.5	134.4	6.1
5	Castleton-on-Hudson	Stuyvesant (CP-125)	CRC Track Chart - Hudson Line	134.4	125.6	8.8
6	CP Trackage Rights Mileage Granted		Sum(L.1 - L.5)			34.3
<b><u>Route 2</u></b>						
7	CP-VO	CP-SK	CRC Timetable - Selkirk Branch	22.2	11.5	10.7
8	CP-SK	Stuyvesant (CP-125)	CRC Timetable - Selkirk Branch	11.5	1.3	10.2
9	CP Trackage Rights Mileage Requested		Sum(L.7 - L.8)			20.9
<b><u>Route 3</u></b>						
10	CP Kenwood Yard	CP-SK	CP-24, Gilmore at p.2	7.1	0.0	7.1
11	CP-SK	Stuyvesant (CP-125)	CRC Timetable - Selkirk Branch	11.5	1.3	10.2
12	CP Trackage Rights Mileage Requested		Sum(L.10 - L.11)			17.3
<b><u>Stuyvesant to Poughkeepsie (Division Post with Metro-North)</u></b>						
13	Stuyvesant (CP-125)	Hudson	CRC Timetable - Hudson Line	125.6	114.5	11.1
14	Hudson	Poughkeepsie (Div Post)	CRC Timetable - Hudson Line	114.5	75.8	38.7
15	CP Trackage Rights Mileage Granted		Sum(L.13 - L.14)			49.8
<b><u>Metro-North Territory Mileages:</u></b>						
<b><u>Poughkeepsie to Oak Point Link - Metro-North Ownership</u></b>						
16	Poughkeepsie (Div Post)	Chelsea	CRC Track Chart - Hudson Line	75.8	61.4	14.4
17	Chelsea	Beacon	CRC Track Chart - Hudson Line	61.4	59.0	2.4
18	Beacon	Peekskill	Metro North Hudson Line	59.0	41.3	17.7
19	Peekskill	Tarrytown	Metro North Hudson Line	41.3	25.7	16.0
20	Tarrytown	Irvington	Metro North Hudson Line	25.3	22.7	2.6
21	Irvington	Yonkers	Metro North Hudson Line	22.7	15.2	7.5
22	Yonkers	Oak Point Link	R. P. Carey 01/17/99 Schematic	15.2	5.8	9.4
23	CP Trackage Rights Mileage over Metro-North		Sum(L.16 - L.22)			70.0
<b><u>South End Mileages:</u></b>						
<b><u>Oak Point Link to Oak Point Yard - State of New York Ownership</u></b>						
24	Oak Point Link	Oak Point Yard (Bronx)	CSX-167, Downing V.S.	3.8	0.7	3.1
<b><u>Oak Point Yard to Harlem River Trailvan Terminal</u></b>						
25	Oak Point Yard (Bronx)	Harlem River Terminal	CSX-167, Downing V.S.			1.0
<b><u>Oak Point Yard to Fresh Pond Junction (Freemont Industrial Branch)</u></b>						
26	Oak Point Yard (Bronx)	Fresh Pond Junction	CSX-167, Downing V.S.			7.6

## Restatement of Revised Plaistow Exhibit No. (JJP-2.4)

## to Correct Trackage Rights Mileages,

Apply STB Costed Waybill Sample Revenue Apportionment Procedures to Total Revenues and Total Variable Costs,  
Selkirk/Chicago Line Apportionment Corrections, Switching Charge Corrections, and Inflation Adjustment Correction

Line No.	OFSAC (a)	TFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g) Note 2	Adjusted Variable Cost (h) Note 3	Trkg Rgts Miles (m) Note 4	Corrected Trackage Rights Segment Prorate					Car Miles (6) (e) * (m) * 2
										Adj Revenue (1) Note 5	Adj Variable Cost (2) Note 6	Conrail ROI <sup>1</sup> (3) (2) * 0.206	Conrail Full Cost (4) ((2)-(3)) * 1.43676	Conrail Earnings (5) (1) - (4)	

Restatement of Revised Plaistow Exhibit No. (JJP-2.4)  
to Correct Trackage Rights Mileages,

Apply STB Costed Waybill Sample Revenue Apportionment Procedures to Total Revenues and Total Variable Costs,  
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Line No.	OFSAC (a)	IFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g) Note 2	Adjusted Variable Cost (h) Note 3	Trkg Rgts Miles (m) Note 4	Corrected Trackage Rights Segment Prorate					Car Miles (6) (e) * (m) * 2
										Adj Revenue (1) Note 5	Adj Variable Cost (2) Note 6	Conrail ROI <sup>1</sup> (3) (2) * 0.206	Conrail Full Cost (4) ((2)-(3)) * 1.43676	Conrail Earnings (5) (1) - (4)	



## Restatement of Revised Plaistow Exhibit No. (JJP-2.4)

## to Correct Trackage Rights Mileages,

Apply STB Costed Waybill Sample Revenue Apportionment Procedures to Total Revenues and Total Variable Costs,  
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Line No.	OFSAC (a)	IFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g) Note 2	Adjusted Variable Cost (h) Note 3	Trkg Rgts Miles (m) Note 4	Corrected Trackage Rights Segment Prorate					Car Miles (6) (e) * (m) * 2
										Adj Revenue (1) Note 5	Adj Variable Cost (2) Note 6	Conrail ROI <sup>1</sup> (3) (2) * 0.206	Conrail Full Cost (4) ((2)-(3)) * 1.43676	Conrail Earnings (5) (1) - (4)	

## Restatement of Revised Plaistow Exhibit No. (JJP-2.4)

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Line No.	OFSAC (a)	IFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g) Note 2	Adjusted Variable Cost (h) Note 3	Trkg Rgts Miles (m) Note 4	Corrected Trackage Rights Segment Prorate					Car Miles (6) (e) * (m) * 2
										Adj Revenue (1) Note 5	Adj Variable Cost (2) Note 6	Conrail ROI <sup>1</sup> (3) (2) * 0.206	Conrail Full Cost (4) ((2)-(3)) * 1.43676	Conrail Earnings (5) (1) - (4)	

## Restatement of Revised Plaistow Exhibit No. (JJP-2.4)

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Line No.	OFSAC (a)	IFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g) Note 2	Adjusted Variable Cost (h) Note 3	Trkg Rgts Miles (m) Note 4	Corrected Trackage Rights Segment Prorate					Car Miles (6) (e) * (m) * 2
										Adj Revenue (1) Note 5	Adj Variable Cost (2) Note 6	Conrail ROI <sup>1</sup> (3) (2) * 0.206	Conrail Full Cost (4) ((2)-(3)) * 1.43676	Conrail Earnings (5) (1) - (4)	

## Restatement of Revised Plaistow Exhibit No. (JJP-2.4)

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Line No.	OFSAC (a)	IFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g) Note 2	Adjusted Variable Cost (h) Note 3	Trkg Rgts Miles (m) Note 4	Corrected Trackage Rights Segment Prorate					Car Miles (6) (e) * (m) * 2
										Adj Revenue (1) Note 5	Adj Variable Cost (2) Note 6	Conrail ROI <sup>1</sup> (3) (2) * 0.206	Conrail Full Cost (4) ((2)-(3)) * 1.43676	Conrail Earnings (5) (1) - (4)	



Restatement of Revised Plaistow Exhibit No. (JJP-2.4)  
to Correct Trackage Rights Mileages,

Apply STB Costed Waybill Sample Revenue Apportionment Procedures to Total Revenues and Total Variable Costs,  
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Line No.	OFSAC	TFSAC	Switch Type	Total Distance	Carloads	Tons	Adjusted Revenue	Adjusted Variable Cost	Trkg Rgts Miles	Corrected Trackage Rights Segment Prorate					Car Miles
										Adj Revenue	Adj Variable Cost	Conrail ROI <sup>1</sup>	Conrail Full Cost	Conrail Earnings	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(m)	(1)	(2)	(3)	(4)	(5)	(6)
							Note 2	Note 3	Note 4	Note 5	Note 6	(2) * 0.206	((2)-(3)) * 1.43676	(1) - (4)	(e) * (m) * 2
232	Total			297,710.4	14,217	1,025,879	\$ 47,141,945	\$ 32,648,700	60.61	3,487,447.52	2,162,614.07	445,543.64	2,467,018.11	1,020,429	1,759,425
	Total Increase:1 by Projected Traffic Growth (8%)													1,102,064	

<sup>1</sup> Conrail 1995 URCS Variable ROI ratio developed by Mr. Plaistow in Exhibit No. (JJP-2.4), footnote 3.

<sup>2</sup> 1995 Costed Waybill Sample Revenue times 4.461% inflation from 1995 to 1997.

<sup>3</sup> 1995 Costed Waybill Sample Variable Cost times 4.461% inflation from 1995 to 1997.

<sup>4</sup> Calculated on a probabilistic basis as 20% of corrected mileage to Schenectady via Rensselaer + 80% of corrected mileage to Stuyvesant (Selkirk Yard moves).

<sup>5</sup> For moves originating or terminating in the trackage rights segment, revenue prorate is calculated as:  $(g) * ((m)+100) / ((d)+200)$ .

For NYA overhead moves, trackage rights segment revenue prorate is calculated as:  $(g) * (m) / ((d)+200)$ .

<sup>6</sup> For moves originating or terminating in the trackage rights segment, variable cost prorate is calculated as:  $(h) * ((m)+100) / ((d)+200)$ .

For NYA overhead moves, trackage rights segment variable cost prorate is calculated as:  $(h) * (m) / ((d)+200)$ .

Restatement of Revised Plaistow Exhibit No. (JJP-2.4)  
to Include Local Traffic, Correct Trackage Rights Mileages,  
Apply STB Costed Waybill Sample Revenue Apportionment Procedures to Total Revenues and Total Variable Costs,  
Selkirk/Chicago Line Apportionment Corrections, Switching Charge Corrections, and Inflation Adjustment Correction

Line No.	Switch		Total		Tons	Adjusted Revenue	Adjusted Variable Cost	Trkg Rgts Miles	Corrected Trackage Rights Segment Prorate					Car Miles
	OFSAC (a)	IFSAC (b)	Type (c)	Distance (d)					Adjusted Revenue (1)	Adj Variable Cost (2)	Conrail ROI <sup>1</sup> (3)	Conrail Full Cost (4)	Conrail Earnings (5)	
					(f)	(g) Note 2	(h) Note 3	(m) Note 4	Note 5	Note 6	(2) * 0.206	((2)-(3)) * 1.43676	(1) - (4)	(e) * (m) * 2
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Restatement of Revised Plaistow Exhibit No. (JJP-2.4)  
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Line No.	OFSAC (a)	TFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g) Note 2	Adjusted Variable Cost (h) Note 3	Trkg Rgts Miles (m) Note 4	Corrected Trackage Rights Segment Prorate					Car Miles (6) (e) * (m) * 2
										Adjusted Revenue (1) Note 5	Adj Variable Cost (2) Note 6	Conrail ROI <sup>1</sup> (3) (2) * 0.206	Conrail Full Cost (4) ((2)-(3)) * 1.43676	Conrail Earnings (5) (1) - (4)	
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Line No.	OFSAC (a)	TFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g) Note 2	Adjusted Variable Cost (h) Note 3	Trkg Rgts Miles (m) Note 4	Corrected Trackage Rights Segment Prorate					Car Miles (6) (e) * (m) * 2
										Adjusted Revenue (1) Note 5	Adj Variable Cost (2) Note 6	Conrail ROI <sup>1</sup> (3) (2) * 0.206	Conrail Full Cost (4) ((2)-(3)) * 1.43676	Conrail Earnings (5) (1) - (4)	
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Restatement of Revised Plaistow Exhibit No. (JJP-2.4)

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Line No.	OFSAC (a)	TFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g)	Adjusted Variable Cost (h)	Trkg Rgts Miles (m)	Corrected Trackage Rights Segment Prorate					Car Miles (6)
										Adjusted Revenue (1)	Adj Variable Cost (2)	Conrail ROI <sup>1</sup> (3)	Conrail Full Cost (4)	Conrail Earnings (5)	
							Note 2	Note 3	Note 4	Note 5	Note 6	(2) * 0.206	((2)-(3)) * 1.43676	(1) - (4)	(e) * (m) * 2
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Restatement of Revised Plaistow Exhibit No. (JJP-2.4)  
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Line No.	OFSAC (a)	TFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g) Note 2	Adjusted Variable Cost (h) Note 3	Trkg Rgts Miles (m) Note 4	Corrected Trackage Rights Segment Prorate					Car Miles (6) (e) * (m) * 2
										Adjusted Revenue (1) Note 5	Adj Variable Cost (2) Note 6	Conrail ROI <sup>1</sup> (3) (2) * 0.206	Conrail Full Cost (4) ((2)-(3)) * 1.43676	Conrail Earnings (5) (1) - (4)	
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Restatement of Revised Plaistow Exhibit No. (JJP-2.4)  
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Selkirk/Chicago Line Apportionment Corrections, Switching Charge Corrections, and Inflation Adjustment Correction

Line No.	Switch		Total		Tons	Adjusted Revenue	Adjusted Variable Cost	Trkg Rgts Miles	Corrected Trackage Rights Segment Prorate					Car Miles
	OFSAC	TFSAC	Type	Distance					Adjusted Revenue	Adj Variable Cost	Conrail ROI <sup>1</sup>	Conrail Full Cost	Conrail Earnings	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(m)	(1)	(2)	(3)	(4)	(5)	(6)
							Note 2	Note 4	Note 5	Note 6	(2) * 0.206	((2)-(3)) * 1.43676	(1) - (4)	(e) * (m) * 2
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Restatement of Revised Plaistow Exhibit No. (JJP-2.4)  
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Apply STB Costed Waybill Sample Revenue Apportionment Procedures to Total Revenues and Total Variable Costs,  
Selkirk/Chicago Line Apportionment Corrections, Switching Charge Corrections, and Inflation Adjustment Correction

Line No.	OFSAC	TFSAC	Switch Type	Total Distance	Carloads	Tons	Adjusted Revenue	Adjusted Variable Cost	Trkg Rgts Miles	Corrected Trackage Rights Segment Prorate					Car Miles
										Adjusted Revenue	Adj Variable Cost	Conrail ROI <sup>1</sup>	Conrail Full Cost	Conrail Earnings	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(m)	(1)	(2)	(3)	(4)	(5)	(6)
							Note 2	Note 3	Note 4	Note 5	Note 6	(2) * 0.206	((2)-(3)) * 1.43676	(1) - (4)	(e) * (m) * 2
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Restatement of Revised Plaistow Exhibit No. (JJP-2.4)  
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Apply STB Costed Waybill Sample Revenue Apportionment Procedures to Total Revenues and Total Variable Costs,  
Selkirk/Chicago Line Apportionment Corrections, Switching Charge Corrections, and Inflation Adjustment Correction

Line No.	DFSAC (a)	TFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g) Note 2	Adjusted Variable Cost (h) Note 3	Trkg Rgts Miles (m) Note 4	Corrected Trackage Rights Segment Prorate					Car Miles (6) (e) * (m) * 2
										Adjusted Revenue (1) Note 5	Adj Variable Cost (2) Note 6	Conrail ROI <sup>1</sup> (3) (2) * 0.206	Conrail Full Cost (4) ((2)-(3)) * 1.43676	Conrail Earnings (5) (1) - (4)	
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Restatement of Revised Plaistow Exhibit No. (JJP-2.4)  
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Line No.	OFSAC (a)	TFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g)	Adjusted Variable Cost (h)	Trkg Rgts Miles (m)	Corrected Trackage Rights Segment Prorate					Car Miles (6)
										Adjusted Revenue (1)	Adj Variable Cost (2)	Conrail ROI <sup>1</sup> (3)	Conrail Full Cost (4)	Conrail Earnings (5)	
							Note 2	Note 3	Note 4	Note 5	Note 6	(2) * 0.206	((2)-(3)) * 1.43676	(1) - (4)	(e) * (m) * 2
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Restatement of Revised Plaisiow Exhibit No. (JJP-2.4)  
to Include Local Traffic, Correct Trackage Rights Mileages,  
Apply STB Costed Waybill Sample Revenue Apportionment Procedures to Total Revenues and Total Variable Costs,  
Selkirk/Chicago Line Apportionment Corrections, Switching Charge Corrections, and Inflation Adjustment Correction

Line No.	OFSAC (a)	TFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g) Note 2	Adjusted Variable Cost (h) Note 3	Trkg Rgts Miles (m) Note 4	Corrected Trackage Rights Segment Prorate					Car Miles (6) (e) * (m) * 2
										Adjusted Revenue (1) Note 5	Adj Variable Cost (2) Note 6	Conrail ROI <sup>1</sup> (3) (2) * 0.206	Conrail Full Cost (4) ((2)-(3)) * 1.43676	Conrail Earnings (5) (1) - (4)	
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Restatement of Revised Plaistow Exhibit No. (JJP-2.4)  
to include Local Traffic, Correct Trackage Rights Mileages,

Apply STB Cost of Waybill Sample Revenue Apportionment Procedures to Total Revenues and Total Variable Costs,  
Selkirk/Chicago Line Apportionment Corrections, Switching Charge Corrections, and Inflation Adjustment Correction

Line No.	OFSAC (a)	IFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g)	Adjusted Variable Cost (h)	Trkg Rgts Miles (m)	Corrected Trackage Rights Segment Prorate					Car Miles (6)
										Adjusted Revenue (1)	Adj Variable Cost (2)	Conrail ROI <sup>1</sup> (3)	Conrail Full Cost (4)	Conrail Earnings (5)	
							Note 2	Note 3	Note 4	Note 5	Note 6	(2) * 0.206	((2)-(3)) * 1.43676	(1) - (4)	(e) * (m) * 2
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Restatement of Revised Plaistow Exhibit No. (JJP-2.4)  
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Apply STB Costed Waybill Sample Revenue Apportionment Procedures to Total Revenues and Total Variable Costs,  
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Line No.	OFSAC (a)	IFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g) Note 2	Adjusted Variable Cost (h) Note 3	Trkg Rgts Miles (m) Note 4	Corrected Trackage Rights Segment Prorate					Car Miles (n) (e) * (m) * 2
										Adjusted Revenue (1) Note 5	Adj Variable Cost (2) Note 6	Conrail ROI <sup>1</sup> (3) (2) * 0.206	Conrail Full Cost (4) ((2)-(3)) * 1.43676	Conrail Earnings (5) (1) - (4)	
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Restatement of Revised Plaistow Exhibit No. (JJP-2.4)  
to Include Local Traffic, Correct Trackage Rights Mileages,  
Apply STB Costed Waybill Sample Revenue Apportionment Procedures to Total Revenues and Total Variable Costs,  
Selkirk/Chicago Line Apportionment Corrections, Switching Charge Corrections, and Inflation Adjustment Correction

Line No.	OFSAC	TFSAC	Switch	Total	Carloads	Tons	Adjusted Revenue	Adjusted Variable Cost	Trkg Rgts Miles	Corrected Trackage Rights Segment Prorate					Car Miles
			Type	Distance						Adjusted Revenue	Adj Variable Cost	Conrail ROI <sup>1</sup>	Conrail Full Cost	Conrail Earnings	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(m)	(1)	(2)	(3)	(4)	(5)	(6)
							Note 2	Note 3	Note 4	Note 5	Note 6	(2) * 0.206	((2)-(3)) * 1.43676	(1) - (4)	(e) * (m) * 2
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Restatement of Revised Plaisiow Exhibit No. (JJP-2.4)  
to Include Local Traffic, Correct Trackage Rights Mileages,

Apply STB Costed Waybill Sample Revenue Apportionment Procedures to Total Revenues and Total Variable Costs,  
Selkirk/Chicago Line Apportionment Corrections, Switching Charge Corrections, and Inflation Adjustment Correction

Line No.	OFSAC (a)	TFSAC (b)	Switch Type (c)	Total Distance (d)	Carloads (e)	Tons (f)	Adjusted Revenue (g)	Adjusted Variable Cost (h)	Trkg Rgts Miles (m)	Corrected Trackage Rights Segment Prorate					Car Miles (6)
										Adjusted Revenue (1)	Adj Variable Cost (2)	Conrail ROI <sup>1</sup> (3)	Conrail Full Cost (4)	Conrail Earnings (5)	
							Note 2	Note 3	Note 4	Note 5	Note 6	(2) * 0.206	((2)-(3)) * 1.43676	(1) - (4)	(e) * (m) * 2
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Restatement of Revised Plaistow Exhibit No. (JJP-2.4)  
to Include Local Traffic, Correct Trackage Rights Mileages,  
Apply STB Costed Waybill Sample Revenue Apportionment Procedures to Total Revenues and Total Variable Costs,  
Selkirk/Chicago Line Apportionment Corrections, Switching Charge Corrections, and Inflation Adjustment Correction

Line No.	OFSAC	TFSAC	Switch Type	Total Distance	Carloads	Tons	Adjusted Revenue	Adjusted Variable Cost	Trkg Rgts Miles	Corrected Trackage Rights Segment Prorate					Car Miles
										Adjusted Revenue	Adj Variable Cost	Conrail ROI <sup>1</sup>	Conrail Full Cost	Conrail Earnings	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(m)	(1)	(2)	(3)	(4)	(5)	(6)
							Note 2	Note 3	Note 4	Note 5	Note 6	(2) * 0.206	((2)-(3)) * 1.43676	(1) - (4)	(e) * (m) * 2
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<b>Overall Total</b>			584	983.3	30,909	1,871,782	\$90,274,665.25	\$54,869,765.66	54.8	\$10,440,625.81	\$5,497,165.13	\$1,132,530.76	\$6,270,932.18	\$4,169,693.63	3,320,148
<b>Overall Total Increased by Projected Traffic Growth (8%)</b>														\$4,503,269.12	

<sup>1</sup> Conrail 1995 URCS Variable ROI ratio developed by Mr. Plaistow in Exhibit No. (JJP-2.4), footnote 3.

<sup>2</sup> 1995 Costed Waybill Sample Revenue times 4.461% inflation from 1995 to 1997.

<sup>3</sup> 1995 Costed Waybill Sample Variable Cost times 4.461% inflation from 1995 to 1997.

<sup>4</sup> Calculated on a probabilistic basis as 20% of corrected mileage to Schenectady via Rensselaer + 80% of corrected mileage to Stuyvesant (Selkirk Yard moves).

<sup>5</sup> For moves originating or terminating in the trackage rights segment, revenue prorate is calculated as:  $(g) * ((m)+100) / ((d)+200)$ .

For NYA overhead moves, trackage rights segment revenue prorate is calculated as:  $(g) * (m) / ((d)+200)$ .

<sup>6</sup> For moves originating or terminating in the trackage rights segment, variable cost prorate is calculated as:  $(h) * ((m)+100) / ((d)+200)$ .

For NYA overhead moves, trackage rights segment variable cost prorate is calculated as:  $(h) * (m) / ((d)+200)$ .



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LLP**

**ERIC VON SALZEN**  
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COLUMBIA SQUARE  
665 THIRTIETH STREET, NW  
WASHINGTON, DC 20004-1109  
TEL (202) 697-5600  
FAX (202) 697-6010

January 19, 1999

**BY TELECOPIER (202) 942-5999 AND FIRST CLASS MAIL**

Dennis G. Lyons, Esq.  
Arnold & Porter  
555 Twelfth Street, N.W.  
Washington, D.C. 20004-1206

**Re: Finance Docket No. 88388 (Sub No. 69), Responsive  
Application - State Of New York, By And Through Its  
Department Of Transportation, And The New York City  
Economic Development Corporation**

Dear Dennis:

This is in response to your January 15, 1999 letter inquiring about Mr. Plaistow's workpaper showing his calculation of the annuity of benefits in Line 5 of Revised Exhibit No. (JJP-2.2), CP-28.

With respect to the amounts shown in the "Benefits" column, Mr. Plaistow advises me that the principal reason for the difference between his numbers and those in your letter is that he used the original benefits from the Application, CSX/NS-18, Appendix A, for both CSX and NS and did not include the changes made by the NS errata (CSX/NS-35). Please see the enclosed workpaper, which incorporates the NS errata changes. There is still a slight difference between Mr. Plaistow's figure for Year 3 CSX benefits (\$429.3) and yours (\$426.3), which results in a comparable difference in the CSX+NS total for that year (\$979.246 v. \$976.2), and there is also a slight difference between his figure for Normal Year NS benefits (\$551.6) and yours (\$552.6), which does not result in any difference in the CSX+NS total. It is possible that your figures include typographical errors.

With respect to the interest rate, Mr. Plaistow advises me that the 12.2% interest rate was used in error. The enclosed workpaper corrects the calculation using an interest rate of 11.84%.

HOGAN & HARTSON LLP

Dennis G. Lyons, Esq.  
January 19, 1999  
Page 2

Canadian Pacific will reflect these corrections in a errata which we will file with our reply to CSX's motion for reconsideration.

Please call me if there is any further information that you require.

Sincerely,

Eric Von Salzen

EVS/cmd

Enclosure: As stated

cc: George W. Mayo, Jr., Esq.  
Mr. Joseph J. Plaistow

**Total Benefits**

Benefit Component:

Year			
One	Two	Three	Normal

Benefits		Annuity		Calculations	
Adjusted	As Reported	Adjusted	As Reported	Adjusted	As Reported

CSX / Conrail					1	337,504	184,452	883,488	783,242	6,865,743	5,777,801	NPV Bene
Total	385.5	533.6	645.3	851.8	2	740,582	547,800	883,488	783,242	6,865,743	5,777,801	NPV Annu
Shipper Logistics	188.0	188.0	188.0	188.0	3	978,248	938,287	883,488	783,242	11.84%	12.2%	AT COC
Highway Maintenance	50.0	50.0	50.0	50.0	4	957,417	909,453	883,488	783,242	883,488	783,242	Annuity
Adjusted Total	178.5	317.6	429.3	435.8	5	957,417	909,453	883,488	783,242			
					6	957,417	909,453	883,488	783,242			
NS / Conrail					7	957,417	909,453	883,488	783,242			
Total	223.9	598.6	769.6	771.2	8	957,417	909,453	883,488	783,242			
Shipper Logistics	27.8	73.7	92.1	92.1	9	957,417	909,453	883,488	783,242			
Competitive Pricing	24.8	65.6	82.0	82.0	10	957,417	909,453	883,488	783,242			
Highway Maintenance	19.7	38.4	45.5	45.5	11	957,417	909,453	883,488	783,242			
Adjusted Total	158.0	423.0	549.9	551.8	12	957,417	909,453	883,488	783,242			
					13	957,417	909,453	883,488	783,242			
Total CSX + NS	337.504	740.582	979.248	987.417	14	957,417	909,453	883,488	783,242			
					15	957,417	909,453	883,488	783,242			
					16	957,417	909,453	883,488	783,242			
					17	957,417	909,453	883,488	783,242			
					18	957,417	909,453	883,488	783,242			
					19	957,417	909,453	883,488	783,242			
					20	957,417	909,453	883,488	783,242			

Revised

Exhibit No. (JJP-2.2)

January 7, 1999

Page 1 of 1

**Development of Conrail System-Wide Earnings - 1997**

Based on STB Decision 109 - Finance Docket No. 33388

Component (1)	Source (2)	Value (000) (3)
1. Net Revenue from Railway Operations	1995 CR R-1, Sch 210, Line 15 (b)	\$ 446,154
2. Other Income		
a. Total Other Income	1995 CR R-1, Sch 210, Line 27 (b)	177,463
b. Revenue from property used in other than carrier operations	1995 CR R-1, Sch 210, Line 16 (b)	4,687
c. Other Income excluding non-carrier	Line 2(a) - Line 2(b)	172,776
3. Miscellaneous Deductions		
a. Total Miscellaneous Deductions	1995 CR R-1, Sch 210, Line 36 (b)	47,721
b. Expenses of property used in other than carrier operations	1995 CR R-1, Sch 210, Line 29 (b)	572
c. Miscellaneous Deductions excluding non-carrier	Line 3(a) - Line 3(b)	47,149
4. Adjusted Net Revenue	Line 1 + Line 2(c) - Line 3(c)	571,781
5. Annuity of Merger Benefits	1/	<del>783,242</del> 883,466
6. Total 1995 Conrail System Earnings	Line 4 + Line 5	\$ <del>1,355,023</del> 1,455,247
7. Index to 1997 using GDP-IPD	STB Decision No. 109	4.461%
8. Total 1997 Conrail System Earnings	Line 6 x Line 7	\$ <del>1,415,470</del> 1,520,166

1/ Benefits reported in RR Control Application FD 33388, Volume 1 of 8, Appendix A and Appendix B, excluding shipper logistics savings, highway maintenance savings and other benefits which would not accrue to the carriers. Annuity is based on 20 year stream of savings, 2.2% annual inflation and the 1997 after tax cost of capital for the railroad industry as published by the STB in Ex Parte No. 558.



Revised

Exhibit No. (JJP-2.3)

January 7, 1995

Page 1 of 1

**Development of Conrail Earnings Multiplier**

Based on STB Decision No. 109 - Finance Docket No. 33388

Component (1)	Source (2)	Value (000) (3)
1. Fair Market Value of Conrail	Revised Exhibit No. (JJP-2.1)	\$ 14,656,000
2. Conrail Earnings	Revised Exhibit No. (JJP-2.2)	<del>-1,415,470</del> 1,520,166
3. Earnings Multiplier	Line 1 + Line 2	<del>-10.35</del> 9.64

**Comparison of Pro Forma CSX and NS Earnings  
with Summary of Benefits Amounts by Year**

Line No.	Item (1)	Source or Computation (2)	Year 1 (3)	Year 2 (4)	Year 3 (5)	Normal Year (6)
<b><u>CSX Earnings</u></b>						
1	Annual Operating Benefits per Summary of Benefits <sup>1</sup>	CSX/NS-18 App A	\$ 179.5	\$ 317.6	\$ 429.3	\$ 435.8
2	Annual Pro Forma Operating Income Adjustments <sup>2</sup>	CSX/NS-18 App D	<u>30.0</u>	<u>150.0</u>	<u>281.0</u>	<u>303.0</u>
3	Summary of Benefits Over/(Under) Income Statements	L.1 - L.2	\$ 149.5	\$ 167.6	\$ 148.3	\$ 132.8
<b><u>NS Earnings (per Errata CSX/NS-35)</u></b>						
4	Annual Operating Benefits per Summary of Benefits <sup>1</sup>	CSX/NS-35 App B	\$ 158.0	\$ 423.0	\$ 549.9	\$ 551.6
5	Annual Pro Forma Operating Income Adjustments <sup>2</sup>	CSX/NS-35 App H	<u>(2.0)</u>	<u>257.0</u>	<u>381.0</u>	<u>384.0</u>
6	Summary of Benefits Over/(Under) Income Statements	L.4 - L.5	\$ 160.0	\$ 166.0	\$ 168.9	\$ 167.6
<b><u>CSX + NS Earnings</u></b>						
7	Annual Operating Benefits per Summary of Benefits <sup>1</sup>	L.1 + L.4	\$ 337.503	\$ 740.561	\$ 979.246	\$ 987.417
8	Annual Pro Forma Operating Income Adjustments <sup>2</sup>	L.2 + L.5	<u>28.000</u>	<u>407.000</u>	<u>662.000</u>	<u>687.000</u>
9	Summary of Benefits Over/(Under) Income Statements	L.7 - L.8	\$ 309.503	\$ 333.561	\$ 317.246	\$ 300.417

<sup>1</sup> Annual Net Operating Benefits (Net Revenue Gains + Operating Costs and Benefits), excluding Shipper Logistics Benefits, and Highway Maintenance Benefits, and Competitive Pricing Benefits.

<sup>2</sup> Annual Adjustments to Base Year Operating Income (Earnings Before Interest and Taxes).

**Restatement of Plaistow "Annuity of Merger Benefits"  
Using Pre-Tax Cost of Capital and Pro Forma Earnings**

Line No.	Item (1)	Annual Earnings		
		CSX Earnings Amount <sup>1</sup> (2)	NS Earnings Amount <sup>2</sup> (3)	CSX + NS Earnings 1995 Dollars (4) (2) + (3)
Assumed Conrail Earnings by Year Subsequent to Merger				
1	Year 1	\$ 30,000	\$ (2,000)	\$ 28,000
2	Year 2	150,000	257,000	407,000
3	Year 3	281,000	381,000	662,000
4	Year 4	303,000	384,000	687,000
5	Year 5	303,000	384,000	687,000
6	Year 6	303,000	384,000	687,000
7	Year 7	303,000	384,000	687,000
8	Year 8	303,000	384,000	687,000
9	Year 9	303,000	384,000	687,000
10	Year 10	303,000	384,000	687,000
11	Year 11	303,000	384,000	687,000
12	Year 12	303,000	384,000	687,000
13	Year 13	303,000	384,000	687,000
14	Year 14	303,000	384,000	687,000
15	Year 15	303,000	384,000	687,000
16	Year 16	303,000	384,000	687,000
17	Year 17	303,000	384,000	687,000
18	Year 18	303,000	384,000	687,000
19	Year 19	303,000	384,000	687,000
20	Year 20	303,000	384,000	687,000
21	Pre-Tax Cost of Capital incl State Tax			17.50%
22	Net Present Value of CSX + NS Earnings by year			\$ 2,990,632
23	Annual Annuity Payment Required to Produce Net Present Value			\$ 545,021

<sup>1</sup> CSX/NS-18, Appendix D, CSX/Conrail Pro Forma Income Statements, Annual Adjustments to Base Year Operating Income (Earnings Before Interest and Taxes) by year from Exhibit WWW - 25.

<sup>2</sup> CSX/NS-35 (Errata to Primary Application), Appendix D, NS/Conrail Pro Forma Income Statements, Annual Adjustments to Base Year Operating Income (Earnings Before Interest and Taxes) by year from Exhibit WWW - 25.

Development of Conrail 1997 Capitalized Earnings Multiplier  
Based on STB Decision No. 109 - Finance Docket No. 33388 (Sub-No. 69)  
And Annuity of 100% of CSX and NS Merger Earnings

Line No.	Description (1)	Source or Computation (2)	Value (000) (3)
1	Conrail 1995 System Earnings	STB Decision No. 109, p.10	\$ 571,781
2	Annuity of 100% of Merger Earnings	Exhibit WWW - 26	<u>545,021</u>
3	Conrail 1995 System Earnings plus Annuity of 100% of Merger Earnings	L.1 + L.2	\$ 1,116,802
4	Index from 1995 to 1997 using GDP Deflator	STB Decision No. 109	<u>4.461%</u>
5	Conrail 1995 System Earnings plus Annuity of 100% of Merger Earnings Indexed to 1997	L.3 * (1 + L.4)	\$ 1,166,622
6	Fair Market Value of Conrail	STB Decision No. 109, p.10, referencing CSX/NS-177, Exhibit WWW-5	\$ 14,656,000
7	Earnings Multiplier	L.6 / L.5	12.56



**Development of Conrail 1997 Capitalized Earnings Multiplier**  
**Based on STB Decision No. 109 - Finance Docket No. 33388 (Sub-No. 69)**  
**And Annuity of 50% of CSX and NS Merger Earnings**

Line No.	Description (1)	Source or Computation (2)	Value (000) (3)
1	Conrail 1995 System Earnings	STB Decision No. 109, p.10	\$ 571,781
2	Annuity of 50% of Merger Earnings	Exhibit WWW - 26 / 2	<u>272,510</u>
3	Conrail 1995 System Earnings plus Annuity of 50% of Merger Earnings	L.1 + L.2	\$ 844,291
4	Index from 1995 to 1997 using GDP Deflator	STB Decision No. 109	<u>4.461%</u>
5	Conrail 1995 System Earnings plus Annuity of 50% of Merger Earnings Indexed to 1997	L.3 * (1 + L.4)	\$ 881,955
6	Fair Market Value of Conrail	STB Decision No. 109, p.10, referencing CSX/NS-177, Exhibit WWW-5	\$ 14,656,000
7	Earnings Multiplier	L.6 / L.5	16.62

## Trackage Rights Rate per Car-Mile

Line No.	Item (1)	Source or Computation (2)	Plaistow (3)	Exhibit WWW - 28 (4)	Exhibit WWW - 29 (5)
1	1997 Trackage Rights Line Segment Earnings	Exhibit WWW - 22	\$ 1,102,064	\$ 1,102,064	\$ 1,102,064
2	Capitalized Earnings Multiplier	Exhibit WWW - 25 Exhibit WWW - 28 Exhibit WWW - 29	<u>9.64</u>	<u>12.56</u>	<u>16.62</u>
3	Capitalized 1997 Trackage Rights Line Segment Earnings	L.1 * L.2	\$ 10,623,897	\$ 13,841,924	\$ 18,316,304
4	1997 Pre-Tax Cost of Capital	Decision No. 109, p.11	<u>17.5%</u>	<u>17.5%</u>	<u>17.5%</u>
5	Annual Rental for Trackage Rights Line Segments	L.3 * L.4	\$ 1,859,182	\$ 2,422,337	\$ 3,205,353
6	Car Miles	Exhibit WWW - 22	<u>1,759,425</u>	<u>1,759,425</u>	<u>1,759,425</u>
7	Interest Rental Rate per Car-Mile	L.5 / L.6	\$ 1.057	\$ 1.377	\$ 1.822
8	"Below-the-Wheel" Cost per Car-Mile	WWW V.S of 01/07/99 page 4	<u>0.205</u>	<u>0.205</u>	<u>0.205</u>
9	Total Cost per Car-Mile	L.7 * L.8	<u>\$ 1.262</u>	<u>\$ 1.582</u>	<u>\$ 2.027</u>

**Comparison of Cost per Switching Event  
1995 SOO and Conrail URCS Costs vs. Gilmore Exhibit 1**

Source: STB 1995 Phase III URCS for SOO and Conrail

Line No.	Item	Source or Computation	SOO	Conrail	Gilmore Exhibit 1
	(1)	(2)	(3)	(4)	(5)
<u>SEM Cost incl GOH</u>					
1	OPR	WT E1L111C1	\$ 2.64066	\$ 3.43305	
2	DL	WT E1L111C2	0.16005	0.13905	
3	ROI	WT E1L111C3	<u>0.21768</u>	<u>0.35484</u>	
4	Total incl GOH	Sum(L.1 - L.3)	\$ 3.01839	\$ 3.92694	
<u>SEM per Switch Type</u>					
5	Industry Switch	WTE2L118C25	17.47245	5.91605	
6	Interchange Switch	WTE2L118C26	9.60985	3.25383	
7	I & I Switch	WTE2L118C29	4.36811	1.47901	
<u>SEM Cost incl GOH per Switch Type</u>					
8	Industry Switch	L.4 * L.5	\$ 52.74	\$ 23.23	\$[[[ ]]] <sup>1</sup>
9	Interchange Switch	L.4 * L.6	\$ 29.01	\$ 12.78	not shown
10	I & I Switch	L.4 * L.7	\$ 13.18	\$ 5.81	\$[[[ ]]] <sup>2</sup>

<sup>1</sup> Described on Exhibit 1 as an Origin Switch.

<sup>2</sup> Described on Exhibit 1 as an Intermediate Switch.

### Restatement of Gilmore Exhibit 1