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**SURFACE TRANSPORTATION BOARD**

ENTERED  
Office of the Secretary

**FINANCE DOCKET NO. 33388**

FEB 08 1999

Part of  
Public Record

**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)**

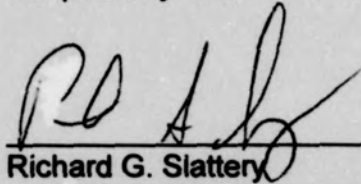
**RESPONSIVE APPLICATION – STATE OF NEW YORK, BY AND THROUGH ITS  
DEPARTMENT OF TRANSPORTATION, AND  
THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**

**AMTRAK'S MOTION FOR LEAVE TO FILE  
APPENDED VERIFIED STATEMENT OF  
RICHARD D. SIMONEN**

The National Railroad Passenger Corporation ("Amtrak") respectfully requests that it be permitted to file the appended Verified Statement of Richard D. Simonen. Amtrak leases from Conrail the line from Stuyvesant, NY to Schenectady, NY ("the Stuyvesant Schenectady Line") over which Canadian Pacific Railway Company or an affiliate ("CP") will operate as a result of the trackage rights at issue in this proceeding, and is the owner of another line segment, known as the Hell Gate Line, over which CP will also operate. The January 27, 1999 Reply to CP's Petition for Reconsideration (CSX-175) filed by CSX Corporation and CSX Transportation, Inc. ("CSX"), and the Reply Verified Statement of R. Paul Carey appended thereto, contain an extensive discussion of the relationship between Amtrak and the Consolidated Rail Corporation

("Conrail") with respect to the lease of the Stuyvesant-Schenectady Line that, among other things, includes erroneous information as to the compensation Conrail pays Amtrak under the terms of the lease between the parties. While Amtrak takes no position on the compensation issues in dispute between CSX and CP in this proceeding, it believes that the Board's acceptance of Mr. Simonen's verified statement would ensure that those issues are decided on the basis of an accurate factual record, and would enhance the Board's understanding of the lease between Amtrak and Conrail that CSX's reply filing has placed in issue.

Respectfully submitted,



Richard G. Slattery  
NATIONAL RAILROAD PASSENGER  
CORPORATION  
60 Massachusetts Avenue, N.E.  
Washington, D. C. 20002  
(202) 906-3987

Counsel for National Railroad  
Passenger Corp.

Dated: February 5, 1999

## VERIFIED STATEMENT OF

RICHARD D. SIMONEN

1. My name is Richard D. Simonen. I am Project Manager Contract Administration and Performance of the National Railroad Passenger Corporation ("Amtrak"). In that position, and in the other positions I have held since 1976, my responsibilities include administering various contracts between Amtrak and the Consolidated Rail Corporation ("Conrail").
2. Among the contracts I administer is the Amendment to Off Corridor Agreement between Amtrak and Conrail dated July 1, 1980 that was included in a recent filing (CSX-175) by CSX Corporation ("CSX") in this proceeding as an exhibit to the Reply Verified Statement of R. Paul Carey ("Carey R.V.S."). This contract, which Mr. Carey refers to as the "P-H Agreement", contains the use, maintenance and compensation terms agreed to by Amtrak and Conrail for their operations over Conrail-owned trackage between Poughkeepsie, NY and Hoffmans, NY, which is just west of Schenectady, NY. Among other things, the P-H Agreement provides that the portion of this trackage between Stuyvesant, NY and Schenectady, NY ("the Stuyvesant-Schenectady Line") will be leased to and maintained by Amtrak, with Conrail retaining the right to conduct its own freight operations.
3. At pages 5 and 7 of his reply verified statement, Mr. Carey states that Amtrak does not charge Conrail anything for Conrail's operations over the Stuyvesant-Schenectady Line. This is not correct. Under paragraphs 7 and 10 of the P-H Agreement, Conrail pays Amtrak a fixed amount per track mile,



which is adjusted annually for inflation, for its operations over the portions of the Stuyvesant-Schenectady Line over which it actually operates. Exhibit 1 to my verified statement contains the pertinent pages of a document, provided to me in the ordinary course of business by the Conrail accountant who is responsible for Amtrak monthly billings, which confirms (in the bottom right hand corner of the second page) that Conrail was obligated to pay Amtrak \$393,002 during fiscal year 1998 for its operations over the approximately 18 miles of the Stuyvesant-Schenectady Line on which Conrail presently operates.

4. If Conrail commences operations over additional portions of the Stuyvesant-Schenectady Line, paragraph 14 of the P-H Agreement requires it to make the same payment per track mile for these operations. In addition, as Mr. Carey indicates at page 7 of his reply verified statement, paragraph 11 of the P-H Agreement provides for Amtrak to receive unspecified additional compensation from Conrail if freight traffic over any portion of the Stuyvesant-Schenectady segment exceeds one million gross tons annually.
5. Therefore, CP's operations over portions of the Stuyvesant-Schenectady Line not currently used by Amtrak, and the additional freight traffic it will bring to the line, will entitle Amtrak to additional compensation under the P-H Agreement. As Mr. Carey notes (Carey R.V.S., pp. 5-6), CP's operations could also affect the compensation Amtrak pays CSX under the P-H Agreement for operations over one of the two tracks on the line segment between Poughkeepsie and Stuyvesant that is not leased to Amtrak. Mr.

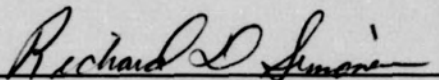
Carey acknowledges CSX's responsibility under the P-H Agreement for these payments/compensation adjustments, and CP is also responsible for them under the agreement in which Amtrak has consented to CP's operations over the Stuyvesant-Schenectady Line (and over the Hell Gate Line that I discuss below). I should note that it makes no difference to Amtrak whether, as an administrative matter, it receives payment from CSX or directly from CP. Amtrak also takes no position as to how compensation due Amtrak should affect the payments CP will make to CSX.

6. Mr. Carey is correct (Carey R.V.S., pp. 7-8) that CP's operations over the Stuyvesant-Schenectady Line could raise other issues affecting Amtrak. Amtrak stands ready to negotiate such issues with CSX and/or CP, and sees no need for Board intervention at this time.
7. I would also like to take this opportunity to correct two minor factual errors in the record in this proceeding, neither of which is material to any matter that needs to be resolved by the Board given the agreement that Amtrak has reached with CP. First, contrary to a statement that appeared in a CP filing (CP-25, Reply Verified Statement of Paul D. Gilmore, p. 4, n. 3), Amtrak, not Conrail, owns approximately four miles of track in New York City, much of which is located on the Hell Gate Bridge ("the Hell Gate Line"), that forms part of the route over which CP will operate to reach Fresh Pond Jct. Second, in Decision 109 at page 7, the Board stated that the portion of the Stuyvesant-Schenectady Line between Schenectady and the connection with the Hudson Line at Rensselaer is double track. The line between Schenectady and

Rensselaer is in fact single track at present, although Amtrak and the State of New York have plans to fund the installation of a second track.

# VERIFICATION

I, Richard D. Simonen, declare under penalty of perjury that the foregoing 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 Statement. Executed on February 5, 1999.

  
Richard D. Simonen



**EXHIBIT 1**

Poughkeepsie to Hoffmans

Flat Rate

EFFECTIVE JULY 1, 1997 - JUNE 30, 1998

<u>SEGMENTS</u>	<u>MAINTAINED BY</u>	<u>ANNUAL</u>	<u>MONTHLY</u>
1	CONRAIL	\$ 1,473,291	\$ 122,774
2	AMTRAK	\$ (167,329)	\$ (13,944)
3 & 4	AMTRAK	\$ (225,673)	\$ (18,806)
		<u>\$ (393,002)</u>	<u>\$ (32,750)</u>
		<u>\$1,080,289</u>	<u>\$ 90,024</u>

Flat Rate - Track Mtc. Exp. - Track No. 2 Solely Amtrak

\$ 88,251

SEGMENT 1



**POUGHKEEPSIE-HOFFMANS**  
EFFECTIVE JULY 1, 1997 - JUNE 30, 1998

AMENDMENT TO OFF-CORRIDOR OPERATING AGREEMENT, DATED JULY 1, 1980 AND NOTIFICATION LETTER DATED MAY 10, 1993  
REDESIGNATING NO. 2 TRACK AS SOLELY AMTRAK BETWEEN CP-124 (M.P. 123.8) AND CP-75 (M.P. 75.7) EFFECTIVE MAY 1, 1993

**FLAT RATE MAINTENANCE CHARGES PER TRACK MILE**  
(RATES ARE SUBJECT TO ADJUSTMENT ANNUALLY ON JULY 1, BY AAR INDICES)

SEGMENT	TRACK NO.	M.P.	M.P.	USAGE TRACK MILES		MAINTENANCE COST PER TRACK MILE		SPEEDS (MPH)		PAYMENT DUE CONRAIL OR (AMTRAK)	
				COMMON	SOLELY	MONTHLY	ANNUAL	0 - 70	71 - 110	MONTHLY	ANNUALLY
1	1	75.7	114.2 *	38.5							
		114.8	123.8	9.0							
				47.5		1,268	15,220		X	60,246	722,947
	2	75.7	123.8		48.1	1,835	22,017	X		88,251	1,059,013
		75.7	114.2 *		38.5	1,268	15,220		X	48,831	585,968
		114.8	123.8		9.0	1,268	15,220		X	11,415	136,980
		123.8	125.6	1.8		1,268	15,220		X	2,283	27,393
										62,529	750,343
										122,774	1,473,291
2	1	135.2	142.5	7.3				X			
	2	142.2	142.5	0.3				X			
				7.6		(1,835)	(22,017)	X		(13,844)	(167,329)
3 AND 4	7	146.2	156.45	10.25		(1,835)	(22,017)	X		(18,806)	(225,673)
POUGHKEEPSIE - HOFFMANS FLAT RATE										90,024	1,080,289
REFERENCES:										(32,750)	(393,002)

REFERENCES:

1. Amendment Agreement

- a. Item 7: Effective 7/1/80 annual maintenance \$10,900 per track mile for speeds up to 70 MPH.
- b. Item 8: Effective 7/1/80 annual maintenance \$7,535 per track mile for speeds 71 to 110 MPH.
- c. Item 9: Annual maintenance fee is subject to escalation effective July 1 annually with quarterly AAR Indices.

\* 2. Amendment Agreement - Exhibit 1

- a. Excludes 50 MPH curve between M.P. 114.0 and M.P. 114.8 (0.6 miles)

# CERTIFICATE OF SERVICE

I, Richard G. Slattery, certify that on February 5, 1999, I have caused to be served a copy of the foregoing Amtrak' Motion for Leave to File Appended Verified Statement of Richard D. Simonen upon the following parties, by first-class mail, postage prepaid, or by more expeditious means:

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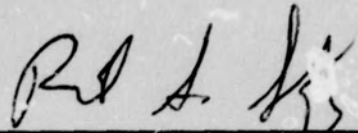
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The Honorable Jerrold Nadler  
U.S. House of Representatives  
Washington, DC 20515

  
Richard G. Clattery

STB FD 33388 (Sub 69) 2-5-99 I 193262

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**ARNOLD & PORTER**555 TWELFTH STREET, N.W.  
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February 5, 1999

DENNIS G. LYONS  
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DENVER  
LOS ANGELES  
LONDON**ENTERED**  
**Office of the Secretary**

FEB - 8 1999

**Part of**  
**Public Record**

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

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-176, "Motion of CSX Corporation and CSX Transportation, Inc. to Supplement the Record With Resepect to the Pending Petitions for Reconsideration," for filing in the above-referenced docket. Associated with this filing is a Verified Statement of William W. Whitehurst, Jr. Certain parts of the Whitehurst Verified Statement and its accompanying exhibits contain Highly Confidential information. They are included via a Highly Confidential complete version of CSX-176, submitted in a separate, sealed and appropriately labeled envelope.

The Motion contains an executed certificate of service; the Highly Confidential version 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 CSX-176 and the Whitehurst Verified Statement, plus the public, nonconfidential portion of the 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.

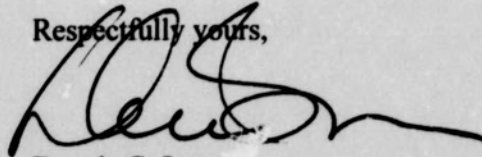


**ARNOLD & PORTER**

The Hon. Vernon A. Williams  
February 5, 1999  
Page 2

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

Respectfully yours,

A handwritten signature in dark ink, appearing to read 'D. Lyon', with a long, sweeping horizontal line extending to the right.

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

Enclosures  
*via hand delivery*

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



## SURFACE TRANSPORTATION BOARD

ENTREPRENEUR  
Office of the Secretary

FINANCE DOCKET NO. 33388

FEB - 8 1999

Part of  
Public Record

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

Motion of CSX Corporation and CSX Transportation, Inc.  
to Supplement the Record With Respect to the  
Pending Petitions for Reconsideration

## PUBLIC VERSION

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(904) 359-3100

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

February 5, 1999

**Motion of CSX Corporation and CSX Transportation, Inc.  
to Supplement the Record With Respect to the  
Pending Petitions for Reconsideration**

CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") respectfully move the Board to supplement the record with respect to the pending Petitions for Reconsideration in this matter filed by the Canadian Pacific Parties and by CSX, by filing the attached Verified Statement of William W. Whitehurst, Jr. The Motion concerns an aspect of the Reconsideration Reply Verified Statement of Joseph J. Plaistow attached to the "Canadian Pacific Parties' Reply in Opposition to CSX Petition for Reconsideration of Decision No. 109" (CP-29) (the "Plaistow R.R.V.S."), insofar as it recomputes the "interest rental" component of the trackage rights fee claimed to be appropriate for movements by CP using the trackage rights awarded to CP by the Board in Decision No. 109.

The basis of this Motion is that, without advising the Board in the Plaistow R.R.V.S., or in the 34-page narrative part of CP-29, Plaistow has arbitrarily changed the assumptions under which, in his earlier Verified Statements in CP-25 and CP-28, he calculated the expenses of Conrail in determining the segment net earnings of the line in the study year, 1995. In those two earlier statements, Plaistow did not assume that there would be an expense for interchange with other carriers in the Albany area on all movements over the trackage rights from the Albany area to New York City (or to other destinations in the CP-25 filing where they were involved). In his latest statement,

however, in CP-29, in each and every one of these movements, Plaistow has made an assumption — without foundation — that an interchange with another carrier occurred in the Albany area, and as a result a substantial item of expense for that interchange has been inserted in Plaistow's calculations. As stated above, no mention of this is made in his latest Verified Statement or in the narrative in CP-29. The effect of introducing these spurious costs is to increase segment expense, decrease net segment earnings, and thus decrease the segment cost value and, ultimately, the interest rental.

#### **DISCUSSION**

We are mindful that the Board's rules prohibit a reply to a reply. Accordingly, while there are many differences of approach and execution in the calculation of the appropriate trackage rights fee between the Verified Statements of William W. Whitehurst, Jr., in the CSX filings in this matter and those of Plaistow in the CP filings, we leave those open disagreements in the hands of the Board, since they have been fully presented and briefed and the differences in approach are manifest.

However, CSX believes that the covert introduction of a new factor into an expert's calculations — one not used in his earlier presentations and, indeed, one that has no basis in fact — is a tactic that should not be countenanced by the Board. Thus, we seek the Board's leave to introduce the attached Verified Statement of William W.

Whitehurst, Jr., which outlines what has occurred and the effect of it on Plaistow's calculations.

The Plaistow R.R.V.S. and related portions of CP-29 contain some seemingly candid passages in which Plaistow disclaims taking a possible aggressive position which would benefit his client. Thus, in CP-29 at 12, it is said that there might be a way of reducing the "below the wheel" costs alleged by CP from 13¢ a car-mile to 9¢ a car-mile, but that CP declines to make that request. Again, another *beau geste* is offered up in CP-29 at 15-17, where CP and Plaistow are faced with criticism of using the \$250 charge, which was originally proposed by CP as to what it would pay for switching, rather than Conrail's cost of switching, to compute Conrail's expenses on the segment. There, after a defense of the usage of the \$250 charge, it is said that instead of using \$250, Plaistow's calculations as revised and presented in CP-29 will employ as the switching charge cost to Conrail a cost of 150 percent of Conrail's system average switching cost.

While that revision in Plaistow's calculations — which happened to be against CP's interest — was very clearly presented as such in the CP-29 filing, Plaistow was making another change in his method of calculating Conrail's segment expenses in the base year 1995 about which no disclosure was made in the narrative or in the Plaistow R.R.V.S. Plaistow thus introduced in CP-29, for the first time, in every movement to and from the Albany area considered in his study, a cost for interchange between Conrail and another carrier, presumably in the Albany area. No such cost was applied in the earlier



Verified Statements in CP-25 and CP-28. In those prior statements, there was a straight mileage prorate of the variable costs of the entire movement from origin to destination.<sup>1</sup> In the calculations in CP-29, however, there was one full interchange event for all movements to the Bronx (as well as an origination and termination event), and two interchange events for all movements to Fresh Pond Junction. Unlike the change in costing for switching, this change in method was not identified in the text or in the written attachments to CP-29, including the Plaistow R.R.V.S.

The attached Verified Statement of William W. Whitehurst, Jr., made after a study of the Plaistow electronic workpapers, shows what Plaistow did in detail and indicates a quantification of the magnitude of this change in Plaistow's assumptions, undisclosed in the written filing of CP-29.

According to the Whitehurst Verified Statement (at 3-4), the total additional expenses associated with the segment for the base year as a result of this are \$690,329, and when adjusted to update them to 1997, \$721,125. That, of course, decreases segment earnings by a like amount. Even using Plaistow's multiplier of 5.33 times earnings — which, of course, is not the appropriate multiplier<sup>2</sup> — this causes a decrease of

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<sup>1</sup> See CP-25, Plaistow R.V.S. at 10 and Ex. JJP-2.4, p. 2; CP-28, Plaistow R.V.S. at 6 and Ex. JJP-2.4, p. 2. Thus, if there was an interchange elsewhere on the movement — say at the Chicago Gateway — a portion of its cost would be included in the CP-25 and CP-28 calculations, since a "mileage prorate" of costs was used, but the entire cost of the interchange would not be saddled onto the East of the Hudson segment.

<sup>2</sup> See CSX-175 at 5-11.

\$3,843,594 in the valuation of the segment and a decrease of the interest rental amounting to \$0.43 per car-mile. Whitehurst V.S. at 3-4. In other words, instead of the \$0.34 per car-mile trackage rights fee computed by Plaistow in CP-29, the reversal of Plaistow's new assumption would increase the trackage rights fee, even under the other assumptions and methods used by Plaistow which we have addressed in our earlier filings, to \$0.77 per car-mile.

Of course, any assumption that all of the movements on the line in question — or more than a small fraction of them — involve an interchange with other carriers in the Albany area is clearly incorrect. A major piece of the basic Conrail "X" of long-range lines goes through the Albany area. These include the Water Level Line from New York and Boston to Chicago and St. Louis, serving many major cities along the way and reaching two transcontinental gateways. The assumption implicit in Plaistow's earlier work — that the movements on the East of the Hudson Line were generally portions of larger movements on the Conrail system, not movements which came on line or went off line in the Albany area — was obviously correct. Just as no disclosure was made of the change in assumption in CP-29, no reason for the change in assumption was given.

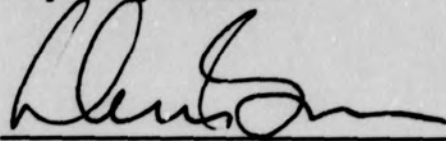
#### CONCLUSION

For the reasons stated — the undisclosed change in assumptions going to the calculation of the expense factor in the historical earnings of Conrail used for the



valuation of the line under the CE method — and the tacit representation in CP-29 that except where Plaistow's methodology was described as being changed, it remained the same — a distorted presentation has been silently inflicted on the Board. As a remedy, the attached Verified Statement of William W. Whitehurst, Jr. should be received in evidence as part of the record.

Respectfully submitted.



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(904) 359-3100

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

February 5, 1999

# **WHITEHURST VERIFIED STATEMENT**

*PUBLIC VERSION*

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, and a reply verified statement as part of the CSX Reply to the Canadian Pacific Parties' ("CP")<sup>1</sup> Petition for Reconsideration and Clarification of Decision No. 109, filed January 27, 1999.

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<sup>1</sup> Canadian Pacific Parties or 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.

I have been asked by CSX to analyze the Plaistow reconsideration reply verified statement ("RRVS") included in the Canadian Pacific Parties' Reply in Opposition to CSX Petition for Reconsideration of Decision No. 109 filing of January 27, 1999 in this FD No. 33388 (Sub-No. 69) proceeding. The purpose of my analysis was to identify any new factual errors introduced in Mr. Plaistow's RRVS which would have a significant impact on the amount of the trackage rights fee per car-mile he calculates in that RRVS. I have found numerous new factual errors in Mr. Plaistow's RRVS, at least four of which have a significant impact on the trackage rights fee per car-mile which he develops. Both trackage rights line segment earnings and the capitalized earnings ("CE") multiplier are affected by these errors. However, I have been requested to restrict my statement to those cases where Mr. Plaistow has taken a new approach in his calculations and there is no disclosure in his statement or exhibits or the narrative of the filing which reveals or suggests the change in methodology.

SIGNIFICANT NEW FACTUAL ERROR IN MR. PLAISTOW'S  
LINE SEGMENT EARNINGS CALCULATIONS

The most significant new factual error in Mr. Plaistow's development of line segment earnings, in terms of both railroad operations and dollar impact, is his inclusion of a nonexistent interchange event for each movement. Nowhere in either the text or the exhibits of his RRVS does Mr. Plaistow reveal that he has added an interchange which is not part of the pertinent route of movement of traffic over Conrail. Nor does the narrative portion of CP-29 contain any disclosure of this. It is only by detailed examination and analysis of Mr. Plaistow's electronic spreadsheet workpapers that I have identified these interchange events and the associated costs.

It appears that Mr. Plaistow is now viewing the trackage rights line segment as a separate railroad for purposes of his cost development and is introducing an



interchange at the point (presumably in the Albany area) where each movement enters or exits the line segment at the north end. This interchange is in addition to the interchange which occurs in the case of traffic handled to/from the NY&A. In other words, Mr. Plaistow assigns to every movement at least one interchange event; to movements involving the NY&A he assigns two interchange events (and, of course, URCS increases each interchange event by the empty return ratio).

Traffic movements over the Conrail line segment do not require an interchange at the north end. And, in fact, CP operating on trackage rights over the line segment would not have an interchange (with Conrail or anyone else) at the north end of the trackage rights line segment, though of course it is Conrail's costs and net earnings that are pertinent.

The procedure by which these nonexistent interchange events and their costs are included in the electronic worksheet Mr. Plaistow uses to calculate line segment earnings is outlined on Exhibit WWW - 33<sup>2</sup> to assist the Surface Transportation Board ("STB") in tracing the cost impact of this error. In contrast to the approach Mr. Plaistow takes in his January 27, 1999 RRVs, the electronic workpapers to his earlier statements applied a straight mileage prorate to the variable costs of the entire movement from origin to destination of each line item of the waybill sample he included in the traffic over the line segment.

On Exhibit WWW - 34<sup>3</sup>, I isolate the costs associated with these nonexistent interchange switch events which Mr. Plaistow has erroneously included in his development of line segment earnings. As shown, these erroneous costs amount to \$690,329. Consequently, Mr. Plaistow's line segment earnings are understated by this

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<sup>2</sup> Exhibit WWW - 33 contains highly confidential material. Therefore, there is both a redacted and a highly confidential version.

<sup>3</sup> Exhibit WWW - 34 contains highly confidential material. Therefore, there is both a redacted and a highly confidential version.

amount, even if no other errors are taken into account. **Brought to the bottom line, and accepting for the purpose of this quantification Mr. Plaistow's CE multiplier of 5.33, correcting this one error increases the interest rental and trackage rights fee by \$0.43 per car-mile**  $[(\$690,329) * (1.04461 \text{ inflation factor from 1995-to-1997}) * (5.33 \text{ earnings multiplier}) * (0.175 \text{ cost of capital}) / (1,567,112 \text{ car-miles})]$ .

Mr. Plaistow's line segment earnings amount of \$340,420 (in 1995 dollars), when corrected to eliminate nonexistent interchange switch events and associated costs is actually \$1,030,749  $(\$340,420 + \$690,329)$ , which (using Mr. Plaistow's earnings multiplier of 5.33) converts to a trackage rights interest rental fee of \$0.641 per car-mile<sup>4</sup> rather than the \$0.21 shown on his Exhibit No. (JJP-2.7). Hence, even using Mr. Plaistow's "below-the-wheel" cost of \$0.13 per car-mile, the resulting trackage rights fee is \$0.77 per car-mile.

As noted above, the foregoing is not the only factual error that Mr. Plaistow has introduced in his latest RRVS. But under the procedural constraints identified above, I do not address his other factual errors in this verified statement.

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<sup>4</sup>  $[(\$1,030,749) * (1.04461 \text{ inflation factor from 1995-to-1997}) * (5.33 \text{ earnings multiplier}) * (0.175 \text{ cost of capital}) / (1,567,112 \text{ car-miles})]$



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: February 4, 1999

**Inclusion of Interchange Switch Events and Costs  
In Exhibit No. (JJP-2.4)**

In Restated Exhibit No. (JJP-2.4), Mr. Plaistow provides the following explanation for the calculation in Column (10), "Segment Variable Cost," in the footnote:

"Column (3) x URCS Variable Cost Per Car where variable costs are calculated using Costed Waybill Sample procedures. I assumed switching costs 50% above system average, way train costs for the 53 mile CSX moves to Stuyvesant and through train costs for the 78.8 mile CP moves to Schenectady."<sup>1</sup>

In the workpapers to this exhibit, 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. The output variable costs for each movement (CSN.PRN) are the costs Mr. Plaistow uses and to which he refers as the variable costs "...calculated using Costed Waybill Sample procedures."

Each separate movement in Exhibit No. (JJP-2.4) has been costed as one of three URCS movement types (as shown on selected pages of Mr. Plaistow's CSX.TXT input file, attached):

- (1) "RT" (received/terminated);
- (2) "OD" (originated/delivered); or
- (3) "RD" (received/delivered).

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<sup>1</sup> Restated Exhibit No. (JJP-2.4) dated January 27, 1999, footnote for Column (10).

Movements costed as "RT" (received/terminated) are those movements identified in previous versions of Exhibit No. (JJP-2.4) as Switch Type "T" in column (c); that is, movements terminated in the trackage rights segment. Movements costed as "OD" (originated/delivered) are those movements previously identified as Switch Type "O" in column (c); that is, originated in the trackage rights segment. The remaining "RD" (received/delivered) movements were previously identified as Switch Type "NYA-T" or "NYA-O" in column (c) and represent movements that were interchanged with the NYA at Fresh Pond. According to the URCS Phase III User Manual in Section 2.2, "Type of Shipment," at pages 5 and 6, URCS costs each of the above movement types as follows:

RT	Received with <u>Interchange Switch</u> , Terminated with Industry Switch
OD	Originated with Industry Switch, Delivered with <u>Interchange Switch</u>
RD	Received with <u>Interchange Switch</u> , Delivered with <u>Interchange Switch</u>

Note that an Interchange Switch has been specified for and included with all movement costings (two Interchange Switches are included for "RD" movements transferred to or from NYA at Fresh Pond).

Since Mr. Plaistow costs each separate movement with a distance of either 53 miles to Stuyvesant or 78.8 miles to Schenectady, his implicit assumption is that each move represents the entire distance carried over Conrail with an assumed interchange with another carrier at either Stuyvesant or Schenectady. However, from workpaper evidence provided in his previous versions of Exhibit No. (JJP-2.4), this is not the case for these movements. Stuyvesant is solely on Conrail property and is not an interchange point with any other carrier, and Schenectady only connects with CP and/or DH.

Mr. Plaistow uses the following values in his costing for switching costs:

1. Conrail Cost per Switch Engine Minute("SEM")<sup>2</sup>:

OPR	\$3.4330
DL	0.1351
ROI	<u>0.3548</u>
Total	\$3.9239
Less: ROI	<u>0.3548</u>
OPR + DL	<u>\$3.5721</u>

Mr. Plaistow uses Conrail 1995 URCS costs per SEM in calculating the variable costs of the trackage rights segment movements. However, in correcting for the interchange switch overstatement, only the OPR + DL costs are corrected, since Mr. Plaistow has already removed ROI at the total variable cost level.

2. Switch Engine Minutes by Switch Type:

<u>Switch Type</u>	<u>Current Year Conrail SEM<sup>3</sup></u>	<u>Plaistow Increase Factor</u>		<u>Override SEM Input By Plaistow<sup>4</sup></u>	<u>URCS Override Parameter Code<sup>4</sup></u>
Industry Switch	5.91605	* 1.5	=	8.874075	39
Interchange Switch	3.25383	* 1.5	=	4.880745	40
I & I Switch	1.47901	* 1.5	=	2.218515	41

Mr. Plaistow increases the number of SEM required for each Industry, Interchange, and I&I switching event by 50%, and the URCS trackage rights line segment variable costs calculated reflect these higher values (as shown on Mr. Plaistow's inputs in CSX.TXT, attached).

<sup>2</sup> See Conrail 1995 URCS, worktable E1 Line 111 Columns 1, 2, and 3 (attached).

<sup>3</sup> Conrail 1995 URCS, worktable E2 Line 118, Columns 25, 26, and 29 (attached).

<sup>4</sup> Mr. Plaistow CSX.TXT input file (selected pages attached).



## OUTPUT UNIT COSTS

## UNIT COSTS FOR LINEHAUL, TERMINAL, CLERICAL AND SPECIAL SERVICE OPERATIONS

LINE	SERVICE UNIT	OPR EXPENSE UNIT COST (1)	DRL EXPENSE UNIT COST (2)	ROI EXPENSE UNIT COST (3)
101	GROSS TON MILE	0.00154425	0.00071817	0.00196636
102	CAR MILE-OTHER THAN CLERICAL	0	0	0
103	TRAIN MILE-OTHER THAN CREW	1.07298	0.00001	0.00002
104	TRAIN MILE-CREW	8.11776	XXXX	XXXX
105	LOCOMOTIVE UNIT MILE	1.8938	0.4758	0.4766
106	CLOR (CARLOADS HANDLED)-OTHER	0.6312	0.0000	0.0000
107	CLOR (CARLOADS HANDLED)-CLERICAL	0	XXXX	XXXX
108	CL ORIG OR TERMINATED-OTHER	0.00000	XXXX	XXXX
109	CL ORIG OR TERMINATED-CLERICAL	16.53700	XXXX	XXXX
110	CAR MILE-CLERICAL	0	XXXX	XXXX
111	SWITCH ENGINE MINUTES	3.4330	0.1391	0.3548
112	TON MILES IN LAKE TRANSFER SERVICE	0.0000	0.0000	0.0000
113	TONS HANDLED AT COAL TERMINALS	1.05452001	0.07183860	0.20524600
114	TONS HANDLED AT ORE TERMINALS	1.38690	0.03520	0.10057
115	TONS HANDLED AT OTHER MARINE TERMINALS	0.4727	0.0046	0.0253
116	REFRIGERATED CAR MILES	0.07893	XXXX	XXXX
117	PROTECTIVE SERVICE REEFER TCU DAYS	0.00000000	XXXX	XXXX
118	REFRIGERATED TCU DAYS	0.14779	1.51993	0.00273
119	OTHER (NON-REFRIGERATED) TCU DAYS	1.87704	5.95254	0.05158
120	TCU'S LOADED AND UNLOADED	23.53250	1.15289	1.50941
121	MVU'S LOADED AND UNLOADED	12.38810	XXXX	XXXX
122	TCU'S PICKED UP AND DELIVERED	83.22900	XXXX	XXXX



## WORKTABLE E2 PART 1 (CONTINUED)

LINE	CR		1995 URCS APPLICATION		6-Dec-96	
	CM PER INTRATERM SW (19)	CM PER INTERTERM SW (20)	CM PER I & I SW (21)	AVE CM(R) PER CD(R) (22)	AVE MILES BETWEEN I & I SW (23)	AVE MI B/ INTERCH EVENTS (24)
101	6.0	5.25	1.0	596.95	200.0	547.229
102	6.0	5.25	1.0	596.95	200.0	547.229
103	6.0	5.25	1.0	596.95	200.0	369.765
104	6.0	5.25	1.0	596.95	200.0	496.767
105	6.0	5.25	1.0	596.95	200.0	569.601
106	6.0	5.25	1.0	596.95	200.0	633.420
107	6.0	5.25	1.0	596.95	200.0	723.054
108	6.0	5.25	1.0	596.95	200.0	40600.301
109	6.0	5.25	1.0	596.95	200.0	544.949
110	6.0	5.25	1.0	596.95	200.0	655.879
111	6.0	5.25	1.0	596.95	200.0	1771.160
112	6.0	5.25	1.0	596.95	200.0	881.377
113	6.0	5.25	1.0	596.95	200.0	334.889
114	6.0	5.25	1.0	596.95	200.0	575.235
115	6.0	5.25	1.0	596.95	200.0	717.854
116	6.0	5.25	1.0	596.95	200.0	717.854
117	6.0	5.25	1.0	596.95	200.0	717.854
118	6.0	5.25	1.0	596.95	200.0	658.673

## WORKTABLE E2 PART 1 (CONTINUED)

LINE	CURRENT YR SEM PER INDUSTRY SW (25)	CURRENT YR SEM PER INTERCH SW (26)	CURRENT YR SEM PER INTRATER SW (27)	CURRENT YR SEM PER INTERTERM SW (28)	CURRENT YR SEM PER I & I SW (29)
101	5.91605	3.25383	8.87408	7.09926	1.47901
102	5.91605	3.25383	8.87408	7.09926	1.47901
103	5.91605	3.25383	8.87408	7.09926	1.47901
104	5.91605	3.25383	8.87408	7.09926	1.47901
105	5.91605	3.25383	8.87408	7.09926	1.47901
106	5.91605	3.25383	8.87408	7.09926	1.47901
107	5.91605	3.25383	8.87408	7.09926	1.47901
108	5.91605	3.25383	8.87408	7.09926	1.47901
109	5.91605	3.25383	8.87408	7.09926	1.47901
110	5.91605	3.25383	8.87408	7.09926	1.47901
111	5.91605	3.25383	8.87408	7.09926	1.47901
112	5.91605	3.25383	8.87408	7.09926	1.47901
113	5.91605	3.25383	8.87408	7.09926	1.47901
114	5.91605	3.25383	8.87408	7.09926	1.47901
115	5.91605	3.25383	8.87408	7.09926	1.47901
116	5.91605	3.25383	8.87408	7.09926	1.47901
117	5.91605	3.25383	8.87408	7.09926	1.47901
118	5.91605	3.25383	8.87408	7.09926	1.47901

OUTPUT FILE CSX.PRW  
OUTPUT DATA DELIMITED  
OUTPUT PARAMETERS RR MT DIS FC COM CNT  
OUTPUT VARIABLES 700

MT	RT
39	8.874
40	4.881
41	2.2185

Movement  
Type: RT

Industry Switch SEM Override

Interchange Switch SEM Override

I # I Switch SEM Override

REDACTED

REDACTED

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Page 6 of 8

REDACTED

Exhibit WWW-33  
Page 7 of 8

Movement  
Type = OD

8  
NT

REDACTED

REDACTED

Exhibit WWW-33  
Page 8 of 8

Movement  
Type = RD

MT RD

REDACTED



**Re-Computation of Trackage Rights Line Segment Earnings  
to Correct Interchange Switch Costs Error**

Exhibit WWW - 34  
Page 1 of 13  
Correction of Restated  
Exhibit No. (JJP-2.4)

**Restated Exhibit No. (JJP-2.4) dated January 27, 1999 (CP-29)**

<u>OFSAC</u>	<u>TFSAC</u>	<u>Cars</u>	<u>Tons</u>	<u>Waybill Revenue</u>	<u>Mile Blocks</u>	<u>O&amp;D Blocks</u>	<u>TR Blocks</u>	<u>Segment Revenue</u>	<u>Segment Variable Cost</u>	<u>Make Whole Adjustment</u>	<u>Total Variable Cost</u>	<u>ROI</u>	<u>Full Cost</u>	<u>Segment Earnings</u>	<u>Car Miles</u>
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
								(5)*(6)+(6+7)*1.08	URCS VC * (3)		(10) + (11)	(12) * 0.206	((12)-(13))*1.43676*1.08	(9) - (14)	M * (20) * (3)

REDACTED



**Re-Computation of Trackage Rights Line Segment Earnings  
to Correct Interchange Switch Costs Error**

Exhibit W.W. - 34  
Page 2 of 13  
Correction of Restated  
Exhibit No. (JJP-2.4)

**Restated Exhibit No. (JJP-2.4) dated January 27, 1999 (CP-29)**

<u>OFSAC</u>	<u>TFSAC</u>	<u>Cars</u>	<u>Tons</u>	<u>Waybill Revenue</u>	<u>Mile Blocks</u>	<u>O&amp;D Blocks</u>	<u>TR Blocks</u>	<u>Segment Revenue</u>	<u>Segment Variable Cost</u>	<u>Make Whole Adjustment</u>	<u>Total Variable Cost</u>	<u>ROI</u>	<u>Full Cost</u>	<u>Segment Earnings</u>	<u>Car Miles</u>
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
								(5)*(8)/(6+7)*1.08	URCS VC * (3)		(10) + (11)	(12) * 0.206	((12)-(13))*1.43676*1.08	(9) - (14)	M * (20) * (3)

REDACTED

**Re-Computation of Trackage Rights Line Segment Earnings  
to Correct Interchange Switch Costs Error**

Exhibit WWW - 34  
Page 3 of 13  
Correction of Restated  
Exhibit No. (JJP-2.4)

**Restated Exhibit No. (JJP-2.4) dated January 27, 1999 (CF-29)**

<u>OFSAC</u>	<u>TFSAC</u>	<u>Cars</u>	<u>Tons</u>	<u>Waybill</u>	<u>Mile</u>	<u>O&amp;D</u>	<u>TR</u>	<u>Segment</u>	<u>Segment</u>	<u>Make</u>	<u>Total</u>		<u>Full</u>	<u>Segment</u>	<u>Car</u>
<u>(1)</u>	<u>(2)</u>	<u>(3)</u>	<u>(4)</u>	<u>Revenue</u>	<u>Blocks</u>	<u>Blocks</u>	<u>Blocks</u>	<u>Revenue</u>	<u>Variable</u>	<u>Whole</u>	<u>Variable</u>	<u>ROI</u>	<u>Cost</u>	<u>Earnings</u>	<u>Miles</u>
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
								(5)*(6)+(6+7)*1.08	URCS VC * (3)		(10) - (11)	(12) * 0.266	((12)-(13))*1.43676*1.08	(9) - (14)	M * (20) * (3)

REDACTED

**Re-Computation of Trackage Rights Line Segment Earnings  
to Correct Interchange Switch Costs Error**

Exhibit WWW - 34  
Page 4 of 13  
Correction of Restated  
Exhibit No. (JJP-2.4)

**Restated Exhibit No. (JJP-2.4) dated January 27, 1999 (CP-29)**

<u>OFSAC</u>	<u>TFSAC</u>	<u>Cars</u>	<u>Tons</u>	<u>Waybill</u> <u>Revenue</u>	<u>Mile</u> <u>Blocks</u>	<u>O&amp;D</u> <u>Blocks</u>	<u>TR</u> <u>Blocks</u>	<u>Segment</u> <u>Revenue</u>	<u>Segment</u> <u>Variable</u> <u>Cost</u>	<u>Make</u> <u>Whole</u> <u>Adjustment</u>	<u>Total</u> <u>Variable</u> <u>Cost</u>	<u>ROI</u>	<u>Full</u> <u>Cost</u>	<u>Segment</u> <u>Earnings</u>	<u>Car</u> <u>Miles</u>
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
								(5)*(8)/(6+7)*1.08	URCS VC * (3)		(10) * (11)	(12) * 0.206	((12)-(13))*1.43676*1.08	(9) - (14)	M * (20) * (3)

REDACTED

**Re-Computation of Trackage Rights Line Segment Earnings  
to Correct Interchange Switch Costs Error**

Exhibit WWW - 34  
Page 5 of 13  
Correction of Restated  
Exhibit No. (JJP-2.4)

Restated Exhibit No. (JJP-2.4) dated January 27, 1999 (CP-29)

<u>OFSAC</u>	<u>TFSAC</u>	<u>Cars</u>	<u>Tons</u>	<u>Waybill</u>	<u>Mile</u>	<u>O&amp;D</u>	<u>TR</u>	<u>Segment</u>	<u>Segment</u>	<u>Make</u>	<u>Total</u>		<u>Full</u>	<u>Segment</u>	<u>Car</u>
<u>(1)</u>	<u>(2)</u>	<u>(3)</u>	<u>(4)</u>	<u>Revenue</u>	<u>Blocks</u>	<u>Blocks</u>	<u>Blocks</u>	<u>Revenue</u>	<u>Variable</u>	<u>Whole</u>	<u>Variable</u>	<u>ROI</u>	<u>Cost</u>	<u>Earnings</u>	<u>Miles</u>
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
								(5)*(8)/(6+7)*1.08	URCS VC * (3)		(10) + (11)	(12) * 0.206	((12)-(13))*1.43676*1.08	(9) - (14)	M * (20) * (3)

REDACTED



**Re-Computation of Trackage Rights Line Segment Earnings  
to Correct Interchange Switch Costs Error**

Exhibit WWW - 34  
Page 6 of 13  
Correction of Restated  
Exhibit No. (JJP-2.4)

Restated Exhibit No. (JJP-2.4) dated January 27, 1999 (CP-29)

<u>OFSAC</u>	<u>TFSAC</u>	<u>Cars</u>	<u>Tons</u>	<u>Waybill</u>	<u>Mile</u>	<u>O&amp;D</u>	<u>TR</u>	<u>Segment</u>	<u>Segment</u>	<u>Make</u>	<u>Total</u>		<u>Full</u>	<u>Segment</u>	<u>Car</u>
<u>(1)</u>	<u>(2)</u>	<u>(3)</u>	<u>(4)</u>	<u>Revenue</u>	<u>Blocks</u>	<u>Blocks</u>	<u>Blocks</u>	<u>Revenue</u>	<u>Variable</u>	<u>Whole</u>	<u>Variable</u>		<u>Cost</u>	<u>Earnings</u>	<u>Miles</u>
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
								(5)*(8)/(6+7)*1.06	URCS VC * (3)		(10) * (11)	(12) * 0.206	((12)-(13))*1.43676*1.08	(9) - (14)	Mi * (20) * (3)

Total T/O

Total NY&amp;A

Overall Total

13,140

944,560

40,740,600

\$4,463,224\$3,300,387\$45,908\$3,346,295\$689,337\$4,122,804\$340,4201,567,112

REDACTED



**Re-Computation of Trackage Rights Line Segment Earnings  
to Correct Interchange Switch Costs Error**

Exhibit WWW - 34  
Page 7 of 13  
Correction of Restated  
Exhibit No. (JJP-2.4)

**Correction of Restated Exhibit No. (JJP-2.4) to Exclude Interchange Switch Costs Erroneously Included**

OFSAC	TFSAC	Cars	Tons						SEM per Inter- change Event	URCS Unit Cost per SEM	Variable OPR+DL Cost per car for Interchange Switching	Line Segment Earnings				Segment Miles	Car Miles
				Car Owner	Car Type	Spot/ Pull Ratio	Empty Return Ratio	Empty Return Ratio				Interchange Cost included in Variable Cost	Interchange Cost included in Full Cost	Adjusted Full Cost excluding Interchange Cost	Adjusted Earnings excl Interchange Cost		
(1)	(2)	(3)	(4)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)	(25)	(26)	(27)	(28)	(29)	(30)
									CP Override	OPR+DL	(21)*(22)*(23)	(24) * (3)	(25) * 1.43676 * 1.08	(14) - (26)	(9) - (27)		(29) * (20) * (3)

REDACTED

**Re-Computation of Trackage Rights Line Segment Earnings  
to Correct Interchange Switch Costs Error**

Exhibit WWW - 34  
Page 8 of 13  
Correction of Restated  
Exhibit No. (JJP-2.4)

**Correction of Restated Exhibit No. (JJP-2.4) to Exclude Interchange Switch Costs Erroneously Included**

OFSAC (1)	TFSAC (2)	Cars (3)	Tons (4)					URCS per Inter- change Event (22)	SEM per Unit Cost per SEM (23)	Variable OPR+DL Cost per car for Interchange Switching (24)	Line Segment Earnings				Segment Miles (29)	Car Miles (30)
				Car Owner Ship (17)	Spot/ Pull Ratio (18)	CP Empty Return Ratio (19)	URCS Empty Return Ratio (20)				Interchange Cost included in Variable Cost (25)	Interchange Cost included in Full Cost (26)	Adjusted Full Cost excluding Interchange Cost (27)	Adjusted Earnings excl Interchange Cost (28)		
											(21)*(22)*(23)	(24) * (3)	(25) * 1.43676 * 1.08	(14) - (26)	(9) - (27)	(29) * (20) * (3)

REDACTED

**Re-Computation of Trackage Rights Line Segment Earnings  
to Correct Interchange Switch Costs Error**

Exhibit WWW - 34  
Page 9 of 13  
Correction of Restated  
Exhibit No. (JJP-2.4)

**Correction of Restated Exhibit No. (JJP-2.4) to Exclude Interchange Switch Costs Erroneously Included**

OFSAC (1)	TFSAC (2)	Cars (3)	Tons (4)	Car Owner Ship (17)	Car Type (18)	Spot/ Pull Ratio (19)	Empty Return Ratio (20)	URCS Empty Return Ratio (21)	SEM per Inter- change Event (22)	URCS Unit Cost per SEM (23)	Variable OPR+DL Cost per car for Interchange Switching (24)	Interchange Cost included in Variable Cost (25)	Interchange Cost included in Full Cost (26)	Adjusted Full Cost excluding Interchange Cost (27)	Adjusted Earnings excl Interchange Cost (28)	Segment Miles (29)	Car Miles (30)
									CP Override	OPR+DL	(21)*(22)*(23)	(24) * (3)	(25) * 1.43676 * 1.08	(14) - (26)	(9) - (27)		(29) * (20) * (3)

REDACTED

### Re-Computation of Trackage Rights Line Segment Earnings to Correct Interchange Switch Costs Error

Exhibit WWW - 34  
Page 10 of 13  
Correction of Restated  
Exhibit No. (JJP-2.4)

**Correction of Restated Exhibit No. (JJP-2.4) to Exclude Interchange Switch Costs Erroneously Included**

OFSAC	TFSAC	Cars	Tons	Car Owner Ship	Car Type	CP Pull Ratio	CP Return Ratio	URCS Empty Return Ratio	SEM per Inter-change Event	URCS Unit Cost per SEM	Variable OPR+DL Cost per car for Switching	Interchange Cost included in Variable Cost	Interchange Cost included in Full Cost	Adjusted Full Cost excluding Interchange Cost	Adjusted Earnings excl Interchange Cost	Segment Miles	Car Miles
(1)	(2)	(3)	(4)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)	(25)	(26)	(27)	(28)	(29)	(30)
									CP Override	OPR+DL	(21)/(22)*(23)	(24) * (3)	(25) * 1.43676 * 1.08	(14) - (26)	(9) - (27)		(25) * (30) * (3)

REDACTED



**Re-Computation of Trackage Rights Line Segment Earnings  
to Correct Interchange Switch Costs Error**

Exhibit WWW - 34  
Page 11 of 13  
Correction of Restated  
Exhibit No. (JJP-2.4)

**Correction of Restated Exhibit No. (JJP-2.4) to Exclude Interchange Switch Costs Erroneously Included**

Correction of Released Exhibit No. 100-427 to Exhibit 100-427, which changes Exhibit 100-427 to Exhibit 100-427																	
OFSAC	TFSAC	Car	Tons	Line Segment Earnings										Segment Miles	Car Miles		
				Car Owner Ship	Car Type	CP Spot/Pull Ratio	CP Empty Return Ratio	URCS Empty Return Ratio	SEM per Inter-change Event	URCS Unit Cost per SEM	Variable OPR+DL Cost per car for Interchange Switching	Interchange Cost included in Variable Cost	Interchange Cost included in Full Cost			Adjusted Full Cost excluding Interchange Cost	Adjusted Earnings excl Interchange Cost
(1)	(2)	(3)	(4)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)	(25)	(26)	(27)	(28)	(29)	(30)
									CP Override	OPR+DL	(21)*(22)*(23)	(24) * (3)	(25) * 1.43676 * 1.08	(14) - (26)	(9) - (27)		(29) * (20) * (3)

REDACTED



**Re-Computation of Trackage Rights Line Segment Earnings  
to Correct Interchange Switch Costs Error**

Exhibit WWW - 34  
Page 12 of 13  
Correction of Restated  
Exhibit No. (JJP-2.4)

Correction of Restated Exhibit No. (JJP-2.4) to Exclude Interchange Switch Costs Erroneously Included															
				Line Segment Earnings											
OFSAC	TFSAC	Cars	Tons	Car	Spot/	CP	URCS	SEM	URCS	Variable	Interchange	Interchange	Adjusted Full	Adjusted	
(1)	(2)	(3)	(4)	Owner	Car	Pull	Empty	per	Unit	OPR+DL Cost	Cost	Cost	Cost excluding	Earnings excl	Segment
				Ship	Type	Ratio	Ratio	Inter-	Cost	per car for	included in	included in	Cost	Cost	Miles
				(17)	(18)	(19)	(20)	change	per	Interchange	Variable Cost	Full Cost	Cost	Cost	(29)
								Event	SEM	Switching	(25)	(26)	(27)	(28)	(30)
								(22)	(23)	(24)	(25)	(26)	(27)	(28)	(30)
								CP Override	OPR+DL	(21)*(22)*(23)	(24) * (3)	(25) * 1.43676 * 1.98	(14) - (26)	(9) - (27)	(29) * (20) * (3)
Total T/O															
Total NY&A															
Overall Total		13,140	944,560								444,885.67	690,329.46	3,432,474.49	1,030,749.22	1,567,112

REDACTED

**Re-Computation of Trackage Rights Line Segment Earnings  
to Correct Interchange Switch Costs Error**

Exhibit WWW - 34  
Page 13 of 13  
Correction of Restated  
Exhibit No. (JJP-2.4)

**Restated Exhibit No. (JJP-2.4) dated January 27, 1999 (CP-29)**

OFSAC	TFSAC	Cars	Tons	Waybill Revenue	Mile Blocks	O&D Blocks	TR Blocks	Segment Revenue	Segment Variable Cost	Make Whole Adjustment	Total Variable Cost	ROI	Full Cost	Segment Earnings	Car Miles
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
								(5)*(8)/(6+7)*1.06	URCS VC * (3)		(10) + (11)	(12) * 0.206	((12)-(13))*1.43676*1.06	(9) - (14)	M * (20) * (3)

**Sources:**

- Column (1): Extracted from 1995 STB Costed Waybill for all movements originating or terminating on Trackage Rights Line Segment
- Column (2): Extracted from 1995 STB Costed Waybill for all movements originating or terminating on Trackage Rights Line Segment
- Column (3): Extracted from 1995 STB Costed Waybill for all movements originating or terminating on Trackage Rights Line Segment
- Column (4): Extracted from 1995 STB Costed Waybill for all movements originating or terminating on Trackage Rights Line Segment
- Column (5): Extracted from 1995 STB Costed Waybill for all movements originating or terminating on Trackage Rights Line Segment
- Column (6): Total Movement Miles + 100 rounded up to nearest whole number
- Column (7): One each for origin and destination
- Column (8): Trackage Rights Line Segment Mileage + 100 rounded up to nearest whole number + 1 for origination/termination
- Column (9): (Column (8) + (Column (6) + Column (7))) x STB Costed Waybill Revenue x (1 + Estimated Traffic Growth Rate of 8%)
- Column (10): Column (3) x URCS Variable Cost Per Car where variable costs are calculated using Costed Waybill Sample procedures. I assumed switching costs 50% above system average, way train costs for the 53 mile CSX moves to Stuyvesant and through train costs for the 78.8 mile CP moves to Schenectady.
- Column (11): Applied STB Make Whole Adjustment for 1995 to Line Segment Movements
- Column (12): Column (10) + Column (11)
- Column (13): Column (12) x 20.6%
- Column (14): (Column (12) - Column (13)) x 1.43176 x (1 + Estimated Traffic Growth Rate of 8%)
- Column (15): Column (9) - Column (14)
- Column (16): 78.8 Miles x 1995 Empty Return Ratio x Column (3) for CP moves. CSX moves use 53 miles.
- Column (17): Extracted from 1995 STB Costed Waybill for all movements originating or terminating on Trackage Rights Line Segment
- Column (18): Extracted from 1995 STB Costed Waybill for all movements originating or terminating on Trackage Rights Line Segment
- Column (19): STB 1995 URCS national values.
- Column (20): STB 1995 Conrail rounded URCS values used by Mr. Plaistow.
- Column (21): STB 1995 Conrail values used in URCS variable cost calculations.
- Column (22): Switch Engine Minutes (SEM) per Interchange Switch used by Mr. Plaistow in batch URCS run (Conrail 1995 URCS value \* 1.5).
- Column (23): STB 1995 Conrail variable OPR + DL costs per SEM used in URCS variable cost calculations. ROI costs were removed by Mr. Plaistow in column (13), so only the OPR + remain to be adjusted out.
- Column (24): Column (21) x Column (22) x Column (23). 1995 Conrail variable OPR + DL Interchange Switch costs per car included in URCS variable cost calculations.
- Column (25): Column (24) x Column (3). 1995 Conrail variable OPR + DL Interchange Switch costs for the movement included in Mr. Plaistow's variable cost calculations.
- Column (26): Column (25) x 1.43676 x (1 + Estimated Traffic Growth Rate of 8%). 1995 Conrail variable OPR + DL Interchange Switch costs for the movement included in Mr. Plaistow's cost calculations.
- Column (27): Column (14) - Column (26). Mr. Plaistow's full cost adjusted for Interchange Switch cost erroneously included in total.
- Column (28): Column (9) - Column (27). Mr. Plaistow's earnings adjusted for Interchange Switch cost erroneously included in total.
- Column (29): Trackage rights line segment miles used for each movement - 78.8 miles for CP moves to Schenectady and 53 miles for CSX moves to Selkirk.
- Column (30): Column (29) x Column (20) x Column (3). Car miles for each movement.

REDACTED

## **CERTIFICATE OF SERVICE**

I, Dennis G. Lyons, certify that on February 5, 1999, I have caused to be served a true and correct copy of the foregoing CSX-176, "Motion of CSX Corporation and CSX Transportation, Inc. to Supplement the Record With Respect to the Pending Petitions for Reconsideration," to the following parties,\* by first-class mail, postage prepaid, or by more expeditious means:

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---

\* The Highly Confidential Version is being served on those counsel who we understand have executed the "Highly Confidential" undertaking. The Public Version is being served on the other counsel. If parties receiving the Highly Confidential Version wish also to have the Public Version, the undersigned should be contacted.

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The Honorable Jerrold Nadler  
U.S. House of Representatives  
Washington, D.C. 20515



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DENNIS G. LYONS

STB

FD

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(Sub 69)

1-27-99

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Office of the Secretary

JAN 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'**  
**MOTION TO EXCEED PAGE LIMIT**  
**ESTABLISHED UNDER 49 C.F.R. § 1115.3(d)**

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Hudson Railway Company Limited

January 27, 1999

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 --  
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'  
MOTION TO EXCEED PAGE LIMIT  
ESTABLISHED UNDER 49 C.F.R. § 1115.3(d)**

The Canadian Pacific Parties 1/ hereby petition for leave to exceed the 20-page limit established under 49 C.F.R. § 1115.3(d) for purposes of the Canadian Pacific Parties' Reply in Opposition to CSX Petition for Reconsideration of Decision No. 109. The three issues presented in the CSX petition, and in particular the complex matter of how the trackage rights charge for the east-of-the-Hudson trackage rights should be computed, require detailed response. CP was unable to address in full the

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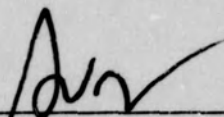
1/ "Canadian Pacific Parties" or "CP" refer collectively to Canadian Pacific Railway Company, Delaware and Hudson Railway Company Inc., Soo Line Railroad Company and St. Lawrence & Hudson Railway Company Limited.



matters that needed to be addressed within the 20 pages allotted under the Board's regulations.

Accordingly, CP requests Board authority to exceed the 20-page limit in its reply submission.

Respectfully submitted,



---

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Company Limited

January 27, 1999

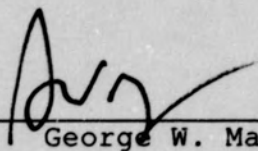
. . . .

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of January, 1999, I served by the means indicated below a copy of the foregoing Canadian Pacific Parties' Motion for Leave To Exceed Page Limit Established under 49 C.F.R. § 1115.3(d) 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)

  
\_\_\_\_\_  
George W. Mayo, Jr.

STB FD 33388 (Sub 69) 1-7-99 I 192940

192540  
HOGAN & HARTSON  
L.L.P.

0101499013  
January 7, 1999

GEORGE W. MAYO, JR.  
PARTNER  
DIRECT DIAL (202) 637-5679

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.  
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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

EE RECEIVED  
JAN 07 1999  
Dear Secretary Williams:  
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  
for Reconsideration and Clarification. Certain tables in the Gilmore  
and Plaistow Reconsideration Verified Statements being submitted  
herewith contain highly confidential information, and accordingly are  
being filed under seal in a separately marked envelope. 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

ENTERED  
Office of the Secretary

JAN 08 1999

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GWM:jms  
Enclosures  
cc: Counsel for Parties Required To Be Served

BRUSSELS LONDON MOSCOW PARIS\* PRAGUE WARSAW

BALTIMORE, MD BETHESDA, MD COLORADO SPRINGS, CO DENVER, CO McLEAN, VA

\\DC - 66673/1 - 0377213.19

\*Affiliated Office



192940

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 --  
COM RAIL 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 FOR RECONSIDERATION AND CLARIFICATION**

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**FILED**

07 1999

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TRANSPORTATION BOARD

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January 7, 1999

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### VERIFIED STATEMENTS

Paul D. Gilmore

Joseph J. Plaistow

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 --  
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 FOR RECONSIDERATION AND CLARIFICATION**

Pursuant to 49 C.F.R. §§ 1115.3 and 1117.1, the  
Canadian Pacific Parties 1/ hereby petition (1) for  
reconsideration of the \$0.71 per car mile trackage rights charge  
established by the Board in its Decision No. 109 (served December  
18, 1998) for CP operations over the CSX 2/ "east-of-the-Hudson"

---

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.

2/ CSX Corporation and CSX Transportation, Inc. are  
collectively referred to as "CSX". CSX will operate the subject  
east-of-the-Hudson line pursuant to an operating agreement with  
New York Central Lines LLC ("NYC"), which will acquire the line  
from Consolidated Rail Corporation ("Conrail"). "Primary  
applicants" refers collectively to CSX,, on the one hand, and

[Footnote continued]

line between Schenectady/Albany, NY, and Fresh Pond Junction, NY, and (2) for clarification of the scope of CP's rights to access customers and facilities located in the Bronx and Queens. For reasons explained below, the Board's decision involved material error, and that decision will be affected materially by new evidence and changed circumstances.

### **PREFACE AND SUMMARY OF ARGUMENT**

#### **(i) Reconsideration of Trackage Rights Charge.**

Through its adaptation of the SSW Compensation 3/ methodology to this proceeding, the Board has established an extraordinarily high trackage rights charge for CP's use of CSX's east-of-the-Hudson line. More than twice as high as charges freely negotiated between railroads acting at arms' length, the charge established by the Board is so high that it will defeat the pro-competitive objectives the Board sought to achieve in imposing the subject trackage rights.

Two factors are responsible for the trackage rights charge computed by the Board being inappropriately high. First,

---

[Footnote continued]

Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS"), on the other.

3/ St. Louis Southwestern Ry. Compensation -- Trackage Rights, 1 I.C.C.2d 776 (1984), 4 I.C.C.2d 668 (1987), 5 I.C.C.2d 525 (1989), 8 I.C.C.2d 80 (1991), 8 I.C.C.2d 213 (1991), aff'd without opinion, 978 F.2d 745 (D.C. Cir. 1992), cert. denied, 508 U.S. 951 (1993) (the "SSW Compensation cases").



the Board failed to take account of the fact that it limited CP's north-end trackage rights to the so-called Route 1 between Poughkeepsie and Schenectady, and further limited those rights to overhead traffic only. To adjust for these limitations, the line segment earnings used in the SSW Compensation calculation should reflect only those earnings on the CSX trackage over which CP would operate and exclude all north-end local traffic to which CP would not have access.

Second, the \$0.71 per car mile charge is derived from an application of the SSW Compensation methodology that fails to take account of the increased traffic volumes, improved efficiency, and other merger benefits that CSX and NS anticipate they will realize from their acquisition and division of Conrail. Clearly, CSX and NS did not pay over \$16 billion to acquire less than \$575 million of Conrail annual net revenues, but the 24.54 earnings multiplier that the Board used in its SSW Compensation calculation implicitly assumes that they did just that. The Board includes merger benefits in the numerator of its calculation (based on the market value paid by the primary applicants for Conrail, as allocated to road property), but excludes them from the denominator of this calculation (based exclusively on Conrail's pre-merger earnings, as allocated to road property). Not surprisingly, this fundamental inconsistency in approach produces a grossly inflated earnings multiplier.

The accompanying Plaistow Reconsideration Verified Statement applies the SSW Compensation formula to recalculate the CSX trackage rights charge to CP. In the recalculation, Mr. Plaistow appropriately accounts for the routing and overhead traffic limitations the Board has imposed on CP's east-of-the-Hudson trackage rights, makes adjustments for the important role of merger benefits in the Conrail transaction, and corrects those aspects of his earlier analysis that the Board criticized in Decision No. 109. The recalculated trackage rights charge developed by Mr. Plaistow is \$0.36 per car mile. This is the initial charge the Board should adopt to govern CP's operations over CSX's east-of-the-Hudson line. However, as Mr. Plaistow explains and the Board contemplated (Decision No. 109 at 11), this trackage rights charge should be adjusted periodically to reflect actual post-merger experience.

(ii) Clarification of Scope of Rights.

To avoid misunderstandings that might complicate future negotiations with CSX, CP requests that the Board state expressly that CP is entitled to direct access to all existing and future rail facilities and customers in the Bronx and Queens, including any facility CP may acquire or construct there, subject to payment of mutually agreeable compensation; this includes CP's entitlement to direct access to the Harlem River Yard (through which CP's trains pass moving to and from Oak Point Yard) to pick up, deliver and store cars and serve customers using the yard,

provided CP negotiates an arrangement with the yard's third-party operator. CP also requests that the Board state expressly that, to the extent the access described in the preceding sentence would require use of any CSX trackage or facilities, if CP is unable to negotiate acceptable compensation with CSX for such use, CP could obtain Board resolution of the compensation issue; the same would be true with respect to compensation for the New York & Atlantic Railway Company's use of Oak Point Yard.

### **ARGUMENT**

#### **I. TRACKAGE RIGHTS COMPENSATION SHOULD BE RECALCULATED**

In this proceeding, the Board is attempting "to restore to New York City some of the rail competition that was lost when Conrail was created" (Decision No. 109 at 6), by allowing CP to compete with CSX east of the Hudson River. To accomplish that purpose, the trackage rights fee that CP pays to CSX "must put [CP] in the same competitive position as [CSX]" for the traffic for which the two carriers are expected to compete. Id. at 8. The Board formulated the SSW Compensation methodology with the intent that, in application, it would establish a trackage rights charge that would do just that: Put the tenant carrier in the same competitive position as the owning carrier. 4/

However, the Conrail transaction is unique in terms of the acquisition premium associated with it and the manner in

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4/ SSW Compensation, 1 I.C.C.2d at 786.

which it was structured. No precedent establishes precisely how to apply the SSW Compensation formula under these circumstances.

In CP's reply submission, Mr. Plaistow proposed one way to reflect the significant features of the Conrail transaction in calculating a trackage rights charge. 5/ In Decision No. 109, the Board took issue with several elements of Mr. Plaistow's approach to this problem, and adopted a modified methodology. The result of the Board's modified methodology is a trackage rights charge more than twice as high as those typically negotiated between railroads, 6/ which would fundamentally undercut CP's ability to provide the competition that the Board seeks to restore in the east-of-the-Hudson market.

A. The Board's Calculation of Trackage Rights Compensation Is Materially Overstated

The trackage rights charge established by the Board is excessive. It fails to reflect the routing and traffic limitations that the Board's decision imposes on CP's trackage

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5/ In its opening submission, CP proposed that the trackage rights charge should be \$0.29 per car mile, based on the charge the primary applicants agreed to assess one another for trackage rights granted each other under their transaction agreement. Decision No. 109 at 2. CP submitted the SSW Compensation calculation of \$0.27 per car mile, developed by Mr. Plaistow, in its reply submission to rebut the condemnation methodology advocated by CSX and to confirm the reasonableness of CP's proposed charge. See CP-27.

6/ See CP-25, Plaistow R.V.S., Ex. No. JJP-3 (of 26 trackage rights charges cited, only one exceeds \$0.35 per car mile). As the Board is aware, CSX and NS negotiated a \$0.29 trackage rights fee to govern their grants of trackage rights to one another.



rights north of New York City, and it uses an earnings multiplier that does not properly account for the sizable merger benefits component of the price CSX and NS paid for the Conrail system.

Limitations on Trackage Rights. The line segment earnings employed in the Board's calculation are significantly overstated because they do not reflect the commercial limitations that the Board imposed on CP's east-of-the-Hudson trackage rights. The Board adopted the line segment earnings figure calculated by CP (\$592,490) 7/ (Decision No. 109 at 10), which was based on the full-service trackage rights and three north-end routes requested by CP. But in fact, the Board restricted the rights so that they are overhead only on CSX trackage north of New York City, and on the north end they extend only to the so-called Route 1 between Schenectady and Poughkeepsie (on which Amtrak is the predominant user) and not to the requested Routes 2 and 3. In essence, the Board required CP to compensate CSX for rights that the Board did not grant. 8/

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7/ The Board increased CP's figure for inflation using the 4.61% GDP deflator factor to derive a figure of \$618,921.

8/ The charge established by the Board requires CP effectively to subsidize CSX's local operations at the expense of CP's competitive overhead operations. This gives CSX a double competitive advantage over CP. CSX will enjoy line segment revenue and density from local operations, thereby reducing its unit costs, while CP must bear the full costs for its use of the track without these benefits. Yet CP will be required to pay CSX compensation based on the assumption that CP is in fact enjoying these benefits.



In the SSW Compensation cases, the Board 9/ made it clear that where it grants only overhead trackage rights, all local traffic must be excluded from the line segment earnings calculation. 4 I.C.C.2d at 684, 693-94. "[T]he value of bridge only rights is lower than total traffic rights;" it is improper "to require [a trackage rights tenant] to pay interest rental on rights it cannot exercise." Id. at 684.

Similarly, it is the earnings on the route over which trackage rights are granted that are relevant to establishing the charge for those rights; other routes and their associated earnings are irrelevant. See, e.g., 1 I.C.C.2d at 788-89; 4 I.C.C.2d at 684-86. Here, it is the earnings on Route 1 10/ and the CSX tracks in the New York City area over which CP is being granted trackage rights that should be considered; earnings on Routes 1 and 2, over which CP has not been granted trackage rights, should not be taken into account. 11/

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9/ References to the Board include its predecessor, the Interstate Commerce Commission.

10/ Conrail has leased to Amtrak that part of Route 1 between Schenectady and Stuyvesant, Amtrak is the predominant user of this leased line, and Conrail (as will CSX) conducts only local service operations over it. CP-25 at 9, 18 n.21 & Gilmore R.V.S. at 4. Accordingly, the earnings associated with this line segment are comparatively small.

11/ In its reply submission, CP did not focus specifically on the marginal earnings associated with this leased line because it was simultaneously seeking alternative trackage rights routings over Routes 2 and 3, the latter trackage being used by Conrail to handle virtually all of its east-of-the-Hudson traffic. Since CP has not been granted the use of Routes 2 and 3, it is appropriate

[Footnote continued]

Earnings Multiplier. The second correction that should be made to the Board's trackage rights compensation calculation relates to the earnings multiplier. The Board calculated this multiplier using a numerator representing the fair market value of Conrail's road property, derived from the price paid by the CSX and NS for Conrail. This price took into account the merger benefits the primary applicants would realize through the acquisition. By contrast, the denominator used by the Board was derived exclusively from the historic earnings generated by Conrail through operation of its road properties, earnings that did not reflect any of the merger benefits that were responsible for the acquisition premium paid for Conrail. This fundamental disparity in concept -- in which the numerator is inflated by merger benefits but the denominator is not -- creates a materially overstated earnings multiplier (24.54). See Decision No. 109 at 9-10.

It is clear that CSX and NS did not incur the acquisition cost paid for Conrail simply to acquire the earnings being generated on Conrail's lines. As pointed out by primary applicant witness Whitehurst, "[t]he very point of the

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[Footnote continued]

now to exclude the earnings associated with these routes, and to focus exclusively upon the earnings associated with Route 1 and the other CSX lines over which CP is being granted trackage rights.

transaction, and the willingness of CSX and NS to incur the price they paid for Conrail, is to achieve merger-related efficiencies, incremental traffic and revenue gains, service improvements, and other benefits." 12/ Whitehurst R.V.S. at HC-670 (CSX/NS-177). Indeed, the Board found that "anticipated synergies will enable NS and CSX to reduce their cost of providing transportation by about \$1 billion per year beginning in the third year following completion of the transaction." Decision No. 89 at 51.

To establish the relationship between the price paid for Conrail and the earnings taken into account in arriving at that price, it is necessary to ensure that the earnings figure includes not only the earnings generated on Conrail's lines, but also the cost savings, traffic increases, and other merger benefits that would accrue to the primary applicants as a consequence of the transaction. In his Reply Verified Statement, Mr. Plaistow proposed a methodology for calculating a trackage rights charge that undertakes to do this.

Identifying certain problems it believed Mr. Plaistow's methodology raised, the Board did not attempt to correct the

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12/ Accord, Ka t R.V.S. at HC-232 (CSX/NS-177) ("The acquisition cost does reflect the best measure of the fair market value of Conrail given the opportunity to realize the cost savings and traffic gains that the transaction offers to the marketplace."); id. at HC-286 ("The market acquisition premium -- the difference between the purchase price of Conrail and the pre-transaction market value of Conrail's outstanding publicly-traded stock -- is . . . more than accounted for by the cost-savings attributable to the proposed transaction.").

problems; instead, it chose simply to disregard merger benefits. Decision No. 109 at 10. In doing this, the Board erred. Merger benefits can appropriately be taken into account while avoiding the technical problems that the Board identified: "public" merger benefits can be excluded from the calculation, account can be taken of the "phasing in" of the benefits, and the benefits that apply to the subject line segment can be considered. In his Reconsideration Verified Statement, 13/ Mr. Plaistow has done this, as discussed below.

B. CP Has Appropriately Recalculated the Trackage Rights Charge

Using the corrected figures for line segment earnings and the earnings multiplier discussed above, Mr. Plaistow applied the SSW Compensation methodology to calculate the trackage rights charge CP should pay CSX for use of CSX's east-of-the-Hudson line. In doing this, Mr. Plaistow has corrected the several details of his methodology that the Board criticized in Decision No. 109.

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13/ CP is submitting herewith a Reconsideration Verified Statement of Joseph J. Plaistow, an expert economist with L. E. Peabody & Associates, Inc., in which Mr. Plaistow explains, among other things, the basis for the earnings multiplier and line segment earnings adjustments proposed by CP. His statement is not cumulative of evidence earlier submitted in this proceeding, and was not previously adduced because the matters he addresses concern aspects of the Board's Decision No. 109 that could not have been anticipated. The accompanying Reconsideration Verified Statement of Paul D. Gilmore, CP's Vice President-Eastern Operations, is similarly not cumulative and was not earlier submitted for the same reason.



Specifically, he has (1) used the Price Waterhouse percentage of road property to total road property plus equipment; (2) excluded "public" benefits of the merger; (3) considered the merger benefits of years one, two and three, rather than using only the benefits attributable to the "normal" year; (4) considered the merger benefits that would apply to the line segment in question; and (5) used the 17.5% pre-tax industry cost of capital. As noted earlier, Mr. Plaistow has also adjusted the line segment earnings to reflect (1) inflation, (2) overhead (instead of full service) trackage rights, and (3) operations over Route 1 alone (and not over Routes 2 or 3).

As explained by Mr. Plaistow, with these corrections, the trackage rights charge CP should pay CSX should be, as an initial matter, \$0.36 per car mile. Over time, this charge should be subject to adjustment.

As the Board observed in Decision No. 109 (at 11), whatever trackage rights charge is determined, it is only a "starting point"; the charge will have to be adjusted periodically to reflect various factors that can be expected to change over time. This is particularly so here, where the unprecedented nature of the Conrail transaction makes it particularly difficult to predict with certainty what the actual traffic, revenues, and costs of the line will be.

Therefore, the Board should incorporate in its order specific provisions for a periodic "true-up" of the trackage



rights fee. As Mr. Plaistow describes in greater detail, this process should result in an adjustment of the trackage rights fee after six months, and thereafter every year, to reflect actual traffic volumes, revenues, expenses, etc.

C. CP Cannot Compete Effectively with CSX for East-of-the-Hudson Traffic If It Must Pay a Trackage Rights Charge of \$0.71 Per Car Mile

As explained in the accompanying Gilmore Reconsideration Verified Statement, CP will simply be unable to compete effectively with CSX for the movement of east-of-the-Hudson traffic if it has to pay CSX a trackage rights charge of \$0.71 per car mile. CSX would be able systematically to underprice CP for the movement of traditional boxcar traffic, and CP's rates for the short-haul intermodal traffic (and waste traffic) -- which CP has viewed as its principal growth opportunity -- could not be set low enough to attract that traffic away from trucks.

Through analysis the October 20, 1997 haulage agreement 14/ between CSX and CP, Mr. Gilmore shows that for a representative boxcar movement between Montreal and New York City CP's use of its trackage rights (assuming a \$0.71 per car mile charge) would cost it approximately \$53 more per car than

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14/ CSX filed this agreement and various amendments thereto with the Board as Exhibit 3 of its opening submission in this proceeding (CSX-167).

movement of the same car under the haulage agreement. <sup>15/</sup> This \$53 is representative of the fact that the trackage rights charge established by the Board is well in excess of a market-based rate, <sup>16/</sup> and illustrates the ease with which CSX could underprice CP and thereby force CP's eventual withdrawal from the market.

As for the short-haul intermodal traffic CP hopes to attract, Mr. Gilmore shows that the \$0.71 charge is so high that CP could never establish rates low enough to attract this low-margin traffic off the highway; similarly, CP could not compete for movement of waste at this rate, since waste traffic is governed by the same low-margin economics. Yet, if CP is not able to compete for this critically important traffic, it makes little sense for CP to engage in any east-of-the-Hudson service.

Whereas the Board's \$0.71 per car mile charge will not permit CP to be an effective competitor with CSX, the \$0.36 per car mile charge calculated by Mr. Plaistow will. As explained by Mr. Gilmore, CP believes that it will be able to compete for both conventional boxcar traffic and for short-haul intermodal

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<sup>15/</sup> Unfortunately for CP, the haulage agreement applies only to a very limited universe of traffic. It extends only to carload shipments transported by truck at the time of the agreement, and does not extend to intermodal, coal, coke made from coal, iron ore and "set up" motor vehicle movements.

<sup>16/</sup> As explained by Mr. Gilmore, a \$0.36 per car mile charge makes the costs to CP of a haulage movement and a trackage rights movement virtually equivalent.

traffic 17/ if the Board adjusts the trackage rights charge to this lower amount.

Mr. Gilmore also points out that this \$0.36 per car mile charge is generally in line with the \$0.328253 per car mile charge (subject to escalation starting July 1, 1996) Conrail negotiated for its own use of the Poughkeepsie to Schenectady line (the Route 1 line CP will be using) in the event Conrail (or here its successor, CSX) leases the entirety of the line to Amtrak. As he explains, it makes no sense that CP should be required to pay CSX a trackage rights charge of \$0.71 per car mile to operate over the Poughkeepsie to Schenectady line where CSX would only have to pay some \$0.32 per car mile to operate over the same line.

D. CP's Payments to Amtrak Should Be Deducted from CP Payments Owed CSX.

As noted above, Conrail has leased to Amtrak its line between Poughkeepsie and Stuyvesant, but has retained the right to operate over the line in exchange for certain payments to Amtrak. CP-25 at 9, 18 n.21; Gilmore R.V.S. at 4. CP has

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17/ As to short-haul intermodal traffic (as well as waste traffic), Mr. Gilmore explains that CP's ability to compete for this traffic at the \$0.36 per car mile charge is further dependent on (1) CP's ability to handle the traffic out of the Harlem River Yard and thereby avoid having to pay a switching charge to CSX (discussed below), and (2) defining a car, for trackage rights purposes, as the number of axles divided by four (which, in Mr. Gilmore's experience, is a conventional definition for this type of traffic).

negotiated an arrangement that allows CP to operate over this line on the same terms as does Conrail (and as will CSX). Id. Since CP will be paying CSX a trackage rights charge for using this leased line, and will simultaneously be making payments to Amtrak (in adherence to terms Conrail negotiated with Amtrak) for use of the same line, CP should not have to pay twice for the same access. CP proposes to deduct from its trackage rights payments to CSX any payments it has to make to Amtrak for use of the subject track, and seeks Board endorsement that this deduction is appropriate. 18/

## **II. THE RIGHTS GRANTED CP SHOULD BE CLARIFIED**

CP seeks clarification of three matters related to the scope of the rights granted it in the Board's Decision No. 109.

First, the Board's decision makes no reference to the Harlem River Yard, through which CP's trains moving to and from Oak Point Yard will pass. CP had sought the right to use this yard for pick up, delivery, storage and any other purpose (subject to agreement with the yard's third-party operator) (CP-24 at 12-13), and CSX had expressed its agreement to extend this right to CP (CSX-167 at 8, 13). The operator of the yard (who has leased it from New York State) has advised of its willingness to lease CP one and perhaps more tracks for car

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18/ Alternatively, CP could make the full trackage rights payment to CSX, and CSX could make the appropriate payments to Amtrak on CP's behalf.



storage and switching. CP-25 at 11, n.14; Gilmore R.V.S. at 5, n.4. CP requests clarification that it is entitled to use the Harlem River Yard for all purposes (including parking locomotives there and using it as a point for CP crews to go on and off duty), subject to working out appropriate arrangements with the yard's operator, that CP traffic originating or terminating at the yard does not have to pass through Oak Point Yard, that CP would not have to pay CSX any switching charge in regard to this traffic so long as CSX does not handle it for switching purposes, and that CP can directly serve customers sited at the yard.

Second, the Board notes that "CSX has agreed to CP's request for access to all yards, terminals, other facilities and shippers, present and future, located in the Bronx and Queens" but that CSX's compensation proposal for this access is "unacceptable." Decision No. 109 at 7. It further notes that CP, while intending to rely primarily on CSX switching services, requests "the option of providing direct service to customers and facilities in the Bronx and Queens, so as to establish a market discipline (instead of a regulatory one) on the quality of switching services provided to CP by CSX," but that "CP has not proposed suitable compensation arrangements that would become necessary if it were to make more extensive use of CSX's New York City track and terminal areas, as would be required if CP were to provide direct service to customers and facilities in the Bronx and Queens." Id.

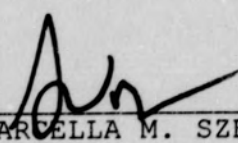
CP seeks clarification that it is entitled to direct access to all customers and facilities in the Bronx and Queens if it should decide to exercise such right of direct access, subject to working out appropriate compensation, as discussed below. Thus, for example, CP could have direct access to any third-party owned rail facility and could make such use of the facility as agreed upon with the owner; similarly, CP would have the right of direct access to and full use of any facility it may acquire or build in the Bronx or Queens.

Third, CP recognizes that if it had to use any CSX terminal trackage or facilities to obtain the direct access to customers or facilities in the Bronx or Queens discussed above, it would have to work out appropriate compensation arrangements with CSX. CP seeks clarification that, in the event that such arrangements could not be satisfactorily negotiated, CP could submit the matter to the Board for resolution. This would include the Board retaining jurisdiction to decide any dispute related to compensation CP might owe CSX for CP's use of Fresh Pond Yard or the New York & Atlantic Railway Company's use of Oak Point Yard.

**CONCLUSION**

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

Respectfully submitted,



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January 7, 1999

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



**RECONSIDERATION 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 and one in the reply phase. In this reconsideration verified statement, I explain that CP cannot be competitive with CSX for the movement of east-of-the-Hudson traffic at the \$0.71 per car mile trackage rights charge established by the Board, but that it could be competitive for movement of this traffic at the \$0.36 per car mile charge supported in the accompanying Reconsideration Verified Statement of Joseph J. Plaistow. In addition, I explain that CP requires clarification of certain matters related to the scope of its rights in the Bronx and Queens areas.

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1/ This statement is being submitted on behalf of CPR, Delaware and Hudson Railway Company, Inc., 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.

**I. The Trackage Rights Charge Imposed by the Board  
Will Not Allow CP To Be an Effective Competitor**

As indicated in my earlier statements filed with the Board, CP is very interested in serving customers in the Bronx and Queens, and believes that it can be an effective competitor with CSX through use of the east-of-the-Hudson trackage rights awarded by the Board if the charge established by the Board permits it to do so. Having said this, CP does not believe that it can be an effective competitor with CSX if it has to pay CSX a trackage rights charge of \$0.71 per car mile.

There are two types of traffic CP would hope to move through use of its east-of-the-Hudson trackage rights: boxcar traffic, and what CP terms "short-haul intermodal" traffic. 2/ Boxcar traffic is the kind of traffic that Conrail is generally moving in the corridor today. Short-haul intermodal traffic is traffic that is truck competitive, moves in specially designed flat cars (double stacks are not used) in corridors that are not long enough to support traditional intermodal service, 3/ and is characterized by rates that have very small profit margins associated with them.

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2/ CP also hopes to compete for movement of waste traffic, which generally shares handling and low-margin characteristics with short-haul intermodal traffic.

3/ This service is provided in corridors as short as 370 miles, which is about 50 percent of the minimum distance that, in my experience, is considered to be necessary for traditional single stack intermodal service to be competitive.

Analysis of the October 20, 1997 haulage agreement 4/ between CSX and CP illustrates why a \$0.71 per car mile charge would not permit CP to compete effectively with CSX for the movement of boxcar traffic. In an arms-length setting CSX and CP negotiated a haulage agreement under which CSX believed that it would be adequately compensated for east-of-the-Hudson carload movements under the agreement, and CP believed that it could move boxcar traffic at the negotiated charge. Conceptually, the trackage rights charge established by the Board for the same movement should allow traffic to move with approximately the same economic results for both CSX and CP as under the negotiated haulage agreement. Yet, it does not.

CP has analyzed 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, and compared what the cost of this same movement would be if CP were to use its CSX haulage rights for the movement. As explained in Exhibit 1 hereto, the trackage rights movement would be approximately \$53 more expensive for CP than the haulage movement; if, however, the trackage rights charge

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4/ CSX filed this agreement and various amendments thereto with the Board as Exhibit 3 of its opening submission in this proceeding (CSX-167). CSX redacted the financial terms of the agreement; relevant financial terms are set forth in Exhibit 1 hereto.

were reduced to \$0.36 per car mile, the two movements would each cost CP approximately the same.

Although CP can compete with CSX under the haulage agreement economics, 5/ it cannot do so under the Board's trackage rights economics which cost CP an additional \$53 per car. CSX would be able consistently to underprice CP for movements CP sought to handle by trackage rights, and eventually CP would simply have to withdraw from the market.

As for short-haul intermodal traffic CP hopes to attract, this is traffic that is currently moving largely by truck. In its Decision No. 89 (at 81-82), the Board recognized the public benefits associated with transferring this type of traffic onto rail. But the only way that this can occur is if the rates CP can offer are competitive with trucking rates. Today, as a rule of thumb, CP cannot charge more than \$1.00 per car mile for this type of intermodal traffic; a higher charge will not attract the traffic away from trucks.

If CP has to pay CSX \$0.71 per car mile for movements over CSX's east-of-the-Hudson line, it would have to charge more than the \$1.00 per car mile ceiling for short-haul intermodal

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5/ Unfortunately for CP, the haulage agreement applies only to a very limited universe of traffic. It extends only to carload shipments transported by truck at the time of the agreement, and does not extend to intermodal, coal, coke made from coal, iron ore and "set up" motor vehicle movements.



traffic or carry that traffic at a loss. Since it cannot do the latter, and the former would attract no traffic, the trackage rights charge set by the Board would preclude CP from moving this traffic and effectively undercut the public policy objective of getting the traffic off of the highways. In CP's judgment, the short-haul intermodal traffic (together with low-margin waste traffic which CP could not compete for if it had to bear the \$0.71 per car mile charge) presents CP with the greatest opportunity for traffic development. If CP is not able to compete for this traffic, it makes little sense for CP to engage in any east-of-the-Hudson service.

Having given the matter extensive analysis, CP believes that it will be able to compete for both conventional boxcar traffic and for short-haul intermodal traffic if the Board adjusts the trackage rights charge to no more than \$0.36 per car mile, in accordance with Mr. Plaistow's accompanying analysis. 6/ This charge is significantly more in line with the kind of trackage rights charge with which I have had experience; indeed,

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6/ As to short-haul intermodal traffic (as well as waste traffic), CP's ability to be competitive in the movement of this traffic at the \$0.36 per car mile charge is further dependent on (1) CP's ability to handle the traffic out of the Harlem River Yard and thereby avoid having to pay a switching charge to CSX (discussed below), and (2) defining a car, for trackage rights purposes, as the number of axles divided by four (which, in my experience, is a conventional definition for this type of traffic).

most trackage rights charges with which I am familiar are lower than this charge.

The Board should note that this \$0.36 per car mile charge is generally in line with the \$0.328253 per car mile charge (subject to escalation starting July 1, 1996) Conrail negotiated for its own use of the Poughkeepsie to Schenectady line (the Route 1 CP will be using) in the event Conrail leases the entirety of the line to Amtrak. The context of this negotiated charge was an April 10, 1996 agreement between Amtrak and Conrail contemplating the possibility that the current agreements between Amtrak and Conrail -- under which Amtrak leases the portion of this line between Stuyvesant and Schenectady on terms that provide for each of the parties to perform certain maintenance and to make certain payments -- are replaced, Amtrak leases the entire line, and CSX pays a trackage rights charge to operate over it. 7/ It makes no sense that CP

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7/ Specifically, the Conrail-Amtrak agreement provides as follows:

If, in the future, the parties agree that Amtrak will lease Segment I between Poughkeepsie and Hoffmans, New York, [just north of Schenectady] from Conrail, thereby making Amtrak the lessee of all segments between Poughkeepsie and Hoffmans, and if the parties further agree that Amtrak will assume all the track maintenance and communications and signal maintenance for that entire territory (and no other services will be required of Conrail), the parties agree that the Performance Payments for operations between Poughkeepsie and Hoffmans under this Agreement, as

[Footnote continued]

should be required to pay CSX a trackage rights charge of \$0.71 per car mile to operate over the Poughkeepsie to Schenectady line where CSX would only have to pay some \$0.32 per car mile to operate over the same line.

## **II. CP Needs Clarification of the Scope of Its Rights in the Bronx and Queens**

In its Decision No. 109, the Board does not address CP's right to use the Harlem River Yard, a facility owned by New York State, leased to a third-party operator, and through which CP's trains would move in passage to and from Oak Point Yard. As I explained in an earlier submission, the Yard's operator has advised CP of its willingness to lease CP one and perhaps more tracks for car storage and switching. CP anticipates reaching agreement with this operator that will allow CP to access directly all customers served by the Yard (use of CSX trackage

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[Footnote continued]

described in Section 5.1(c) and Appendix V, shall not apply to Amtrak operations over the entire leased territory after that date. The parties further agree that if the agreements described in the preceding sentence are reached, Conrail's sole payments to Amtrak for any Conrail freight operations conducted over the entire leased territory between Poughkeepsie and Hoffmans, beginning with the effective date of such agreement, shall be \$.328253 per freight car mile, subject to escalation starting July 1, 1996. The foregoing provision shall not preclude the inclusion of other terms and conditions in said agreement.

would not be involved in this regard), to use the yard for crews going on and coming off duty, and for parking cars and locomotives. Among other things, the Yard will play an important role in CP's development of short-haul intermodal traffic. CP assumes that, under the Board's decision, it is free to work out whatever arrangements it can with the Yard's operator, and that in using the Yard CP would not owe CSX any switching charge (assuming that CSX is not performing any switching services for CP in the Yard). But because the Board's decision is silent on these matters, CP seeks clarification that its assumption is correct.

Additionally, CP seeks clarification that it is entitled to direct access to all customers and facilities in the Bronx and Queens if it should decide to exercise such right of direct access, subject to working out appropriate compensation arrangements with CSX where use of CSX trackage or facilities would be involved in exercising this right. Although CP expects to rely predominantly on CSX switching to serve local customers, it urges that it be granted these direct access rights to assure that it is fully competitive with CSX. In my experience, the market discipline created by these rights would be far more effective than any regulatory discipline that might be applied to ensure appropriate CSX performance of its switching services. Further, to the extent that CP and CSX are unsuccessful in

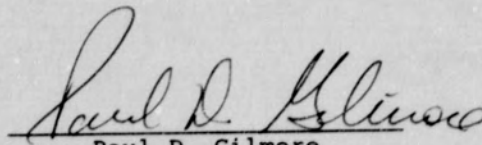


negotiating direct access compensation arrangements, CP seeks clarification that the Board will retain jurisdiction to decide any resulting dispute.

**Exhibit No. 1 contains highly  
confidential material and is being filed with  
the Board under seal**

**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 January 5, 1999.

  
Paul D. Gilmore

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



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

**I. Introduction and Summary**

My name is Joseph J. Plaistow. <sup>1/</sup> The purpose of this statement is to show that the \$0.71 per car mile trackage rights fee imposed by the Surface Transportation Board in Decision No. 109 is too high under SSW Compensation principles as applied to the facts of this case. For example, the \$0.71 fee is excessive in light of the STB's granting of overhead, not full-service, trackage rights and its limiting of the trackage rights to Route 1 only.

This statement proposes an alternative calculation of the trackage rights fee, based on SSW Compensation principles and the facts of this case; this calculation also corrects the details of my previous methodology with which the STB disagreed in Decision No. 109. The trackage rights fee that results from this corrected methodology is \$0.36 per car mile. This is made up of \$0.13 for the "below-the-wheel" operating and maintenance portion of the fee accepted by the STB in Decision No. 109 plus a revised interest rental component of \$0.23 per car mile.

I also propose a "true-up" procedure to adjust the trackage rights fee periodically, based on actual operating experience.

**II. Review of Economic Aspects of STB Decision**

**A. STB's Stated Objective and Critical Economic Findings**

In Decision No. 109, the STB stated that "The 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." (6th page of decision)

The STB reiterated the following two critical economic findings:

1. "There are four methods for developing the 'interest rental' portion of the trackage rights fee: . . . the CE [capitalized earnings] approach is our preferred method for developing the rental component in trackage rights compensation cases, because, among other things, it values the property as a going concern for railroad use . . ." (9th page of decision, footnote 17)
2. "Any compensation established in this proceeding must put the tenant in the same competitive position as the owning carrier." (8th page of decision)

My analyses in this statement are based on the Board's stated objective and economic findings.

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

**B. Economic Adjustments Called for by the STB's Decision No. 109**

In its review of the SSW Compensation <sup>2/</sup> analysis set forth in my Reply Verified Statement, submitted as part of CP's December 10, 1998 Reply Evidence and Argument (CP-25), the Board identified the following as changes it believed should be made to my Conrail and line segment earnings calculations:

1. Projected public benefits should not be included,
2. Earnings and merger benefits should be adjusted for inflation,
3. The benefit numbers should consider years other than the "normal year,"
4. The cost of capital should be 17.5%, not 17.2%, and
5. Merger benefits should be reflected in the calculation of line segment earnings.

These adjustments are treated in Section III, below.

At the 10th page of the decision, in the first paragraph, the STB called for the fair market value of road property to be calculated on the basis of the value developed by Price Waterhouse for allocating road and equipment property, because CSX and NS will use these figures to allocate Conrail's assets on their books. <sup>3/</sup> This adjustment is made in Section III.C., below.

The STB also made several rulings with respect to the scope of the East-of-the-Hudson trackage rights that require adjustment and recalculation of the Conrail and line segment earnings; these rulings are as follows:

1. CP trackage rights over CSX-owned lines will be overhead rights, not full service, north of New York City.
2. CP will be granted rights only over "Route 1" on the north end of the East-of-the-Hudson line.

**III. Making the Economic Adjustments Called for by the STB**

**A. Adjusting Conrail Earnings in the Calculation of the Earnings Multiplier**

Two of the adjustments called for by the STB affect the Conrail earnings used in the calculation of the earnings multiplier. They are 1) removing public benefits from the calculation and 2) reflecting merger benefits from years 1-3, in addition to the normal year.

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.

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<sup>2/</sup> St. Louis Southwestern Ry. Compensation -- Trackage Rights, 1 I.C.C.2d 776 (1984), 4 I.C.C.2d 668 (1987), 5 I.C.C.2d 525 (1989), 8 I.C.C.2d 80 (1991), 8 I.C.C.2d 213 (1991), aff'd without opinion, 978 F.2d 745 (D.C. Cir. 1992), cert. denied, 508 U.S. 951 (1993) (the "SSW Compensation cases").

<sup>3/</sup> In the fourth paragraph on the 10th page of Decision 109, the STB states, "CP does not make an adjustment to the earnings multiplier to separate earnings developed from road property from earnings developed from equipment." This statement is incorrect; as the STB states in the first paragraph on page 10, I did make such an adjustment, but I based it on book value rather than the value developed by Price Waterhouse.

This was based on the "matching principle" that is derived from the Board's SSW Compensation decisions and Railroad Accounting Principles.

In Compensation III, 4/ the STB paid special attention to conforming the trackage rights fee calculation to the principles set forth in the Railroad Accounting Principles Board's (RAPB's) Railroad Accounting Principles, Final Report, September 1, 1987. 5/ The STB assured itself that the calculation of the trackage rights fee adhered to the RAPB's principles. Consistency -- the matching of time frames and the matching of accounts with the entity for which costs are being determined -- is central to these RAPB principles. Thus, the RAPB was calling for what can be called "apples-to-apples" comparisons. I will refer to this as the "matching principle". As the matching principle applies here, it requires that the bases for determination of all facets of the earnings multiplier, and its application to the line segment earnings, must be consistent.

The concept behind the earnings multiplier is that the fair market value of the Conrail property is set by the amount that a willing purchaser is willing to pay in the marketplace. The purchaser will determine that amount based on its projection of the future cash flows generated by the purchased property. These ideas are embodied in the calculation of the statements of benefits submitted by merger applicants. 6/ These are going concern evaluations consistent with the STB's specifications.

As the matching principle applies here, it requires consistency in calculating 1) acquisition price paid for Conrail, 2) Conrail earnings, and 3) line segment earnings. All three of these are future oriented, not historic. When they purchased Conrail, CSX and NS were not purchasing past Conrail earnings, they were purchasing the future earnings that each expected from the Conrail properties. Wall Street provided CSX and NS with the required capital based on projected, post-acquisition earnings, not historic Conrail earnings. CSX and NS stockholders approved the transaction on the basis of projected, post-acquisition earnings, not historic Conrail earnings. Each component of the earnings multiplier (that is, the acquisition price and Conrail earnings) and the line segment earnings to which the earnings multiplier is applied must reflect this future orientation. 7/ Therefore, merger benefits must be included in the calculations.

Although my calculation of the trackage rights fee in my previous verified statement sought to adhere to the matching principle, the STB in Decision No. 109, page 10, concluded that there were three deficiencies in the

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4/ 5 I.C.C.2d 525, 528-30.

5/ This document established eight Railroad Accounting Principles to govern the determination of costs for specific regulatory purposes.

6/ On several occasions, I have been responsible for the development of "Statements of Benefits".

7/ The matching principle could also be followed in the earnings multiplier calculation by consistently using only historic values (that is, acquisition price would reflect book equity and book debt, Conrail earnings would be that reported in the relevant year, and line segment earnings would be those realized in the same relevant year). Clearly, however, the prospective approach to calculating the earnings multiplier is preferable to the historic approach, and more consistent with STB principles.

way that I had attempted to do so: (1) the inclusion of public benefits, (2) the use of only the "normal" year's benefits, and (3) failure to reflect the benefits in the line segment earnings. These details of my prior calculations can be corrected without abandoning the matching principle.

With respect to public merger benefits, my Revised Exhibit No. (JJP-2.2) now refines the calculation of Conrail system-wide earnings by removing those benefits identified in the CSX and NS Statements of Benefits that do not accrue to CSX or NS, but, rather, accrue to the public in general. Public benefits categories that have now been excluded are shipper logistics benefits, highway maintenance benefits, and reduced rates to shippers.

With respect to the "normal" year issue, my Revised Exhibit No. (JJP-2.2) reflects each of the Statement of Benefits years, not just the normal year, in the "Annuity of Merger Benefits" at line 5. This figure was calculated (after removing the public benefits for each year) over a 20-year period, using the cash flow stream of merger benefits of years 1, 2, and 3 and the normal year (normal year merger benefits were assumed to be realized for the last 17 years of the period). Inflation over the 20-year period was assumed to be 2.1% (which is the annual equivalent of the 4.461% inflation for a two-year period reported on the tenth page of the STB's Decision No. 109). I then calculated the annuity equivalent to this 20-year cash flow stream. As directed by the STB, the Board's inflation factor was also applied at line 7 of Revised Exhibit No. (JJP-2.2).

The next section, Section III.B, describes the adjustment of line segment earnings to reflect the same categories of merger benefits included in the calculation of Conrail earnings.

#### ***B. Adjusting Line Segment Earnings***

Three adjustments to line segment earnings need to be made to conform to the Board's Decision No. 109.

First, in its decision, the STB stated that the line segment earnings that I had estimated should have been adjusted for merger benefits. I therefore carefully reviewed the merger benefits estimated by the primary applicants (after excluding the same public benefits -- shipper logistics benefits, highway maintenance benefits, and reduced rates to shippers -- that I excluded in calculating Conrail system-wide earnings, as described in Section III.A) to determine what benefits would accrue to the East-of-the-Hudson line segment.

The primary applicants developed their estimates of merger benefits on a system-wide basis, and did not pro-rate such benefits (or even generate data that would make it possible to pro-rate such benefits <sup>8/</sup>) to individual line segments. Indeed, the nature of the benefits is such that most would not really apply to a single small line segment like this one. However, CSX projected an increase in traffic for the 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

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<sup>8/</sup> For example, NS calculated its Statement of Benefits based the increment between pre- and post-acquisition status and never reported the total operating statistics.



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>9/</sup>

Second, line segment earnings have to be adjusted to reflect the fact that in Decision No. 109 the STB granted overhead, not full service trackage rights. CP can compete only for the portion of the traffic originating or terminating in the Bronx or Queens, NY. My previous calculation of line segment earnings included traffic that now cannot be handled with CP's overhead rights, and the Board used my previous estimates in its trackage rights fee estimate. This affects the line segment earnings calculation because CP will be able to handle only a small portion of the traffic over the line segment. Consistent with the SSW Compensation cases, line segment earnings were adjusted to exclude earnings on traffic included in full-service trackage rights, but not included in the overhead rights granted by the STB (see 4 I.C.C. 2d at 684, 693-694).

Third, line segment earnings must be adjusted because Decision No. 109 granted trackage rights for operations only over "Route 1". This dramatically impacts the route for which we must calculate line segment earnings. My previous calculation of line segment earnings had made the simplifying assumption (which was favorable to CSX) that all CP traffic would be routed through Selkirk, the same route over which all the CSX traffic travels, even though some portion of CP's traffic would use Route 1. That assumption no longer makes sense if all CP traffic must use Route 1 and none of it will move through Selkirk. Route 1 north of Stuyvesant goes through Albany and Schenectady, a route over which only Amtrak trains and a few local freights move. <sup>10/</sup> (See the schematic map Exhibit No. 2 attached to CP Witness Paul D. Gilmore's November 30, 1998 operating verified statement submitted as part of CP-24.) Thus, the line segment earnings over Route 1 are dramatically lower than the line segment earnings over the route through Selkirk.

Because total earnings for the origin to destination movement are attributed to the trackage rights line segment based on a mileage pro-rate, and because the vast majority of the traffic travels through Selkirk, not Albany, far less of the earnings are attributed to the trackage rights line segment. My December 10, 1998 Reply Verified Statement assumed that CP movements would travel 78 miles over the trackage rights line 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 Stuyvesant-Albany-Schenectady portion of Route 1 produces revenues only from the CP traffic and the local trains servicing points on the line. The line segment earnings in my Revised Exhibit No. (JJP-2.4) reflect earnings from only the overhead traffic available to CP. There are no earnings from Amtrak trains because they only cover their own associated costs.

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<sup>9/</sup> To the extent that additional merger benefits are actually experienced on the East-of-the-Hudson line, they would be captured and reflected in the "true-up" adjustment that I propose in Section IV, below.

<sup>10/</sup> The STB describes the Conrail line north of Stuyvesant over which it grants CP trackage rights as "... a high-speed, double track line [that], other than Amtrak trains, normally handles only Conrail local service trains." (6th page of Decision No. 109).

My Revised Exhibit No. (JJP-2.4) shows the adjusted line segment earnings reflecting these three changes. Even with these adjustments, my revised line segment earnings are still overstated for a number of reasons.

- For traffic originating or terminating in the Bronx or Queens, New York, I assumed that the miles used for the earnings pro-rate include all miles within the New York metropolitan area because no data is available, as yet, on how the traffic will actually be handled and what the interchange point will actually be. For example, for traffic interchanged with the NY&A, we have assumed that all interchanges will take place at Fresh Pond, but they might actually take place at Oak Point Yard.
- I have assumed no switching charges for traffic interchanged with the NY&A; I have been advised that the charges for handling this traffic will be addressed in future discussions between CP and CSX.
- I have used system average Conrail unit costs to approximate those to be incurred by carriers operating over the East-of-the-Hudson line. This results in an understatement of unit costs in the case of CP traffic. Initially, CP had projected running 1 train per day, but this was based on full-service trackage rights; since the trackage rights granted are overhead rights only, this will decrease traffic density dramatically. That will, in turn, greatly increase the unit costs actually incurred by CP trackage rights operations over the line segment. In fact, this factor will impede CP's ability to become an effective competitor with CSX for traffic they both can serve. If CP costs are too high, CP may not be able to help the STB reach its objective of restoring "... to New York City some of the rail competition that was lost when Conrail was created."

Nevertheless, I believe that the adjusted line segment earnings are the best estimate that can be made based on the evidence in the record and represent a reasonable basis for making an initial determination of the trackage rights fee.

#### ***C. Recalculating the Earnings Multiplier***

My Revised Exhibit No. (JJP-2.3) recalculates the earnings multiplier using the results of Revised Exhibits Nos. (JJP-2.1 and 2.2). Rather than the STB's earnings multiplier of 24.54, and my previous multiplier of 6.26, Revised Exhibit No. (JJP-2.3) reports a multiplier of 10.35.

#### ***D. Recalculating the Interest Rental Portion of the Trackage Rights Fee***

My Revised Exhibits Nos. (JJP-2.5 through 2.7) report my recalculation of the Interest Rental Portion of the trackage rights fee. Revised Exhibit No. (JJP-2.6) uses the 17.5% cost of capital called for in Decision No. 109.

#### ***E. Practical Impact of the STB Prescribed Trackage Rights Fee***

The result of all these adjustments is a trackage rights fee of \$0.36. Several factors indicate that this is a more reasonable result, and more consistent with SSW Compensation principles and the Board's stated objectives, than the \$0.71 per car mile fee calculated by the STB.

In Decision No. 109 at page 9, the STB stated that the \$0.71 per car mile fee would increase CP's costs by less than \$30 per car over the trackage rights line, compared to the \$0.29 fee CP proposed, which "should not unduly impede CP's ability to compete for east-of-the-Hudson traffic." However, further analysis shows that \$30 per carload is not insignificant and moreover that the actual cost increase to CP would be up to double that amount.

Thirty dollars per car is not insignificant. At the cost and earnings levels reported in my Reply Verified Statement, the \$30 would be approximately equal to the \$30.73 roadway portion of the earnings of an average carload of overhead traffic on the East-of-the-Hudson line. <sup>11/</sup>

Moreover, \$30 per car only represents the trackage rights fees paid on the loaded portion of movement, but CP must pay a fee that covers both the loaded and empty portion of the move. The STB calculated the \$30 per car by taking the difference between \$0.71 and \$0.29, or \$0.42, and multiplying that by the number of miles of trackage rights, a maximum distance of approximately 78 miles. This equates to a difference of \$32.76 per car if the car moves over the maximum trackage rights distance. <sup>12/</sup> Because New York is a predominantly terminating market for rail traffic, and the trackage rights fee must be paid on the empty return portion of the round trip, the per-car cost must be multiplied by the empty return ratio.

As the STB said in Decision No. 109, its objective in setting any trackage rights fee is to allow the tenant to compete on an equal footing with the landlord; and its specific objective in granting East-of-the Hudson trackage rights to CP is to restore some intramodal rail competition in New York City. CP's ability to compete against CSX for the traffic to which CP gains access via these trackage rights is therefore crucial to the accomplishment of these objectives. An excessive trackage rights fee would place CP at a significant economic disadvantage to CSX.

In Decision No. 89 in this proceeding, the STB stated that it would be mindful of the impact of the "acquisition premium" (that is, the difference between the prospective and historic view of Conrail's value) on rate-making. The establishment of this trackage rights fee is one of the first instances where the application of the "acquisition premium" has affected rate-making. It is critical that the STB establish sound precedents in application of the "acquisition premium". The revised procedures for calculating the trackage rights fee that are described above, and the "true-up" procedure described in Section IV, should help assure sound applications.

***F. Switching Charges for CSX Switching in the Bronx and Queens, New York***

CP had requested that switching charges be based on the lower of \$250 or actual costs. The STB Decision No. 109 ruled that switching charges will be \$250 per carload until and unless adjusted through a cost study or renegotiation. In my previous statement I calculated that providing switching services to CP would only cost CSX about \$75 per car, based on 1995 URCS costs. In my Revised Exhibit No. (JJP-6), I have substituted 1997 URCS unit costs, which have recently become available. Total variable cost per car switched is \$61.27. <sup>13/</sup> The \$250 is

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<sup>11/</sup> This figure is calculated by dividing total adjusted earnings on the overhead portion of the traffic detailed in Exhibit No. (JJP-2.4) as submitted on December 10, 1998 by the total number of overhead carloads on the line.

<sup>12/</sup> Many carloads would not travel over the maximum distance (especially with overhead, not full-service, rights), so the average per car charge for the loaded portion of the movement would be somewhat less than \$30.

<sup>13/</sup> Excluding clerical costs, CSX variable costs are even lower. Clerical costs are likely to be incurred only by CP, as the traffic will move under CP waybills and will never require clerical support from CSX.

408% of variable costs and is clearly unreasonably high. This highlights the necessity to adjust this switching charge to the actual cost level as soon as possible.

#### **IV. Adoption of a "True-up" Procedure**

##### ***A. "True-up" of the Trackage Rights Fee***

The SSW Compensation formula is very sensitive to the input assumptions. This is a particular problem here, where it is anticipated that future performance will vary substantially from historical results, but it is difficult to predict performance with a high level of confidence. Under these circumstances a "true-up" procedure is particularly appropriate.

The purpose of a "true-up" procedure is to adjust rates and charges to substitute actual performance results for projections and assumptions, and to reflect changes in a carrier's cost of providing the service. The Board stated in Decision No. 109 that "any compensation established in this proceeding must put the tenant in the same competitive position as the owning carrier". To achieve this end, the actual performance and costs incurred by the owning carrier associated with the trackage rights and the switching fee must be established and evaluated on a regular basis with compensation adjusted accordingly.

I calculated the trackage rights fee of \$0.36 per car-mile. This is an estimate of actual costs based on available data and reasonable estimates from evidence submitted in the merger proceeding. This value represents a reasonable starting point, but should be replaced by an evaluation of actual costs as soon as reasonably practicable. In my opinion, data sufficient to develop actual costs should be available after six months of operation. The "true-up" procedure I recommend would recalculate my Revised Exhibits No. (JJP-2.4 through 2.7) after compiling actual data.

On the eleventh page of Decision No. 109 the STB states that "Actual trackage rights compensation per car-mile should be adjusted periodically to reflect: (1) cost of capital rate for the specific period; (2) number of car-miles for the tenant and owning carriers for the specific time period; and (3) actual other 'below-the-wheel' costs for the specific time period." This statement recognizes the need for a "true-up", but additional data needs to be considered. To develop the appropriate level of trackage rights fees the actual costs for providing the service should be combined with the actual revenues and operating characteristics for the subject traffic.

My Revised Exhibit (JJP-2.4) develops the estimated earnings for the traffic available to CP based on estimated traffic volumes and revenues of the line segments in question from the STB's Confidential Waybill Sample. Costs for this traffic are developed using the STB's Uniform Rail Costing System adjusted for assumed traffic growth. Actual data should be collected to replace these estimates. Specifically, actual data should be collected for the tons, carloads, revenue, expenses, total miles, and miles over trackage rights specific to this traffic.

Because CP's participation is new, there are some areas where data is not currently known. For example, actual locations of traffic interchanges to (or pickup from) the NY&A and the pick-up and drop-off points between CP and CSX are not known today, but will be following some experience in trackage rights implementation. Also,



as shown in the calculations on my Revised Exhibit No. (JJP-2.7), the rental fee requires total car-miles on the trackage rights segment. Total car-miles can be calculated from the data described above.

**B. "True-up" of the Switching Charge**

Revised Exhibit No. (JJP-6) calculates CSX's 1997 variable cost for industry switching of \$61.27 per car. This is significantly below the \$250 per car switch fee established by the STB in Decision No. 109. If CP is to be able to compete on an equal footing with CSX, switching fees should more closely approximate variable costs. The current unreasonably high margins should be slashed. Actual costs for switching the "East-of-the-Hudson" traffic should be developed on the same basis as the trackage rights fee. That is, after six months of gathering data representing actual operations, that data should be evaluated and a fee based on actual costs established. The data that should be collected for this calculation includes: the number of cars switched, labor costs, switch engine minutes per switch, and any associated clerical costs.

**C. "True-up" Interval**

The initial "true-up" should occur after a period which allows for sufficient data to be collected while at the same time reducing the negative economic impact of applying approximate charges for a period longer than necessary. If estimated charges are too low, CSX is harmed; if estimated charges are too high, CP is harmed. Once a reasonable rate is established based on actual information, a true-up should be performed annually to maintain the relationship between the tenant and owning carriers.

Data required for the true-up should be as current as possible. The data for the initial "true-up" should be collected up through the month prior to the calculation of the "actual" costs. If service were to begin in April 1999, data should be collected through September 1999 with implementation of the revised rates beginning in November 1999. The "true-up" would then take place annually thereafter.

**V. Conclusion**

The trackage rights fee for CP's access to the "East-of-the-Hudson" overhead traffic initially should be revised to \$0.36 per car-mile. This is made up of \$0.13 for the "below-the-wheel" operating and maintenance portion of the expense (accepted in Decision No. 109) and \$0.23 for the interest rental component. The interest rental reflects the STB's limitation of the trackage rights to overhead traffic and Route 1, as well as the issues raised by the STB in Decision No. 109.

The \$250 switching fee (accepted in Decision No. 109) is in excess of the cost CSX is likely to incur for providing this service.

The trackage rights and switching fees are based on estimated costs and should be revised to reflect actual costs so that CP will be in "the same competitive position" as CSX to compete for this traffic. A procedure to "true-up" these fees with actual costs should be performed after six months of operation and annually thereafter.

**Revised Exhibit No. (JJP-2.1) contains highly  
confidential material and is being filed with  
the Board under seal**

**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/	783,242
6. Total 1995 Conrail System Earnings	Line 4 + Line 5	\$ 1,355,023
7. Index to 1997 using GDP-IPD	STB Decision No. 109	4.461%
8. Total 1997 Conrail System Earnings	Line 6 x Line 7	\$ 1,415,470

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, 1999

Page 1 of 1

**Development of Conrail Earnings Multiplier**

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

<u>Component</u>	<u>Source</u>	<u>Value</u> <u>(000)</u>
(1)	(2)	(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)	1,415,470
3. Earnings Multiplier	Line 1 + Line 2	10.35



**Development of Trackage Rights Segment Earnings**

The trackage rights line segment earnings were developed in a three step process:

- 1) Identify the potential traffic on the line;
- 2) Calculate the total earnings for the subject traffic; and,
- 3) Calculate the earnings associated with the trackage rights segment.

Each of these steps are described below with the calculations shown on the following pages of this exhibit.

**1. Identify the potential overhead traffic on the line**

We identified the potential overhead traffic on the line by reviewing CP's East of the Hudson schematic (Exhibit No. 1 attached to CP witness Paul D Gilmore's November 30, 1998 operating verified statement submitted as part of CP-24), the Conrail system map, and the Official Open & Prepay Station List to gather the universe of FSACs on the trackage rights segment of the line.

Using the 1995 Costed Waybill Sample we extracted all traffic either originating or terminating at any of the FSACs on the trackage rights line in the area of New York for which CP has been granted access (i.e., Bronx, Queens). To this we added all traffic that originated or terminated on the NY&A as this traffic almost always uses the "East of the Hudson" trackage rights line. NY&A traffic interchanged with the New York Cross Harbor was eliminated.

In the December 10, 1998 Reply Verified Statement, we determined a 20% CP market share, but that was for traffic developed using full-service rights. With overhead rights, only New York metropolitan area traffic is relevant. We project that CP will develop a larger market (i.e., 30%) share from New York.

**2. Calculate the total earnings for the subject traffic**

The Costed Waybill sample includes total revenues and total variable costs for each move. These costs include Operating Expense, Depr/Leases and Return on Investment. To develop

**Development of Trackage Rights Segment Earnings**

earnings for this traffic on a basis comparable to Conrail's system earnings, we calculated full costs, excluded return on investment and then subtracted this adjusted cost from revenues.

Because we compare these earnings to the system earnings inclusive of estimated merger benefits we have increased the line segment earnings to reflect a surrogate of the benefits of the merger expected to impact this line. Specifically, we increased revenue and costs by 8% based on CSX traffic density projections on these line segments after the merger.

**3. Calculate the earnings for the trackage rights segment**

The earnings calculated in 2 above represent the total earnings for each move. To develop the amount applicable to the "East of the Hudson" overhead trackage rights segments we applied a mileage pro-rate. We first developed the trackage rights miles for each movement. We then applied to the earnings a ratio of the trackage rights miles to the total miles of the movement.

The mileage along this route was estimated by using PC RAIL®. CSX owned tracks up to Poughkeepsie and trackage between High Bridge and Fresh Pond Junction were included in the estimation. The section between Poughkeepsie and High Bridge (owned by Metro North and subject other trackage rights) was deducted from the total where it was applicable.

In addition to the mileage pro-rate, we adjusted earnings to reflect the terminal switch fee of \$250 per car proposed by CP. This adjustment was accomplished by deducting Conrail's system average switching costs and replacing that with the \$250 per car charge that CP will actually have to incur.

**Revised Exhibit No. (JJP-2.4) at pages 3-7  
contains highly confidential material; these  
pages are being filed with the Board under seal**

**Development of Segment Value Based on Earnings**

<u>Component</u> (1)	<u>Source</u> (2)	<u>Value</u> (3)
1. Earnings Multiplier	Revised Exhibit No. (JJP-2.3)	10.35
2. Total Line Segment Earnings (attributable to Trackage Rights)	Revised Exhibit No. (JJP-2.4), page 6	163,008
3. Adjusted Value of Trackage Rights Segments	Line 1 x Line 2	1,687,810



**Development of Trackage Rights Segment Rental Component**

<u>Component</u> (1)	<u>Source</u> (2)	<u>Value</u> (3)
1. Adjusted Value of Trackage Rights Segments	Revised Exhibit No. (JJP-2.5)	\$ 1,687,810
2. Pre-tax Cost of Capital	STB Decision 109, FD 33388	17.5%
3. Annual Rental for Trackage Rights Line Segments	Line 1 x Line 2	295,367

**Development of Trackage Rights Segment Rental**  
**On A Per Car-Mile Basis**

<u>Component</u> (1)	<u>Source</u> (2)	<u>Value</u> (3)
1. Annual Rental for Trackage Rights Line Segments	Revised Exhibit No. (JJP-2.6)	\$ 295,367
2. Total Car-Miles on Trackage Rights Segments	1/	1,297,368
3. Trackage Rights Interest Rental Fee per Car-Mile	Line 1 ÷ Line 2	\$ 0.23

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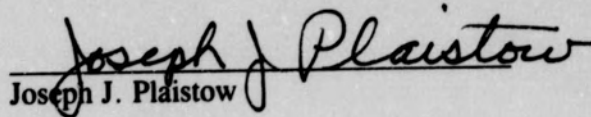
1/ Total Carloads from Revised Exhibit No. (JJP-2.4) (column (e)) times miles over trackage rights  
Revised Exhibit No. (JJP-2.4) (column (m)) × 2.0 (100% empty/return).

Development of SSW Compensation Type  
Switching Cost Per Car  
Based On 1997 CSXT URCs

Item/Cost Element (1)	Source (2)	Variable Unit Cost (3)	Service Units (4)	Full Cost (5)
1. Switch Mins - Industry	E2L101C25		5.35858	
2. Ratio Spot to Pull (T/L)	100% Empty		2.0	
3. Total Switch Mins	Line 1 x Line 2		10.71716	
4. SEM Oper Exp	E1L111C1	\$3.01844		
5. SEM D and L	E1L111C2	\$0.18315		
6. SEM ROI	E1L111C3	\$0.66376		
7. CL Clerical Oper Exp	E1L109C1	\$17.90252	1.0	
8. CL O/T Clerical Oper Exp	E1L106C1	\$1.94456	1.0	
9. Variable SEM Cost Per Min	Sum of Lines 4 through 6			\$3.87
10. Variable SEM Cost Per Car	Line 9 x Line 3			\$41.43
11. Clerical Operating Expense	Line 7 + Line 8			\$19.85
12. Variable Switch Cost Per Car	Line 10 + Line 11			\$61.27
13. Constant Cost Markup	D8L617C1			1.38544
14. Total Full Switch Cost Per Car	Line 13 x Line 12			\$84.89

Verification

I, JOSEPH J. PLAISTOW, 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 January 7, 1999.

  
Joseph J. Plaistow

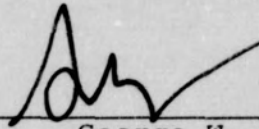


CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of January, 1999,  
I served by the means indicated below a copy of the foregoing  
Canadian Pacific Parties' Petition for Reconsideration and  
Clarification 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)



---

George W. Mayo, Jr.

STB FD 33388 (Sub 69) 1-7-99 I 192931

192531 968

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January 7, 1999

0101499006



**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

ENTERED  
Office of the Secretary

**FILED**

07 1999

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)**

JAN 08 1999

Part of  
Public Record

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of CSX-173, "Petition of CSX Corporation and CSX Transportation, Inc. for Reconsideration of Decision No. 109," for filing in the above-referenced docket. Associated with this filing is a Verified Statement of William W. Whitehurst, Jr.; certain parts of that Verified Statement contain Highly Confidential information. Such Highly Confidential information is submitted in a separate, sealed and appropriately labeled envelope. The Petition contains an executed certificate of service; the Highly Confidential material contained in Mr. Whitehurst's Verified Statement will be served only on those parties that have executed the undertaking under the Protective Order.

This filing is accompanied by a check in the amount of \$150 in payment of the filing fee.

Please note that a 3.5-inch diskette containing a WordPerfect 5.1 formatted copy of the Petition and the text of the Whitehurst Verified Statement, plus the public, nonconfidential exhibits to the Whitehurst Verified Statement in Excel format, is

**FEE RECEIVED**

JAN 07 1999

**SURFACE  
TRANSPORTATION BOARD**

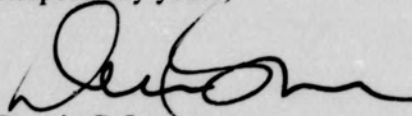
**ARNOLD & PORTER**

The Hon. Vernon A. Williams  
January 7, 1999  
Page 2

enclosed. Also enclosed is a 3.5-inch diskette containing the Highly Confidential exhibits to the Whitehurst Verified Statement, in Excel format.

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 "D. Lyons", written over the typed name.

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

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



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 33388

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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

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STB FINANCE DOCKET NO. 33388 (SUB-NO. 69)

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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

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**PETITION OF APPLICANTS CSX CORPORATION  
AND CSX TRANSPORTATION, INC.  
FOR RECONSIDERATION OF DECISION NO. 109**

Applicants CSX Corporation and CSX Transportation, Inc. (collectively, "CSX")  
hereby submit their petition for reconsideration of three aspects of Decision No. 109  
concerning the terms of the trackage rights granted to Canadian Pacific Railway  
Company and its affiliate, Delaware and Hudson Railway Company (collectively "CP"),  
pursuant to 49 C.F.R. § 1115.3.

## **PREFACE AND SUMMARY**

1. The Board's application in Decision No. 109 of its SSW Compensation formula to determine the compensation due CSX for the East-of-the-Hudson trackage rights granted to CP was based on the flawed calculations of CP's witness, Plaistow, whose Verified Statement was filed too late for CSX to reply to it. The Board corrected some of Plaistow's errors in Decision No. 109, but could not catch them all. The attached Verified Statement of William W. Whitehurst, Jr., identifies additional errors made by Plaistow in calculating both components of trackage rights compensation -- "below the wheel" costs and interest rental -- that were not corrected in Decision No. 109. It also quantifies the effect of its corrections of Plaistow's work. The corrections indicate a figure very substantially increased from the \$0.71 derived by the Board.

In light of the peculiar circumstances of this case -- including the facts that the line in question has been lightly used and that that is expected to continue -- it may be appropriate for the Board to calculate interest rental on the basis of capitalizing earnings based on Conrail's system average revenues and costs, as it did in UP/SP. Whitehurst presents a restated calculation using that approach resulting in a compensation fee of \$1.215 per car-mile. This figure is significantly lower than the figure that would be developed on the basis of an interest rental based on capitalization of line segment

earnings making the required additional corrections to Plaistow's calculations.<sup>1</sup> See Whitehurst V.S., Exhibits WWW-13 and WWW-15.

2. In Decision No. 109 the Board denied CSX any compensation for the loss of its exclusivity as to its freight rights over the portion of Conrail's Hudson Line between Poughkeepsie and Oak Point Link that is leased to Metro-North.<sup>2</sup> For the reasons developed in Part II below, CSX believes that the imposition of second-carrier trackage rights on a rail carrier operating freight transportation under retained exclusive freight rights as much requires interest rental compensation as does imposing them on a carrier owning a line in fee. Accordingly, CSX requests that the Board modify Decision No. 109 to provide that CSX should be entitled to interest rental compensation for CP's use of the Metro-North trackage, assuming that CSX establishes the exclusivity of Conrail's retained freight rights (denied by CP) in a proceeding before the Special Court.<sup>3</sup> Alternatively, in order to avoid a situation in which judicial review of the Board's order determining whether interest rental compensation should be paid would be litigated on a hypothetical basis, that is, on the assumption that the Special Court will agree with CSX, the Board may wish to vacate the statements it made concerning the Metro-North

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<sup>1</sup> In the event, however, that the Board further revises the compensation calculations in Decision No. 109, either on its own motion or in response to a petition for reconsideration from another party, CSX urges that the Board follow the primary approach set forth in the Whitehurst V.S. and restate its calculations in accord with that approach.

<sup>2</sup> Decision No. 109 at 12.

<sup>3</sup> All our references to the Special Court are to the United States District Court for the District of Columbia, on which the powers of the Special Court have devolved under the Federal Courts Improvement Act of 1996, Pub. L. 104-317, 110 Stat. 3858-59.

segment compensation issue in Decision No. 109 and reserve further consideration of that issue until the Special Court acts on the issue that is reserved to its exclusive jurisdiction.

3. The Board rejected in cursory fashion CSX's request that the Board terminate the rights CSX granted to CP in the October 20, 1997 settlement agreement in light of the overlapping and substantially expanded rights granted CP pursuant to Decision No. 89 and implemented by Decision No. 109.<sup>4</sup> For the reasons developed in Part III below, CSX believes that this result is inconsistent with the Board's policy encouraging voluntary settlements, inequitable to CSX, and counterproductive to the Board's purposes in granting CP rights to reach New York City in Decision No. 89. Accordingly, in particular, CSX urges the Board, as a condition of the trackage rights granted to CP or in the exercise of its override authority pursuant to 49 U.S.C. § 11321, to terminate the rights granted to CP under the October 1997 settlement agreement with CSX insofar as they relate to rail service involving the line East of the Hudson.

## **ARGUMENT**

### **I. THE COMPENSATION DUE CSX FOR THE TRACKAGE RIGHTS GRANTED TO CP SHOULD BE ADJUSTED TO CORRECT FOR THE ERRONEOUS CALCULATIONS BY CP WITNESS PLAISTOW**

In Decision No. 109, the Board resolved the disagreement between CSX and CP over the compensation to be paid CSX for the trackage rights granted to CP. The Board

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<sup>4</sup> See Decision No. 109 at 8 n.13.



held that its SSW Compensation formula,<sup>5</sup> consisting of a pro-rata share of all “below-the-wheel” operating costs and a pro-rata share of a rate of return on investment element, referred to as “interest rental,” should be applied. The Board further specified that in calculating the interest rental component, the capitalized earnings (“CE”) method, which values the property as a going concern for railroad use, should be applied.<sup>6</sup> CSX accepts those principles.

The Board went on to apply the SSW Compensation formula and the CE method to arrive at a compensation figure, using data supplied by CP witness Plaistow in his verified statement appended to CP’s December 10, 1998 reply pleading, CP-25. CSX had moved to strike the Plaistow statement as tardy insofar as it purported to show that CP’s proposed compensation was reasonable.<sup>7</sup> The Board agreed with CSX that insofar as the Plaistow statement “attempts to demonstrate that CP’s compensation approach is reasonable,” that statement “should have been included in CP’s CP-24 opening submission”; but it denied CSX’s motion to strike nonetheless.<sup>8</sup> Instead of striking the Plaistow statement, the Board relied on the data contained in it, but noted that the statement “contains several errors” which the Board corrected in restating the interest rental component.<sup>9</sup> The Board also stated that CSX may have “in the context of a

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<sup>5</sup> St. Louis Southwestern Railway Company – Trackage Rights Over Missouri Pacific Railroad Company – Kansas City to St. Louis, 1 I.C.C. 2d 776 (1984), 4 I.C.C. 2d 668 (1987), 5 I.C.C. 2d 525 (1989), 8 I.C.C. 2d 213 (1991).

<sup>6</sup> Decision No. 109 at 9.

<sup>7</sup> See CSX-170.

<sup>8</sup> Decision No. 109 at 4 n.7.

<sup>9</sup> Id. at 9.

petition for reconsideration, an opportunity to respond . . . to the Plaistow statement and to our calculations derived therefrom.”<sup>10</sup>

In this Petition and the accompanying Verified Statement of William W. Whitehurst, Jr. (“Whitehurst V.S.”), CSX accepts the Board’s invitation and points out several errors in the Plaistow statement in addition to those identified and corrected in Decision No. 109. Those errors affect both the computation of “below-the-wheel” costs and the interest rental component.<sup>11</sup> In particular, the necessary adjustments to the interest rental figure result in a substantially higher total compensation figure. In light of that fact, and because of the peculiar circumstances of this situation – especially the very light historic use of the line by Conrail and its anticipated usage by CSX and CP, at least at the start of post-Split operations – another approach the Board has used to calculate interest rental, based on system average earnings, would be acceptable to CSX, may be more appropriate in this case and would remove any concern as to CP’s ability to provide vigorous competition to CSX.

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<sup>10</sup> *Id.* at 4 n.7.

<sup>11</sup> We urge that the Board, as promised (Decision No. 109 at 4 n.7), give CSX a full “opportunity to respond” to Plaistow’s evidence, without the constraints on petitions for reconsideration set forth in 49 C.F.R. § 1115.3(b). However, in any event, it does seem to us that in the particulars identified below the Board fell into “material error” within the meaning of 49 C.F.R. § 1115.3(b) insofar as it accepted portions of Plaistow’s computations without the sanitizing benefit of adversary response.

A. "Below-the-Wheel" Costs

The Board accepted Plaistow's calculation of "below-the-wheel" costs of \$0.13 per car-mile.<sup>12</sup> In arriving at that figure, however, Plaistow used an inappropriate method of converting from variable to fully allocated costs. Specifically, Plaistow used a "Constant Cost Markup Ratio", which treats the ratio of variable costs to total costs as constant for all cost categories. As Whitehurst explains, that method is inappropriate and leads to erroneous results when only certain categories of costs are being allocated, as in the case of "below-the-wheel" costs.<sup>13</sup> In Decision No. 89, the Board recognized that use of the URCS "Flow-Through Option" is appropriate for making such allocations.<sup>14</sup> Whitehurst has restated the cost calculations using the appropriate methodology. See Whitehurst V.S., Exhibit WWW-11.<sup>15</sup> With this restatement, the amount due CSX for this component of trackage rights compensation is \$0.205 per car-mile.

B. Interest Rental

The Board identified and corrected several errors in Plaistow's calculation of the interest rental component.<sup>16</sup> Buried within Plaistow's tables, however, are other material

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<sup>12</sup> Decision No. 109 at 9.

<sup>13</sup> This is because Plaistow made no allocation for those components of "below-the-wheel" costs that are not treated as variable in URCS. See Whitehurst V.S. at 3.

<sup>14</sup> See Decision No. 89 at 141 and nn.211-14; see also Whitehurst R.V.S., Exhibit WWW-9, CSX/NS-177 at 713.

<sup>15</sup> Whitehurst begins with the Conrail fully allocated cost figure of \$0.46 per car-mile reflected in Decision No. 89 at 141; deducts the old Conrail return on investment component of that figure; and adjusts from 1995 to 1997 using the GDP deflator. Whitehurst V.S. at 4.

<sup>16</sup> See Decision No. 109 at 10-11 (correcting erroneous use of book value, over-inclusion of merger benefits in line segment earnings, failure to separate earnings developed from

*Footnote continued on next page*

errors the Board did not detect which significantly understate the compensation due CSX. These errors, and the proper calculations, are set forth in detail in the Whitehurst V.S. and its accompanying exhibits, and are briefly summarized here.

First, Plaistow based his calculations of the earnings attributable to the line segment over which trackage rights are being granted on the assumption that CP would receive the full scope of the rights it had requested, employing three access routes to the Hudson Line, and accordingly included earnings attributable to movements that do not make use of the trackage rights granted to CP in Decision No. 109.<sup>17</sup> The Whitehurst V.S. quantifies the increase in the line segment earnings resulting from excluding these movements at its Exhibit WWW-13.<sup>18</sup>

Second, Plaistow erroneously based his calculations on the switching costs anticipated by CP, rather than on the actual switching costs of Conrail. But the line segment earnings on which the calculation is to be based are the earnings of the owning carrier, here Conrail.<sup>19</sup> Nonetheless, Plaistow excluded Conrail's URCS system average

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*Footnote continued from previous page*

road property from earnings developed from equipment, and use of incorrect cost of capital).

<sup>17</sup> See Whitehurst V.S. at 5-6.

<sup>18</sup> The increase results from the exclusion of movements that, by Plaistow's calculations, produced negative earnings. See Whitehurst V.S. at 8 and Exhibit WWW-13.

<sup>19</sup> See, e.g., Atchison, Topeka & Santa Fe Railway Co. - Operating Agreement - Southern Pacific Transp. Co., 8 I.C.C.2d 297, 304 (1992) (earnings multiplier derived by multiplying "the value of the landlord's total system by the ratio of the landlord's line-specific earnings to the landlord's total railroad earnings") (emphasis added).



switching cost and substituted the switching cost that he assumed CP will pay.<sup>20</sup> This erroneously calculates this component of line segment earnings from the perspective of the tenant carrier. Whitehurst corrects this error and quantifies the resulting increase in line segment earnings at his Exhibit WWW-13.<sup>21</sup>

Third, in allocating Conrail's earnings to East-of-the-Hudson movements, Plaistow simply applied a mileage proration to data derived from the 1995 Costed Waybill Sample,<sup>22</sup> ignoring the fact that origin and destination activities produce higher revenues, as is recognized in the construction of the Costed Waybill Sample.<sup>23</sup> Whitehurst has restated the line segment earnings based on this more accurate apportionment of revenues and costs and quantifies that line segment earnings increase at Exhibit WWW-15.

It will be observed that the effect of correcting these errors of Plaistow in applying the CE method to the line segments involved (particularly since, as Plaistow did, Whitehurst has considered only the portions of the line that are in Conrail's fee ownership) would produce a very substantial increase to the \$0.71 figure derived by the Board upon correcting those of the Plaistow errors that the Board uncovered. To be sure, CSX could with good reason claim the fee that those calculations support. But while the

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<sup>20</sup> See CP-25, Plaistow R.V.S. at 10.

<sup>21</sup> Plaistow's error is compounded by the way in which he made the adjustment – deducting Conrail's actual average switching costs before allocation to the trackage rights segment, but adding CP's full switching costs after that allocation. See Whitehurst V.S. at 6-7.

<sup>22</sup> CP-25, Plaistow R.V.S. at 10 and Exhibit No. (JJP-2.4).

<sup>23</sup> See Whitehurst V.S. at 9-11 and Exhibit WWW-14.

line segment-based CE method appears to CSX to be generally the correct method of determining the base for interest rental calculations, it may well not be appropriate to use that method here in light of the fact that the line segment in question is relatively lightly used for freight movements, and in light of the Board's purposes here.<sup>24</sup> Accordingly, CSX would not object to the use of, and the Board may find it more appropriate to use system average earnings, an alternative method of computing the base for the interest rental that the Board has also used on occasion in the past. In UP/SP, the Board calculated interest rental on the basis of historic system average earnings, rather than specific segment earnings.<sup>25</sup>

Using that approach here, as set forth at pages 12-15 and Exhibit WWW-18 of the Whitehurst V.S., produces a compensation figure of \$1.01 per car-mile as interest rental and \$1.215 overall with the below-the-wheel component. CSX submits that this approach – which produces a substantially lower compensation figure than that which would be derived by making the above-referenced adjustments to the Plaistow calculations relied on in Decision No. 109 – may be better suited to the specific situation presented here, and CSX does not object to its use here.

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<sup>24</sup> CSX acknowledges that the Board has set as its goal, following the urgings of the New York Parties and other public officials, the introduction of a second major rail carrier directly serving the City of New York and providing interchange for points elsewhere on Long Island.

<sup>25</sup> Union Pacific Corp. – Control and Merger – Southern Pacific Rail Corp., F.D. No. 32760, Decision No. 44 at 140-42.

As noted above, CSX believes that generally the basis for computing pertinent costs and revenues, whether for the purpose of determining the base for the interest rental, or, in the case of costs, for a cost-based analysis, should be the particular line segment or segments under scrutiny. In particular, for example, in determining the costs of providing switching in the Bronx and Queens – notoriously an area of high costs, where extensive switching activities will take place – only actual operating costs relating to the area in question should be used, not systemwide costs. Indeed, that is the conventional practice as to joint facilities. Nonetheless, as mentioned, CSX does not object to the use of the Conrail systemwide basis for determining the CE base for the interest rental for the trackage rights here. Use of systemwide costs clearly will not prejudice CP, and it is clear that CP will be able to compete vigorously with CSX for business originating and terminating at destinations within the City of New York and moving in interchange with the New York & Atlantic to the rest of Long Island.

In relation to this, the Board should consider that Metro-North, an instrumentality of one of the New York Parties who have supported CP's positions in the present proceeding, is negotiating trackage rights arrangements with CP over a major 50-mile segment of the line in question, from Oak Point Link to Poughkeepsie. Those public bodies, which are not private sector entities whose survival and capital financing is dependent on profits, will probably be providing a subvention to CP in those negotiations through highly concessionary arrangements.<sup>26</sup> In combination with the concessionary

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<sup>26</sup> For the reasons alluded to in Part II below, presumably at least until the issues as to Metro-North's ability to grant trackage rights are resolved by the Special Court, Metro-

*Footnote continued on next page*

approach taken by CSX herein, that should assure that CP can compete vigorously and on an equal footing with CSX. Thus, CSX requests that the total compensation due CSX be adjusted to \$1.215 per car-mile<sup>27</sup> for the Conrail-owned segment.

**II. CSX IS ENTITLED TO COMPENSATION FOR THE LOSS OF ITS EXCLUSIVE FREIGHT RIGHTS OVER THE PORTION OF THE HUDSON LINE CONTROLLED BY METRO-NORTH**

The SSW Compensation formula ensures that a trackage rights grantor is not placed at a competitive disadvantage relative to its tenant by requiring the tenant to bear a pro-rata share of the total cost of the line, including a rate-of-return or "interest rental" element reflecting the cost of the capital used to construct or purchase the line.<sup>28</sup> A portion of Conrail's Hudson Line, over which CP will operate, is leased to Metro-North under a 60-year lease granted by Penn Central, Conrail's predecessor.<sup>29</sup> That lease reserved to Penn Central the exclusive rights to operate freight trains over the portion of

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*Footnote continued from previous page*

North will not be insisting on any interest rental component from CP in terms of that segment.

<sup>27</sup> In the event that the Board decides, on its own motion or in response to a petition for reconsideration, to make other adjustments to the trackage rights compensation figure awarded in Decision No. 109, CSX requests that the Board make the adjustments to the Board's adjusted Plaistow calculation set forth in the *Whitehurst V.S.*, and award a compensation figure that takes full account of those adjustments.

<sup>28</sup> "When all the landlord costs are not covered by compensation terms, trackage rights constitute a cross subsidy from the landlord or its customers." SSW Compensation, 4 I.C.C.2d at 683 (internal quotes omitted).

<sup>29</sup> See generally CSX-169 at 17-20.



the line leased to Metro-North,<sup>30</sup> and those exclusive rights devolved upon Conrail in the Final System Plan. The Board rejected CSX's contention that it is due compensation for the invasion of those exclusive freight rights, stating:

[W]e do not require compensation for the competitive or financial value of trackage rights, only the costs (including capital costs) of their use. No capital costs have been set forth by CSX for the portion of the track owned by Metro-North.

Decision No. 109 at 12. But CSX is not seeking compensation for the value of its freight rights; it simply seeks "the appropriate cost-based interest rental" attributable to its property rights.<sup>31</sup> And the reason why CSX did not present those costs in CSX-167 or CSX-169 is obvious: CSX was not asking the Board to fix a compensation rate, but rather, given the time exigencies of the proceeding, a compensation formula, which would be translated into a rate by negotiation between the parties in the first instance, or by arbitration with Board review if there was a failure to agree.<sup>32</sup> In any event, CSX submits that the same process used to determine the interest rental due CSX for the rest of the CP trackage rights can be applied to the Metro-North portion of the line to determine CSX's capital costs, that is, the formula applied as to interest rentals in Decision No. 109,

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<sup>30</sup> Metro-North and CP apparently dispute CSX's claim to freight exclusivity over the segment in question. NYC-23/NYS-32, Bernard V.S. at 4; CP-24 at 2 n.1. That issue should be resolved by the Special Court pursuant to its exclusive jurisdiction. 45 U.S.C. §§ 719(e)(1)(F), 719(e)(2). The issue on this petition is whether, assuming the rights are confirmed to be exclusive, CSX is entitled to compensation for the loss of its exclusivity through the Board-mandated grant of trackage rights to CP. If the rights are exclusive, CSX does not quarrel with the Board's general power to override exclusivity – just like the Board's power to override the prerogatives of a fee owner by mandating trackage rights on a line held in fee.

<sup>31</sup> CSX-169 at 21.

<sup>32</sup> See id.

with the further corrections to the Plaistow calculations identified and corrected as per the primary methodology in the Whitehurst V.S.

In reaching its determination that CSX is entitled to no compensation for the invasion of the exclusive freight rights held by CSX over the Metro-North portion of the Hudson line, the Board overlooked the unique circumstances in which those rights arose, namely, that they were retained by Penn Central, the original fee owner, and devolved upon Conrail. This is not a case in which one freight railroad obtained trackage rights from another railroad pursuant to ICC or Board order or under a voluntarily negotiated transaction. Rather, Penn Central, Conrail's predecessor, owned the line, and entered into a long-term lease to Metro-North's predecessor, the MTA.<sup>33</sup> That lease expressly "[r]eserv[ed] further from the leased premises, the right, which continues to remain with Lessor," to operate freight railroad common carrier service.<sup>34</sup> Conrail's interest in the line segment is thus indistinguishable from fee ownership as far as freight operations are concerned. Each of Conrail and Metro-North has a certain bundle of rights in the line segment in question.<sup>35</sup> Conrail's rights to use the line segment for freight operations are as full as those of a fee owner who has granted exclusive and extensive passenger rights,

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<sup>33</sup> CSX-169, Exhibit A-2.

<sup>34</sup> CSX-169, Exhibit A-2, Appendix II-A, at 3-4.

<sup>35</sup> This principle is supported by a classic and close-to-home judicial pronouncement: "For 'property' is nothing more than a collection of rights and can be valued on no other basis; talk of property as having some reified existence simply makes for confusion." Friendly, J., in *In re Valuation Proceedings*, 445 F. Supp. 994, 1012 (Special Ct. 1977).

for compensation, to a passenger operator. Indeed, Metro-North is not a fee owner itself.<sup>36</sup>

Both Conrail's predecessor, Penn Central, and CSX incurred capital costs in connection with the establishment of or succession to these exclusive rights. Indeed, the Special Court noted testimony by an official of the MTA to the effect that the amount paid by MTA to Penn Central for the purchase and lease of properties was reduced by an amount reflecting the capitalized value of the reserved trackage rights.<sup>37</sup> CSX, as an acquiror of Conrail, has made a capital investment in that property just as it has in all of Conrail's other property. The fact that Metro-North is the lessee and primary user of the segment and controls its dispatching does not alter the fact that Conrail's predecessor and CSX each incurred a capital cost for that segment, and that CSX is entitled, under the Board's trackage rights compensation principles, to an interest rental fee compensating it for the invasion of its property rights.

It is the exclusive nature of the rights reserved to Conrail that distinguishes them from ordinary nonexclusive trackage rights granted by a fee owner. Metro-North is not a fee owner and has no freight rights to grant, although CP says it is "negotiating" with Metro-North and is apparently willing to pay Metro-North for them.<sup>38</sup> As to the rights of Conrail and, hence, CSX, there is a fundamental difference between acquiring (or in this

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<sup>36</sup> CSX-169, Exhibit A-2; see NYC-23/NYS-32, Bernard V.S. at 2.

<sup>37</sup> See CSX-169, Exhibit A-1 at 19.

<sup>38</sup> See CP-24 at 2 n.1. The New York custom of selling the Brooklyn Bridge comes to mind.

case retaining) the right to be the only freight railroad operating on a line and being one of a number of nonexclusive providers of such service. Denying compensation to CSX for the loss of its exclusivity and CP's payment of any interest rental to Metro-North would each be irrational and unjustified.<sup>39</sup>

The foregoing discussion assumes, as seems clear to CSX, that Conrail's (and hence CSX's) freight rights are an exclusive carve-out of the leasehold estate that was granted to Metro-North by Conrail's predecessor. That issue is in dispute, and the dispute can only be decided by the Special Court, as the Board has apparently recognized. See Decision No. 109 at 4-5, 11-12. Raising and fully briefing the issue before the Special Court and obtaining its decision will take a period of time that will be inconsistent with the schedule on which the present proceedings must go forward. It seems to CSX to be a burden on the Board and on its reviewing courts for the Board to decide at this time the issue whether CSX is entitled to obtain interest rental compensation over the Metro-North segment if CSX succeeds in making its case for exclusivity before the Special Court. Accordingly, the Board may wish to vacate its statements in Decision No. 109 as to whether or not CSX is entitled to an interest rental on that segment at the present time, and postpone decision on that issue until the Special

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<sup>39</sup> Indeed, it is paradoxical that the Board has denied CSX compensation for the loss of its exclusive right to operate freight trains over a line while it apparently assumes that Metro-North is entitled to such compensation, even though Metro-North does not own the line but leases it from a successor to Penn Central under a long-term lease. Why Metro-North, as the holder of exclusive passenger rights over a line, should be treated more favorably than CSX, the holder of exclusive freight rights, when it comes to compensation to be paid by a second freight carrier, is unexplained and seemingly inexplicable.



Court has spoken as to the nature of Conrail's applicable rights – that is, exclusive or not -- as granted under the Final System Plan and as acquired by CSX.<sup>40</sup>

### **III. THE BOARD SHOULD TERMINATE THE RIGHTS GRANTED TO CP IN THE OCTOBER 1997 SETTLEMENT AGREEMENT**

On October 20, 1997, pursuant to the Board's policy of encouraging voluntary settlements, CSX and CP entered into a settlement agreement providing CP with certain independent ratemaking authority on specified movements (the "October 1997 Agreement"). While CP accepted those arrangements and withdrew from the proceeding, as required by the October 1997 Agreement, the Board decided in Decision No. 89 to grant CP trackage rights over the Hudson Line in order to expand competition in New York City. Under the Board's action, CP will receive substantially greater rights East of the Hudson than it had bargained for in the October 1997 Agreement. In light of this result, CSX requested in CSX-167 that the Board terminate the arrangements in that voluntary agreement on the ground that they were superseded by the trackage rights to be granted to CP under Decision No. 89. The Board denied CSX's request without discussion. Decision No. 109 at 8 n.13.

CSX submits that it is inequitable to require CSX to perform its part of an agreement when the material basis for that agreement – that no further or additional relief would be granted to CP – has been vitiated. Allowing CP to retain the benefits of that

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<sup>40</sup> Such a vacation and postponement which would prevent the establishment of an administrative precedent might also promote settlement.

voluntary agreement plus the expanded benefits conferred unilaterally by the Board would not only be unjust to CSX, but it would also undermine the Board's settlements policy and the Board's purposes in granting the trackage rights.

The Board's policy of encouraging voluntary settlements depends on parties being able to rely on the finality of the agreements they reach. If one of the parties can make a settlement and then ask the Board to improve on it -- or, as in this case, if the deal can be improved at the behest of parties other than the settling party -- allied or not -- parties in CSX's position will be wary of entering into settlements. That is because they will be unable to count on deriving any benefits from them. Clearly, there may be circumstances when the Board will find it necessary to expand rights granted in a settlement in order to remedy a problem, such as a loss of competition, created by a transaction. But that was not the case here; the condition in question was aimed at fulfilling a different and atypical goal of expanding competition. While CSX does not now quarrel with the means used by the Board to fulfill that goal, CSX should not be forced to pay twice in the process.

Moreover, maintaining the October 1997 Agreement in effect may undercut the purpose of the relief being awarded to CP. If CP can compete for the particular New York City traffic it values without running its own trains over the Hudson Line, by using the advantageous independent ratemaking rights it negotiated in the October 1997 Agreement, it may have less incentive to devote itself to serving the City by incurring the costs of using the trackage rights and operating trains over the line. This result would subvert the Board's intention in bringing a second carrier into the City. Terminating the agreement would maximize CP's incentive to make full use of the trackage rights and

would fulfill the objectives of the Board and the New York Parties who sought the relief being granted to CP.

CP has made the point (CP-25 at 23-24) that much of the October 1997 Agreement<sup>41</sup> does not relate to the line East of the Hudson. That is true. But a material portion of it does. As to that, CP indicated that it would be willing, under certain conditions which it sought to dictate itself and which the Board has not satisfied,<sup>42</sup> to give up the "overlapping" rights granted to it under that Agreement with respect to the East of the Hudson Line, particularly the right of independent ratemaking. CP-25 at 26-27. Since CP now has trackage rights, unrestricted as to commodities and as to the source of the movements on CP's lines (unlike the October 1997 independent ratemaking rights) to serve New York City directly over the East of the Hudson Line, there in particular is no reason to leave that "overlapping" portion of the October 1997 Agreement in being. To do so would add insult to injury to CSX and be subversive of the Board's own purposes. So at the very least, the provisions in the October 1997 Agreement concerning movements over the East of the Hudson Line should be terminated, as even CP has noted would be appropriate.

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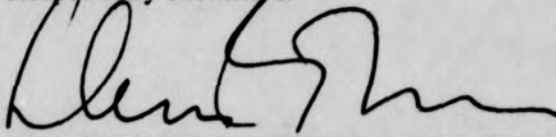
<sup>41</sup> CP does not question CSX's right to terminate the May 1998 Settlement Agreement or the January 1998 letter (each discussed and presented in CSX-167) pursuant to their terms, which CSX has done. See CP-25 at 25 and n.26.

<sup>42</sup> Namely, that the Board gave it local trackage rights along the entirety of the Hudson Line from Selkirk to New York City. See CP-25 at 26-27.

## **CONCLUSION**

For the reasons stated, CSX requests that the Board restate the trackage rights compensation due CSX in accordance with the foregoing and the Whitehurst V.S.; declare that CSX is entitled to interest rental from CP for the invasion of its exclusive freight rights over the Metro-North portion of the Hudson Line subject to CSX's proving exclusivity before the Special Court, or take steps to leave the interest rental issue open pending resolution of the exclusivity issue by the Special Court; and terminate at least the East of the Hudson rights granted to CP under the October 1997 Agreement.

Respectfully submitted.



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January 7, 1999



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.

Canadian Pacific Railway Company, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited (collectively "CP") filed reply evidence (designated as CP-25) in FD No. 33388 (Sub-No. 69) on December 10, 1998. Included in that filing is the verified statement of Joseph J. Plaistow. The Surface Transportation Board's ("STB") Decision No. 109 in FD

No. 33388 (Sub-No. 69) of December 18, 1998, relies on the Plaistow evidence at various points, but expressly invites a critique of this evidence by CSX.<sup>1</sup>

I have been asked by CSX to: (a) analyze the evidence filed by Joseph J. Plaistow together with the STB's Decision No. 109; and (b) respond to the Plaistow evidence upon which the STB relies in setting a trackage rights compensation rate per car-mile. In this verified statement, I describe my analyses, findings, and corrections regarding the Plaistow evidence. My response is presented under the following topic headings:

- ¶ Corrections to Plaistow "Below-the-Wheel" Costs
- ¶ Corrections to Plaistow Line Segment Earnings
- ¶ Alternative Development of Interest Rental Component of Car-Mile Rate

#### CORRECTIONS TO PLAISTOW "BELOW-THE-WHEEL" COSTS

At page 9 of its Decision No. 109, the STB states that it "accepts" the \$0.13 per car-mile rate provided by CP for "below-the-wheel" costs based on Conrail's 1995 Uniform Railroad Costing System ("URCS") system average data. This rate is developed by CP witness Plaistow at Exhibit No. (JJP-1) and is hence open to critique as provided in the STB's decision.

At Exhibit No. (JJP-1), Mr. Plaistow develops a fully allocated "below-the-wheel" rate of \$0.13 per car-mile for operating expenses ("OPR") and depreciation and leases ("DRL" or "DL") combined. This rate is understated, primarily because of the approach

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<sup>1</sup> At 4 n. 7, the STB states: "In this decision, however, we are not simply 'establishing a formula'; we are setting a compensation amount; and, to this end, we have had to rely on some of the data provided in the Plaistow statement. Thus, we are prepared to afford CSX, in the context of a petition for reconsideration, an opportunity to respond, if it is so inclined, to the Plaistow statement and to our calculations derived therefrom." At 11, the STB states: "In addition, as noted above, we will permit CSX to seek reconsideration based on its critique of any of the Plaistow evidence upon which we have relied here."

Mr. Plaistow uses to adjust from the variable costs level to the full (or fully allocated) costs level. Mr. Plaistow uses a "Constant Cost Markup Ratio" approach as shown at line 21 of Exhibit No. (JJP-1).

A "Constant Cost Markup Ratio" is the ratio of Total Railway Expense to Total Variable Railway Expense. A "Constant Cost Markup Ratio" approach applies this ratio to the variable costs of a given movement, service, or category of traffic to compute an estimate of the fully allocated costs of that activity. Such an approach works reasonably well when all cost categories are considered, but can misstate fully allocated costs when only certain portions of costs, such as "below-the-wheel" costs, are involved. For example, in URCS the variability percentage assigned to costs of each of "Dispatching Trains", "Operating Signals", "Operating Drawbridges", and "Highway Crossings" is zero (as shown at WT D3, L. 159 through 162, Col. (4)), which means that no portion of these costs is included in variable costs. Hence, even though each of these is a component of "below-the-wheel" costs, when fully allocated costs are derived from variable costs using the "Constant Cost Markup Ratio" approach no costs for any of these activities will be included.

To deal with situations such as this, URCS provides a "Flow-Through Option" which computes costs under the assumption that expenses are fully (that is 100%) variable, thereby arriving at fully allocated costs directly without the need for a constant cost markup step. As stated on Exhibit WWW - 9 of my December 1997 rebuttal verified statement in the main FD No. 33388 proceeding, I used the "Flow-Through Option" to compute CSX-Conrail 1995 Fully Allocated URCS Costs. In its Decision No. 89 at 141, the STB states that, using the same method, they developed Conrail costs of 46 cents per car-mile.

My computation replicating the STB's 46 cents per car-mile for Conrail from the 1995 URCS using the "Flow-Through Option" is presented here as Exhibit WWW - 11.

The STB's \$0.46 per car-mile rate for Conrail contains return on investment ("ROI") costs as well as OPR and DL costs. Removing the ROI costs component to arrive at "below-the-wheel" costs, as used by the STB here, yields a rate of \$0.196 per car-mile. (This computation is also shown on Exhibit WWW - 11.) In other words, by using a "Constant Cost Markup Ratio" approach, Mr. Plaistow has significantly understated the fully allocated "below-the-wheel" rate.

As demonstrated here, the Conrail rate of \$0.46 per car-mile computed by the STB 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 1997 and 1995 of 4.461% as provided by the STB in its Decision No. 109 results in a "below-the-wheel" rate of \$0.205.

#### CORRECTIONS TO PLAISTOW LINE SEGMENT EARNINGS

At page 11 of its Decision No. 109, the STB "accepts" the \$592,490 line segment earnings amount developed by CP. This amount is developed by CP witness Plaistow at Exhibit No. (JJP-2.4) and is hence open to critique as provided in the STB's decision.

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.



Deletion of Movements Not on  
The Trackage Rights Line Segment

As the first step in my analysis, I reviewed the line item detail of Mr. Plaistow's Exhibit No. (JJP-2.4), which consists of 24 pages. Each line represents a separate movement; in total there are 1,168 movements.

Of this total, 59 are movements with zero miles on trackage rights. Mr. Plaistow did not include them in his earnings calculations<sup>2</sup>. Each of them either: (a) has Albany as the origin or the destination point; or (b) shows O-T (origin and termination) as the same point. Albany is the line segment endpoint at which CP moves between its owned lines and the trackage rights line segment. Hence, traffic between this point and points West-of-the-Hudson would not be in trackage rights territory.

More importantly, there are 525 movements to/from a point that is not on the trackage rights access route which the STB approved at page 7 of its Decision No. 109<sup>3</sup>. The point that is not on that route is Selkirk Yard. It does not appear that any of these movements make use of the trackage rights route and, therefore, they too should be excluded from the earnings calculation.

Exhibit WWW - 12<sup>4</sup> is a copy of Mr. Plaistow's Exhibit No. (JJP-2.4) which has been marked to show the line items for movements which either: (1) have zero miles on

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<sup>2</sup> The text at page 2 of Exhibit No. (JJP-2.4) states "In some instances we found that the traffic we had identified did not traverse the trackage rights line at all. Data from these movements are excluded in our calculations."

<sup>3</sup> In its Opening Evidence and Argument of November 30, 1998 (CP-24), CP requested three access routes on the north end of the east-of-the-Hudson line, depicted as CP Route 1, CP Route 2, and CP Route 3. At page 7 of its Decision No. 109, the STB denied CP's request for three access routes to the Hudson Line at Albany, on the north end of the trackage rights line. The STB only authorized CP to use Route 1, as proposed by CP in CP-24, Exhibit 2; and further noted that this route does not involve Conrail's Selkirk Yard.

<sup>4</sup> Exhibit WWW - 12 contains line item detail from the STB Waybill Sample, and is hence marked Highly Confidential.

trackage rights; or (2) are shown as originating or terminating at Selkirk Yard. In making adjustments to arrive at the correct line segment earnings amount, I have deleted both of these categories of marked line items. The first category (zero miles on trackage rights) has no effect on Mr. Plaistow's earnings computation; the second category (Selkirk Yard) does have an effect. The magnitude of this effect is identified on Exhibit WWW - 13, which also measures the impact of corrections discussed in the subsection immediately below.

Corrections to Mr. Plaistow's  
Treatment of Switching Costs

As the second step in my analysis, I addressed Mr. Plaistow's treatment of switching costs. Two columns of Exhibit No. (JJP-2.4) address switching costs. These columns (col. (j) and col. (o)) make adjustments which Mr. Plaistow claims are necessary to properly reflect actual earnings on the line. Mr. Plaistow describes and attempts to justify the adjustments he makes at page 10 of his verified statement in the following language:

"In the time available, it was not possible to determine the precise earnings of each piece of traffic. However, I did adjust for the difference in actual switching costs versus URCS system average switching costs. This is an important adjustment because for each piece of traffic originated or terminated on the 'east-of-the-Hudson' line segment and transported by CP, a \$250 switching charge will have to be paid. To make this adjustment, I removed the URCS system average switching cost (see Exhibit No. (JJP-2.4), page 24 of 24 for the calculation of this cost). and I added back the actual cost to CP of \$250 per car. I assumed that CP would transport 20% of the traffic originated or terminated on the trackage rights line segment."

*Mr. Plaistow's adjustment to switching costs is nonsense, as is his rationale!* The line segment earnings to be developed are those of Conrail, not those of CP or of part Conrail and part CP. Furthermore, the earnings multiplier which is applied to line segment earnings is based on Conrail earnings and Conrail fair market value, not the earnings and/or fair market value of CP. The switching charge of \$250 per car which

CP proposes to pay to Conrail for the 20% portion of total traffic it expects to handle has no relevance to Conrail's 1995 or 1997 costs and earnings.

In contrast, the URCS system average switching cost which Mr. Plaistow removes is Conrail's URCS system average switching cost, and Conrail is the railroad whose costs are being compared to revenues to derive earnings. If Mr. Plaistow were to replace Conrail's URCS system average switching cost with a more accurate measure of Conrail's switching costs applicable to the trackage rights line segment, that might have been appropriate. But that is not what Mr. Plaistow did -- instead he plugged in a \$250 per car switch fee which CP proposes to pay to Conrail.

The only rationale I see for Mr. Plaistow's switching cost "switch" is that it has the effect of understating line segment earnings and thereby reducing the interest rental component of the trackage rights payment CP would pay. Even at first glance the cost assigned to each car is increased by \$164.60 (\$250 switch charge added less \$85.40 Conrail URCS switching cost deleted). Moreover, on closer inspection, the structure of Mr. Plaistow's Exhibit No. (JJP-2.4) builds in a greater cost increase than this. Note that the Conrail URCS switch cost (col. (j)) is deducted out *before* allocation to the trackage rights segment but that the \$250 switching charge (col. (o)) is added in *after* allocation to the trackage rights segment. This manipulation has the effect of shrinking the amount of the Conrail URCS switch cost deduction from its full value to a small percentage of that value, while keeping the \$250 switch charge at 100% of its full value. The average percentage of total earnings which Mr. Plaistow assigns to the trackage rights line segment can be computed by dividing the total of col. (n) "Earnings on TR Excl. Switching" (\$2,751,097) by the total of col. (l) "Total Adjusted Earnings" (\$47,891,727). The resulting percentage is 6%. Consequently, the magnitude of the artificial and irrelevant cost increase Mr. Plaistow builds in is on the order of \$245 per car (\$250 - (\$85.40 \* 0.06)).

Exhibit WWW - 13 summarizes the corrections to Mr. Plaistow's line segment earnings described in this and the immediately preceding section of my verified statement. Line 1 of the exhibit presents totals for relevant columns shown on page 23 of Exhibit No. (JJP-2.4). The total adjusted earnings at this point are the \$592,490 claimed by Mr. Plaistow. Line 2 of the exhibit deletes data from each column applicable to the 59 movements with zero miles on trackage, and Line 3 shows amounts net of these deductions. As can be seen from column 13, the adjusted earnings are unaffected. However, eliminating amounts applicable to these 59 movements in other columns cleans up the totals by eliminating data not relevant to the trackage rights movements.

Line 4 of the exhibit deletes movements to/from Selkirk Yard, which do not make use of the route over which the STB has granted trackage rights to CP. Note that Mr. Plaistow attributes a negative earnings contribution of \$886,711 to these movements. The principal reasons for this negative result lie in: (a) Mr. Plaistow's treatment of switching costs; and (b) the procedure which Mr. Plaistow used for apportioning earnings to the trackage rights line segment. His mileage pro-rate procedure substantially understates earnings related to traffic origination and termination - a topic developed further in the next subsection of this verified statement.<sup>5</sup>

Line 5 of the exhibit portrays Mr. Plaistow's totals after taking out movements which are not in the territory for which the STB has granted trackage rights to CP. Removing these movements to/from Selkirk Yard and its associated negative earnings contribution of \$886,711 results in corrected line segment earnings of \$1,479,201.

Line 6 of the exhibit reverses the switching cost "adjustment" which Mr. Plaistow introduced into the costed waybill sample data, and Line 7 shows the results of this

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<sup>5</sup> Correcting both of these categories of errors would result in a positive line segment earnings contribution from movements to/from Selkirk Yard of \$1,864,164.



correction, which restores the earnings result to that applicable to Conrail rather than an amalgamation of Conrail and CP. Mr. Plaistow's erroneous switch charge addition has the effect of reducing line segment earnings by over one million dollars (\$1,070,133), and correcting it increases actual line segment earnings to \$2,549,335.

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

As the third step in my analysis, I addressed Mr. Plaistow's apportionment of total revenues and costs to the trackage rights line segment. Strictly speaking, Mr. Plaistow did not apportion either revenues or costs. What he apportioned were earnings, and the way he apportioned them was by applying a mileage pro-rate.

To arrive at total earnings for each movement, Mr. Plaistow: (1) picked up the total variable costs from the 1995 STB Costed Waybill Sample; (2) adjusted these variable costs to the full cost level; (3) deducted the return on investment component of costs; and then (4) subtracted the full costs net of return on investment from total revenues (also from the 1995 STB Costed Waybill Sample). To develop the portion of this total earnings amount for each movement applicable to "East-of-the-Hudson" he applied a mileage pro-rate. That is, Mr. Plaistow computed the percentage of total movement miles that were on the trackage rights line segment and then multiplied this percentage times the total earnings for the movement to estimate earnings applicable to the line segment. By using this mileage pro-rate procedure, Mr. Plaistow ignored both: (1) the revenues and the costs typically associated with origin and destination activities; and (2) information in the STB Costed Waybill Sample procedures which permits more accurate estimation of these revenues and costs.

Typically, more costs per mile are incurred by a railroad in originating and terminating a shipment than in line haul movement. This situation is recognized in the

procedures for developing URCS costs of handling the shipment. Furthermore, in recognition of this situation, railroads participating in a multiple line movement typically assign an additional portion of the total revenues earned for the shipment to the originating carrier and to the terminating carrier.

This phenomenon is also recognized in the construction of the Costed Waybill Sample. Exhibit WWW - 14 is an excerpt from the User Guide For The 1995 Surface Transportation Board Waybill Sample ("User Guide"). This guide describes various features of the 1995 Waybill Sample, also referred to as the "1995 Costed Waybill Sample", which Mr. Plaistow used as his data source for identifying revenues and costs associated with traffic originating or terminating on the trackage rights line (SEE Plaistow RVS at 8 - 10 and Exhibit No. (JJP-2.4) at 1).

Revenue allocations are addressed in Section 8 of the User Guide, which describes the 1995 Waybill Records Layouts. Item 102 contains the Expanded Total Revenue and Items 103 through 112 contain the Revenue Split applicable to each railroad participating in the shipment. The manner in which total revenues are split (i.e. apportioned) among participating railroads is described at page 8-32 of the User Guide in the following text:

"Revenue splits are calculated by ALK in the following manner: the waybill's expanded freight revenue figure (item 99) is divided by the number of 100 mile blocks traveled by each railroad in the route. The origin railroad is apportioned revenue for an additional block, to allow for pick-up and switching expenses. Likewise, the termination railroad is credited with revenue for an additional block, to allow for delivery expenses."

To illustrate this procedure by simple example, assume a waybill covering an 800 mile shipment over three railroads with an originating railroad line haul of 100 miles, an intermediate railroad line haul of 500 miles and a terminating railroad line haul of 200 miles. On a straight mileage prorata basis, the originating railroad would be assigned 12.5% (1/8) of the revenues, the intermediate railroad would be assigned 62.5% (5/8) of the revenues, and the terminating railroad would be assigned 25% (2/8) of the

revenues. Using the more refined approach provided in the Costed Waybill Sample to take into account shares of the service provided by each railroad, however, two additional 100 mile blocks are considered for purposes of allocation -- one going to the origin carrier and one going to the termination carrier -- bringing the total allocation divisor to 1000 miles. The allocations of total revenues using the Costed Waybill Sample procedures then assign the originating railroad 20% (2/10) of total revenue, the intermediate railroad 50% (5/10) of total revenue and the terminating railroad 30% (3/10) of total revenue. Comparing these percentage results to the straight mileage prorate approach used by Mr. Plaistow, we see that his apportionment procedure under-assigns revenues to the origin portion of the movement and to the termination portion of the movement. Since the vast majority of the waybill movements Mr. Plaistow considers in developing earnings for the trackage rights line segment either originate or terminate on that line segment, Mr. Plaistow has understated revenues and hence earnings attributable to the trackage rights line segment.

The build-up of total variable costs is also addressed in Section 8 of the User Guide at pages 8-49 and 8-50, Items 183 and 185 through 192. A more accurate estimate of costs attributable to the trackage rights line segment can be computed by using these variable cost data. Conceptually, the procedure requires three steps. First, variable costs for carriers (if any) other than the originating (or terminating) railroad are deleted. Then, the URCS variable costs for the railroad originating (or terminating) the shipment (in this case Conrail) are replicated using URCS unit costs and movement operating characteristics. The components of the URCS variable cost for the movement can then be subdivided between those involved in terminal activities versus those involved in line haul activities.

Hence, an adjustment to arrive at a more accurate apportionment of revenues can be made if total revenues and total movement miles are known; and an adjustment to arrive at a more accurate assignment of costs can be made if variable costs and

movement miles are identified separately for each railroad that participated in the movement. Mr. Plaistow's workpapers provide the necessary data for the revenue adjustment but not the necessary data for the cost adjustment.

In Exhibit WWW - 15<sup>6</sup>, I apply the STB's more accurate revenue apportionment procedure to arrive at revenues attributable to the trackage rights line segment (see computation instructions for "col.(1)"). Lacking necessary data to apply the variable cost adjustment, I use the revenue apportionment procedure as a surrogate (see computation instructions for "col.(2)"). The resulting more accurate earnings amount for the line segment is \$4,457,835. As can be readily seen, the impact of this correction, in combination with the other corrections described above, is very significant. Corrected line segment earnings are nearly eight (8) times as large as those Mr. Plaistow constructed.

Trackage rights line segment earnings reflecting the various corrections to Mr. Plaistow's development are summarized on Exhibit WWW -16.

#### ALTERNATIVE DEVELOPMENT OF INTEREST RENTAL COMPONENT OF CAR-MILE RATE

Mr. Plaistow's verified statement of December 10, 1998 on behalf of CP includes a computation of the "interest rental" component of a trackage rights car-mile rate which uses the capitalized earnings approach established in SSW Compensation<sup>7</sup>. Interest rental rate results derived for a specific line segment using the capitalized earnings approach (or method) are highly sensitive to two factors used in the computation - - (1) the earnings multiplier for the system as a whole, and (2) the

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<sup>6</sup> Exhibit WWW - 15 contains line item detail from the STB Waybill Sample, and is hence marked Highly Confidential.

<sup>7</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).



earnings for the specific line segment in question. The STB's Decision No. 109 utilizes the capitalized earnings ("CE") method established in SSW Compensation which CP proposes, but finds several errors in CP's "interest rental" component and corrects them. The STB's corrections restate both: (a) the fair market value of road property; and (b) Conrail's earnings - - and thereby change the earnings multiplier. Similarly, my analyses of Mr. Plaistow's data and computations, as developed in earlier sections of my verified statement, correct line segment earnings for the "east-of-the-Hudson" line segment to which the STB has granted CP trackage rights access.

Given the substantial change in resulting interest rental rate produced by these corrections to CP's earnings multiplier and line segment earnings errors, it may be appropriate to consider an alternative approach to computing the trackage rights rate which utilizes the same SSW Compensation principles, but applies them on a system average basis. The STB has approved this alternative approach recently in FD No. 32760, the UP/SP merger proceeding<sup>8</sup>. In that proceeding, the operating and maintenance cost portion of the formula (also referred to as "below-the-wheel" costs) was calculated, as here, at the fully allocated cost level and utilized the same cost components. The interest rental portion of the formula was computed similarly to the capitalized earnings method and utilized some of the same factors, but was calculated as a system average figure, and therefore did not require development of either an earnings multiplier or line segment specific earnings.

The interest rental computation which the STB approved in FD No. 32760 started with fair market value of the acquired railroad, as here. The fair market value was then separated between the rail component and the non-rail component, and the rail component was further separated between fixed (or road) properties versus equipment,

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<sup>8</sup> SEE 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)

again as here. However, since the resulting rate to be used was to be a system average figure, it was not necessary to convert system totals to line segment specific values by constructing an earnings multiplier and then applying it to line segment specific earnings. Instead, the fair market value of the road property could be annualized directly through application of the railroad current cost of capital. Finally, the resulting annual figure was converted to a per-service-unit basis by dividing by gross ton miles ("gtm").

In FD No. 32760, the STB found the interest rental component of the trackage rights compensation rate to be 2.40 mills per gross ton-mile. The amount upon which the STB relied was developed in UP/SP-231, in the Rebuttal Verified Statement of Richard F. Kauders at Exhibit RFK-1. A copy of that exhibit is reproduced here as Exhibit WWW - 17. The STB also found that the total rate for operations and maintenance and the return element combined was 3.84 mills per gross ton-mile. Subsequently, in Decision No. 47 of FD No. 32760, the STB imposed this "flat rate of 3.84 mills per GTM for all equipment as trackage rights compensation to be paid by Tex Mex to UP/SP" (Decision No. 47 at 18).

Following the method approved by the STB in FD No. 32760, and employing factors provided in Decision No. 109 of FD No. 33388, I have computed the interest rental component of trackage rights compensation on a system average basis. In keeping with other sections of Mr. Plaistow's filing and the STB's decision, the interest rental rate is stated on a per car-mile basis. My computations are shown on Exhibit WWW - 18. Parsing through this exhibit, the sources and computations are quite straight-forward. The fair market value of road property is drawn from the source referenced by the STB at page 10 of Decision No. 109 (CSX/NS-177, Exhibit WWW - 5). The 1997 pre-tax cost of capital rate of 17.5% is drawn from page 11 of the STB's Decision No. 109. Conrail's system total car-miles are drawn from the Conrail 1995 URCS.

Computed on a system-wide basis, the interest rental component of trackage rights compensation is \$1.01 per car-mile. Combining this component with "below-the-wheel" costs of \$0.205 produces a total rate of \$1.215 per car-mile.

# 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 6, 1999



**Conrail 1995 Fully Allocated URCS Costs**  
**For Activities Covered by Trackage Rights Payments (M/W and Train Control)**  
**(in thousands)**

Source: STB 1995 Conrail URCS Worktables with Flow-Through Option.

Line No.	Item (1)	Source or Computation (2)	Conrail Amount (3)
<u>Below the Wheel Costs</u>			
<u>GTM Costs</u>			
1	OPR	D1L157C(2+3) * D8L607C1	\$ 290,993
2	DL	D1L234C(2+3) * D8L608C1	172,072
3	ROI	D1L251C(2+3) * D8L609C1	<u>678,983</u>
4	Total GTM Costs	SUM(L.1 - L.3)	<u>\$ 1,142,049</u>
<u>Train Control</u>			
5	Train Control	D3L(159+160+161+162)C3	\$ 24,773
6	Transportation Fringe & Overhead Rate	(Note 1)	<u>39.38%</u>
7	Transportation Fringes & Overheads	L.5 * L.6	<u>\$ 9,755</u>
8	Total Train Control	L.5 + L.7	<u>\$ 34,528</u>
9	<u>Total Below the Wheel Costs</u>	L.4 + L.8	<u>\$ 1,176,576</u>
10	Average Gross Ton Miles	(Note 2)	186,216,117
11	Car Miles	A1L114C1	2,542,217
<u>Rate per:</u>			
12	Gross Ton-Mile	L.9 / L.10	<u>\$ 0.006318</u>
13	Car-Mile	L.9 / L.11	<u>\$ 0.463</u>
<hr/>			
14	<u>Total Below the Wheel Costs Excluding ROI</u>	L.9 - L.3	<u>\$ 497,593</u>
<u>Rate per:</u>			
15	Gross Ton-Mile	L.14 / L.10	<u>\$ 0.002672</u>
16	Car-Mile	L.14 / L.11	<u>\$ 0.196</u>

<sup>1</sup> Transportation fringe rate calculated as:  
D3L(173+174+175)C3 / D3L172C(2+3)

<sup>2</sup> Average trailing gross ton miles used in URCS calculated as:  
D1L157C7 / D1L157C10

**Exhibit WWW-12  
is Highly Confidential  
and is separately presented**

## Summary of Plaistow Exhibit No. (JJP-2.4) by Movement Category

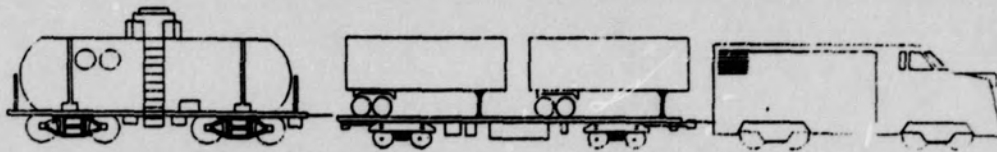
Line No.	Description (1)	No. of Move- ments (2)	Amounts for Entire Movement								Amounts for Trackage Rights Line Segment		
			Total Revenues (3)	Total Variable Costs (4)	Full Costs (5)	Conrail URCS Switching Costs on 20% of Moves (6)	Full Cost Net of CRC Switching on 20% of Moves (7) (5) - (6)	20.60% ROI Incl in Full Cost Net of Switching (8)	Adj Cost Excl ROI & Switching (9) (7) - (8)	Total Adjusted Earnings (10) (3) - (9)	Earnings on Trackage Rights Excl Switching (11)	Switching for CP at \$250/Car Terminal Switch Fee on 20% of Moves (12)	Adjusted Earnings (13) (11) - (12)
Exhibit No. (JJP-2.4) Column Reference:			(g)	(h)	(i)	(j)			(k)	(l)	(n)	(o)	(p)
1	All Movements Listed by Plaistow <sup>1</sup>	1,168	\$ 143,377,524	\$ 84,284,926	\$ 121,097,243	\$ 834,864	\$ 120,262,379	\$ 24,776,582	\$ 95,485,797	\$ 47,891,727	\$ 2,751,097	\$ 2,443,982	\$ 592,490
2	Movements Outside CP Proposed Trackage Rights Territory	59	11,080,930	6,272,959	9,012,741	97,484	8,915,257	1,836,730	7,078,527	4,002,403	0	285,376	0
3	Movements Used by Plaistow <sup>2</sup> (L.1 - L.2)	1,109	\$ 132,296,594	\$ 78,011,967	\$ 112,084,502	\$ 737,380	\$ 111,347,122	\$ 22,939,852	\$ 88,407,270	\$ 43,889,324	\$ 2,751,097	\$ 2,158,607	\$ 592,490
4	Movements Outside Territory STB Granted Trackage Rights	525	45,877,102	25,485,411	36,616,434	359,363	36,257,071	7,469,720	28,787,351	17,089,751	165,288	1,052,000	(886,711)
5	Movements In Territory STB Granted Trackage Rights <sup>3</sup> (L.3 - L.4)	584	\$ 86,419,492	\$ 52,526,556	\$ 75,468,068	\$ 378,017	\$ 75,090,051	\$ 15,470,132	\$ 59,619,919	\$ 26,799,573	\$ 2,585,808	\$ 1,106,607	\$ 1,479,201
6	Correct Switching Cost to Restore Actual CRC URCS Cost in Lieu of CP's Proposed "Terminal Switch Fee" of \$250 per car <sup>4</sup>					\$ 378,017	* \$ 2,585,808 / \$ 26,799,573 =	\$ 36,474	⇒		36,474	1,106,607	(1,070,133)
7	Plaistow with CRC Switch Charge Corrected (L.5 - L.6)										\$ 2,549,335	\$ 0	\$ 2,549,335

<sup>1</sup> Source: CP-25, Plaistow Reply Verified Statement, Exhibit No. (JJP-2.4), page 23. Note that Adjusted Earnings in col 13 do not equal col 11 less col 12 because Switching cost in col 12 includes all movements listed by Plaistow, even those with no trackage rights mileage.

<sup>2</sup> Excludes line entries shown on Exhibit No. (JJP-2.4) with zero trackage rights miles. These appear on pages 3 and 19. Mr. Plaistow attributes zero earnings to these line entries, since no portion of the movement is via CP's proposed trackage rights. See Exhibit WWW - 12 for line item detail.

<sup>3</sup> Excludes line entries originating or terminating in FSAC code 10423 (Selkirk). This is on routes over which STB has not granted trackage rights. These line entries appear on pages 3-12 and pages 19-20 of Exhibit No. (JJP-2.4). See Exhibit WWW - 12 for line item detail.

<sup>4</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 20% of the traffic for the entire movement and substituting a proposed switching fee of \$250 per car on 20% 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 20% 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 (\$375,967 \* \$2,578,891 / \$26,520,288) = \$36,560.



**USER GUIDE  
FOR THE  
1995  
SURFACE TRANSPORTATION BOARD  
WAYBILL SAMPLE**



**ASSOCIATION OF AMERICAN RAILROADS  
POLICY, LEGISLATION & ECONOMICS DEPARTMENT**

**JULY 15, 1996**



100. Expanded Tons (8 digit numeric)

The billed weight in tons (item 96) multiplied by the expansion factor (item 88).<sup>6</sup>

101. Expanded Trailer/Container Count (6 digit numeric)

The number of TOFC/COFC units (item 9) multiplied by the expansion factor (item 88).<sup>6</sup>

102. Expanded Total Revenue (10 digit numeric)

The total freight revenue (item 15) multiplied by the expansion factor (item 88). Revenue splits are calculated by ALK in the following manner: the waybill's expanded freight revenue figure (item 99) is divided by the number of 100 mile blocks traveled by each railroad in the route. The origin railroad is apportioned revenue for an additional block, to allow for pick-up and switching expenses. Likewise, the termination railroad is credited with revenue for an additional block, to allow for delivery expenses.<sup>6</sup>

103. Origin Railroad Split Revenue (10 digit numeric)

That portion of the total expanded revenue (item 99) assigned to the origin railroad.<sup>6</sup>

104. First Interchange RR Split Revenue (10 digit numeric)

That portion of the total expanded revenue (item 99) assigned to the second rail carrier in the route.<sup>6</sup>

105. Second Interchange RR Split Revenue (10 digit numeric)

That portion of the total expanded revenue (item 99) assigned to the third rail carrier in the route.<sup>6</sup>

106. Third Interchange RR Split Revenue (10 digit numeric)

That portion of the total expanded revenue (item 99) assigned to the fourth rail carrier in the route.<sup>6</sup>

107. Fourth Interchange RR Split Revenue (10 digit numeric)

That portion of the total expanded revenue (item 99) assigned to the fifth rail carrier in the route.<sup>6</sup>

183. Total Variable Cost (8 digit numeric)

The expanded variable cost for all railroads in the waybill computed using the Uniform Railroad Costing System (URCS). URCS produces an average variable costs for Class I railroads using railroad specific accounting and operating data. Costs for local and regional railroads use URCS regional data. Ex Parte 270 (Sub 4) multiple car and unit train cost reductions are applied to multiple car shipment costs to reflect economies of scale. The costs removed from multiple car shipments are apportioned back to single car traffic using railroad specific "make whole" values. URCS costs are computed by the Surface Transportation Board.<sup>4</sup>

184. Blank field (8 digit numeric)185. Railroad 1 Variable Cost (8 digit numeric)

The portion of the total variable cost (item 183) for the first rail carrier in the route. Includes multiple car and unit train cost reductions or a railroad specific, single car "make whole" cost, as appropriate.<sup>4</sup>

186. Railroad 2 Variable Cost (8 digit numeric)

The portion of the total variable cost (item 183) for the second rail carrier in the route. Includes multiple car and unit train cost reductions or a railroad specific, single car "make whole" cost, as appropriate.<sup>4</sup>

187. Railroad 3 Variable Cost (8 digit numeric)

The portion of the total variable cost (item 183) for the third rail carrier in the route. Includes multiple car and unit train cost reductions or a railroad specific, single car "make whole" cost, as appropriate.<sup>4</sup>

188. Railroad 4 Variable Cost (7 digit numeric)

The portion of the total variable cost (item 183) for the fourth rail carrier in the route. Includes multiple car and unit train cost reductions or a railroad specific, single car "make whole" cost, as appropriate.<sup>4</sup>

189. Railroad 5 Variable Cost (7 digit numeric)

The portion of the total variable cost (item 183) for the fifth rail carrier in the route. Includes multiple car and unit train cost reductions or a railroad specific, single car "make whole" cost, as appropriate.<sup>4</sup>

**Exhibit WWW-15  
is Highly Confidential  
and is separately presented**

## Trackage Rights Segment Earnings and Car Miles

Line No.	Description (1)	Source or Computation (2)	No. of Movements <sup>1</sup> (3)	Trackage Rights Segment Earnings <sup>2</sup> (4)	Total Car Miles Trackage Rights Segments <sup>3</sup> (5)
1	All Movements Listed by Plaistow <sup>4</sup>		1,168	\$ 592,490	4,583,979
2	Movements Outside CP Proposed Trackage Rights Territory		<u>59</u>	<u>0</u>	
3	Movements Used by Plaistow <sup>5</sup>	(L.1 - L.2)	1,109	\$ 592,490	4,583,979
4	Movements Outside Territory STB Granted Trackage Rights		<u>525</u>	<u>(886,711)</u>	
5	Movements In Territory STB Granted Trackage Rights <sup>6</sup>	(L.3 - L.4)	584	\$ 1,479,201	4,287,995
6	Correct Switching Cost to Restore Actual CRC URCS Cost in Lieu of CP's Proposed "Terminal Switch Fee" of \$250 per car <sup>7</sup>			<u>(1,070,133)</u>	
7	Plaistow with CRC Switch Charge Corrected	(L.5 - L.6)		\$ 2,549,335	4,287,995
8	Plaistow with O&D Revenue & Cost Weighting Corrected	Exhibit WWW - 15		\$ 4,457,835	4,287,995

<sup>1</sup> Source of line nos. 1 - 7: Exhibit WWW - 13, column 2.

<sup>2</sup> Source of line nos. 1 - 7: Exhibit WWW - 13, column 13.

<sup>3</sup> Computed for each movement as: total carloads times trackage rights mileage times 2.0 (100% empty return). See Plaistow Exhibit No. (JJP-2.7), note 1.

<sup>4</sup> Source: CP-25, Plaistow Reply Verified Statement, Exhibit No. (JJP-2.4), page 23. Note that Adjusted Earnings in col 13 do not equal col 11 less col 12 because Switching cost in col 12 includes all movements listed by Plaistow, even those with no trackage rights mileage.

<sup>5</sup> Excludes line entries shown on Exhibit No. (JJP-2.4) with zero trackage rights miles. These appear on pages 3 and 19. Mr. Plaistow attributes zero earnings to these line entries, since no portion of the movement is via CP's proposed trackage rights. See Exhibit WWW - 12 for line item detail.

<sup>6</sup> Excludes line entries originating or terminating in FSAC code 10423 (Selkirk). This is on routes over which STB has not granted trackage rights. These line entries appear on pages 3-12 and pages 19-20 of Exhibit No. (JJP-2.4). See Exhibit WWW - 12 for line item detail.

<sup>7</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 20% of the traffic for the entire movement and substituting a proposed switching fee of \$250 per car on 20% 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 20% of the entire movement.



REDACTED — To Be Placed on Public File

Before the  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

APR 30 1996

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

RAILROAD MERGER APPLICATION

APPLICANTS' REBUTTAL

VOLUME 2, PART A - STATEMENTS OF APPLICANTS' PRINCIPAL OFFICERS  
AND STATEMENTS ON COMPETITION AND PUBLIC BENEFITS

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REBUTTAL  
VERIFIED STATEMENT  
OF  
RICHARD F. KAUDERS

My name is Richard F. Kauders. I am Manager-Economic Research for Union Pacific Railroad Company ("UP"). I have been employed by UP more than 23 years. My responsibilities include the development of cost and related testimony for use before the Surface Transportation Board ("Board") and its predecessor, the Interstate Commerce Commission ("Commission"). I hold a B.S. degree from Cornell University and the M.B.A. degree from Northwestern University. My experience with UP has consisted principally of work in the regulatory costing area including mergers, trackage rights, rate complaints and investigations and branch line abandonments.

I have participated in cost studies and the calculation of benefits in a number of merger proceedings before the Interstate Commerce Commission, including Finance Docket 30000, Union Pacific -- Control -- Missouri Pacific & Western Pacific ("UP/MPWP"), Finance Docket 30,800, Union Pacific -- Control -- Missouri-Kansas-Texas ("UP/MKT"), and Finance Docket 32133, Union Pacific -- Common Control -- Chicago North Western ("UP/CNW"). I have previously been deposed in this proceeding about the calculation of the benefits and the preparation of the Summary of Benefits exhibit.

I have been asked to respond to criticism of various parties attacking the benefits which will flow from this merger, the preparation of the Summary of

Ex. RFK-1

**DETERMINATION OF INTEREST RENTAL COMPONENT  
OF TRACKAGE RIGHTS COMPENSATION PAYABLE**

Line No.	Item (1)	Source or Computation (2)	Amount (3)
A	<b><u>FAIR MARKET VALUE OF SP</u></b>		
1	Total	Exhibit TDC-12	\$5,476,158,082
B	<b><u>SEPARATION OF FAIR MARKET VALUE OF SP BETWEEN RAIL COMPONENT AND NON-RAIL (REAL ESTATE) COMPONENT</u></b>		
2	Real Estate held for sale	SPR Annual Report to stockholders - 1994	\$ 361.4
3	Road Investment - gross book value	ibid	2,204.4
4	Railroad Equipment Investment - gross book value	ibid	1,013.4
5	Other Property Investment - gross book value	ibid	309.0
6	Total	L.2+L.3+L.4+L.5	\$3,888.2
7	Rail Component Portion of Total	(L.3+L.4)/L.6	82.76%
8	Fair Market Value of Rail Component	L1*L.7	\$4,532,068.429
C	<b><u>SEPARATION OF FAIR MARKET VALUE OF SP RAIL COMPONENT BETWEEN FIXED PROPERTIES (base for Interest Rental) vs EQUIPMENT</u></b>		
9	Book Value of Road Property		
a	Gross	R-1 Sch 330 (1994)	\$5,932,526,000
b	less Depreciation	R-1 Sch 335 (1994)	2,105,087,000
c	Net	L.9a - L.9b	\$3,827,439,000
10	Book Value of Equipment		
a	Gross	R-1 Sch 330 (1994)	\$1,947,311,000
b	less Depreciation	R-1 Sch 335 (1994)	866,533,000
c	Net	L.10a - L.10b	\$1,080,778,000
11	Road Portion of Total	L.9c/(L.9c+L.10c)	77.98%
12	Fair Market Value of Road Property	L.11*L.8	\$3,534,106,961
D	<b><u>ANNUALIZATION</u></b>		
13	Railroad Current Cost of Capital pre-tax, Incl. State Tax Factor	Ex Parte 523	18.30%
14	Interest Rental Base for SP Real Property	L.13*L.12	\$646,741,574
E	<b><u>INTEREST RENTAL RATE</u></b>		
15	SP System GTM (thousands)	URCS WT A1 L123	269,927,360
16	Interest Rental Rate per GTM (Mills)	L.14/(L.15)	2.3959838

**Conrail Interest Rental Rate  
Per Car-Mile**

Line No.	Item (1)	Source or Computation (2)	Conrail Amount (3)
<u>Fair Market Value Interest Rental</u>			
1	FMV Conrail Road Property	CSX/NS-177 Exhibit WWW-5 per STB Decision No. 109 p.10	\$14,656,000
2	Cost of Capital	STB Decision No. 109 p.11	<u>17.50%</u>
3	FMV Interest Rent - Conrail Road Property	L.1 * L.2	\$2,564,800
4	Conrail Annual Car-Miles	Conrail 1995 URCS A1L114C1	2,542,217
5	Interest Rental Rate per Car-Mile	L.3 / L.4	<u>\$ 1.01</u>



## **CERTIFICATE OF SERVICE**

I, Dennis G. Lyons, certify that on January 7, 1999, I have caused to be served a true and correct copy of the foregoing CSX-173, "Petition of CSX Corporation and CSX Transportation, Inc. for Reconsideration of Decision No. 109," and the Verified Statement of William W. Whitehurst, Jr. and its exhibits,\* to the following parties, by first-class mail, postage prepaid, or by more expeditious means:

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\* Highly Confidential exhibits are being served only on those known to have executed the Highly Confidential undertaking under the Protective Order of the Board.

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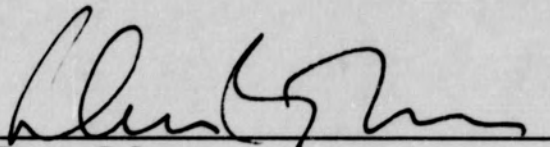
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The Honorable Jerrold Nadler  
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