

15                   MR. SHUDTZ: Well, first if I could  
16 address, Vice Chairman, your comment about the  
17 additional rental. We just follow the procedure that  
18 has been employed for years here at the Board as to  
19 disclosure of additional rental provisions. And my  
20 only point is that I think if you compare that with  
21 anyone, any additional rental provision that other  
22 people talk about, you will see that this is a very

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1 low figure and one that is intentionally designed by  
2 CSX not to be a restraint of competition. We  
3 understand what the arguments are concerning paper  
4 barriers, and I think if you look at these rates  
5 compared to others you will see that this is a very  
6 marginal, very minor rate.

7 Second, as to why we chose this style of  
8 transaction, under the lease, Buckingham Branch will  
9 be in control of the line and its maintenance and its  
10 operation. That's the transaction that we have  
11 designed and how we wanted to progress the  
12 transaction. We have no desire to have Mr. Bryant  
13 there buy local trackage rights. We want him to be in  
14 charge of the property so the customers have a new  
15 entity to deal with on this light density line.

16 Our reservation and trackage rights are  
17 clear. They are for limited purposes and moving of  
18 empties and even as Mr. Edelman said, they compliment  
19 the CSX's movement of loaded trains on the James River  
20 division to the south and return empty movements on  
21 the north. Again, ultimately the line could be  
22 rationalized. I'm not sure how that serves everyone's

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1 interests, but the empties could be moved on the James  
2 River division with improvements on the James River  
3 division. But we're not sure how that serves anyone's  
4 interests.

5 VICE CHAIRMAN MULVEY: Thank you. That's  
6 all I have.

7 CHAIRMAN NOBER: I just have one follow-up  
8 question. Mr. Edelman, in response to my question  
9 said, "If you look at all of the different factors,  
10 the lease is not a lease." That's their argument.  
11 Don't take anyone individually. Look at them all and  
12 the totality of all circumstances here and this is not  
13 a lease. How do you respond to that?

14 MR. SHUDTZ: He's wrong. This is a lease.  
15 It's a lease by its terms. It's for a customary term  
16 of years. It has customary rental provisions. It has  
17 all the customary provisions of a lease. We have a  
18 reservation of trackage rights. That is what he is  
19 claiming, that somehow you can't have a lease and a  
20 reservation of trackage rights.

21 But we've seen those transactions over and  
22 over since 1940 from this Board. I might add that you

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1 have joint uses here. There are all sorts of  
2 arrangements that are covered under 113(23). Call it  
3 a lease. Call trackage rights. Call it a joint use.  
4 We are here under that jurisdiction for an approval of  
5 a transaction and all of these fine points.

6 MR. O'BRIEN: If I could just add one  
7 thought to that. Mr. Bryant has indicated to me that  
8 for the customers, it is extremely important that that  
9 lease have that long term. They are making  
10 investments in themselves in terms of availing  
11 themselves of rail service and it's been very  
12 important to them that this lease be as long term as  
13 it is currently structured.

14 CHAIRMAN NOBER: I have no further  
15 questions.

16 VICE CHAIRMAN MULVEY: No more.

17 COMMISSIONER BUTTREY: None.

18 CHAIRMAN NOBER: Thank you very much.

19 VICE CHAIRMAN MULVEY: Thank you.

20 COMMISSIONER BUTTREY: Thank you.

21 CHAIRMAN NOBER: Again, thank you all very  
22 much and again I want to thank all the parties for

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1 their presentations today and their good arguments and  
2 for giving us a lot to consider. With that, the Board  
3 stands adjourned. Off the record.

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