

219682
ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35042



U S RAIL CORPORATION
-- LEASE AND OPERATION EXEMPTION --
SHANNON G., a New Jersey limited liability company

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. 10902 and 49 CFR 1150.41

SUPPLEMENTAL INFORMATION
IN RESPONSE TO BOARD ORDER DATED JUNE 15, 2007

Submitted By:

John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 263-4180

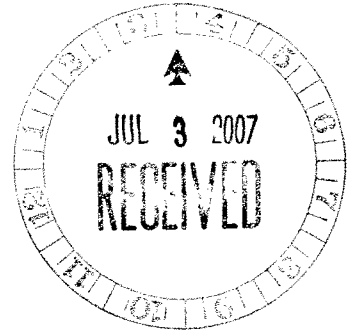
Counsel for Petitioner

Due: July 5, 2007

ENTERED
Office of Proceedings
JUL 03 2007
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35042



U S RAIL CORPORATION
-- LEASE AND OPERATION EXEMPTION --
SHANNON G., a New Jersey limited liability company

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. 10902 and 49 CFR 1150.41

SUPPLEMENTAL INFORMATION
IN RESPONSE TO BOARD ORDER DATED JUNE 15, 2007

INTRODUCTION

U S Rail Corporation ("U S Rail") submits this filing in response to the Board's order served on June 15, 2007, seeking "supplemental information describing, in detail, why track [being constructed and leased to it by Shannon G] qualifies as a private line of railroad." U S Rail includes with this supplemental information the verified statements of Shannon G's ("SG's") officer and part owner John Lira and U S Rail's president Gabriel Hall.

BACKGROUND

On June 6, 2007, U S Rail, an existing class III short line rail carrier with operations in central Ohio, filed a Verified Notice of Exemption under 49 CFR 1151.41 to lease and operate a 1,400 foot private siding under construction in Paterson, NJ. SG, a New Jersey-based real estate developer, was building the track that is the subject of this proceeding on its land as a private siding to serve a transload facility that it was developing. U S Rail represented in its Verified Notice of Exemption that it had executed a Railroad Operating and Property Lease Agreement with SG for the common carrier lease and operation of a rail-served transload terminal in Paterson, NJ, that SG is currently constructing the subject trackage as a private railroad outside the regulatory jurisdiction of the Board, and that it [U S Rail] would hold itself out as the exclusive provider of common carrier rail freight service at this facility.

To date only two parties have submitted any comments in response to U S Rail's exemption notice. On June 11, 2007, four days before the Board issued its order, the New York Susquehanna & Western Railway Company ("NYS&W") filed a letter advising the Board that although NYS&W has engaged

in verbal negotiations with U S Rail in regard to the potential track layout at the Paterson, NJ, site, no agreement has as yet been reached. NYS&W went on to say that while it is prepared to honor its common carrier obligation, there is currently no switch from NYS&W's lines into SG's property, nor any U S Rail tracks on NYS&W's property that would permit interchange of traffic and NYS&W has no agreements with U S Rail for the interchange or switching of traffic or any other purpose. But NYS&W added that if U S Rail were to obtain authority to operate and construct the subject rail facilities, it would be prepared to negotiate appropriate arrangements to permit service to the facility described U S Rail's exemption.

Finally, on June 26, 2007, the City of Paterson filed what it called a "Notice of Intent to Participate and Certificate of Service" noting that it had initiated eminent domain proceedings against Shannon G's property¹ and that said property is located near residential homes and does not appear to be a suitable location for the loading operation in question and that U S Rail's exemption notice contains statements that can be construed as misleading.

¹ In addition, on June 28, 2007, Judge Burrell Humphreys issued an order in Docket No. PAS-L-1799-07, The City of Paterson v. Shannon G., LLC (Superior Court of New Jersey, Law Division, Passaic County) requiring SG to cease and desist from any further construction pending a hearing on July 23, 2007. Settlement discussions have now begun between the City and SG.

ARGUMENT

The subject track is a private railroad under longstanding Board and Interstate Commerce Commission precedent and the Board should so find.

As a general matter, the board has consistently held that "it has no jurisdiction over private track - track that is used exclusively by the track's owner for movement of its own goods (either by utilizing its own equipment or by contracting for service) and for which there is no common carrier obligation to serve other shippers that might locate along the line." B. Willis, CPA, Inc.-
Petition for Declaratory Order, STB Finance Docket No. 34013 (served July 26, 2002).² In finding the track private, the Board reasoned that "a person is not a rail carrier for the purposes of the ICA unless it holds itself out to provide rail service to others." The Board also said that where a shipper does not hold out to provide common carrier rail service over the line it constructs and maintains to serve its own facility and no other shippers are served by the line, then neither the construction, nor

² In that case a utility company constructed a track for the purpose of providing its power plant with a line accessing a second, competitive rail carrier. The track was constructed at the utility company's expense. The company, not a railroad, owned the track and paid the maintenance of the track. Rail operations were conducted by a class I railroad under a contract with the utility company and pursuant to a license granted by the company.

a railroad's operation over that track to reach the shipper's facility, requires ICC or Board authorization or approval.

Similarly, in Devens Recycling Center, LLC-Petition for Declaratory Order, STB Finance Docket No. 34952 (served Jan. 10, 2007), the Board ruled that where the Petitioner (the party building the track) owned the land on which the track was to be built and would own the track post-construction, that it had no intention of becoming a common carrier, or serving other customers, and that it would be the only customer receiving shipments on the track, the track in question is private track even though a common carrier railroad (there the Boston & Maine Railroad) would furnish service over it.

U S Rail recognizes that there is a recent trend involving the common carrier conversion of private rail lines. See, e.g., SMS Rail Service, Inc. - Petition for Declaratory Order, STB Finance Docket No. 34483, served Jan. 24, 2005, citing SMS Rail Service, Inc. - Lease and Operation Exemption - Pureland Association, Inc., Finance Docket No. 32494 (ICC served May 26, 1994); Penn-Jersey Rail Lines - Acquisition and Operation Exemption - Lines in Penn Warner Industrial Park, Falls Township, Bucks County, PA, STB Finance Docket No. 33835 (served May 5, 2000); and

SMS Rail Service, Inc. - Acquisition and Operation
Exemption - Valero Refining Company-New Jersey, STB Finance
Docket No. 33927 (served Sept. 22, 2000); Yolo Shortline
Railroad Company - Lease and Operation Exemption - Port of
Sacramento, STB Finance Docket No. 34114 (served Feb. 3,
2003), slip op. at 4 n.9; Union Pacific Railroad Company -
Operation Exemption - In Yolo County, CA, STB Finance
Docket No. 34252 (served Dec. 5, 2002); and Ohio Valley
Railroad Company - Acquisition and Operation Exemption -
Harwood Properties, Inc., STB Finance Docket No. 34486
(served Feb. 23, 2005).

What distinguishes this case from others is the fact SG was in the process of building the track that U S Rail proposes to operate. That construction is now complete³ although the track has not as yet been connected to the NYS&W track.

Moreover, U S Rail believes that the Board has begun to scrutinize every one of these "common carrier conversion" cases in light of the adverse publicity associated with railroad operations in urban areas and its concern that parties are intent on obtaining Board operating authority in order to utilize a railroad's

³ As noted in footnote 1 on page 4, the City of Paterson has obtained a cease and desist order against any further construction pending further hearing. Settlement discussions between the parties have begun.

federal preemption powers to avoid the application of state and local environmental and permitting laws. U S Rail does not desire to handle garbage, construction and demolition, or waste traffic. Furthermore, it knows of no Board or ICC decision that would preclude it from initiating common carrier operations over a new piece of private track once construction is finished.

In response to the Board's inquiry U S Rail submits two short verified statements. The statement furnished by SG's John Lira shows how the subject track qualifies as private track under traditional precedent. SG's track was built on SG property at its expense and will be maintained at SG's expense. Had U S Rail not expressed a desire to use this track to perform common carrier rail service over it, SG would have employed U S Rail to operate it as its contractor. SG would be the only rail shipper at that location and would be the sole shipper shown in the bill of lading.⁴ John Lira V.S. at 3. As Mr. Lira explains in his statement, SG acquired the land on which the track has been built as an investment. It found that this property made a good site for handling stone traffic. Subsequently, it found that the property would be a useful site for

⁴ Parties for whom SG would be providing transloading services on its private track would be its customers rather than those of the serving railroad.

transloading other commodities that it bought and sold. To that extent, SG needed a rail siding and rail service in its role as a rail customer, a consignee and a consignor of freight. Id. at 1-3.

U S Rail also submits a statement prepared by its president Gabriel Hall who describes its business plan of using a network of short track segments in the urban areas of the East to help its Ohio railroad to attract freight that would otherwise move by truck. Mr. Hall explains how he came to find this opportunity, how U S Rail's proposed operation evolved from merely operating the trackage as a contractor for SG into a common carrier operation, and the status of his negotiations with NYS&W to reach an agreement for switch installation and traffic interchange. Gabriel Hall V.S. at 1-3.

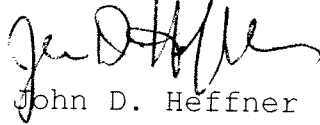
Significantly, NYS&W has stated that should U S Rail obtain Board authority to operate and construct the subject rail facilities, NYS&W would be prepared to negotiate appropriate arrangements to permit service to the facility described U S Rail's exemption. The Board has consistently ruled that its authority need not await the execution of an agreement for the provision of rail service. It can authorize operations pending receipt of an agreement because Board authorization is permissive. In rail line

acquisition and operation cases, the Board has consistently held that a noncarrier seeking to acquire or operate a rail line does not need to have an executed agreement in order to seek Board approval. See, e.g., BNSF Railway Company-Acquisition and Operation-State of South Dakota, STB Finance Docket No. 34667, served March 3, 2005; MVC Transportation, LLC-Acquisition Exemption-P&LE Properties, Inc., STB Finance Docket No. 34462, served October 20, 2004; and Missouri Central Railroad Company-Acquisition and Operation-Lines of Union Pacific Railroad Company, STB Finance Docket No. 33508, served Sept. 14, 1999. The same reasoning appears to apply where the agreement required is one for interchange and switch installation.

Accordingly, U S Rail believes that the track that SG's track qualifies as "private track" under the applicable precedent. U S Rail requests that the Board

promptly issue the requested exemption so it can initiate
common carrier rail service.

Respectfully submitted,



John D. Heffner

John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 263-4180

Counsel for Petitioner

Due: July 5, 2007

**VERIFIED STATEMENT
OF JOHN LIRA**

John Lira, being duly sworn, deposes and states as follows.

My name is John Lira. I am a 50% owner of Shannon G, a rail customer. My office address is 694 Main Avenue, Paterson, NJ 07055. I appear in this proceeding on behalf of and as a witness supporting the request of U S Rail to operate over a segment of railroad that is the subject of a Verified Notice of Exemption filed in Finance Docket No. 35042.

It is my understanding that the Surface Transportation Board has asked U S Rail to provide certain additional information about the nature of the track that is the subject of this proceeding before it will consider U S Rail's exemption request. Specifically, the Board has asked why this track qualifies as a private line of railroad. Accordingly, Shannon G provides the following information.

Shannon G is a New Jersey limited company originally established in January 2006 for the purpose of purchasing and developing real estate in the State of New Jersey. It acquired the piece of real estate which is the subject of this proceeding on July 27, 2006, as an investment. Originally zoned for industrial purposes and located in a primarily industrial section of the City of Paterson, Shannon G believed that the primary short term use of this property is as a loading and unloading facility for freight. It is very common for companies engaged in real estate development to find immediate uses of the property, for example, for

cutting, storing, loading, and unloading lumber, and excavating, storing, loading, and unloading sand, dirt, stone or other aggregate products while waiting to develop property in other ways. In that regard, Shannon G found that this site would be very useful for handling stone traffic. Shannon G immediately set about the task of marketing this property accordingly.

Shannon G's early marketing efforts paid off quickly when it secured a purchase order from a company called Trax Unlimited of Plainfield, NJ, to supply an initial order of 15,000 tons of stone to be used for railroad ballast. Under that order, Shannon G will purchase the stone from a supplier, Hanson Stone of Jamesville, NY, and will then resell this material to Trax Unlimited. In order to handle this order and other stone orders that it is soliciting and expects to receive, Shannon G requires a rail siding and rail service.

Shannon G has also become active in soliciting other types of traffic. For example, it will be shipping tire chips to Richmond, VA, and Niagara Falls, NY, to be used as fuel in electric cogeneration stations. Local trucking companies will collect the cargo and bring it to Shannon G's site where it will be loaded onto rail cars for movement in interstate commerce. In each case, Shannon G's customer has specified that this traffic move by rail. Accordingly, Shannon G's ability to market and obtain this traffic is contingent on having a rail siding and rail service.

Counsel has advised me that in order for a piece of railroad to be regarded by the Board as a “private track,” it must be built on the shipper’s property or an easement acquired by the customer, that the shipper must pay for the construction, and must be responsible for the costs of routine maintenance. The subject piece of track is located on Shannon G’s property and was built at Shannon G’s expense. Shannon G will be responsible for maintaining the track. Moreover, that rail service will be provided under a bill of lading showing Shannon G as the customer. I also understand that a shipper may provide its own rail service on its track or may chose to utilize a contractor for the purpose. Shannon G has chosen to use U S Rail as its contractor because U S Rail can provide a service better tailored to its needs than the connecting short line railroad, New York Susquehanna & Western, could provide.

I would like to address one final matter. Counsel has informed me that the City of Paterson has filed a “Notice of Intent to Participate and Certificate of Service” wherein it alleges that the property is located near residential homes, does not appear to be a suitable location for loading and unloading, and the assertion of facts can be construed as misleading. In response, Shannon G notes that this neighborhood has historically been industrial in nature and has been zoned accordingly until very recently. Its zoning has now been reclassified as “redevelopment.” Nevertheless, most of the neighboring enterprises are of an

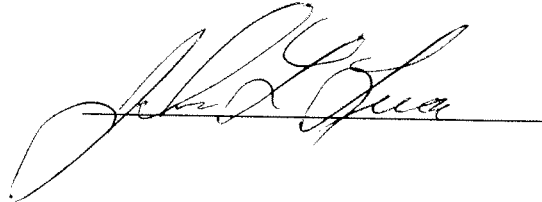
industrial or commercial nature. For example, surrounding uses include, among others, a cement company which stores trucks, machinery, supplies, and debris, a warehouse, a trucking company, a company which provides equipment for catering, several auto garages and repair facilities, an auto body shop, a battery company, and a roofing company. The residences to which the City refers are six single family houses located on Lawrence Street which dead ends at Shannon G's facility and does not allow through traffic at this time. I am attaching to this filing a map and several pictures indicating the proximity of Shannon G's facilities to these other property uses.

Significantly, the City of Paterson is a neighbor of Shannon G. The City's Department of Public Works has a major facility directly across the Susquehanna Railroad tracks that separate Shannon G's property from the City's. The City of Paterson's Department of Public Works uses that facility to keep and service its dump trucks and other heavy equipment needed to meet the needs of its 300,000 citizens. The City has sought to acquire Shannon G's property in order to expand the facilities of the Department of Public Works, specifically for use as a truck garage. I am attaching to this statement the relevant pages of the City's condemnation complaint that identifies the purpose to which it would put Shannon G's property. So much for residential and other more "gentrified" uses.

VERIFICATION

STATE OF)
) SS
CITY OF)

JOHN L LIRA, being duly sworn according to law,
hereby deposes and states that (s)he is authorized to make the
Verification, has read the foregoing document, and knows the
facts asserted therein are true and accurate as stated, to the
best of (her)his knowledge, information and belief.



Subscribed and sworn to before me, a Notary Public, in and for
the City of PASSAIC in the State of NJ, this 2nd
day of July.

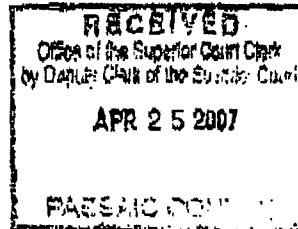


Notary Public

My Commission expires:

LAILA CRISTOBAL
NOTARY PUBLIC
PASSAIC COUNTY, NEW JERSEY
MY COMMISSION EXPIRES FEB. 11, 2009

SUSAN E. CHAMPION
 PATERSON CORPORATION COUNSEL
 155 MARKET STREET
 PATERSON, N.J. 07505
 PHONE: 973-321-1366
 FAX: 973-321-1367
 ATTORNEY FOR PLAINTIFF
 CITY OF PATERSON DEPARTMENT
 OF COMMUNITY DEVELOPMENT



THE CITY OF PATERSON, by its
 DEPARTMENT OF COMMUNITY
 DEVELOPMENT,

Plaintiff

vs.

SHANNON G., LLC

Defendant

SUPERIOR COURT OF NEW JERSEY
 CHANCERY DIVISION
 PASSAIC COUNTY

DOCKET NO. PAS-

Civil Action

VERIFIED COMPLAINT

The City of Paterson, by its Department of Community Development, by way of
 Complaint against the Defendant, says:

1. The Department of Community Development, City of Paterson
 (hereinafter "DCD") is an agency established by Ordinance of the City of Paterson to
 exercise certain governmental functions, subject to the review and approval of the
 Municipal Council and the Administration, as provided by State statute and City
 Ordinance.

2. Defendant Shannon G. LLC, is a New Jersey limited liability company
 with an address care of its sole officer and registered agent, Charles Michael Derrigan,
 LLC, 482 Notch Road, West Paterson, NJ 07424, and is the sole record owner of the lot

05/11/2007 15:38 973-321-1001

particularly described as 247-265 Fulton Place, Paterson, NJ, Block 3202, Lot 10, which is further described in Exhibit A (appraisal report) attached hereto.

3. The City of Paterson is duly authorized and empowered to take lands and property for public use.

4. On March 27, 2007, an ordinance was duly adopted determining that the lands described above should be acquired for public purposes including but not limited to accommodating the expansion of a Department of Public Works Facility, authorizing the acquisition of said lands, and appropriating funds to pay the cost of such acquisition. See Enacted Ordinance, attached hereto as Exhibit B.

5. After the plaintiff duly determined as aforesaid to acquire said lands and premises it negotiated with the owner thereof pursuant to law in an attempt to reach a voluntary agreement for their acquisition. The plaintiff offered to pay 1,260,000 dollars and no cents for this property. See Offer Letter, attached hereto as Exhibit C; see also Appraisal, attached hereto as Exhibit A (previously provided to defendant along with Offer Letter, in accordance with R. 4:73-1).

6. Said negotiations have failed and the plaintiff cannot acquire said lands and premises by agreement with the owner because of differences between them as to price. See Rejection Letter, attached hereto as Exhibit D.

7. The manner in which plaintiff calculated the amount of reasonable compensation is detailed in the Appraisal dated February 9, 2007, attached hereto as Exhibit A. Those documents, previously provided to defendant in accordance with R. 4:73-1, furnished the condemnor with the map and a description of land to be acquired and identity of improvements to be acquired, if any; a statement of the full fair market value including a description of the appraisal valuation method or methods relied upon as

05/11/2007 16:06 9734705701

well as a breakdown of the appraised value allocated to the land to be acquired, and improvements to be acquired, if any; and data concerning comparable sales or leases relied upon in determining the amount of compensation offered which included names of seller and purchaser or landlord and tenant, location of property by block, lot, street, street number, and municipality, date of sale or date and duration of lease, the consideration for the sale or amount of rent, and book and page number of the recording of the deed; and any unusual factors known to the condemnor which may affect value.

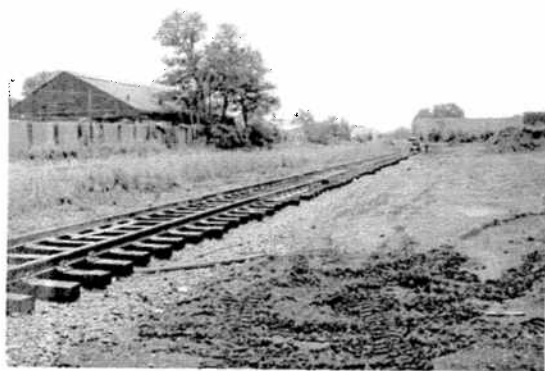
Plaintiff therefore demands judgment:

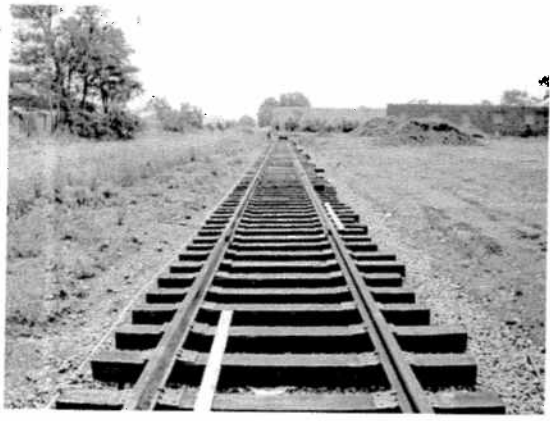
- A. Determining that the plaintiff is authorized to and has duly exercised its power of eminent domain;
- B. Appointing three residents of the County of Passaic as condemnation commissioners to make a just and equitable appraisal of the value of said lands and premises and to fix the compensation to be paid for the taking thereof;
- C. Directing notice be given to the defendant pursuant to law.

SUSAN E. CHAMPION,
CORPORATION COUNSEL
ATTORNEY FOR PLAINTIFF
City of Paterson, Department of
Community Development

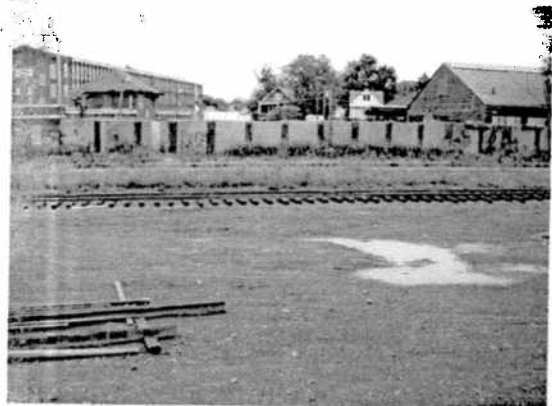
Dated: April 19, 2007

By: 
BEN-DAVID SELIGMAN, ESQ.
ASST. CORPORATION COUNSEL























VERIFIED STATEMENT OF GABRIEL HALL

Gabriel Hall, being duly sworn, deposes and states as follows:

My name is Gabriel Hall. My office address is U S Rail Corporation, 7846 Central Ave., Toledo, Ohio 43617. In my capacity as President of U S Rail Corporation ("U S Rail"), I am responsible for all aspects of marketing, strategic planning, and corporation growth. I spend much of my time looking for new opportunities to expand the services my company offers.

U S Rail began about six years ago when my management team acquired stock control of an existing class III short line railroad operating about 100 miles of track in central Southern Ohio. That company was called the Great Miami & Scioto Railroad and has since been renamed U S Rail Corporation.

My goal since then has been to find other rail properties and facilities that strategically located around the country so that shippers and receivers on its Ohio line can find sources for raw materials and markets for their products. This is the same marketing philosophy that some of the larger short line railroad holding companies are employing to develop additional business. By developing a network that can offer customers both origins and destinations, U S Rail believes it can attract a substantial amount of traffic that would otherwise move by truck. Consistent with this business model, U S Rail is looking to acquire, operate, and/or serve rail

lines and facilities in other eastern markets. With its large consumer base and comparative lack of rail-served facilities, the New York area offers tremendous expansion opportunities.

Some time in July of 2006, I learned about Shannon G and its plans to develop a transload facility on a private piece of track that it planned to build on its newly acquired land. I made a point of meeting Shannon G's John Lira to see how my company could provide rail service and logistics under contract to Shannon G. Our discussions proceeded favorably to the point that in August of that year I asked Mr. Lira if U S Rail could use the Paterson facility to ship customer goods into. After some discussion, Mr. Lira agreed. I then asked if we could "short line" Paterson, that is to say, to convert his proposed private track into a common carrier operation, to which he agreed.

Thereafter, in late August 2006, I spoke with John Fenton of the New York, Susquehanna & Western Railway Company (NYS&W) regarding the opportunity at Paterson at the site of Shannon G's proposed facility. Initially, he was very receptive, but after several more conversations and one face-to-face meeting, he went very cold on the idea. We discussed the problems with waste and the legal issues being raised by the State of New Jersey which were of tremendous concern to the NYS&W. In February 2007, I met again with Mr. Fenton. He then affirmed that NYS&W

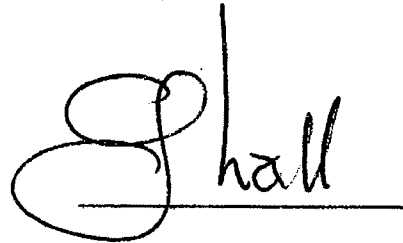
would not agree to an interchange since this would attack their standing as the only carrier in that location. The NYS&W did not want to share their "franchise" with anyone. The NYS&W would only consider a "customer" relationship'.

Subsequently, at a rail industry function, I met with another NYS&W official, James Howrath, who seemed a little more receptive to the Paterson Project. In fact, he spoke with the NYS&W track engineer, Dick Hensel, to whom I sent some maps. But the project seemed to languish at that level .

I communicated again with Jim Howrath and NYS&W's legal department after the City of Paterson commenced legal action to condemn Shannon G's property. After consulting with his counsel, he advised that U s Rail "had to do what it had to do," i.e. seek STB operating authority.

"Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: 7-3-2006.

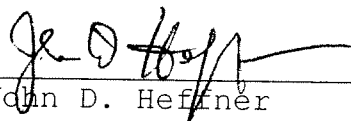

[signature]

CERTIFICATE OF SERVICE

I, John D. Heffner, certify that a copy of the foregoing Supplemental Information In Response to Board Order dated June 15, 2007 was served on July 2, 2007 to the following:

Ben-David Seligman
Assistant Corporation Counsel
Law Department, City of Paterson
155 Market Street
Paterson, NJ 07505

Paul Moates, Esq.
Sidley Austin LP
1501 K Street, NW
Washington, DC 20005



John D. Heffner