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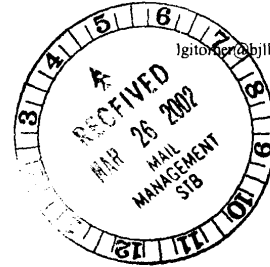
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March 26, 2002

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ORIGINAL



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

205049

RE: Docket No. AB-565 (Sub-No. 3X), *New York Central Lines, LLC—Abandonment Exemption—Berkshire County, MA* and Docket No. AB-55 (Sub-No. 595X), *CSX Transportation, Inc. Discontinuance of Service in Berkshire County, Massachusetts*

Dear Secretary Williams:

Enclosed are the original and 10 copies of the Response of CSX Transportation, Inc. and New York Central Lines, LLC to Request to Set Terms and Conditions by Housatonic Railroad Company, Inc., in two volumes. Also enclosed are three 3.5-inch IBM-compatible floppy diskettes with the file Response.doc. Further, enclosed are the original and 10 copies of Mr. Shulte's verification for the appraisal in Volume II.

Please time and date stamp the additional copy of this letter and return it with our messenger. Thank you for your assistance.

If you have any questions, call or email me.

Sincerely yours,

Louis E. Gitomer, Esq.

Enclosures

ENTERED

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-565 (SUB-NO. 3X)

205049

NEW YORK CENTRAL LINES, LLC—ABANDONMENT EXEMPTION—
BERKSHIRE COUNTY, MA

DOCKET NO. AB-55 (SUB-NO. 595X)

CSX TRANSPORTATION, INC. DISCONTINUANCE OF SERVICE IN BERKSHIRE
COUNTY, MA

RESPONSE OF CSX TRANSPORTATION, INC. AND NEW YORK CENTRAL LINES, LLC
TO REQUEST TO SET TERMS AND CONDITIONS BY HOUSATONIC RAILROAD
COMPANY, INC.

VOLUME I

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Attorneys for: NEW YORK CENTRAL LINES, LLC and
CSX TRANSPORTATION, INC.

Dated: March 26, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-565 (SUB-NO. 3X)

NEW YORK CENTRAL LINES, LLC—ABANDONMENT EXEMPTION—
BERKSHIRE COUNTY, MA

DOCKET NO. AB-55 (SUB-NO. 595X)

CSX TRANSPORTATION, INC. DISCONTINUANCE OF SERVICE IN BERKSHIRE
COUNTY, MA

RESPONSE OF CSX TRANSPORTATION, INC. AND NEW YORK CENTRAL LINES, LLC
TO REQUEST TO SET TERMS AND CONDITIONS BY HOUSATONIC RAILROAD
COMPANY, INC.

CSX Transportation, Inc. ("CSXT") and New York Central Lines, LLC ("NYC") (collectively referred to as "CSX") respond to the Request to Set Terms and Conditions (the "Request") by Housatonic Railroad Company, Inc. ("Housatonic"). CSX requests that the Surface Transportation Board ("Board") reject the terms and conditions that Housatonic seeks to have established. CSX urges the Board: (1) to adopt CSX's fully justified purchase price of **\$ 450,000**; and (2) to ensure an orderly transfer of the line by establishing the Board's typical terms of closing requiring that (i) payment will be made by cash or certified check; (ii) closing will occur within 90 days of the service date of the Board's decision in this matter; (iii) CSX shall convey all property by quitclaim deed; and (iv) CSX shall deliver all releases from any mortgage within 90 days of closing.

BACKGROUND

On July 20, 2001, CSX filed a notice of exemption under 49 C.F.R. Part 1152 Subpart F--Exempt Abandonments for NYC to abandon and CSXT to discontinue service over approximately 1.91 miles of railroad between milepost QBY-0.59 and milepost QBY-2.50 in Pittsfield, Berkshire County, MA ("The Line"). The Board served and published in the Federal Register (66 FR 42582-83) the notice of exemption on August 13, 2001.

On August 27, 2001, Housatonic late-filed a notice of intent to file an offer of financial assistance ("OFA"), which the Board accepted in a decision served September 7, 2001. This allowed Housatonic until September 12, 2001, to file its OFA. On September 6, 2001, Housatonic filed a petition to extend the time to file its OFA in order to obtain information from CSX. In a decision served September 11, 2001, the Board tolled the time for Housatonic to file its OFA until October 12, 2001. The time for CSX to provide information to Housatonic and the time for Housatonic to file its OFA was extended by Board decisions served October 9, 2001, October 19, 2001, November 9, 2001, and December 18, 2001, at which time CSX was directed to provide the requested information to Housatonic by February 11, 2002, and the time period for Housatonic to file an OFA was tolled until February 19, 2002.

In response to Housatonic's request for information, on December 13, 2001, CSX provided Housatonic with its calculation of net liquidation value of the track and track structures, and on January 20, 2002, CSX provided Housatonic with its calculation of net liquidation value of the land.

Despite the Board's tolling decision of September 11, 2001, on September 17, 2001, Housatonic filed an OFA to acquire the Line for continued rail freight service for \$ 27,750. Housatonic filed a purported revised OFA to purchase the Line for the same amount on February 19, 2002 (despite receiving CSX's appraisal).¹ The Board, in a decision served on February 22,

¹ It appears to CSX that Housatonic extended the process before the Board unnecessarily. Housatonic apparently never intended to even consider CSX's land valuation. CSX believes that

2002, determined that Housatonic was financially responsible. Housatonic and CSX have been negotiating, but have been unable to reach an agreement due to Housatonic's unwillingness to pay cash or make a substantial down payment based on CSX's fully justified valuation. On March 21, 2002, Housatonic filed the Request.

Housatonic's Request contains a brief, one verified statement, and numerous exhibits of questionable relevance. Housatonic asks the Board to set the purchase price for the Line at \$11,367, even lower than its initial offer, and to establish *inappropriate* terms and conditions.² As CSX will prove, Housatonic has not justified its valuation of the property or the imposition of terms and conditions. Moreover, Housatonic has failed to meet its burden of proof. The Board should set the purchase price of the Line at \$ 450,000, and impose only its standard terms and conditions, as requested by CSX.

CSX has submitted an appraisal by a qualified expert, compared to Housatonic's purported experts. The appraisal prepared for CSX was based on a full inspection of the Line, while there is a serious question as to the level of inspection conducted on Housatonic's behalf. The CSX appraiser reviewed the across-the-fence values for the entire Line, while Housatonic's appraiser did not even consider across-the-fence values for more than 75 percent of the Line. The appraisal performed for CSX is consistent and straightforward compared to the appraisal performed for Housatonic which does not comply with generally accepted standards in OFA proceedings and is difficult to follow. CSX believes that the Board should accept its appraisal and reject the appraisal (including the "Desk Review") submitted by Housatonic.

In support of its position, CSX submits the verified statements of two licensed real estate

Housatonic is only interested in abusing the OFA process to obtain the Line for far less than the constitutional minimum value.

² Housatonic now also asks the Board for the first time to value segments of the Line and allow Housatonic to pick and choose the segments that it will purchase. The OFA filed by Housatonic did not raise the possibility of segmenting the Line. CSX urges the Board not to condone such last-minute tactics where the time to respond is merely five days and offeror must have known of its desire to possibly purchase portions of the Line at the time the OFA was made.

appraisers, Mr. Gary Massar, MAI (Exhibit 4) and Mr. David J. Shulte, MAI (Exhibit 5). Mr. Shulte prepared the appraisal of the Line, which concluded that CSXT owned the entire Line in fee simple and that the net liquidation value (“NLV”) of the real estate in the Line to which CSX has fee title is \$ 450,000.

ARGUMENT

There are two areas of dispute between CSX and Housatonic: valuation of real estate and closing terms and conditions. CSX and Housatonic agree that the Line consists of 18.21 acres owned in fee simple by CSX.³ Housatonic makes five requests for relief and raises three issues. Items 1 and 2 (Request at 4) and Issues 1, 2 and 3 (Request at 6) go to the valuation of the real estate. Items 3, 4, and 5 (Request at 4) go to the closing conditions requested by Housatonic. CSX will address the issue of valuation and then the closing terms.

I. VALUATION.

CSX and Housatonic agree on two of the three items calculated by the Board in determining NLV. First, the parties agree that there is no net liquidation value for the track and track materials. Second, Housatonic has agreed with CSX that the Line consists of 18.21 acres (Request at 14 and Appraisal of Schulte Realty Advisors, Inc. (“Schulte Appraisal”) at 3). However, there is serious disagreement over the valuation of the real estate between CSX and Housatonic.

³ Mr. Shulte estimated that the Line consists of 18.13 acres. Based on engineering maps prepared by CSX for settlement negotiations with Housatonic, it appears that the Line consists of 18.21 acres. CSX has not had the time to determine how this additional acreage should be broken down between the three parcels used by Mr. Shulte for valuation. Nevertheless, properly valuing an additional 0.08 acres would only increase the NLV determined by Mr. Shulte. It does not affect the accuracy of his appraisal.

A. General Evidentiary Standards.

Proceedings to set conditions and compensation are governed by 49 U.S.C. §10904(d)-(f). Under section 10904(f)(1)(B), the Board may not set a price that is below the fair market value of the line. In the leading case in this area, *Chicago N.W. Transp. Co.-Abandonment*, 363 I.C.C. 956 (1981) ("*Lake Geneva Line*"), *aff'd sub nom. Chicago and North Western Transp. Co. v. United States*, 678 F.2d 665 (7th Cir. 1982), the Board's predecessor, the Interstate Commerce Commission (the "ICC") determined that in the absence of a higher going concern value for continued rail use, the proper valuation standard in proceedings under section 10904 is the NLV of the rail properties for their highest and best nonrail use. CSX accepts the use of the NLV standard here, and urges the Board to accept CSX's valuation of real estate.

B. Burden of Proof.

In proceedings to set terms, the Board has established that the burden of proof is on the offeror, the proponent of the requested relief. Under this standard, Housatonic has the burden of proof. Indeed, the Board has consistently found that placing the burden of proof on the offeror is particularly appropriate in these proceedings because the offeror has the right to withdraw its offer if the established purchase price proves unacceptably high, while the rail carrier is required to sell its line to the offeror at the sale price set by the Board even if the carrier views the price as too low. *See Lake Geneva Line*, at 961; *The Grand Trunk Western Railroad Company--Abandonment--in Clark, Madison and Fayette Counties, OH*, ICC Docket No. AB-31 (Sub-No. 29) (ICC served June 26, 1990) ("*Grand Trunk*"). Thus, in areas of disagreement, the offeror must present more detailed evidence or analysis or provide more reliable and verifiable documentation than that which the carrier submits. Absent detailed evidence supporting the

offeror's estimates and contradicting the rail carrier's estimates, the Board accepts the carrier's estimates in a forced sale context. *See Fillmore Western Railway Company-Abandonment Exemption-In Fillmore County, NE*, STB Docket No. AB-492 (Sub-No. 2X) (STB served October 31, 2001); *Burlington Northern Railroad Company-Abandonment Exemption-In Sedgwick, Harvey and Reno Counties, KS*, ICC Docket No. AB-6 (Sub-No. 358X) (ICC served June 30, 1994); *Norfolk Southern Railway Company--Abandonment Exemption--Between Red Bay and Haleyville, AL in Franklin, Marion and Winston Counties, AL*, ICC Docket No. AB-290 (Sub-No. 123X) (ICC served October 8, 1993) ("*Norfolk Southern*"); *Buffalo Ridge Railroad, Inc.--Abandonment Exemption--Between Manley, MN and Brandon, SD*, ICC Docket No. AB-377X, ICC served January 22, 1993) ("*Buffalo Ridge*"); *Baltimore & O. R. Co.--Exemp. --Aband. in Harrison, Doddridge, Ritchie and Wood Counties, WV*, ICC Docket No. AB-19 (Sub-No. 125X) (ICC served February 8, 1988) ("*B&O I*"); *Chicago & N.W. Transp. Co.--Aband. Exemp.--Mason City, IA*, ICC Docket No. AB-1 (Sub-No. 205X) (ICC served November 27, 1987) ("*CNW I*"); and *Conrail Aband. in Chicago, IL*, ICC Docket No. AB-167 (Sub-No. 970N) (ICC served May 5, 1987) ("*Conrail*").

All areas where the evidence is equal or the offeror presents the less convincing evidence, or no evidence, must be resolved in favor of the railroad. *See Grand Trunk, supra*; *Norfolk Southern, supra*; *Buffalo Ridge, supra*; *B&O I, supra*; *CNW I, supra*; and *Conrail, supra*.

C. Real Estate Valuation.

There are three components to the valuation of CSX's real estate interest in The Line. First, the acreage held by CSX in fee must be determined. Next, an across-the-fence ("ATF")

valuation of each parcel must be made. Finally, certain discounts must be applied to the property.

Housatonic has accepted CSX's calculation of the amount of land held in fee (the entire right-of-way for the Line). The Line consists of 18.21 acres. Mr. Shulte has divided the Line into three parcels because of the similar valuation characteristics within each parcel. Mr. Shulte then conducted an in-depth analysis of ATF sales and the applied appropriate valuations to the relevant parcels. Finally, Mr. Shulte reviewed the topography and use of each parcel to arrive at his reasonable reductions in value compared to ATF (Shulte Appraisal at 35).

However, Housatonic has substantially and unjustifiably understated the ATF while overstating the discounts. Each component will be discussed to point out Housatonic's errors and present the Board with the correct information on which to base its value of the Line.

1. The Board should accept CSX's appraisal and reject Housatonic's appraisal.

The Board accepts land appraisals by experienced real estate appraisers covering comparable sales, site usage, and selling expenses. *The Baltimore and Ohio Railroad Company--Abandonment--in Ross County, OH*, ICC Docket No. AB-19 (Sub-No. 134X) (ICC served November 6, 1987) ("*B&O II*"). Here too, the offeror has the burden of proof.

a. CSX's appraiser has superior credentials and experience.

The first issue is the credentials of the appraisers. Mr. David J. Shulte has been appraising rail corridors and rail related properties since 1986. He holds the MAI designation granted by the Appraisal Institute. Mr. Schulte took the time to learn about the area by talking to local market participants and appraisers in order to obtain a current understanding of the local market. On the other hand, Mr. Benedict, Jr., who appraised the property, is a candidate for the

MAI designation, but has not yet completed all requirements. Mr. Benedict, Sr. only reviewed the appraisal performed by his son and partner. Request, Exhibit C-1 at 3. Although Mr. Benedict, Sr. holds the MAI designation, he apparently is not currently certified, as his continuing education is only complete through 1997. *Id.* at 71. Mr. Shulte is an experienced and currently certified appraiser, while neither Mr. Benedict, Sr., nor Mr. Benedict, Jr., are.

Even without the overriding principle that the offeror must carry the burden of proof, the appraisal performed for CSX by Mr. Shulte (the “Shulte Appraisal”), more accurately determines the NLV than the appraisal performed for Housatonic by Norman Benedict Associates, Inc. (the “Benedict” Appraisal”). Mr. Shulte’s appraisal is attached as Exhibit 5. The Benedict Appraisal was attached as Exhibit C-1 to the Request.

b. CSX’s appraiser fully inspected the Line.

The Shulte Appraisal and Benedict Appraisal agree that familiarity with the Line is extremely important for an accurate appraisal. Mr. Shulte inspected the entire Line on November 28, 29, and 30, 2001. Shulte at 4. However, the Benedict Appraisal indicates that only Mr. Benedict, Jr. inspected the Line (Mr. Benedict, Sr. did not physically inspect the Line⁴) and that “The appraised land was inspected, in whole or in part, on November 29 and December 3, 2001.” Benedict Appraisal at 19. The ordinary meaning of this language leads to the conclusion that Mr. Benedict, Jr. did not physically inspect the entire Line, and that moreover, the extent of the inspection is unknown. Since neither CSX nor the Board can determine which portions of the

⁴ Housatonic cites Mr. Benedict Sr.’s experience and knowledge in arguing the validity of the Benedict appraisal, but Mr. Benedict, Sr. did not inspect the Line, did not file a verified statement, and did not conduct, or even apparently participate in, the Desk Review presented in Exhibit B of the Request. There is thus some question as to his actual and active participation in the appraisal process.

Line were and were not inspected for the Benedict Appraisal, there is a significant question as to its thoroughness. The questionable personal inspection of the Line underlying the Benedict Appraisal substantially lessens, if not eliminates, the weight the Board should give that appraisal. Indeed, in light of the burden of proof standard in OFA proceedings, and this major, if not fatal, flaw in the appraisal, CSX urges the Board to conclude that wherever there is a conflict between the appraisals performed for CSX and Housatonic that the Board resolve those issues in CSX's favor.

c. CSX's appraiser followed Board procedures.

In addition, Mr. Shulte determined the ATF for all of the parcels in the Line. The Benedict Appraisal did not. In fact, the Benedict Appraisal did not even look at ATF for three segments defined which it defined as A2 (3.15 acres), B3 (9.04 acres), and B4 (1.77 acres). Exhibit C-1 pages 53 and 54. Instead of valuing these portions (13.96 acres) at ATF and then discounting the ATF for topography and use, the Benedict Appraisal assumed this land to be nearly worthless and assigned a gross value to it of only \$1 per acre.

d. Housatonic's appraisal and logic are fatally flawed.

The Request and the Benedict Appraisal are inconsistent in that they claim the appropriate purchasers for portions of the Line are the adjoining landowners (called abutters in the Request and Benedict Appraisal) and then discount the value of the Line because there is no road frontage. As is more fully set out below, frontage is irrelevant in sales to adjoining property owners. Housatonic also makes much of the fact that CSX has not produced an agreement from a potential purchaser of the Line as a corridor. Housatonic misses the point that CSX has not valued the Line as a corridor. Although CSX notes that a corridor use may be the highest and

best use, CSX performed an ATF analysis considering sales to adjacent property owners. It should be noted, however, that a notice of interim trail use has been filed in this proceeding.⁵ Housatonic's corridor valuation discussion is a red herring since CSX properly used an ATF valuation for the Line, without any assemblage factor.⁶

Another inconsistency that permeates the Request and the Benedict Appraisal is the thought that in order to have any value, a plot of land must have a commercial use and be able to be developed. Housatonic is wrong, especially when considering its claim that the highest and best use of the Line is to sell it to adjacent property owners. Housatonic does not demonstrate that an adjacent property owner needs to or wants to develop or have commercial use for the adjacent property. Indeed, if the adjacent property owner is a residence, the preference is most likely that the land remain unimproved.

The unverified desk review by Mr. Benedict, Jr. (who is not an MAI) admits that the unadjusted per acre valuation in industrial and commercial areas in the Benedict Appraisal and the Shulte Appraisal are comparable. But then he starts to make his illogical and unjustified deductions because CSX is not selling the Line as a corridor, the property cannot be developed and it has no commercial value. The Housatonic analysis of the sale on page 15 of the Request is incorrect. The \$140,000 sale Housatonic refers to is located adjacent to the sale that Mr. Schulte used. The \$30,000 sale was for land only, and sold to an adjoining owner (the \$140,000 improved sale). Mr. Schulte discounted the sale accordingly for the motivation of the buyer.

⁵ Where Housatonic opines that trail transactions do not produce any value for the selling railroad, CSX's experience differs dramatically from Housatonic's opinion in that CSX frequently negotiates to sell trails in excess of NLV.

⁶ Since CSX did not, and does not seek to, value the Line as a corridor, the Board does not need to consider Housatonic's erroneous argument that the Board can value the Line based on

Further, he did not place much weight on this sale in his final analysis. This is an attempt by Housatonic to mislead the Board. Likewise, Housatonic's assertion that Mr. Schulte used improved commercial sales without analysis is wrong. In his investigation, Mr. Shulte learned that improvements on sale parcels were demolished after purchase, which required adjustment to the final consideration. Housatonic, on the other hand, merely relied on deed research and did not verify the sales with interested parties, so they would not have this information.

The Benedict Appraisal found that the Line had no utility due to water related influences. Request at 15. However, the facts are that the water related influences, where present, only affected adjacent property. The Line itself is high and dry. Moreover, Housatonic does not address the multitude of residential development in the area, with new homes being built today. The Line abuts both residential acreage and an area of residential home sites. Mr. Schulte correctly used ATF methodology to identify these uses (which comply with current zoning) and used a weighted average unit value, which is also acceptable.⁷

In addressing the residential areas, Housatonic claims no value to the land because it does not have any road frontage. But, again Housatonic seems to forget its own theory that sale to adjoining landowners is the highest and best use of the Line, and that these landowners do have road frontage. Therefore, the merging of the title to the real estate in the Line with the property of the adjoining landowners creates one owner of real estate with road frontage. That being the case, Housatonic's entire argument on road frontage vanishes, and its \$1 per acre valuation for

prorating the value established by a ten-year old sale of a segment north of the Line for trail use.
⁷ With regard to zoning, it must be noted that the Benedict Appraisal in considered sections A2 and B3 to be entirely residential. That is wrong. The current zoning, as reported in the Shulte Appraisal, for the large majority of those parcels is industrial and commercial. The Shulte Appraisal reflects the appropriate ATF values for such zoning, compared to the absurd \$1 per

residential property, which it reached without conducting an ATF valuation should be rejected out-of-hand by the Board. Moreover, the value per square foot suggested on page 16 of the Request is based on the false assumption that no portion of the property can be used as a building lot. However, Housatonic ignores the merger of a portion of the Line with another lot, which can be used for residential construction, and which will substantially enhance the value of the property by increasing the overall acreage.

Mr. Shulte used deductions of between 45% and 75% in calculating NLV. The Benedict Appraisal used unreasonable deductions of up to 99.9% in calculating NLV. The lengthy explanations attributed to the Benedict Appraisal as justification for deductions by Housatonic, on careful reading are nearly unintelligible sentences that in essence state the opinion that the land has no value. In the dispute between the Shulte Appraisal and the Benedict Appraisal as to the appropriate deductions, CSX urges the Board to reject the Benedict Appraisal because Housatonic has the burden of proof, at this time Mr. Shulte is a more qualified appraiser than either Mr. Benedict, Jr. or Mr. Benedict, Sr., and Mr. Shulte made a more detailed analysis of the ATF values. The ICC accepted discounts in the 50 percent range as reasonable, and that is the range of discount used by CSX's appraiser, Mr. Shulte. *See Norfolk Southern Railway Company--Abandonment Exemption--Between Red Bay and Haleyville, AL in Franklin, Marion and Winston Counties, AL*, ICC Docket No. AB-290 (Sub-No. 123X) (ICC served October 8, 1993).

Mr. Shulte estimated the costs of selling the Line to be 15%. The Benedict Appraisal included no cost, but in this instance, Housatonic accepted Mr. Shulte's analysis, demonstrating that Housatonic's goal in this proceeding is not to help the Board establish the constitutional

acre valuation accorded by the Benedict Appraisal.

minimum, but to garner the lowest price it possibly can. But that is not the standard governing the Board. The Board must determine the NLV of the Line.

CSX commissioned its own appraisal of The Line by Mr. Shulte. Mr. Shulte's appraisal does not suffer the infirmities of the Benedict Appraisal. Mr. Shulte correctly values 18.13 acres. Mr. Shulte has considered extremely recent across-the-fence sales in preparing his appraisal, and Mr. Shulte has applied generous, but not onerous or unreasonable discounts of between 45 and 75 percent to his gross valuation. Taking these proper steps, Mr. Shulte has appraised the real estate underlying The Line at \$450,000. The Board should adopt this fully justified appraisal in determining the NLV of the Line instead of the discredited Benedict Appraisal.

2. The 1982 Agreement is entitled to no weight in determining the NLV of the Line.

Housatonic claims that a Trackage Rights Agreement (Exhibit P to the Request) dated as of March 31, 1982 (the "1982 Agreement") between Consolidated Rail Corporation ("Conrail"), CSX's predecessor, and the Boston and Maine Corporation ("B&M") requires CSX to sell a portion of the Line to Housatonic for 75% of NLV and another portion for \$5,000.00.

Housatonic is wrong. Although interpretation of the 1982 Agreement is outside of the Board's jurisdiction, following is a discussion demonstrating that the 1982 Agreement is of no force and effect. The introduction of the 1982 Agreement by Housatonic is simply another red herring intended to decrease the proposed purchase price even further.

Housatonic claims to be B&M's successor to the 1982 Agreement pursuant to an Assignment dated as of January 11, 1991 from B&M to Housatonic. Not only was there no proper assignment, the conduct of the parties during 1991 and during this OFA process clearly demonstrates that the parties have not been operating under the 1982 Agreement. Housatonic

would like the Board to believe that even though the parties have not been operating under the 1982 Agreement (Housatonic admits it has not been paying for the trackage rights as required under the 1982 Agreement), the right to purchase the Line for a decreased value somehow survived on its own. There is no basis for this proposition because the right to purchase was wholly tied to the trackage rights which no longer exist. If the trackage rights did remain in existence, Housatonic would have no reason to request that the Board impose trackage rights to allow Housatonic to access the Line.

a. The 1982 Agreement was not properly assigned to Housatonic.

With regard to assignment of the 1982 Agreement, the 1982 Agreement required Conrail's consent for its assignment. Housatonic omitted to file with the Board the General Conditions—Form A to the Agreement (See Exhibit 1), which prohibit assignment without the prior written approval of the other party (Section 14). Housatonic has not submitted any evidence of prior written approval of the assignment from B&M to Housatonic by Conrail. To the best of CSX's knowledge none exists. Indeed, the intended assignment document itself was limited to "the extent that the same may be legally assigned." As such, Housatonic has not demonstrated that there was a valid assignment of the 1982 Agreement.

b. The parties have not been operating under the 1982 Agreement.

The 1982 Agreement is inactive, if not terminated. Although certain Conrail obligations were automatically assigned to CSX as partial successor to Conrail, the 1982 Agreement would not be one of those obligations since it was inactive at the time CSX succeeded to Conrail's obligations.

Pursuant to an Interchange Agreement dated March 20, 1991 ("Interchange Agreement"),

between Conrail and Housatonic (Exhibit 2), Housatonic is permitted to operate over the CSX property used as a rail yard between Milepost CP 150.75 and CP 147.80 (the “Yard”) which is contiguous to the Line. Pursuant to the Interchange Agreement, which was assigned to CSX, Housatonic is not permitted to operate within the Yard or on the Line. Housatonic is only permitted to use the Yard for “delivery and receipt of interchange traffic” and Housatonic is not permitted “to perform any local freight service” on this property. If the 1982 Agreement had still been in effect in 1991, there would have been no need for Housatonic and Conrail to enter into the Interchange Agreement since the 1982 Agreement gave B&M trackage rights through the Yard and on the Line.

Most interesting is the fact that B&M filed to discontinue service over the Line in 1992. *Boston and Maine Corporation and Springfield Terminal Railway Company—Discontinuance of Trackage Rights Exemption—in Berkshire County, MA*, ICC Docket No. AB-32 (Sub-No. 47X) (ICC served August 25, 1992) (the “*B&M Discontinuance*”) Exhibit 3. Had B&M assigned the 1982 Agreement to Housatonic, there would have been no trackage rights for B&M to discontinue in this proceeding. Combined with the instant abandonment proceeding, the *B&M Discontinuance* results in the termination of the 1982 Agreement under Section 8(f).

Moreover, even if the 1982 Agreement were still in effect, and it never was with regard to Housatonic because there was never a valid assignment, the provisions of the Agreement create a procedure separate from the OFA process for determining NLV and should not be considered part of the OFA process.

Both the documented evidence and the course of dealing between the various parties lead to the only sensible conclusion that the 1982 Agreement is no longer in effect. Housatonic is

trying to resurrect an inactive agreement to drive the NLV even lower than their original low offer which was approximately 6% of the NLV as determined by CSX. There is simply no basis for the contractual reduction sought by Housatonic.

D. Real Estate Summary.

Housatonic has not met its burden of proof as far as establishing the net liquidation value of the real estate underlying the Line. Instead, CSX has presented the more convincing and accurate appraisal of the value of the real estate as summarized below.

	Square Feet	Unit Value	Gross Value	Deductions	Adjusted Value
Parcel 1	225,557	\$3.13	\$705,993	50%	\$352,997
Parcel 2	356,756	\$1.26	\$449,513	75%	\$112,378
Parcel 3	173,804	\$0.70	\$121,663	45%	\$ 66,915
Total			\$1,277,169		\$532,290

Mr. Shulte then adjusted the NLV for selling expenses of 15%, resulting in a final value of \$450,000.

II. CLOSING CONDITIONS

Housatonic has requested the Board to establish three closing conditions (Request at 4). CSX agrees with one of the conditions, but requests the Board to reject the other two conditions sought (but not justified) by Housatonic. Housatonic, without explanation or justification, seeks certain variations on the Board's standard closing conditions that CSX requests be denied. Housatonic has the burden of proof in this proceeding, and where an issue is contested by CSX, Housatonic's failure to meet that burden should lead the Board to deny the relief sought by Housatonic.

A. In Item 4 of the Request at page 4, CSX agrees that conveyance of the property be by quit claim deed. See Item 4, Request at 4.

B. The Board should deny the unjustified variations in closing conditions sought by Housatonic in Item 3 of the Request at page 4.

First, Housatonic seeks to be able to notify CSX of which parcels it will acquire within 10 days of the Board's decision setting the terms and conditions, subject to a subsequent environmental review. By requesting such a condition, Housatonic has turned the statute on its head. "The decision of the Board shall be binding on both parties, except that the person who has offered to ... purchase the line may withdraw his offer within 10 days of the Board's decision." 49 U.S.C. § 10904(f)(2). The statute is clear. It does not provide for a conditional acceptance of terms by the offeror. Housatonic does not even attempt to explain why the Board should depart from the clear language of the statute. The statute is intended to protect the owner of the line from facing unreasonable delay in the rationalization of its railroad (this proceeding has been delayed since August, over seven months, by Housatonic's obviously frivolous claims that it needed to see CSX's valuation information before it filed an OFA, when Housatonic merely ignored CSX's valuation). The intent of the statute must be to unconditionally bind the offeror to a contract after 10 days so that the owner can collect damages if the offeror later decides not to go forward. The statute is not conditional. Moreover, Housatonic has not explained why it now needs to conduct an environmental review and could not have done that in the seven months that have passed since it filed its late notice of intent to file an OFA. Nor has Housatonic even hinted at any environmental problem. CSX respectfully requests the Board to impose the statutory and standard condition that Housatonic must unconditionally accept or reject, in writing, the terms and conditions established by the Board by notifying the Board and

CSX on or before 10 days after service of the decision setting terms and conditions.

Next, Housatonic seeks a 60-day period to conduct an environmental review. No justification is given for this request, and therefore it must be rejected. Moreover, as noted above, Housatonic could have sought permission from CSX to conduct an environmental review and conducted the review after it filed its notice of intent to file an OFA on August 27, 2001. It has not done so, and should not be permitted to abuse the OFA process by requesting such a condition precedent to closing at this late date. Closing terms similar to those sought by Housatonic involving environmental concerns have previously been rejected. *Chesapeake Western Railway Company-Abandonment-Between Pleasant Valley and Staunton in Rockingham and Augusta Counties, VA*, ICC Docket No. AB-290 (Sub-No. 120) (ICC served September 17, 1992). CSX asks the Board to be mindful that neither Housatonic nor its counsel are novices in these matters, and that their lack of diligence should not be rewarded at the expense of CSX.

Third, Housatonic requests closing within 90 days of service of the decision setting terms and conditions. CSX agrees with this condition, so long as it is unconditional.

Fourth, Housatonic also requests that CSX “deliver all releases from any mortgages upon closing.” Again, Housatonic is seeking the modification of the Board’s standard closing conditions without any explanation or justification. Indeed, Housatonic is seeking to shift an uncompensated burden and cost to CSX, contrary to the Board’s precedent. It has always been the Board’s and the ICC’s position that in an OFA proceeding, the owner should bear no risk or uncompensated costs. Therefore, the owner was given 90 days after closing to use the money it received at closing to pay-off any mortgages and have the paper work completed. Here, Housatonic requests the Board to force CSX to expend its own funds and complete the paper

work to release mortgages before CSX is even sure that Housatonic will close the transaction. The Board is well aware that parties have changed their minds in OFA proceedings after accepting the terms and conditions set by the Board. CSX urges the Board not to require it to incur these costs prior to closing and, instead to impose the standard condition requiring the “delivery of releases from any mortgage within 90 days of closing.” *See 1411 Corporation—Abandonment Exemption—in Lancaster County, PA*, STB Docket No. AB-518X (STB served October 18, 2001), at 7 (“*1411 Corporation*”).

Fifth, CSX requests the Board to require Housatonic to make payment by cash or certified check at closing. Indeed, CSX respectfully requests the Board to impose the standard conditions as enumerated in numerous decisions, including *1411 Corporation* as follows: “(1) payment must be made by cash or certified check; (2) closing must occur within 90 days of the service date of this decision; (3) Applicants must convey all property by quitclaim deed; and (4) Applicants must deliver all releases from any mortgage within 90 days of closing.” *Id.*

C. The Trackage Rights and Ratemaking Conditions should be Denied.

CSX requests the Board to deny the trackage rights requested by Housatonic. Again without explanation or justification, “Housatonic requests that the Board grant Housatonic incidental trackage rights from the connection between Housatonic’s Berkshire Line where it connects with the CSXT line in Pittsfield to and through North Adams Junction Yard to the line being acquired, for the purpose of routing traffic between Housatonic’s Berkshire Line and the Line being acquired and for the purpose of interchange in Pittsfield with CSXT.” Request at 4. CSX requests the Board to deny the requested trackage rights as has consistently been done in the past.

Our examination of 49 U.S.C. 10905 [predecessor to 49 U.S.C. 10904] leads us to conclude that we cannot authorize trackage rights as part of a section 10905 transfer. There is no language in 49 U.S.C. 10905 specifically dealing with trackage rights. By contrast 49 U.S.C. 10910 [predecessor to 49 U.S.C. 10907] which also provides for forced sales to financially responsible persons, allows us, upon the offeror's request, to provide the 'acquiring carrier trackage rights to allow a reasonable interchange with the selling carrier or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by the acquiring carrier.'" 49 U.S.C. 10910(d). We must assume that if Congress wanted us to impose trackage rights in financial assistance proceedings it would have provided us with specific language like that found in 49 U.S.C. 10910. We note that the language of both these sections was developed at a similar time in the Staggers Rail Act of 1980.

Conrail Abandonment of the Cairo Branch in Illinois, ICC Docket No. AB-167 (Sub-No. 56N) (ICC served March 4, 1982); *Illinois Central Gulf Railroad Company—Abandonment—Between Tuscaloosa and Maplesville, AL*, ICC Docket No. AB-43 (Sub-No. 101) (ICC served August 10, 1984). The ICC Termination Act of 1995 made no change to section 10904 that authorizes the imposition of trackage rights in OFA proceedings. Therefore, CSX urges the Board to deny the trackage rights requested by Housatonic.

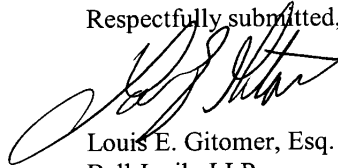
The Line is not part of Housatonic's Berkshire Line. Once again Housatonic has proposed a condition without explaining it or providing any justification. Since precedent clearly is contrary to Housatonic's request for trackage rights to reach the Line, CSX requests that the Board not "order that the line being acquired be considered a part of Housatonic's existing Berkshire Line for traffic and ratemaking purposes." Request at 4. Housatonic's intent is unclear, CSX believes that this condition is inappropriate in an OFA proceeding, and precedent has rejected a similar request. The ICC, in the first case setting terms and conditions rejected a similar request. "Although we will require C&NW to interchange with GLA at Ringwood, we will reject the remainder of GLA's proposed condition. On the present record, we cannot

determine whether the existing rates will be adequate. Moreover, if the present rates are retained as joint rates, a division of the rates will be required.” *Lake Geneva Line*, at 963.

CONCLUSION

CSX respectfully requests the Board to set the purchase price for the Line at **\$450,000**, and establish the customary closing conditions.

Respectfully submitted,



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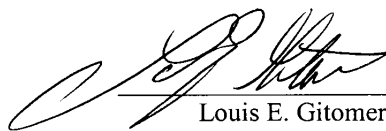
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Washington, DC 20005
(202) 638-3307

Attorneys for: NEW YORK CENTRAL LINES, LLC and
CSX TRANSPORTATION, INC.

Dated: March 26, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Response of CSX Transportation, Inc. and New York Central Lines, LLC to Request to Set Terms and Conditions by Housatonic Railroad Company, Inc. to be served upon counsel for the Housatonic Railroad Company, Inc. by hand delivery and express mail.

A handwritten signature in black ink, appearing to read "L. Gitomer", is written over a horizontal line.

Louis E. Gitomer
March 26, 2002

EXHIBIT 1

GENERAL CONDITIONS - FORM A

DATED March 31, 1982

TO TRACKAGE RIGHTS AGREEMENT DATED AS OF
BETWEEN CONSOLIDATED RAIL CORPORATION (Owner) AND ROBERT
W. MESERVE AND BENJAMIN H. LACY, TRUSTEES OF THE PROPERTY
OF BOSTON AND MAINE CORPORATION, DEBTOR (User) relating to
trackage rights near North Adams Junction and Springfield,
Massachusetts.

ARTICLE 1. USE OF JOINT TRACKAGE.

(a) User's use of the Joint Trackage shall be
in common with Owner and any other user of the Joint Track-
age, and Owner's right to use the Joint Trackage shall not
be diminished by this Agreement. Owner shall retain the
right to grant to other persons rights of any nature in the
Joint Trackage.

(b) Unless otherwise agreed between Owner and
User, User shall not use any part of the Joint Trackage for
the purpose of switching, storage of cars, or the making or
breaking up of trains, except that nothing contained herein
shall, upon prior approval of Owner, preclude the emergency
use by User of such auxiliary tracks as may be designated by
Owner for such purpose.

(c) Owner shall have exclusive control of the
management and operation of the Joint Trackage.

(d) Unless otherwise stated in the Agreement to which these conditions pertain, User shall have the right to operate in either direction over the Joint Trackage.

ARTICLE 2. REVISION OF BASE CHARGE.

(a) The Base Charge and said additional charge shall be subject to change to reflect any increases or decreases in labor, material and other costs subsequent to the base year, as hereinafter provided.

(b) The Base Charge and said additional charge set forth in Section 3 of this Agreement shall be revised effective July 1 of each year, beginning July 1, 1983, to compensate for 75% of the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in "Railroad Recovery Index" and supplements thereto, issued by the Association of American Railroads. In making such determination, the final "Material prices, wage rates and supplements combined (excl. fuel)" index for the Eastern District shall be used and the final index figure for the calendar year 1981, hereinafter referred to as the "Base Calendar Year" shall be taken as the base. The method of revising the Base Charge and the additional charge shall be determined by calculating the percentage of increase, or decrease, in the index of the year to be adjusted as related to the Base Calendar Year; then

multiplying this percentage of increase or decrease by 75%; and applying that percentage to the Base Charge and the additional charge.

(c) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excl. fuel)" final index figure for the Base Calendar Year; "B" to be the "Material prices, wage rates and supplements combined (excl. fuel)" final index figure for the calendar year 1982; "C" to be the Base Charge; "D" to be the percentage of increase or decrease, and "E" to be the adjusted revised percentage of increase or decrease, the revised Base Charge would be determined by the following formula:

$$(1) \frac{B - A}{A} = D$$

$$(2) D \times 75\% = E$$

$$(3) (C \times E) + C = \text{revised Base Charge, rounded to the nearest cent (5 mills or more up to the next cent) effective July 1, 1983.}$$

(d) In the event the base for the annual Indices of Charge-Out Prices and Wage Rates issued by the Association of American Railroads shall be changed from the year 1977, appropriate revision shall be made in the Base Calendar Year. If the Association of American Railroads or any successor organization discontinues publication of the Annual Indices

of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter will be referred to the Interstate Commerce Commission for determination. In the event said Commission is without jurisdiction to make such a determination, the parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association shall be final and binding upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs and expenses of the arbitrator shall be borne equally by such parties.

(e) At the option of either party hereto the compensation provided for in Section 3 and Article 2 of this Agreement shall be open to renegotiation every five (5) years from the Commencement Date, as hereinafter defined. In the event the parties fail to reach agreement upon such renegotiation, such failure shall not constitute a breach of this Agreement and the parties shall continue to be bound by the terms of compensation provided in said Section and Article for the remainder of the term of this Agreement.

ARTICLE 3. ADDITIONS, RETIREMENTS AND ALTERATIONS.

(a) Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to or retirements from the Joint Trackage as shall, at its judgment, be necessary for the economical or safe operation thereof or as shall be required by any law, rule, regulation or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Joint Trackage and such retirements shall be excluded from the Joint Trackage. When making changes other than those required by law, rule, regulation, or ordinance as prescribed herein, Owner may make such changes in the Joint Trackage as Owner finds desirable except that Owner shall accommodate the economic and safety needs of User in making such changes.

(b) If the parties agree that changes in or additions and betterments to the Joint Trackage, including changes in communication or signal facilities, are required to accommodate User's operations, beyond that required by Owner to accommodate its own operations, Owner shall construct the additional or altered facilities and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

ARTICLE 4. MAINTENANCE OF JOINT TRackage.

(a) Owner shall maintain, repair and renew the Joint Trackage at its own expense and with its own supervision

and labor. Owner shall keep and maintain the Joint Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Joint Trackage or that operations thereover will not be interrupted. FRA Class I, shall be deemed the minimum level meeting the requirement of reasonable repair under this paragraph, but Conrail may maintain the Joint Trackage to a higher level if it so chooses.

(b) User shall notify Owner in writing of any violations of the maintenance standards required by subparagraph (a) of this section. Upon receipt of such notification, Owner shall take corrective action in the form of repairs or appropriate slow orders.

(c) Owner shall also perform, at the expense of User, such additional maintenance as User may require.

ARTICLE 5. MANAGEMENT AND OPERATION.

(a) User shall comply with the provisions of the Federal Boiler Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars and equipment are being operated over the Joint Trackage. User shall indemnify, protect, defend and save Owner and its officers, agents and employees harmless from all fines, penalties and liabilities imposed upon Owner under such laws, rules and regulations by any public authority or court hav-

ing jurisdiction in the premises, when attributable solely to the failure of User to comply with its obligations in this regard.

(b) User in its use of the Joint Trackage will comply in all respects with the operating rules and regulations of Owner, and the movement of User's trains, locomotives, cars and equipment over the Joint Trackage shall at all times be subject to the orders of the transportation officers of Owner.

(c) User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Joint Trackage qualified for operation thereover, and User shall pay to Owner, promptly upon receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

(d) In the event Owner conducts an investigation or hearing concerning the violation of any operating rule or practice of Owner by an employee or employees of User, User shall be notified in advance of any such investigation or hearing and such investigation or hearing may

be attended by any official designated by User and shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to said employee or employees.

(e) Owner shall have the right to exclude from the Joint Trackage any employee of User, except officers, determined by Owner, as the result of such investigation or hearing described above, to be in violation of Owner's rules, regulations, orders, practices or instructions issued by Timetable or otherwise. User shall release, indemnify, defend and save harmless Owner and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

(f) The trains, locomotives, cars and equipment of User, Owner, and any other present or future user of the Joint Trackage or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic.

(g) If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled and unable to proceed under its own power, or fails to maintain the speed required by Owner on the Joint Trackage, or if in emergencies crippled or otherwise defective cars are set

out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Joint Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

(h) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Joint Trackage, such work shall be done by Owner and User shall reimburse Owner for the cost thereof.

(i) In the event Owner and User agree that Owner should provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all costs and expense for any such additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

(j) Owner will cooperate with User and promptly inform User as to operating, maintenance and construction plans which might in any way affect User's operations under this trackage rights agreement.

ARTICLE 6. MILEAGE AND CAR HIRE.

All mileage and car hire charges accruing on cars in User's trains on the Joint Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

ARTICLE 7. CLEARING OF WRECKS.

Whenever User's use of the Joint Trackage requires rerailing, wrecking service or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track and structures, and the cost and expense thereof, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be apportioned in accordance with the provisions of Article 8 hereof. All locomotives, cars and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to it.

ARTICLE 8. LIABILITY.

(a) Whenever any loss of, damage to, or destruction of any property whatsoever or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars or equipment of, or in the account of, either Owner or User only being involved, that party so involved

shall assume all liability therefor, and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Article 7 hereof, and shall forever protect, defend and indemnify the other party from and against and save it, its officers, agents and employees harmless from any such liability, cost and expense.

(b) Whenever any such loss, damage, destruction, injury or death occurs with the trains, locomotives, cars or equipment of, or in the account of, both Owner and User being involved, Owner and User will separately assume all liability for loss of or damage to said trains, locomotives, cars (including without limitation lading) and equipment operated by each of them and for injury to or death of each of their employees and persons in each of their care and custody, and injury to or death of any other person or persons whomsoever, and loss, damage or destruction of all other property (including without limitation the Joint Trackage) so occurring, including without limitation all cost and expense referred to in Article 7 hereof, shall be borne equally by Owner and User.

(c) Whenever any such loss, damage, destruction, injury or death occurs with the trains, locomotives, cars or equipment of, or in the account of, both User and any other user of the Joint Trackage only being involved, then any

such other user shall be considered as the Owner for the purpose of determining between the parties to this Agreement User's assumption and share of liability, cost and expense under this paragraph.

(d) Whenever any such loss, damage, destruction, injury or death occurs with the trains, locomotives, cars or equipment of, or in the account of, Owner, User and any other user being involved, then Owner and such other user shall be jointly considered as Owner and a single party to this Agreement for the purpose of determining the assumption and apportionment of liability, cost and expense between the parties to this Agreement under this paragraph.

(e) The foregoing provisions of paragraphs (a), (b), (c) and (d) shall apply regardless of considerations of fault or negligence.

(f) Notwithstanding the foregoing provisions, in the event any loss, damage, destruction, injury or death occurs with the trains, locomotives, cars or equipment of, or in the account of, both parties to this Agreement only being involved and in the event such loss, damage, destruction, injury or death is attributable to the sole negligence of the employee(s) on the train of only one of the parties to this Agreement where such sole negligence is the active or proximate cause of such loss, damage, destruction, injury or death, the party hereto whose employee(s) was (were) solely negligent shall assume and bear all liability, cost and expense

in connection with the loss, damage, destruction, injury or death so occurring, and said party shall forever protect, indemnify, defend and save the other party to this Agreement and its officers, agents and employees harmless from and against any liability, cost and expense which said other party may incur as a result of such loss, damage, destruction, injury or death.

(g) In every case of death or injury suffered by an employee of either User or Owner, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(h) For purposes of this Article 8, pilots furnished by Owner to User pursuant to Article 5(c) of this Agreement shall be considered as the employees of User while such pilots are on board or getting on or off trains of User.

ARTICLE 9. INVESTIGATION.

(a) Each party will investigate all claims, in-

injuries, deaths, property damages and losses sustained by its own employees and persons in its care or custody and adjust or defend any claims by such employees or persons. Other claims, injuries, deaths, property damages and losses shall be investigated, adjusted and defended by the party whose train, locomotive, car or equipment is involved in the accident from which the claim, death, injury, property damage or loss arises (excluding, however, freight loss and damage claims filed in accordance with Section 11707 of the Interstate Commerce Act).

(b) Each party will investigate, adjust and defend all freight loss and damage claims filed with it in accordance with Section 11707 of the Interstate Commerce Act.

(c) In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.

(d) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time claim agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.

(e) Excluding freight loss and damage claims filed in accordance with Section 11707 of the Interstate Commerce Act, neither party shall settle nor compromise any claim, demand, suit or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds Ten Thousand Dollars (\$10,000).

(f) It is understood that nothing in this Article shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 8 hereof.

ARTICLE 10. PAYMENT OF BILLS.

(a) All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party.

(b) Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 3 hereof, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals in effect at the time any work is performed

by Owner, as specified in the then current Rules Covering Preparation of Joint Facility and Other Rental Rates for Use Between Carriers, promulgated by the General Managers' Association of Chicago, or its successor organization.

ARTICLE 11. DEFAULT AND TERMINATION.

In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Joint Trackage. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

ARTICLE 12. REGULATORY APPROVAL.

Should this Agreement require the prior approval of the Interstate Commerce Commission, User at its own cost and expense will initiate and thereafter diligently prosecute an appropriate application or petition to secure such approval and this Agreement shall take effect after such approval has been secured on the date User commences operations over the Joint Trackage (herein referred to as the "Commencement Date"). The Commencement Date shall be evidenced by an exchange of

correspondence between the appropriate operating officers of the parties hereto. In the event Interstate Commerce Commission approval is not required, the Commencement Date shall be the date agreed upon by the parties hereto as evidenced by an exchange of correspondence referred to above. Owner will assist and support efforts of User to secure Interstate Commerce Commission approval of this Agreement.

ARTICLE 13. ABANDONMENT OF JOINT TRACKAGE.

Notwithstanding the provisions of Section 7 of this Agreement but subject to the provisions of Section 8 of this Agreement, Owner may abandon the Joint Trackage during the term of this Agreement or any renewals thereof, upon giving User not less than one hundred twenty (120) days notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Joint Trackage, User will seek and exercise such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Joint Trackage. Owner and User will exercise the abandonment and discontinuance authority within thirty (30) days from the date Owner and User obtain the aforementioned regulatory authority. Upon the date established by Owner for abandonment of the Joint Trackage by its aforesaid
42 notice to User or upon the above-specified date of exercise

of the regulatory authority to abandon and discontinue operations, whichever is later, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred. As used herein, - Joint Trackage means the entire Joint Trackage or any portion or portions thereof.

ARTICLE 14. GENERAL PROVISIONS.

(a) This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against either of the parties hereto.

(b) All Section and Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(c) This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties and supersede any and all oral understandings between the parties.

(d) No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

EXHIBIT 2

AGREEMENT

Dated as of March 20, 1991

between

CONSOLIDATED RAIL CORPORATION ("Conrail" or "Owner")

and

HOUSATONIC RAILROAD COMPANY ("HRRRC" or "User")

Relating to Operating Rights Over
the Boston Line of
Consolidated Rail Corporation (Owner) between
CP-150 and CP-147 at Pittsfield, MA
to access tracks at or in the vicinity of
North Adams Junction Yard for interchange purposes.

INTERCHANGE AGREEMENT

THIS AGREEMENT, entered into as of this 20th day of March, 1991 by and between CONSOLIDATED RAILROAD CORPORATION (hereinafter referred to as "Conrail" or "Owner") and HOUSATONIC RAILROAD COMPANY (hereinafter referred to as "HRRC" or "User")

WHEREAS, the parties hereto desire to enter into an agreement to provide for the interchange of loaded and empty freight cars on Conrail's track(s) at or in the vicinity of North Adams Junction Yard, Pittsfield, Massachusetts; and

WHEREAS, in order to access the interchange facilities, Conrail is willing to grant HRRC Operating Rights subject to the terms and conditions set forth herein.

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

SECTION 1. GRANT OF OPERATING RIGHTS

Subject to the terms and conditions herein provided, Conrail hereby grants to HRRC the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as the "Operating Rights") over that portion of Conrail's Boston Line between the Conrail/HRRC connection at "CP 150" (Mile Post 150.75+) and CP-147 (Mile Post 147.80+), including necessary head and tail room, at Pittsfield, Massachusetts, a total distance of approximately 2.95 miles (hereinafter referred to as "Subject Trackage"), as shown on Exhibit "I", attached hereto and made a part hereof.

SECTION 2. USE OF SUBJECT TRACKAGE

(a) Operating Rights herein granted are granted for the sole purpose of HRRC using same for the delivery and receipt of interchange traffic between the parties hereto, and HRRC shall not perform any local freight service whatsoever at any point located on the Subject Trackage, nor is HRRC permitted to ingress or egress at any point other than that specified in Section 1 hereof.

(b) HRRC shall make application to the Federal Railroad Administration (FRA) and shall satisfy Conrail's Division General Manager as to compliance with FRA rules and regulations covering HRRC's operations over Conrail's Boston Line, the limits of which are described above.

SECTION 3. INTERCHANGE PROVISIONS

(a) HRRC shall deliver and pull interchange cars to and from track(s) leased by HRRC from Conrail under a separate lease agreement and to and from track(s) at North Adams Junction Yard and vicinity so designated by Conrail's representative in charge (hereinafter collectively referred to as the "Interchange Track(s)"). Such cars shall be placed on the minimum number of Interchange Track(s) required to hold them. If "doubling over" of cars is required, it shall be accomplished by HRRC's locomotive and HRRC's train and engine crew and the cost and expense thereof shall be assumed and borne solely by HRRC.

(b) The interchange of traffic covered by this Agreement shall be governed by the applicable AAR Interchange Rules and the Car Service and Car Hire Rules and any supplements or amendments thereto promulgated from time to time by the Association of American Railroads, and cars together with containers and/or trailers loaded thereon

(hereinafter referred to as "cars") shall be considered as interchanged from the account of one party to the other when:

- (i) Placed on the Interchange Track(s) and the engine consist is uncoupled therefrom.

SECTION 4. MAINTENANCE OF SUBJECT TRACKAGE AND INTERCHANGE TRACK(S)

Conrail shall maintain, repair and renew the Subject Trackage and the Interchange Track(s) at its own expense with its own supervision and labor. Conrail shall keep and maintain the Subject Trackage and the Interchange Tracks(s) in reasonably good condition for the use herein contemplated, but Conrail does not guarantee the condition of the Subject Trackage or the Interchange Track(s) or that operation thereover will not be interrupted.

SECTION 5. MANAGEMENT AND OPERATION

(a) User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars and equipment are being operated over the Subject Trackage and the Interchange Track(s). User shall indemnify, protect, defend, and save harmless Owner and its directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of User to comply with its obligations in this regard.

(b) User in its use of the Subject Trackage and Interchange Track(s) will comply in all respects with the operating rules and regulations of Owner, and the movement of User's trains, locomotives, cars and equipment over the Subject Trackage and the Interchange Track(s) shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage or the Interchange Track(s) as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its directors, officers, agents and employees from and against all liabilities when attributable solely to the failure of User to comply with the provisions of this subsection.

(c) User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage and the Interchange Track(s) qualified for operation thereover, and User shall pay to Owner, promptly upon receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

(d) Owner may conduct an investigation at its option if a User's employee working on Owner's property is alleged to have violated Owner's rules, regulations, orders, practices or instructions, or if an incident occurs which

requires an investigation under applicable agreement rules. To exercise its option, Owner will schedule the investigation and notify User's Local Transportation Officer in the territory thereof, who will, in turn, arrange to issue proper notice to the User's employee(s) of the investigation. Owner's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner will provide its regulations, supplements, and safety rules to User at no cost.

(e) If Owner conducts an investigation, Owner shall have the right to exclude from the Subject Trackage any employee of User, except officers, determined by Owner as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.

(f) In a major offense such as violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.

(g) If Owner conducts an investigation, its officer will conduct the investigation, but an officer of User may be present to assure compliance with the User's labor agreement and practices with respect to investigation procedures. After the investigation is concluded, Owner will promptly furnish User with two copies of the transcript and a recommendation as to the discipline to be assessed. User's Transportation Officer will arrange to assess discipline, subject to receipt of Owner's recommended discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the

extent of barring the individual from operating over Owner's territory.

(h) It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner will be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

(i) The trains, locomotives, cars and equipment of User, Owner, and any other present or future user of the Subject Trackage or the Interchange Track(s) or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic.

(j) If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage or the Interchange Track(s), or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage or the Interchange Track(s), Owner shall have the option to furnish motive power or such other assistance as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off such

trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

(k) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, or the Interchange Track(s) such work shall be done by Owner and User shall reimburse Owner for the cost thereof.

(l) In the event Owner and User agree that Owner should provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

SECTION 6. CLEARING OF WRECKS

Whenever User's use of Subject Trackage or the Interchange Track(s) requires rerailling, wrecking service, or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track and structures. The cost and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be apportioned in accordance with the provisions of Section 8 hereof. All locomotives, cars and equipment and salvage from same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to it.

SECTION 7. LIABILITY

The responsibility of the parties hereto as between themselves for loss of, damage to, or destruction of

any property whatsoever or injury to or death of any person or persons whomsoever, resulting from, arising out of, incidental to, or occurring in connection with the Operating Rights or the interchange operations set forth in this Agreement, shall be determined as follows:

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars or equipment of, or in the account of, User being involved, without the trains, locomotives, cars, or equipment of, or in the account of, Owner being involved, User shall assume all liability therefor and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 6 hereof, and shall forever protect, defend, indemnify, and save harmless Owner and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Owner or its directors, officers, agents or employees.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, Owner being involved, without the trains, locomotives, cars, or equipment of, or in the account of, User being involved, Owner shall assume all liability therefor and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section

- 8 -

6 hereof, and shall forever protect, defend, indemnify, and save harmless User and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of User or its directors, officers, agents, or employees.

(c) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both Owner and User being involved, Owner and User shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars (including without limitation lading), and equipment operated by each of them and for injury to and death of each of their directors, officers, agents, and employees, and persons in each of their care and custody, and all liability, cost, and expense for injury to and death of any other person or persons whomsoever, for loss of, damage to, or destruction of all other property (including without limitation the Subject Trackage and the Interchange Track(s)) and for any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, so occurring shall be borne equally by Owner and User, including without limitation all cost and expense referred to in Section 6 hereof. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused

in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.

(d) Notwithstanding the foregoing provisions, whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both parties to this Agreement being so involved, without the trains, locomotives, cars, or equipment of, or in the account of, any other user being involved, and in the event such loss, damage, destruction, injury, or death is attributable to the sole negligence of the employee(s) on the train(s), locomotive(s), car(s), or caboose(s) of, or in the account of, only one of the parties to this Agreement where such sole negligence is the active or proximate cause of such loss, damage, destruction, injury, or death, the party hereto whose employee(s) was (were) solely negligent shall assume and bear all liability, cost, and expense in connection with the loss, damage, destruction, injury, and death so occurring, including without limitation all cost and expense referred to in Section 6 hereof, and said party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against any such liability, cost, and expense.

(e) In every case of death or injury suffered by an employee of either Owner or User, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in

installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(f) For purposes of this Section 7, pilots furnished by Owner to User pursuant to Section 5(c) of this Agreement shall be considered as the employees of User while such pilots are on board or getting on or off trains of User.

(g) For the purposes of this Section 7, the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage or the Interchange Track(s), and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or the Interchange Track(s), or their rights-of-way, for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

SECTION 8. INVESTIGATION

(a) Except as provided in Subsection (b) hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

(b) Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11707 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contracts filed pursuant to 49 U.S.C. Section 10713.

(c) In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

(d) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time claim agents, full-time attorneys, and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.

(e) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11707 or 49 C.F.R. Section 1005, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds Ten Thousand Dollars (\$10,000).

(f) It is understood that nothing in this Section shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Section 7 hereof.

SECTION 9. PAYMENT OF BILLS

(a) All payments called for under this Agreement shall be made within sixty (60) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to

matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party.

(b) Bills rendered pursuant to the provisions of this Agreement, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed.

SECTION 10. EMPLOYEE PROTECTION

User shall assume and hold Owner harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits, or working conditions arising from this Agreement or the activities of the parties hereunder, whether such claims are based on conditions imposed by the Interstate Commerce Commission or are predicated on the Railway Labor Act or labor agreements.

SECTION 11. INSURANCE

(a) During the term and continued term of this Agreement, User shall provide and maintain in effect a policy of public liability insurance, including contractual liability assumed by User under the provisions of this Agreement, which names Owner as an additional insured and provides for a minimum of forty (40) days advance notice to Owner before any changes or cancellation. Said insurance shall be in limits of not less than \$3 million single limit bodily injury and/or property damage and shall be in companies and form acceptable to Owner.

(b) User shall forward annually to Owner's Director of Insurance located at Six Penn Center, Room 1310, Philadelphia, PA 19103-2959, evidence of the amount of public liability insurance currently in effect.

SECTION 12. TERM

(a) This Agreement shall take effect as of the date first above written; provided, however, that HRRC shall not commence operations over the Subject Trackage or the Interchange Track(s) until:

(i) HRRC has satisfied Conrail's Division General Manager as to compliance with FRA rules and regulations covering HRRC's operations over Conrail's Boston Line.

(ii) Insurance requirements have been satisfied in accordance with Section 11 of this Agreement.

(b) This Agreement shall continue in force and effect until terminated by either party upon thirty (30) days written notice to the other party. Termination of this Agreement shall not relieve, release or excuse either party from any liability which either party may have incurred or any obligation which may have accrued under any provisions of this Agreement prior to the effective date of termination.

SECTION 13. ASSIGNMENT

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that User shall not transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of Owner.

SECTION 14. NOTICE

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

(a) If to Conrail:
c/o Senior Vice President - Operations
Consolidated Rail Corporation
Six Penn Center Plaza
Philadelphia, PA 19103-2959

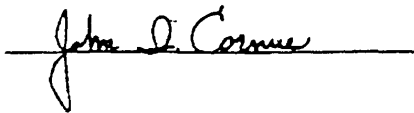
(b) If to HRRC:
Housatonic Railroad Company
c/o President
Canaan Union Station
P. O. Box 1146
Canaan, CT 06018

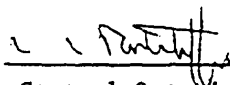
(c) Either party may provide changes in the above addresses to the other party by personal service or certified mail.

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

WITNESS:

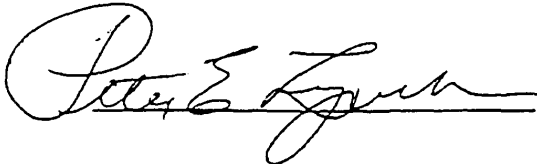
CONSOLIDATED RAIL CORPORATION

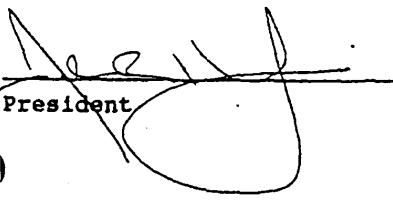


BY: 
General Superintendent
Contracts

WITNESS:

HOUSATONIC RAILROAD COMPANY



BY: 
President

PITTSFIELD, MA

NO SCALE
2-4-91

EXHIBIT I

OPERATING RIGHTS OF HRRC ON
CONRAIL BOSTON LINE BETWEEN
CP-150 AT MP 150.75 & AND
CP-147 AT MP 147.80 FOR
ACCESS TO/FROM CONRAIL'S NORTH ADAMS
JUNCTION YARD FOR INTERCHANGE PURPOSES.

PITTSFIELD MA

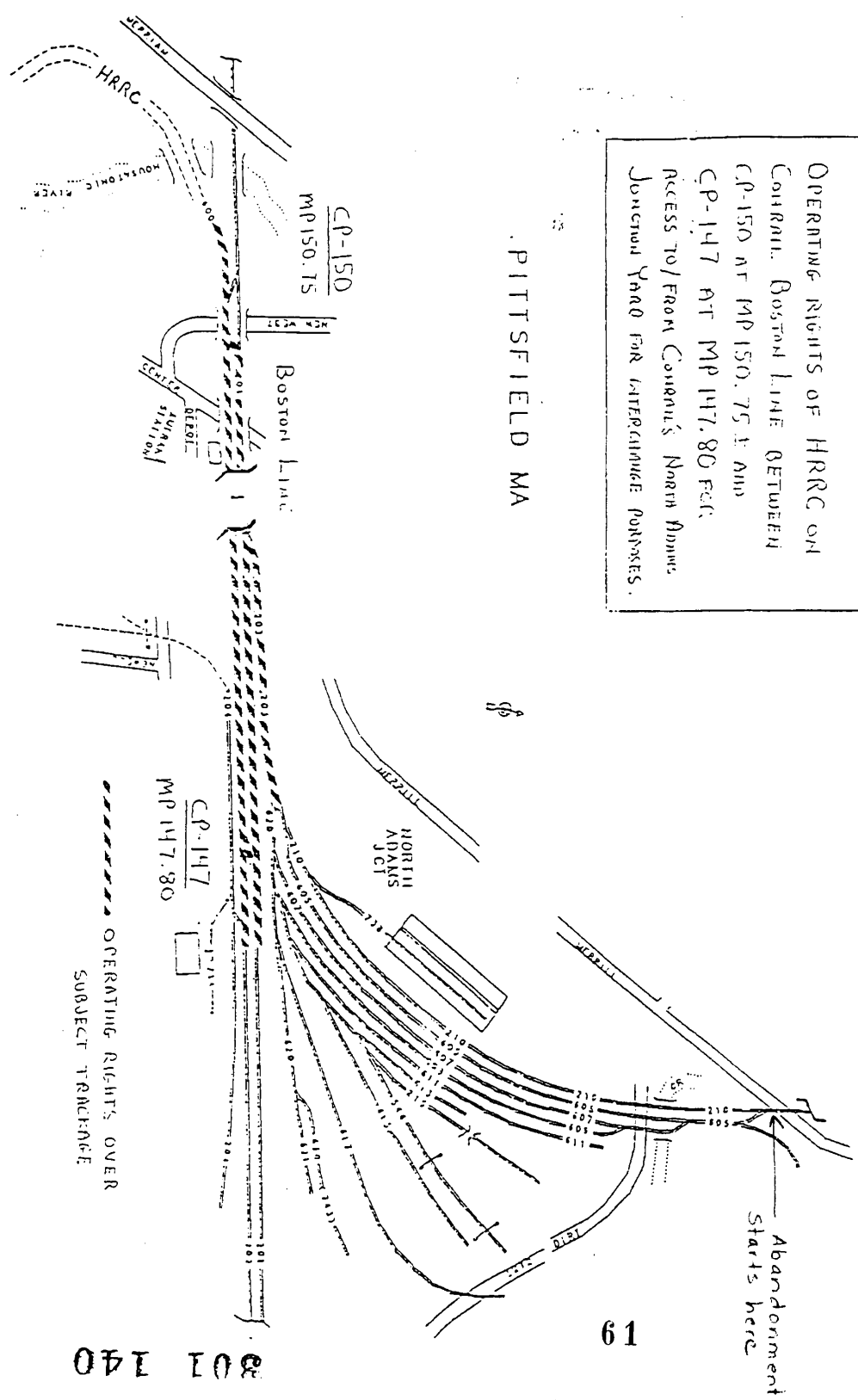


EXHIBIT 3

FR-7035-01
DO

AB/3
SERVICE DATE

AUG 25 1992

INTERSTATE COMMERCE COMMISSION

NOTICE OF EXEMPTION

[Docket No. AB-32 (Sub-No. 47X)]

BOSTON AND MAINE CORPORATION AND SPRINGFIELD TERMINAL
RAILWAY COMPANY--DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION--
IN BERKSHIRE COUNTY, MA

Boston and Maine Corporation and Springfield Terminal Railway Company (applicants) have filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to discontinue trackage rights over 5.09 miles of line owned and operated by Consolidated Rail Corporation (Conrail). The segment extends between milepost 150.75 and milepost 148.16, and between milepost 0.00 and milepost 2.50 in Pittsfield, in Berkshire County, MA.¹ Conrail will continue to operate the segment.

Applicants have certified that: (1) no local traffic has moved over the line for at least 2 years; (2) overhead traffic, if any, which previously moved over the line has been rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or by a State or local government agency acting on behalf of such user) regarding cessation of service on the line either is pending with the Commission or any U. S. District Court or has been decided in favor of the complainant within the 2-year period. Applicants also have

¹ Mileposts 148.16 and milepost 0.0 mark the same point on the line, hence, the 5.09 miles constitute a continuous segment.

certified that they have complied with the notice requirements of 49 CFR 1152.50(d)(1).

As a condition to use of this exemption, any employee adversely affected by the discontinuance of trackage rights shall be protected under Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 24, 1992, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues² and formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2)³ must

² Ordinarily a stay will be routinely issued by the Commission in those instances where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment, cannot be made prior to the effective date of the notice of the exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Because trackage rights discontinuances are exempt from the Commission's environmental and historic reporting requirements, a stay would not be issued here for these reasons.

³ See Exempt. of Rail Abandonment--Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

Docket No. AB-32 (Sub-No. 47X)

be filed by September 4, 1992. Petitions to reopen must be filed by September 14, 1992, with:

Office of the Secretary
Case Control Branch
Interstate Commerce Commission
Washington, DC 20423

A copy of any petition filed with the Commission should be sent to applicants' representative:

John R. Nadolny
Law Department
Boston and Maine Corporation
Iron Horse Park
No. Billerica, MA 01862

If the notice of exemption contains false or misleading information, use of the exemption is void ab initio.

Decided: August 18, 1992

By the Commission, David M. Konschnik, Director, Office of Proceedings.

(SEAL)

Anne K. Quinlan
Acting Secretary

EXHIBIT 4

VERIFIED STATEMENT

OF

GARY MASSAR

My name is Gary L. Massar and I am owner and president of The Massar Group, Inc., an appraisal and advisory services company. My office is located at 11725 Seaview Drive, Jacksonville, Florida. I have been involved with the valuation of railroad and utility corridors, both for abandonment and sale purposes, since 1988. I am an independent contractor and perform certain projects on behalf of CSX Real Property, Inc. ("RPI").

I hired Mr. David Schulte to appraise the relevant line of railroad. Mr. Schulte is a qualified appraiser who has done work for RPI in the past. I instructed Mr. Schulte to estimate the net liquidation value of the line in accordance with the Board's regulations. As a result, Mr. Schulte performed an analysis to determine the net liquidation value for the highest and best non-rail use. Mr. Schulte employed the Across the Fence ("ATF") valuation method for his appraisal at my direction.

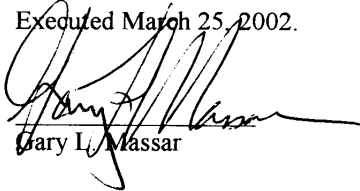
I have reviewed the reports of Mr. Schulte and Mr. Benedict, the appraiser for the Housatonic Railroad Company, Inc. ("HRRC"). I believe Mr. Schulte's methodology and therefore, his result, are more accurate. As stated above, Mr. Schulte utilized the ATF valuation method for all property within the corridor to establish the net liquidation value of the line. HRRC's appraiser, however, did not identify ATF values for a substantial portion of the line. HRRC's appraiser is also mistaken with regard to the applicable zoning regulations on a portion of the line and he failed to consider reasonable alternate uses of the property. Finally, HRRC's appraiser made nonsensical 99.9% downward adjustments to certain parcels apparently due to the presence of wetlands. There is no reasonable basis for such significant adjustments. Mr.

Schulte factored in certain substantial negative adjustments to account for topographical issues in a more reasonable and accurate manner.

VERIFICATION

I, Gary L. Massar, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed March 25, 2002.



Gary L. Massar