

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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DOCKET NO. FD 36710

**RICHMOND WATERFRONT INDUSTRIAL PARK, LLC – PETITION
FOR DECLARATORY ORDER**

**OPENING STATEMENT OF
RICHMOND WATERFRONT INDUSTRIAL PARK, LLC**

Stephen Foxman, Esquire
Jeffrey P. Lewis, Esquire
**Eckert Seamans Cherin & Mellott,
LLC**
Two Liberty Place, 22nd Floor
50 South 16th Street
Philadelphia, PA 19102
215-851-8400
sfoxman@eckertseamans.com
jlewis@eckertseamans.com

Thomas W. Wilcox, Esquire
**Law Office of Thomas W. Wilcox,
LLC**
1629 K. Street, NW Suite 300
Washington, DC 20006
202-508-1065
tom@twilcoxlaw.com

*Counsel for Richmond Waterfront
Industrial Park, LLC*

Dated: October 15, 2024

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Pursuant to the Decision served in this Proceeding on May 9, 2024 (“May 9th Decision”), as amended by decisions served on August 1, 2024 and October 1, 2024, Richmond Waterfront Industrial Park, LLC (“RWIP”) hereby submits its Opening Statement in this proceeding.

I. INTRODUCTION

RWIP’s Petition for Declaratory Order (“Petition”) requests a declaration by the Surface Transportation Board (“STB” or “Board”) that the STB does not have jurisdiction over a purported railroad easement (the “Easement”) owned by the Philadelphia Belt Line Railroad Company (“PBL”) traversing property owned by RWIP. As demonstrated in this Opening Statement, the Easement and the remaining

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railroad tracks within it (“Easement Tracks”) are neither a line of railroad imbued with a common carrier obligation subject to 49 U.S.C. § 10901, nor an excepted “side track” governed by 49 U.S.C. § 10906. Rather, prior to all use of the Easement Tracks ceasing approximately 22 years ago,¹ they were constructed and used by parties other than PBL outside of the national rail system. Therefore, state and local property laws control the disposition of the Easement and the Easement Tracks, and such laws are not preempted by 49 U.S.C. § 10501(b). *See*, Docket No. FD 36014, *Ingredion Incorporated – Petition for Declaratory Order* (served September 30, 2016) at *3 (where the Board explained that disputes involving state property laws “are questions that the state court should resolve.”). *See also*, STB Finance Docket No. 34662, *CSX Transportation, Inc. – Petition for Declaratory Order* (served March 14, 2005), at *9 (“Section 10501(b) preemption does not extend to operations that are not part of the national rail network.”). The Board should declare that it has no jurisdiction over the Easement Tracks and, accordingly, should reject PBL’s claims that the Easement Tracks are either a “railroad line” under 49 U.S.C. §10901 nor excepted tracks under §10906.

II. STATUS OF JUDICIAL PROCEEDINGS

The Petition was prompted by a December 6, 2022, ruling in *Richmond Waterfront Industrial Park, LLC v. Philadelphia Belt Line Railroad Company*, No.

¹ Petition for Declaratory Order, Verified Statement of David Wolf (“Wolf V.S.”) at 2.

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02872, March Term, 2022, Commerce Program, Civil Trial Division, in The Court of Common Pleas, Philadelphia County, Pennsylvania (“Lower Court”).² Without first taking any evidence, the Lower Court ruled that it did not have subject matter jurisdiction to decide the legal question under Pennsylvania state law of whether RWIP could claim the property underlying the Easement. The Court based that holding upon its determination that the tracks were a line of railroad subject to the Board’s abandonment rules under 49 U.S.C. § 10903. Specifically, the Lower Court ruled that “[RWIP] must bring the matter to the federal Safety [sic] Transportation Board (“STB”) pursuant to the ICC Termination Act of 1995, 49 U.S.C. §§ 10501 *et seq.* The Act completely preempts state action when it comes to determining if a railroad has abandoned its tracks.”³ Thus, the Lower Court jumped to the legal conclusion that the Easement Tracks were imbued with a common carrier obligation, and so it could not decide whether it could extinguish the Easement based upon PBL’s non-use by application of the principles of adverse possession or pursuant to other principles of Pennsylvania law.

The Lower Court’s ruling was prompted by PBL asserting—without presenting any supporting facts—that the Easement and the Easement Tracks were lines of railroad subject to § 10901, which could only be disposed of pursuant to a

² Exhibit A to Petition.

³ *Id.* at 1.

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formal abandonment proceeding pursuant to § 10903.⁴ But RWIP rejects that premise for the reasons set forth in this Petition.

On January 5, 2023, RWIP appealed the Lower Court's ruling, eventually leading the case to the Superior Court of Pennsylvania.⁵ In an order entered on March 25, 2024, the Superior Court upheld the Lower Court's ruling, which prompted RWIP to file a Supplement to the Petition for Declaratory Order with this Board on April 9, 2024. The Board issued the May 9th Decision shortly thereafter. RWIP subsequently filed a petition for allowance of appeal of the Superior Court's ruling to the Pennsylvania Supreme Court, which denied RWIP's Petition on September 11, 2024.

III. UPDATED FACTUAL BACKGROUND

In the May 9th Decision, the Board granted RWIP's and PBL's requests to engage in discovery to obtain additional factual information about the 134-year history of PBL and the specific tracks at issue in this proceeding. This section of RWIP's Opening Statement updates, expands upon, and in some cases corrects the factual background set out in the Petition in light of the additional documentation and data produced by PBL that bear on the jurisdictional question before the Board. To the extent that the updated factual background set forth in this Opening Statement

⁴ *Id.* at 1-2.

⁵ Case No. 1172 EDA 2023.

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conflicts with the Background section of the Petition, it is due to a prior lack of more specific information on the subject matter.

A. Identity and Interest of RWIP

RWIP is a Pennsylvania limited liability company engaged in the business of industrial leasing.⁶ In 1998, RWIP acquired⁷ three parcels of land which total 51.6 acres located at 5000-B Richmond St. a/k/a 2950 Kirkbride Street a/k/a 4601 and 4701 Bath Street, City and County of Philadelphia, Pennsylvania (the “Property”).⁸ Maps of the Property showing the location of the Easement are attached as Exhibit C to the Petition. The southern boundary of the Property is adjacent to Buckius Street, and the northern boundary of the property extends slightly beyond Bridge Street.

RWIP purchased the Property from the Rohm and Haas Company (“R&H”), a large chemical manufacturer which at that time operated extensive facilities located immediately north of the Property. As referenced throughout this Opening Statement, R&H and its predecessors in interest were connected to the Easement Tracks over their history. In fact, as summarized in Section D below, beginning in 1967 PBL leased the Easement Tracks to R&H for its own use using its own railroad

⁶ See the Verified Statement of David Wolf, President of Wolf Investments the owner of Richmond Waterfront Industrial Park, LLC (“Wolf V.S.”) attached to the Petition, at 1.

⁷ By the terms of the agreement the purchaser of the property was Wolf Investments “or its nominee,” which was RWIP.

⁸ Hereinafter, the City and County of Philadelphia, Pennsylvania, is referenced as “City” or “Philadelphia.”

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equipment, which use continued until R&H sold its facility to Dow Chemical Company in 2009.⁹ All use of the Easement Tracks ceased around 2001. Presently, RWIP uses the Property to engage in the business of storing tractor trailer trucks and chassis. PBL's claims that the Board has jurisdiction over the Easement and the rulings of the Pennsylvania courts have thwarted RWIP's efforts to further develop the Property for industrial and commercial use.

B. The Philadelphia Belt Line Railroad

PBL is a railroad corporation that was formed under Pennsylvania state law in 1889 by citizens of Philadelphia to construct approximately 18 miles of track in the Philadelphia area.¹⁰ In the late 1800's numerous interstate railroads operated in the City and its surroundings.¹¹ The City, through its council,¹² passed the Ordinance of December 26, 1890 ("*1890 Ordinance*"), a lengthy document which sets forth specific conditions upon which PBL could construct railroad tracks for other railroads to use in and around Philadelphia (Exhibit 1). These conditions were

⁹ Wolf V.S. at 2-3.

¹⁰ See, Articles of Association of the Philadelphia Belt Line Railroad Company, adopted May 10, 1889.

¹¹ These include, *inter alia*, Pennsylvania Railroad (later merged with the New York Central to become "Penn Central," which railroad later merged with other railroads to become "Amtrak"). These also include Philadelphia & Reading Railroad, later renamed Reading Railroad Company, then Reading Company, which merged with other companies to become Consolidated Rail Corporation ("Conrail").

¹² At the time that the City enacted this ordinance, the body of city government that actually passed the ordinance (before it was signed into effect by the mayor) were the Select and Common Councils of the City of Philadelphia. These councils were later consolidated and renamed the Philadelphia City Council. Hereinafter, these councils will be referred to as "City Council."

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designed to advance the commercial interests of the City and its businesses.

Nothing in the *1890 Ordinance* states that the tracks it authorized PBL to construct were for the purpose of PBL providing common carrier rail service. In fact, as explained below and contrary to statements it has made throughout its existence, PBL has never in its 134-year history provided any common carrier service over any of the tracks constructed pursuant to the *1890 Ordinance*. Rather, it has served as a facilitator for contract rail service provided by actual operating railroads.

To further the City's commercial goals and objectives, the *1890 Ordinance* imposes strict controls over the PBL. These restrictions include a condition that any tracks PBL construct must be "open to the use of all railroad companies which shall execute a satisfactory agreement to comply with all reasonable rules and regulations, which rules and regulations shall apply to all without discrimination." *1890 Ordinance* at Section 5. This condition has been called the "Belt Line Principle," which "mandate[s] equal, non-discriminatory access over the PBL line to all rail carriers" to advance commerce in Philadelphia.¹³ Accordingly, "PBL, from its formation, has made its tracks and related facilities available, for a charge and subject to the Belt Line Principle . . ."¹⁴ to the interstate railroads then-operating in

¹³ See, Finance Docket No. 32802, *Philadelphia Belt Line Railroad Company v. Consolidated Rail Corp., CP Rail System, and CSX Transportation, Inc.* (STB served July 2, 1996) ("*Conrail*")

¹⁴ *Id.* at *2-*3.

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Philadelphia, which it has using private contracts such as leases, haulage agreements or other arrangements that were outside the Board's jurisdiction.¹⁵

Other controls placed on PBL by the City include (1) the placement of tracks subject to the modification or relocation at the demand of the City (*1890 Ordinance* at Section 7); (2) that the charges PBL could assess be capped by state law (*Id.* at Section 8); (3) the dividends on its stock be capped at 6%, with any excess earnings going to the City (*Id.* at Section 9); and (4) that the right is broadly reserved by the City to establish regulations controlling the running of cars and locomotives over the tracks "as may be required for the protection of the citizens or business interests in the city" (*Id.* at Section 12).

Finally, to ensure the City's control of PBL as a quasi-public corporation, the *1890 Ordinance* mandates the creation of a voting trust for all the PBL's stock and requires that 51% of all stock be held by entities other than PBL "to the end that said railroad may forever be maintained for the common use of all railroads upon equal terms, without discrimination." (*Id.* at Section 13).

C. PBL Has Never Operated as a Common Carrier

¹⁵ Docket No. FD 35345, *Philadelphia Belt Line Railroad Company – Petition for Declaratory Order* (Served August 4, 2010), ("*PBL Declaratory Order*") at *2 (describing how PBL entered into haulage agreements with other carriers to move freight on PBL's behalf, and explaining how "Board approval is not needed for a haulage agreement as it does not implicate either the control of a line of railroad, the transfer of a common carrier obligation, or the operation of one carrier over the tracks of another.")

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While it has occasionally been referred to as a Class III rail carrier,¹⁶ PBL has never directly provided any rail service to any rail shipper. As the Board noted in *Conrail*:

Although a rail carrier, PBL never operated the Belt Line. Instead, PBL, from its formation, has made the line and related facilities available, for a charge and subject to adherence to the Belt Line Principle, to the three major railroads (and their successors) and have provided Philadelphia shippers with competitive linehaul services.

Id. at *2-*3 (citations omitted). Also in *Conrail*, the Board cited the Regional Rail Reorganization Act of 1972, Pub. L. No. 93-126, and further noted:

Conrail assumed the Philadelphia operations that formerly had been provided by the bankrupt Reading and Penn Central, including their operations over the Belt Line North... Subsequently, on March 1, 1987, PBL and Conrail entered into a 10-year lease agreement giving Conrail “exclusive use” of the Belt Line North property (sole operating authority to serve Belt Line North shippers), subject to the Belt Line Principle.

Id. Nor, on information and belief, has PBL ever owned railcars or locomotives, and it has no operating employees or train crews. PBL’s corporate purpose and charge from the City was to administer and facilitate competitive rail service to Philadelphia businesses by the multiple interstate railroads then operating in the City area.¹⁷

¹⁶ See, *Conrail* at *1.

¹⁷ See, also, *Conrail* at *6 (“Moreover, PBL does not operate, and never has operated, the Belt Line that it now seeks to have “reconnected.”) (The Board is referring to reconnecting the Belt Line North with the Belt Line South).

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In view of the foregoing, PBL has never engaged in any activity that would support a finding that the Easement Tracks are a line of railroad or qualify PBL's minimal activities on the Easement Tracks or the Property as that of a common carrier.

D. The Easement Tracks and Easement at Issue in this Proceeding

As summarized in the Petition, Railroad operations along the Delaware River waterfront in Philadelphia date back to the 1800s. Indeed, the tracks and right-of-way of the Kensington and Tacony Railroad crossed the Property beginning in 1891. That track and right-of-way was formally abandoned in the mid-1980s¹⁸ and is not at issue in this proceeding.

The Easement and Easement Tracks run north and south through the Property from Buckius Street to just north of Bridge Street, (which is located near the northern end of the Property).¹⁹ They comprise an approximately 3,790 - foot²⁰ long and 33-feet wide strip of land that, on information and belief, is an isolated remnant of a portion of PBL's tracks referred to as the Belt Line North. In *Conrail*, the Belt Line North was described by PBL and the Board as running south for approximately three miles from Bridge Street past Buckius Street to Allegheny Avenue in Philadelphia,

¹⁸ https://en.wikipedia.org/wiki/Connecting_Railway.

¹⁹ Buckius and Bridge Street are shown on both maps in Exhibit C to the Petition.

²⁰ The Petition preliminarily estimated the length of the Easement to be approximately 2,716 feet long.

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where it connected to tracks owned by Conrail’s predecessors.²¹ On the Property itself, the Easement at issue in this proceeding extends southward from the northern end of the Property near Bridge Street to the southern boundary of the Property at Buckius Street, which is shown on the maps in Exhibit C to the Petition.

PBL did not construct the Easement Tracks, nor did it pay for their construction. Rather, pursuant to an agreement, dated May 4, 1891,²² the tracks were constructed by a contractor—Charles Campbell—whose work was financed by the Philadelphia and Reading Railroad Company (“Reading”), because Reading “desire[d] to use” this section of track “when constructed.” *Id.* at 1. Pursuant to the agreement, Reading paid for the construction of the tracks in exchange for the contractual right to use them, (*id.* at Section B), and PBL owned them subject to the controls in the *1890 Ordinance*. *Id.* at 1.

As stated above, the Easement Tracks have not been used for over 22 years, and some of the tracks have been removed and/or are in poor condition. Other segments of the Easement Tracks have been covered with dirt and asphalt. The only

²¹ *Conrail* at *1. The Belt Line North was described by the STB in *Conrail* in 1996 as follows: “PBL now owns, controls, or has trackage rights over approximately 16.3 miles of rail line and right-of-way along Delaware Avenue on the Delaware River waterfront in downtown Philadelphia. The line is separated into a northern and southern segment. The Belt Line North extends approximately three miles from Bridge Street in the north through the site of Conrail’s former Port Richmond Yard to Allegheny Avenue in the south.”

²² Agreement between Charles S. Campbell, PBL, and Philadelphia and Reading Railroad, dated May 4, 1891, pp. 1-18 (“*1891 Finance Agreement*”). Exhibit 2.

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maintenance PBL has performed is to occasionally spray to control weeds.²³ The tracks extending south from Buckius Street to Allegheny Avenue have also been unused for many years and have also fallen into disrepair. As explained below in Section IV.6, the tracks north of the Property boundary were removed completely in 2023 by the developers of 5000 Richmond Street, a truck-served warehouse facility.²⁴ There are no longer any railroad tracks north of the Bridge Street boundary of the Property.

E. The Prior Use of the Easement Tracks

Contemporaneous with the *1891 Finance Agreement*, Reading entered into another agreement, also dated May 4, 1891²⁵ (“*1891 Use Agreement*”) that granted Reading contractual rights, subject to the restrictions in the *1890 Ordinance*, to “{ }” the newly constructed track along with other railroads if they paid a proportionate share of “{ }” incurred by Reading.²⁶ No provision of the *1891 Use Agreement* stated that Reading’s use, occupancy, and enjoyment of the track was to provide common carrier service to any shipper. Rather, the agreement stressed in part that any service would be subject

²³ Wolf V.S. at 3.

²⁴ See, <https://www.youtube.com/watch?v=ObgGbXXNJMI>, showing work performed at 5000 Richmond Street in 2023 and before, a property which is owned by an unrelated party just north of and contingent with the Property.

²⁵ *Agreement of May 4, 1891 between The Philadelphia & Reading Railroad Company and The Philadelphia Belt Line Railroad Company*. Exhibit 3.

²⁶ See, *1891 Use Agreement* at 4 & 6.

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to {

}. *Id.* at Section 12. This agreement was also

conditioned upon {

}.

Apparently, no other railroads sought to utilize the tracks on the Property by contributing to the maintenance and operating costs, so Reading had sole contractual rights to use the Easement Track from their construction in 1891 until 1976, when the railroad entered bankruptcy and its assets were conveyed to Conrail.²⁷ Conrail also assumed all of Reading's rights and obligations under the *1891 Use Agreement*.²⁸

In addition, as mentioned above, between January 1967 and October 1977, PBL entered into a series of leases with R&H by which all of the Easement Tracks running the length of the Property from Buckius Street to the vicinity of Bridge Street were progressively leased in segments to R&H to permit it to move its railroad cars by its own motive power over the tracks.²⁹ Consequently, starting in 1967 and

²⁷ A summary of this history is contained at pages 3-4 of the Petition for Exemption filed by PBL in Finance Docket No. 29517, *Petition of the Philadelphia Belt Line Railroad Company Under 49 U.S.C. §10505 for Exemption of the Proposed Transaction from Provisions of 49 U.S.C. §10901* ("PBL Exemption Action"), a copy of which petition is attached hereto as Exhibit 4.

²⁸ *Id.*

²⁹ The *PBL/R&H Leases* are attached hereto as Exhibit 5 as follows: R&H and PBL Lease, dated January 6, 1967 (#1436-A), PBL and R&H Lease, dated August 14, 1973 (#1436-D), and R&H and PBL Lease, dated October 31, 1977 ("*R&H Leases*").

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continuing until use of the Easement Tracks ceased altogether in 2001 the primary user of the Easement Tracks was neither Reading nor Conrail, but was R&H in conjunction with its own plant operations.

As Mr. Wolf explained in his Verified Statement, there has always been a double locked gate at the Buckius Street terminus of the Easement Tracks. Moreover, as Mr. Wolf also explained, the tracks north of the double gate running to Bridge Street were used by R&H to transport its tank cars from its facility north of the Property to the double gate (on information and belief Engineering Station 100+0) for Conrail to pick them up and take south.³⁰ Conversely, Conrail would deliver tank cars to the gate and leave them for R&H to pick up with its locomotive and take back to the plant.³¹ Finally, it appears that pursuant to the R&H Leases, R&H had the sole responsibility of maintaining the leased tracks at its own cost.³²

F. PBL and Conrail

Conrail's assumption in 1976 of Reading's contract rights and obligations to use the Easement track set forth in the *1891 Use Agreement* was not accompanied by a request to the ICC for authority to operate as a common carrier over the

³⁰ Wolf V.S. at 3.

³¹ *Id.*

³² See *Railway Track Maintenance Agreement*, dated December 22, 1998, between Rohm & Haas and RWIP (Exhibit 6), paragraph 1. Under this Agreement, which was entered into when RWIP purchased the Property, R&H had sole use of the Easement Tracks, and the authority to share the maintenance responsibilities with RWIP if it desired to use the track for its own purposes. RWIP had no use for the track, however.

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Easement Tracks or elsewhere on tracks making up the Belt Line North located south of Buckius Street. Indeed, as described above, only R&H apparently had been exclusively using most of the Easement Tracks since 1967 for its own operations and PBL leased the remaining segment to R&H in 1977.

In 1980, while R&H was exclusively using the Easement Tracks for its own plant operations, a dispute arose between Conrail and PBL over the *1891 Use Agreement*. This led to an attempt by PBL to try to obtain, for the first time, common carrier status from the ICC for some of its tracks and for itself. In that proceeding, the *PBL Exemption Action*, PBL and the ICC confirmed that Reading's rights to use the Easement Tracks under the *1891 Use Agreement* were pursuant to contract, and were not common carrier operations, and neither were Conrail's rights after the Reading's assets were merged into it.

In summary:

1. On November 14, 1980, PBL filed a Petition for Exemption with the ICC that sought authority for PBL to operate its own trains over the Belt Line North tracks, which included the Easement Tracks that had been leased to R&H.³³ In response to this filing, the ICC first ruled that **“PBL has never operated as a railroad, therefore its operations would not be covered**

³³ *PBL Exemption Action* at *2.

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by any grandfather clauses in the Interstate Commerce Act. Consequently, it must obtain authority to operate over the lines in which it has a property interest.” *Id.* (bold added).

2. The ICC granted PBL exemption authority to operate on its tracks as a common carrier, **but placed a one-year time limit for PBL to consummate certain unnamed transactions** (*e.g.* to May 10, 1982) **in order to retain the exemption authority.**³⁴
3. On November 24, 1981, PBL and Conrail entered into a Settlement Agreement, which in pertinent part included an Operating Agreement between PBL and Conrail.³⁵ By its terms, the Operating Agreement only became effective “upon approval, from any right of appeal, by the Interstate Commerce Commission”³⁶
4. On December 14, 1981, PBL filed a letter with the ICC in the *PBL Exemption Action* submitting the Settlement and Operating Agreements and requesting that “the Commission either issue an order accepting these agreements as implementing the authority granted [to PBL] in [the April 10, 1981 decision] or issue an order declining jurisdiction in this matter.”

³⁴ *Id.* at 6.

³⁵ See, Exhibit 7, Settlement Agreement between PBL and Conrail, November 24, 1981 and Operating Agreement, (Exhibit A to Settlement Agreement).

³⁶ See, Operating Agreement, Section 4.

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PBL also asked the ICC to waive the condition that it consummate its exemption authority in one year. The ICC did not respond to PBL's letter, and so the ICC did not approve the Operating Agreement and, by its terms, it did not become effective.

5. It's December 14, 1981 letter having been ignored by the ICC, PBL filed a petition styled *Supplemental Petition for Clarification and/or Postponement of Consummation*³⁷ ("Supplemental Petition" or "*Supp. Pet.*") on March 23, 1982, to formally ask the ICC to extend its original exemption authority to operate indefinitely, or in the alternative, for five years. In the Supplemental Petition PBL also again submitted, and asked the ICC to approve, the Operating Agreement and Settlement Agreement. However, PBL emphasized that Conrail's role was not to provide common carrier operations on PBL's tracks. Instead, it described "the role of Conrail as a contract operator."³⁸
6. PBL also attempted to convince the ICC to "confirm and clarify preexisting rights dating back to the Nineteenth Century," (emphasis in original). *Supp. Pet.* at 6, by asserting its alleged common carrier status, and by extension, its tracks, were "latent so long as Conrail, B&O, and their predecessors

³⁷ Portions of this document ("Supp. Pet.") are attached as Exhibit 8.

³⁸ *Supp. Pet.* at 5. In this petition, PBL admitted again that it is not an operating common carrier. See, *id.* at 1 (alleging that it is "a nonoperating common carrier railroad.").

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furnished a substitute service” pursuant to private contracts. *Id.* at 8. Under this strained rationale, PBL asserted that the ICC should view Conrail’s contract operations “as a fulfillment of that [latent common carrier] right” as PBL’s “agent.” *Id.* Conceding that Conrail’s use of PBL’s tracks pursuant to contract did not require ICC authorization, PBL asked the ICC to “go even one step further by holding that PBL’s independent operating rights have remained dormant during periods of contract operation, but such rights will automatically arise upon termination of contract service.” *Id.*

7. The ICC rejected PBL’s requests and assertions. On May 3, 1982, the ICC responded to PBL’s Supplemental Petition by merely extending the date for it to consummate its exempted operating authority for two additional years to May 10, 1984, stating “PBL must consummate the transaction by that date in order to take advantage of the exemption previously granted.”³⁹ The ICC denied the Supplemental Petition “in all other respects,”⁴⁰ thereby declining to approve the Operating and Settlement Agreements. The ICC also declined to “confirm and clarify” that PBL and its tracks—including the Easement Tracks—possessed “preexisting” and “latent” common carrier rights and obligations which somehow lay “dormant.”

³⁹ *PBL Exemption Action* (ICC Served May 3, 1982 at *1.

⁴⁰ *Id.*

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8. By Petition dated April 17, 1984, PBL sought a further extension of the deadline for it to perfect its exemption authority, to May 10, 1986. The ICC granted this extension on May 18, 1984. On April 23, 1986, however, PBL filed yet another motion seeking an indefinite extension of the exemption. The ICC granted this motion on May 28, 1986, stating it was for PBL to “consider different options for providing service over its lines,” including “leasing its line to Conrail.” The ICC added “should PBL decide to hire another party to provide service (instead of perfecting the authority it was granted), that party would be required to obtain our approval under or exemption from 49 U.S.C. 10901.”⁴¹

In response to the May 28, 1986 ruling, PBL chose not to perfect the exemption operating authority and instead entered into a private lease with Conrail on March 1, 1987 (“1987 Lease”).⁴² Exhibit A to the 1987 Lease specified that it covered PBL property and tracks, “within the Belt Line North right-of-way . . . commencing at Engineering Station 0+0 at the South House Line of Allegheny Avenue . . . to its intersection at Buckius Street at Engineering Station 110+00, that being the point of delivery of traffic to the Rohm and Haas Plant.”⁴³ Consequently the tracks covered

⁴¹ *PBL Exemption Action* (ICC Served May 28, 1986) at 1.

⁴² A copy of the 1987 Lease was attached as Exhibit E to RWIP’s Petition. *See also, Conrail* at *2. There is no evidence that Conrail ever sought authority from the ICC to conduct or discontinue common carrier operations over any of the Belt Line North tracks in conjunction with the 1987 Lease.

⁴³ Exhibit E to the Petition, 1987 Lease, at page 17, Exhibit A.

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by the 1987 Lease did not include the Easement Tracks, which were at that time possessed by R&H and being used by it for its own operations using its own locomotives pursuant to the Rohm & Haas Leases. Rather, Exhibit A stated that PBL assigned its interests in the leases to Conrail. *Id.*⁴⁴

As stated previously, all use of the Easement tracks by R&H ceased around 2001.

IV. ARGUMENT

A. The Easement Tracks are not a Line of Railroad Subject to the Board's Jurisdiction

Neither the ICC nor the Board has ever affirmatively determined that either agency has jurisdiction over the Easement Tracks, or any railroad track or a right-of-way easement owned by PBL. On the contrary, in addition to the *PBL Exemption Action* and *Conrail* cases, *supra*, the Board in *PBL Declaratory Order*, *supra*, note

⁴⁴ As summarized in the Petition, the 1987 Lease was subsequently extended another 10 years from 1997 to 2007, at which time it changed to a month-to-month arrangement. In 2014, several years after use of the Easement tracks ceased, Conrail and PBL replaced their month-to-month arrangement with an Operating Lease Agreement, with a term that runs to December 2028 ("2014 Lease"). See, Exhibit F to the Petition. Conrail again did not accompany this new agreement with a request to the Board for authority to conduct common carrier operations over PBL's tracks. In fact, Section 12 (page 13) of the 2014 Lease states (bold added): "it is the understanding of the parties that **any Conrail operations under this Agreement do not require approval by the STB nor will any STB approvals be sought for Conrail to operate pursuant to this Agreement. Moreover, in no event shall Conrail seek approval of this Agreement with the STB without first obtaining written consent of the Belt Line.**"

Certainly, this constitutes an expression by PBL (and Conrail) of its understanding that STB does not have jurisdiction over the Easement tracks. Otherwise, this statement makes no sense.

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15, rejected a later attempt by PBL to claim that the Board had jurisdiction over a track, or other property interest, owned by PBL.⁴⁵ As further summarized above, there is no evidence the Easement Tracks ever held the status of a common carrier line of railroad over the 134-year history of the tracks. The numerous legal reasons why the existing precedent and history of the Easement Tracks precludes a finding that they are imbued with a common carrier obligation that may only be extinguished through a formal abandonment proceeding are set forth below:

1. The Easement Tracks Were Not Constructed by PBL Nor Were they Intended for Use in Interstate Common Carrier Service

PBL did not construct or pay for the Easement Tracks. Instead, the tracks were constructed and financed by third parties pursuant to local Pennsylvania laws and the City's ordinances, many of which contained onerous restrictions and conditions. Nothing in the *1890 Ordinance* states that the tracks were for common carrier rail service, and indeed, the tracks were used by other railroads pursuant to private contracts which all had to be subject to the "Belt Line Principle" and other restrictions in the *1890 Ordinance*.

Also as summarized above, the Board in the *PBL Exemption Action*

⁴⁵ *PBL Declaratory Order* at *3-*4 ("(1) PBL has not demonstrated that it ever perfected the right to operate as a common carrier over the PBL right-of-way, (2) PBL has neither demonstrated that it was a common carrier over the Penn Street Lines via trackage rights, a lease, or otherwise, nor established that PBL's status as to those lines is related to the PBL right-of-way; and (3) 49 U.S.C. 10903 does not apply to the PBL right-of-way.").

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affirmatively rejected PBL's attempt to obtain a ruling that the Easement Tracks, among PBL's other tracks, somehow possessed "latent" common carrier status dating back to the "Nineteenth Century" that lay "dormant" while Reading, Conrail, and other railroads conducted private contract operations on them where none first sought ICC's authorization. Indeed, at no time in the *PBL Exemption Action* nor in any other case discussed hereinabove did PBL argue that Reading's and Conrail's operations over these tracks were as common carriers subject to the Board's jurisdiction. Rather, PBL emphasized that these carriers used its tracks under private contract arrangements that were *not* subject to the ICC's jurisdiction, which is entirely consistent with the tracks having a legal status of being privately constructed and operated, and not lines of railroad under 49 U.S.C. §10901.

2. The Transportation Act of 1920 Does Not Apply to the Easement Tracks

Nor can PBL successfully claim that the Easement Tracks have jurisdictional status by operation of Section 402 of the Transportation Act of 1920 ("1920 Act") or any other "grandfathering" statutes governing railroad tracks. The Easement Tracks were constructed just after the creation of the ICC in 1887 and before passage of the 1920 Act. Section 402⁴⁶ of that Act (the precursor to today's 49 U.S.C. §10901 and §10903) required that after its passage a railroad conducting common

⁴⁶ Section 402 added new section 1(18) to the Interstate Commerce Act.

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carrier operations must seek a certificate of public convenience and necessity to construct, operate or abandon a railroad track. Here, there is no evidence that PBL sought such a certificate. Additionally, tracks constructed and operated by existing rail carriers that operated as common carriers prior to the passage of the 1920 Act were “grandfathered” by Section 402. As explained in STB Finance Docket No. 33740, *The Burlington Northern and Santa Fe Railway Company – Petition for Declaration or Prescription of Crossing, Trackage or Joint Use* (Served May 13, 2003) at*8:

Most of what today constitutes the national rail system was already in place in 1920 when Congress provided for ICC licensing. Congress did not require existing rail carriers to perfect any grandfather rights by seeking certificates for these existing lines, but that is because there was no need to do so. The track and ties were already in place. The ICC’s jurisdiction already attached to carriers engaged in interstate transportation by rail. The regulation of carriers operating on existing lines was identical to that over lines constructed after the certificate requirement. That the [public convenience and necessity] ... was served by the existence of these lines was not questioned.

However, the PBL’s tracks, and particularly the Easement Tracks, did not meet these requirements. They were not originally constructed by PBL nor operated by PBL at all, let alone as a common carrier. Rather, as previously stated, Reading financed the cost of construction, which it did as part of a contractual arrangement with Campbell and PBL to use the tracks pursuant to the contract terms and the restrictions imposed on PBL by the 1890 Ordinance. These facts led the ICC to

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rightfully conclude in the *PBL Exemption Action* that no “grandfathering” statutes, including the 1920 Transportation Act, applied to PBL and its tracks.

3. The Actions of PBL and Conrail Also Confirm that the Board Has No Jurisdiction over the Easement Tracks

Nor can PBL attempt to rely on the operating authority it conditionally received in the *PBL Exemption Action* to argue that the Easement Tracks are imbued with a common carrier obligation. After all, PBL never elected to (and most likely never intended to) exercise the authority it sought, which was to operate its own trains and equipment over its tracks. Instead, PBL simply perpetuated its historical practice, pursuant to the *1890 Ordinance*, to allow Conrail and other railroads to use its tracks pursuant to private contracts, which were not once accompanied by any railroad seeking operating authority from the ICC or the Board. Indeed, in the case of the Easement Tracks, PBL did not disclose to the ICC in the *PBL Exemption Action* that, contrary to its representations in its Petition of a desire to conduct its own operations, PBL had years before leased the Easement Tracks to a rail shipper (R&H) for its use and maintenance as part of its plant operations. And when that shipper had no more use for the tracks, they were left unused and deteriorating for over 20 years. These actions constitute a conscious decision on the part of PBL to not perfect the authority that was granted by the ICC in the *PBL Exemption Action*,

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and they foreclose any finding that the Easement Tracks are a “railroad line” under 49 U.S.C. §10901.

4. The “Belt Line Principle” and Other 1890 Ordinance Conditions are Inconsistent With a Finding that the Easement Tracks are Imbued with a Common Carrier Obligation

The “Belt Line Principle” on which Belt Line was founded and the prerequisite for any operations by rail carriers on the Belt Line’s tracks, also refutes the notion that the Easement tracks were or are common carrier tracks. As stated in the *2014 Lease*, that principle:

...is defined as the requirement that the Belt Line be operated (i) to benefit the trade and commerce of the City of Philadelphia, (ii) to provide full and equal facilities upon equal terms for all railroads which now or may hereafter enter the City to use the Belt Line’s railroad, without discrimination or favoritism between them and (iii), to assure that the Belt Line and its railroad are free from the exclusive control of any of the railroad companies that use it and will be controlled in the interest of trade and commerce of the City of Philadelphia.”^[47]

This requirement in the *1890 Ordinance* contractually obligates interstate rail carriers to place the commercial interests of Philadelphia businesses over the needs of the carrier’s other customers—many of whom no doubt had or have facilities located outside of Philadelphia. This restriction conflicts with the statutory

⁴⁷ See, Operating Lease Agreement between PBL and Conrail, January 1, 2014 (Exhibit F to the Petition at 8 – 9).

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obligations of rail carriers under 49 U.S.C. §11101(a), to provide common carrier transportation or service to shippers upon reasonable request. It is hornbook law that local ordinances and restrictions that unreasonably interfere with a carrier's ability to provide common carrier service are preempted by 49 U.S.C. §10501(b). *See, e.g.* STB Finance Docket No. 33971, *Joint Petition for Declaratory Order – Boston and Maine Corp. and Town of Ayer, MA* (served May 1, 2001). The Belt Line Principle and the other restrictions in the *1890 Ordinance* discussed above clearly conflict with the rules that permit rail carriers to establish rates and service terms in the first instance, subject to the Board determining whether they are reasonable and in the public interest. *See, e.g.*, 49 U.S.C. §§11101, 10703, and 10704. As a result, the terms and conditions for service established pursuant to federal law would preempt an attempt to require the carrier to adhere to the Belt Line Principle, even if it was set forth in a contract.⁴⁸

However, the Belt Line Principle is arguably **not** preempted if the carrier is conducting private contract service on tracks that are **not** subject to the Board's jurisdiction, which is the case here, where the tracks were constructed pursuant to the *1890 Ordinance*. PBL's recognition of this distinction was reflected in its strained, and ultimately unsuccessful attempt in the *PBL Exemption Action* to try to

⁴⁸ *See, e.g.*, STB Finance Docket No. 33388, *CSX Corp, et al – Control – Conrail, Inc. et al*, 3 STB 196, 307 (1998) (Where the STB did not concede that the "Belt Line Principle" had "any valid contractual basis.")

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preserve Conrail's non-jurisdictional contract service while simultaneously claiming there existed a "dormant" common carrier obligation on the same tracks.

The ICC rejected this attempt to "play both sides of the fence," with the end result being that the PBL's tracks and Conrail's contract service remained outside of the agency's jurisdiction unless (1) PBL perfected the operating authority it was granted through the exemption process; and (2) Conrail sought operating authority from the ICC. Neither of which conditions were ever met, resulting in the Easement Tracks remaining outside of the Board's jurisdiction.

5. PBL's More Recent Characterizations of the Tracks as Being Subject to the Board's Jurisdiction are Wrong

Because the Easement tracks have never been imbued with a common carrier obligation, PBL's statements to third parties that the tracks have the status of lines of railroad under 49 U.S.C. §10901 have been incorrect and misleading. These include unsupported representations to the Pennsylvania Courts discussed in RWIP's Petition. They also include a 2023 letter sent to the Pennsylvania Department of Transportation (PennDOT) on March 31, 2023 (after litigation between PBL and RWIP before the Pennsylvania courts had commenced) in which PBL asserted jurisdictional status of the Easement Tracks. Exhibit 9. However, there is no evidence that PBL ever supplied PennDOT with any proof of this claimed

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status, as no such materials were produced by PBL in the discovery phase of this proceeding in response to RWIP's discovery requests.

6. There is No Present or Future Use of the Tracks for Common Carrier Rail Service In any Event

In addition to the Easement Tracks never holding the status of common carrier lines of railroad throughout their 134-year history, there is no reason for the Board to find they should possess that legal status going forward. After all, there are no rail shippers to serve, nor will there be any in the future. As described above, the primary, if not only shipper north of Buckius Street for decades was R&H. Moreover, beginning in 1967 the Easement Tracks were used exclusively by R&H for its own business purposes until that use ceased around 2001. The tracks have laid unused and in disrepair since that time. Nor is there any credible evidence that they will ever be used again. Even in the Lower Court proceeding, the Court noted “PBL has not asserted any rights to the use of the tracks or the right-of-way [and] [f]urther, PBL has not disclosed plans to provide railroad, rail carrier, or rail transportation services even if the right-of-way was fully intact and accessible.”⁴⁹

RWIP does not desire or need rail service. Nor are there any other current rail shippers. Nor are there any businesses that might realistically desire or need rail service. Indeed, as of late 2023 or early 2024, the Easement Tracks now physically

⁴⁹ Court of Common Pleas Opinion, No. 02872, 41 CD 2023, dated March 1, 2023 (attached as Exhibit B to the Petition).

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terminate at the northern boundary of the Property; the tracks beyond that point having recently been removed by the owners of the adjacent property and the underlying land converted to a parking lot and green space.⁵⁰ The railroad tracks on that parcel were removed as part of the construction of warehouse facilities that were designed and constructed to be solely served by commercial trucks.⁵¹ The complex, named 5000 Richmond Street, broke ground in May 2023 and, according to materials produced by PBL in discovery, PBL's efforts to convince the developers to establish a rail connection to the complex were rejected, presumably because the complex is designed and constructed to be solely truck served.

The only other industry of any significance adjacent to the Property is AdvanSix, the owner and operator of a small bulk shipping facility on the bank of the Delaware River that is associated with its chemical manufacturing activities. According to materials produced by PBL in discovery, it approached AdvanSix to “{

}”⁵² The project was also described as “{

⁵⁰ See, e.g., Exhibit 10 (photograph of tracks ending at northern boundary of property, and 5000 Richmond Street brochure). Notably, the tracks, which were purportedly owned by PBL, were removed and the underlying land modified without PBL or any other party first seeking formal abandonment authority from the Board.

⁵¹ Wolf V.S. at 3.

⁵² Exhibit 11 (PBL Board of Directors Meeting Minutes) Meeting Minutes dated November 27, 2017, Exhibit B at 1.

}”⁵³

However, rail service at this location { }. In 2022 AdvanSix informed PBL that {

}.”⁵⁴ Subsequently, in August 2023, {

}”⁵⁵

There is therefore no reason for the Easement Tracks to be imbued with a common carrier obligation going forward. The tracks have laid dormant and in an increasing state of disrepair since 2001. There are no current businesses requesting or needing rail service. There are no businesses that show any indication of wanting rail service in the future. Any claims by PBL in its response to this Opening Statement that there is potential future business that should be considered by the Board in this proceeding would therefore be necessarily based on the level of pure speculation the Board has consistently rejected. *See, e.g.*, Docket No. AB-364 (Sub-No. 14X), *Mid-Michigan Railroad, Inc. – Abandonment Exemption – In Kent, Ionia, and Montcalm Counties, MI* (served September 26, 2008) at 3; STB Docket No. AB-

⁵³ Exhibit 11: Meeting Minutes dated April 25, 2019 at 3.

⁵⁴ Exhibit 11, Meeting Minutes dated April 28, 2022 at 2.

⁵⁵ Exhibit 11, Meeting Minutes dated August 30, 2023 at 2.

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290 (Sub-No. 184X), *Norfolk and Western Railway Company—Abandonment Exemption—In Cincinnati, Hamilton County, OH* (Served May 13, 1998) at 9; STB Docket No. AB-1014, *Denver & Rio Grande Railway Historical Foundation – Adverse Abandonment – In Mineral County, CO* (Served May 23, 2008) at 8, 12; and *STB Decision and Certificate of Interim Trail Use or Abandonment*, Docket No. AB 1071, *Stewartstown Railroad Company – Adverse Abandonment – In York County, PA* (Served November 16, 2012).

B. The Easement is not a “Side Track” under 49 U.S.C. §10906

The issue of whether the Easement Tracks were excepted tracks under 49 U.S.C. §10906 arose in the Lower Court when the Court—in RWIP’s opinion—erroneously conflated the rules applicable to such tracks with the rules applicable to lines of railroad subject to 49 U.S.C. §10901. PBL itself made no such claims before the Lower Court, and it did not respond to RWIP’s discussion of this issue in the Petition. Accordingly, RWIP incorporates by reference herein its entire argument under the heading “**C. The Easement is not a “Side Track” under 49 U.S.C. §10906**” at pages 20-21 of the Petition, and RWIP reserves its right to rebut any arguments and evidence submitted by PBL on this issue in its reply to this Opening Statement.

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V. CONCLUSION

The Board should issue an order declaring that the tracks and Easement transversing Petitioner's Property are neither a line of railroad subject to § 10901, nor a "side track" subject to § 10906, and that the Board therefore has no jurisdiction over the Easement, the Easement Tracks and the parties' dispute.

Respectfully submitted,

/ss/ Steven Foxman
Stephen Foxman, Esquire
Jeffrey P. Lewis, Esquire
**Eckert Seamans Cherin & Mellott,
LLC**

Two Liberty Place, 22nd Floor
50 South 16th Street
Philadelphia, PA 19102
215-851-8400
sfoxman@eckertseamans.com
jlewis@eckertseamans.com

/ss/ Thomas W. Wilcox
Thomas W. Wilcox, Esquire
**Law Office of Thomas W. Wilcox,
LLC**

1629 K. Street, NW Suite 300
Washington, DC 20006
202-508-1065
tom@twilcoxlaw.com

Dated: October 15, 2024

*Counsel for Richmond Waterfront
Industrial Park, LLC*

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APPENDIX A

LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Exhibit Description</u>
1.	Ordinance of December 26, 1890
2.	Finance Agreement of May 4, 1891
3.	Use Agreement of May 4, 1891
4.	ICC Finance Docket No. 29517, Petition for Exemption of the Philadelphia Beltline Railroad Company under 49 U.S.C. §10505 for Exemption of Proposed Transaction from Provisions of 49 U.S.C. §10901.
5.	PBL/Rohm & Haas Leases: R&H and PBL Lease dated January 6, 1967 (#1436-A), PBL and R&H Lease dated August 14, 1976 (#1436-D), and R&H and PBL Lease dated October 31, 1977 (PBL 349-PBL 353)
6.	Railway Track Maintenance Agreement of December 22, 1998 between Rohm & Haas and RWIP
7.	Settlement Agreement of November 24, 1981 between PBL and Conrail and Operating Agreement, Exhibit A to Settlement Agreement
8.	ICC Finance Docket No. 29517, PBL Supplemental Petition for Clarification and/or Postponement of Consummation (excerpts)
9.	March 31, 2023 PBL letter to PennDOT
10.	Photograph of tracks ending at northern boundary of property and Brochure of 5000 Richmond Street
11.	PBL Board of Directors Meeting Minutes: November 27, 2017, April 25, 2019, April 28, 2022, and August 30, 2023.

EXHIBIT 1

AN ORDINANCE

To authorize the Philadelphia Belt Line Railroad Company to construct its railroads and branches upon and across streets, to authorize changes and revisions in the lines and grades of certain streets, the location of a new street, the widening of certain streets and the shifting of the tracks occupied jointly by the River Front and the Philadelphia & Reading Railroad Companies, and the entering of security.

SECTION 1. *The Select and Common Councils of the City of Philadelphia do Ordain*, That the Philadelphia Belt Line Railroad Company be and the same is hereby authorized to build its line of railroad from its point of commencement at or near the Atlantic Refinery, in the Twenty-sixth Ward, thence by a line following the general direction of the Schuylkill and Delaware Rivers to the terminus of the said railroad, at or near Monroe, otherwise known as Princeton street, in the Twenty-third Ward; also to build branches of said railroad from a point marked A on the map accompanying this ordinance, by the route shown thereon, to a point on the City Line marked B, and from points marked C, E, G and I to points marked D, F, H and K respectively on said map, and to enter upon, occupy and cross with its line and branches any and all streets, lanes, and alleys between the points above named, with all the suitable and necessary sidings, turnouts and connections into and upon the warehouses and wharves which are now or may hereafter be located along said line or branches, when such sidings, turnouts, or connections are requested by the owners of said warehouses and wharves, so that the manufactories and business interests along the said line shall have full benefit of receiving from and delivering property to the said railroad. It is expressly understood that no sidings shall be laid longitudinally upon any other streets or avenues mentioned hereafter without permission of Councils is first by ordinance obtained.

The route of the said Philadelphia Belt Line Railroad and branches thereof shall be shown upon a map to be filed at the Department of Public Works.

The route shall be as follows :

Commencing with a double track on Schuylkill avenue, at Curtin street, in the Twenty-sixth Ward; thence southwardly

in Schuylkill avenue to a point at or near Hoyt street; thence curving southeastwardly to a point at or near the intersection of Avenue Thirty-seven south and Thirty-second street; thence southeastwardly, crossing the tracks of the Girard Point Extension Railroad, to a point at or near the intersection of Avenue Forty-two south and Twenty-seventh street; thence curving southwardly to a point in Twenty-sixth street near Avenue Forty-three south; thence southwardly in Twenty-sixth street to a point north of Avenue Forty-five south; thence curving eastwardly to a point in Avenue Forty-five south, east of Twenty-sixth street; thence eastwardly in Avenue Forty-five south to Government avenue near Twenty-second street; thence northeastwardly in Government avenue to a point where the said avenue is intercepted by Sixteenth street extended; thence eastwardly in Government avenue to a point at or near Fifth street; thence northwardly on Fifth street to a point at or near Johnson street; thence curving eastwardly on Johnson street, crossing the tracks of the Pennsylvania Railroad Company, to a point on Delaware avenue; thence northwardly on Delaware avenue and east of the right of way of the Pennsylvania Railroad Company to a point at or near the intersection of Delaware avenue, Porter street and Commercial avenue; thence northwestwardly along Commercial avenue parallel with and east of the right of way of the Pennsylvania Railroad Company and the Schuylkill River East Side Railroad Company to a point at or near the intersection of Commercial avenue, Moore street and Meadow street; thence northwardly in and along Meadow street east of and parallel with the right of way of the Schuylkill River East Side Railroad Company to a point at or near the intersection of Meadow street and Tasker street; thence curving westwardly and northwardly to a point in Front street, north of Tasker street, crossing the tracks of the Schuylkill River East Side Railroad in Meadow street, and the tracks of the Pennsylvania Railroad in Swanson street; thence northwardly along Front street to a point at or near Queen street; thence curving eastwardly into and along Queen street to a point in Delaware avenue north of Queen street, crossing the Swanson Street Branch of the Philadelphia, Wilmington and Baltimore Railroad and the tracks of the Pennsylvania Railroad; thence northwardly with a single track along Delaware avenue, and property adjacent thereto, nine and one-half feet east of the east rail of the tracks now laid in Delaware avenue to a point at or near Callowhill street; thence with a

double track northeastwardly along Delaware avenue and Beach street to a point at or near the Aramingo Canal; thence curving northwardly in and along the general course of said canal to the Richmond Branch of the Philadelphia and Reading Railroad; thence northeastwardly in and along the said Aramingo Canal or street to a point near Butler street; thence curving eastwardly to a line parallel with and northeast of Butler street; thence southeastwardly along same to a point near Casper street; thence curving eastwardly to a point in Carbon street at or near Wheat Sheaf lane; thence northeastwardly in Carbon street to a point in the line of Carbon street extended, on the river bank at or near Buckius street; thence northwardly by the general courses of the river bank to Bridge street; thence northeastwardly by a line outside of the river bank and crossing the mouth of Frankford Creek to a point on the wharf of the Philadelphia Cordage Company; thence northwardly, crossing the tracks of the Kensington and Tacony Branch of the Pennsylvania Railroad, to a point in Milnor street, at or near Funk street; thence northeastwardly in Milnor street to Monroe, otherwise known as Princeton street.

The route of the branch from point marked A on the main line to point marked B on County Line shall be as follows:—

Commencing at a point in the main line of the Philadelphia Belt Line Railroad in Aramingo Canal or street, south of Butler street, thence northeastwardly in the Aramingo Canal or street to a point south of Wheat Sheaf lane; thence curving westwardly, crossing Wheat Sheaf lane west of the Aramingo Canal or street and passing under the Philadelphia and Trenton Railroad immediately south of Frankford Creek; thence along and south of Frankford Creek, passing under Frankford avenue, and under Kensington avenue at or near "P" street; thence northwestwardly, crossing Juniata avenue at or near "O" street, Cayuga street at or near "N" street, Courtland street at or near "L" street, Fisher's lane at or near "J" street; thence northwestwardly, following the general course of Tacony Creek, as shown on the map, to the line between the counties of Philadelphia and Montgomery, at or near the intersection of Cheltenham avenue with Cheltenham avenue; the said branch to have Y connection with the railroad tracks of the main line, parallel with, and northeast of Butler street.

The route of the branch from point marked C on the main line to point marked D shall be as follows:—

Commencing at a point in the main line of the Philadelphia Belt Line Railroad in Carbon street north of Butler street, thence southwestwardly in Carbon street to a point in the line of Carbon street extended, on the river bank; thence southwestwardly by the general courses of the river bank to Allegheny avenue. The said branch to have Y connection with the railroad tracks of the main line parallel with and northeast of Bulter street.

The route of the branch from point marked E on the main line to point marked F shall be as follows:—

Commencing at a point in the main line of the Philadelphia Belt Line Railroad in Beach street south of the Aramingo Canal, thence northeastwardly in Beach street to Cumberland street.

The route of the branch from point marked G on the main line to point marked H shall be as follows:—

Commencing at a point on the main line of road on Government avenue near and west of Fifth street; thence extending eastwardly along Government avenue and Avenue Forty-three south to the river bank at or near Third street; thence along the river bank to a point at or near Spangler street.

The route of the branch from point marked I on the main line to point marked K shall be as follows:—

Commencing at a point in Schuylkill avenue at or near Hoyt street; thence southwardly in Schuylkill avenue to near Avenue Thirty-six south; thence curving westward to the river bank; thence following the general line of the river bank along the Schuylkill River to a point near the prolongation southward of Thirtieth street; thence curving northward to a connection with the tracks of the Girard Point Extension Railroad at or near Avenue Forty-five south.

There shall be no crossings at grade of existing streets now opened nor of railroad tracks now constructed and in use prior to June 20, 1889, by the portion of the Philadelphia Belt Line Railroad along the Aramingo Canal and Frankford and Tacony Creeks to the county line, excepting Richmond street at its crossing of the Aramingo Canal, and on the portion of the branch line along Butler street between Richmond street and Carbon street. All streets crossing Butler street between the Aramingo Canal and Richmond street, including Richmond street, shall be crossed overhead at an elevation of not less than thirteen feet.

The Department of Public Works, through the Board of Surveys be, and is hereby authorized and directed, from time to

time, upon the demand of the Philadelphia Belt Line Railroad Company, to widen Beach street and Delaware avenue from Cumberland street to the south side of Callowhill street on either or both sides of said streets, to an additional width of not more than thirty feet; also to shift the tracks occupied by the River Front Railroad Company and the Philadelphia & Reading Railroad Company, wherever necessary, between Cumberland street and the south side of Callowhill street, and to make such revision of street and curb lines as may be necessary to enable the tracks of the Philadelphia Belt Line Railroad Company to be constructed and operated upon said widened streets: *Provided*, That the shifting of the aforesaid tracks shall be done by or under the direction of the Department of Public Works, and that all expenses of every kind arising from the widening of said streets, the revision of street and curb lines, and vacation of sidewalks, and the shifting of aforesaid tracks, including all damage to private property shall be borne and paid by the Philadelphia Belt Line Railroad Company.

SECT. 2. That the Philadelphia Belt Line Railroad Company, wherever it shall cross or occupy any now opened public street, shall keep that portion thereof occupied by its tracks in good order and condition at all times, and shall save the City of Philadelphia harmless, so far as the City may be liable therefor, from any responsibility that may grow out of the construction or operation of the said railroad and branches over, upon, or under the streets as aforesaid.

When the City of Philadelphia shall direct the opening and paving or macadamizing of any street now upon the approved plan, or a change of grade of any street now open across the line of said railroad track to avoid grade crossings, in such a way as shall make necessary the construction of bridges and abutments, the railroad company shall construct at its own expense such bridges and abutments thus made necessary, in accordance with plans furnished by the Department of Public Works.

SECT. 3. The said Philadelphia Belt Line Railroad Company shall have the right to occupy with double tracks any portion of the property of the City of Philadelphia across which the route of the said railroad and branches may extend.

SECT. 4. The Philadelphia Belt Line Railroad Company shall enter into an agreement with the City of Philadelphia, that where the line of the said railroad shall be constructed on any portion of Delaware avenue as it now exists, that the said

company will move its tracks to the eastern side of said avenue whenever Delaware avenue shall be widened or opened of a sufficient width to permit this to be done. And thereupon the said Philadelphia Belt Line Railroad Company shall have the right to lay and maintain an additional track, with necessary turnouts and switches upon said portion of Delaware avenue so widened or opened; and if at any time hereafter the said avenue shall be so widened, the railroad company shall indemnify the City of Philadelphia against being put to any expense by reason of the building of bulkheads and of the grading and paving thereof.

SECT. 5. The rights conferred by this ordinance are granted upon the express and precedent condition that before any of the said rights herein conferred shall be exercised by the Philadelphia Belt Line Railroad Company, it shall procure such contracts under bonds, the amount of which is to be hereinafter specified to be executed with the city of Philadelphia, in such form as shall be approved by the City Solicitor, as will make effectual the following conditions:

That the Philadelphia Belt Line Railroad Company shall, in conjunction with all the stockholders of said company, enter into an agreement bearing the approval of the Mayor and the City Solicitor, that the whole of the Philadelphia Belt Line Railroad and its branches shall be completed within five years after the passage of this ordinance and that as fast as the said Philadelphia Belt Line Railroad and branches shall be completed each part thereof as rapidly as it shall be constructed shall be open to the use of all railroad companies which shall execute a satisfactory agreement to comply with all reasonable rules and regulations, which rules and regulations shall apply to all without discrimination.

SECT. 6. That the Philadelphia Belt Line Railroad Company shall be subject to the same limitations and penalties respecting the time of running its trains and the standing of its engines or cars upon any part of its track between Callowhill street and Dock street, as were provided for the River Front Railroad Company, in ordinance approved May 31, 1877, entitled "An ordinance to authorize the River Front Railroad Company and the Philadelphia and Reading Railroad Company to severally and jointly occupy and use certain streets for railroad purposes," as well as the subsequent decree of the Court of Common Pleas confirming the restrictions as provided by ordinance.

SECT. 7. The position of the said railroad tracks upon said streets and avenues now opened shall conform to the established grade thereof, and when the growth of improvement shall require bringing the streets not yet opened along which the said railroad or its branches may be laid to the conformed grades of the City, the said railroad company shall at its own expense raise or depress its tracks to conform to the said grades wherever and whenever it shall be notified to do so by ordinance of Councils ordering the opening and paving or macadamizing of said streets and the construction as to plan and character of rail, shall be approved by the Department of Public Works; and it is hereby stipulated that before any of the streets or avenues herein designated shall be occupied for railroad purposes, the company shall file an obligation with the City Solicitor, protecting the said City from any expenses whatever consequent upon, or growing out of the laying of said railroad tracks hereby authorized so far as the said City shall be liable.

SECT. 8. That no higher charges shall be made by the Philadelphia Belt Line Railroad Company for the transportation of any traffic over the lines of the railroad authorized to be constructed, than are permitted by the provisions of the act of General Assembly of the Commonwealth of Pennsylvania entitled "An act regulating railroad companies," approved the nineteenth day of February, 1849, and all supplements thereto.

SECT. 9. That the dividends on the fully paid stock be limited to six per cent. per annum, all excess of earnings to go to the City of Philadelphia.

SECT. 10. That the privileges herein and hereby given to the Philadelphia Belt Line Railroad Company are conditioned upon their giving to the City of Philadelphia, prior to the commencement of each section, as hereinafter specified, upon the approval of the City Solicitor, the following bonds of indemnification, protecting the City from all loss, damage, claim or demand by reason of the construction of the railroad tracks herein authorized to be constructed by the Philadelphia Belt Line Railroad Company: Upon that portion of the line between Point Breeze and Pollock street, fifty thousand (50,000) dollars; upon that portion of the line between Pollock street and Reed street, seventy-five thousand (75,000) dollars; between Reed street and Lehigh avenue, two hundred and fifty thousand (250,000) dollars; between Cumberland street and Tacony, one hundred thousand (100,000) dollars; between Lehigh avenue and County Line, fifty thousand (50,000) dollars. Said

bonds shall bear the guarantee or security of one or more of the Philadelphia trust companies, and shall terminate and become void at the expiration of two years after the completion of the respective sections to which they apply.

SECT. 11. That the Department of Public Works be and is hereby authorized and directed to make modifications in the lines and grades of streets crossed by the Philadelphia Belt Line Railroad, as follows :

Lay out a new street, fifty feet wide, on the west side of the Aramingo Canal, from Richmond street to East Girard avenue. Lower the grade of East Norris street and East Girard avenue, at the crossing of the Aramingo Canal, to + 4.0 City *datum* ; revise the lines and grades of Frankford avenue, the elevation of tracks at said avenue to be + 8.0 City *datum*, and of the Asylum road, near Crescentville, so that those streets shall be carried over the railroad, on bridges, with a clearance of nineteen feet ; revise the grades of Kensington avenue and Old Front street, so that Kensington avenue may be carried over the railroad on a bridge with nineteen feet clearance ; revise the grades of Fisher's lane, Olney road, and Old Second street, so that each may be carried, on a bridge, over the railroad, with a clearance of nineteen feet ; revise the lines and grades of all streets not now open along the line of Frankford Creek, between the Aramingo Canal and the Montgomery county line, so that said streets, when opened, may pass either under or over the Philadelphia Belt Line Railroad ; revise the grade on Queen street, between Delaware avenue and Swanson street, and on the west side of Delaware avenue.

The Department of Public Works is hereby further authorized and directed to make such revision of the grades of any and all streets upon the Plan of the City which shall be affected by the aforesaid revisions, or by the construction of the Philadelphia Belt Line Railroad Company, as may be necessary to enable the said railroad to be constructed, and to make effectual the aforesaid revisions of grades ; conditioned that said Philadelphia Belt Line Railroad shall file its bond in the sum of two hundred and fifty (250,000) dollars, to be approved by the City Solicitor, and file in the Law Department, providing that said company shall pay all damages arising out of the changes and modifications of the grades of the streets, avenues and lanes, now opened, mentioned in this section.

SECT. 12. All work herein and hereby authorized shall be done under the supervision and to the satisfaction of the Depart-

ment of Public Works, and nothing herein or hereby granted shall prevent Councils, by ordinance, from establishing proper regulations for running of the cars and locomotives over the streets herein named as may be required for the protection of the citizens and business interests of the city, and before exercising any of the rights or privileges herein and hereby granted, the sum of fifty (50) dollars shall be paid by the Philadelphia Belt Line Railroad Company into the City Treasury for the printing of this ordinance.

SECT. 13. That, before exercising any of the rights or privileges herein or hereby granted, the Philadelphia Belt Line Railroad Company, the officers, directors and all the shareholders thereof, shall execute, to the satisfaction of the Mayor and City Solicitor, an agreement providing for the creation of a voting trust for all the stock of the said railroad company. Also, an agreement providing for a gift of fifty-one (51) per cent. of the present stock of said railroad company and fifty-one (51) per cent. of all the stock which may hereafter be issued by it to such corporations and persons as may be legally competent to act thereunder, to the end that the said railroad may forever be maintained for the common use of all railroads upon equal terms, without discrimination.

Approved the twenty-sixth day of December, A. D. 1890.

EDWIN H. FITLER,
Mayor of Philadelphia.

AN ORDINANCE

To approve the contract and surety of J. B. Reilly for doing all the preparatory work in connection with the construction of a reservoir in the Twenty-first Ward.

SECTION 1. *The Select and Common Councils of the City of Philadelphia do ordain*, That the contract of J. B. Reilly for doing all the preparatory work in connection with the construction of a reservoir in the Twenty-first Ward be, and the same is hereby approved, and that The Equitable Trust Company be, and it is hereby approved as the surety of the said J. B. Reilly for the faithful performance of the said contract.

Approved the twenty-sixth day of December, A. D. 1890.

EDWIN H. FITLER,
Mayor of Philadelphia.

EXHIBIT 2

hereinafter set forth:

NOW THIS AGREEMENT WITNESSETH, That, in consideration of the premises and of the further sum of One Dollar to each by the other in hand paid, the receipt whereof is hereby acknowledged, the parties hereto have covenanted and agreed and hereby do covenant and agree as follows:-

A.- The Contractor hereby covenants and agrees:-

1.- That he will forthwith subscribe to and pay for, in advance of construction, \$102,000 of the present common stock of the Belt Line Company at the par value thereof, and that he will, upon the receipt of the said stock, transfer the same, free of cost or expense of any kind, to the Commercial Exchange and Board of Trade in accordance with the provisions of a certain agreement made the fourth day of May, A. D. 1891, between the President, Stockholders and Directors of the Belt Line Company and The Philadelphia Board of Trade and Commercial Exchange of Philadelphia.

2.- That he will construct for the Belt Line Company so much of its road or line in the City of Philadelphia, between Callowhill Street and a point on Delaware Avenue near Queen Street, or North of Allegheny Avenue to or toward Cottman Street as can be done for the said sum of \$102,000.

3.- That the cost to the Belt Line Company of the construction of the said portions or sections of the line shall be the actual cost thereof to the Contractor with an allowance of ten per centum additional thereon to cover

3.

the cost of superintendence, risk, and work to be done and performed by the Railroad Company, as hereinafter provided.

4.- That he will comply with all the provisions of the Ordinance of the twenty-sixth day of December, 1890, so far as the same may relate to the construction of the aforesaid portions of the road or line hereinbefore specified.

5.- That he will pay to the Railroad Company the ten per centum allowance aforesaid, to cover the cost of superintendence, risk, and work to be done and performed by the Railroad Company.

B.- The Railroad Company covenants and agrees:-

1.- That it will pay to the contractor the sum of \$102,000. to enable him to pay for the stock hereinbefore provided to be subscribed for and paid by him.

2.- That it will furnish all the indemnity required to enable the Belt Line Company to furnish security to the City of Philadelphia in order to conform to and comply with the aforesaid Ordinance of Councils with reference to the construction of the sections or portions of the road or line hereinbefore referred to.

3.- That it will pay for, at par, so much of the preferred stock and bonds of the said Belt Line Company as, under the option hereinafter given, it may elect to take, to aid in the construction of said sections or portions of the Belt Line Company's road.

C.- The Belt Line Company hereby covenants and agrees:-

1.- That it will maintain its corporate organiza-

4.

tion, and, at the request of the Contractor, will take such corporate action and take and actively prosecute such proceedings as may be required for the acquisition of the rights of way necessary for the ~~xxxx~~ aforesaid portions or sections of the line of road, and such other corporate action or proceedings as may be necessary to enable the Contractor to proceed with the work of construction herein agreed to be done.

2.- That it will procure all rights of way for the said portions or sections, and pay for the same, together with all damages arising or that may arise from the construction of the said portions or sections, out of the proceeds of the sale of an issue of \$200,000. of its bonds and out of the proceeds of the sale of so much of \$28,000. of its preferred stock, hereinafter provided to be issued, as shall remain after making the deduction and reservation provided for in paragraph Two (2) of Section "D" hereof.

3.- That it will apply the whole amount of money received by it from the subscription to the common stock of the Belt Line Company as aforesaid, viz: \$102,000., to the payment to the Contractor for the work of construction hereinbefore agreed by him to be done.

D.- It is mutually covenanted and agreed as follows:-

1.- That when the said sum of \$102,000., shall have been expended on the construction of the aforesaid portions of the said ^d road, or either of them, the Contractor shall have the option, for eighteen months thereafter, ex-

clusive of any time during which construction may be prevented by order or decree of Court, to continue to construct the remaining portion of the line between Callowhill Street and a point on Delaware Avenue near Queen Street, or the portion North of Allegheny Avenue to or toward Cottman Street which may at that time be not constructed.

2.- That the Railroad Company shall have the option, for eighteen months after the date of this agreement, to take at par so much of the preferred stock of the Belt Line Company, not exceeding \$98,000., as the Belt Line Company shall not require, to obtain funds for the payment of the cost of its organization, expenditures prior to operation, the expenses incurred in complying with the conditions of the said Ordinance precedent to the exercise of its right to construct the portions of its line herein agreed to be constructed, the expenses of the Voting Trust and other necessary expenses, and for protecting and defending its corporate rights, powers and franchises. The Railroad Company shall also have the option, for eighteen months after the date of this agreement, to take \$200,000., or any portion thereof, of the first mortgage ^{7%} gold bonds, free from taxes, of the Belt Line Company, payable at the expiration of fifty years from date thereof; the said bonds to be paid for by the Railroad Company at their par value, and to be convertible at the option of the Belt Line Company, into an issue of bonds covering the entire road of the Belt Line Company.

3.- The proceeds received by the Belt Line Company from the sale of the bonds and preferred stock, hereinbefore provided to be issued to the Railroad Company, in case it shall exercise its option to take the same or any part thereof, shall be applied by the Belt Line Company, first, to the payments for rights of way and damages arising from the construction of so much of its line as the Railroad Company shall cause to be constructed pursuant to the provisions hereof; and any surplus remaining shall be applied by the Belt Line Company to the expense of such construction; but, in case of the failure of the Railroad Company, within eighteen months after the execution of this agreement, to indicate the time and manner in which the monies, so applicable to construction, shall be expended, the Belt Line Company may, at its option, return to the said Railroad Company such unexpended balance of the said proceeds of the said bonds and preferred stock so applicable to construction, and the Railroad Company shall and will, thereupon, return to the Belt Line Company the corresponding amount of said securities so issued thereof at par. It being understood and agreed that provisions of this section, in regard to the returning of the said monies or securities shall not relate to the \$102,000. paid in on account of common stock.

4.- It is distinctly understood and agreed that the payment for the construction of the portion of the Belt Line Company's line herein agreed to be constructed, shall be made solely from the said \$102,000., so as to be paid in by the Contractor and from any surplus of the monies recei-

ved from stock and bonds to be issued to the Railroad Company after due provision for the before mentioned rights of way and damages, and that the Belt Line Company shall not be liable in any manner to the contractor, or to any other person, laborers or claimants, for any portion of such cost of construction other than is herein provided; but such portions of the Belt Line as shall be constructed hereunder shall be delivered to the Belt Line Company free from all claims or liens for construction of any kind.

5.- The rights and obligations herein provided for extend only to ~~xxx~~ such portions of the line of the Belt Line Company as are hereinbefore mentioned and nothing herein contained shall be construed to interfere with the rights or powers of the Belt Line Company to construct, operate or use any other part of its line in such manner as it may deem desirable and independently of this agreement.

6.- The Belt Line Company shall have the privilege of leasing such existing tracks along its route, within the territorial limits embraced in this agreement as may be used for its line therein, and in the event of such lease the obligation of the Contractor to construct such portion of the line shall, at the option of the Belt Line Company, cease.

7.- The provisions of this agreement shall extend to and bind the respective executors, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the said Contractor hath here-

3.

unto set his hand and seal, and the said Companies have caused their respective corporate seals to be hereunto affixed, duly attested, the day and year first above written.

Witness:
John Morris

Chas. S. Campbell

Seal

The Philadelphia Belt Line Railroad Company,

By:

F. B. Reeves,

President.

Attest:

John Morris,

Secretary.

The Philadelphia and Reading Railroad Company,

By:

A. A. McLeod,

President.

Attest:

Wm. R. Taylor,

Secretary.

EXHIBIT 3

REDACTED

EXHIBIT 4

FILE IN DOCKET

E.D. 29517

BEFORE THE
INTERSTATE COMMERCE COMMISSION

~~E.D. 29517~~

PETITION OF THE PHILADELPHIA
BELT LINE RAILROAD COMPANY
UNDER 49 U.S.C. §10505
FOR EXEMPTION OF
PROPOSED TRANSACTION FROM
PROVISIONS OF 49 U.S.C. §10901

RECEIVED
INTERSTATE COMMERCE
COMMISSION
NOV 17 7 45 AM '80

RECEIVED
OFFICE OF THE
SECRETARY
NOV 20 7 45 AM '80

FILED
NOV 14 1980

INTERSTATE
COMMERCE COMMISSION

John D. Heffner
Suite 500
2011 "I" Street, N.W.
Washington, D.C. 20006
(202) 452-8833

COUNSEL FOR PETITIONER

OF COUNSEL:

Anthony Agnew, Esq.
Gilfillan, Gilpin & Brehman
11th Floor, 1201 Chestnut Street
Philadelphia, PA 19107

INTERSTATE
COMMISSION

NOV 14 1980

2
ADMIN. & SERVICE
UNIT

Dated: November 14, 1980

BEFORE THE
INTERSTATE COMMERCE COMMISSION

PETITION OF THE PHILADELPHIA
BELT LINE RAILROAD COMPANY
UNDER 49 U.S.C. §10505
FOR EXEMPTION OF
PROPOSED TRANSACTION FROM
PROVISIONS OF 49 U.S.C. §10901

By this petition, The Philadelphia Belt Line Railroad Company ("PBL" or "The Belt Line"), a nonoperating common carrier by railroad, requests that the Commission, acting under 49 U.S.C. §10505, confirm its legal rights to operate as an independent railroad without having to comply with the requirements of 49 U.S.C. §10901. In support of its petition, PBL states as follows:

1. PBL was originally chartered on May 10, 1880, under Pennsylvania law, for the purpose of constructing and operating a neutral terminal railroad in the Port of Philadelphia and specifically "to maintain open and competitive rail service in the Port and adjacent industrial areas." Pursuant to an agreement executed on May 4, 1891, PBL's common stock is held by the Commercial Exchange of Philadelphia and the Philadelphia Board of Trade (now Greater Philadelphia Chamber of Commerce). All the stock is subject to a voting trust to be administered in the best interests of the Port of Philadelphia. The Board of Directors represents customers and other shipping interests. This arrangement still exists today.

2. Pursuant to a second agreement dated May 4, 1891, PBL granted to the Philadelphia & Reading Railroad Company (predecessor of the Reading Railroad) the right to use all portions of its trackage for which Reading contributed funds for construction as well as the right to use exclusively those segments for which it agreed to pay the maintenance costs. The agreement required Reading to contribute towards PBL's administrative overhead, to subscribe to certain bonds and preferred stock to be issued by PBL, to pay interest on the bonds and pay a 5% dividend on the preferred stock. Furthermore, the agreement gave other railroads the right to use portions of PBL's property provided that they bear a proportionate share of all costs, expenses, and liabilities incurred by Reading. Finally, the agreement provided for the various user railroads to furnish a proportionate share of locomotives and cars required to move the traffic.

3. Pursuant to an agreement dated July 1, 1911, the Baltimore & Ohio Railroad obtained the right to operate portions of The Belt Line's properties and to share in the costs, expenses, and liabilities thereof. This agreement required the Baltimore and Ohio to handle PBL's traffic on equal terms with its own traffic.

4. Pursuant to the following agreements:

<u>Date</u>	<u>Parties</u>
2/5/1891	PBL and City of Philadelphia ("City")
5/2/1892	PBL, Pennsylvania RR ("PRR") and River Front Railroad Company ("RFRR")
6/2/1900	PBL, PRR, RFRR
12/28/1900	PBL, PRR, RFRR, Phila & Reading ("P&R")
5/20/1902	PBL, City, PRR, RFRR, P&R
6/3/1902	PBL, PRR, RFRR, P&R
10/31/1911	PBL, P&R
3/14/1923	"South Philadelphia Agreement" (bet. PBL, City, Phila, Balto & Wash RR, PRR, Schuylkill River East Side RR, B&O)
4/13/1925	South Philadelphia Agreement
1/19/1926	South Philadelphia Agreement
8/30/1929	South Philadelphia Agreement

other rights and privileges were granted to The Belt Line to fulfill its charter and confirm and extend its operations.

5. Reading continued to use PBL's facilities and both Reading and Penn Central fulfilled their contractual obligations for said use up until April 1, 1976. Baltimore and Ohio continues to use the facilities and adhere to its contract today.

6. On April 1, 1976, rail properties of the various bankrupt carriers being reorganized under the Regional Rail Reorganization Act ("3R Act"), including Reading and Penn Central, were conveyed to the Consolidated Rail Corporation ("Conrail") under the Final System Plan of the U.S. Railway Association and the implementing conveyance orders of the Special Court created under the 3R Act. Conrail advised PBL that it would continue the operations of its predecessors over Belt Line's facilities and would honor the obligations inherent in such operation. Relying on such assurances, PBL permitted Conrail to operate over its

tracks serving its customers. PBL billed Conrail for its use of The Belt Line facilities and Conrail initially made prompt payment.

7. Since October 1977, Conrail has unilaterally refused to pay certain expenses and obligations for which it has been billed and for which it is liable as successor to the Reading and Penn Central Railroads. Subsequently, Conrail paid some but not all of these expenses and obligations. More recently, Conrail has not honored current bills and now owes The Belt Line a total of \$77,198.12 for which demand has been made and refused. Since PBL cannot survive for long without payment of such bills, it has initiated civil litigation to terminate the 1891 agreement, recover the amounts owing, and deny Conrail future use of PBL facilities.

8. Conrail is also aware that The Delaware & Hudson Railroad has requested access to the Port of Philadelphia through exercise of The Belt Line's charter obligations. Conrail has expressed its opposition to D&H's entry. Conrail also recognizes that B&O has the right under its 1911 agreement with PBL to access to those remaining portions for which Conrail now has exclusive use.

9. Pursuant to the aforementioned agreements and charters, PBL currently owns approximately 5.8 miles of railroad along with 10.5 miles of trackage rights over Conrail or B&O. On those properties owned by The Belt Line which Conrail uses exclusively, 16 shippers tendered 6609 revenue carloads during 1979.

For the year ended December 31, 1979, railway operating revenues paid by tenants amounted to \$180,604.27 and billable expenses totalled \$202,991.45. Had Conrail paid all the bills which were rendered in accordance with its agreement, PBL's revenues would have equalled expenses as intended by its agreement.

10. By this petition from exemption, PBL seeks to confirm its right to perform its own transportation service and to operate totally as an independent common carrier by railroad over the following trackage:

OWNED - Belt Line North - Allegheny Avenue to Bridge Street
plus branches.

Penn's Landing Segment - Catherine Street to Callowhill
Street.

Food Distribution Center - 11th Street to Swanson Street.

TRACKAGE RIGHTS -

River Front Railroad - Callowhill Street to Cumberland
Street; Trenton Avenue connection
and Branches.

South Delaware Avenue - Pattison Avenue to Catherine
Street (CR & B&O)

South Philadelphia Agreement -

Thorofare Tracks - STADIUM to Delaware Ave.

Delaware Extension - STADIUM to PENROSE (CR & B&O)

OVERHEAD RIGHTS -

Port Richmond Yard - Cumberland Street to Allegheny Ave.

11. Section 10505, as amended by §213 of the Staggers Rail Act of 1980, governs PBL's exemption request. Subsection (a) of that section authorizes the Commission, in a matter related to a rail carrier providing transportation subject to its jurisdiction under the Interstate Commerce Act, to exempt a person, class of persons or a transaction or service when the

Commission finds that the application of a provision of this subtitle -(1) is not necessary to carry out the transportation policy of §10101a of this title; and

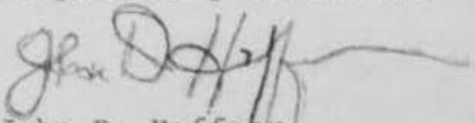
- (2) either (A) the transaction or service is of limited scope, or (B) the application of a provision of this subtitle is not needed to protect shippers from the abuse of market power.

Subsection (b) of that provision permits the Commission to begin a proceeding on its own initiative or upon application by the Secretary of Transportation or an interested party. In that regard, petitioner believes that this is the type of transaction which Congress intended to exempt. PBL's proposal is not necessary to carry out the national transportation policy. The transaction is of limited scope, affecting only service to the Port of Philadelphia. Furthermore, no provision of the Interstate Commerce Act is required to protect shippers from abuses of market power. In fact, granting this request will further the interests of Port customers by insuring competitive rail service by PBL, D&H and B&O, as well as continuing Conrail access subject to their satisfying outstanding indebtedness. Approval of PBL's petition will benefit the shipping public and the Port of Philadelphia generally by insuring the continued existence of rail service along the waterfront. In support of its petition, PBL notes that subjecting it to the regulatory requirements of §10901, dealing with initiation of railroad operations, will not serve any public purpose. Requiring PBL to file a §10901 application is unnecessary since PBL has

long held requisite the operating authority. It would be burdensome and time-consuming to require PBL to spend its limited resources prosecuting an application for operating authority as well as contrary to the deregulatory spirit of the Rail Act of 1980. In addition, it would be very wasteful of the Commission's already overtaxed personnel and facilities. Finally, it should be noted that any impact on Conrail and its employees will be negligible. This petition does not include any request for issuance of securities. No impact on energy consumption or environment is involved because PBL will merely replace Conrail as the operator of existing rail service.

WHEREFORE, The Philadelphia Belt Line respectfully requests that the Commission exempt its proposed initiation of independent operations from the requirement of approval under 49 U.S.C. §10901.

Respectfully submitted,


John D. Heffner
Counsel for Petitioner
2011 "I" Street, N.W.
Suite 500
Washington, D.C. 20006
(202) 452-8833

Date: November 14, 1980

EXHIBIT 5

THIS AGREEMENT made this 6th day of January, 1967 by and between THE PHILADELPHIA BELT LINE RAILROAD COMPANY, a corporation created and existing under the laws of the Commonwealth of Pennsylvania, hereinafter called "Belt Line" and ROHM AND HAAS COMPANY, a corporation created and existing under the laws of Delaware, hereinafter called "Industry".

W I T N E S S E T H

WHEREAS, Industry owns certain sidetrack in the 45th ward of the City of Philadelphia, which are connected with the tracks of Belt Line, all as shown on Plans #2 $\frac{1}{2}$ and #23/4, dated June, 1936 (last revision on Plan #2 $\frac{1}{2}$, 5/3/66 and Plan 23/4, 1/24/64, attached hereto and made a part hereof, and

WHEREAS, Railroad and Industry entered into an Agreement, dated October 24, 1960 by which Industry leased 580' of Railroad's track extending from point B on Plan 23/4, referred to above, to a point 5' south of the southerly houseline of Bridge Street as extended (now vacated), and

WHEREAS, Industry now owns all land on either side of the Belt Line from Jenks Street north, and

WHEREAS, to assist Industry in protecting access to its property, Belt Line has entered into an agreement with Industry, dated June 4, 1963 permitting Industry to install gates along the line of Jenks Street and crossing said Belt Line tracks, and

WHEREAS, Industry desires to lease from Belt Line that part of the aforesaid tracks of Belt Line beginning at the aforesaid gates at Jenks Street, shown as point A on Plan 2 $\frac{1}{2}$ and ending at the northern limit of ownership by the Belt Line, and shown as point B on Plan 23/4, the tracks comprising a total of 3280 feet, to permit Industry to move railroad cars by its own motive power over said tracks, and

WHEREAS, Belt Line is willing to lease its said tracks between Points A and B for the purpose aforesaid, but only upon and subject to the terms and conditions hereinafter set forth.

NOW THEREFORE, for the consideration hereinafter specified, Belt Line does hereby demise and let unto Industry for the term of one year from date hereof, all those certain tracks in the 45th Ward of the City of Philadelphia between the aforesaid gates crossing the tracks on the line of Jenks Street, shown as Point A on said Plan 2 $\frac{1}{2}$, and the northern most limit of ownership of the Belt Line, shown as Point B on said Plan 23/4, under and subject to the following terms and conditions:

1. Industry shall pay to Belt Line an annual rent of [REDACTED] on or before the date of the execution of this agreement, and a similar sum on or before the anniversary of this agreement of each and every year hereafter during the existence of this leasehold estate.

2. Industry, during the term of this leasehold estate, and any extension or renewal thereof, shall have the right to use the said demised premises for the movement thereover by its own motive power only of such railroad cars as are owned or leased by it, or are subject to or in prospect of being subject to bills of lading in favor of Reading Company. Industry agrees that such cars are to be subject to all lawfully issued tariffs excepting tariffs issued by the railroad governing intra-plant switching. Notwithstanding, it is agreed that where such switching is done by power furnished by the railroad its tariffs governing intra-plant switching will be effective.

3. Belt Line reserves the right to use the said demised premises for the performance by it of its common carrier obligations and for the performance by other common carriers by railroad, granted the privilege of operation over said demised premises by Belt Line, of their common carrier obligations. It is agreed that the trains and engines of Belt Line and its tenant companies will have priority of use of said track over the trains and engines of Industry.

4. Belt Line shall maintain the said demised track according to the standards of maintenance determined by it, but Industry shall at its sole cost and expense clear all wrecks occurring while moving motive power or cars over the demised premises and re-rail all cars or motive power being moved by it at the time of derailling, provided, however, that all track work required as a result of such wrecks or derailling of cars and motive power shall be performed by Belt Line and at the sole cost of Industry.

5. Industry shall equip and maintain its motive power and railroad cars (owned by it) used in operating over said track, and shall operate said motive power and cars both Industry owned and owned by others, in accordance with all applicable ordinances and statutes, and all regulations, rules and orders of any federal, state, municipal governmental authority and does hereby indemnify and hold harmless, Belt Line, its successors and assigns, and its officers, agents, servants and employees from any and all penalties or fines which Belt Line may be subjected to as a result of the failure of Industry to comply with the provisions of this Article 5.

6. Industry hereby releases and indemnifies Belt Line, its tenant company, Reading Company, and their respective successors and assigns, and their officers, agents, servants and employees from any and all liability for damage or injury (including death) to the property or person of any person (including Belt Line and its tenant company, their successors and assigns, and their respective officers, agents, servants and employees) arising from or in any way connected with, or resulting from the use by Industry of the demised track, and whether caused by the fault, failure or negligence of Belt Line, its tenant company, their respective successors and assigns or otherwise.

Notwithstanding the foregoing release, Belt Line will assume responsibility for all liability for damage or injury (including death) to the property or person of any person (including the parties hereto, their successors and assigns, and their respective officers, agents, servants and employees) which occur as a result of its sole negligence arising out of or resulting from use by its locomotives or the use by the locomotives of its tenant, Reading Company, of the demised trackage.

7. This agreement, and the leasehold estate created hereby, shall, unless sooner terminated as hereinafter provided, continue from year to year, unless either party hereto shall give written notice to the other thirty days or more prior to the termination of the term hereby created or any extension or renewal thereof, of an intention to cancel the same at the termination thereof; provided, however, that Belt Line shall have the right to cancel this agreement, and the leasehold estate created hereby or any extension or renewal thereof at any time when ordered to do so by any public body having jurisdiction to make such an order, and also by thirty day's written notice to cancel the same whenever Belt Line determines that the said demised premises are needed by it, or by any common carrier by railroad granted the privilege of operation over said demised premises by Belt Line, in order more efficiently to perform its common carrier obligations. This agreement shall be void and of no effect if it is determined at any time that Belt Line, by reason of its charter, any law, regulation or ordinance, any prior agreement, or the tenure under which it owns its right-of-way, does not have the power to enter into this agreement, or if the existence of this agreement is in violation of any such charter, law, regulation, ordinance, or prior agreement, or if its existence would terminate or curtail Belt Line's charter, franchise, or ownership of its right-of-way. Belt Line shall have no obligation to litigate any such question, but the opinion of its counsel shall be conclusive. In the event of such termination prior to the end of

any one-year term, Belt Line shall refund to Industry that proportion of the rent paid by it as the then unexpired term bears to the entire term. It is further agreed by the parties hereto that the present agreement is not to be interpreted as changing or amending the provisions of any existing agreements between the parties hereto, except as provided in Article 8.

8. The aforesaid Agreement of October 24, 1960 by which Railroad leased to Industry 580' of its track is hereby cancelled.

9. This agreement is made on behalf of the parties hereto, their respective successors and assigns, except that Industry shall not assign the same until it shall first have obtained the approval of Belt Line to such assignment.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement the day and year first hereinabove written.

Attest:

amarnold
Secretary

THE PHILADELPHIA BELT LINE
RAILROAD COMPANY

By:

E. W. Descher
President.

Attest:

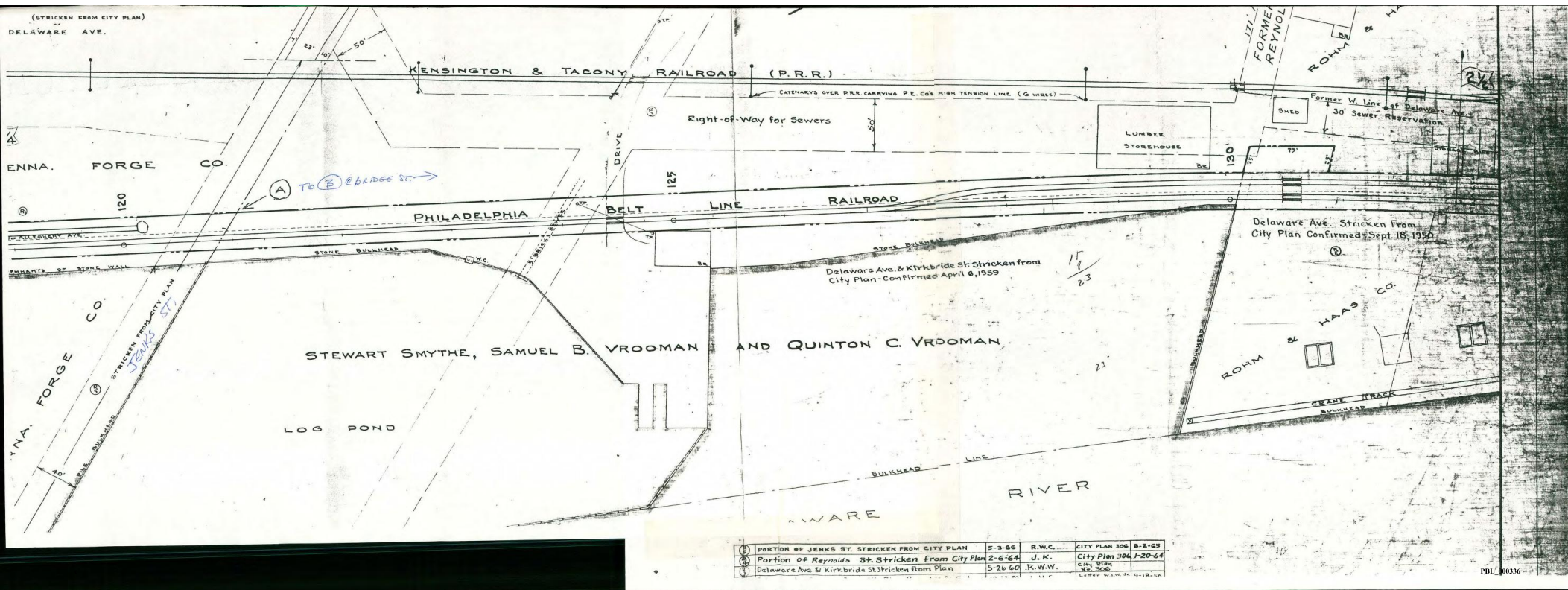
H. R. Chen
Assistant Secretary

ROHM AND HAAS COMPANY

By:

C. H. [Signature]
Vice President. 41

APPROVED AS TO FORM
GILFILLAN, GILPIN & BREHMAN
By D. M. H.



1436 Palm & Hoe Co.

1-6-67

Track house

to
Chavez.

Agreement # 1436-D

THIS SUPPLEMENTAL AGREEMENT made this 14th day of August 1973,
by and between

THE PHILADELPHIA BELT LINE RAILROAD COMPANY,
a corporation created and existing under the laws of the Commonwealth
of Pennsylvania, hereinafter called "Belt Line"; and,

ROHM AND HAAS COMPANY,
a corporation created and existing under the laws of the State of
Delaware, hereinafter called "Industry".

W I T N E S S E T H

WHEREAS, Industry now owns all land on either side of Belt
Line's railroad northward from vacated Buckius Street; and,

WHEREAS, in order to permit Industry to move railroad cars
by its own motive power for the economical and convenient conduct
of its business, Belt Line, by Agreement dated January 6, 1967,
leased to Industry that portion of its trackage extending from the
track gates on the northerly houseline of vacated Jenks Street to
the northerly limits of its ownership, amounting to a total of
3,280 feet of trackage; and,

WHEREAS, in furtherance of the economical and convenient
conduct of its business, Industry desires: (a) to extend its lease-
hold interest in the trackage of the Belt Line so as to include all
Belt Line trackage extending northward from the centerline of vacated
Buckius Street to the Industry's track gates on line with the north-
erly houseline of vacated Jenks Street; (b) to install a frog and
switch to connect the parallel siding track which presently terminates
at a point about 60 feet south of the centerline of vacated Jenks
Street, with the main track; and, (c) to install a set of switches
to form a crossover with point of switch therefor in the main track
located 800 feet south of the point of switch for the first mentioned
switch; and,

WHEREAS, Belt Line is willing to lease to Industry the
aforesaid additional trackage comprising a total of 1,080 feet of
main track between points C and D; 1,145 feet of sidetrack between
points E-F-F', and 160 feet of crossover track between points G and G',

for a total of 2,385 feet of track, all as shown on copy of Plan P-16094 dated revised July 16, 1973, attached hereto and made a part hereof.

NOW THEREFORE, in consideration of the foregoing and of the covenants hereinafter contained, the parties hereto, each intending to be bound hereby, covenant and agree for themselves and their respective successors and assigns as follows:

(1) Belt Line does hereby devise and let unto Industry for the term of ten years from the date hereof and thereafter from year to year until terminated under the provisions of the original Agreement dated January 6, 1967, all those said tracks in the 45th Ward of the City of Philadelphia between Buckius Street and vacated Jenks Street, including crossover and portion of switch extending northward from Jenks Street as shown between points C-D; E-F-F'; and G-G' on said plan.

(2) Industry shall pay to Belt Line an annual rental at the rate of \$2.00 per foot of track, or \$4,770. on or before the date of the execution of this agreement and similar or like sum on or before the anniversary of this agreement for each and every year hereafter during existence of this lease-hold estate: It being understood that said sum is in addition to and forms no part of the rent charged for the use of the trackage from Jenks Street to the northern most limits of the Belt Line as covered by the Agreement dated January 6, 1967, to which this agreement is a supplement.

(3) Industry will at its sole cost and expense: (a) install a No. 8 Turnout with a 20 foot switch in the main track with point thereof located 75 feet north of the north houseline of vacated Jenks Street, so as to connect the said sidetrack with the main track; (b) install No. 8 crossover with 20 foot switch, the point of which in the main track to be located 800 feet south of the point of switch to be installed at vacated Jenks Street, and (c) Industry agrees that said switch and crossover upon installation to be and become the property of Belt Line absolutely.

(4) Belt Line will: (a) clean the area between the rails of the said sidetrack and the space between the sidetrack and the main track and will thereafter continue to maintain the premises in a clean

and presentable condition, including annual applications of appropriate chemical for the control of weeds; and, (b) install such ties as may be required at the north end of the siding track in order to complete in a safe and proper manner the connection with the switch to be installed by Industry, as well as, replace such ties as may be required to place the siding track in good and safe operating condition, as to which the decision of the Belt Line shall be final.

(5) The time, manner and method of the performance of the work by Industry or its contractor shall first be approved by the Chief Engineer of the Reading Company or his duly authorized representative, whose decision shall be final.

(6) Industry shall replace the west half of the track gates at Jenks Street with a gate of sufficient length to provide 15 feet clearance measured from centerline of the most westerly track; it being understood that the provisions of the agreement covering the installation of the track gates dated June 4, 1963, shall apply to the relocated west gate post and enlarged track gate as though the same had been initially covered thereby.

(7) In all other respects the provisions of the said agreement of January 6, 1967, of which this is a supplement, shall remain in full force and effect and shall apply to the additional trackage herein leased as though such trackage had been originally included therein.

IN WITNESS WHEREOF, the parties hereto have duly executed this supplemental agreement the day and year first herein above written.

APPROVED AS TO FORM
FILLAN, CHASE & BRENNAN
Fillan

The Philadelphia Belt Line
Railroad Company

Attest: *Conrad*
Secretary

By: *Allen*
Executive Vice President

Rohm and Haas Company

Attest: *H.R. Green*
Assistant Secretary

By: *R.W. Russell*
Vice President



THIS SUPPLEMENTAL AGREEMENT, made this 31st day of October A.D. 1977, by and between THE PHILADELPHIA BELT LINE RAILROAD COMPANY, a Corporation created and existing under the laws of the Commonwealth of Pennsylvania, hereinafter referred to as "Belt Line", and, ROHM AND HAAS COMPANY, a Corporation created and existing under the laws of the State of Delaware, hereinafter referred to as "Industry", to an agreement between Belt Line and Industry bearing date of January 6, 1967, and supplement thereto dated August 14, 1973, covering lease by Industry of certain tracks of the Belt Line situate in the 45th Ward, City and County of Philadelphia.

WITNESSETH:

WHEREAS, In accordance with the terms and conditions of the aforescribed agreement of January 6, 1967, and supplement thereto of August 14, 1973, Industry enjoys the use and lease of certain railroad tracks and right-of-way of the Belt Line extending northward within the property of Industry from the centerline of vacated Buckius Street to the point of said tracks' connection with tracks of Industry at a point approximately 130'± south of vacated Kennedy Street, including the right to move railroad cars by Industry's own motive power thereover for the economical and convenient conduct of the business of Industry; and

WHEREAS, Industry desires to construct additional track facilities consisting of a turnout and a connecting track, said turnout to be placed in aforementioned track leased by Belt Line to the Industry at a point designated "A" on plan of Industry prepared for Industry by William G. Major Associates, designated job number 5367 and dated September 26, 1977, a copy of said plan hereto attached and made a part hereof, the construction of said turnout and connecting track shown between points "A"- "B" on said plan requiring Industry's use of an additional 115 feet of the right-of-way of Belt Line; and

WHEREAS, Belt Line is willing to lease to Industry the additional right-of-way, as aforesaid, between points "A"- "B" on said plan, and agrees to the construction of additional storage track facilities (hereinafter referred to as sidetrack) as shown between points "B"- "C"- "D" and "E" on said plan and agrees to the operation of same subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and of the covenants hereinafter contained, the parties hereto, each intending to be legally bound hereby, covenant and agree for themselves and their respective successors and assigns as follows:

1. The annual rent of [REDACTED] Dollars [REDACTED] set forth in Article 1 of agreement of January 6, 1967, shall be increased as of January 6, 1978, and every year thereafter during the existence of the agreement and leasehold estate created thereunder, to [REDACTED] Dollars [REDACTED].

2. The Industry shall provide all necessary right-of-way outside of the right-of-way of Belt Line required for the proper construction and operation of said sidetrack, said right-of-way to be

satisfactory to Belt Line.

The cost and expense of procuring or complying with any ordinance, order, permit or consent whatsoever, required by Municipal, State, Federal or other lawfully constituted authorities, for the construction, maintenance, operation, use, relocation or removal of said sidetrack shall be borne by the Industry.

Belt Line shall have the right to enter upon the property of the Industry, for the purpose of maintaining and operating said sidetrack.

3. The cost of constructing said additional storage track facilities, between points "A"- "B"- "C"- "D" and "E" on said plan, including grading of roadbed and all other appurtenances in connection therewith shall be borne by the Industry.

4. Said sidetrack shall be maintained (including removal of ice and snow) and renewed to the satisfaction of Belt Line; the work shall be performed and the cost thereof borne as follows:

By the Belt Line - Between points "A"- "B" on said plan.
By the Industry - Between points "B"- "C" and points "C"- "D" and "C" and "E".

5. The title to and ownership of said sidetrack shall be vested as follows:

In the Belt Line - That portion between points "A"- "B" on said plan.
In the Industry - Balance of sidetrack.

6. Industry agrees not to permit any obstruction, either permanent or temporary, over said sidetrack less than twenty-two (22) feet above top of rail or along side of said sidetrack less than eight (8) feet, six (6) inches, from center of track and such additional clearances on curves as may be required by Belt Line; provided that no wire shall in any case be constructed over said sidetrack less than twenty-seven (27) feet above top of rail, and that high tension wires must have additional clearance provided in accordance with the requirements of any regulatory body; and Industry shall in all other respects establish and maintain on its property a clear and safe space on each side of said sidetrack sufficient to insure the safety of employees and equipment of Belt Line.

If any obstruction, either permanent or temporary, other than a wire, shall result in a clearance less than the standard clearance hereinabove specified, Industry may maintain such obstruction provided it is shown upon said plan, and Industry shall, at its expense, erect, maintain and renew signs warning of such obstruction. In no event shall a wire be permitted over said sidetrack with less than said standard clearance.

Industry agrees to indemnify and hold harmless Belt Line for loss, damage or injury to the person or property of the parties

hereto and their employees, and to the person or property of any other person or corporation, arising from the failure of Industry to provide the clearances and clear and safe space required by the first paragraph of this Article 6, whether or not the condition contributing to such loss, damage or injury is shown on said plan, or warning thereof is given by signs or otherwise. If any act or omission of the Belt Line shall have contributed to such loss, damage or injury any claim or liability therefor shall be borne equally by the parties hereto; provided, however, that neither the operation by Belt Line over such sidetrack nor its failure to warn its employees of the inadequate clearance or the unsafe condition shall be considered to be such a contributory act or omission of Belt Line.

7. Industry will observe and comply with all rules and regulations of Belt Line and The Department of Transportation of the United States of America governing the handling of inflammable materials, the loading and unloading of tank cars, the location of racks and storage tanks, and protection of oil sidings from danger due to stray electric currents.

9. In all other respects the foregoing provisions are in addition to and not in limitation of any of the terms and conditions in said agreement of January 6, 1967, and supplement thereto of August 14, 1973, of which agreement and supplement this agreement is a second supplement, it being understood that all other terms of said agreement of January 6, 1967, shall remain in full force and effect and shall apply to the additional sidetrack to be constructed hereunder as though such sidetrack had been included therein.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement as of the day and year first herein above written.

Attest:

[Signature]
Secretary

THE PHILADELPHIA BELT LINE RAILROAD COMPANY

By *Robert L. Taylor*
President

Attest:

B.R. Greene
Assistant Secretary

ROHM AND HAAS COMPANY

By *R. L. Jellay*
Group Vice President



EXHIBIT 6

RAILWAY TRACK MAINTENANCE AGREEMENT

THIS AGREEMENT, dated December 22, 1998 by and between **ROHM AND HAAS COMPANY**, a Delaware corporation, having its principal office at 100 Independence Mall West, Philadelphia, Pennsylvania 19106 ("**R&H**") and **RICHMOND WATERFRONT INDUSTRIAL PARK, LLC**, a Pennsylvania limited company, having an office at Bath and Jenks Streets, Philadelphia, Pennsylvania 19137 ("Richmond") provides as follows:

BACKGROUND

Pursuant to an Agreement of Sale for a certain tract of land and the improvements located thereon situate at 5000 Richmond Street, Philadelphia County, Commonwealth of Pennsylvania, dated October 15, 1998, together with all amendments thereto and assignments thereof (the "**Agreement of Sale**"), Richmond acquired legal title to Lot #2, 5000 Richmond Street, Philadelphia, Pennsylvania as more fully described on Exhibit "A" attached hereto and made a part hereof ("Lot #2"), on the terms and conditions therein set forth; and

R&H currently uses and maintains a Railway Belt Line (the "Line") which is located on Lot #2, for the transport of materials; and

Richmond, or tenants of Richmond, may, at a future date, desire to use the Line in furtherance of its or their business activities; and

CONRAIL or successor ("Conrail"), provides rail service to the Line pursuant to a rail easement and a Belt Line Agreement dated 1976, which sets forth the responsibilities for the maintenance of the Line by users; and

Conrail has been unable to locate or provide a copy of the Belt Line Agreement; and

The parties hereto, in the absence of having the benefit of being provided the Belt Line Agreement, wish to set forth their respective rights and responsibilities with respect to the maintenance of the Line.

NOW, THEREFORE, the parties hereto, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, agree as follows:

1. While R&H is the sole user of the Line, R&H shall, at its sole cost and expense maintain the Line, including switching spurs, in a manner consistent with its

past practice and in accordance with all applicable federal, state and local laws, ordinances, regulations or codes.

2. Richmond, or any tenant of Richmond may, at any time, commence use of the Line.

3. Upon the commencement of use of the Line by Richmond, or its tenants, and while R&H continues using the Line, the cost of the maintenance of the Line shall be borne equitably and ratably between R&H and Richmond, in accordance with their respective use of the Line, such as number of cars delivered to each party or other verifiable benchmark as the parties shall agree to use. In the event it is impossible or impracticable to determine the pro rata usage of the Line of the parties, the cost of maintenance of the Line shall be borne equally between R&H and Richmond. The parties further agree to work cooperatively to recover track maintenance costs from Conrail as permitted by law or agreement.

4. In the event R&H discontinues use of the Line and Richmond, or its tenants, have commenced use of the Line, then Richmond shall, at its sole cost and expense, maintain the Line.

5. In the event R&H discontinues use of the Line before Richmond, or its tenants, have commenced use of the Line, then neither R&H nor Richmond shall be responsible for any maintenance of the Line.

6. In the event any of the terms of the Belt Line Agreement are contrary to the terms of this Agreement, the parties may either: (i) ratify this Agreement without modification; (ii) amend this Agreement to conform its terms with the Belt Line Agreement; or (iii) terminate this Agreement upon thirty days notice, in writing, to the other party.

7. This Agreement applies to and binds the respective parties hereto and their executors, administrators, heirs, successors and assigns.

8. Any party's failure to enforce strictly any provision of this Agreement shall not be construed as a waiver thereof or as excusing either party from future performance. Any waiver, to be effective, must be in writing and signed by the party against whom it is sought to be enforced.

9. The parties hereto consent to the jurisdiction of the courts of the Commonwealth of Pennsylvania with respect to any controversy hereunder, without regard to the laws of conflict of law governing in the Commonwealth of Pennsylvania.

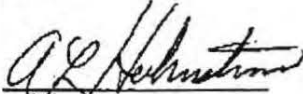
10. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof.

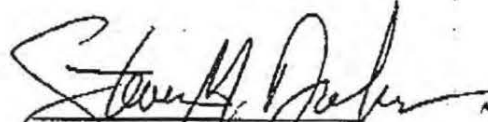
11. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each when executed shall be deemed to be an original but all of which shall constitute one and the same agreement.

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

ROHM AND HAAS COMPANY

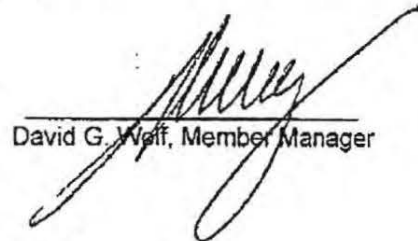
Attest:


Witness


Site Manager

**RICHMOND WATERFRONT INDUSTRIAL
PARK, LLC**


Witness


David G. Wolf, Member Manager

December 17, 1998
Lot 2
Rohm & Haas Company
Parcel Containing 55.5950 Acres
45th Ward
City of Philadelphia
Commonwealth of Pennsylvania

EXHIBIT "A"

ALL THAT CERTAIN tract or parcel of land with the buildings and improvements erected thereon, Situate in the Forty-Fifth Ward of the City of Philadelphia, County of Philadelphia, Commonwealth of Pennsylvania and being described according to a Plan of Subdivision for Rohm & Haas Bridesburg Plant, prepared by William G. Major Associates, Inc., Civil Engineers and Surveyors, Bristol, Pennsylvania dated December 17, 1998, the Plan of Subdivision as follows to wit:

Beginning at a point in the bed of Buckius Street (60.00' wd.) and said point being 25 feet from the centerline thereof and being the Southeasterly side of Bath Street (30' wide) extended;

THENCE extending along the Southeasterly line of Bath Street North Fifty Seven degrees Thirty Five minutes Thirty Seven seconds East (N-57°-35'-37"-E); a distance of Seven Hundred Forty Seven and Fifteen thousandths feet (747.015') to a point for a corner on the Southwesterly side of Jenks Street, being Forty feet wide (40.000' wd.);

THENCE extending along the Southwesterly side of Jenks Street South Thirty One degrees Forty Seven minutes Thirty Nine seconds East (S-31°-47'-39"-E); a distance of Seven and Nine Hundred Forty Five feet (7.945') to a point for a corner on the Southerly end of Jenks Street;

THENCE extending along the Southerly end of Jenks Street and extending beyond on a line parallel to and distant One Hundred Twenty feet (120.000') Southeasterly from Cooper Street, being Thirty Feet wide (30.000' wd.) North Fifty Eight degrees Twelve minutes Twenty One seconds East (N-58°-12'-21"-E); a distance of Three Hundred Twenty feet (320.000') to a point for a corner on the Northeasterly line of Kirkbride Street, being Forty feet wide (40.000' wd.);

THENCE extending along the Northeasterly line of Kirkbride Street North Thirty One degrees Forty Seven minutes Thirty Nine seconds West (N-31°-47'-39"-W); a distance of Twenty and Sixty-Seven thousandths feet (20.067') to a point for a corner on the Southeasterly line of Bath Street, being Thirty feet wide (30.000' wd.);

THENCE extending along the Southeasterly line of Bath Street North Fifty Eight degrees Eleven minutes Twenty One seconds East (N-58°-11'-21"-E); a distance of Four Hundred Thirteen and Seven Hundred Sixty Two thousandths feet (413.762') to a point for a corner in the bed of Reynolds Street, being Thirty feet wide (30.000' wd.).

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Commonwealth of Pennsylvania

THENCE extending in the bed of Reynolds Street North Forty Nine degrees Twenty One minutes Twenty Four seconds West (N-49°-21'-24"-W); a distance of Twenty Nine and Three Hundred Twenty Nine Thousandths feet (29.329') to a point for a corner;

THENCE extending from the bed of and crossing the Easterly line of Reynolds Street, and along the lands now or formerly of John D'Orazio & Sons, Inc., a Pennsylvania Corporation, North Thirty Eight degrees Fifty Seven minutes Forty Nine seconds East (N-38°-57'-49"-E); a distance of Fifty Eight and Twenty Five Thousandths feet (58.025') to a point for a corner;

THENCE extending along the lands of the said John D'Orazio & Sons, Inc. The following three (3) courses and distances:

1) Extending South Forty Nine degrees Twenty One minutes Twenty Four seconds East (S-49°-21'-24"-E); a distance of Eighty Four and Two Hundred Fifty Three thousandths feet (84.253') to a point for a corner;

2) THENCE extending North Thirty Eight degrees Fifty Seven minutes Forty Nine seconds East (N-38°-57'-49"-E); a distance of Four Hundred Nine and Eight Hundred thousandths feet (409.800') to a point for a corner in the former line of Bridge Street, variable width;

3) THENCE extending along the former line of Bridge Street North Fifty One degrees Twenty Five minutes Nine seconds West (N-51°-25'-09"-W); a distance of One Hundred Twenty Five and One Hundred Seventy Seven thousandths feet (125.177') to a point for a corner at the Southeasterly terminus of Bridge Street;

THENCE extending along the Southeasterly terminus of Bridge Street North Thirty Eight degrees Thirty Four minutes Fifty One seconds East (N-38°-34'-51"-E); a distance of Forty feet (40.000') to a point for a corner in the line of lands N/L Bridesburg Boy's and Girl's Club;

THENCE extending along the line of lands N/L Bridesburg Boy's and Girl's Club the following two courses and distances:

1) Extending along the former Northeasterly line of Bridge Street South Fifty One degrees Twenty Five minutes Nine seconds East (S-51°-25'-09"-E); a distance of One Hundred Forty Five and Seven Hundred thousands feet (145.700') to a point for a corner;

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2) THENCE extending North Thirty Six degrees Thirty Seven minutes Thirty Eight seconds East (N-36°-37'-38"-E); a distance of Two Hundred Forty Seven and One Hundred Forty Four thousandths feet (247.144') to a point for a corner of Lot #1;

THENCE extending along lands of Lot 1 as shown on above Plan of Subdivision, South Fifty One degrees Twenty Five minutes Nine seconds East (S-51°-25'-09"-E); a distance of Six Hundred Ninety Five and Two Hundred Seventy Nine thousandths feet (695.279') to a point for a corner passing over the bulkhead line of the West bank of the Delaware River as approved by the War Department, September 10, 1940, said bulkhead line is distant Five Hundred Three and Four Hundred Seventeen thousandths feet (503.417') from the end of this course.

THENCE extending in a line parallel and approximately One Hundred feet (100.000') distant from the pierhead line of the West bank of the Delaware River as approved by the War Department, September 10, 1940, South Nineteen degrees Forty Seven minutes Fifty One and Four Tenths seconds West (S-19°-47'-51.4"-W); a distance of Two Hundred Sixty and Eight Hundred Twenty Two thousandths feet (260.822') to a point for a corner;

THENCE extending South Thirty Five degrees Four minutes Fifty and Three tenths seconds West (S-35°-04'-50.3"-W); a distance of One Thousand Seven Hundred Fourteen and Two Hundred Twenty Four thousandths feet (1,714.224') to a common point and corner in the bed of the West bank of the Delaware River of Lot 3 as shown on the aforesaid Plan of Subdivision;

THENCE extending along the Northerly side of proposed Lot 3 North Forty Four degrees Eight minutes Fifty Eight seconds West (N-44°-08'-58"-W); a distance of Four Hundred Twenty Four and Five Hundred Forty Nine thousandths feet (424.549') crossing the bulkhead line of the West bank of the Delaware River as approved by the War Department, September 10, 1940; to a point for a corner on the Easterly side of a Thirty Three foot wide (33.00' wd.) Right-of-Way of the Philadelphia Belt Line Railroad; said point being along the Westerly side of Lot 3 of the above referenced Plan of Proposed Subdivision;

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THENCE extending along the Easterly Right-of-Way of the Philadelphia Belt Line Railroad, other lands now or formerly of Rohm and Haas Company, and crossing over the Easterly line of Buckius Street, South Twenty Five degrees Thirty Five minutes Eight seconds West (S-25°-35'-08"-W); a distance of Eight Hundred Sixteen and Sixty Four thousandths feet (816.064') to a point in the center line of the aforesaid Buckius Street;

THENCE extending Northwesterly along the center line of Buckius Street North Twenty Seven degrees Fifty Eight minutes Twelve seconds West (N-27°-58'-12"-W); crossing over a Thirty Three foot wide (33.000' wd.) Right-of-Way of the Philadelphia Belt Line Railroad and a Thirty foot wide (30.000' wd.) Right-of-Way to the Kensington and Tacony Railroad, a distance of Three Hundred Eighty Two and Eight Hundred Fifty Seven thousandths feet (382.857') to a point for a corner;

THENCE extending into the bed of Buckius Street North Twenty Eight degrees Forty Three minutes Forty Four seconds East (N-28°-43'-44"-E); a distance of Twenty Nine and Nine Hundred Twelve thousandths feet (29.912') to a point for a corner;

THENCE extending through the bed of Buckius Street North Twenty Seven degrees Fifty Eight minutes Twelve seconds West (N-27°-58'-12"-W); a distance of Nine Hundred Thirteen and Sixty-Four thousandths feet (913.064') to the first mentioned point and place of beginning.

The contents of said parcel being Two Million Four Hundred Twenty One Thousand Seven Hundred Thirty-One square feet (2,421,731 SF) or Fifty Five and Five Thousand Nine Hundred Fifty tenthousandths acres (55.5950 Acs.) of land.

Subject to the certain Thirty foot wide (30.00' wd.) non-exclusive easement for ingress and egress for the benefit of Lot 3 and Lot 4 as shown on the Plan of Subdivision.

Subject to any and all easements and restrictions of record.

William G. Major, P.E. & L.S.

EXHIBIT 7

SETTLEMENT AGREEMENT

THIS AGREEMENT, made this 24th day of November 1981, by and between THE PHILADELPHIA BELT LINE RAILROAD COMPANY (Belt Line), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania; and CONSOLIDATED RAIL CORPORATION (Conrail), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania.

W I T N E S S E T H :

WHEREAS, Conrail presently conducts rail operations over properties owned by Belt Line; and

WHEREAS, Belt Line contends and Conrail denies that certain contractual obligations of Reading Company or its predecessors were assumed by Conrail along with trackage rights which Conrail received pursuant to the Regional Rail Reorganization Act of 1973, as amended, and Belt Line has instituted litigation seeking recovery from Conrail under said contractual obligations; and

WHEREAS, Belt Line also alleges and Conrail denies in the aforementioned litigation that Conrail has violated certain provisions of the antitrust laws; and

WHEREAS, the Interstate Commerce Commission (Commission) has granted Belt Line an exemption from the need for Commission approval to institute its own operations over Belt Line properties; and

WHEREAS, the parties desire to resolve their disputes to the extent necessary to permit the continued use by Conrail of Belt Line's properties;

NOW, THEREFORE, the parties in consideration of the premises and the mutual promises and covenants hereinafter set forth, agree as follows:

1. This agreement shall become effective upon the occurrence of all three of the following events: (a) payment by Conrail of amount due under Paragraph 3; (b) execution and delivery by the parties hereto of an Operating Agreement in the form attached hereto as Exhibit "A", which is hereby made a part hereof; and (c) execution and filing of a Stipulation for Dismissal with Prejudice and the entry by the Court of an Order dismissing with prejudice the action brought by Belt Line against Conrail in the United States District Court for the Eastern District of Pennsylvania on October 29, 1980, Civil Action No. 80-4201, said Stipulation and Order being in the form attached hereto as Exhibit "B" and hereby made a part hereof. The dismissal of such action shall not prejudice the right of either party to enforce, by litigation or otherwise, any rights which may accrue to either after the date of dismissal. Notwithstanding the provision that the effectiveness of this agreement is

dependent on payment by Conrail as set forth in Subparagraph (a) above, the obligation to make such payment shall be effective on the date of this agreement.

2. On the first day of the first month which begins after the date on which this Agreement becomes effective, the Stipulation for Interim Monetary Relief entered by the parties on December 16, 1980 shall become null and void.

3. Conrail hereby agrees to pay to Belt Line the sum of [REDACTED] within fifteen (15) days after the date of this Agreement. Said sum of [REDACTED] shall constitute full compensation by Conrail for use of Belt Line's properties for the period from April 1, 1976 to the date of this Agreement and full satisfaction of all claims set forth in the action filed by Belt Line against Conrail in the United States District Court for the Eastern District of Pennsylvania on October 29, 1980, Civil Action No. 80-4201. If said sum of [REDACTED] is not paid to Belt Line within fifteen (15) days of the date of this Agreement, then it shall accrue interest at the rate of twenty (20%) percent per annum, commencing on the date of this Agreement. Nothing herein is intended to affect Belt Line's rights to collect said sum by legal means, including set-off and counterclaim.

4. Conrail hereby agrees to assume, at its own cost and expense, the defense of the action brought against Belt Line by Edward Puchalski in the United States District Court for the Eastern District of Pennsylvania, Civil Action No. 79-2775, and to indemnify Belt Line from any liability arising out of said action.

5. Effective upon the making of the payment referred to in Paragraph 3 above, the operation of all agreements to which Belt Line is a party which affect the facilities designated in Exhibit "A" ("Belt Line North facilities") attached hereto, shall be suspended insofar as such agreements regulate or concern relations between Belt Line and Conrail from said effective date until the date of termination of the Operating Agreement. Such suspension shall not abridge or affect the rights of third parties under said agreements or under the Belt Line principle. Nothing herein shall be deemed to affect the rights of any party after termination of the Operating Agreement, except that when the Operating Agreement is terminated and Conrail permanently stops using Belt Line facilities, said Agreements shall no longer bind Conrail but shall bind its successors and assigns.

6. Subject to requisite regulatory approvals, Belt Line and Conrail hereby agree to enter into an Operating Agreement in the form attached hereto as Exhibit "A".

7. RESPONSIBILITY TO PERSONNEL.

Conrail agrees to indemnify, defend and hold Belt Line harmless against any claims by, for, or on behalf of Conrail employees with respect to employment rights, protection payments, injury to persons, damage to property, or any other claim whatsoever related to their employment arising out of any negligent acts by Conrail arising in connection with its past use of and operations on Belt Line properties. Conrail does not agree to indemnify, defend, or hold Belt Line harmless against any claims

based upon Belt Line's conduct or upon events alleged to have been caused by the condition of any track maintained by Belt Line.

8. INDEMNIFICATION.

Conrail agrees to indemnify, defend and hold Belt Line harmless against any claims by, for, or on behalf of any third party arising out of any negligent acts by Conrail arising in connection with its past use of, operations on, or provision of rail service to customers served by Belt Line properties. Conrail does not agree to indemnify, defend, or hold Belt Line harmless against any claims based upon Belt Line's conduct or upon events alleged to have been caused by the condition of any track maintained by Belt Line.

9. CONSTRUCTION.

This Agreement is to be construed in accordance with the laws of the Commonwealth of Pennsylvania and federal statutes insofar as they apply.

10. ASSIGNABILITY.

This Agreement is not assignable by either party unless it first obtains the written consent of the other party.

11. MUTUAL RELEASE.

For consideration given by each party to the other, Conrail and Belt Line hereby remise, release and forever discharge each other of and from any and all manner of actions, causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies,

agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands of whatsoever nature in law, in equity or in admiralty, direct or indirect, known or unknown, matured or not matured, including for contribution and/or indemnity, that either party had or now has against the other, including, without limitation, those with respect to (a) any and all matters alleged or which could have been alleged, irrespective of jurisdiction or venue, in an action captioned The Philadelphia Belt Line Railroad Company v. Consolidated Rail Corporation, United States District Court for the Eastern District of Pennsylvania, Civil Action No. 80-4201, or arising from the transactions or occurrences upon which said action is based, and/or (b) any and all matters arising from Conrail's use of or operation on tracks owned by Belt Line or to which Belt Line has rights.

This release shall not affect:

(a) Obligations assumed by either party under this Agreement;

(b) Obligations arising out of employment rights, torts and third party claims which accrued prior to the effective date of this Agreement;

(c) Rights under existing agreements, other than those referred to in Paragraph 5 of this Settlement Agreement to the extent their operation is suspended by such paragraph.

(d) Rights of third parties passing through either party hereto;

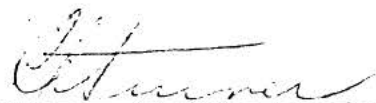
(e) Rights, obligations or claims arising in connection with Belt Line properties not designated in Exhibit "A".

12. The Stipulation for Interim Monetary Relief filed in the case of The Philadelphia Belt Line Railroad Company vs. Consolidated Rail Corporation, United States District Court for the Eastern District of Pennsylvania, No. 80-4201 shall be of no further force and effect effective on the date when the payment required by Paragraph 3 is made. If such payment is made on a date other than the first day of the month, the [REDACTED] payment for such month shall be pro-rated on the basis of a thirty-day month and the remaining balance not due Belt Line shall be credited against the payment under Paragraph 3.

13. Notwithstanding anything contained in Paragraph 5 above, if Belt Line exercises its right to terminate this Agreement, Conrail may continue to use the Belt Line facilities covered by this Agreement provided it continues to make payments required by this Agreement, subject, however, to all rights of Belt Line under this Agreement, and to Belt Line's right to operate on such facilities, or to allow others to do so. Belt Line may, however, substitute itself or another operator for Conrail, but, in such case, Conrail will not be bound by the Agreement of May 4, 1891 as amended.

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

Attest


11

THE PHILADELPHIA BELT LINE
RAILROAD COMPANY

By 
Name: Charles E. Mather, III
Title: President

CONSOLIDATED RAIL CORPORATION

Attest Allan Schimmel
SECRETARY

By L. Stanley Crane
Name: L. Stanley Crane
Title: Chairman and Chief
Executive Officer

EXHIBIT A TO SETTLEMENT AGREEMENT

OPERATING AGREEMENT

THIS AGREEMENT, made this 24th day of November , 1981, by and between THE PHILADELPHIA BELT LINE RAILROAD COMPANY (Belt Line), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania; and CONSOLIDATED RAIL CORPORATION (Conrail), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania.

W I T N E S S E T H :

WHEREAS, Conrail presently conducts rail operations over properties owned by Belt Line; and

WHEREAS, Belt Line contends and Conrail denies that certain operating rights and attendant contractual obligations of Reading Company or its predecessors were conveyed to Conrail pursuant to the Regional Rail Reorganization Act of 1973, as amended, and Belt Line has instituted litigation seeking recovery from Conrail under said contractual obligations; and

WHEREAS, Belt Line also alleges and Conrail denies in the aforementioned litigation that Conrail has violated certain provisions of the antitrust laws; and

WHEREAS, the parties have concurrently entered into an Agreement ("Settlement Agreement") to resolve those disputes; and

WHEREAS, the Interstate Commerce Commission (Commission) has granted Belt Line an exemption from the need for Commission approval to institute its own operations over Belt Line properties; and

WHEREAS, the parties desire to resolve all of the aforementioned litigation and enter into this Operating Agreement to govern continued use by Conrail of Belt Line facilities;

NOW, THEREFORE, the parties, in consideration of the premises and the mutual promises and covenants hereinafter set forth, agree as follows:

1. Conrail shall have operating rights over the rail properties designated on Exhibit "A" to this Operating Agreement, which is made a part hereof. Belt Line will maintain such rail properties. To the extent that other rail carriers may have rights under the Belt Line principle or under existing agreements, Conrail shall recognize such rights and honor such agreements to the same extent the Belt Line is obligated to do so, provided nothing in this Agreement shall be construed to extend the operation of the Belt Line principle beyond areas where it is now in effect. Nothing contained in this Operating Agreement shall modify the presently existing rights or obligations of either party hereto to permit or require access to the Belt Line system.

2. Commencing on the date this Agreement and the Settlement Agreement are executed by the parties, Conrail will pay Belt Line the sum of [REDACTED] per month, subject to the

escalation provisions of Paragraph 3 of this Operating Agreement, for its operating rights over the rail properties designated in Exhibit "A", the maintenance of such rail properties by Belt Line, and all other services provided to Conrail by Belt Line. Said monthly payments shall be made on or before the 15th day of each month, to be applied to that month and shall be due notwithstanding the fact that neither Agreement has become effective in accordance with its terms.

3. Escalation Provision.

(a) The monthly payment of [REDACTED] referred to in Paragraph 2 of this Operating Agreement shall be referred to in this paragraph as the Base Charge.

(b) The Base Charge shall be subject to change to reflect any increases or decreases subsequent to the base year, as hereinafter provided.

(c) The Base Charge shall be revised effective November 1 of each year, beginning November 1, 1982, to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1967=100), Series Q-MPW, included in "Indexes of Railroad Material Prices and Wage Rates" (or its successor, the "Railroad Cost 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) a" index for the Eastern District shall be used and the final index figure for the calendar year 1980 shall be taken as the base. The method of

revising the Base Charge shall be determined by calculating the percentage of increase, or decrease, in the index of the year to be escalated as related to the 1980 base, and applying that percentage to the Base Charge.

(d) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excl. fuel) a" final index figure for the calendar year 1980; "B" to be the "Material prices, wage rates and supplements combined (excl. fuel) a" final index figure for the calendar year 1981; "C" to be the Base Charge; and "D" to be the percentage of increase or decrease, the revised Base Charge would be determined by the following formula:

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

$$(2) \quad (C \times D) + C = \text{revised Base Charge} \\ \text{effective Nov. 1, 1982}$$

(e) A revised Base Charge shall be calculated in that fashion each year as of November 1 of the year, and said revised Base Charge shall be paid monthly to Belt Line by Conrail during the twelve-month period commencing in November of said year.

(f) In the event the base for the annual Indexes of Charge-Out Prices and Wage Rates issued by the Association of American Railroads shall be changed from the year 1967, appropriate revision shall be made in the base (established as herein provided) for the calendar year 1980. If the Association of American Railroads or any successor organization discontinues publication of the Annual Indexes 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.

4. This Operating Agreement shall become effective upon approval, free of any right of appeal, by the Interstate Commerce Commission, and shall remain in effect until either party gives forty-five (45) days' notice of its desire to terminate. The agreement may be terminated by either party upon thirty (30) days' notice of a default by the other party if such default is not corrected within the thirty (30) day notice period, or, if such default cannot be corrected in the case of a default in making a payment under Paragraph 2 within fifteen (15) days and if any other default within thirty (30) days, unless a default is not reasonably capable of completion within thirty (30) days, in which case, if correction of such default is not commenced within thirty (30) days and diligently completed. The notice of default or of termination shall not be effective unless it is in writing and sent by certified mail to:

In the case of notice to Belt Line:

The Philadelphia Belt Line Railroad Company
Lafayette Building
Philadelphia, PA 19106
Attention: President

In the case of notice to Conrail:

Consolidated Rail Corporation
1838 Six Penn Center Plaza
Philadelphia, PA 19104
Attention: President

or to such other address as may be notified by either party to the other.

5. Conrail agrees to supply at its cost such maintenance-of-way materials as may be agreed upon as the result of twice-annual inspections of Belt Line-maintained-railroad to be done jointly by Conrail and Belt Line personnel. The assignment of maintenance-of-way material to Belt Line will be done subject to the final approval of the Conrail General Manager-Eastern Region, Philadelphia, which approval shall not be unreasonably withheld.

6. BELT LINE PROPERTIES NOT INCLUDED.

Belt Line properties not forming part of its common carrier railroad right-of-way and Belt Line rail properties not designated on Exhibit "A" are excluded from this Agreement, and Conrail shall have no interest in the proceeds of The Belt Line management of properties not included in this Agreement, nor shall any of the provisions of this Agreement apply to Belt Line's operation of such properties.

7. RESPONSIBILITY TO PERSONNEL.

Conrail agrees to indemnify, defend, and hold Belt Line harmless against any claims by, for, or on behalf of Conrail employees with respect to employment rights, protection payments, bodily injury, death, or property damage, or any other claim

whatsoever related to employment arising out of Conrail's continued use of and operations on Belt Line properties. Conrail does not agree to indemnify, defend, or hold Belt Line harmless against any claims based upon Belt Line's conduct or upon events alleged to have been caused by the condition of any track maintained by Belt Line.

8. INDEMNIFICATION.

Conrail agrees to indemnify, defend, and hold Belt Line harmless against any claims by, for, or on behalf of any third party arising out of any alleged negligent acts by Conrail arising in connection with its continued use of, operations on, or provision of rail service to customers located on Belt Line properties. Conrail does not agree to indemnify, defend, or hold Belt Line harmless against any claims based upon Belt Line's conduct or upon events alleged to have been caused by the condition of any track maintained by Belt Line.

9. OPERATIONAL DAMAGE.

In addition to all other liabilities assumed by it hereunder, Conrail shall be responsible for all damage to Belt Line property caused by any negligent operation of trains by Conrail. This paragraph excludes any damages arising from the condition of any tracks maintained by Belt Line.

10. TRANSPORTATION CHARGES.

All rates, fares, charges and/or surcharges for transportation services provided by Conrail on facilities designated in Exhibit "A" shall be set by Conrail in tariffs or contracts issued or entered

into by Conrail. Conrail will not bill, collect or be held liable for any transportation charges imposed by Belt Line prior to the effective date of this contract. Belt Line will cancel its tariff PBL 9500, I.C.C.—~~PBL~~ 9005-F, PA PUC 128 and agrees that during the period this Agreement is effective and Conrail is the sole user of Belt Line North facilities and compliance herewith, Belt Line will refrain from imposing cost recovery surcharges, surcharges under the authority of 49 U.S.C. 10705a, switching charges or other charges for transportation services which are applicable in whole or part to transportation services on the Belt Line North as described in Exhibit "A". If any other railroad becomes entitled to use of Belt Line North facilities, Belt Line shall be permitted to impose, bill and collect such charges in connection with services supplied by such other railways.

11. CONSTRUCTION.

This agreement is to be construed in accordance with the laws of the Commonwealth of Pennsylvania and federal statutes insofar as they apply.

12. ASSIGNABILITY.

This Operating Agreement is not assignable by either party unless it first obtains the written consent of the other party.

13. REGULATORY CONSIDERATIONS.

A. This agreement is construed in terms of the Order of the Interstate Commerce Commission under Finance Docket 29517, dated April 10, 1981, and will be submitted to the Commission in

accordance with that Order and will become effective as far as the Commission is concerned immediately, unless otherwise ordered by the Commission.

B. This agreement will become effective thirty (30) days after its submission to the Pennsylvania Public Utility Commission, unless proceedings are instituted in accordance with Section 507 of Title 66 of the Pennsylvania Consolidated Statutes, in which case, it will become effective thirty (30) days after final determination of such proceedings. Pending such approval, and after the execution of the Settlement Agreement between the parties hereto, Conrail will pay Belt Line the sum of \$12,500 per month for the use of its facilities.

14. BELT LINE PRINCIPLE.

In its operation on facilities of Belt Line property subject to this agreement, Conrail will provide full and equal facilities upon equal terms, without discrimination or favoritism among said railroads or in favor of Conrail, for such railroads as may properly gain access to said Belt Line properties, and Conrail will operate said Belt Line facilities so that the same will be used and controlled in the interests of the trade and commerce of the City of Philadelphia. Nothing contained in this Operating Agreement shall modify the presently existing rights or obligations of either party hereto to permit or require access to the Belt Line system.

15. RIGHTS OF THIRD PARTIES.

Nothing in this agreement shall abrogate or alter

the rights of parties other than Conrail and Belt Line under agreements with Belt Line, Conrail, or both, nor shall this Agreement abrogate or alter the rights of the City of Philadelphia whether arising out of agreements, ordinances or grants of franchises to or with Belt Line, Conrail or either of them.

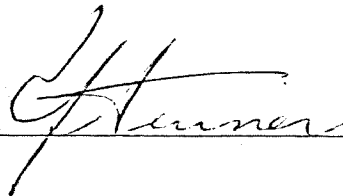
16. ABANDONMENT AND CHANGES.

Nothing in this Agreement shall modify the rights of Belt Line or Conrail with respect to abandonment of Belt Line facilities or franchises, making of major changes in such facilities without the written consent of Belt Line nor shall this Agreement be construed to limit Conrail's rights, as they presently or may from time to time exist, to abandon its own tracks or facilities, subject to Belt Line's rights, if any exist, to oppose such abandonment on grounds which do not arise out of this Agreement.

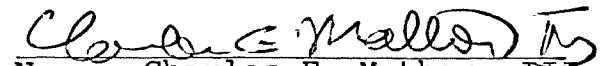
IN WITNESS WHEREOF, the parties hereto have caused this Operating Agreement to be executed on their behalf as of the date first above written.

THE PHILADELPHIA BELT LINE
RAILROAD COMPANY

Attest

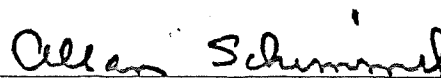


By


Name: Charles E. Mather, III
Title: President

CONSOLIDATED RAIL CORPORATION

Attest



SECRETARY

By

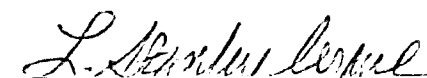

Name: L. Stanley Crane
Title: Chairman and Chief
Executive Officer

EXHIBIT B TO
SETTLEMENT AGREEMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE PHILADELPHIA BELT LINE	:	CIVIL ACTION
RAILROAD COMPANY,	:	
	:	
Plaintiff	:	
	:	
v.	:	
	:	
CONSOLIDATED RAIL CORPORATION	:	
	:	
Defendant	:	NO. 80-4201

STIPULATION FOR DISMISSAL WITH PREJUDICE

IT IS HEREBY STIPULATED AND AGREED by the parties
to this action, acting through their undersigned counsel,
that the Court is respectfully requested to enter the attached
order dismissing this action with prejudice.

ANTHONY B. AGNEW, JR.
Gilfillan, Gilpin & Brehman
11th Floor
1201 Chestnut Street
Philadelphia, PA 19107
(215) 563-5700

LAURENCE Z. SHIEKMAN
M. DUNCAN GRANT
ELEANOR N. EWING
Pepper, Hamilton & Scheetz
123 South Broad Street
Philadelphia, PA 19109
(215) 893-3000

Dated:

THE PHILADELPHIA BELT LINE
RAILROAD COMPANY,

Plaintiff

V.

CONSOLIDATED RAIL CORPORATION

Defendant

CIVIL ACTION

NO. 80-4201

ORDER

IT IS HEREBY ORDERED, this day of October, 1981, that the above action shall be, and the same is hereby, DISMISSED WITH PREJUDICE. Each party is to bear its own costs.

J.

DESCRIPTION OF THE PROPERTY FOR EXHIBIT A OF THE AGREEMENT

The property to be used by Conrail under this Agreement shall consist of the line of railroad located in the Bridesburg Section of Philadelphia, commencing at Engineering Station 0+0 at the South House Line of Allegheny Avenue, extending in a general Northeasterly direction along the West side of relocated Delaware Avenue and then extending in and along Carbon Street (not opened) to its intersection with Buckius Street at Engineering Station 110+00, the latter being the point of delivery of traffic to the Rohm and Haas Plant. This property also includes the Kettlewell Street Branch from its junction with the above described line to the intersection of Schiller and Allen Streets. All property is located in the City of Philadelphia. A general location map is attached.

EXHIBIT "A"

EXHIBIT 8

FILE IN DOCKET

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Petition of the Philadelphia)
Belt Line Railroad Company) Finance Docket No. 29517
under 49 U.S.C. §10505 for)
Exemption from Regulation)

SUPPLEMENTAL PETITION
FOR CLARIFICATION AND/OR
POSTPONEMENT OF CONSUMMATION



1. BACKGROUND

By this Supplemental Petition, The Philadelphia Belt Line Railroad Company ("PBL" or "The Belt Line"), a nonoperating common carrier by railroad, requests that the Commission clarify its operating rights under an exemption previously granted in Finance Docket No. 29517 or alternatively, extend the deadline prescribed in that order for consummating the transaction.

On November 14, 1980, The Belt Line originally filed a petition with the Commission under §10505 of the Interstate Commerce Act ("The Act"), 49 U.S.C. §10505, requesting a confirmation of its rights to provide its own transportation function and to operate as an independent railroad over the rail properties described below without having to obtain operating authority under §10901 of the Act. The rail properties sought to be operated include:

OWNED - Belt Line North - Allegheny Avenue to Bridge Street plus branches.

Penn's Landing Segment - Catherine Street to Callowhill Street.

Food Distribution Center - 11th Street to Swanson Street.

TRACKAGE RIGHTS -

River Front Railroad - Calowhill Street to Cumberland Street; Trenton Avenue connection and Branches.

TRACKAGE RIGHTS (Continued):

South Delaware Avenue - Pattison Avenue to Catherine Street (CR & B&O)

South Philadelphia Agreement -
Thorofare Tracks - STADIUM to Delaware Ave.
Delaware Extension - STADIUM to PENROSE
(CR & B&O)

OVERHEAD RIGHTS -

Port Richmond Yard - Cumberland Street to Allegheny Ave.

PBL's petition was based on the fact that it was originally chartered on May 10, 1889 to operate as a neutral terminal company providing a competitive railroad service for the Port of Philadelphia. Pursuant to a series of agreements^{1/}, carriers seeking access to The Belt Line's facilities including the Reading Company, the Pennsylvania Railroad, the Baltimore & Ohio Railroad, and their predecessors, obtained rights to use its properties in exchange for payment of certain obligations. These agreements are still effective today and available to any railroad willing to abide by their terms.

On April 1, 1976, the Consolidated Rail Corporation ("Conrail"), a new carrier created by the U.S. Railway Association out of the properties of the bankrupt eastern carriers, took over the properties and operations of the Reading and Penn Central^{2/} Railroads in Philadelphia. Conrail continued to use The Belt Line facilities and make payments in accordance with the aforementioned agreements. In October, 1977, certain disputes developed between PBL and Conrail with the result that Conrail

^{1/} Described fully in PBL's November 14, 1980 petition.

^{2/} Successor to the Pennsylvania Railroad.

began to withhold some payments due under the agreements for the use of The Belt Line's facilities. During the same period, the Delaware & Hudson Railway Company ("D&H") requested access to PBL's facilities pursuant to exercise of The Belt Line's charter obligations.

As a result of Conrail's refusal to pay for the use of PBL facilities and to handle D&H traffic, The Belt Line initiated certain litigation. Specifically, The Belt Line filed an action in Federal District Court against Conrail for declaratory and injunctive relief and money damages. The Belt Line also filed with the Commission on November 14, 1980, a petition for exemption from the requirements of §10901 to allow it to provide its own transportation function and operate as an independent railroad. On April 10, 1981, the Commission issued an order in Finance Docket No. 29517, 46 F.R. 21492, effective May 10, 1981, exempting PBL from compliance with the entry requirements of §10901 provided that it initiate operations within one year of the order's effective date (May 10, 1982).

Subsequently, by agreements dated November 24, 1981,^{3/} The Belt Line and Conrail settled their dispute over the use and compensation for PBL facilities. As relevant, the agreements

^{3/} Copies attached hereto.

provide that Conrail shall pay The Belt Line \$150,000 in full settlement of claims arising between April 1, 1976 and November 24, 1981; that Conrail shall pay The Belt Line \$12,500 per month, subject to escalation, for operating rights, maintenance, and other services, that Conrail shall provide full and equal access without discrimination to other railroads obtaining rights to The Belt Line's properties; and that the agreements may be terminated upon default or upon reasonable notice. Significantly, the parties provided^{4/} that the agreements would be submitted to the ICC in accordance with and pursuant to FD. 29517 and would become effective upon ICC approval.

Consistent with the spirit of the Operating Agreement, PBL notified the Commission by letter dated December 14, that the agreements had been signed. The Belt Line asked the Commission to view the agreements as implementing the authority previously granted by way of exemption in FD. 29517 or decline to assert jurisdiction over the matter. Alternatively, The Belt Line requested the Commission to waive the condition that consummation take place within one year of the effective date of FD. 29517. Although the Commission never responded to The Belt Line's letter, the staff informally asked PBL to submit this petition for relief with supporting legal authorities.

^{4/} At paragraph 13, p. 8-9 of the Operating Agreement.

II. Conrail Operation of The Belt Line's
Operating Authority Constitutes Consummation

Conrail's operation of PBL's railroad facilities pursuant to The Belt Line charter and implementing agreements and the settlement and operating agreements executed on November 24, 1981 constitutes consummation of the authority granted in Finance Docket No. 29517. Indeed, both Conrail and The Belt Line expected that the Commission would regard the execution of the settlement and operating agreements as fulfillment of the exemption authority. As the operating agreement clearly states in paragraph 13:

"This agreement is construed in terms of the Order of the Interstate Commerce Commission under Finance Docket No. 29517, dated April 10, 1981, and will be submitted to the Commission in accordance with that Order and will become effective as far as the Commission is concerned immediately, unless otherwise ordered by the Commission."

Aside from the stated intentions of the parties, there are other reasons why the Commission should regard Conrail's operation of The Belt Line's properties. The Belt Line's unique status as a neutral terminal company requires it to keep a degree of distance between it and those carriers using its facilities. Any order of the Commission which recognizes The Belt Line's own common carrier status and the role of Conrail as a contract operator, in other words as an agent, preserves that important legal distinction. Any decision by the Commission which does not grant exempt operating authority to The Belt

Line in its own name while permitting it to contract out the transportation functions to another carrier blurs the neutral terminal company label mandated by The Belt Line charter. Moreover, PBL did not file its FD. 29517 petition to obtain an exemption from seeking new operating authority but rather to confirm and clarify preexisting rights dating back to the Nineteenth Century.

Commission precedent also compels the conclusion that Conrail operation of PBL facilities satisfies the consummation requirements of the Commission's order. Although The Belt Line exemption petition appears to present a case of first impression, there is some relevant precedent. In that regard, PBL submits that it is already a common carrier, subject to Commission regulation. The test of whether or not a railroad company will be treated as a common carrier, subject to Commission regulation, is whether there has been a "holding out" to the public as a common carrier; but this "holding out" is not proven by what the party calls itself or how much it advertises, but by the services that it actually performs. See Status of Bush Universal, Inc., 342 I.C.C. 550,564 (1973) and cases cited therein. In determining whether the owner of railroad properties will be regarded as a regulated common carrier, the Commission has observed:

As such it is a "person" inextricably and functionally engaged in "transportation" by "railroad" within the meaning of former section 1(3)(a) of the Interstate Commerce Act. This maintenance obligation, coupled with the implicit duty under the certificate of furnishing adequate freight service in interstate commerce (which duty lies latent so long as substitute freight service is being fulfilled by SIRT under a trackage rights arrangement) is sufficient to establish that it is now engaged in such transportation as a carrier by railroad subject to the Interstate Commerce Act.

Brotherhood of Loco. Engineers v. Staten Island, 360 I.C.C. 464, 474 (1979). The fact that PBL has historically contracted out its transportation function is not significant. Washington University v. United States, 157 F. 2d 112 (8th Cir. 1946) (holding that University, which owned a public freight station and operated it under contract with a terminal railroad, was a common carrier by railroad and, as such, subject to certain employment taxes).

Viewed in light of this precedent, PBL is clearly, and always has been, a common carrier. It performs its own track engineering and maintenance, reports to the I.C.C. as Class III common carrier, issues local switching tariffs,^{5/} collects demurrage, and controls access to and use of its facilities by Class I carriers. It is The Belt Line, not Conrail, B & O, or D & H, to which its shippers primarily look for rail service. Furthermore, the fact that PBL has not, to date, chosen

^{5/} See I & S No. 70584, Conrail Petition to Reject Philadelphia Belt Line Tariff, October 2, 1981.

to exercise its rights to operate as an independent carrier is irrelevant. As the Commission noted in Staten Island, supra, at 474, PBL's duty to provide service is latent so long as Conrail, B & O, and their predecessors furnished a substitute service. Thus, PBL submits that its right to operate as an independent carrier has existed since 1889. The Commission may choose to recognize Conrail's current operation pursuant to the November 24, 1981, agreements as a fulfillment of that right. The Commission may go even one step further by holding that PBL's independent operating rights have remained dormant during periods of contract operation, but such rights will automatically arise upon termination of contract service.

III. The Commission May Extend Consummation
Indefinitely or For Additional Periods of Time

Should the Commission decide that Conrail operation of The Belt Line pursuant to the November 24, 1981, agreement does not constitute consummation of the authority granted by exemption in FD 29517, petitioner urges the Commission to extend the consummation date. PBL's unusual request is premised on uncertainty over the future of rail service provided by Conrail. Under the Northeast Rail Service of 1981 ("NERSA")^{6/}, enacted as part of The Omnibus Budget Reconciliation Act, Congress directed that Conrail be changed from a government-owned and financed railroad to a profitable, privately-owned enterprise.

^{6/} 95 Stat. 676, amending the Regional Rail Reorganization Act of 1973, 45 U.S.C. Section 701, et seq.

or face liquidation. Sections 403 through 408 of NERSA establishes a rough time table for Conrail's transformation from public to private enterprise. Section 405(d) even provides for the Secretary of Transportation to set up neutral terminal companies in the Northeast. Since the transformation or dissolution of Conrail could come any time between 1983 and the end of this decade, PBL requires a flexible time frame for consummating that FD. 29517 authority.

The Belt Line has researched the question of whether the Commission can authorize an indefinite extension and has found nothing precisely on point. The case of FD. No. 29156, McHugh Brothers Heavy Hauling, Inc.-Control-New Hope & Ivyland Railroad Company, _____ I.C.C. _____ (Served Feb. 8, 1982) (not printed), does indicate that the Commission will extend a consummation date for at least two years. Although the Commission's power to reopen a proceeding for the purpose of imposing conditions is not exactly the same as the power to postpone compliance with a consummation condition, these powers are in many respects analogous. As a general proposition, the power to authorize a transaction necessarily includes the power to condition a transaction and to insure compliance with a condition. Atlanta, B. & C. R. Co. v. United States, 28 F. 2d 885, 887 (N.D. Ga. 1928); Bush Term. R. Co. Operation, 257 I.C.C. 375, 385 (1944). The power to postpone the date for compliance with a condition seems to be a natural corollary of the power to impose a condition.

The Commission has also consistently held that it has jurisdiction to reopen or modify its orders in light of changed circumstances. See, e.g., Norfolk & W. Ry. Co. And New York, C. & St. L. R. Co. Merger, 347 I.C.C. 506 (1974); Nueces County Navigation District No. 1, Construction, 330 I.C.C. 717, 720 (1967); Central Pac. Ry. Co. Control, 317 I.C.C. 469, 482 (1962). In fact, the Commission has complete power over its orders and can modify or suspend them at any time. Loftus v. Pullman, 19 I.C.C. 102, 104 (1910); Modified, 20 I.C.C. 21 (1910). Furthermore, the Commission may reopen or modify its orders despite the lack of a specific condition or provision for reopening, Southern Pacific Company v. United States, 277 F. Supp. 671, 675 (D. Nebr. 1967). The power to reopen or modify a decision is also not limited to Section 11343 Transactions. Cf. Levisa River R. Co. Construction, 257 I.C.C., 203, 220 (1944); Chicago, R.I. & P. Ry. Co.-Trustees Abandonment, 254 I.C.C. 785, 781-7 (1944); Baldwin v. Scott County Milling Co., 307 U.S. 478 (1939) (involving line extensions and abandonments). Commission orders will not be defective where jurisdiction is retained for further consideration and imposition of conditions at some later date. Erie-Lackawanna Railroad Company v. United States, 259 F. Supp. 964, 975 (S.D. N.Y. 1966) (merger case).

The Belt Line urges that this precedent is dispositive on the issue of the Commission's power to postpone the consummation date. That date was imposed as a condition of the original grant of the exemption. The Commission therefore

retains jurisdiction to postpone or eliminate the consummation requirement or to grant other relief in view of changed circumstances. At the time, PBL's original petition was filed, the parties did not expect that The Belt Line-Conrail litigation would be settled in the manner it was, if at all. Also, no one could have anticipated with any degree of specificity legislation on the reorganization or disposition of Conrail. Accordingly, PBL requests that changed circumstances require that the Commission either extend indefinitely the date, May 10, 1982, imposed in the original FD. No. 29517 order or extend that date for a specific period for up to five years to permit a delayed consummation. Furthermore, The Belt Line petitions the Commission to retain jurisdiction over this matter to enter such additional orders as may be required.

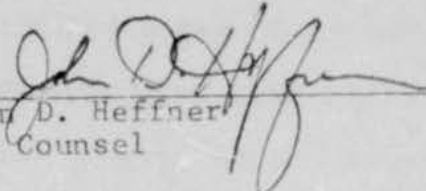
IV.

Wherefore, The Philadelphia Belt Line Railroad Company requests that the Commission either find (1) that Conrail's operation over The Belt Line's facilities constitutes consummation of the exemption authority previously granted in FD. No. 29517 or, (2) alternatively postpone the consummation deadline of May 10, 1982, imposed in the original FD. No. 29517 order indefinitely or to a date five years hence, and (3) retain jurisdiction to enter such additional orders as may be required.

Respectfully submitted,

THE PHILADELPHIA BELT LINE RAILROAD, INC.

By


John D. Heffner
Its Counsel

Of Counsel
Pepper & Corazzini
1776 K Street, N. W.
Washington, D. C. 20006

202/296-0600

EXHIBIT 9

REDACTED

EXHIBIT 10

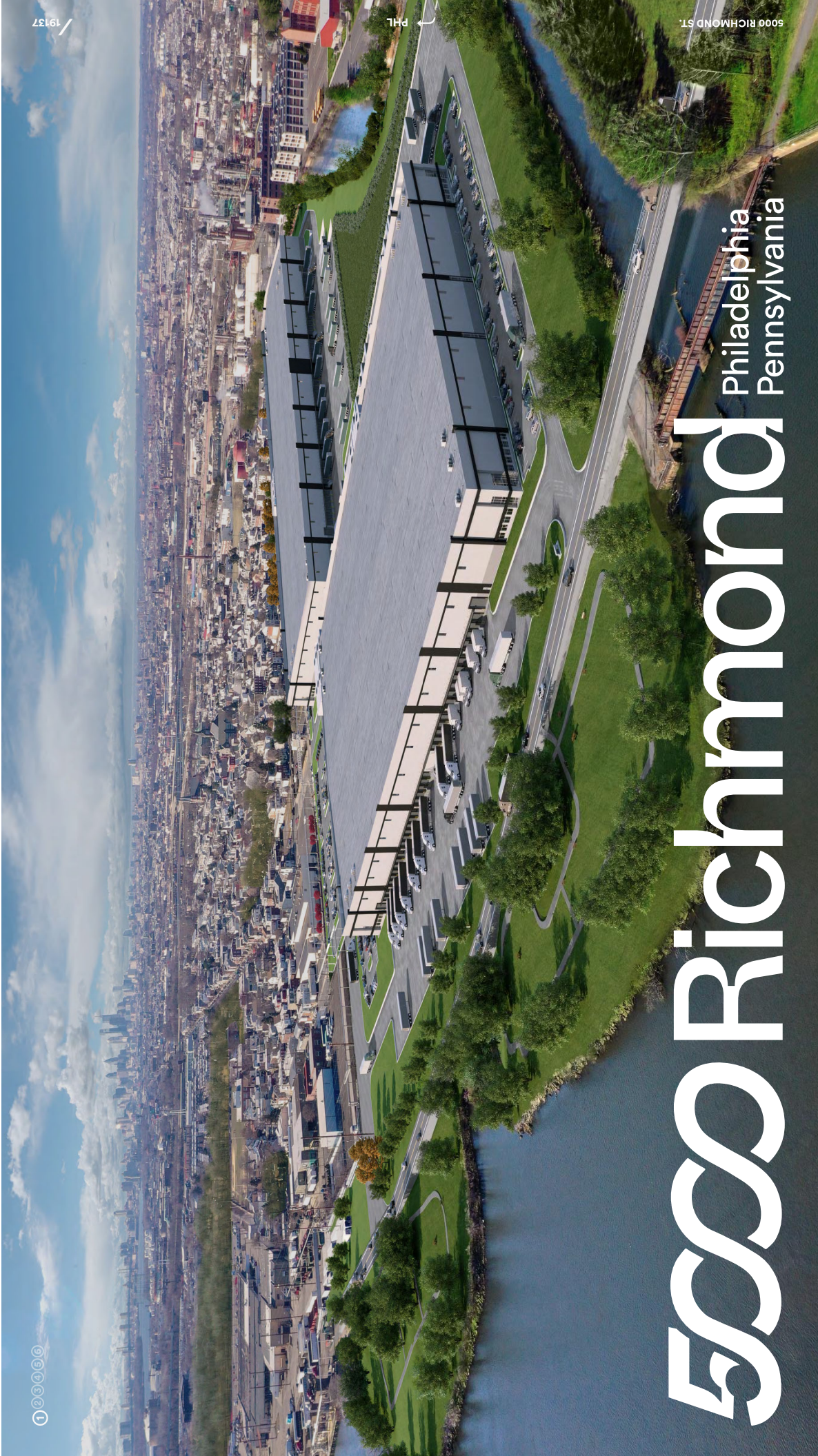


5000 Richmond

Philadelphia
Pennsylvania

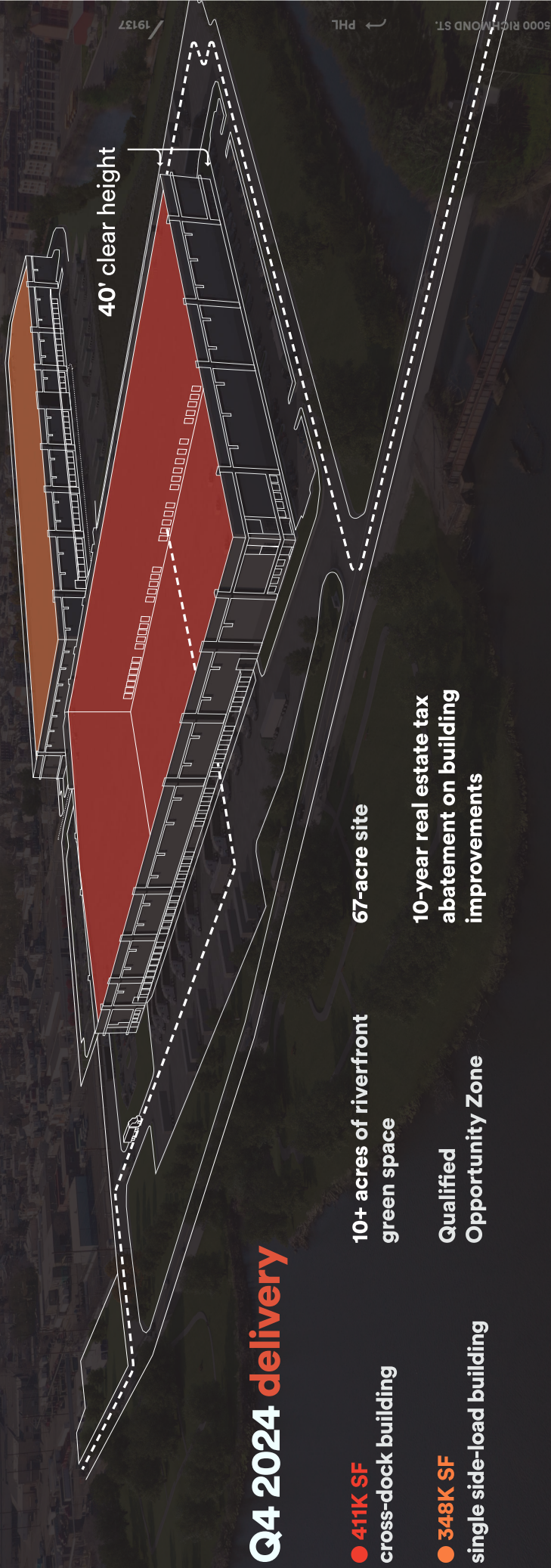
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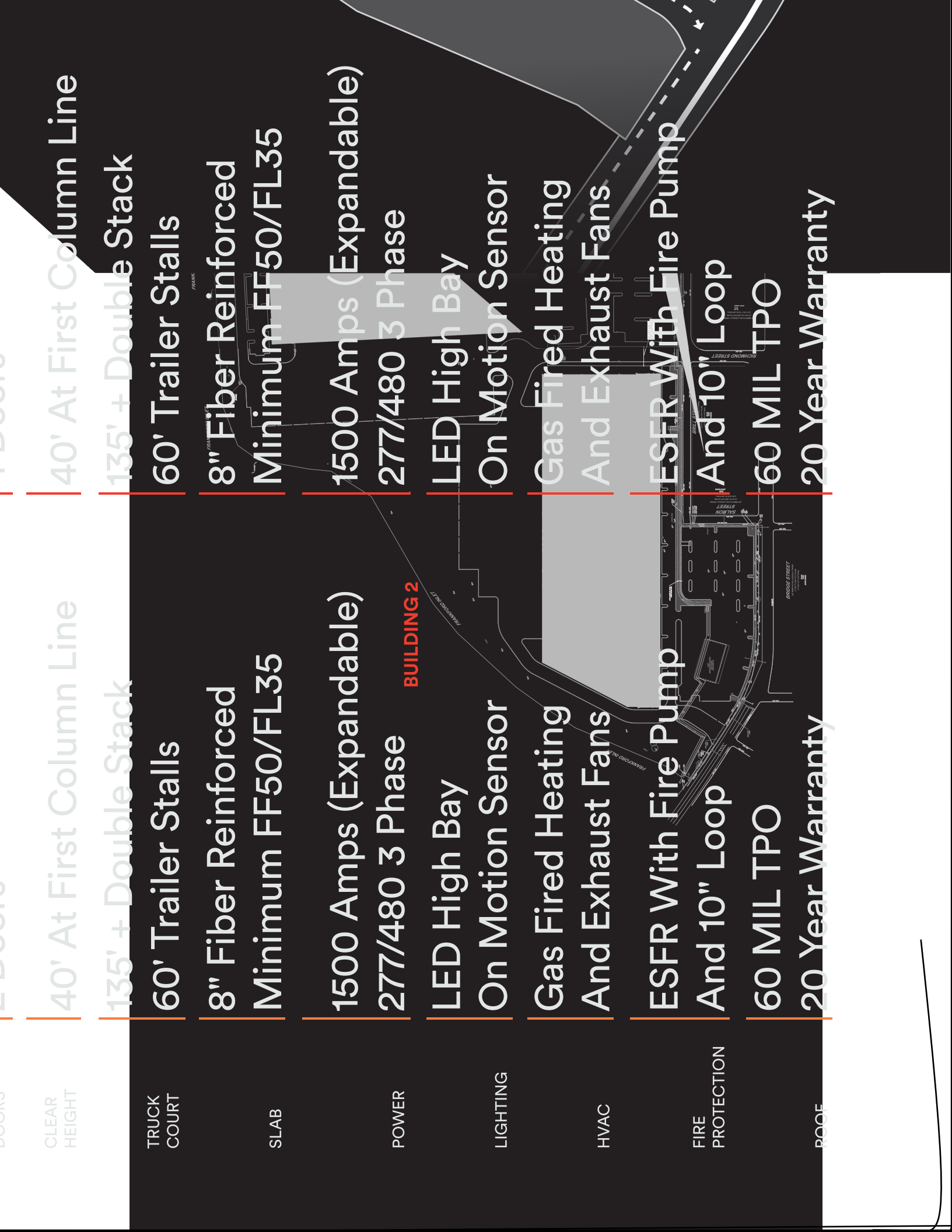


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CLEAR
HEIGHT

40' At First Column Line

40' At First Column Line

TRUCK
COURT

135' + Double Stack

135' + Double Stack

60' Trailer Stalls

60' Trailer Stalls

SLAB

8" Fiber Reinforced
Minimum FF50/FL35

8" Fiber Reinforced
Minimum FF50/FL35

POWER

1500 Amps (Expandable)
277/480 3 Phase

1500 Amps (Expandable)
277/480 3 Phase

LIGHTING

LED High Bay
On Motion Sensor

LED High Bay
On Motion Sensor

HVAC

Gas Fired Heating
And Exhaust Fans

Gas Fired Heating
And Exhaust Fans

FIRE
PROTECTION

ESFR With Fire Pump
And 10" Loop

ESFR With Fire Pump
And 10" Loop

ROOF

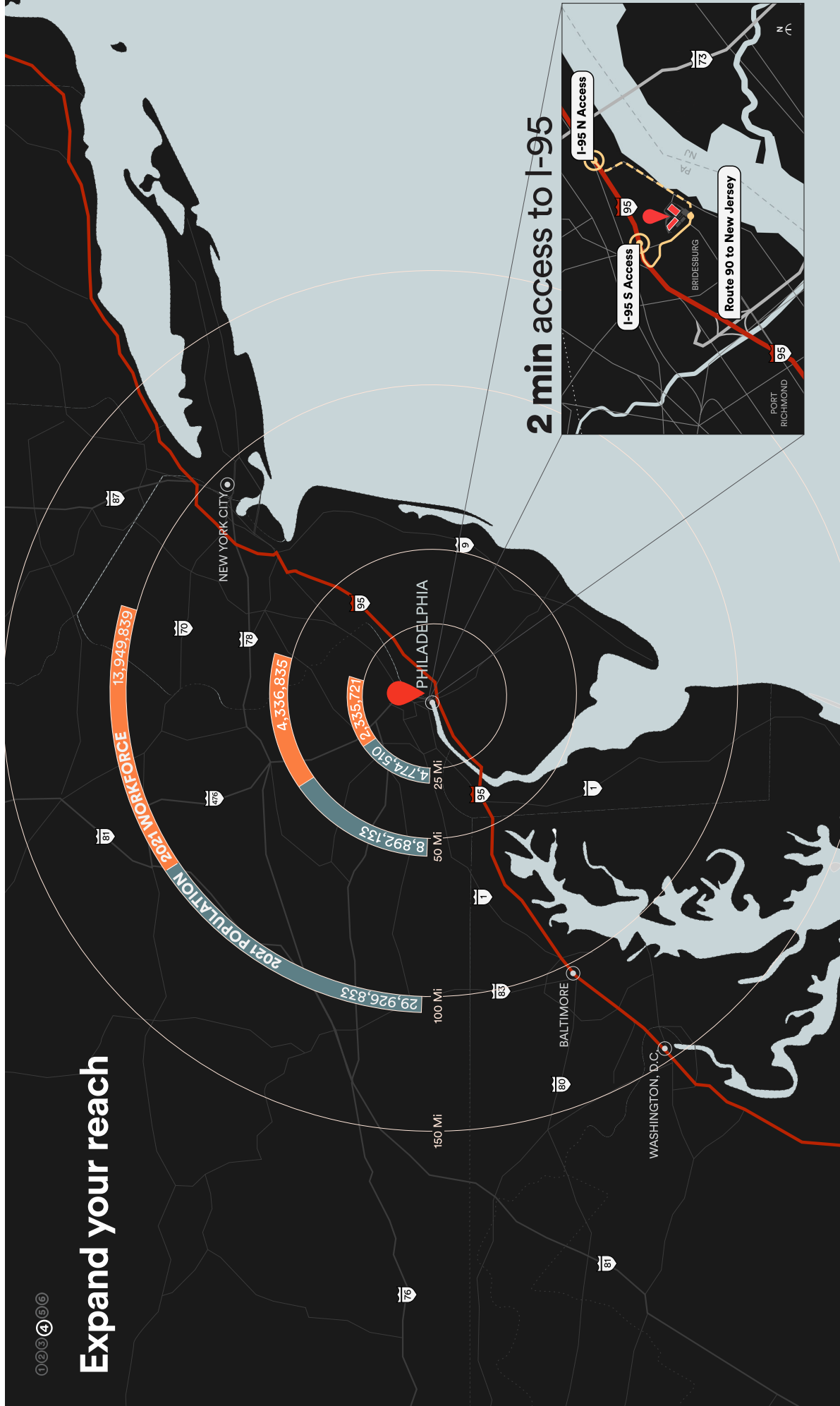
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60 MIL TPO

20 Year Warranty

20 Year Warranty

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2 min access to I-95



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Andrew Green

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andrew.green@cbre.com

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Thomas F. Monahan

Vice Chairman

tom.monahan@cbre.com

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EXHIBIT 11

REDACTED

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October, 2024, copies of the foregoing Opening Statement were served by electronic mail on the parties of record on the official service list for Docket No. FD 36710.

/ss/ Thomas W. Wilcox
Thomas W. Wilcox