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EXPEDITED ACTION REQUESTED

April 30, 2019

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Cynthia T. Brown, Chief
Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
April 30, 2019
Part of
Public Record

Re: Docket No. FD 36298, Naval Nuclear Propulsion Program, United States Army Military Surface Deployment and Distribution Command, and Fluor Marine Propulsion, LLC – Petition For Declaratory Order

FEE RECEIVED
April 30, 2019
SURFACE
TRANSPORTATION BOARD

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket please find (i) an executed original (which contains marked color pages) and ten copies of the Joint Petition of the Naval Nuclear Propulsion Program, United States Army Military Surface Deployment and Distribution Command, and Fluor Marine Propulsion, LLC For Declaratory Order; (ii) three CDs with PDF copies of the Joint Petition; and (iii) an executed original and ten copies of a Joint Motion For Procedural Schedule.

Also enclosed is a check for the filing fee of $1,400. By this letter, Petitioners Naval Nuclear Propulsion Program, United States Army Military Surface Deployment and Distribution Command, and Fluor Marine Propulsion, LLC ("FMP") request waiver of the filing fee. *See* 49 C.F.R. § 1002.2(e)(1) (waiving filing fees for federal governmental entities).

Kindly date stamp the extra copy of this cover letter and the enclosed pleadings and return them to the bearer of this letter. Thank you for your attention to this matter.

FILED

April 30, 2019
SURFACE
TRANSPORTATION BOARD

Respectfully submitted,

John H. LeSeur
An Attorney for FMP

cc: Certificate of Service List

EXPEDITED ACTION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

NAVAL NUCLEAR PROPULSION PROGRAM, UNITED STATES ARMY MILITARY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND, AND FLUOR MARINE PROPULSION, LLC – PETITION FOR DECLARATORY ORDER	)	Docket No. FD 36298

JOINT PETITION OF NAVAL NUCLEAR PROPULSION PROGRAM, UNITED STATES ARMY MILITARY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND, AND FLUOR MARINE PROPULSION, LLC FOR DECLARATORY ORDER

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Dated: April 30, 2019

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Verified Statement of Donald J. Boyle

COUNSEL'S EXHIBIT

BEFORE THE
SURFACE TRANSPORTATION BOARD

NAVAL NUCLEAR PROPULSION PROGRAM, UNITED STATES ARMY MILITARY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND, AND FLUOR MARINE PROPULSION, LLC – PETITION FOR DECLARATORY ORDER	)	Docket No. FD 36298

JOINT PETITION OF NAVAL NUCLEAR PROPULSION PROGRAM, UNITED STATES ARMY MILITARY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND, AND FLUOR MARINE PROPULSION, LLC FOR DECLARATORY ORDER

The Naval Nuclear Propulsion Program ("NNPP"), the United States Army Military Surface Deployment and Distribution Command ("SDDC") and Fluor Marine Propulsion, LLC ("FMP") (collectively the "Government") submit this Joint Petition for Declaratory Order and, in support hereof, state as follows:

SUMMARY

The Government asks the Surface Transportation Board ("STB" or "Board") to address three questions that arise in the context of Delaware & Hudson Railway Co. d/b/a Canadian Pacific's ("CP's") recent interest in selling a short rail line (or a portion of it) CP owns, colloquially referred to as the Ballston Spa Industrial Track ("BSIT"), and related threats by CP to either stop providing service over the BSIT or to deny the Government access to the BSIT to transload its freight. These questions are important because failure to timely transload the Government's freight has significant national security implications to the Government.

The BSIT as currently configured is a single-line track that starts at a switch off a CP north/south main line located near Ballston Spa, NY and moves north and west for approximately 0.55 miles to an end-point located just to the east of an old freight house. The Government has used the BSIT for over sixty years as a critical link in the transportation of heavy oversized containers (some of which contain radioactive materials) to its Kenneth A. Kesselring Site ("Kesselring Site"). The Kesselring Site is a vitally important defense facility where the Government trains sailors to operate nuclear-powered vessels through the use of operating prototype naval nuclear reactor plants. The Kesselring Site and the BSIT are part of the Strategic Rail Corridor Network ("STRACNET") – the network that identifies military facilities that must receive rail service.

CP wants to sell the BSIT, or a portion of it, to the Government. CP has informed the Government that its interest in selling is liability-based. Specifically, CP has told the Government that following the tragic rail accident in 2013 at Lac-Mégantic CP's senior management team determined it should attempt to sell property it owned that was used to transport hazardous commodities.

CP has endeavored to leverage its sales interest by threatening to stop providing service over the BSIT, or denying the Government access to the BSIT to transload its container cars, unless the Government agreed to its sales terms. CP also attempted to better its sales-hand by initially representing to the Government that the BSIT was an excepted spur, a representation that the Government learned was inaccurate only after it retained STB Counsel.

STB Counsel reviewed the Interstate Commerce Commission's ("ICC" or "Commission") archived dockets and found that in 1980, CP's predecessor – the Delaware & Hudson Railway Company ("D&H") – had sought authority to abandon the BSIT, which at that time was a 1.03-mile rail line. In D&H's 1980 Abandonment Case,[1] D&H acknowledged that the BSIT was a regulated common carrier line because it once formed part of D&H's main line. The Government, acting through the Department of Energy ("DOE"), opposed D&H's proposal because then, as now, the BSIT served a critical transportation link in the Kesselring Site logistics chain. The case was resolved when D&H amended its abandonment application by withdrawing its request to abandon the portion of the BSIT that shippers, including the Government, were using – the 0.56-mile segment from the main line switch to the old freight house – while proceeding to seek authority to abandon the remaining portion of the line west of the old freight house. The ICC approved the application, as amended. 1980 Abandonment Case (ICC decision served Oct. 15, 1980) ("Final Decision") (Counsel's Exhibit ("CE") at 107-109).

With this new information in hand, the Government asked CP to consider exploring a potential *State of Maine*[2] transaction where the Government could purchase the BSIT while CP retained a common carrier easement to provide service. While the Government did not agree with CP's hardball sales tactics, it believed that a *State of*

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[1] *See Del. & Hudson Ry. Co. – Abandonment – In the Towns of Ballston & Milton, NY*, ICC Docket No. AB-156 (Sub-No. 9F) ("1980 Abandonment Case").

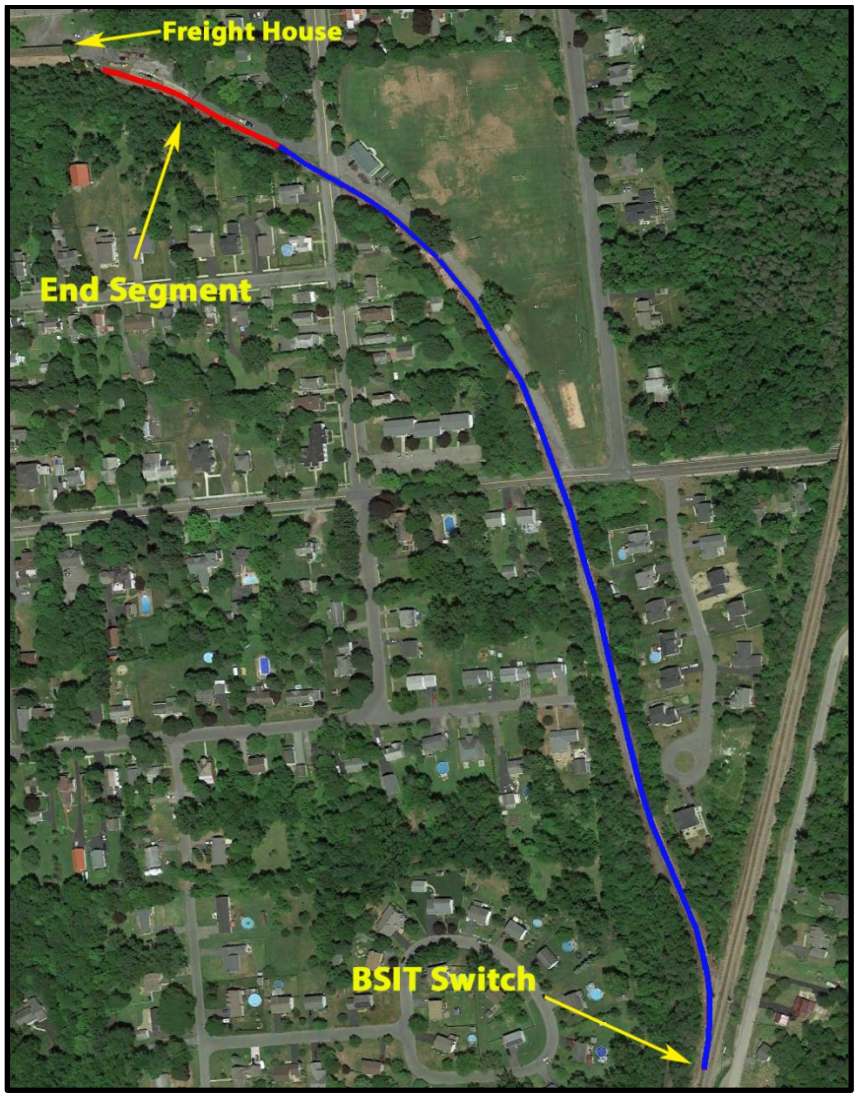
[2] *See Maine, Dep't of Transp. – Acquisition & Operation Exemption – Maine Cent. R.R.*, 8 I.C.C.2d 835 (1991) ("*State of Maine*").

Maine transaction could be a "win/win" because CP would obtain its stated objective (sale of the BSIT) and the Government would achieve its goal (continued CP common carrier service).

Unfortunately, CP summarily rejected exploration of a *State of Maine* transaction and instead threatened to seek abandonment authority for what it called the "regulated" segment of the BSIT. CP now appears to concede that a portion of the BSIT – from the main line switch to a point approximately 430 feet from the end of the BSIT is an STB-regulated rail line, but takes the position that the remaining segment of the BSIT ("End Segment") is an excepted spur, a position CP asserts is based on its construction of the ICC's 1980 Abandonment Case record.

The Government informed CP that its threat to abandon a STRACNET connector line was irresponsible, and it appears that CP has backed off that threat in part (for now). In March 2019, CP proposed to retain the "regulated segment" of the BSIT; sell the End Segment to the Government; and then operate over the End Segment under some form of "private siding agreement."

With the foregoing history in mind, the Government asks the Board to address three questions in connection with the End Segment of the BSIT, illustrated in the recent satellite map:



The first question is whether the End Segment is a regulated rail line. The Government asks the Board to find that the answer to this question is "yes." The 1980 Abandonment Case Final Decision requires CP to continue to provide service over the BSIT from the main line switch (Valuation Station 1626+83) to the old freight house, a distance of approximately 0.56 miles. This 0.56 miles includes the End Segment. *See* Final Decision at 1-2 (CE-108 thru -09).

The second question is whether CP has a common carrier obligation to provide common carrier rates and to transport the Government's regulated commodity

shipments over the End Segment upon reasonable request and has a corollary common carrier obligation to allow the Government reasonable access to the End Segment to transload its freight. The Government asks the Board to find that the answer to this question is "yes" because a common carrier must provide rates and service on reasonable request; must provide a reasonable location for shippers to transload their freight on railroad property; and must grant shippers reasonable access to that property to transload their freight.

The third question is if (i) the End Segment is (or becomes) a non-regulated rail line and (ii) the Government purchases the End Segment for its exclusive use, does CP have a common carrier obligation to place the Government's cars on the End Segment? The Government asks that the Board answer this question "yes." The law has long held that a common carrier must deliver shipments on private track clear of the railroad's right-of-way.

The Board's answers to these questions will assist the Government in two crucial ways: (i) it will assist the parties in structuring a purchase transaction (if one is to occur); and (ii) it will let the parties know what common carrier service rights the Government possesses over the BSIT End Segment.

The Government respectfully requests that the Board expedite its consideration of this Joint Petition. The Government is currently engaged in a very time-sensitive naval nuclear reactor refueling overhaul at the Kesselring Site. The first shipment of radioactive material is scheduled for late 2019/early 2020. Based on CP's actions and statements to date, the Government has substantial reasons to be concerned

that CP will threaten to not transport the loaded containers and/or not allow the Government access to the only place the containers can be transloaded – the area at the end of the BSIT End Segment – if the issues raised in this Joint Petition are not resolved promptly.

In addition, any delays in the Government's refueling overhaul schedule can cost the Government up to $800,000 per day and undermine national security interests because for every week or partial week of delays the Government incurs in returning the prototype to student training, the Navy fleet suffers a loss of approximately 20 nuclear-trained sailors.

The Government's Joint Petition contains supporting Verified Statements ("VS") from five witnesses: Stephen J. Trautman, Deputy Director of NNPP; David P. Dorfman, Senior Civil Engineer, Railroads for National Defense Program, SDDC Transportation Engineering Agency; Angela L. Hemphill, Chief of Domestic Movement Operations and Fleet Manager, SDDC Operations Directorate G3; Bernhard E. Gundermann, Manager, Refueling Overhaul Production Support, Naval Nuclear Laboratory ("NNL")/FMP; and Donald J. Boyle, Managing Counsel, NNL/FMP.

IDENTITY OF PETITIONERS

Petitioner NNPP is an integrated joint DOE and U.S. Navy organization. Executive Order 12344, as codified at 50 U.S.C. §§ 2406, 2511, sets forth the responsibility of NNPP for all aspects of the Navy's nuclear propulsion program, including operation of the NNL's Kesselring Site located near Ballston Spa, NY, as well as the selection, training, and assignment of personnel at that facility. NNPP is the

shipper of record for the container car movements at issue in this proceeding. These shipments to and from the NNL's Kesselring Site near Ballston Spa, NY support the refueling overhaul of a U.S. government training and testing prototype naval nuclear reactor plant located at the Kesselring Site.

Petitioner SDDC is the United States Transportation Command's Service Component Command responsible for managing all aspects of the Department of Defense's surface movements, from planning, booking and shipping, to tracking cargo. SDDC supports NNPP by, among other things, issuing tenders for rail transportation for container movements to and from the BSIT. SDDC also owns DODX rail cars, which they have assigned to NNPP, for these movements and is responsible for managing the Railroads for National Defense Program, which, in conjunction with the Federal Railroad Administration, designates the STRACNET and Connector Lines, which are the civil rail lines most important to the national defense.

Petitioner FMP manages and operates the government-owned NNL, which includes the Kesselring Site, under contracts with DOE and the Department of the Navy. With a staff of over 7,800 engineers, scientists, technicians, and support personnel, FMP's mission is to develop the most advanced naval nuclear propulsion technology and to provide technical support, including training, for the continued safe, reliable operation of all existing naval reactors. To that end, FMP operates prototype nuclear propulsion plants at the Kesselring Site for research and training purposes. The prototypes, in addition to testing new naval nuclear propulsion technologies, serve as realistic platforms to train the sailors and officers who operate the nuclear propulsion plants at sea; the

prototypes are intended to mirror a shipboard environment. FMP and its subcontractors are in the process of overhauling one of these prototypes, including receiving and transporting the container cars between the BSIT and the Kesselring Site. FMP and NNPP must have reasonable access to the BSIT for the transfer of the container cars to and from heavy haul vehicles for movements to and from the Kesselring Site.[3]

BACKGROUND

A. The Kesselring Site – A STRACNET Facility; The BSIT – A STRACNET Connector Line

1. In 1948, the Government acquired 3,900 acres of land in West Milton, NY and began developing what is now called the Kesselring Site. The Kesselring Site was originally developed as a potential location for the testing of liquid metal cooled power breeder reactors, although none were built there. Groundbreaking occurred in 1950, and construction of facilities began in 1951.[4]

2. The scope of the Kesselring Site's activities changed in early 1950s to focus on nuclear propulsion plants. These power plants are located in nuclear-powered submarines and ships. They contain nuclear reactors that generate energy used to operate the submarines and ships. *Id*.

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[3] References herein to FMP include NNL's predecessor manager/operator Bechtel Marine Propulsion Corporation ("BMPC"). *See* Boyle VS at ¶ 1.

[4] BMPC, *Kesselring Site Envtl. Summary Rep.* at 4 (Mar. 2014), available at https://navalnuclearlab.energy.gov/ckfinder/userfiles/files/KSO%20Environmental%20Summary%20Report.pdf.

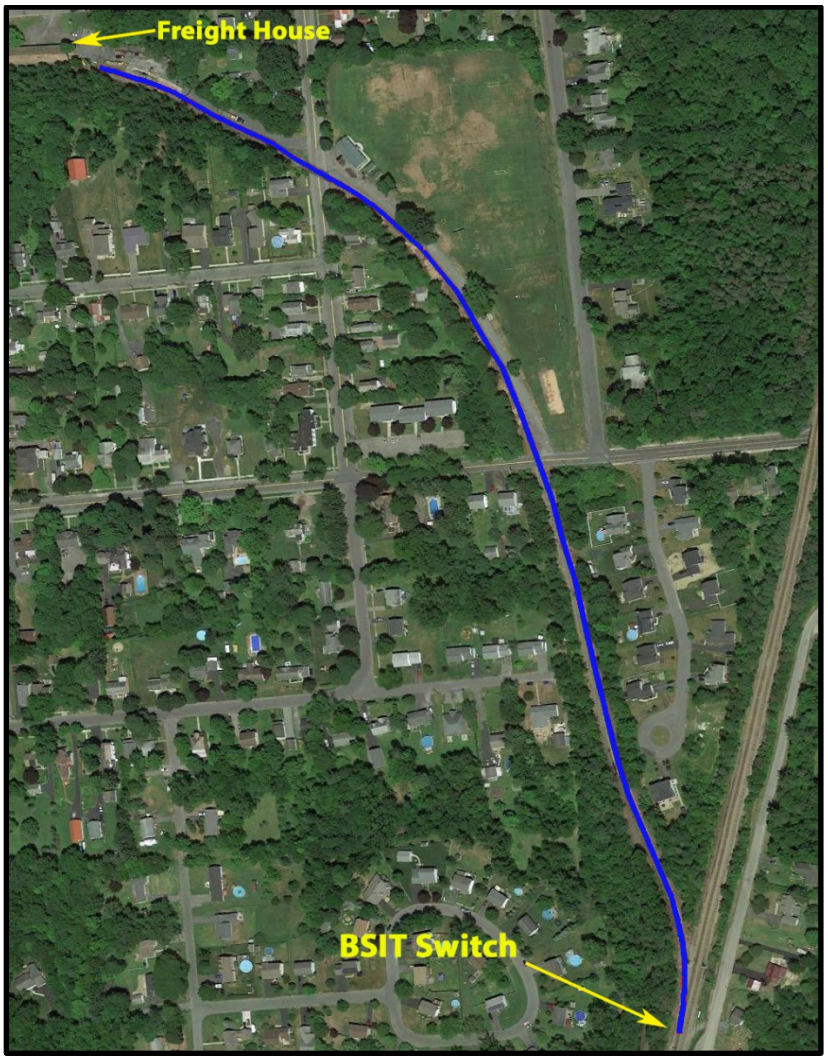
3. Since 1955, the Kesselring Site has been used for testing propulsion plants and for the training of Navy operators in the use of these plants. The propulsion plants at the Kesselring Site are called "prototypes." These prototypes are land-based working models of the power plants used at sea. Trautman VS at ¶¶ 6, 10.

4. The first power plant at the Kesselring Site went into operation in 1955. This and three subsequent power plant prototypes were later decommissioned because more modern platforms were developed. An advanced test platform – the MARF prototype – was placed in service at the Kesselring Site in 1976 and, in 1979, the S8G prototype for the USS OHIO was placed in service at the Kesselring Site. These two operating power plants remain at the Kesselring Site today. *Id*. at ¶ 7.

5. The prototype power plants at the Kesselring Site have needed to be refueled periodically. *Id*. at ¶ 11. These refueling operations require the use of very heavy, oversized containers. *Id*. at ¶ 13. These containers are specifically designed by the Government to safely transport radioactive material, including spent nuclear fuel. Gundermann VS at ¶ 14.

6. Since the early 1950s, fueling and refueling at the Kesselring Site has involved long-haul rail service to and from a rail line known as the BSIT, located in Ballston Spa, NY. The BSIT is owned by CP. Today, the BSIT consists of a single-line track that starts at a switch off a north/south CP main line in Upstate New York, and then moves north and west for approximately 0.55 miles, before ending near an old freight house located in Ballston Spa, NY. Boyle VS at ¶ 31.

7. The BSIT alignment is shown on a recent Google Earth map:



Boyle VS, Ex. DJB-1.

8. The BSIT is located approximately 8 miles from the Kesselring Site. On inbound shipments, the containers are transloaded from rail to heavy haul vehicle at the end of the BSIT. The heavy haul vehicles transport the containers from the BSIT to the Kesselring Site by local roads and, on outbound shipments, the heavy haulers use local roads to transport the containers from the Kesselring Site to the BSIT. Gundermann VS at ¶ 6.

9. The size and scope of the transloading operation is illustrated by the following pictures – the first shows the size of a typical container car and the next two illustrate the BSIT transloading/heavy haul transportation to the Kesselring Site:

Gundermann VS, Ex. BEG-4 at 2.

Id., Ex. BEG-1 at 1.

Id., Ex. BEG-4 at 3.

10. The BSIT is a critical link in the Kesselring Site transportation supply chain because it is the only available location where the Government can, on inbound moves, physically transload its heavy container shipments from rail to heavy haul vehicle and then physically transport the containers by heavy haul vehicle to the Kesselring Site and, on outbound moves, it is the only location where container shipments originating at the Kesselring Site can be physically transported by heavy haul vehicle for transloading to rail. The Government has also worked closely with local officials to coordinate the movement of these containers over local roads in a safe and efficient manner. Gundermann VS at ¶ 12.

11. The Kesselring Site is one of a select group of 126 military installations in the United States designated by the United States Army as a critical national defense facility. The BSIT has been jointly designated by the Army and the Federal Railroad Administration as part of the 37,700 miles of main lines, and connector lines, that form the STRACNET – the network of rail lines that must be kept in service to provide service to critical national defense facilities. Dorfman VS at ¶ 5.

12. The S8G prototype at the Kesselring Site is now undergoing a refueling overhaul, a large and complex project valued at $1.5 billion. Trautman VS at ¶ 8. This is the first refueling at the Kesselring Site since 1994. Refueling at the Kesselring Site is a complex operation involving multiple steps, including detailed advance transportation planning. The transportation plan called for twelve container shipments. Gundermann VS at ¶ 7. The first several shipments originating in Idaho or other origination points would be comprised of empty containers or equipment,

separately transported, with the first shipment scheduled to arrive at the BSIT in the Spring of 2018. The next set of shipments would be comprised of loaded container cars (containing radioactive material) originating at the Kesselring Site for delivery via the BSIT to destinations including South Carolina and Idaho. Gundermann VS at ¶¶ 7-8; Boyle VS at ¶ 6.

B. CP's Proposal to Sell the BSIT; CP's Service Termination Threats; and the Government's Proposal to Explore a *State of Maine* Transaction

13. As one of its first steps to implement its transportation plan, the Government instituted discussions with CP in 2013. These initial discussions focused on the need to repair/rehabilitate the BSIT to accommodate the Government's shipments. Boyle VS at ¶ 6. At that time, CP was using a portion of the BSIT – from the main line switch east to near Eastern Avenue – to store rail cars. The segment starting at Eastern Avenue to the end of the track had not been used since 2004. *Id*. at ¶ 7.

14. As these initial discussions advanced, CP informed the Government that it wanted to sell the BSIT to the Government. CP representatives informed FMP that CP's impetus to sell the BSIT came from CP's senior management team who, following the tragic Lac-Mégantic disaster in 2013, wanted to limit (or eliminate) CP's obligations (and liability) relating to the transportation of hazardous commodities, including radioactive material. *Id*. at ¶ 9. CP also represented to FMP that it had no legal obligation to continue to own or provide service on the BSIT because it was an excepted spur. *Id*. at ¶ 8.

15. CP tied its sales interests to action items the Government needed to complete before it could start receiving empty container shipments in late May of 2018 for the S8G refueling. Specifically, CP took the position during the ensuing discussions concerning rehabilitation of the BSIT that FMP had to perform the track repairs on a segment of the BSIT west of Eastern Avenue; that FMP had to pay for these repairs; that FMP's contractors could not enter the BSIT to make the repairs unless FMP first signed an "insurance and indemnity" agreement; and that FMP had to execute a letter agreement stating that, in return for the right to enter CP's property to make the repairs, FMP would engage in "good faith" discussions for the Government to purchase the BSIT. *Id*.

16. FMP responded that while it was willing to pay for needed BSIT repairs, CP's liability concerns were unfounded because the Government goes to great lengths to insure the safe transportation of radioactive commodities; that, over the past 60 years, NNPP had safely made over 870 container shipments of naval spent nuclear fuel without any injuries to workers or the public and without any release of radioactivity; and that, in any case, the Price-Anderson Act Nuclear Industries Indemnity Act accorded CP complete indemnity protections. However, as Mr. Boyle succinctly summarizes it, FMP's response to CP "fell on deaf ears." *Id*. at ¶ 10.

17. Faced with a looming deadline for the start of shipments, FMP entered into an entry/insurance/indemnity agreement with CP in early October 2017 containing the terms generally described in ¶15 above. *See* Boyle VS, Ex. DJB-2. FMP spent $309,000 to rehabilitate the BSIT track and siding area. Most of those repairs were completed by December 2017. Boyle VS at ¶ 11.

18. CP then began to make threats to cut off service if FMP did not purchase the BSIT. Specifically, some CP officials informed FMP in the Winter of 2018 that if the Government did not close on the purchase of the BSIT immediately, CP would not transport the Government's upcoming container shipments. FMP responded that CP's threats were irresponsible in light of the national security importance of the Government's upcoming shipments. *Id*. at ¶ 12. FMP also told CP that any property acquisition by the Government involved substantial due diligence (and approvals from many different Government entities) before any line purchase offer could be approved, and that FMP did not have authority to independently engage in property acquisition negotiations on behalf of the Government. *Id*., Ex. DJB-3 at 1.

19. At the same time CP was threatening a service stoppage, the Government had to continue to take the transportation steps necessary to keep the Kesselring Site refueling on schedule. On April 5, 2018, SDDC made a formal request to three carriers (called a "tender" by the Government) – Union Pacific Railroad Company ("UP"); Norfolk Southern Railway Company ("NS") and CP – to provide their Rule 11 common carrier rates and service terms for three empty container shipments to move in through route service between Idaho and Ballston Spa, on three separate trains, with UP as the origin carrier, NS as the bridge carrier and CP as the destination carrier. *Id*. at ¶ 14. *See also* Hemphill VS at ¶¶ 1-2.

20. UP and NS promptly provided their rates and service terms, but CP did not. CP did not provide common carrier rates (or agree to provide service pursuant to those rates) until the first empty car shipment was already en route, and then did so only

after the Government first agreed to CP's demand that FMP execute a second insurance and indemnity agreement ("Access Agreement") (Boyle VS, Ex. DJB-4) governing FMP's access to the BSIT to transload rail cars. Among other things, CP insisted, over FMP's objections, that FMP's access rights under the Access Agreement were limited to transloading empty container cars only (thus excluding transloading loaded cars) and that the Access Agreement contain a recital stating that CP and the Government "are negotiating in good faith the potential acquisition of . . . [the BSIT and adjoining property] for the purpose of [the Government] loading rail cars with loaded shipping containers with radioactive materials." *Id.*, Ex. DJB-4 at 1. The recitals also provided that "the parties acknowledge that certain laws and regulations govern purchases made by the U.S. Government and its contractors." *Id.*

21. The first empty container shipment arrived at Ballston Spa in early June 2018 and was subsequently transported by heavy haul vehicle to the Kesselring Site. Since that time, the Government has received three additional empty container shipments at the BSIT that were transloaded and delivered to the Kesselring Site. The first loaded shipment is scheduled for delivery to the BSIT sometime between October 2019 and early 2020, with the exact date dependent upon the status of ongoing refueling activities at the Kesselring Site. Gundermann VS at ¶¶ 10-11.

22. In the Spring of 2018, the Government retained STB Counsel. The Government asked STB Counsel to review what legal rights the Government had to obtain common carrier service over the BSIT. Counsel researched the history of the BSIT and, as part of that research, obtained access to the archived ICC records in the

1980 ICC Abandonment Case (summarized in detail in ¶¶ 34-71 below). Counsel informed the Government that the 1980 Abandonment Case records showed that the BSIT was a common carrier line (not an excepted spur) for 0.56 miles between the main line switch and the old freight house – an area that encompassed the 0.55-mile BSIT. Boyle VS at ¶ 19.

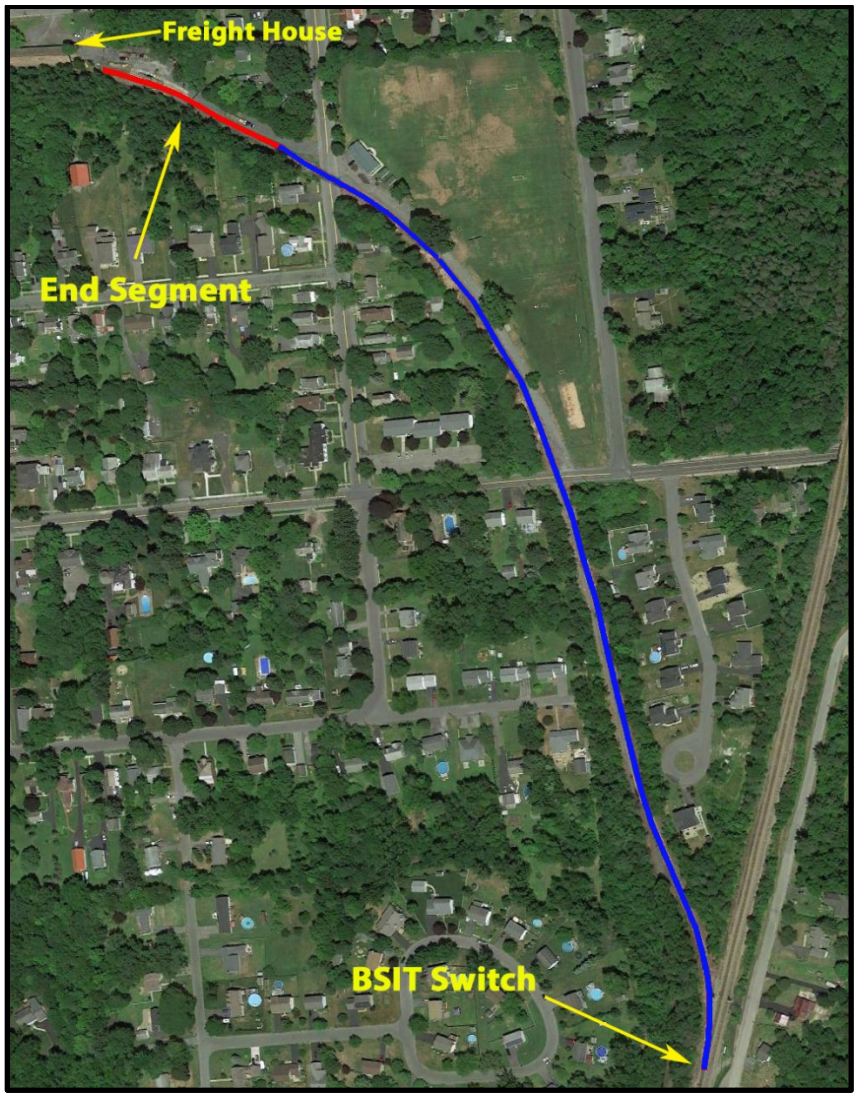
23. The Government communicated these findings to CP. The Government also informed CP that it would continue to engage in good faith discussions concerning its purchase of the BSIT, subject to applicable legal and regulatory restrictions attendant to the real property acquisition process. The Government explained that, in light of the discovery of this new information, any Government purchase of the BSIT needed to be conditioned on CP's retention of a common carrier easement to continue to provide common carrier service over the BSIT. These transactions are colloquially referred to as "*State of Maine*" transactions. *Id*. at ¶¶ 23-24.

24. The Government believed that if exploration of the terms of a *State of Maine* transaction resulted in a final agreement, CP would obtain its stated objective (sale of the BSIT) and the Government would obtain its objective (CP would continue to have a common carrier obligation to provide service over the BSIT subject to STB enforcement). *Id*. at ¶ 24.

25. After pursuing informal discussions, the Government made a formal communication to CP to inform CP of the Government's willingness and intent to consider exploring acquisition of the BSIT in a *State of Maine* transaction, in a letter dated October 18, 2018 (Boyle VS, Ex. DJB-5). *Id*. at ¶ 25. In its November 27, 2018

response, CP rejected the Government's proposal, and stated that if the Government did not agree to CP's sales terms – the Government purchasing the BSIT with CP agreeing to provide service over the BSIT pursuant to a private siding agreement terminable on 30 days' notice – CP would seek authority at the STB to abandon what it referred to as the "regulated" portion of the BSIT. *Id*. at ¶ 25; Ex. DJB-6 at 2; Ex. DJB-7 at 3.

26. CP's reference to the "regulated" portion of the BSIT relates to CP's construction of the 1980 Abandonment Case record. When the Government informed CP about the results of its review of the 1980 Abandonment Case record, CP conceded that a portion of the BSIT – from the main line switch to a point just west of Eastern Avenue was an STB-regulated rail line – but took the position that the remaining 430 feet of the line (which includes the area where the Government transloads cars) was an excepted spur, a position the Government does not share. CP's view of the regulatory status of the BSIT is illustrated in the following mark-up of the current BSIT routing:



Id., Ex. DJB-9. CP's position is that the End Segment (red line above) is an excepted spur. The Government's position is that the End Segment is a regulated rail line. *Id.* at ¶ 30-31.

27. FMP responded to CP's November 27, 2018 letter in its letter dated January 29, 2019. FMP once again emphasized to CP that CP's threats to abandon the BSIT – a STRACNET connector line – were irresponsible; that the Government would vigorously oppose any effort by CP to abandon the BSIT; and that all of the BSIT was a

regulated rail line. Despite CP's threats, the Government continued to offer to explore a *State of Maine* purchase transaction with CP. Boyle VS at ¶ 26.

C. CP's Proposal to Sell the End Segment

28. CP responded to FMP's January 29, 2019 letter in a letter dated March 7, 2019 (Boyle VS, Ex. DJB-8). In that letter, CP offered to drop its threat to abandon what it continued to reference as the "regulated" portion of the BSIT, if the Government agreed to purchase the so-called "unregulated" segment of the BSIT and further agreed to enter into a "private siding agreement." *Id.*, Ex. DJB-8 at 2.

29. On March 8, 2019, FMP and CP representatives met to discuss CP's claim that the BSIT End Segment was an excepted spur, not a line of railroad. Following that meeting, which included a BSIT site visit, CP sent a follow-up email on March 14 (Boyle VS, Ex. DJB-10) and the Government authorized the issuance of FMP's letter, dated March 25, 2019 (Boyle VS, Ex. DJB-11), responding to CP's March 7 letter and March 14 email.

30. As discussed in FMP's March 25, 2019 letter, the Government and CP appear to agree that the current distance from the CP main line switch to the end of the BSIT is 0.55 miles. However, as also discussed in the letter, the parties continue to disagree on whether the BSIT End Segment is regulated rail line. The Government understands CP's current position to be that the CP main line switch in 1980 was approximately 430 feet south of where it is today, so when measuring the length of the regulated portion of the BSIT, the correct starting point is not the location of the current switch, but the asserted location of the switch in 1980. Using this starting point, CP

argues the regulated portion of the BSIT ends at the beginning of the BSIT End Segment, and the BSIT End Segment is as an excepted spur. The Government's position is that the BSIT/D&H main line switch location has not changed since 1980, so the measurement of the 0.55-mile regulated portion of the BSIT starts at the current main line switch location, a position the Government maintains is consistent with all of D&H's representations in the 1980 Abandonment Case record, as well as the ICC's Final Decision in that case. Boyle VS at ¶ 31; Gundermann VS at ¶¶ 15-28.

D. The Government Decides to File This Joint Petition Seeking Expedited Declaratory Order Relief

31. FMP informed CP that rather than continuing to debate the regulatory status of the BSIT End Segment without the likelihood of achieving a meeting of the minds, the Government would institute an STB declaratory order proceeding, and request that the Board resolve the dispute between the parties. The STB's rulings will assist the Government in two ways: (i) it will assist the parties in structuring a purchase transaction (if one is to occur); and (ii) it will let the parties know what common carrier service rights the Government possesses over the BSIT End Segment. Boyle VS at ¶ 32.

32. The Government also chose to file this Joint Petition because delay in resolving the regulatory status issues could cause irreparable injury to the Government. The first loaded container shipment is scheduled to arrive at the BSIT in late 2019/early 2020. As matters now stand, the CP Access Agreement provides the Government no contract right to access the BSIT to unload these shipments, nor, based on CP's past service cut-off threats, does the Government have any assurance that CP will transport

the loaded shipments over the BSIT End Segment in accordance with what the Government considers to be CP's common carrier obligation. Boyle VS at ¶ 33.

33. Every day the refueling overhaul schedule at the Kesselring Site is delayed due to CP's failure to provide reasonable service could cost the Government up to $800,000 (Trautman VS at ¶ 20) and serve to undermine national security interests because "[f]or every week or partial week of delays [the Government] incurs in returning the prototype to student training, the Navy fleet suffers a loss of approximately 20 nuclear-trained sailors." *Id*. at ¶ 21.

E. The 1980 Abandonment Case Record

34. The parties' dispute involves what happened in the 1980 Abandonment Case. Accordingly, the Government provides the Board with a detailed chronology of this Case as part of its Background presentation. A complete copy of the 1980 Abandonment Case record the STB provided to the Government's STB Counsel is set forth in the accompanying Counsel's Exhibit.

35. On October 11, 1979, D&H filed its "Notice of Intent to Abandon or to Discontinue Service" in two dockets, AB-156 (Sub-No. 8F) and AB-156 (Sub-No. 9F) ("Notice of Intent") (CE-1 thru -8). D&H stated that in the Sub-No. 9F docket, it planned to file an application for a certificate of public convenience and necessity permitting the abandonment of:

> A line known as the Ballston Spa Industrial Track which extends from M.P. A 30.76 (Val. Sta. 1626+83) in the Town of Ballston, Saratoga County, in New York State to M.P. A 31.79 (Val. Sta. 1681+20) in the Town of Milton, Saratoga County in New York State constituting a total distance of

> 5,437 feet or 1.03 miles. There are no agency or terminal stations on this line.

CE-2. D&H stated that in the Sub-No. 8F docket, it planned on seeking authority to abandon another line, known as the "Saratoga Industrial Track," and provided a detailed description of that line by milepost number and Valuation Station. *Id*. D&H stated that it was seeking authority to abandon each line because "continued operation over the line constitutes an economic hardship upon the company." *Id*.

36. Prior to filing its Application, D&H complied with governing public notification rules by publishing the following newspaper notice ("Newspaper Notice"):

> Delaware & Hudson Railway Company hereby gives notice that on or about May 1, 1980 it intends to file with the Interstate Commerce Commission, Washington D.C. 20423, an application for a certificate of public convenience and necessity permitting the abandonment of:
>
> . . . .
>
> (2) A line known as the Ballston Spa Industrial Track which extends from M.P. A. 30.76 (Val. Sta. 1626+83) in the Town of Ballston, Saratoga County, in New York State to M.P. A. 31.79 (Val. Sta. 1681+20) in the Town of Milton, Saratoga County in New York State constituting a total distance of 5,437 feet or 1.03 miles. There are no agency or terminal stations on this line.

CE-50.

37. On May 5, 1980, D&H filed its Application in Docket No. AB-156 (Sub-No. 9F), captioned as "Application of Delaware and Hudson Railway Company Under Title 49 U.S.C. §10903 and 49 C.F.R. 1121.33 for a Certificate of Public Convenience and Necessity Authorizing the Abandonment of Its Ballston Spa Industrial

Track, Saratoga County, New York." CE-12. The Application contained a sixteen-page narrative followed by supporting appendices and exhibits. *See* CE-12 thru -40.

38. D&H's Application starts with a description of the abandonment authority it was seeking. CE-13. This description is identical to the description in its Notice of Intent and its Newspaper Notice:[5]

> Comes now Delaware and Hudson Railway Company (hereinafter called Applicant) and respectfully petitions the Interstate Commerce Commission, under the provisions of Title 49 U.S.C. §10903, for a certificate that the present and future public convenience and necessity permit the abandonment of Applicant's Ballston Spa Industrial Track in Saratoga County, New York from a point in the Town of Ballston at Mile Post A 30.76 (Valuation Station 1626+83) to Mile Post A 31.79 (Valuation Station 1681+20) in the Town of Milton, Saratoga County, a total distance of 1.03 miles.

CE-13.

39. D&H next explained why the short 1.03-mile track was a regulated line for which D&H had to seek abandonment authority before stopping service:

> Although the designation of the line bears the title of "Industrial Track," due to the fact that the line had at one time formed a part of the main line of Applicant's rail line, this application is being filed. The main line had been relocated in the 1960's pursuant to a New York State crossing elimination program. The realignment of the main line on a path west of the original route [at the North and east of the original route at the South] left two unconnected spurs, one at the North and one at the South. The line between them was eliminated along with numerous crossings. The Ballston Spa Industrial Track constitutes the Southern remnant of the old main line. A separate and contemporaneous application is

[5] *See* Abandonment Case, D&H's "Affidavit of Publication of the Notice of Intent to Abandon" (filed May 16, 1980) (CE-50).

> filed for abandonment of the Northern remnant, which is the Saratoga Industrial Track under AB 156 (Sub-No. 8F).

CE-13 thru -14.

40. D&H stated that for purposes of reviewing its Application, the ICC should divide the line into two sections, the section that shippers were using – from the main line switch 0.56 miles to a team track located adjacent to an old freight house – and the portion shippers were not using – the portion of the line west of the old freight house:

> The description of the line must be broken down into two parts. The line, as it extends from the point of switch on the present main line to a point .56, meets or almost meets Federal Railroad Administration Class I standards. At this point, there is located an old freight house, presently owned by Tufflite Plastics Company, one of the users of the line. It is used as a warehouse. The area immediately adjacent to the warehouse, is a team delivery area where most of the traffic has been handled for the past sixteen months.
>
> The line as it extends from the warehouse to the end at M.P. A 31.79 (Val. Sta. 1681+20) does not meet Federal Railroad Administration Class I standards. It has not been used for about 18 months.

CE-18 thru -19. *See also* CE-21 ("Approximately .56 miles from the point of switch on the main line of Applicant, there is a team delivery facility where the majority of the traffic is received or forwarded."); CE-22 ("No significant changes have been made in operation in the last five years other than providing all service at the old freight house .56 miles from the beginning of the line.").

41. D&H acknowledged that it "anticipate[d] significant opposition to [the] application" from shippers on the line (CE-18), including opposition from the "Knolls Atomic Power Lab" (which today is called the NNL) (CE-26), but believed that

shipper opposition was limited to its proposed abandonment of service west of the old freight house:

> There appears no objection from any sector to abandonment of the line from the old freight house, to the end of the branch. The objections already manifested are to the abandonment of the line between the point of switch on the main line and the old freight house.

CE-27.

42. D&H also acknowledged that the Knolls Atomic Power Lab could not divert its shipments from the line to truck:

> The alternate means of transportation available to the affected users is by truck, with the exception of Knolls Atomic Power Lab. Due to the excessive weights per unit of cargo handled this user would experience great difficulty in handling over the road movements directly from point of origin. Although significant efforts were made to find a suitable routing, none have yet been found.

CE-26.

43. D&H further acknowledged that it had been engaged in "[e]xtensive negotiations" with "significant users" of the line in an "attempt to find alternate solutions to abandonment." CE-26. These efforts included offering the line for sale to the Knolls Atomic Power Laboratory or to "relocate the team delivery track to a point on the line by retaining a short spur." CE-27. D&H stated that none of these alternatives had been successful to date (*id.*) and stated that it was filing its application because while it was operating the line at a modest loss ($7,000 per year) (*id.*), it recognized that shippers – particularly the Knolls Atomic Power Laboratory – needed service to continue over the line:

> [This Application] is being filed with the specific purpose to request the assistance of the Commission to arrive at a solution to the problem facing both applicant and the users of the line which is that applicant cannot indefinitely provide service at a loss. Some alternate solution to continuation of the service in the manner presently required must be found. Despite the efforts expended by all concerned in this matter no such solution has yet been found.

CE-18.

44. Following the filing of D&H's Application, requests to investigate were filed by Tufflite Plastics, Inc. (a shipper on the line) (CE-47 thru -48) and Walter J. Floss, Jr., a New York State Senator (CE-53). On May 21, 1980, DOE filed an unopposed request to extend the deadline for filing petitions to investigate to July 7, 1980. CE-51. DOE stated that it sought the extension because it had a vital need to continue to use the track and that "discussions between DOE and D & H about possible alternatives to the proposed abandonment now are underway:"

> The Knolls Atomic Power Laboratory, which is operated for the Naval Reactors Branch of DOE, must rely upon the nearby Ballston Spa Industrial Track for periodic shipments in and out of that facility of extremely large and heavy loads of nuclear reactor equipment. Because continued use of this track is considered vital by DOE, discussions between DOE and D & H about possible alternatives to the proposed abandonment now are underway. If a satisfactory alternative can be agreed to, an investigation by the Commission could be avoided.

CE-51.

45. On June 6, 1980, DOE filed a verified petition asking the ICC to institute a proceeding to investigate D&H's abandonment proposal. *See* CE-54 thru -60.

In that petition, DOE first emphasized that "[c]ontinued operation of the Kesselring Site is essential to the Federal Government's defense programs:"

> A major activity of the Knolls Atomic Power Laboratory is the operation of a facility in West Milton, New York known as the Kesselring Site. The Federal Government's investment in the Kesselring Site, land and facilities is approximately three-quarters of a billion dollars. There are approximately 600 contractor employees and 1,500 naval personnel regularly employed at the site. At the Kesselring Site are four nuclear reactors of the type used by the United States Navy. These nuclear reactors are used for developmental work and to train United States Navy personnel in the operation of nuclear-powered submarines and surface ships. Continued operation of the Kesselring Site is essential to the Federal Government's defense programs. Such operation requires periodic shipments in and out of extremely large and heavy loads of nuclear reactor equipment. Shipment of this equipment by any mode other than rail is completely impractical for more than very short distances.

CE-55 thru -56.

46. Next, DOE emphasized that abandonment of the line "would cause substantial injury:"

> The Ballston Spa Industrial Track, which D&H proposes to abandon, is approximately 6 miles from the Kesselring Site. DOE relies upon use of the Ballston Spa Industrial Track for periodic shipments, and its abandonment would cause substantial injury. The short highway route between the Ballston Spa Industrial Track and the Kesselring Site now can accommodate shipments of the size and weight that are required for operation of the Kesselring Site. There are no alternative rail sidings capable of handling shipments of the size and weight that are required for operation of the Kesselring Site. Furthermore, the weight and size of shipments that are required at the Kesselring Site cannot be moved over other existing roads from any other siding due to physical and/or regulatory restrictions.

CE-56.

47. DOE informed the ICC that it was currently planning to receive 20 to 25 railcars "over the next five years," weighing approximately 2,000 tons, and asked the Commission to institute an investigation; and after concluding such investigation, deny D&H's Application because it was "vital to the national security" that the line remain in common carrier service. CE-57.

48. On June 16, 1980, DOE filed a copy of a resolution adopted by the Board of Supervisors of Saratoga County, NY asking the ICC to investigate D&H's proposed abandonment of the line. CE-61, -66. DOE also appended a two-page document, and supporting enclosures, containing additional information supporting its petition for investigation. CE-61 thru -65. In that document, DOE again emphasized its lack of transportation alternatives:

> Attached is a map showing the highway route taken from the Ballston Spa industrial track to the Kesselring Site (Enclosure 2). The route that the Department of Energy uses is the exclusive highway route over which large and heavy loads can be shipped to the Kesselring Site. When the Department of Energy first started making shipments from the D & H Railway siding to the Kesselring Site, we were required to get, and still must obtain, State and local permits to ship oversize loads. The local governments agreed on the route that we currently follow and upgraded the highway accordingly to support the extreme size and weight shipped thereon. It would probably be impossible for DOE to obtain local oversize load permits for shipments over any other area highway since this would involve road upgrading and other route modifications . . . that local agencies would be unwilling to undertake.
>
> . . . .

> It is physically impossible to transport our oversize loads by truck from Saratoga Springs to the Kesselring Site. In addition, due to problems discussed [above], bridge capacities are inadequate for such loads and there is insufficient clearance with overhead lights and wires.

CE-62 thru -63.

49. On June 27, 1980, the ICC served a decision instituting an investigation into the proposed abandonment ("Investigation Decision"). *See* CE-71 thru -76. The Investigation Decision described the line D&H proposed to abandon in identical fashion to the description D&H had used in its Notice of Intent, its Newspaper Notice, and its Application:

> On May 5, 1980, the Delaware and Hudson Railway Company (D&H) filed an application for a certificate of public convenience and necessity permitting the abandonment of a line of railroad known as the Ballston Spa Industrial Track which extends from milepost A 30.76 (Valuation Station 1626+83) in the Town of Ballston, Saratoga County, NY, to milepost A 31.79 (Valuation Station 1681+20) in the Town of Milton, Saratoga County, NY, constituting a total distance of 5,437 feet or 1.03 miles.

CE-71.

50. The Investigation Decision also stated that the "environment and energy impacts of this action have been examined and found potentially to be significant." *Id*. The ICC's archived dockets contain an undated Environmental Assessment ("EA") prepared by the ICC's Energy and Environment Branch. *See* CE-67 thru -70. The EA states in pertinent part:

> Our analysis has revealed that there may be significant environmental impacts as a result of the proposed action.

> These impacts are associated with the movement of commodities of excessive weight and size over roads which the Department of Energy (DOE) maintains cannot handle this traffic. In addition, a small percentage of the shipments are radioactive. Insufficient information is on hand through which a concrete determination of any significance can be made. Information pertinent to this determination has been requested and should be made available in the future.

CE-69.

51. On August 7, 1980, DOE and D&H entered into a "Rail Service Agreement" ("1980 Rail Service Agreement" or "Agreement"). *See* CE-90 thru -105. The Agreement starts out with a series of recitals, including a recital that DOE has been using, and continues to need to use, the portion of the BSIT from the main line switch to the team loading/unloading facility located ".55 miles" from the main line switch:

> WHEREAS, DOE has been using RAILROAD'S team loading/unloading facility located at Milepost A 31.32 on RAILROAD'S line known as the Ballston Spa Industrial Track for approximately 26 years, which facility is .55 miles from the connection of said track with RAILROAD'S main line; and
>
> WHEREAS, the Ballston Spa Industrial Track team loading/unloading facility is, in the opinion of DOE, the sole and exclusive area from which the large and heavy reactor equipment loads can be transported by truck to and from the Kesselring Site; and
>
> . . . .
>
> WHEREAS, [D&H's Application] encompasses RAILROAD'S operation over the entire Ballston Spa Industrial Track, but DOE's needs only extend to receiving railroad carrier service over the first .55 miles of such track;

CE-90 thru -91.

52. The Agreement then starts with a Definitions article (Article One). CE-91 thru -93. Article Two, Section 201 provides that D&H agrees to provide common carrier service over the "Truncated Ballston Industrial Spur" up to milepost A 31.32:

> RAILROAD shall continue to provide DOE, during the term of this agreement, with public rail freight service on the Truncated Ballston Industrial Spur up to the RAILROAD'S team loading/unloading facility located at Milepost A 31.32. Such rail freight service includes carriage of all shipments into and out of said team facility as required by DOE and in accordance with the RAILROAD'S common carrier obligations.

CE-93. The "Truncated Ballston Industrial Spur" is defined in Article One as "that portion of Ballston Spa Industrial Track that extends from Milepost A 30.76 to the Tufflite Plastics Company Warehouse at Milepost A 31.32 as identified in the attached Appendix 'A.'" CE-92.

53. Article Two, Section 202 provides that "RAILROAD shall be responsible, at its own expense, for providing all maintenance on the Truncated Ballston Industrial Spur and shall continue to maintain said track at the level at or exceeding FRA Class I Standards." CE-93.

54. Article Three, Section 301 provided that D&H would perform specified rehabilitation work in accordance with a line rehabilitation plan set forth in Appendix B to the Agreement, and Article Three, Section 303 provided that DOE would reimburse D&H for its rehabilitation expenses. CE-94. Appendix B set forth the following estimates for rehabilitation work: "Renew Ties & Surface Point Switch to Freight House" (estimate $22,323.00) (CE-103); "Rebuild Eastern Ave. Grade Crossing"

(estimate $12,183.00) (CE-104); and "Rebuild E. High Street Grade Crossing" (estimate $10,491.00) (CE-105), for a total estimate for all three projects of $44,977.00 (*id.*).

55. Article Four, Section 401 provided that if D&H incurred any operating losses in any year during the term of the Agreement as a result of its continued operation of the Truncated Ballston Industrial Spur, DOE would "reimburse the RAILROAD for such losses in an amount up to but not to exceed $6,000 per agreement year." CE-94.

56. Article Five, Section 501 capped DOE's financial liability for rehabilitation work D&H performed in accordance with Article Three, Section 301 at "$45,000 during the first agreement year of this agreement." CE-95. Article Five, Section 502 provided that if D&H incurred rehabilitation costs less than $45,000 in the first contract year, and DOE exercised its option to renew the Agreement, "any unused money can be used for rehabilitation during any subsequent agreement year." *Id.*

57. Article Six, Section 601 provided that the Agreement would run for "one (1) full year from the effective date" (CE-95), *i.e.*, from August 11, 1980 (CE-100). Article Six, Section 602 accorded DOE the option to renew the Agreement "on a year to year basis" by providing D&H notice "at least forty-five days in advance of the beginning of the second year, and each successive year thereafter for which renewal is sought . . . ." CE-95.

58. Article Seven provided that D&H agreed to withdraw its Abandonment Application "for the portion of the line between the main line and Milepost A 31.32, during the time that this agreement remains in effect" and that "[t]his article in

no way affects RAILROAD'S right to petition the ICC for abandonment of its Ballston Spa Spur past the Tufflite Plastics Company Warehouse (Milepost A 31.32)." CE-96.

59. Article Eight, Section 802 provides that "RAILROAD agrees that its relationship with DOE under this agreement is as a Common Carrier and independent contractor." *Id*. The remaining articles (Articles Nine through Nineteen) (CE-96 thru -101) contain terms governing tariff application (Article Nine) (CE-96 thru -97); Audit Rights (Article Ten) (CE-97); Warranties (Article Eleven) (CE-97 thru -98); Notices (Article Twelve) (CE-98); Comptroller General audit rights (Article Thirteen) (CE-98 thru -99); No Official Benefits (Article Fourteen) (CE-99); Covenant Against Contingency Fees (Article Fifteen) (CE-99 thru -100); Permits and Licenses (Article Sixteen) (*id*.); Assignment (Article Seventeen) (*id*.); Convict Labor (Article Eighteen) (*id*.); and Effective Date (Article Nineteen) (CE-100 thru -101).

60. Appendix A contains a hard-to-read hand-drawn one-page schematic. CE-102. Among other things, the schematic:

> - Contains a hand-drawn single rail line from the CP switch at Valuation Station 1626+83 ending near the old freight house/Tufflite Plastics warehouse, with a hand written notation showing the end of this line segment at Valuation Station 1655+87, and a hand-written notation stating "Truncated Ballston Industrial Spur (0.55 mi)."
>
> - Contains hand-written notations that appear to show Valuation Station 1626+83 at Milepost A 30.84 and Milepost A 30.76 at Valuation Station 1622+53.
>
> - Contains a hand-written notation and arrow stating "Siding Serving Dep't of Energy To Be Retained."

- Contains a hand-written notation identifying the location of Valuation Station 1681+20.

61. On August 11, 1980, D&H filed a copy of the Rail Service Agreement at the ICC. CE-89. D&H also filed on August 11, 1980, a document entitled "Amendment and Partial Withdrawal" ("Amended Application"). CE-77 thru -88.

62. In its Amended Application, D&H described the line it had initially sought to abandon in an identical fashion to the description in its Notice of Intent, its Newspaper Notice, its Application, and the one the ICC relied upon in its Investigation Decision:

> On May 1, 1980, Delaware and Hudson Railway Company, the Applicant herein had filed an application for a certificate of convenience and necessity seeking permission to abandon Applicant's Ballston Spa Industrial Track in Saratoga County, New York from a point in the Town of Ballston at Mile Post A 30.76 (Valuation Station 1626+83) to Mile Post A 31.79 (Valuation Station 1681+20) in the Town of Milton, Saratoga County, a total distance of 1.03 miles.

CE-79.

63. D&H then informed the ICC that it was amending its Application "with respect to the portion of the line which extends beyond MP 31.32 to MP 31.79" (CE-83) and "hereby withdraws so much of its application as relates to abandonment of the portion of the line which extends from MP 30.76 to MP 31.32" (CE-80).

64. D&H explained that it was taking this action because "[w]ith respect to abandonment of such portion of the line in question [from MP 31.32 to MP 31.79], Applicant believes there are no objections by any party and any objections hitherto

registered related substantively exclusively to abandonment of the portion of the line which extends from MP 30.76 to MP 31.32." *Id*.

65. D&H also explained that it had "entered into an agreement which will enable Applicant to continue rail freight service on such portion of the line[]" and that "[p]ursuant to said agreement the service on the line shall be maintained in the manner in which it has been hitherto rendered in conformity with Applicant's common carrier obligation." CE-81.

66. D&H then stated that it also sought to amend and reclassify its Application as a summary application for the portion of the track "which extends beyond MP 31.32 to MP 31.79, which is the end of the branch." CE-82. D&H further requested that the ICC waive the filing of verified statements called for under the ICC's Investigation Decision. *Id*.

67. On August 22, 1980, Knolls Atomic Power Lab filed a letter with the ICC stating that it "has no objection to abandonment of the segment of line which extends from Milepost 31.32 to MP 31.79." CE-106.

68. The ICC served its Final Decision in the Abandonment Case on October 15, 1980. CE-107 thru -111. In that decision, the ICC described the line D&H initially sought to abandon in a fashion identical to D&H's Notice of Intent, D&H's Application, the ICC's Investigation Decision, and D&H's Amended Application:

> On May 5, 1980, the Delaware and Hudson Railway Company (D&H) filed an application for a certificate of public convenience and necessity permitting the abandonment of a line of railroad known as the Ballston Spa Industrial Track which extends from milepost A 30.76 (Valuation

> Station 1626+83) in the Town of Ballston, Saratoga County, NY, to milepost A 31.79 (Valuation Station 1681+20) in the Town of Milton, Saratoga County, NY, constituting a total distance of 5,437 feet or 1.03 miles.

CE-107.

69. The ICC then summarized the procedural history of the case, noting that D&H had "filed an amendment to its application requesting abandonment only with respect to that portion of the line known as the Ballston Spa Industrial Track which extends from milepost A 31.32 to milepost 31.79" and had requested "withdrawal to abandonment of the portion of the line which extends from milepost 30.76 to milepost 31.32." *Id*.

70. The ICC granted D&H's request to dismiss its Application for the "portion of the abandonment which extends from milepost 30.76 to milepost 31.32." CE-108. The ICC noted in connection with this ruling that "the only segment of the line that DOE as well as all other users of the line are actually concerned with, is the segment between milepost 30.76 and milepost 31.32;" that "DOE and D&H have entered into an agreement which will enable D&H to continue rail freight service on such portion of the line;" and that "[b]y letter dated August 8 and 12, 1980, respectively, DOE and Tufflite indicated that they had no objection to the abandonment application as so amended." CE-107.

71. The ICC also granted D&H's request that its Amended Application "be processed on an uncontested basis" (*id*.) and certified that "[t]he present and future public convenience and necessity permits the abandonment by D&H of its line of railroad

known as the Ballston Spa Industrial Track which extends from milepost A 31.32 to milepost 31.79" (CE-108).

72. The archived Abandonment Case record the STB provided to the Government's STB Counsel totaled 111 pages.

ISSUES PRESENTED

The Government requests that the Board issue a declaratory order answering the following questions:

(1) Is the BSIT End Segment a regulated rail line?

(2) Does CP have a common carrier obligation to provide common carrier rates and service over the BSIT End Segment upon the Government's reasonable request and to provide the Government reasonable access to the BSIT End Segment to transload its freight?

(3) If (i) the End Segment is (or becomes) a non-regulated rail line and (ii) the Government purchases the End Segment for its exclusive use, does CP have a common carrier obligation to place the Government's cars on the End Segment?

ARGUMENT

Under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, the Board may issue a declaratory order to terminate a controversy or remove uncertainty. *See Intercity Transp. Co. v. United States,* 737 F.2d 103, 106 (D.C. Cir. 1984); *Delegation of Auth. – Declaratory Order Proceedings,* 5 I.C.C.2d 675, 675 (1989); *Oakland Glob. Rail Enter. – Pet. For Declaratory Order*, FD 36168, slip op. at 5 (STB served Mar. 15, 2019).

I. THE BSIT END SEGMENT IS A REGULATED RAIL LINE

The Board has frequently exercised its discretion to issue declaratory orders resolving the regulatory status of rail track. *See, e.g.*, *Ulster & Del. Ry. Revitalization Corp. – Pet. For Declaratory Order*, FD 36164, slip op. at 4 (STB served June 29, 2018) (STB issues a "declaratory order to remove uncertainty regarding the [regulatory] status of the Line"); *Chi. Southshore & S. Bend R.R. – Pet. For Declaratory Order – Status of Track at Hammond, IN*, FD 33522 (STB served Dec. 17, 1998) (same). The Government respectfully requests the Board do the same here.

There is "no single test" for determining what constitutes a regulated rail line. [6] The Board has adopted a "case-by-case approach for such cases, relying on the track's use, history, and physical characteristics." *Highline*, 8 I.C.C.2d at 790. However, where, as here, a rail line was "once unquestionably used for line haul operations," the Board "continue[s] to have jurisdiction over it" even in cases where "the track in question now possesses many of the characteristics of a spur."[7]

CP concedes that most of the BSIT is a regulated rail line, but takes the position that the 430' End Segment is not. CP's position is predicated on a mistaken

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[6] *Chelsea Prop. Owners – Abandonment – Portion of the Consol. Rail Corp.'s W. 30th St. Secondary Track in N.Y.C., NY*, 8 I.C.C.2d 773, 790 (1992) ("*Highline*"), *aff''d sub nom. Consol. Rail Corp. v. ICC*, 29 F.3d 706 (D.C. Cir. 1994); *accord Oakland Glob. Rail Enter. – Pet. For Declaratory Order,* FD 36168, slip op. at 8 (STB served Mar. 15, 2019).

[7] *Highline*, 8 I.C.C.2d at 790; *accord Allegany Valley R.R. – Pet. For Declaratory Order*, FD 35239, slip op. at 9 n.26 (STB served Apr. 19, 2013); *Atchison, Topeka & Santa Fe R.R. – Abandonment Exemption – In Lyon Cty., Kan.*, AB 52 (Sub-No. 71X), slip op. at 3 (ICC served June 17, 1991).

construction of the 1980 Abandonment Case record – a mistaken construction that conveniently supports its management's new liability concerns. While CP may want to advance its current management's objectives above all else, it "cannot escape [the Board's] abandonment jurisdiction" by declaring the End Segment is not a regulated line of railroad. *Id.*

A. The End Segment is Part of the Regulated Rail Line Between the D&H (Now CP) Main Line Switch and the Old Freight House That D&H Agreed Not to Abandon in 1980

The record in the 1980 Abandonment Case clearly shows that the BSIT End Segment is a regulated common carrier rail line.

1. In the 1980 Abandonment Case, D&H Initially Sought to Abandon the BSIT as Then Configured from the Main Line Switch past the Old Freight House to the End of the Line

In the 1980 Abandonment Case, D&H initially sought to abandon the track from "M.P. A 30.76 (Val. Sta. 1626+83) . . . to M.P. A 31.79 (Val. Sta. 1681+20) . . . constituting a total distance of 5,437 feet or 1.03 miles." CE-2; *see also* CE-50. D&H explained in its Application that M.P. A 30.76 (Val. Sta. 1626+83) was the location of the BSIT/D&H main line switch and M.P. A 31.79 (Val. Sta. 1681+20) was the end of the regulated portion of the line. CE-18 thru -19. D&H noted that this segment of the BSIT was once part of D&H's main line between Ballston Spa and *Saratoga* Springs, but following a track relocation in a previous decade, the main line was relocated east of Ballston Spa, and all that was left was the BSIT segment. CE-13 thru -14.

D&H stated in its Application that it sought to abandon the BSIT as it was then configured (1.03 miles from the switch to the end) because it was operating the line at a modest loss ($7,000 annually) (CE-27) but acknowledged that it expected "significant opposition" to its abandonment proposal from shippers on the line (CE-18).

D&H observed that in judging shipper opposition, the ICC should divide the BSIT into two segments: (i) the segment that shippers, including DOE, were using from the main line switch at M.P. A 30.76 (Val. Sta. 1626+83) to the team loading/unloading area adjacent to the old freight house, a distance of 0.56 miles; and (ii) the segment they were not using, the track from the old freight house at M.P. A 31.32 to the end of the BSIT at M.P. A 31.79 (Val. Sta. 1681+20). CE-18 thru -19; CE-21; CE-22.

2. DOE and Other Shippers Opposed D&H's Proposal to Abandon the Portion of the BSIT They Were Using – from the Main Line Switch to the Old Freight House

DOE initially opposed D&H's Application because, then, as now, the portion of the BSIT between the D&H main line switch and the old freight house played a vital role in the Kesselring Site refueling:

> A major activity of the Knolls Atomic Power Laboratory is the operation of a facility in West Milton, New York known as the Kesselring Site. . . . . At the Kesselring Site are four nuclear reactors of the type used by the United States Navy. These nuclear reactors are used for developmental work and to train Unites States Navy personnel in the operation of nuclear-powered submarines and surface ships. Continued operation of the Kesselring Site is essential to the Federal Government's defense programs.
>
> . . . .

> The Ballston Spa Industrial Track, which D&H proposes to abandon, is approximately 6 miles from the Kesselring Site. DOE relies upon use of the Ballston Spa Industrial Track for period shipments, and its abandonment would cause substantial injury. The short highway route between the Ballston Spa Industrial Track and the Kesselring Site now can accommodate shipments of the size and weight that are required for operation of the Kesselring Site. There are no alternative rail sidings capable of handling shipments of the size and weight that are required for operation of the Kesselring Site. Furthermore, the weight and size of shipments that are required at the Kesselring Site cannot be moved over other existing roads from any other siding due to physical and/or regulatory restrictions.

CE-55 thru -56. Other shippers using the BSIT also objected to D&H's proposal.[8]

D&H acknowledged that DOE had no option other than to use the BSIT to transport its shipments to Kesselring:

> The alternate means of transportation available to the affected users is by truck, with the exception of Knolls Atomic Power Lab. Due to the excessive weights per unit of cargo handled this user would experience great difficulty in handling over the road movements directly from point of origin. Although significant efforts were made to find a suitable routing, none have yet been found.

CE-26.

Indeed, D&H filed its Application to try to come up with a workable solution that addressed shipper concerns – loss of service between the main line switch

[8] *See, e.g.*, 1980 Abandonment Case filings by Tufflite Plastics (CE-47-48), N.Y. State Senator Walter J. Floss, Jr. (CE-53), and on behalf of the Board of Supervisors of Saratoga County, N.Y. (CE-65).

and the old freight house – and D&H's concerns – modest annual operating losses for providing service over the line. *See* CE-18.

3. DOE and D&H Settled Their Differences, with D&H Agreeing to Continue to Provide Common Carrier Service From the Main Line Switch to the Old Freight House

On August 7, 1980, D&H and DOE settled their differences by entering into the Rail Service Agreement. CE-90 thru -105. In the Agreement, the parties first acknowledged that D&H had been providing DOE with service from the main line switch located at milepost A. 30.76 for approximately 0.55 miles to D&H's team loading/unloading facility at milepost A. 31.32:

> WHEREAS, DOE has been using RAILROAD'S team loading/unloading facility located at Milepost A 31.32 on RAILROAD'S line known as the Ballston Spa Industrial Track for approximately 26 years, which facility is .55 miles from the connection of said track with RAILROAD'S main line;

CE-90.

They agreed that D&H would continue to provide common carrier service over this 0.55-mile portion of the BSIT, which they called the "Truncated Ballston Industrial Spur:"

> RAILROAD shall continue to provide DOE, during the term of this agreement, with public rail freight service on the Truncated Ballston Industrial Spur up to the RAILROAD'S team loading/unloading facility located at Milepost A 31.32. S*uch rail freight service includes carriage of all shipments into and out of said team facility as required by DOE and in accordance with the RAILROAD'S common carrier obligations.*

CE-93 (emphasis added).

The parties defined "Truncated Ballston Industrial Spur" as "that portion of Ballston Spa Industrial Track that extends from Milepost A 30.76 to the [the old freight house now being used by] Tufflite Plastics Company Warehouse at Milepost A 31.32 as identified in the attached Appendix 'A.'" CE-92. Appendix A to the Agreement contains a hand-drawn schematic that includes a solid line that starts at the main line switch and goes for approximately 0.55 miles from the switch to a point just east of the old freight house. CE-102.

In return, DOE agreed to reimburse D&H for specified maintenance and rehabilitation costs on the truncated line (CE-94), including rehabilitation costs estimated at $22,323.00 for tie renewal "to Freight House" (CE-103) and D&H agreed to withdraw its abandonment application "for the portion of the line between the main line and Milepost A 31.32." CE-96.

4. Following Its Settlement with DOE, D&H Withdrew Its Request to Abandon the BSIT from the Main Line Switch to the Old Freight House, and the ICC Granted D&H's Application, as Amended

After cutting this deal, D&H filed an Amended Application. CE-77 thru -88. In its Amended Application, D&H moved to withdraw its Application insofar as it applied to the portions of the BSIT shippers were using – the portion of the line between the main line switch at "MP 30.76" (Valuation Station 1626+83) and the old freight house at "MP 31.32" (CE-80) – while retaining its Application seeking abandonment of

the remaining segment of the BSIT – from the old freight house at "MP 31.32 to MP 31.79" (Valuation Station 1681+20) (CE-82).

In its Final Decision, the ICC approved D&H's Amended Application. CE-107 thru -109. In that decision, the ICC observed that D&H had initially sought to abandon the BSIT "from milepost A 30.76 (Valuation Station 1626+83) . . . to milepost A 31.79 (Valuation Station 1681+20)," but in its Amended Application, had asked to dismiss its initial abandonment request as to "the only segment of the line that DOE as well as all other users of the line are actually concerned with, [] the segment between milepost 30.76 and milepost 31.32." CE-107.

The ICC granted D&H's request to withdraw its initial request to abandon the segment between the D&H main line switch and the old freight house (MP A. 30.76, Valuation Station 1626+83 to MP A 31.32) and issued an order that authorized D&H to abandon the portion of the BSIT that shippers were not using – from the old freight house at milepost A 31.32 to the end of the line at milepost A 31.79 (Valuation Station 1681+20). CE-108.

5. The BSIT as Configured Today Is a Regulated Line Because It Starts at the Main Line Switch and Ends at the Old Freight House

The BSIT, as it exists today, is a single line that starts at the main line switch at Val. Station 1626+83 and ends 0.55 miles from the main line switch near the old freight house. This 0.55-mile track includes the End Segment, as even CP concedes. *See* Boyle VS at ¶ 30. Thus, the End Segment is regulated track because (i) it is located within the 0.56-mile corridor between the main line switch (Val. Sta. 1626+83) and the

old freight house that D&H did not abandon in 1980; and (ii) as configured today, the BSIT (including the End Segment) is the only track in this corridor.

B. CP's Assorted Contentions That the End Segment Is Not a Regulated Line Are Without Merit

1. The Main Line Switch Has Not Moved Since 1980

CP argues that the main line switch in 1980 was located approximately 430' south of its present location. CP then claims that with this new switch starting point, the regulated portion of the BSIT ends at the beginning of the End Segment. Gundermann VS at ¶ 18. CP has provided the Government with no documentation supporting this assertion, and the Government's independent investigation to date indicates that this assertion is incorrect. *Id*. at ¶ 28.

The ICC's Final Decision identifies the location of the D&H/BSIT main line switch at Valuation Station 1626+83. CE-107. The Government has reviewed Valuation Maps predating 1980 that show the location of the D&H/BSIT main line switch at 1626+83, not some other location. *Id*. at ¶ 20. The Government has also reviewed old aerial photographs predating 1980 that show the location of the BSIT/D&H main line switch as located in the same place it is today. *Id.* at ¶ 20.

2. D&H Never Acknowledged, Much Less Corrected, Any Milepost Errors in Its ICC Filings

CP claims that the schematic attached as Appendix A to the 1980 Rail Service Agreement demonstrates that (a) the "correct" location of the BSIT/CP main line switch was at Milepost 30.76 (Valuation Station 1622+53), not the Milepost 30.76 (Valuation Station 1626+83) as shown in D&H's Application; (b) D&H corrected the

record when it filed the Rail Service Agreement (with the appended schematic) at the ICC on August 11, 1980; and (c) when the ICC approved D&H's Amended Application, it meant that the ICC approved a 0.56-mile abandonment starting at Milepost 30.76 (Valuation Station 1622+53), which, according to CP, means the regulated segment of the BSIT ends at the beginning of the End Segment. Gundermann VS at ¶ 18.

Each component part of CP's daisy chain is wrong. As discussed above, D&H correctly identified the location of the main line switch in its Application as being located at Valuation Station 1626+83. D&H may have used the wrong milepost number – *i.e.*, the milepost number associated with the correct 1626+83 Valuation Station may have been milepost A 30.84, not milepost 30.76 – but D&H never acknowledged, much less attempted to correct, this error (assuming it was one) either before or after D&H filed the 1980 Rail Service Agreement with the ICC. *Id*. at ¶¶ 21-25.

In all of its filings, starting with its Notice of Intent and including its Newspaper Notice, its Application, and its Amended Application (filed after it had entered into the 1980 Rail Service Agreement), D&H consistently referred to the D&H/BSIT switch location at "M.P. A 30.76 (Val. Sta. 1626+83)." CE-2; *see also* CE-13; CE-15; CE-30; CE-50; CE-79. The ICC, relying on D&H's description, also referred to the D&H/BSIT switch as located at "milepost A 30.76 (Valuation Station 1626+83)" in both its Investigation Decision (CE-71) and its Final Decision (CE-107).[9]

[9] D&H also represented in its Application and Amended Application that the old freight house was located 0.56 miles from the main line switch, at MP A 31.32 (*e.g.*, CE-18, -19, -22, -81) and that the end of the line was located 1.03 miles from the main line

It is not unusual for carriers to misidentify mileposts in their abandonment or exemption applications.[10] The burden is on the carrier to correct any such errors.[11] D&H did not do so. This was harmless in 1980 (and remains so today) because D&H did use the correct Valuation Station reference for the location of the switch (1626+83) and a correct narrative description of where the retained regulated line began (at the D&H main line switch) and ended (at the old freight house).

Moreover, Valuation Stations are far more accurate than mileposts in calculating the location of rail facilities. As succinctly summarized by one leading railroad engineer:

> Each railroad is typically stationed every 100', measuring along 100' chords in curves, and stations are referenced on **Valuation Maps**. Val maps, as they are nicknamed, were created at the turn of the 20th century in order to have a basis for taxing each railroad property. Most railroads require, or at least prefer, that surveys be tied into existing Valuation Station and milepost. It is best not to use moveable objects such as mileposts or whistle

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switch, at MP A 31.79, Valuation Station 1681+20 (*e.g.*, CE-13, -79). The ICC cited and relied on these representations as well in both its Investigation Decision (CE-71) and in its Final Decision (CE-107).

[10] *See, e.g.*, *Norfolk S. Ry. Co. – Abandonment Exemption – In Balt. Cty., MD*, AB-290 (Sub-No. 237X), slip op. at 3 (STB served Apr. 3, 2006) ("*Norfolk Southern*") (carrier acknowledges "typographical error" in identifying the correct end mileage post in an abandonment exemption petition); *Md. Transit Admin. – Pet. For Declaratory Order*, FD 34975, slip op. at 1 (STB served Mar. 30, 2007) (noting "discrepancy between the stated length of the line and the corresponding stated mileposts").

[11] *See Norfolk Southern*, slip op. at 4 (carrier "has the burden to provide the Board with a complete and accurate record as to what is proposed to be abandoned" and "has an obligation to provide the public with accurate information about its proposal to ensure that all potentially interested parties and members of the general public have proper notice and the opportunity to participate in the Board's proceeding" including an obligation to correct an "incorrect identification of the line's ending milepost").

> posts as references. Culverts and bridges are generally not moved, and make good reference points for tying into Val Stations.

Harvey A. Crouch, *Railroad Surveys, Profiles & Topographic Surveys* at 1 (2012) (emphasis in original).[12]

Finally, the Board itself has recognized that D&H's track relocations undertaken decades ago in the Ballston Spa/Saratoga Springs area resulted in confusion concerning post-relocation milepost designations. *See Saratoga & N. Creek Ry., LLC – Acquisition & Operation Exemption – Del. & Hudson Ry. Co. d/b/a Canadian Pac.*, FD 35500, slip op. at 2 n.3 (STB served June 1, 2011) ("*Saratoga*") (noting anomalies in D&H milepost locations in transaction involving access rights to CP's Saratoga Springs, NY yard).

3. The End Segment Is Not an Excepted Spur

CP also argues that the reference in the schematic showing that "Siding Serving Dep't of Energy To Be Retained" (CE-102) demonstrates that the BSIT End Segment was a siding in 1980 and remains so today. Boyle VS at ¶ 30. It may (or may not) be true that prior to 1980, a portion of the End Segment was a "siding," but it makes no difference today.[13]

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[12] Available at https://pdhonline.com/courses/l108/108content.pdf.

[13] *See Nicholson v. ICC*, 711 F.2d 364, 368 n.12 & 367 (D.C. Cir. 1983) ("That a track segment is . . . identified as a . . . side track is not determinative of whether it is exempted," rather the inquiry "turns on the intended use of the track segment, not on the label . . . of the segment") (internal quotation marks omitted).

To comply with the 1980 Final Decision, D&H (and now CP) needed to keep a regulated line in service between the D&H main line switch and the old freight house. D&H was free in 1980 to rearrange and relocate its tracks to comply with this decision.[14] It may have done so by including what was once a spur as part of its regulated line. From a technical standpoint, this would have resulted in what was once a spur being reclassified as main line track.[15] What it could not do – and did not do – is not have a least one regulated line between the main line switch and the old freight house.

In addition, the End Segment is currently used in providing through rail service – a standard test the Board uses to distinguish regulated lines from spurs excepted from regulation under 49 U.S.C. § 10906. Under the use test, the Board examines whether the tracks are "intended to be used to carry through trains between points of shipment and delivery, or are merely incidental to, and not required for, a railroad's service between points of shipment and delivery." *Allied Erecting &*

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[14] *See, e.g.*, *Swanson Rail Transfer, LP – Declaratory Order – Swanson Rail Yard Terminal*, FD 35424 (STB served June 14, 2011) (relocating an existing regulated line does not require Board authorization); *City of Detroit v. Canadian Nat'l Ry. Co.*, 9 I.C.C.2d 1208, 1214-20 (1993) (relocating an existing regulated line did not require ICC authorization), *aff'd sub nom. Detroit/Wayne Cty. Port Auth. v. ICC*, 59 F.3d 1314, 1316-17 (D.C. Cir. 1995).

[15] *See, e.g.*, *Bath & Hammondsport R.R. Co. – Abandonment Exemption – In Steuben Cty., NY*, AB-436X, 1995 WL 408756 at *2 n.9 (ICC served July 12, 1995) ("the Commission has held that the status of a spur can change to that of a regulated line of railroad through a change in usage"); *Atchison, Topeka & Santa Fe Ry. Co. – Abandonment Exemption – In Lyon Cty., KS*, AB-52 (Sub-No. 71X), 1991 WL 120344 at *2 (ICC decided June 11, 1991) ("We have long held that a spur can become a line of railroad as service over the track is expanded . . . ."). Since the reclassification would have occurred as part of line relocation, no ICC authority would have been required.

Dismantling, Inc. & Allied Indus. Dev. Corp. – Pet. For Declaratory Order – Rail Easements in Mahoning Cty., Ohio, FD 35316, slip op. at 7 (STB served Sept. 17, 2015) (internal quotation marks and citations omitted).

Today, the Government's rail shipments to and from the Kesselring Site originate or terminate from a point of shipment on the BSIT – the end of the End Segment near the old freight house. Gundermann VS at ¶ 15. Thus, the End Segment is not "incidental to" through service – *i.e.*, it is not a siding off the regulated line today – it is part of the regulated line that is "required for . . . service between points of shipment and delivery." *Allied*, slip op. at 7.

4. CP's Contentions Produce Absurd Results

CP's contention that the BSIT switch was located approximately 430' south of where it is today, and using that starting point, to measure the 0.56-mile length of the BSIT produces absurd results. For starters, all of the corresponding mileage references in the 1980 Abandonment Case Record are wrong. For example:

> - The old freight house is not located 0.56 miles from the main line switch but 430' closer to the D&H switch, where, of course, it is not located. Gundermann VS at ¶ 26.
>
> - The 1.03-mile track D&H sought to abandon in 1980 stops 430' east of the end of the regulated segment (located at Val. Station 1681+20), leaving 430' of stranded regulated track – a request D&H clearly would not have made in 1980. Gundermann VS at ¶ 26.

More fundamentally, CP is maintaining that DOE, and other shippers, agreed to allow D&H to abandon track that they needed to use to move their traffic between the main line switch to the area where it was being loaded, unloaded, or

transloaded. The 1980 Abandonment Case record is clear that the DOE, and other shippers, were very concerned about preserving common carrier service from the point of switch to the area where they were loading, unloading, or transloading their shipments. *See, e.g.*, CE-51; CE-55 thru -56; CE-62 thru -63.

Under CP's End Segment contentions, DOE and the other shippers failed to achieve their basic objective – preservation of regulated common carrier service over the portion of the BSIT they were using. That asserted result is absurd. DOE and the other shippers made sure in 1980 that they would retain common carrier service to meet their needs.

II. CP HAS A COMMON CARRIER OBLIGATION TO PROVIDE RATES AND SERVICE OVER THE BSIT END SEGMENT AND TO PROVIDE THE GOVERNMENT REASONABLE ACCESS TO THE END SEGMENT TO TRANSLOAD ITS FREIGHT

The STB has the statutory authority to apply, interpret and enforce the common carrier obligation set forth in the Interstate Commerce Act, as amended.[16] The

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[16] *See* 49 U.S.C. § 10102(5) (defining a "rail carrier" as "a person providing common carrier railroad transportation for compensation"); *id.* § 11101(a) (requiring rail carrier to provide common carrier service on reasonable request); *id*. § 11101(b) (requiring a rail carrier to provide its common carrier rates on regulated traffic "on request"). *See also Disclosure, Publ'n, & Notice of Change of Rates & Other Serv. Terms for Rail Common Carriage*, EP 528, 1996 WL 224228 at *2 n.4 (STB served May 3, 1996) ("section 11101(a) . . . reenacts the longstanding common carrier obligation that a carrier provide transportation or service on reasonable request. This obligation has been well developed through case law and is best addressed on a case-by-case basis"); *Sherwin Alumina Co. v. Union Pac. R.R.*, NOR 42143, slip op. at 5 (STB served Sept. 29, 2015) (section 11101(b) incorporates "a statutory common carrier obligation" to provide "common carrier rates to any person requesting them"); *Canexus Chem. Can. L.P. v. BNSF Ry. Co. – Emergency Serv. Order,* FD 35524 (STB served Oct. 14, 2011) (STB issues emergency service order directing carriers to provide common carrier service to a

Government asks that the Board do so here by issuing its requested declaratory order concerning CP's obligations to transport the Government's radioactive material shipments.

A. These Obligations Apply If the BSIT End Segment Is a Regulated Rail Line

If the Board finds that the BSIT End Segment is a regulated rail line, CP clearly has a common carrier obligation to provide rates and service to move the Government's loaded containers over the End Segment, upon reasonable request.[17] The Government requests the Board enter a declaratory order confirming this principle. The Government makes this request because over the past two years, CP has been slow in responding to the Government's rate tenders for shipments of empty containers (Boyle VS at ¶¶ 16-18), and has provided the Government with no assurances that it will provide

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shipper); *Union Pac. R.R. – Pet. For Declaratory Order*, FD 35219 (STB served June 11, 2009) (STB issues a declaratory order clarifying that a rail carrier has an obligation to provide a shipper common carrier service, and to provide common carrier rates, applicable to that service).

[17] *See* 49 U.S.C. §§ 11101(a) ("[a] rail carrier providing transportation or service subject to the jurisdiction of the Board . . . shall provide the transportation or service on reasonable request"), (b) ("[a] rail carrier shall also provide to any person, on request, the carrier's rates and other service terms"). *See also, e.g.*, *U.S. Energy Research & Dev. Admin. v. Akron, Canton & Youngstown R.R. Co.*, 359 I.C.C. 639 (1978) (railroads have a common carrier obligation to transport spent nuclear fuel and to publish common carrier rates applicable to this transportation), *aff'd sub nom. Akron, Canton & Youngstown R.R. Co. v. ICC*, 611 F.2d 1162 (6th Cir. 1979); *Union Pac. R.R. Co. – Pet. For Declaratory Order*, FD 35219, slip op. at 4 (STB served June 11, 2009) ("the common carrier obligation include[s] the transportation of radioactive materials").

rates, and service, for the Government's shipment of containers containing radioactive materials. Boyle VS at ¶ 33.

If the Board finds that the BSIT End Segment is a regulated rail line, CP also clearly has a common carrier obligation to provide the Government with reasonable access to the End Segment to transload its freight.[18] The Government requests that the Board enter a declaratory order confirming this principle. The Government makes this request because, to date, CP has provided the Government with no assurances that it will allow the Government access to the End Segment to transload containers containing radioactive materials. *Id*. at ¶ 33.

B. These Obligations Also Apply If the BSIT End Segment Is Not a Regulated Rail Line

Even if the Board finds that the End Segment is not a regulated rail line, the Government seeks a declaration, based on the specific facts of this case, that CP still has an obligation to provide the Government with common carrier service and rates over the

[18] *See, e.g.*, *Sec'y of Agric. v. United States*, 347 U.S. 645, 647 (1954) ("The general rule is that it is the responsibility of the carrier . . . to 'deliver' the goods by placing them in such a position as to make them accessible to the consignee"); *N.Y. Cent. & Hudson River R.R. Co. v. Gen. Elec. Co.*, 219 N.Y. 227, 234 (1916) (Cardozo, J.) ("Transportation includes delivery . . . . [W]hatever is essential in order to complete delivery, the carrier must do."); *Freight-Handling Charges at St. Louis Stations*, 201 I.C.C. 543, 546 (1934) ("The carriers' duty to make a reasonable and practical delivery of carload freight at a point accessible to the receiver and to afford reasonable and practical facilities for loading carload freight into the cars is fulfilled by the placing of cars on public team tracks for loading or unloading."); *Phila. Team Owners' Protective Ass'n v. Phila. & Reading Ry. Co.*, 32 I.C.C. 387, 391 (1914) ("goods are not regarded as being ready for delivery if they are so placed as not to be obtainable by the person to whom delivery is to be made . . . .").

End Segment, as well as to provide the Government with access to the End Segment to transload its containers.

The BSIT, as CP has cut it up, consists of a regulated segment from the CP switch to the beginning of the End Segment, and an excepted spur segment from the beginning to the end of the End Segment. Normally, the Board has no regulatory authority to enforce the common carrier obligation over track that is ordinarily not classified as a regulated rail line itself. *See* 49 U.S.C. § 10906. There are exceptions, however.

One exception, applicable here, is that where a carrier holds out to provide common carrier service, it must provide at least one area on or adjacent to its regulated track where a shipper can reasonably access, load, unload, or transload its freight.[19] Here, CP is holding out to provide service over the BSIT up to the beginning of the End Segment. CP must provide at least one area on its property where the Government can practically transload its freight. The only area where the Government can do so is at the end of the End Segment – there are no other places to do so on the entire CP system. *See* Gundermann VS at ¶ 12.

A second exception is that a carrier is estopped from taking a position in a regulatory proceeding that is fundamentally inconsistent with a position it has taken in a

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[19] *See Meyers v. Jay St. Connecting R.R.*, 262 F.2d 676, 678 (2d Cir. 1959) (terminal facilities are not excepted track when they are "the sole terminal facilities held out to the public for access to the main line"); *Cheney Lime & Cement Co. v. Seaboard Sys. R.R.*, No. 40037, 1987 WL 99911 at *2 (ICC served Dec. 7, 1987) (terminal facilities are not excepted track where "no traffic could move over the line" if the terminal facilities were abandoned).

prior regulatory proceeding. *See, e.g.*, *Pyco Indus., Inc. – Feeder Line Appl. – Lines of S. Plains Switching, Ltd. Co.*, FD 34890, slip op. at 5 (STB served June 11, 2010). The Board considers three factors in its estoppel analysis: (i) is the party's current position "clearly inconsistent" with its prior positon; (ii) would acceptance of the party's current positon create the perception that the agency was "misled" in the prior proceeding; and (iii) would the party currently asserting the inconsistent position "impose an unfair detriment on the opposing party if not estopped." *Id.*[20] Each factor is satisfied here.

In its 1980 Amended Application, D&H stated it would retain regulated track from the main line switch to the old freight house (at milepost 31.32) so shippers could load, unload, or transload their freight. *See* CE at -80, -81. CP (D&H's successor) now claims that the regulated track stops 430' short of the old freight house. CP's current position is "clearly inconsistent" with D&H's prior position; creates the perception that the ICC was "misled" in 1980; and imposes a "unfair detriment" on the Government because the Government (through DOE) relied on D&H's representations that D&H (now CP) would provide common carrier service to the old freight house. Thus, CP is estopped from arguing that the BSIT End Segment is not a regulated rail line.

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[20] *Accord Canadian Nat'l Ry. Co. & Grand Trunk Corp. – Control – EJ&E W. Co.*, FD 35087, slip op. at 29 n.59 (STB served Dec. 24, 2008) ("Estoppel protects the integrity of the judicial process by preventing a party from asserting a claim in a legal proceeding that is inconsistent with a claim taken by that party in another proceeding or a different phase of the same proceeding."); *New Hampshire v. Maine*, 532 U.S. 742, 749-50 (2001) (same).

III. IF THE GOVERNMENT PURCHASES THE BSIT END SEGMENT, CP HAS A COMMON CARRIER OBLIGATION TO PLACE THE GOVERNMENT'S CARS ON THE SEGMENT

If the Board finds that the End Segment is not a regulated rail line and the Government nonetheless purchases the BSIT End Segment, and operates that segment as a private track, the Government seeks a declaration that CP has an STB-enforceable common carrier obligation to place the Government's rail cars on the beginning of the End Segment.[21]

The Government requests that the Board enter a declaratory order confirming this principle. The Government makes this request because the Government has no assurances that CP will offer reasonable terms governing the transfer of its container cars to the End Segment.[22] Boyle VS at ¶ 32.

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[21] *See, e.g.*, *Freight-Handling Charges*, 201 I.C.C. at 546 (common carrier obligation "extends to placing cars on" private track); *Booth-Kelley Lumber Co. v. S. Pac. Co.*, 183 F.2d 902, 913 (9th Cir. 1950) (carrier required to switch cars onto a private siding clear of the railroad's right-of-way); *In re. Allowances to Short Lines of R.R. Serving Indus.*, 29 I.C.C. 212, 225-26 (1914) ("Under the common law as construed in the practically unanimous decisions of the courts, a delivery of carload freight to a shipper having a private siding is made by shunting the car upon the switch, clear of the main tracks.").

[22] While the Government is not seeking a declaratory order on this point since it appears not to be critical any more, the Government notes that during its discussions with CP over the last two years, CP has continually argued that if it abandoned the BSIT, CP would still have a mandatory common carrier obligation to provide service over the BSIT (assuming the Government bought it and operated it as a private track) and the STB would retain jurisdiction to enforce this common carrier obligation. Of course, that position is wrong. *See, e.g.*, *Chi. Coating Co. v. United States*, 892 F.3d 1164, 1166 (Fed. Cir. 2018) ("abandonment removes the line from the national rail system and terminates the railroad's common carrier obligation for the line"); *Devens Recycling Ctr., LLC – Pet. For Declaratory Order*, FD 34952, slip op. at 2 (STB served Jan. 10, 2007) ("The agency's jurisdiction . . . does not extend to wholly private rail operations

IV. THE GOVERNMENT REQUESTS EXPEDITED ACTION

The Government requests that the Board address its Joint Petition on an expedited basis. To facilitate expedition, the Government has filed its entire opening presentation in this Joint Petition. The Government is filing a separate petition asking that the Board order CP to respond to this Joint Petition with its case in chief within twenty days, and granting the Government the opportunity to file rebuttal fourteen days thereafter.

The Government also requests that the Board issue a responsive Declaratory Order as soon as possible. A prompt order will provide the Government with information it needs to properly structure any line sales transaction. In addition, the Government needs to know what its common carrier shipping rights are regarding its

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conducted over private track"); *Energy Sols., LLC D/B/A Heritage R.R. Corp. – Abandonment Exemption – In Anderson & Roane Ctys., Tenn.*, AB 1128X, slip op. at 3 (STB served Oct. 13. 2015) (if a rail is line abandoned, the abandoning carrier has "no common carrier obligation to provide [common carrier] service;" the carrier "could end service on the Line at any time without Board authorization;" and shippers on the line "would lose their regulatory remedies for service failures or inadequacies"). At most, CP's only common carrier duty to deliver the Government's shipments in that instance would be for CP to place the Government's cars clear of the BSIT switch. *See Booth-Kelley Lumber,* 182 F.2d at 913 ("The Interstate Commerce Act, 49 U.S.C.A. § 1(9) [now 49 U.S.C. § 11103] requires switch connection with private tracks, but this imposes no duty upon the railroad beyond its own right of way.") (internal quotation marks and citation omitted); *Winnsboro Granite Corp. v. S. Ry. Co.*, 176 I.C.C. 481, 483 (1931) (service over private track beyond the initial placement point "is neither compelled nor prohibited by the interstate commerce act" and "[t]o furnish it or withhold it is within the discretion of the carrier"). A carrier's common carrier duty to deliver on private track is different than its common carrier duty to deliver on carrier-owned track. Delivery to the latter requires that the carrier provide service to an area where a shipper has reasonable access to its freight. *See* cases cited at n.18, *supra*.

loaded container car shipments – the first of which is scheduled to arrive at the BSIT in late 2019/early 2020.

Finally, the Kesselring Site refueling overhaul is on a tight schedule. Any delays caused by the Government's failure to receive loaded container cars on schedule can cost the Government up to $800,000 per day and undermine national security interests because "[f]or every week or partial week of delays [the Government] incurs in returning the prototype to student training, the Navy fleet suffers a loss of approximately 20 nuclear-trained sailors." Trautman VS at ¶ 21. Loss of nuclear-trained sailors compounds quickly and creates fleet manning and readiness concerns. *Id*. The Government cannot absorb open-ended delays in the prototype-refueling schedule.

CONCLUSION

The Government respectfully requests that the Board grant this Joint Petition on an expedited basis and issue a Declaratory Order responding to the questions presented in the manner set forth above.

Respectfully submitted,

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Dated: April 30, 2019

CERTIFICATE OF SERVICE

I hereby certify, that I have this 30th day of April, 2019 caused a copy of the foregoing Joint Petition to be served by Federal Express overnight delivery service on CP's Chief Legal Officer and General Counsel – US, as follows:

Jeffrey J. Ellis
Chief Legal Officer
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Calgary, AB T2C 4X9
Canada

William M. Tuttle
General Counsel – US
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120 South 6th Street, Suite 1000
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Marie_van_Uitert@cpr.ca

I have also served an electronic copy of the foregoing Joint Petition on the email addresses shown above.

John H. LeSeur
An Attorney for FMP

BEFORE THE
SURFACE TRANSPORTATION BOARD

NAVAL NUCLEAR PROPULSION PROGRAM, UNITED STATES ARMY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND, AND FLUOR MARINE PROPULSION, LLC – PETITION FOR DECLARATORY ORDER	)	Docket No. FD 36298

VERIFIED STATEMENT OF STEPHEN J. TRAUTMAN

1. My name is Stephen J. Trautman. I am the Deputy Director of the Naval Nuclear Propulsion Program ("NNPP" or "Program").

2. The NNPP is a joint activity of the U.S. Department of the Navy ("Navy") and Department of Energy ("DOE"). The Program has beginning-of-development to end-of-service responsibility for all naval nuclear propulsion matters. Its responsibilities and authorities are set by federal statute, 50 U.S.C. §§ 2406, 2511 (codifying the Naval Nuclear Propulsion Executive Order No. 12344, dated Feb. 1, 1982). Under these statutes, the Secretary of the Navy and Secretary of Energy have assigned the Director, NNPP, responsibility to supervise all aspects of naval nuclear propulsion work, including "maintenance" and "refueling" of these plants, as well as training programs, including Nuclear Power Schools of the Navy, and assistance and concurrence in the selection, training, qualification, and assignment of personnel reporting to the director and of

Government personnel who supervise, operate, or maintain naval nuclear propulsion plants. *See* Exec. Order No. 12344, § 7.

3. I received a Bachelor of Science in nuclear engineering from the Pennsylvania State University in 1986. I am also a graduate of the Bettis Reactor Engineering School in Pittsburgh, Pennsylvania.

4. Since 1987, I have worked for the NNPP, first as an Ensign in the Navy, and subsequently transitioning to a federal civilian from the rank of Lieutenant after my Navy service obligation expired. In January 2001, I was appointed to the Senior Executive Service as Director, External Affairs, of the NNPP. In that position, I was responsible for the NNPP's public and foreign affairs and its physical, information, and personnel security efforts.

5. In my current position as Deputy Director, I am the senior civilian in an organization of more than 40,000 personnel, acting for the Director in his absence and responsible for the administration of the NNPP enterprise. This enterprise encompasses NNPP Headquarters, 17 field offices, Navy support and training facilities, four training reactors, laboratories, shipyards, and nuclear-powered warships representing more than 40% of the Navy's major combatants. I have held this position since January 2006.

6. Two of the NNPP's four current training reactors are located at its Kesselring Site in West Milton, New York. Since 1955, the primary mission of the Kesselring Site has been two-fold: first, to train nuclear officers and enlisted personnel to operate the Navy's nuclear-powered aircraft carriers and submarines; and, second, to test

new technology, such as new core and power plant concepts, before they are deployed to the Fleet.

7. The first power plant at the Kesselring Site went into operation in 1955. This and three subsequent power plant prototypes were later decommissioned because more modern platforms were developed. Two nuclear powered prototypes remain in service at the Kesselring Site: the MARF prototype, which went into service in 1976; and the S8G prototype for the USS OHIO, which became operational in 1979.

8. The Federal Government's ongoing S8G prototype refueling effort is, approximately, a $1.5 billion project that is vital to the mission of the Kesselring Site and the Navy.

9. The technology developed at the Kesselring Site, and the training provided there, is a critically important element of the Nation's defense. This technology and training supports the extraordinary capabilities of the U.S. nuclear-powered submarines and aircrafts that comprise approximately 45% of the Navy's major combat fleet, including 10 aircraft carriers, 14 ballistic missile submarines, 55 attack submarines, and 4 guided missile submarines.

10. The important achievements at the Kesselring Site include testing several subsequent generations of nuclear propulsion plants and, since 1955, training over 52,000 nuclear plant operators for the U.S. Navy. The training of Navy nuclear operators continues to be one of the Kesselring Site's most significant contributions to National defense.

11. The prototype reactors used at the Kesselring Site have been refueled and overhauled from time to time. The need for refueling and overhauling will exist for the foreseeable future. For example, at the present time, the S8G prototype reactor at the Kesselring Site is being refueled and overhauled in order to extend its useful life.

12. The Director of the NNPP has a statutory responsibility to supervise the maintenance and refueling of the naval reactor prototype reactors, including the prototypes at the Kesselring Site. *See* Exec. Order 12344, § 7. It is critically important to the Nation's defense that these maintenance and refueling operations take place in a timely manner. Refueling is a complex process involving sequential steps that must adhere to a strict timetable. Any disruption in the timetable ripples through the entire process and delays the eventual restart of the reactor and its Navy training mission.

13. Rail transportation has played, and will continue to play, an irreplaceable role in the refueling of the nuclear reactor prototypes at the Kesselring Site. The current refueling of the S8G prototype provides a representative example. This refueling involves the rail transport of very heavy, oversized loaded and empty containers to and from Ballston Spa, NY. Because of their size and weight, the only practical way to ship these containers long distance is by rail. However, since the Kesselring Site is not directly served by a rail line, short, heavy haul truck service is required to finish inbound shipments and to originate outbound shipments.

14. The only currently viable location option for the Program to transfer a container from rail to heavy haul vehicle ("transload"), or vice versa, for Kesselring Site shipments is Canadian Pacific's ("CP") Ballston Spa Industrial Track ("BSIT") – track

that is located approximately 8 miles from the Kesselring Site. The BSIT is an approximately 0.55-mile, east-west running, common carrier rail line located in Ballston Spa, NY. The BSIT originates at a switch on a CP main north-south line through Upstate NY and ends in a heavy hauler loading/unloading area.

15. Historically, the NNPP has used the BSIT to transload containers used in previous refueling of the Kesselring Site prototype reactors. The NNPP is currently using the BSIT to transload empty containers as part of the S8G prototype refueling and will, following the loading of these containers, use the BSIT to transload loaded container shipments.

16. On inbound shipments, the containers and rail car body are removed from the rail car trucks at the BSIT loading/unloading area by a contractor, mounted on heavy haul vehicles, and transported by the heavy hauler to the Kesselring Site. On outbound shipments, the heavy hauler transports the container and rail car body from the Kesselring Site to the BSIT loading/unloading area where the rail car trucks are re-installed onto the rail car for placement in CP trains.

17. The BSIT plays a vital link in the refueling operations at the Kesselring Site. As discussed in more detail by Mr. Bernhard E. Gundermann, the NNPP must continue to obtain rail service over the BSIT as it has no other viable transportation options for the last rail leg of the empty, and first rail leg of the loaded, container rail moves.

18. As discussed in more detail by Mr. David P. Dorfman, the BSIT is designated as a connector line to the Strategic Rail Corridor Network. This is an

appropriate and necessary designation because of the important role the Kesselring Site plays in National defense and the critical role that the BSIT plays in this process.

19. The NNPP is very concerned about CP's refusal to acknowledge that the entirety of the BSIT is a common carrier line subject to the common carrier obligation, with that obligation enforced by the Surface Transportation Board ("STB"). The NNPP must continue to obtain common carrier service over the BSIT to carry out its mission at the Kesselring Site. Any refueling shipment delays attributable to CP's current efforts to declare a portion of the BSIT is not subject to STB regulation will be to the substantial detriment of National security interests. Continued regulation by the STB serves as a vital regulatory backstop should CP threaten to stop service or deny the NNPP reasonable access to the BSIT to transload its container shipments.

20. The current refueling of the S8G prototype involves a total of 12 shipments – six inbound and six outbound – over the next two years (the first four inbound shipments have already been completed). Timely rail transportation of these shipments is inextricably linked to the overall refueling critical path schedule. The selected dates for the rail shipments carefully balance scheduling needs with available resources at the Kesselring Site, including cranes, laydown space, and personnel. Delays to rail shipments may cause day-for-day delays to the accomplishment of critical path overhaul operations at the Kesselring Site, which result in direct delays returning the S8G prototype to Navy nuclear training.

21. For every week or partial week of delays the NNPP incurs in returning the prototype to student training, the Navy fleet suffers a loss of approximately 20 nuclear-

trained sailors. A two-month delay is roughly equivalent to a loss of roughly three VIRGINIA Class submarine nuclear propulsion plant crew complements. Lost training capacity for nuclear-trained sailors compounds quickly, leading to fleet manning and readiness concerns, driving National security implications.

22. Additionally, the potential critical path schedule delays associated with delayed shipments and work offsets can result in a cost increase of up to $800,000 per day. Any increase to the approved budget for the S8G prototype refueling is dependent on Congressional approval, which is not guaranteed and could further jeopardize the rate that nuclear-trained sailors are generated for the fleet. For these reasons, the NNPP asks that the STB decide our Declaratory Order Petition on an expedited basis.

VERIFICATION

I, Stephen J. Trautman, verify under penalty of perjury that I have read the foregoing Verified Statement, know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Stephen J. Trautman

Executed on 29 APR, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

NAVAL NUCLEAR PROPULSION PROGRAM, UNITED STATES ARMY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND, AND FLUOR MARINE PROPULSION, LLC – PETITION FOR DECLARATORY ORDER	)	Docket No. FD 36298

VERIFIED STATEMENT OF DAVID P. DORFMAN

1. My name is David P. Dorfman. I am a professional engineer and serve as Senior Civil Engineer for the Railroads for National Defense Program in the Army's Military Surface Deployment and Distribution Command Transportation Engineering Agency ("SDDCTEA").

2. I received my BS, Civil Engineering from Rensselaer Polytechnic Institute. In 1981, I joined the Transportation Engineering Agency and since that time I have held various positions and in 2008 assumed my current position in the Railroads for National Defense Program.

3. The SDDCTEA, through the Railroads for National Defense Program, works with the military Services and defense agencies to identify their requirements for civil sector rail service. The Railroads for National Defense Program

integrates defense rail needs into civil sector planning affecting the Nation's railroad system and strives to ensure America's rail network meets military needs.

4. The SDDCTEA, in conjunction with Federal Railroad Administration ("FRA"), has established the Strategic Rail Corridor Network ("STRACNET"), to ensure the Department of Defense's minimum rail needs are identified and coordinated with appropriate transportation authorities, including the Surface Transportation Board.

5. In October 2018, SDDCTEA and FRA issued their joint report entitled "Strategic Rail Corridor Network (STRACNET) and Defense Contractor Lines" ("2018 STRACNET Report" or "Report")). The 2018 STRACNET Report identified 126 military installations and other locations as requiring rail service to accomplish their missions and designated a minimal STRACNET consisting of 33,000 high-density rail lines, supplemented by 4,700 miles of defense connector lines. The defense connector lines serve facilities that need rail service but are not on STRACNET lines. I append pertinent excerpts from that Report in my Exhibit No. 1 (DPD-1).

6. As particularly pertinent in this proceeding, the 2018 STRACNET Report identifies the Naval Nuclear Propulsion Program's ("NNPP") Kenneth A. Kesselring Site ("Kesselring Site") as requiring offpost rail service. Rather than being served by onpost tracks within the Kesselring Site, it is served by the offpost Delaware & Hudson Railway Co. ("D&H") d/b/a/ Canadian Pacific ("CP") track in Ballston Spa, NY, called the Ballston Spa Industrial Track.

7. The entire Ballston Spa Industrial Track is a critically important part of the offpost STRACNET connector line network serving the Kesselring Site because it is the only suitable location for rail/heavy hauler transloading of shipments to and from the Kesselring Site. While STRACNET maps depict an entire state and do not show all specific local connector line track configurations, the offpost track must go to the location where cargo can be loaded, unloaded, or transloaded.

8. SDDCTEA is very concerned that if any portion of BSIT falls outside of STB oversight, CP may attempt to stop service. The BSIT line must remain in common carrier service, subject to STB oversight, in order to ensure the Kesselring Site obtains rail shipments that are vital to its mission, including rail shipments of very heavy, oversized container cars the NNPP needs to refuel the prototype nuclear reactors located at the Kesselring Site.

9. I have reviewed pertinent portions of the ICC record in AB 156 Sub No. 9F and Mr. Gundermann's Verified Statement addressing this record. I agree with Mr. Gundermann that the location of D&H/BSIT main line switch in 1980 was at valuation station 1626+83, not at some point south of this location, as I understand CP now contends; that the 0.56 miles of track D&H agreed not to abandon in 1980 encompasses the current 0.55 mile length of the BSIT from the CP main line switch (at valuation station 1626+83) to the end of the track; and that, in its 1980 ICC filings, D&H may have mistakenly paired milepost A. 30.76 with Val Station 1626+83.

VERIFICATION

I, David P. Dorfman, verify under penalty of perjury that I have read the foregoing Verified Statement, know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

David P. Dorfman

Executed on April 26, 2019

DORFMAN
EXHIBIT NO. 1

(DPD-1)

October 2018

STRATEGIC RAIL CORRIDOR NETWORK (STRACNET) and DEFENSE CONNECTOR LINES

Military Surface Deployment and Distribution Command
Transportation Engineering Agency
1 Soldier Way
Scott AFB, IL 62225-5006

I. EXECUTIVE SUMMARY

SCOPE

This study was undertaken to update the 2013 designation of the Strategic Rail Corridor Network (STRACNET) and its associated connector lines. The STRACNET has been updated on a 5-year basis since 1993, which has been sufficient to keep pace with rail network changes since that time. Together, STRACNET and the connectors are the civil rail lines most important to national defense. The study also verifies their defense readiness condition, and documents defense rail line requirements. The STRACNET has been relatively stable since 2013. The most significant changes to the STRACNET since 2013 have been removal of the STRACNET designation of the rail lines leading to downtown Boston and San Francisco. In both cases, portions of these former STRACNET lines are now designated as defense connector lines because these portions form part of the route to specific military installations.

CONCLUSIONS

The Military Surface Deployment and Distribution Command[1] Transportation Engineering Agency and the Federal Railroad Administration (FRA) reviewed and updated the designation of civil rail lines important to national defense. Virtually all lines designated for STRACNET and connectors to military installations and activities (such as strategic seaports) requiring rail service meet defense readiness requirements for maintenance condition, clearance, and gross weight capability. State maps in Appendix A show these lines. Department of Defense (DoD) installations and activities requiring rail service to accomplish their assigned mission are listed in Appendix B.

[1] The Military Surface Deployment and Distribution Command (SDDC) was named the Military Traffic Management Command (MTMC) before January 1, 2004.

Inquiries about installations, requirements, and designations should be addressed to:

Mail Address	**Headquarters** **Military Surface Deployment and Distribution Command** **ATTN: Transportation Engineering Agency (SDTE-SA)** **1 Soldier Way** **Scott AFB, IL 62225-5006**
Telephone	**DSN – 770-5741 or 770-5247** **Commercial - (618) 220-5741 or (618) 220-5247**
FAX	**DSN - 770-5551** **Commercial - (618) 220-5551**

Inquiries about State rail maps or the rail database should be addressed to:

Mail Address	**Federal Railroad Administration** **ATTN: RPD-20** **1200 New Jersey Ave. SE Stop 15** **Washington, DC 20590**
Telephone	**Commercial: (202) 493-6415**

II. PURPOSE AND METHODOLOGY

PURPOSE

This publication designates civil rail lines that form the Strategic Rail Corridor Network (STRACNET) and connector lines between STRACNET and installations and activities requiring rail service[2]. It updates the civil rail lines designated to satisfy defense requirements and confirms that these lines meet minimum defense readiness conditions. STRACNET and connector lines are the civil railroad lines most important to national defense. However, STRACNET is not a routing guide, and actual shipments may not necessarily travel over STRACNET lines. Rail lines that are not designated as STRACNET or connector lines are also beneficial to national defense if they have adequate clearance and could be used as a detour route if a service interruption occurred on STRACNET. This publication also presents the current list of DoD installations and activities requiring rail service to accomplish their assigned mission. This list forms the foundation for the update of civil rail lines important to national defense.

METHODOLOGY

The Military Surface Deployment and Distribution Command Transportation Engineering Agency (SDDCTEA) and the Federal Railroad Administration (FRA) jointly reviewed the lines for the STRACNET and connectors between STRACNET and defense installations and activities requiring rail service. Based on SDDCTEA's request, the Department of Defense (DoD) Components (Army, Navy, Air Force, Marine Corps, Defense Contract Management Agency and Defense Logistics Agency) updated the list of military installations and activities requiring rail service. SDDCTEA screened the final list for DoD.

Traffic density is a good indicator of rail line viability. The rail lines[3] designated as STRACNET have moderate to high traffic density, and no fluctuation in traffic density since 2013 was so significant that it suggested a change in STRACNET line designation.

The analysis also included a review to ensure that the designated lines meet defense readiness requirements for maintenance condition, clearance for oversize shipments, and weight-bearing capacity. The FRA continuously monitors carrier's safety maintenance inspection compliance so as to generally achieve coverage of most of STRACNET and defense connector lines every 3 years as part of its overall inspection program.

[2] *STRACNET Condition Report, A Study of Rail Lines Important to National Defense for the Armed Services Committees of Congress*, MTMC, June 1981.

[3] Designated defense lines were also identified in MTMC reports *Rail Lines Important to National Defense*, MTMC, July 1983, *Civil Rail Lines Important to National Defense*, MTMC, July 1986, October 1990, and December 1993, and *Strategic Rail Corridor Network (STRACNET) and Defense Connector Lines*, SDDCTEA, December 1998, September 2003, March 2008, and October 2013.

STRATEGIC RAIL CORRIDOR NETWORK (STRACNET) and DEFENSE CONNECTOR LINES

The DoD clearance profile used to analyze rail line clearances was developed and presented in the MTMC "STRACNET Condition Report," dated June 1981. In successive updates, SDDCTEA has verified that the DoD clearance profile continues to accommodate the vast majority of military equipment.

Finally, the analysis evaluated the weight-bearing capacity of defense lines to support military traffic. The heaviest common military railcar-loading configuration creates a lower axle load than what is required by industry standards for railroad track in North America. Therefore all designated defense lines in the United States meet military needs for moving heavy military cargo.

III. INTRODUCTION AND BACKGROUND

During the 1970s, the railroads experienced a period of economic instability. Ten railroads declared bankruptcy and deferred maintenance was commonplace. The DoD experienced excessive shipping times, and concern increased over the civil railroad industry's capability to support a defense emergency. Therefore, in June 1975, the Deputy Secretary of Defense directed the Commander, MTMC to establish and develop the Railroads for National Defense (RND) Program in coordination with the Department of Transportation's (DOT) FRA.[4]

The purpose of the RND Program is to identify defense rail requirements; assure consideration for national defense in civil railroad policy, plans, standards, and programs; and gain support and responsiveness for defense rail line requirements.

MTMC initiated the RND Program with the development of STRACNET in 1976.[5] STRACNET is a 33,000-mile interconnected network of rail corridors (not actual rail lines) important to national defense (Figure 1). It was developed from analyses of mobilization/deployment needs, peacetime traffic, and combat tank shipments as an indicator of oversize/overweight movements. FRA designated a main line to satisfy each STRACNET corridor.[6]

In 1977, a list of DoD installations and activities requiring rail service was published[7]. The list has been updated in the STRACNET reports since then. Overall, fewer installations require rail service today than in 1977. In some instances STRACNET corridors are no longer required. For example, the rail corridor to downtown Boston was originally part of STRACNET; it was removed from STRACNET in this update because military shipments to northern New England usually follow the circumferential rail route around Boston. The STRACNET designation was also removed from the rail corridor to downtown San Francisco. Portions of both these corridors provide access to specific military installations, and those portions are now designated as defense connector lines. Overall, changes to the original STRACNET have been minimal. It continues to be important to ensure that the rail network infrastructure is robust and capable of moving a large force in a rapid fashion for contingency deployments.

[4] Letter, Deputy Secretary of Defense to the Secretary of Transportation, 25 June 1975.

[5] Report, RND 76- 1, *An Analysis of a Strategic Rail Corridor Network (STRACNET) for National Defense*, MTMC, November 1976.

[6] *Final Standards, Classification, and Designation of lines of Class I Railroads in the United States*, Secretary of Transportation's report to Congress, dated 30 June 1977, submitted in accordance with Section 503(e) of the "Railroad Revitalization and Regulatory Reform Act of 1976" (Public Law 94-210).

[7] *List of Department of Defense Installations and Activities Requiring Rail Service*, MTMC, 1977.
Designated defense lines were also identified in MTMC reports Rail Lines Important to National Defense, MTMC, July 1983, Civil Rail Lines Important to National Defense, MTMC, July 1986, October 1990, and December 1993, and Strategic Rail Corridor Network (STRACNET) and Defense Connector Lines, SDDCTEA, December 1998, September 2003, March 2008, and October 2013.

**STRATEGIC RAIL CORRIDOR NETWORK (STRACNET)
and DEFENSE CONNECTOR LINES**

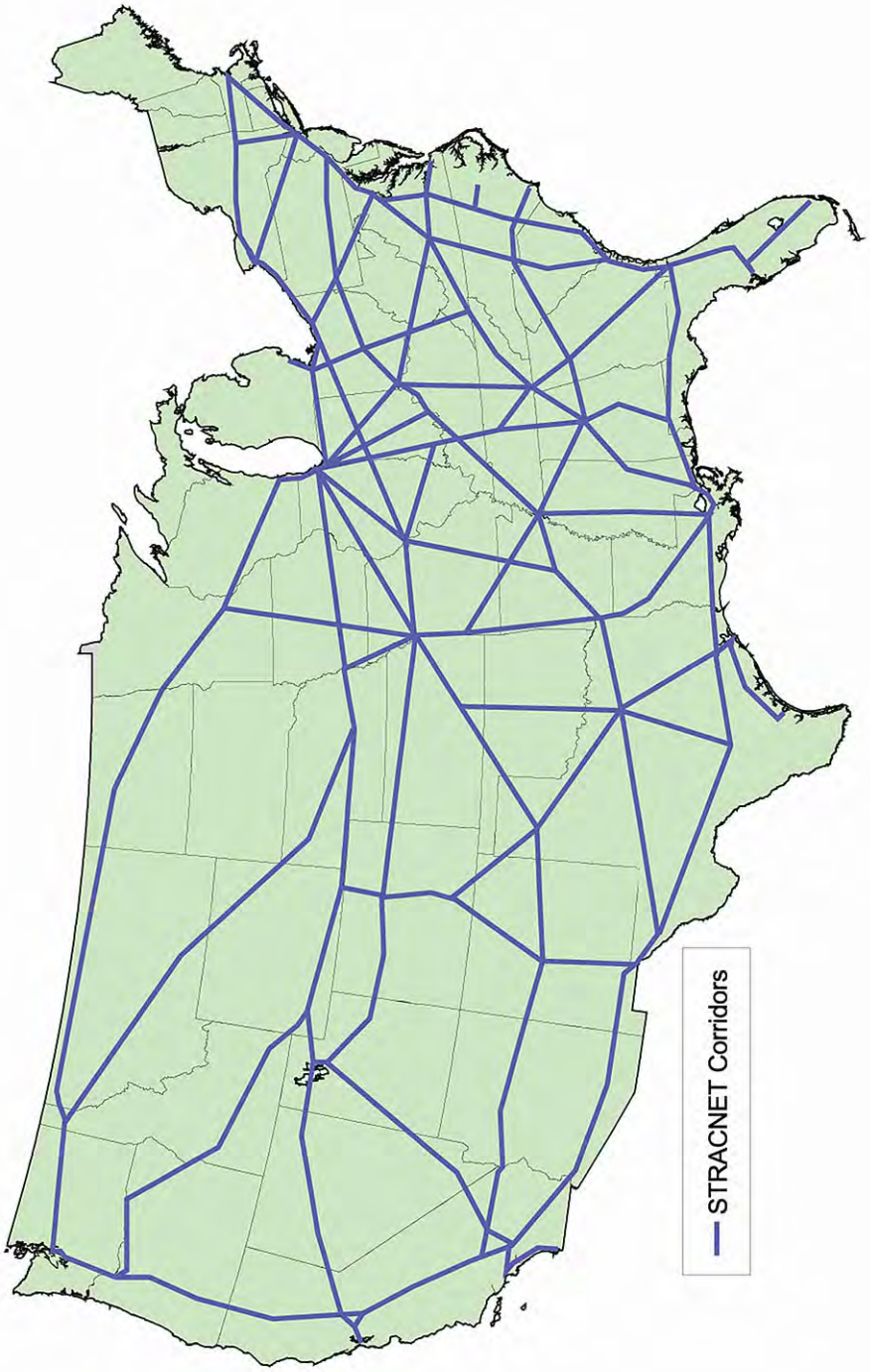


Figure 1. Strategic Rail Corridor Network (STRACNET)

SDDC developed a DoD clearance profile to reflect rail line clearance needs for oversized equipment. The DoD profile has been used by SDDC to analyze rail line clearances and validate the clearance of lines designated for national defense.

By congressional mandate, the condition of defense lines was reported in the STRACNET Condition Report (1981). Connector lines from STRACNET to defense installations and activities requiring rail service were identified. The maintenance condition of defense lines was found to be satisfactory. The report also found that defense shipments are not restricted to designated lines, because of clearance requirements, and in most cases can move by alternate routes. Thus rail lines in addition to STRACNET and the connector lines are beneficial to national defense.

In 1982, the DOT's FRA and MTMC agreed to perform periodic reviews of rail lines important to national defense.[8] Such reviews resulted in the publications: *Rail Lines Important to National Defense*, 1983, *Civil Rail Lines Important to National Defense*, 1986, 1990, and 1993 and *Strategic Rail Corridor Network (STRACNET) and Defense Connector Lines*, 1998, 2003, 2008, and 2013. Since 1993 the STRACNET has been updated on a 5-year cycle.

This 2018 report updates the designation of STRACNET and connector lines which are the railroad lines most important to national defense. STRACNET allows defense and civil rail planning to be more easily coordinated. STRACNET also allows for prioritization of restoration of rail service in the event of any emergency that causes large-scale loss of rail lines. By using high-density lines to satisfy most of STRACNET, the risk of a civil rail line abandonment affecting national defense is minimized. The RND Program focuses most of its efforts on protecting STRACNET and connector lines from being abandoned, downgraded, or having their ability to handle oversize loads impeded.

This report is not intended to be a routing guide for traffic managers. Rail carriers will route traffic using many different parameters relative to profit, distance, clearance, and time. In many instances defense rail shipments will move on other rail lines not designated as part of STRACNET.

The capability of rail carriers to perform this type of routing is enabled by the built-in redundancy of rail lines which form a very robust network. During times of floods, hurricanes, attacks, or earthquakes redundant capability is very useful, but over time it can be very expensive.

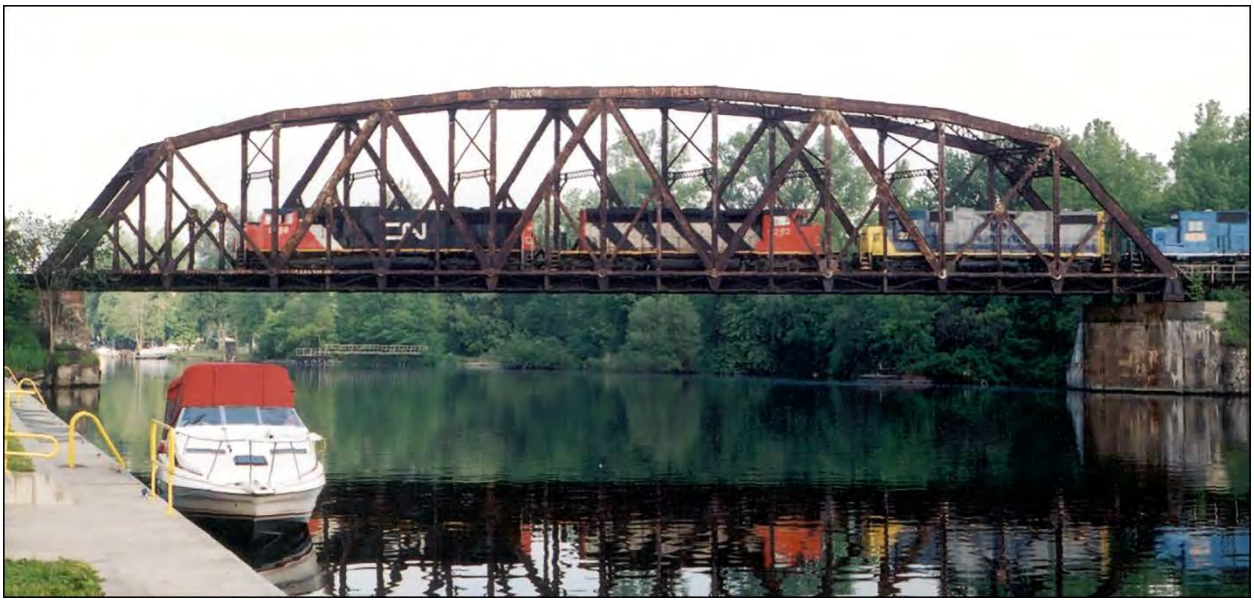
The railroad industry must operate enough track to move traffic efficiently but not so much that the revenue generated is inadequate to support good maintenance. In the past, too many miles of track were being maintained with too few revenue dollars. This situation resulted in several railroad bankruptcies and many miles of deteriorated railroad track. Deregulation of the railroad industry in 1980 enabled the railroads to more easily abandon unprofitable lines. Railroad mergers

[8] Letters, Cdr, MTMC, to Federal Railroad Administrator, 2 April 1982, and Mr. James C. Rooney, Associate Administrator for Policy to the Special Assistant for Transportation Engineering, MTMC, 5 October 1982.

sometimes resulted in most traffic on a corridor being concentrated on a single line, with parallel lines either being abandoned or downgraded to serve only local traffic. These reductions in trackage permitted the railroads to focus their maintenance dollars where they were needed most, with the result that most track is now well-maintained.

With improved efficiencies from mergers and a greater demand for intermodal service, carriers have now seen a dramatic increase in traffic levels. In some instances carriers have placed abandoned lines back into service or upgraded previously downgraded routes to respond to these increases in traffic. Today, the trend is toward increasing capacity on principal rail lines; however, in some cases traffic has increased more than capacity resulting in rail congestion. The rail industry understands if network improvements will help transport more cargo, line upgrades may be a worthwhile investment. Civil-sector (commercial and non-defense governmental) public-private partnerships and favorable tax consideration and/or grants for railroad infrastructure investments may help to further improve railroad infrastructure and capacity.

The RND Program monitors the rail network for abandonments affecting STRACNET or connectors and track improvements to downgraded or abandoned lines. These improvements provide for a robust rail network that earns the capital required to provide good maintenance and support to national defense.



IV. ANALYSIS

1. DESIGNATION OF DEFENSE RAIL LINES

Traffic volume is a good indicator of rail line viability. Higher traffic densities also correlate well with good maintenance conditions. If traffic volumes have changed within defense rail corridors, civil rail lines with higher densities may exist that could replace lines previously designated for those corridors. Therefore, SDDCTEA and the FRA conducted a review and analysis of defense rail corridors based on updated traffic densities.

The FRA obtained the latest available (2016) traffic densities from Class 1 rail carriers. Those lines that had a significant decrease in traffic density, particularly those which, on an annual basis, had dropped below 10 million gross tons (MGT) since the last DoD-FRA analysis (2013), were reviewed by FRA to determine if there were more desirable routes available with higher traffic density. In this update, no STRACNET line had experienced a significant enough traffic decline to warrant substitution by a different route. SDDCTEA and FRA agreed upon the final designation of STRACNET lines (33,000 miles) and connector lines (4,700 miles), which are shown in Figure 2 and identified in detail on the State maps in Appendix A. Military installations and activities requiring rail service are listed in Appendix B. FRA continuously updates the North American Rail Network (NARN) database with rail line abandonments, carrier changes, and other data. SDDCTEA used the FRA NARN database to produce a map of each State.[9]

[9] No map is included for Hawaii since it has no freight railroads.

**STRATEGIC RAIL CORRIDOR NETWORK (STRACNET)
and DEFENSE CONNECTOR LINES**

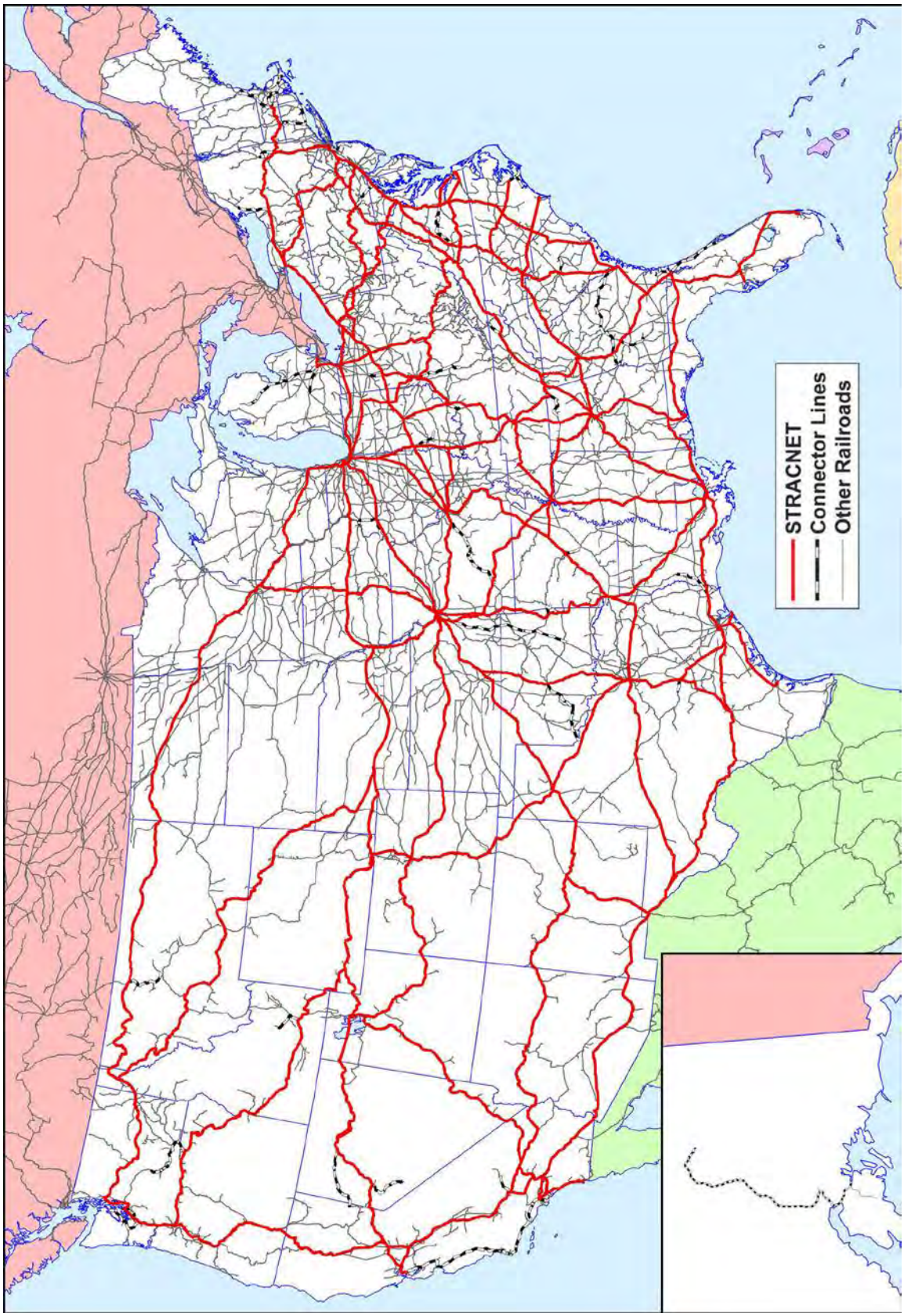


Figure 2. Civil Rail Lines Most Important to National Defense

2. MAINTENANCE CONDITION AND OPERATING SPEED

Maintenance condition of STRACNET is very important to national defense. The allowable operating speed limit over a rail line is directly related to the maintenance condition of the line; that is, the higher the FRA track safety-maintenance classification then the higher the allowable operating speed.[10] Defense planners use an average speed of 22 miles per hour[11] to calculate travel times for military equipment transported by unit trains. Allowing for expected delays, speeds of 40 miles per hour for most of the journey are desirable to assure an average speed of at least 22 miles per hour.

Table 1 shows measures of civil rail line defense readiness condition. Lower speeds are more acceptable on connector lines than on STRACNET lines because the former lines are usually used for only a small portion of the total trip length. Also, many railroads maintain their main lines and operate their trains at higher standards and speeds than shown in Table 1. High maintenance standards result in increased reliability and safety.

The FRA monitors carrier's inspection compliance so as to achieve periodic coverage of all STRACNET and connector rail lines. SDDCTEA's review of the FRA track inspection results indicates broad compliance with the measures of acceptable defense readiness conditions.

The railroads have significantly increased capital expenditures on the Nation's railroad track and structures since the mid-1970s. These expenditures, combined with the 1980 passage of the Stagger's Act, which partially deregulated the railroad industry, resulted in track conditions improving significantly. The decrease in track-related accidents is impressive. FRA data show that there were over 4,000 accidents attributable to track defects each year in 1977, 1978, and 1979. This has declined to less than 1,000 accidents attributable to track defects per year since 2008. The decline in track-related accidents is another indicator confirming defense readiness conditions.

The FRA inspection of designated defense rail lines reveals that, at the time of FRA's inspection, overall the carriers maintained their lines in defense readiness condition.

TABLE 1
MEASURES OF CIVIL RAIL LINE DEFENSE READINESS CONDITION

	Acceptable	Desirable
STRACNET		
FRA Track Class	2	≥ 3
Freight Train Speed (Maximum)	25 mph	≥ 40 mph
CONNECTORS		
FRA Track Class	1	≥ 2
Freight Train Speed (Maximum)	10 mph	≥ 25 mph

[10] *Federal Railroad Administration Track Safely Standards*, 49 CFR 213.9, *Class of Track: Operating speed limits.*
[11] SDDCTEA Pamphlet 700-2, *Logistics Handbook for Strategic Mobility Planning, October 2011*, page 33.

3. LOW TRAFFIC DENSITY CONNECTOR LINES

Low traffic density branchline connectors are those where the total civil and defense rail traffic is less than 3 MGT per year. Low-density lines are likely to have lower speed limits and maintenance levels than high-density lines, as well as being at a greater potential risk of abandonment. The Services, the Defense Contract Management Agency (DCMA), and the Defense Logistics Agency (DLA) have identified 126 installations and activities that require rail service to complete their assigned mission (Appendix B). Of the 126 installations and activities requiring rail service, 40 are on STRACNET main lines, 39 are on connectors with traffic densities greater than or equal to 3 MGT per year, and 47 are on low traffic density branch lines (Table 2). The 47 installations and activities served by these low traffic density branch lines are identified by Service in Appendix C.

In a few cases a low-density line has little risk of abandonment because it sees passenger trains as well as freight trains. For example, passenger trains between Chicago and Los Angeles operate via the Army's Piñon Canyon Maneuver Site (PCMS) over a STRACNET connector line that sees very little freight traffic. As long as these passenger trains operate on their current route, the rail route to PCMS will be very well-maintained and not likely at risk of abandonment.

TABLE 2
DOD INSTALLATIONS AND ACTIVITIES REQUIRING RAIL SERVICE

Served by:	Army	Navy	Marines	Air Force	DCMA	DLA	Total
STRACNET	30	1	4	3	0	2	40
CONNECTORS							
Traffic Volumes Greater than or Equal to 3 MGT/YR*	31	4	0	2	1	1	39
Less than 3 MGT/YR	23	14	4	5	1	0	47
TOTAL	84	19	8	10	2	3	126
*MGT/YR – Million gross tons per year							

4. CLEARANCES

Rail line clearances can be critical for transporting military cargo; military equipment can overhang railcars and extend past the standard width of 10 feet 8 inches set by the Association of American Railroads (AAR) Plate C. Trackside obstructions and structural limitations (for example, bridges (Figure 3), tunnels, high-level station platforms) determine the size of shipments that can be moved. The STRACNET Condition Report, June 1981, explained how MTMC developed the DoD clearance profile (Figure 4) to analyze rail line clearances and determined that almost all STRACNET lines passed the profile.

In some cases, published clearance information[12] indicates that a STRACNET line meets the DoD profile requirements. In other cases, the commercial railroads indicated that the DoD profile would clear a line, subject to special handling, even though the DoD profile exceeded the published clearances for the route. In addition, several commercial railroads have expanded clearances on their routes since 1981.

Figure 3. Plate Girder Bridge

[12] Railway Line Clearances, Volume 202, 1992/93 Annual Issue, K-III Information Company, New York, NY; and The Official Railway Guide - Fourth Quarter 2017, JOC Group Inc., New York, NY

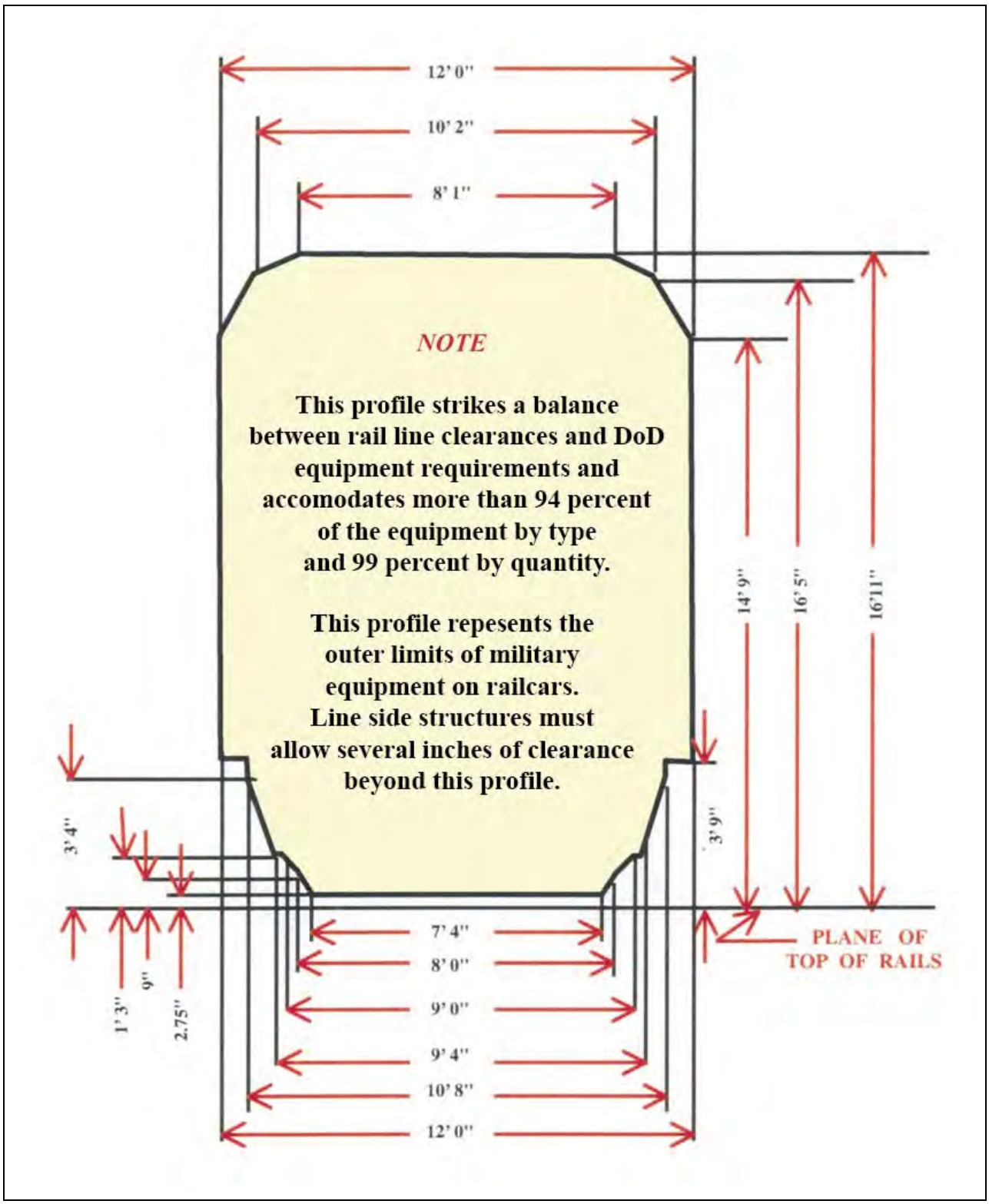


Figure 4. Clearance Profile – Department of Defense

SDDCTEA reviews rail clearances for STRACNET defense lines because clearance dimensions can change. The primary points of contact regarding rail line clearances are railroad clearance engineers and the American Railway Engineering and Maintenance-of-Way Association (AREMA). SDDCTEA works closely with them to ensure that defense lines can accommodate the DoD profile. In general, railroad construction projects will result in improved clearances. If a railroad rebuilds a bridge or tunnel or other substantial structure, it will almost always rebuild it in a way that enhances clearances. The AREMA standards for most new structures require clearances that are substantially more generous than those required by the DoD clearance profile.

High-level platforms in passenger stations are the only type of new construction that is likely to interfere with the DoD profile. High-level platforms can prevent a rail line from being used to deploy M-1 tanks and other key military items as well as various oversize civilian freight shipments. If high-level platforms are installed on STRACNET lines, it is important that they be constructed in such a way that they do not interfere with rapid deployment of military equipment. A well-designed station can have high-level platforms and be compatible with wide military loads. On a multiple-track line, only certain tracks may need to be adjacent to high-level platforms. Freight trains with wide loads can usually pass through these stations on tracks that are not next to the high-level platforms as shown in Figure 5. Another possibility is the construction of gauntlet tracks[13] by the high level platforms as shown in Figure 6. The rails nearer the platform are used by passenger trains; the farther pair of rails is for freight trains with overwidth loads. Wheelchair lifts (Figure 7) or offset mini high platforms (Figure 8) with bridge plates are options for wheelchair access at stations where construction of high-level platforms is not feasible.

A few stations have had high-level platforms for many years. For instance, some Boston-area suburban station platforms impede overwidth equipment shipment to and from Camp Edwards. To solve this problem, when an occasional oversize shipment is made, the military vehicle is blocked and braced and raised above the railcar deck. This is a labor-intensive and time-consuming process, which works only for occasional shipments. Camp Edwards does not have M-1 tanks and has only a handful of M-88 tank retrievers which are almost as large. Camp Edwards can tolerate difficult tiedown procedures for its very low inventory of oversize equipment, but this procedure would cause difficulties for a lot of shipments at one time. No new facilities should be constructed which would prevent or impede military use of STRACNET or defense connector lines.

[13] Gauntlet tracks consist of two pairs of running rails that overlap.

Figure 5. Multiple tracks by a passenger station platform.

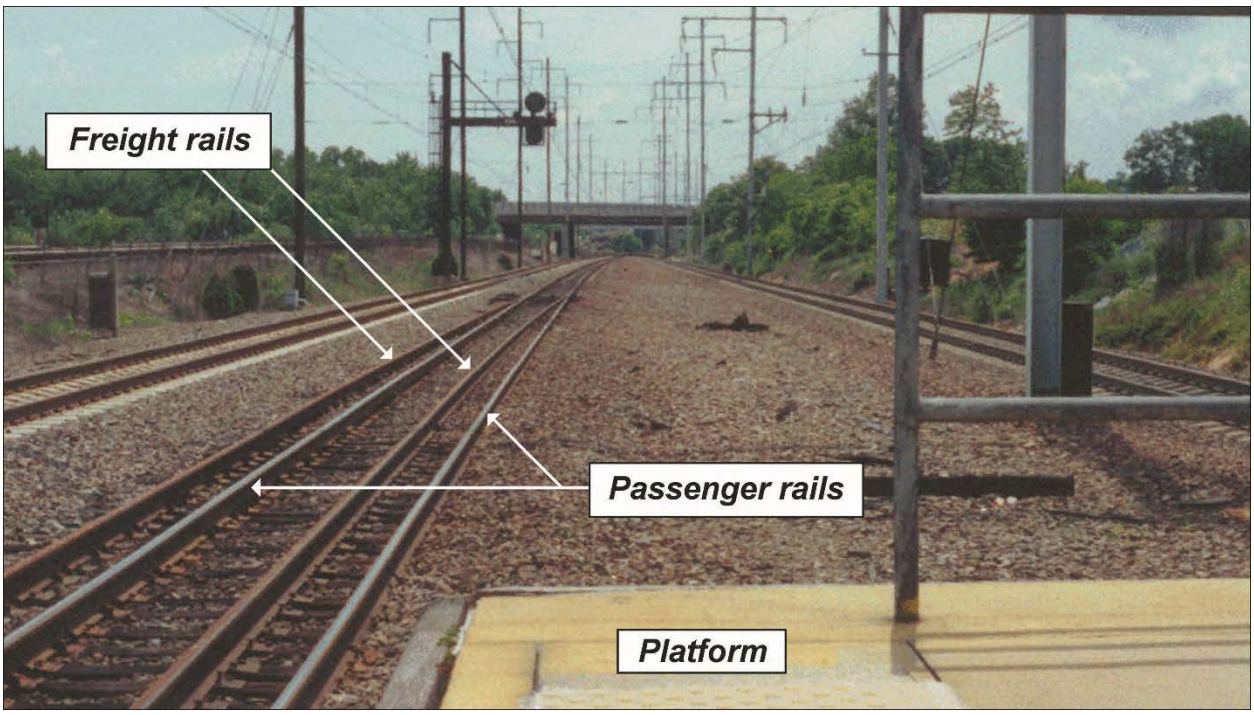


Figure 6. Gauntlet tracks by a high-level platform.

Figure 7. Wheelchair lift.

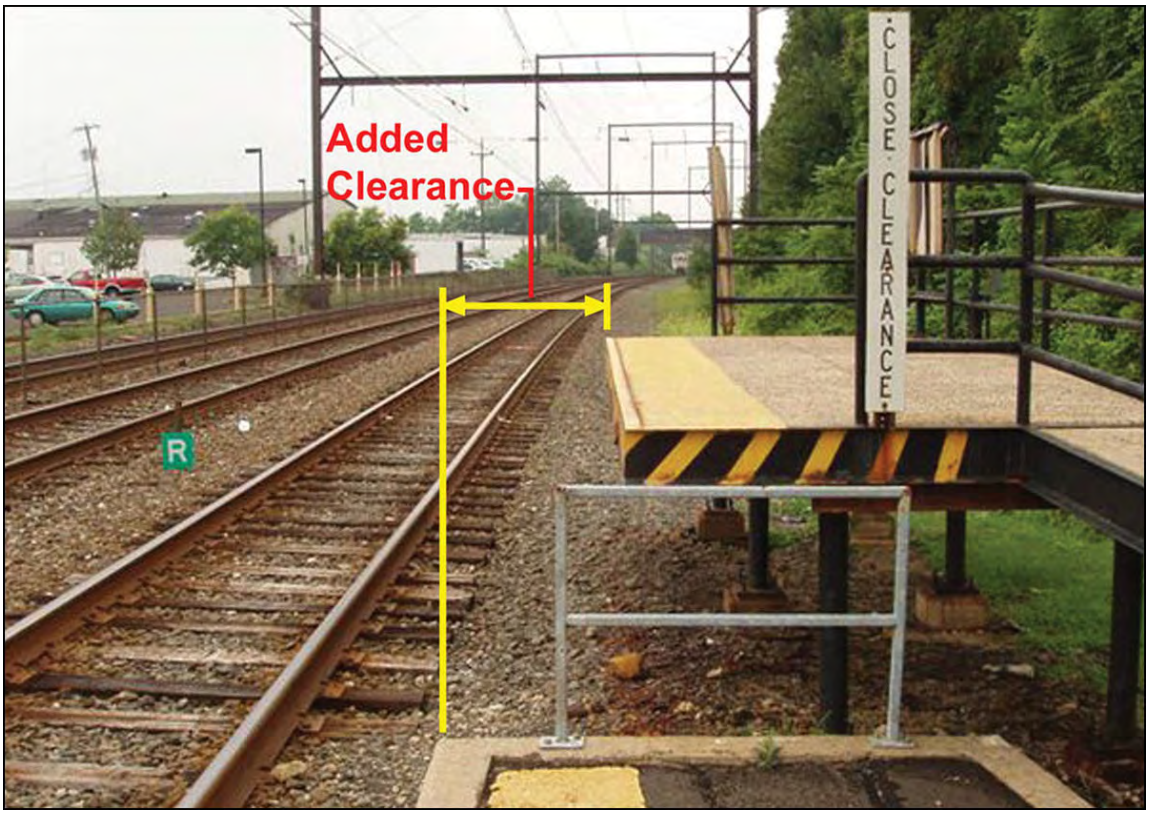


Figure 8. Offset mini high platform.

5. WEIGHT CAPABILITIES

The STRACNET has the weight bearing capability to transport common military loads in their normal transport configurations. The gross weight limitations of the railroad track and structures are high relative to highways. Individual locomotives can weigh in excess of 400,000 pounds. SDDCTEA analyzed the weight capabilities of defense rail lines and found no deficiencies.

When STRACNET was first developed, the industry standard for gross weight was 263,000 pounds for 4-axle cars or an individual axle load of 65,750 pounds. Theoretically this would allow a freight car with six axles to have a gross weight on rail of 394,500 pounds. The military commonly ships two 70-ton tanks on 6-axle heavy-duty flatcars, which results in a gross weight on rail of less than 375,000 pounds, well within the limits of 263K lines. All STRACNET and connector lines have a capacity of at least 263,000 pounds, and tanks have successfully been moved by rail in America for many years. Transporting two tanks on one heavy-duty flatcar is the greatest weight challenge the military commonly gives to the American rail carriers. Furthermore, today the rail industry standard is that rail lines should be able to support freight cars with a gross weight of up to 286,000 pounds riding on four axles, or an individual axle load of up to 71,500 pounds. While not all rail lines meet this 286K standard, most do and more lines will be upgraded to the 286K standard in the future. This standard provides a substantial cushion above the weights required to transport military items.

All STRACNET and connector lines meet at least the old 263,000 pound standard, and many of them meet the newer 286,000 pound standard. Therefore, the weight limits of America's rail network do not constrain the ability to move heavy pieces of military equipment by rail. As is the case with oversize loads, overweight loads can often be routed on non-STRACNET lines, since virtually no railroad main lines fail to meet at least the 263K weight standard.

The designation of a line as STRACNET is useful for planning but provides no movement authority for a shipment that is oversize and/or overweight. All oversize/overweight shipments must be approved by the clearance departments of all the rail carriers involved in their route prior to movement.

V. CONCLUSIONS

SDDCTEA and FRA reviewed civil rail lines important to national defense. The State maps in Appendix A identify STRACNET and connector lines. The maps are supplemented by a list of DoD installations and activities requiring rail service in Appendix B.

Almost all designated lines meet defense readiness requirements for maintenance condition, clearance, and gross weight capabilities.

Defense rail lines designated in Appendix A and the installations and activities identified as requiring rail service in Appendix B document defense rail requirements and supersede previous reports.

SDDCTEA will periodically review track inspection data provided by the FRA for defense lines. It is anticipated that future detailed reviews of defense rail requirements will be periodically conducted by SDDCTEA and FRA.

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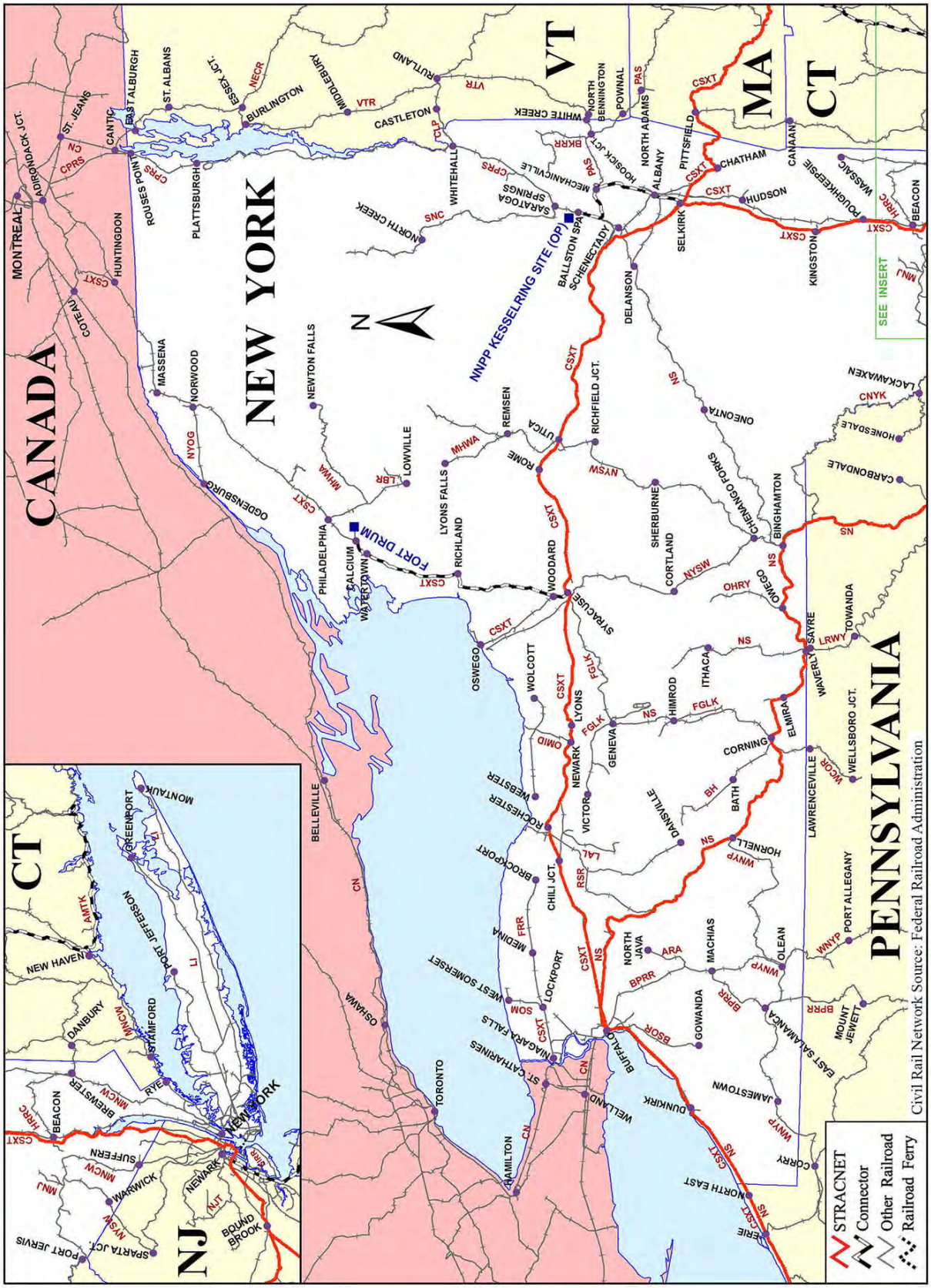
APPENDIX A

State Maps

STRATEGIC RAIL CORRIDOR NETWORK (STRACNET) and DEFENSE CONNECTOR LINES



APPENDIX B

DEPARTMENT OF DEFENSE INSTALLATIONS AND ACTIVITIES REQUIRING RAIL SERVICE

Appendix B supports Appendix A by providing a tabular list of installations and other locations requiring rail service and identifying the nearby railheads or cities. Each of the four Services, as well as the DLA and the DCMA, operate installations and activities where rail service is important to mission accomplishment either in peacetime or mobilization, or both. The Services, DCMA, and DLA have identified 126 installations and activities where rail service is important. These installations and activities are listed in the following table, by State. A key to the installation abbreviations is shown at the end of this appendix.

Some installations, where rail service is required, are actually served by offpost railheads rather than tracks on the installations themselves. These installations are identified by the symbol "OP" for offpost railhead. However, most installations where rail service is important are served by tracks on the installation proper.

STRATEGIC RAIL CORRIDOR NETWORK (STRACNET) and DEFENSE CONNECTOR LINES

ACTIVITY	RAILHEAD
NEW YORK	
Fort Drum	Calcium
NNPP Kesselring Site (OP)	Ballston Spa
NORTH CAROLINA	
DESC, Millers Siding (Seymour-Johnson AFB)	Goldsboro
Defense Fuel Supply Point (DFSP) Selma	Selma
Fort Bragg	Fort Junction
Marine Corps Air Station (MCAS), Cherry Point	Havelock
MCB Camp Lejeune	Havelock
Military Ocean Terminal Sunny Point (MOTSU)	Leland
Port of Morehead City	Morehead City
Port of Wilmington	Wilmington
NORTH DAKOTA	
None	
OHIO	
Camp Perry Joint Training Center	Port Clinton
Camp Ravenna Joint Military Training Center	Atlas
Joint Systems Manufacturing Center	Lima
NNPP Barberton	Barberton
OKLAHOMA	
Fort Sill	Fort Sill
McAlester AAP	Savanna
OREGON	
None	

Abbreviation Key

AAA	Army Ammunition Activity
AAF	Army Airfield
AAP	Army Ammunition Plant
AD	Army Depot
AFB	Air Force Base
DFSP	Defense Fuel Supply Point
MCAGCC	Marine Corp Air Ground Combat Center
MCAS	Marine Corps Air Station
MCB	Marine Corps Base
MCLB	Marine Corps Logistics Base
MOTCO	Military Ocean Terminal Concord
MOTSU	Military Ocean Terminal Sunny Point
NAVSUP	Naval Supply Systems Command
NAWCWD	Naval Air Warfare Center Weapons Division
NSB	Naval Submarine Base
NSA	Naval Support Activity
NNPP	Naval Nuclear Propulsion Program
NWS	Naval Weapons Station
OP	Offpost Railhead
SUPSHIP	Supervisor of Shipbuilding, Conversion and Repair
USPFO	United States Property and Fiscal Office

APPENDIX C

DEPARTMENT OF DEFENSE
INSTALLATIONS AND ACTIVITIES
REQUIRING RAIL SERVICE AND
SERVED BY LOW DENSITY BRANCH LINES

STRATEGIC RAIL CORRIDOR NETWORK (STRACNET) and DEFENSE CONNECTOR LINES

ARMY	STATE
Fort Wainwright	AK
Fort Chaffee	AR
Camp Roberts	CA
Piñon Canyon Maneuver Site (PCMS)	CO
Camp Hartell	CT
Port of Jacksonville	FL
Fort Benning	GA
Crane Army Ammunition Activity	IN
USPFO MD	MD
Camp Edwards	MA
Camp Grayling	MI
Camp Ripley	MN
Camp Shelby	MS
USPFO - SE (MOANG) (OP)	MO
Hawthorne AD	NV
Fort Bragg	NC
MOTSU	NC
Port of Morehead City	NC
Fort Sill	OK
Letterkenny AD	PA
Fort Lee	VA
Indian Island	WA
Joint Base Lewis-McChord	WA
TOTAL 23	

AIR FORCE	STATE
Eielson AFB	AK
Vandenburg AFB	CA
Malmstrom AFB	MT
Shaw AFB	SC
Hill AFB	UT
TOTAL 5	

STRATEGIC RAIL CORRIDOR NETWORK (STRACNET) and DEFENSE CONNECTOR LINES

NAVY	STATE
NAWCWD, China Lake (OP)	CA
Port Hueneme	CA
NSB New London	CT
SUPSHIP Groton	CT
NSB Kings Bay	GA
Naval Nuclear Laboratory Scoville	ID
NNPP Mount Vernon	IN
Naval Shipyard, Portsmouth	NH
NWS Earle	NJ
NNPP Kesselring Site	NY
DCMA Precision Custom Components	PA
NAVSUP WSS Mechanicsburg	PA
Naval Base Kitsap, Bangor	WA
Naval Base Kitsap, Bremerton	WA
TOTAL 14	

MARINE CORPS	STATE
USMC Blount Island Command	FL
MCLB Albany	GA
MCAS Cherry Point	NC
MCB Camp Lejeune	NC
TOTAL 4	

DEFENSE CONTRACT MANAGEMENT AGENCY (DCMA)	STATE
ATK Thiokol (Magna)	UT
TOTAL 1	

DEFENSE LOGISTICS AGENCY (DLA)	STATE
No installations on low-density rail lines	

Abbreviation Key

AAA	Army Ammunition Activity
AAF	Army Airfield
AAP	Army Ammunition Plant
AD	Army Depot
AFB	Air Force Base
DCMA	Defense Contract Management Agency
DFSP	Defense Fuel Supply Point
MCAGCC	Marine Corp Air Ground Combat Center
MCAS	Marine Corps Air Station
MCB	Marine Corps Base
MCLB	Marine Corps Logistics Base
MOTSU	Military Ocean Terminal Sunny Point
NAVSUP	Naval Supply Systems Command
NAWCWD	Naval Air Warfare Center Weapons Division
NNPP	Naval Nuclear Propulsion Program
NSB	Naval Submarine Base
NSA	Naval Support Activity
NWS	Naval Weapons Station
OP	Offpost Railhead
SUPSHIP	Supervisor of Shipbuilding, Conversion and Repair
USPFO	United States Property and Fiscal Office

BEFORE THE
SURFACE TRANSPORTATION BOARD

NAVAL NUCLEAR PROPULSION PROGRAM, UNITED STATES ARMY MILITARY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND, AND FLUOR MARINE PROPULSION, LLC – PETITION FOR DECLARATORY ORDER	)	Docket No. FD 36298

VERIFIED STATEMENT OF ANGELA L. HEMPHILL

1. My name is Angela L. Hemphill. I serve as Chief, Domestic Movement Operations and Fleet Manager for the DODX rail cars in the Defense Freight Rail Interchange Fleet ("DFRIF") for the United States Department of the Army's Military Surface Deployment and Distribution Command Operations Directorate G3 ("SDDC G3").

2. SDDC G3 plays a direct supporting role in arranging for the rail transportation of container car shipments to and from Ballston Spa, NY. To obtain this rail transportation, the Naval Nuclear Propulsion Program ("NNPP") – which is the shipper of record on these moves – works through the SDDC G3. The SDDC G3 supports NNPP by, among other things, issuing the initial requests for "tenders" for container rail transportation service. "Tenders" in this context means a formal request

from SDDC G3 asking a rail carrier to provide NNPP with responsive common carrier rates and service terms.

3. SDDC also owns and maintains the DODX rail cars. SDDC has assigned specific DODX cars to NNPP for NNPP's use in transporting containers by rail to and from Ballston Spa.

4. SDDC G3 is alarmed that if the Ballston Spa Industrial Track ("BSIT") is no longer under the oversight of the Surface Transportation Board ("STB") and absolved of common carrier responsibilities, it may cause (or risk) interruption of service to the Kesselring site in West Milton, NY. The Kesselring Site serves an important National Defense purpose, and it is essential that we ensure continuity of rail service to NNPP in order to preserve the capabilities of the Kesselring Site and to avoid weakening our National Defense posture. Continued service to NNPP can best be assured by keeping the BSIT line in common carrier service and under the authority of the STB.

VERIFICATION

I, Angela L. Hemphill, verify under penalty of perjury that I have read the foregoing Verified Statement, know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Angela L Hemphill
Angela L. Hemphill

Executed on April 26, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

NAVAL NUCLEAR PROPULSION PROGRAM, UNITED STATES MILITARY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND, AND FLUOR MARINE PROPULSION, LLC – PETITION FOR DECLARATORY ORDER	)	Docket No. FD 36298

VERIFIED STATEMENT OF BERNHARD E. GUNDERMANN

1. I am Bernhard E. Gundermann. My business address is Kesselring Site Operations, 2401 River Road, Schenectady, NY 12309. I am the Manager, Refueling Overhaul ("ROH") Production Support for the Naval Nuclear Laboratory ("NNL"). NNL is currently managed and operated by Fluor Marine Propulsion, LLC ("FMP"). Between October 1, 2009 and September 30, 2018, NNL was managed and operated by Bechtel Marine Propulsion Corporation ("Bechtel"). My current responsibilities include providing technical engineering and management support for the transportation of inbound and outbound shipments at the Kesselring Site. My references to FMP include, for time periods prior to December 31, 2018, Bechtel.

2. I received my BS ChE from the Pennsylvania State University in 1983. In 1983, I joined NNL and since that time, I have held various engineering

positions and, since 2004, different managerial positions before assuming my current position in the ROH organization.

3. My Verified Statement addresses the following topics: overview of the transportation aspects of the current refueling at the Kesselring Site; the important role the Ballston Spa Industrial Track ("BSIT") plays in refueling at the Kesselring Site; and the regulatory status of the BSIT.

OVERVIEW

4. The Kesselring Site is located in West Milton, New York. It has no direct rail access, but can be served by trucks and other heavy haul vehicles. Periodically, the nuclear reactor prototypes used at the Kesselring Site need to be refueled. This refueling requires the use of very heavy, oversized container cars to transport nuclear fuel and equipment to and from the Kesselring Site. These containers are specifically designed to safely transport radioactive materials, including spent nuclear fuel.

5. Refueling at the Kesselring Site has involved rail transportation of loaded and empty containers to and from a rail/heavy hauler transfer point located at the end of the BSIT. I append as my Exhibit No. 1 (BEG-1), a Google Earth map showing the transfer point, which is located on the last 125 feet of the 0.55-mile BSIT. I append as my Exhibit No. 2 (BEG-2), current photographs showing the transfer point area. As shown in BEG-2, the transfer point is directly on the BSIT, with an area around the transfer point compacted to support the combined weight of the containers and heavy haulers.

6. The heavy hauler transports empty and loaded containers between the BSIT and the Kesselring Site – a distance of approximately 8 miles. The heavy hauler is also responsible for the physical transfer ("transload") of the containers and rail car bodies between the rail car trucks and the heavy hauler's vehicle. I append as my Exhibit No. 3 (BEG-3), an annotated street map that shows the current truck route of movement between the BSIT and the Kesselring Site. I also append in my Exhibit No. 4 (BEG-4), some photos of the transloading and subsequent transport of the containers and rail car bodies to the Kesselring Site.

7. The S8G nuclear reactor prototype at the Kesselring Site is now in the process of being refueled – the first such refueling since 1994 and first heavy container shipments moving over the BSIT since 2004. The S8G refueling requires twelve rail shipments over an approximately three-year period: six empty container car shipments and six loaded container car shipments.

8. The inbound empty container rail car shipments originate from various locations (including Idaho) and terminate at the rail/heavy hauler transfer point on the BSIT. The rail portion of the outbound loaded container shipments will originate at the rail/heavy hauler transfer point on the BSIT and will terminate in Idaho or South Carolina.

9. The empty and loaded container moves involve up to three rail carriers. On the inbound empty moves, Canadian Pacific ("CP") serves as the destination carrier, whereas on the outbound loaded moves, CP serves as the origin carrier.

10. CP delivered the first of the twelve container rail shipments to the BSIT loading/unloading area on June 8, 2018. This was an oversized empty container (STCC 3491940) that weighed approximately 320,150 pounds. Following receipt, FMP's heavy haul contractor transferred the container to its vehicles and transported the container in these vehicles to the Kesselring Site on June 18, 2018.

11. Since that time, CP has delivered three additional empty container shipments, with the most recent one arriving at the BSIT on December 2, 2018. These empty container shipments were transloaded by our heavy hauler contractor and delivered by the heavy hauler to the Kesselring Site. Loaded shipments containing radioactive materials are scheduled to begin on a date between October 2019 and early 2020, and run through the Fall of 2020.

BSIT IMPORTANCE

12. Since the Kesselring Site does not have direct rail access, the only currently viable option we have to transport these containers is by rail to the BSIT. We must use the BSIT for the following reasons:

- There is sufficient space along, and at the end of, the BSIT to allow our heavy hauler to access container cars and safely transfer the container and rail car body to the heavy hauler on inbound shipments and vice-versa on outbound shipments.

- The short highway route between the BSIT and the Kesselring Site can accommodate the oversized, heavy container shipments that are required for refueling at the Kesselring Site. FMP, and others, have worked closely with local officials to obtain the permits needed to perfect this transportation and to coordinate the container shipments with these officials.

- The only other potential common carrier side track in the area is CP's Saratoga, NY Yard. CP has informed us that it will not permit transloading in its Saratoga Yard of any shipments to/from the Kesselring Site, and, in any event, we do not have permits in place to allow heavy hauler movements between the Saratoga Yard and the Kesselring Site.

13. FMP will need to utilize the BSIT for the next two years in order to complete the refueling of the S8G prototype. We expect that so long as the Kesselring Site is operational – and there are no plans to shut it down – it will continue to need to periodically engage in prototype refueling.

14. As discussed in Mr. Dorfman's Verified Statement, the Kesselring Site requires rail service to accomplish its mission and the BSIT – which is an irreplaceable part of the Kesselring Site rail supply chain – has been designated as an essential connector line to the Strategic Rail Corridor Network ("STRACNET"), the rail lines that the United States Army Surface Deployment and Distribution Command and the Federal Railroad Administration have jointly concluded are essential for the national defense.

REGULATORY STATUS OF THE BSIT

15. I have reviewed the record in the 1980 BSIT Abandonment Case (ICC Docket No. AB-156 (Sub-No. 9F)); the documentary correspondence between FMP and CP concerning the regulatory status of the BSIT; and I attended a meeting with CP representatives on March 8, 2019 that included a field trip to review the BSIT right of way.

16. At our March 8 meeting, CP and FMP agreed that in its 1980 Abandonment Case, the Delaware & Hudson Railway Co. ("D&H") retained 0.55 miles of regulated track extending from the main line switch.

17. Also at our March 8 meeting, CP provided a satellite map showing that the current BSIT length from the CP main line switch to the end of the BSIT was 0.55 miles. I append a copy of this map as my Exhibit No. 5 (BEG-5). FMP agreed that this was correct, and demonstrated to CP that the entirety of the BSIT is a regulated common carrier line. CP disagreed.

18. At the March 8 meeting, and in CP's subsequent follow-up email to Mr. Boyle dated March 14, CP pointed to a schematic appended to the 1980 Rail Service Agreement between the Department of Energy ("DOE") and D&H, and made the following representations based on the schematic – (i) in 1980, the D&H mainline switch was located at Valuation Station 1622+53, which is approximately 430' south of where CP and FMP agree it is located today – Valuation Station 1626+83; (ii) in its 1980 Application, D&H mistakenly referred to the location of the switch as being at Valuation Station 1626+83, when in fact it was located at that time at Valuation Station 1622+53; (iii) the schematic shows the correct location of the switch; and (iv) D&H corrected its initial mistake when it entered into the Rail Service Agreement (with the schematic appended to it) on August 7, 1980 and submitted that Agreement to the Interstate Commerce Commission ("ICC") on August 11, 1980. Based on these four assertions, CP maintained that the correct starting point for measuring the regulated length of the BSIT was 430' south of where the current switch is located, so using that starting point, the

regulated portion of the BSIT ends just west of Eastern Avenue, *i.e.*, 430' short of the current end-point. I append a copy of the 1980 schematic as my Exhibit No. 6 (BEG-6).

19. Following the meeting, I conducted additional research to address CP's points, and summarize the results here.

20. D&H stated in all of its 1980 Abandonment Case filings that the D&H main line/BSIT switch was located at Valuation Station 1626+83. I have located and reviewed D&H Valuation Station maps that predate 1980, and they identify the location of the D&H main line/BSIT switch at Valuation Station 1626+83, not 430' to the south at Valuation Station 1622+53. I append these maps in my Exhibit No. 7 (BEG-7). I have also reviewed historical aerial photographs showing that prior to 1980, the D&H/BSIT main line switch was located in the same place it is today. I append these photos in my Exhibit No. 8 (BEG-8). Thus, these documents continue to support FMP's position that the main line switch in 1980 was located at Valuation Station 1626+83, and that D&H correctly identified this Valuation Station.

21. In its Application, D&H referred to the location of the main line/BSIT switch at "Mile Post A 30.76 (Valuation Station 1626+83)." Counsel's Exhibit ("CE")-13. D&H's representation that the switch was located at Valuation Station 1626+83 was correct for the reasons discussed in ¶ 20 above. D&H's representation that Valuation Station 1626+83 was at Milepost A 30.76 appears to have been incorrect. I have reviewed Valuation Maps showing the location of the BSIT switch at Valuation Station 1626+83. The maps show no specific milepost corresponding to Valuation Station 1626+83, nor have I located any photographs or other on-the-ground evidence

depicting the physical location of any D&H mileposts in 1980. However, if one plots the distance between Milepost 30 at Valuation Station 1582+33 shown in Valuation Map V9A-26 (BEG-7 at 2) and the BSIT switch at Valuation Station 1626+83, the mileage differential equals approximately 0.84 miles, so the corresponding calculated milepost at Valuation Station 1626+83 would be A 30.84, which is also the milepost shown in the 1980 schematic as corresponding to the location of the BSIT switch at Valuation Station 1626+83 (BEG-6). Similarly, a 1993 D&H track chart shows the start of a siding section at Milepost 30.76 and shows the BSIT switch located north of Milepost 30.76 (though no specific milepost is shown for the switch). I append a copy of the track chart as Exhibit No. 9 (BEG-9).

22. D&H and DOE entered into the Rail Service Agreement on August 7, 1980. The document consisted of a cover page and a sixteen-page Agreement (CE-89 thru -105), which included the schematic at page 13 (CE-102). CP claims that D&H corrected the record because the schematic shows Milepost A 30.76 at Valuation Station 1622+53, not at Valuation Station 1626+83, and when the ICC granted D&H's Amended Abandonment Application, it approved an abandonment starting at Valuation Station 1622+53.

23. CP's assertions ignore what actually happened in 1980. Following its execution of the Rail Service Agreement on August 7, 1980, D&H filed its Amended Application with the ICC on August 11, 1980. In that Amended Application, D&H stated that CP had initially sought abandonment authority from "Mile Post A 30.76 (Valuation Station 1626+83) to Mile Post A 31.79 (Valuation Station A 1681+20) . . . a

total distance of 1.03 miles" (CE-79) but now sought to withdraw "so much of its application as relates to abandonment of the portion of the line which extends from MP 30.76 to MP 31.32" (CE-80). Thus, D&H continued to correctly represent that the D&H main line switch was located at Valuation Station 1626+83; continued to represent to the ICC that Valuation Station 1626+83 was located at MP A 30.76; continued to represent that MP A 31.32 was 0.56 miles from MP A 30.76 (located at Valuation Station 1626+83); and continued to represent that MP A 31.79 (Valuation Station 1681+20) was 1.03 miles from MP A 30.76 (located at Valuation Station 1626+83).

24. Similarly, the ICC in its final decision in the 1980 Abandonment Case referred to the BSIT as extending "from milepost A 30.76 (Valuation Station 1626+83) . . . to milepost A 31.79 (Valuation Station 1681+20) . . . constituting a total distance of 5,437 feet" (CE-107); noted that "the only segment of the line that DOE as well as all other users of the line are actually concerned with, is the segment between milepost 30.76 and milepost 31.32" (*id.*); granted D&H's request to withdraw its request to abandon this portion of the BSIT (*id.*); and granted D&H's request to abandon the portion of the BSIT shippers were not using – from milepost A 31.32 to milepost A 31.79 (Valuation Station 1681+20) (CE-108).

25. Thus, based on my review of the 1980 Abandonment Case records, D&H correctly identified the location of the D&H main line/BSIT switch at Valuation Station 1626+83; D&H represented in all of its ICC filings (including its Amended Application filed one day after D&H and DOE had entered into the Rail Service Agreement) that Valuation Station 1626+83 was at Milepost 30.76; and to the extent that

this milepost reference, or others tied to it, were wrong, did not take any action to so inform the ICC.

26. I also note that the mileage references in D&H's Application, its Amended Application and the ICC's final decision are correct only if Valuation Station 1626+83 is the location of the BSIT switch, not Valuation Station 1622+53, as CP now argues:

- In its Application, D&H stated that the old freight house was "0.56" miles from the D&H mainline switch. That assertion is accurate only if the D&H switch was located at Valuation Station 1626+83. If Valuation Station 1622+53 is used as the starting point, the 0.56 miles ends well before the old freight house.

- In its Application, D&H stated that it sought to abandon the track from the main line switch to Valuation Station 1681+20, a total distance of 1.03 miles (5,437 feet). This assertion is accurate only if the D&H switch was located at Valuation Station 1626+83. If Valuation Station 1622+53 is used, the abandonment would have stopped 430 feet short of Valuation Station 1681+20. I have also reviewed pertinent valuation maps that show that, prior to 1980, D&H had previously abandoned track starting at Valuation Station 1681+20. One such map is appended as my Exhibit No. 10 (BEG-10).

- In its Amended Application, D&H represented that shippers were using the BSIT from the main line switch to the team track at the old freight house. In its Amended Application, D&H stated it would retain the portion of the BSIT that shippers were using. CE-81. That representation is correct only if the D&H switch was located at Valuation Station 1626+83. If Valuation Station 1622+53 is used as the switch point, the track to be retained stops well short of the team track area adjacent to the old freight house.

27. CP also cited the notation on the schematic stating that "Siding Serving Dep't of Energy To Be Retained" as demonstrating the last 430' of the BSIT, as presently configured, is a spur. FMP disagrees with this assertion as well for the following reasons:

- In 1980, the BSIT was a 1.03-mile line that started at the D&H main line switch, went west through the team track area located adjacent to the old freight house (which had several tracks) before ending well past the old freight house. I append a pre-1980 valuation map that illustrates the historic BSIT routing in my Exhibit No. 10 (BEG-10).

- The 1980 Abandonment Decision required D&H to continue to have a regulated rail line between the main line and the old freight house loading/unloading team track area, so that shippers (including the Government) could load, and unload their freight.

- Today, there is only a single track rail line between the CP main line switch and the old freight house, which appears to include what in 1980 may have been a "siding" but today is part of the regulated rail line D&H agreed not to abandon in 1980.

- It appears that if D&H abandoned any segment of its line south of the current switch, it would have abandoned part of its main line right of way. See my Exhibit No. 7 (BEG-7).

28. Nothing that CP has provided me to date, or that I have located through my own research, indicates that the current CP/BSIT switch is in a different location today than it was during the 1980 Abandonment Case.

VERIFICATION

I, Bernhard E. Gundermann, verify under penalty of perjury that I have read the foregoing Verified Statement, know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Bernhard E. Gundermann

Executed on April 25, 2019

GUNDERMANN
EXHIBIT NO. 1

(BEG-1)

Map
Google

GUNDERMANN
EXHIBIT NO. 2

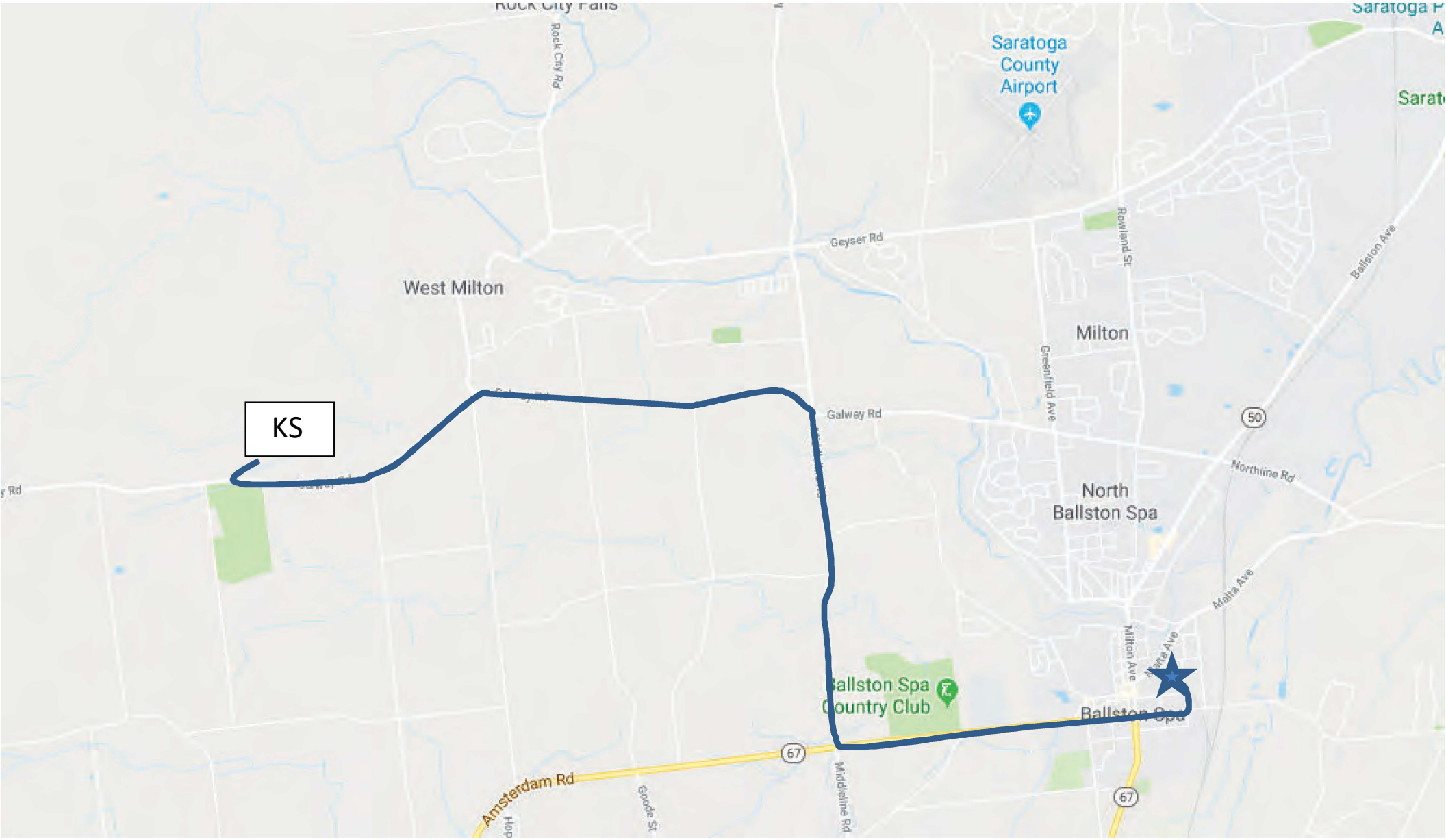
(BEG-2)

CAT

CAT

GUNDERMANN
EXHIBIT NO. 3

(BEG-3)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Rock City Rd
Geyser Rd
West Milton
Milton
Rowland St
Ballston Ave
Greenfield Ave
Galway Rd
KS
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Northline Rd
North Ballston Spa
Malta Ave
Milton Ave
Ballston Spa Country Club
Ballston Spa
67
Amsterdam Rd
Middleline Rd

GUNDERMANN
EXHIBIT NO. 4

(BEG-4)

DODX
38882
DO NOT HUMP

DO NOT HUMP

DODX
88878

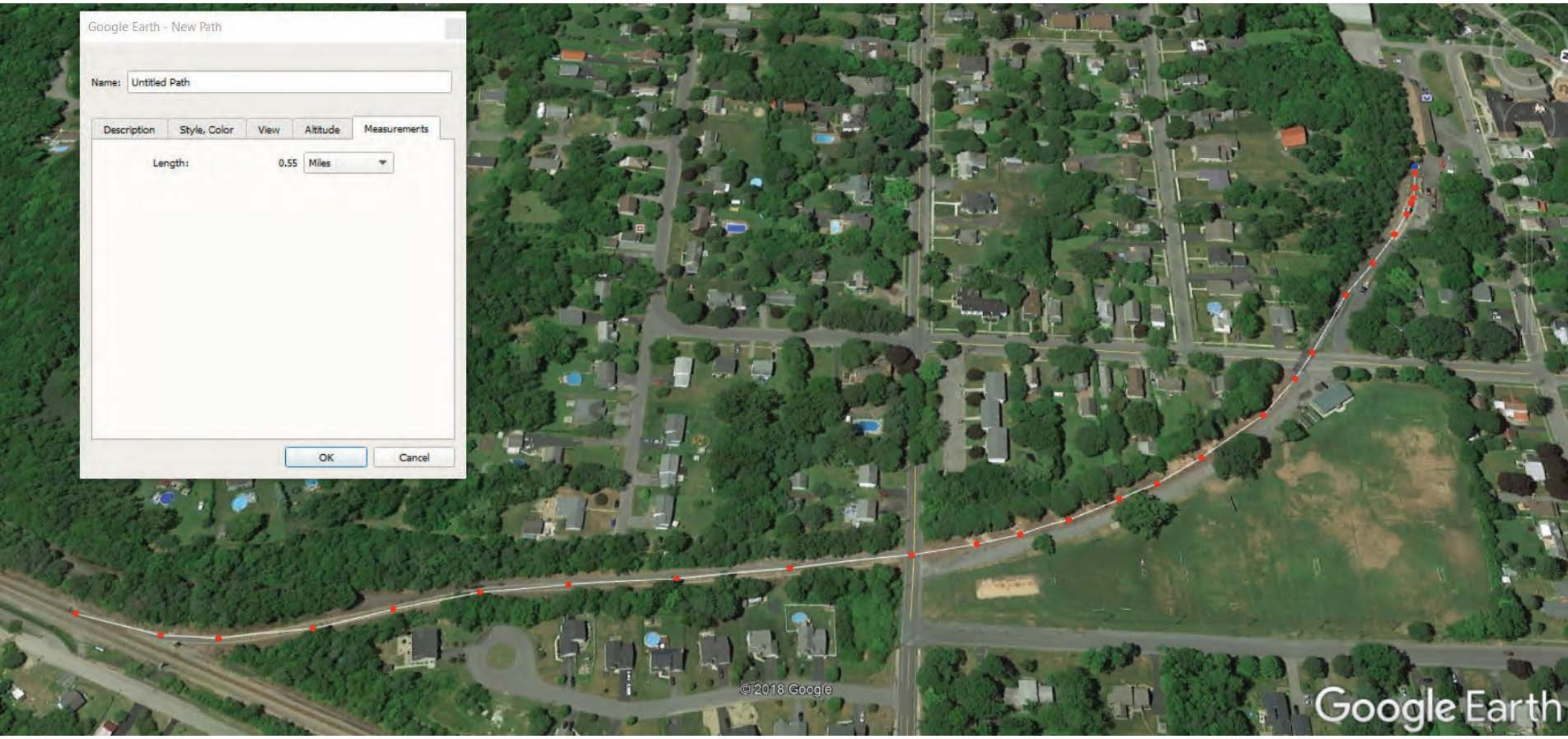
OVER SIZE LOAD

67

BUCKINGHAM
ONLY

GUNDERMANN
EXHIBIT NO. 5

(BEG-5)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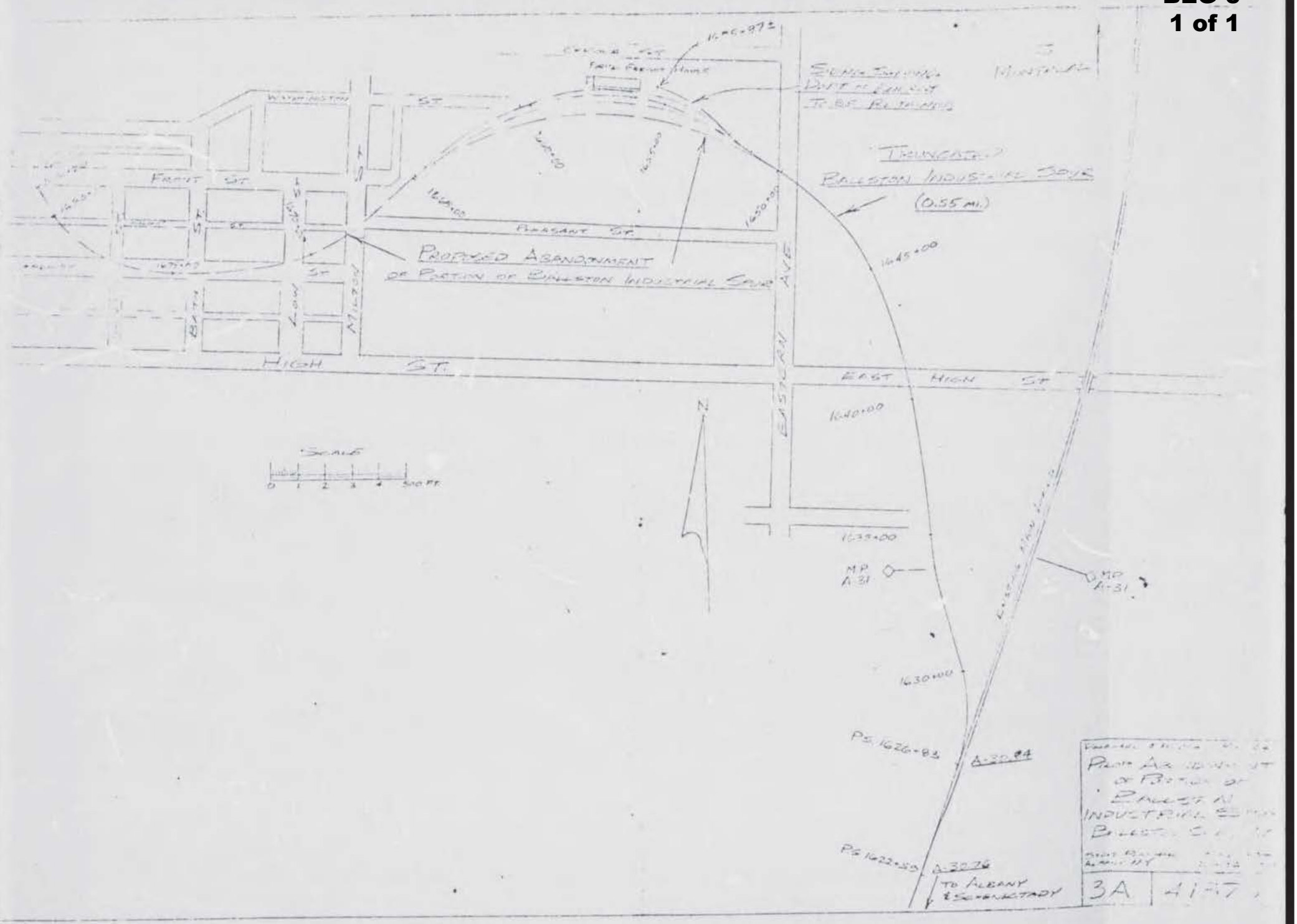
© 2018 Google
Google Earth

GUNDERMANN
EXHIBIT NO. 6

(BEG-6)


WASHINGTON ST
FRONT ST
PLEASANT ST
PROPOSED ABANDONMENT
OF PORTION OF BALLSTON INDUSTRIAL SPUR
TRUNCATED
BALLSTON INDUSTRIAL SPUR
(0.55 MI.)
EASTERN AVE
EAST HIGH ST
HIGH ST
MILTON
LOW
BATH
SCALE
0 1 2 3 4 500 FT
N
1640+00
1635+00
1630+00
1645+00
MP A-31
A-30.84
A-32.26
TO ALBANY & SCHENECTADY
3A
41 FT

GUNDERMANN
EXHIBIT NO. 7

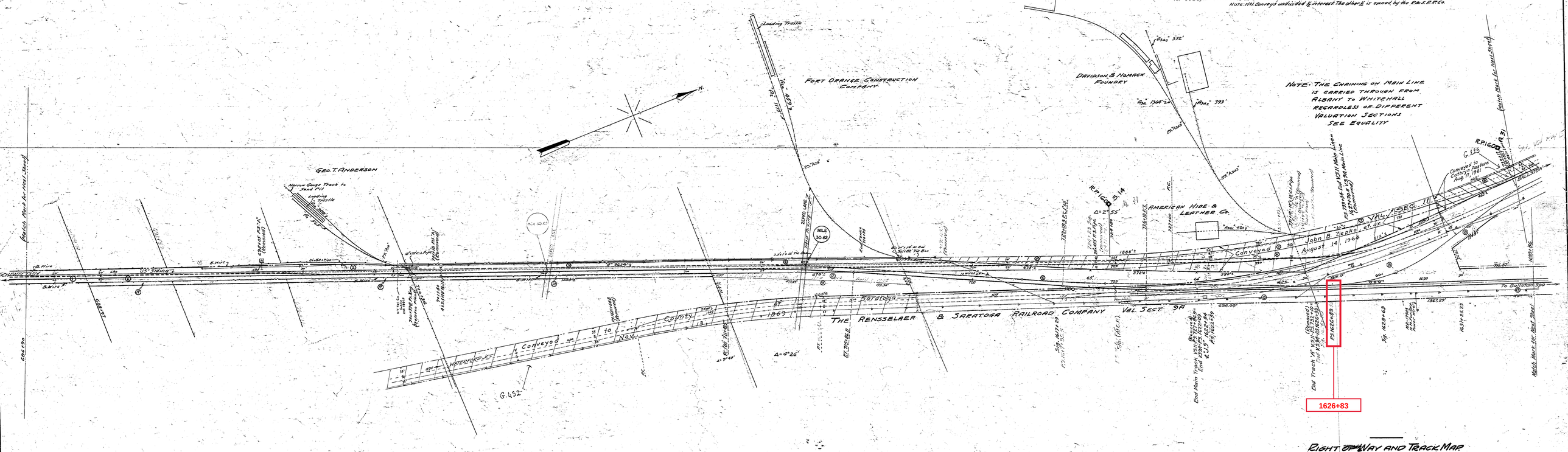
(BEG-7)

BEG-7
1 of 2

No.	Grantor	Grantee	Instrument	Date	Record	Custodian's No.	Remarks
11	Alexander C. Anderson et ux.	The D and H R.R. Corp.	W. Deed	Sept. 5, 1951	D.B.942, P.4, Sept. 18, 1951	N.Y. 9080	
12	State of New York	The Saratoga R.R. Co.	Deed	Jan. 22, 1963	D.B.1734, P.451, Apr. 16, 1963	N.Y. 9070	
13	" " "	" " "	"	" " "	" " "	N.Y. 9070	

No.	Grantor	Grantee	Instrument	Date	Record	Custodian's Number	Remarks
1.	Robert W. Olyphant et al.	S.B.& S.R.R. Co	Cession	June 22, 1831	D.B.X, P.449 Dec. 26, 1853	N.Y. 1741	
2.	Wm. L. White et ux.	" " " "	Deed	Sept. 3, 1832	" X, P.339 Oct. 30, 1853	N.Y. 1783	
3.	Derrick Van Hamme et ux.	" " " "	"	Nov. 3, 1832	" X, P.266 Sept. 8, 1853	N.Y. 1784	
	Derrick Van Hamme et al.	" " " "	Cession	June 22, 1831	" X, P.449 Dec. 26, 1853	N.Y. 1741	
4.	Abner Van Hamme	" " " "	Deed	Oct. 8, 1832	" U, P.436 Oct. 8, 1832	N.Y. 1785	
	John Ellsworth	" " " "	Cession	June 22, 1831	" X, P.449 Dec. 26, 1853	N.Y. 1741	
5.	"	" " " "	Deed	Feb. 23, 1833	" W, P.496 July 28, 1853	N.Y. 1786	
	Margret Cooper et al.	" " " "	"	Apr. 25, 1834	" 15, P.99 June 2, 1854	N.Y. 1787 (1 parcel)	
6.	"	" " " "	"	" " "	" " "	N.Y. 1787 (2 nd parcel See note #7)	
7.	Stephen Peckham et ux.	" " " "	Deed	Feb. 22, 1833	" W, P.497 July 28, 1853	N.Y. 1788	
8.	Lebbeus Booth	" " " "	W. Deed	Oct. 3, 1833	" Y, P.320 June 21, 1894	N.Y. 1789	
	"	" " " "	Release	Feb. 4, 1881	" 59, P.86 Feb. 4, 1881	N.Y. 1790 (Releases C. from fencing)	
9.	Mary Marotta	" " " "	W. Deed	Oct. 4, 1943	" 629, P.293 Oct. 26, 1944	N.Y. 8966	
10.	Joseph L. Wood et al.	" " " "	"	Nov. 29, 1944	" 631, P.301 Sept. 2, 1944	N.Y. 8975	

Note: Nos. 6 and 7 are joint and undivided ½ interest. The other ½ is owned by the D.&H.R.R.Co.



Sheet No. 14, Series 11, of The Saratoga and Schenectady Rail-Road Company, from Survey Station 686+90 to Survey Station 739+17

M. K. Mansfield
Engineer

Right of Way and Track Map

The Saratoga and Schenectady Rail Road Company

Operated By

The Delaware and Hudson Company.

Saratoga Division-Ballston Branch-Schenectady to Ballston Spa

Station 686+90 to Station 739+17

Scale 1"=100' June 30, 1916.

Office of Chairman Valuation Committee

Albany, N.Y.

Revisions							
Date	Nature of Revision	Approv. No.					
1-4-22	Resurvey of Nov 2, 1921	Nonconfirmed	6/21/41	Rail Road of Sub 22+75 removed to Culvert at			
3/15/26	Crossing of Main Line changed from former location	4-2-1927	10/17/40	Pt. Sub 3 Valley connections to 6.0 Pt at 6.29+62.5	D-5998	5/22/63	R.O.W. Parcels 12 & 13 added.
12/5/28	Sub 3 at Pt. 7.94+29 moved to Sta. 6.29+62.5	D-5998	10/17/43	R.O.W. Parcel 9 added.	D-5998	9/7/66	Part at R.O.W. Parcels 2-6 and all of 7 conveyed.
8/31/37	Pt. 4.0 Sub 3 moved to Sta. 3.74+25 at Pt. 3.74+25	4-2-1927	8/31/46	R.O.W. Parcel 10 added.	D-5998		
11/22/50	Line of Levels removed Sub 3 Sta. 16.0+40 & V-VIII	D-8-2005	10/1/46	Bell Tap replaced with F.S. Pipe	D-8-3052		
7/12/58	Bassoder at track near V-VIII removed	D-8-2296					

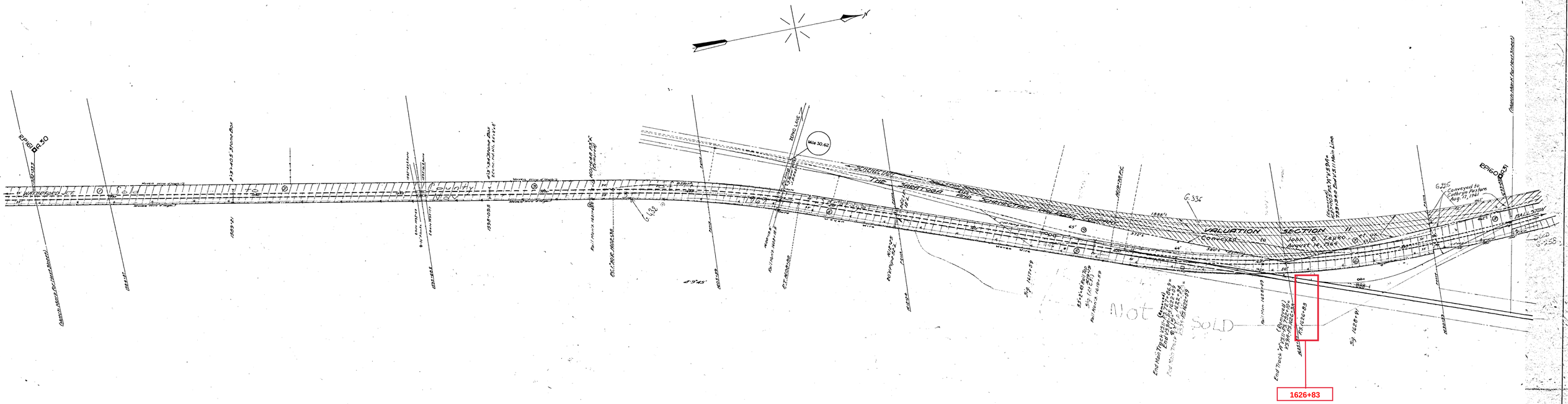
No.	Date	Description	Record	Custodian's No.
1	9/21/58	Tracks 1-2-3-4-5-6-7-8-9-10-11-12-13-14-15-16-17 removed	D-8-2072	
2	3/21/58	V-VIII Switch 24/11 Switch removed Pt. at Sta. 7.08+18	D-8-2091	
3	3/21/58	Tracks 7-8 and 9-10 removed Pt. at Sta. 7.18+91	D-8-2091	
4	11/22/50	Track changes at Junction of V-5A & V-5 in Hall	D-8-2072	
5	2/15/51	R.O.W. Parcel 11 added	D-8041	
6	3/11/60	Pt. at Sta. 7.03+18 moved to Sta. 7.03+18 southerly to	D-8-2061	
7	10/20/61	Part at R.O.W. Parcel 8 conveyed.	D-8-4166	
8	10/20/61	Part at R.O.W. Parcel 8 conveyed.	D-7793	
9	9/7/66	Part at R.O.W. Parcels 2-6 and all of 7 conveyed.	D-8-4336	

Nº	Grantor	Grantee	Instrument	Date	Record	Custodian's Nº	Remarks
10	Cooper Swartz	D.&H.Co.	Agreement	Oct.7,1919		M.P.3336	See Note Nº3.

Nº	Grantor	Grantee	Instrument	Date	Record	Custodian's Nº	Remarks
1.	R.W. Oliphant	R.&S. R.R. Co.	Agreement	Nov. 4, 1833		N.Y.2156	
2.	William L. White	" " " "	Deed	Dec. 14, 1833		N.Y.2157	
	" "	" " " "	Release	Dec. 14, 1833		With N.Y.2157	
3.	Derick Van Hornes	" " " "	Deed	Jan. 2, 1834		N.Y.2158	
	" "	" " " "	Release	Jan. 2, 1834		With N.Y.2158	
4.	Abner Van Hornes	" " " "	Deed	Feb. 12, 1834		N.Y.2159	
	" "	" " " "	Release	Feb. 12, 1834		With N.Y.2159	
5.	Lewis Elsworth	" " " "	Deed	Feb. 15, 1834		N.Y.2160	See Note Nº1.
	Margaret Cooper	" " " "		Nov. 25, 1836	D.B. 25, p.97, June 2, 1836	N.Y.2161	1st Parcel
6.	Stephen Peckham, et ux.	" " " "	W. Deed	Nov. 25, 1834	D.B. 2, p.143, Dec. 2, 1834	N.Y.2162	
7.	Lucinda Peckham	" " " "	" "	May 6, 1864	D.B.96, p.83, May 5, 1864	N.Y.2163	
8.	Gershom L. Booth, et ux.	" " " "	" "	Oct. 11, 1834	D.B. 2, p.210, Oct. 25, 1834	N.Y.2164	
	Lebbeus Booth	" " " "	Agreement	Oct. 11, 1834		With N.Y.2164	
9.	Margaret Cooper	" " " "	Deed	Nov. 25, 1836	D.B. 25, p.98, June 2, 1836	N.Y.2161	

Note:
Nº1. Releases Company from maintaining fences.
Nº2. His undivided half of this parcel belongs to The Saratoga and Schenectady Rail Road Company.
The other undivided half conveyed by this deed to the Rensselaer & Saratoga Rail Road Company.
Nº3. Grant's D&H Co. permission to place pole and anchor guying on Grantor's land.

BEG-7
2 of 2



Sheet Nº 26 Series 9-A of The Rensselaer & Saratoga Railroad Company from Survey Station 1582+33.3 to Survey Station 1633+89.5

Engineer.

Right of Way and Track Map

The Rensselaer & Saratoga Railroad Company

Operated by

The Delaware and Hudson Company.

Saratoga Division - Main Line - Waterford Jct. to Ballston.

Station 1582+33.3 to Station 1633+89.5

Scale 1" = 100' June 30, 1916.

Office of Chairman Valuation Committee.

Albany, N.Y.

Revisions					
Date	Nature of Revision	Appro. Nº			
11-22-21	Resurvey of Oct 24, 1921		7/19/78	New Wire crossing over tracks at Sta 1688+18±	MD-19794
7/21/61	R.O.W. Parcel 1 Nº 31 added.		11/29/61	Track changes at Junction of V.Y.N & V.Y.11	D-7793
10/26/61	Part of R.O.W. Parcel 1 conveyed.		2/6/62	Crossover at Sta. 1617+35.5 removed	DA-3471
3/28/62	Part of 30.2 and 30.2A at Sta 1604+10 removed.	D-5750	10/22/62	Part of R.O.W. Parcel 1 conveyed.	DA-4166
10/2/62	194' of south end of Track "A" removed.	D-5750	2/13/62	N.B. Main Track removed from Sta 1626+93 southerly	DA-4139
2/17/66	Dead track "A" and "one" removed	DA-7236	7/5/66	Single Track Main 1st: P.S. 1612+59 to P.S. 1622+07 removed	DA-4370
3/3/66	2 tracks at K.B.11 at Mile 0.4 to P.A.31 removed	DA-7273	9/7/66	Part of R.O.W. Parcels 3-6-7-9 conveyed.	DA-4336
			5-16-70	Portion of R.O.W. from Sta 1614+00 Southerly sold Nov 13, 1969	KD-31

V-98
26

GUNDERMANN
EXHIBIT NO. 8

(BEG-8)

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EDR
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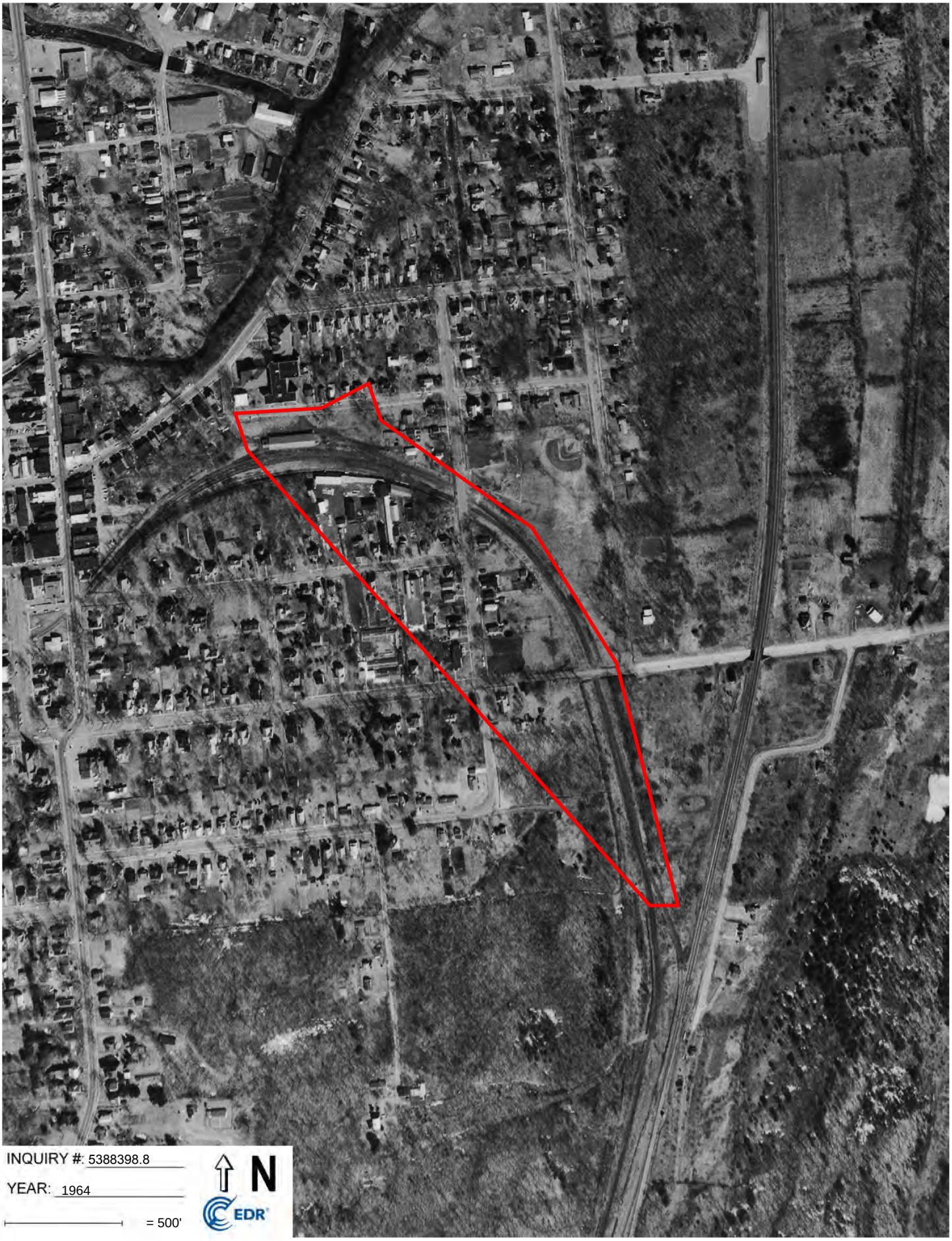
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YEAR: 1964
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EDR

INQUIRY #: 5388398.8
YEAR: 1960
= 500'
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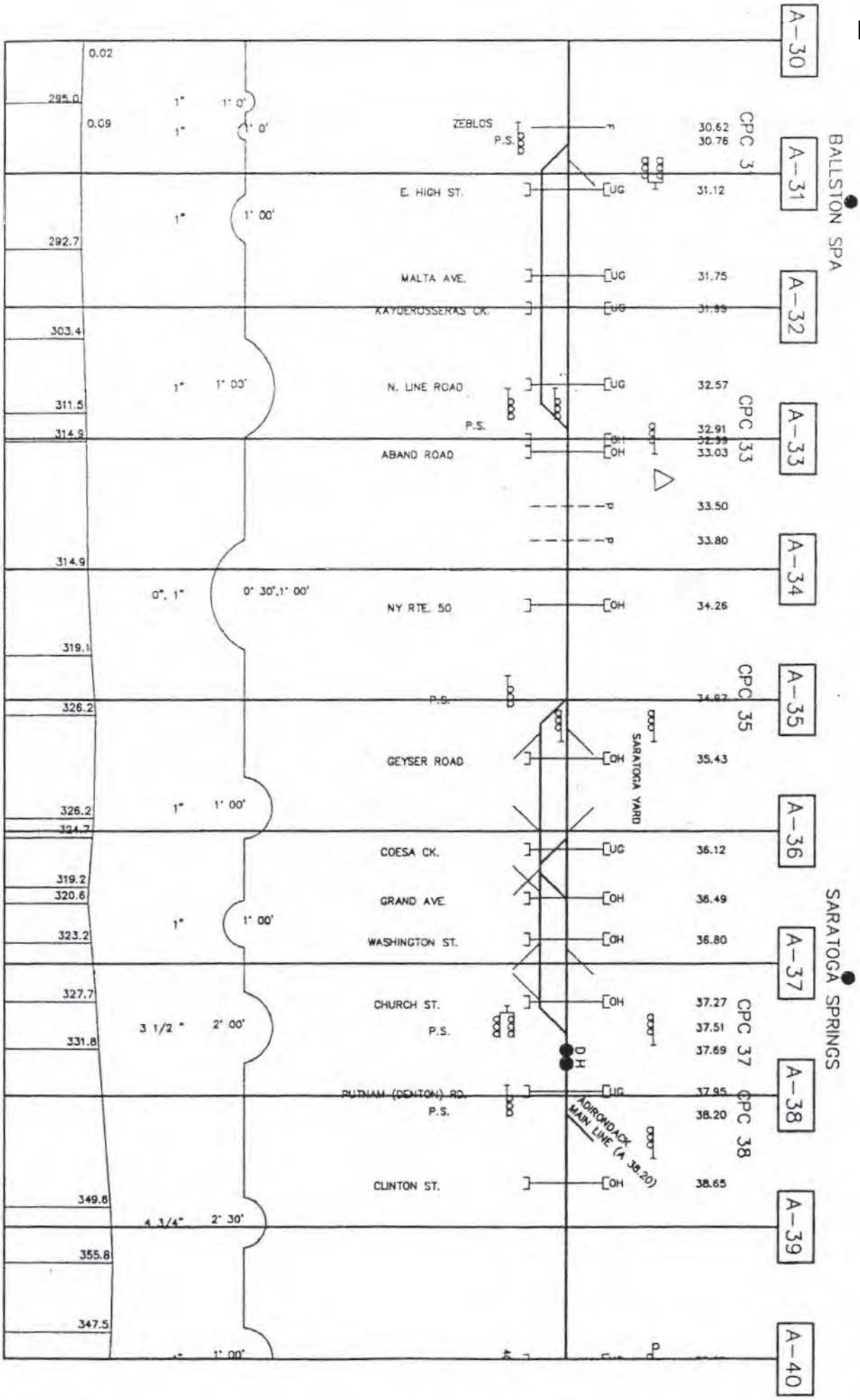
EDR

GUNDERMANN
EXHIBIT NO. 9

(BEG-9)


A-30
A-31
A-32
A-33
A-34
A-35
A-36
A-37
A-38
A-39
A-40
BALLSTON SPA
SARATOGA SPRINGS
CPC 31
CPC 33
CPC 35
CPC 37
CPC 38
ZEBLOS
P.S.
E. HIGH ST.
MALTA AVE.
KAYDEROSSERAS CK.
N. LINE ROAD
ABAND ROAD
NY RTE. 50
GEYSER ROAD
SARATOGA YARD
COESA CK.
GRAND AVE.
WASHINGTON ST.
CHURCH ST.
PUTNAM (DENTON) RD.
ADIRONDACK MAIN LINE (A 38.20)
CLINTON ST.
UG
OH
DH
30.62
30.76
31.12
31.75
31.99
32.57
32.91
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34.26
35.43
36.12
36.49
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37.27
37.51
37.69
37.95
38.20
38.65
295.0
292.7
303.4
311.5
314.9
319.1
326.2
324.7
319.2
320.6
323.2
327.7
331.8
349.6
355.8
347.5
0.02
0.09
1"
1' 0'
1' 00'
0", 1"
0' 30", 1' 00'
3 1/2 "
2' 00'
4 3/4"
2' 30'

GUNDERMANN
EXHIBIT NO. 10

(BEG-10)

BEG-10
1 of 1

No.	GRANTOR	GRANTEE	INSTRUMENT	DATE	RECORD	CUSTODIAN NUMBER	REMARKS.
	(Lebanon Book, et ux.	S. & S. R.R. Co.	W. Deed	Oct. 7, 1833	B.B.Y., P.320, June 21, 1834	N.Y. 1789	
1	" " "	" " "	Release	Feb. 16, 1831	" - 95, " - 86, Feb. 9, 1831	" 1790	See Note #1
2	Hiram Middlebrook, et al.	" " "	W. Deed	Feb. 9, 1833	" - 497, July 29, 1833	" 1791	
3	Thos. C. Taylor	" " "	Deed	Nov. 12, 1832	" - 49, Apr. 24, 1833	" 1792	
4	Stephen Smith, et ux.	" " "	"	Dec. 17, 1832	" - 302, Dec. 5, 1832	" 1793	
5	James Calhoun, et ux.	" " "	W. Deed	June 11, 1832	" - 313, July 3, 1832	" 1794	
6	Harvey Loomis	" " "	Cession	July 15, 1831	X. - 284, Sept. 12, 1833	" 1795	
7	" "	" " "	"	" "	" " "	" 1796	
8	Ezra H. Cornell, et ux.	" " "	"	July 30, 1832	" - 140, July 5, 1832	" 1797	
9	Harvey Loomis, et ux.	" " "	"	Nov. 22, 1833	" - 271, Sept. 12, 1833	" 1798	
10	E. R. Hoyt, et ux.	" " "	W. Deed	June 13, 1832	U. - 390, June 25, 1832	" 1799	
11	Thos. Palmer, et ux.	" " "	Deed	May 1, 1832	" - 366, June 1, 1832	" 1800	
12	Harvey Loomis	" " "	Cession	July 15, 1831	X. - 284, Sept. 12, 1833	" 1797	
13	" "	" " "	"	" "	" " "	" 1798	
14	" "	" " "	"	" "	" " "	" 1799	
15	A. Van Steenburgh, et ux.	" " "	Release	Mar. 26, 1849	" - 117, - 340, Apr. 12, 1849	" 1801	See Note #2
16	Harvey Loomis, et ux.	" " "	W. Deed	Apr. 22, 1833	" - 91, - 322, May 3, 1833	" 1844	See Note #3
17	Axel Ekstrom	D. & H. Co	Lease	June 29, 1916		M.D. 3148	See Note #4

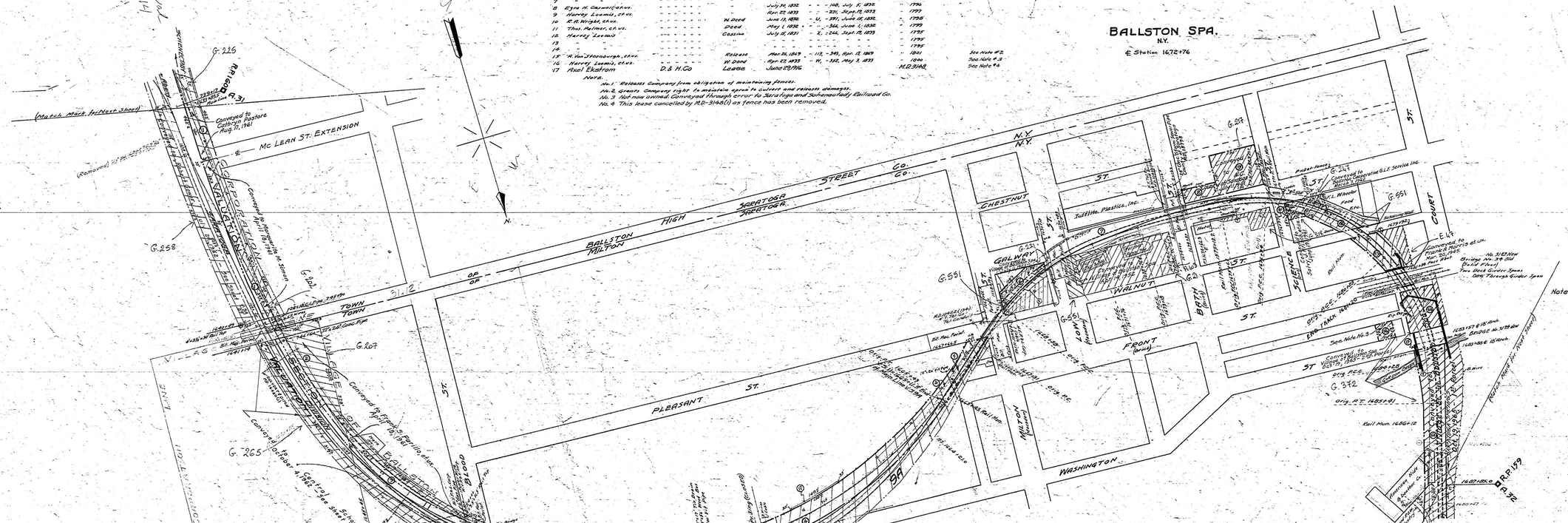
Note.

No. 1 Releases Company from obligation of maintaining fences.

No. 2 Grants Company right to maintain apron to culvert and releases damages.

No. 3 Not now owned. Conveyed through error to Saratoga and Schenectady Railroad Co.

No. 4 This lease cancelled by R.E. 3148(1) as fence has been removed.


BALLSTON SPA.
N.Y.
℄ Station 1672+76
Mc LEAN ST. EXTENSION
(Match Mark for Next Sheet)
Conveyed to Catherine Pastore Aug. 11, 1941
(Removed) by R.E. 3297(2)
Conveyed May 1, 1916 to Mr. Stanton
G. 226
G. 268
G. 207
G. 265
G. 551
G. 376
G. 372
G. 247
G. 551
G. 551
G. 551

BEFORE THE
SURFACE TRANSPORTATION BOARD

NAVAL NUCLEAR PROPULSION PROGRAM, UNITED STATES ARMY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND, AND FLUOR MARINE PROPULSION, LLC – PETITION FOR DECLARATORY ORDER	)	Docket No. FD 36298

VERIFIED STATEMENT OF DONALD J. BOYLE

1. My name is Donald J. Boyle. My business address is 2401 River Drive, Niskayuna, NY. I served as Managing Counsel Naval Nuclear Laboratory ("NNL") for Bechtel Marine Propulsion Corporation ("BMPC"). Between October 1, 2008 and September 30, 2018, BMPC managed and operated the Knolls Atomic Power Laboratory and the Bettis Atomic Power Laboratory, which were combined to form NNL. NNL is currently managed and operated by Fluor Marine Propulsion, LLC ("FMP"). I now serve as General Counsel NNL for FMP. My references to FMP include NNL's predecessor manager/operator, BMPC.

2. Since October 1, 2018, FMP manages and operates the government-owned NNL under contracts with the U.S. Department of Energy ("DOE") and the Department of the Navy. With a staff of over 7,900 engineers, scientists, technicians, and support personnel, NNL's mission is to develop the most advanced naval nuclear propulsion technology and provide technical support, including training, for the continued safe, reliable operation of all existing naval reactors. To that end, FMP

operates prototype nuclear propulsion plants at the NNL Kesselring Site in West Milton, New York for research and training purposes. The prototypes serve as realistic platforms to train the sailors and officers who operate the nuclear propulsion plants at sea.

3. The prototype nuclear propulsion plants at the Kesselring Site must be periodically refueled. This refueling requires the use of rail transportation of loaded and empty containers to the Ballston Spa Industrial Track ("BSIT") and heavy hauler transportation of the loaded and empty containers between the BSIT and the Kesselring Site. I append a satellite view of the current configuration of the BSIT in my Exhibit 1 (DJB-1). As shown there, the BSIT starts at the Delaware & Hudson Railway Company d/b/a Canadian Pacific's ("CP") main line switch and goes north and west before stopping just short of an old freight house.

4. Several years ago FMP, along with other Governmental entities (collectively, the "Government"), began planning for the refueling of one of the two plants at the Kesselring Site – the S8G prototype – including the planning of the necessary transportation arrangements. The other Governmental entities involved included the Naval Nuclear Propulsion Program ("NNPP"), an integrated joint DOE and U.S. Navy organization, and the United States Army's Military Surface Deployment and Distribution Command ("SDDC").

5. NNPP is the shipper of record on the loaded and empty container shipments to/from the Kesselring Site. The SDDC supports NNPP by issuing requests called "tenders" to the railroads for their common carrier rates and service terms for container transportation to the BSIT and by supplying rail cars used in the transportation

(which are assigned to NNPP). FMP's responsibilities include making arrangements to receive the inbound containers and rail cars at the BSIT, changing the transportation mode ("transload") of the containers and rail car bodies from rail to heavy haul vehicles, and transporting the containers to the Kesselring Site (and vice versa for outbound shipments).

6. One of the first tasks we addressed in our transportation planning was the condition of the BSIT. Portions of that line had not been used in years and needed substantial repairs in order to be able to transport the heavy container cars. CP owns the BSIT, and NNPP representatives initiated discussions with CP in 2013 concerning the expected shipments and potential actions that would need to be taken to refurbish the BSIT (including brush removal and track repairs) and restarted those discussions in 2015.

7. I became directly involved in these discussions in connection with legal issues arising with the refurbishment of the BSIT. In 2015, CP refurbished the portion of the BSIT between the CP main line/BSIT switch and a local street in Ballston Spa, NY called Eastern Avenue. Comparatively, this portion of the BSIT did not need as much work because CP had been using this segment to store rail cars. The remaining portion of the BSIT, which is west of Eastern Avenue, needed substantial repair/rehabilitation because it had not been used since the last shipment in 2004.

8. To make a long story short, CP informed me that (i) FMP would have to pay for the repairs to the BSIT track (and CP-owned access road) west of Eastern Avenue; (ii) FMP (and its contractors) could not access the BSIT track west of Eastern

Avenue to make the repairs unless FMP first entered into an access indemnity agreement with CP; and (iii) CP would not enter into the indemnity agreement unless FMP agreed to engage in good faith negotiations concerning the Government's potential purchase of the BSIT, a line CP represented was a "spur" track excepted from Surface Transportation Board ("STB") regulation.

9. When I inquired about why CP was making these demands, CP representatives informed me that following the rail disaster in 2013 at Lac-Mégantic, CP's top management had decided to limit (or eliminate) CP's risks related to the transport of hazardous commodities, such as radioactive material. CP appeared to be particularly concerned about its liability if an accident occurred "on CP property" involving a loaded container containing radioactive material.

10. I responded that CP's concerns were misguided. The Government goes to extraordinary lengths to ensure the safe transportation of radioactive material. For example, since 1957 NNPP has made over 870 container shipments of naval spent fuel – each shipment has been completed safely without any injuries to workers or the public and without any release of radioactivity. In addition, in the unlikely event that an accident did occur, the Price-Anderson Nuclear Industries Indemnity Act provides CP with broad liability protections. My responses fell on deaf ears: CP continued to insist that FMP comply with its demands before it would allow FMP's contractors access to the BSIT.

11. The refueling process at the Kesselring Site called for an initial set of shipments of empty containers, starting in May 2018, followed by a series of loaded

container shipments containing radioactive material. With the May 2018 date fast approaching, FMP believed at the time it had no other choice but to accede to CP's demands. FMP and CP executed a cover letter and the indemnity agreement in early October of 2017 that conformed to CP's demands. I append a copy of this cover letter and agreement in my Exhibit 2 (DJB-2). FMP's contractors proceeded to access and repair the west-of-Eastern Avenue right-of-way and the parallel access road. Those repairs were completed in December 2017 (and the Eastern Ave. road crossing in April 2018) at a cost of $309,000.

12. I then turned my attention to another CP demand – that FMP enter into a second indemnity agreement governing FMP's access to the BSIT west of Eastern Avenue for transloading container cars. CP began insisting on terms in this proposed agreement that were not acceptable to FMP, including limiting FMP's access rights to transloading empty containers, not containers containing radioactive material. In addition, as discussed in my March 5, 2018 letter to CP (appended as Exhibit 3 (DJB-3)), some CP officials had threatened to stop CP service unless FMP immediately purchased the BSIT – a demand that was impossible for the Government to fulfill under its property procurement regulations.

13. At the same time CP was making these demands, the SDDC had issued a formal request for tender on April 5, 2018 seeking Rule 11 common carrier rates and service terms for the transportation of the first three empty container moves from Idaho to Ballston Spa. These three moves were individual moves on separate trains.

14. The move from Idaho to Ballston Spa involved a three-carrier joint route. The three participating carriers were Union Pacific Railroad Company ("UP"), Norfolk Southern Railway Company ("NS"), and CP. NS and UP provided common carrier rates and service terms for their portions of the haul, but CP dragged its heels, by first responding with proposed "private contract" terms, then responding with "draft" common carrier tariff terms.

15. The refueling at the Kesselring Site involves multiple time sensitive steps. In order for the refueling to stay on schedule, the first empty container shipment departed from its origin in Idaho on May 1, 2018.

16. The Government was in a very difficult situation following the departure of the first empty container move. While the transportation arrangements for this shipment were in place with UP and NS, CP's position was that it had no obligation to transport the shipment for its portion of the haul (physically from Saratoga Springs, NY to the end of the BSIT) until, at a minimum, CP provided its "final" common carrier rates and FMP agreed to CP's proposed transloading indemnity agreement terms.

17. With time running out, FMP reluctantly agreed to the terms of a transloading indemnity agreement with CP on May 9, 2018. I append a copy of this agreement ("Access Agreement") as my Exhibit 4 (DJB-4). At CP's insistence, the final version of the Access Agreement applied only to BSIT's transloading of empty container cars. *Id.* at 1. It also contains a recital stating that the parties are engaged in "good faith" discussions concerning the potential sale of the BSIT to the Government and attaches a

list of "milestones describing the actions that must take place and be approved for a sale to occur." *Id.* at 1, 21 (Schedule E).

18. After much back and forth, CP eventually provided its "final" common carrier terms on May 10, 2018 and informed FMP that it would transport the empty container moves from Saratoga Springs to the BSIT pursuant to these "final" terms. CP transported the first of these shipments, which arrived in Ballston Spa on June 8, 2018, and was transported by FMP's heavy-hauler to the Kesselring Site on June 18, 2018.

19. While these events were unfolding, the Government retained STB counsel. Counsel reviewed archived Interstate Commerce Commission ("ICC") records and found that – contrary to CP's prior representations – the BSIT was a regulated common carrier line. Specifically, Counsel found that (i) D&H had acknowledged in a 1980 Abandonment Case (ICC Docket No. AB-156 (Sub-No. 9F)) that the BSIT was a regulated common carrier line; (ii) D&H had agreed not to abandon (and to continue providing common carrier service over) the portion of the BSIT between the D&H (now CP) main line switch and the old freight house; (iii) D&H had agreed not to abandon this portion of the BSIT (which, at the time, had extended west past the old freight house) because DOE, and other shippers, were using this portion of the line to originate and terminate shipments; and (iv) DOE had entered into an agreement with D&H to pay for upgrades on the BSIT.

20. I reported our STB Counsel's findings to CP, and, at this point, my dealings with CP can be divided into three general topic areas: shipment receipts; line purchase discussions; and the regulatory status of the BSIT.

Shipment Receipts

21. Following my report on our Counsel's findings, CP voluntarily provided common carrier rates for three additional empty container moves to the BSIT and participated in Rule 11 hauls with its connecting carriers from the shipment origins to the BSIT. FMP's contractors transloaded each empty container and transported them via heavy haul vehicle to the Kesselring Site.

22. The first move of a loaded container containing radioactive material is scheduled for a date between October 2019 and early 2020, with the final date dependent upon completion of ongoing actions at the Kesselring Site. SDDC has not issued a tender request yet for this move, but, as matters now stand, FMP has no contractual right to enter the BSIT right-of-way to transload the container. As discussed above, CP insisted that the current Access Agreement only allow FMP access to the BSIT to transload empty containers, not containers containing radioactive material. *See supra* ¶ 17; DJB-4 at 1.

Line Sale Negotiations

23. Turning to line sale negotiations, when I learned that the BSIT was a common carrier line, I informed CP that the Government would continue to discuss a line purchase with CP (and would continue ongoing environmental reviews), but told CP that any purchase of the line by FMP (or an affiliated Government entity) must preserve CP's

common carrier obligation to provide service over the line. In addition, the NNPP entered into an inter-agency agreement with the U.S. Army Corps of Engineers ("USACE") to support the potential purchase of the line.

24. To achieve these objectives, the Government proposed that the Government and CP explore what we believed was a creative solution – a "*State of Maine*" transaction – a transaction where the Government would become the owner of the BSIT (thus resolving CP's asserted liability concerns), while CP would retain a common carrier easement to provide service over the BSIT (thus resolving the Government's common carrier service objective).

25. This idea – that the parties explore a *State of Maine* transaction – was formally tendered by the U.S. Army Corps of Engineers ("USACE") to CP in a letter dated October 18, 2018 (appended as my Exhibit 5 (DJB-5)). A senior CP official responded to the USACE letter in a letter dated November 27, 2018 (Exhibit 6 (DJB-6)). In that letter, CP rejected the Government's *State of Maine* proposal; threatened to seek authority to abandon the BSIT; and demanded that the Government agree to enter into "a long term private siding agreement" (DJB-6 at 2).

26. In my subsequent discussions with CP, which we formally summarized in my letter to CP dated January 29, 2019 (Exhibit 7 (DJB-7)), I informed CP that its proposal was a non-starter for the Government because the Government wanted common carrier service protections, enforced by the STB, that were not available under any form of BSIT private siding agreement. DJB-7 at 2-3. I also reinforced with CP that the BSIT was a vital rail line important to national defense and emphasized that

the Government would vigorously oppose any effort by CP to abandon the BSIT. *Id*. at 1. My letter stated in pertinent part:

> You assert in your letter that CP plans to institute proceedings at the STB to abandon the BSIT. The Government strongly urges CP to reconsider its plans. The BSIT is a defense connector line to the Strategic Rail Corridor Network (STRACNET). The STRACNET and its defense connector lines are the civil rail lines most important to the national defense. The Government will vigorously oppose any efforts by CP to abandon the BSIT because your plans undermine critically important national defense interests related to the ongoing refueling at the Kesselring Site . . . .

Id. I also reiterated the Government's interest in exploring a *State of Maine* line purchase transaction or a transaction similar to the one D&H and DOE had entered into in 1980 (which had expired). *Id*. at 2.

27. CP responded in a letter to me, dated March 7, 2019 (appended as Exhibit 8 (DJB-8)). CP once again rejected consideration of a *State of Maine* transaction, but proposed an alternative where CP would drop its threat to abandon what it termed the "regulated" portion of the BSIT; sell the remaining BSIT segment (which I refer to as the "End Segment") to the Government; and then serve the End Segment under a "private siding agreement." DJB-8 at 2. CP also rejected another proposal I had asked it to consider – allowing NS, which has overhead rights to use CP's main line track in the area (and indeed transports the Government's container cars using those rights past the CP/BSIT switch en route to Saratoga Springs, where NS physically interchanges the cars with CP for CP delivery to the BSIT.) *Id*.

Regulatory Status of the BSIT

28. CP's reference to the "regulated" portion of the BSIT leads me to the third topic – the regulatory status of the BSIT. As I discussed above, CP initially represented that the BSIT was not subject to STB regulatory jurisdiction. However, after the Government informed CP in April 2018 what had occurred in the 1980 Abandonment Case, CP conceded that a portion of the BSIT – from the CP switch to just beyond Eastern Avenue – was a regulated railroad line – but maintained, based on its asserted review of the 1980 Abandonment Case record, that the last 430 feet or so of the BSIT was an exempt spur, a position that the Government found to be without merit. It also appeared to me that this position is meant to continue to try to leverage the Government to purchase the BSIT, or some segment of it, on CP's terms by threatening to either not provide service over the End Segment or to deny the Government access to the End Segment to transload shipments containing radioactive materials.

29. On March 8, 2019, Bernhard Gundermann (FMP Manager of the Refueling Overhaul Production Support) and I met with CP representatives to see if we could resolve (or at least better understand) each side's position on the BSIT regulatory status issues. At that meeting, Mr. Gundermann and I outlined the Government's position, which, in a nutshell, was that (i) D&H had agreed in 1980 that it would not abandon (and would continue to provide common carrier service) over the portion of the BSIT that the Government was using – from the CP main line switch to the old freight house – a distance of approximately 0.55 miles; (ii) the current BSIT routing from the main line switch to the end of the BSIT was 0.55 miles; and (iii) the Government would

not, and did not agree, in 1980 to an arrangement where a key portion of the BSIT was not a regulated rail line.

30. CP agreed with us that D&H had agreed to retain 0.55 miles of track from the CP main line switch, and that the current distance from the main line switch to the end of the BSIT was 0.55 miles, but maintained that (i) in 1980, the main line switch was approximately 430' to the south of where it is today, so using that starting point, the 0.55 miles ends approximately 430' before the end of the BSIT (see my Exhibit 9 (DJB-9)); (ii) D&H had used an incorrect description in its 1980 Application of the location of the mainline switch (430' north of its actual location), which D&H subsequently corrected before the ICC issued its final decision in the 1980 Abandonment Case; and (iii) a schematic attached to the DOE/D&H 1980 Settlement Agreement referred to the 430' segment as a "Siding Serving Dep't of Energy To Be Retained."

31. Following the meeting, CP sent me an email dated March 14, 2019 summarizing its position (again) (Exhibit 10 (DJB-10)), and I responded in a letter dated March 25, 2019 (Exhibit 11 (DJB-11)). As I discussed in my letter, the Government's review found that (i) the D&H main line switch was at its current location in 1980 (DJB-11 at 2, ¶ 1); (ii) D&H correctly identified the Valuation Station where the switch was located (but never corrected what may have been an incorrect reference to the milepost at the correct Valuation Station) (*id.* at 2-3, ¶ 2); and (iii) regardless of how D&H may have characterized the 430' segment in its schematic, the 430' segment now appears to be part of the single line regulated BSIT running from the CP switch 0.55 miles to near the old

freight station (*id*. at 3, ¶ 3). Mr. Gundermann addresses these points as well in more detail in his Verified Statement, as does our Counsel in this Joint Petition.

32. I also informed CP in my March 25, 2019 letter that the Government planned on asking the STB for a declaratory order to resolve the issues surrounding the regulatory status of the End Segment in dispute. *Id*. at 1. Obtaining such a ruling is important for two reasons. First, the parties need to know whether the track is a regulated track for purposes of structuring any sales transaction. Second, the Government needs to know – with or without a sales transaction – whether CP has a common carrier obligation, enforceable by the STB, to both provide service over the End Segment and to provide the Government with reasonable access to the BSIT End Segment for purposes of transloading its containers.

33. Time is of the essence here. The first loaded container shipment containing radioactive material is planned for a date between October 2019 and early 2020, and the Government cannot risk CP denying service, or access to its loaded container cars, unless the Government agrees to line sale terms that remove the End Segment from the national regulated rail transportation network. In addition, as Mr. Trautman explains in his Verified Statement, refueling the Kesselring Site is very time sensitive, and any delays in the refueling overhaul schedule can result in huge additional costs of up to $800,000 per day.

34. I noted in my March 25, 2019 letter that the Government is willing to mediate its dispute with CP while this Declaratory Order Proceeding advances (DJB-11 at 1), but, given the critically important national security interests at stake here, the

Government cannot delay proceeding with a formal resolution of this dispute during any such mediation.

VERIFICATION

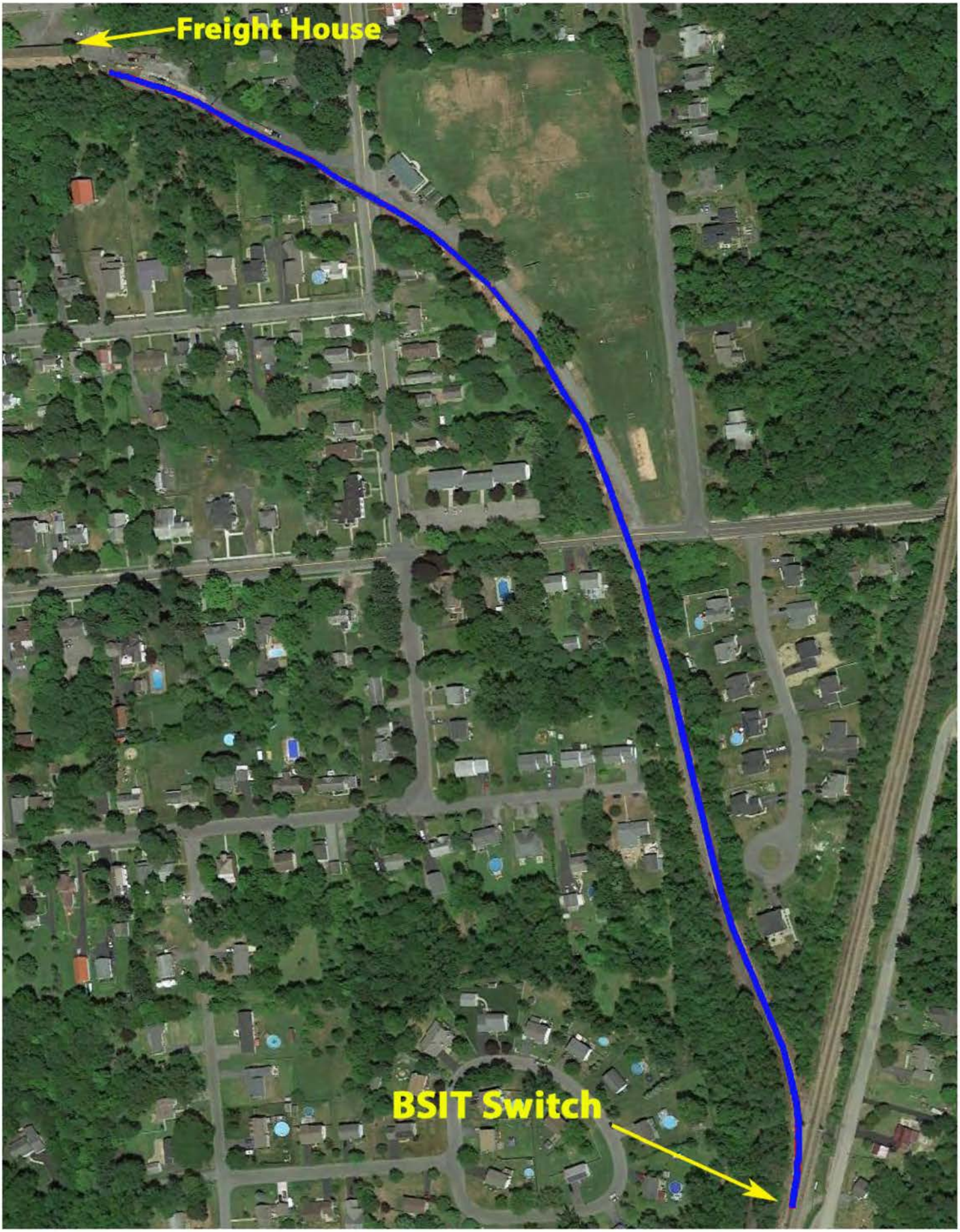
I, Donald J. Boyle, verify under penalty of perjury that I have read the foregoing Verified Statement, know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Donald J. Boyle

Executed on 26 April, 2019

BOYLE EXHIBIT NO. 1

(DJB-1)


Freight House
BSIT Switch

BOYLE EXHIBIT NO. 2

(DJB-2)

CP

James Clements
Vice-President
Strategic Planning &
Transportation Services

7550 Ogden Dale Road SE
Calgary Alberta
Canada T2C 4X9

T 403 319 7470
E James_Clements@cpr.ca

October 4, 2017

Mr. Don Boyle
Managing Counsel
Bechtel Marine Propulsion Corporation
2401 River Road
Schenectady, NY 12309-1103

Re: BMPC purchase of CP property located in Ballston Spa, New York

Dear Mr. Boyle:

As we have discussed, please find enclosed a Permission to Enter Premises, Release and Agreement to Insure ("Agreement") between Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific ("CP") and Bechtel Marine Propulsion Corporation ("BMPC") for your consideration. You may recognize that the attached Agreement is largely based on a similar agreement entered into between the parties for the purpose of inspecting the same portion of CP's spur. We have taken the liberty of importing terms and conditions that specifically address the rehabilitation work that BMPC is undertaking.

We also confirm that CP is willing to enter into the Agreement with the intent of permitting BMPC to commence the rehabilitation work immediately while CP and BMPC negotiate in good faith the sale by CP and the purchase by BMPC, or such other appropriate party, of the subject spur. CP and BMPC further agree that the Agreement shall remain in effect only until such time as the definitive transaction documents concerning the aforementioned sale have been executed by both parties.

Please indicate BMPC's agreement in the space provided below and return an executed copy to my attention. Upon receipt, I will forward a fully-executed copy of the Agreement, subject to any further revisions as mutually agreed upon by the parties, if revisions are necessary. Thank you for your consideration.

Sincerely,

James Clements
VP Strategic Planning & Transp. Services

ACCEPTED AND AGREED:
Signature: _____
Date: Oct 9/2017

CP

7550 Ogden Dale Road SE
Calgary Alberta
Canada T2C 4X9

FACSIMILE COVER SHEET

Date: October 10, 2017

To	Firm	Fax
Donald Boyle	BMPC Legal	518-395-6468

From	Telephone	Fax
Cassandra Quach	403-319-7016	403-319-6770

Total Pages including cover page: 9

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October 10, 2017

VIA FAX

Mr. Donald Boyle
Managing Counsel
Bechtel Marine Propulsion Corporation
2401 River Road
Schenectady, NY 12309-1103

Dear Mr. Boyle:

RE: BMPC purchase of CP property located in Ballston Spa, New York

Attached, please find the fully signed Permission to Enter Premises, Release and Agreement to Insure as per the above subject matter.

We hope you find the enclosed satisfactory. Please feel free to contact the undersigned if you have any questions or concerns.

Sincerely,

Jennifer Dickinson

per: Cassandra Quach

encl.

DELAWARE AND HUDSON RAILWAY COMPANY, INC.

PERMISSION TO ENTER PREMISES, RELEASE AND AGREEMENT TO INSURE

Bechtel Marine Propulsion Corporation ("BMPC") hereby requests permission of Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific ("CP") to enter and be present upon premises, property and/or facilities owned, leased or controlled by CP at and in the vicinity of Ballston Spa, New York at or near railroad milepost 31 of the CP Canadian Subdivision as identified and depicted on Exhibit A attached hereto (the "Premises").

CP consents to BMPC's entry and presence on the Premises for the limited purpose of BMPC, at its expense, repairing and rehabilitating the siding located on the Premises including the track, ballast, sub-ballast, crossing materials, crossing protection apparatus, signals, circuitry, fencing, structures such as culverts, bridges and retaining walls, rail anchors, fastenings, spikes, switch materials, derails, bumping posts, tie plates and track and switch ties as necessary (the "Activities") between Point B and Point C depicted on Exhibit A.

In consideration of CP's consent to BMPC's entry and presence to perform the Activities upon the Premises, BMPC agrees and undertakes to:

(1) Give advance notice to CP's officer or agent signing this Agreement of each entry by BMPC or its authorized representative upon the Premises.

(2) Accept safety direction and supervision from CP while on the Premises.

(3) Not interfere with CP's railroad operations and not conduct Activities within 25 feet of the centerline of CP's railway line without flagging protection.

(4) Pay CP's customary charges for flagging protection services within thirty (30) days after receipt of a written invoice in the event if either BMPC or CP determines flagging protection is required during BMPC's Activities. BMPC understands and acknowledges that advance notice is required to arrange for flagging protection.

(5) Comply, at its own expense, with all applicable federal, state, and municipal laws, rules, and regulations, including environmental laws and regulations while BMPC is present on the Premises.

(6) Perform such repairs as are necessary to ensure safe rail operations on the siding. CP, in the reasonable exercise of its discretion, shall determine whether the condition of the siding is satisfactory after conclusion of BMPC's rehabilitation Activities. CP shall have the right to require BMPC to carry out such additional repairs as are necessary to provide safe rail operations on the siding.

(7) Not bring, keep, store, load, unload or transfer any hazardous substances on the Premises except as incidental to the equipment used to rehabilitate the siding track.

(8) Provide, at its own expense, all equipment required for its Activities. BMPC shall be responsible for any site preparation required; however, BMPC shall not excavate, or construct or place any unauthorized improvement on the Premises. BMPC agrees that upon conclusion of its

Activities, it will leave the Premises to CP's reasonable satisfaction in a neat and tidy condition, free and clear of all waste material, debris and rubbish.

(9) Pay CP's customary charges for inspection of the siding at the conclusion of BMPC's rehabilitation Activities within thirty (30) days after receipt of CP's written invoice.

(10) Comply with all CP's general, safety, and operating rules as they apply to the Activities while on the Premises, including but not limited to, the prohibition of the use of or being under the influence of alcohol or any controlled substances while on the Premises and the provisions of CP's Minimum Safety Requirements for Contractors Working on Railway Premises attached hereto as Exhibit B.

(11) Obtain and maintain, at its own cost and expense, and cause its contractors and subcontractors engaged in connection with this Agreement to obtain and maintain, during the term of this Agreement, policies of:

a) Commercial General Liability Insurance policy with an inclusive limit of not less than **Five Million Dollars ($5,000,000.00)** per occurrence for bodily injury and property damage, or any other increased amount as CP may reasonably require upon conducting reviews from time to time. Such insurance shall specifically state by its wording or by endorsement:

i. CP and its associated or affiliated companies (and the Directors, Officers, employees, agents and trustees of all of the foregoing) as an additional insured with respect to obligations of BMPC under this Agreement and incidental thereto;

ii. "cross liability" or "severability of interest" clause which shall have the effect of insuring each entity named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;

iii. blanket contractual liability, including the insurable liabilities assumed by BMPC under this Agreement;

iv. products & completed operations;

v. employers liability; and

vi. shall not exclude operations on or in the vicinity of the railway right-of-way.

b) Automobile public liability and property damage insurance in an amount not less than **Five Million Dollars ($5,000,000)** all-inclusive covering the ownership, use and operation of any motor vehicles and trailers licensed for use on public highways and which are owned, non-owned, leased or controlled by BMPC and its contractors and agents and used in regards to this Agreement.

BMPC shall comply in all respects with the workers' compensation legislation of the state in which the Premises are located, and upon request from CP, provide written

confirmation from the applicable workers' compensation authority that BMPC is in good standing with such authority.

Prior to the effective date of this Agreement, and upon the insurance renewal date thereafter, BMPC shall furnish to CP certificates of insurance evidencing the above coverages. Insurance coverage shall be endorsed to provide CP with not less than thirty (30) days' written notice in advance of cancellation, material change or amendments restricting coverage. Upon request, BMPC shall provide CP with certified copies of the insurance policies. Such notice shall be by registered mail to the specific attention of: Canadian Pacific Railway Company, Insurance Compliance, P.O. Box 100085 – C5, 1 Ebix Way, Duluth, GA 30096. Alternatively, such notice can be sent by email to CPail@ebix.com.

The acquisition and maintenance of insurance policies by BMPC shall in no manner limit or restrict the liabilities incurred by BMPC under the provisions of this Agreement.

(12) (a) Release CP and all of CP's corporate affiliates, subsidiaries and parent and all officers, agents and employees of CP and such other subsidiaries, affiliates and parent from and against any and all losses, costs, claims, liabilities, damages and expenses resulting from injury to or death of persons, including but not limited to BMPC and damage to or loss of property, including but not limited to property in BMPC's possession or ownership, caused by, arising from, or in any manner growing out of or resulting from, in whole or in part, directly or indirectly, BMPC's presence on the Premises, WHETHER CAUSED BY OR CONTRIBUTED TO BY THE ACTUAL OR ALLEGED NEGLIGENCE OF CP, ITS OFFICERS, EMPLOYEES, AGENTS OR ANY OTHER THIRD PARTY except to the extent caused solely by CP's or its agents' gross negligence or willful misconduct.

(b) BMPC understands that CP's operations involve particular risks and dangers. If being on the Premises exposes BMPC to any CP operations, BMPC specifically assumes all risk of injury, including death, and damage to property from CP's operations (but excluding risks of injuries to, including death of, CP's employee and damage to CP's property) as part of the above assumption of risk, WHETHER SAID INJURY OR DAMAGE IS CAUSED BY OR CONTRIBUTED TO BY THE ACTUAL OR ALLEGED NEGLIGENCE OF THE CP, ITS OFFICERS, EMPLOYEES, AGENTS OR ANY OTHER THIRD PARTY except to the extent caused solely by CP or its agents' gross negligence or willful misconduct.

(13) BMPC understands that BMPC and its representatives must present a copy of this Agreement upon demand of any CP official or railroad police officer. BMPC further agrees to comply with all CP operating practices and federal safety requirements while on or about the Premises. Where necessary or appropriate pursuant to CP practices, BMPC shall procure and use at BMPC's sole cost all necessary and appropriate safety equipment. BMPC shall timely reimburse CP for any fines incurred by CP arising from BMPC's acts or omissions on the Premises.

(14) All notices or communications required hereunder shall be given by courier or facsimile, or if mailed by registered mail, postage prepaid, and addressed to the other party as follows:

To CP:	**Canadian Pacific** Industrial Development 120 South 6th Street Suite 800 Minneapolis, MN 55402 Attention: Regional Manager Fax #: (612) 904-5917
With a copy to:	**Canadian Pacific** Legal Services 120 South 6th Street Suite 800 Minneapolis, MN 55402 Attention: General Counsel – U.S. Fax #: (612) 612-851-5647
To BMPC:	**Bechtel Marine Propulsion Corporation** PO Box 79 West Mifflin, PA 15122-0079 Attention: Manager, Acquisition Management, A6/AM Fax #: (412) 476-7320
With a copy to:	**Bechtel Marine Propulsion Corporation** PO Box 1072 Schenectady, NY 12301-1072 Attention: Managing Counsel Fax #: (518) 396-6469

or such other address as may be furnished from time to time by either party. Any notice, if delivered by courier or facsimile, shall be deemed to have been given or made on the date delivered or the date that a confirmation of receipt of the facsimile was recorded by the sender and if mailed correctly, shall be deemed to have been received on the third (3rd) business day after mailing.

(15) BMPC shall not file or register, nor permit or cause to be filed or registered, this Agreement or any caveat, encumbrance or other instrument of any kind against title to the Access Area or any other lands of CP. The rights granted to BMPC under this Agreement constitute a license only and shall not create an interest in land.

(16) The rights and provisions of BMPC under this Agreement shall not be transferred or assigned in whole or in part except with the prior written consent of CP, which shall not be unreasonably withheld.

(17) This Agreement may not be modified or amended except in writing signed by the parties.

(18) If BMPC fails to pay any amount due under this Agreement, or is in breach of any term of this Agreement then BMPC shall be in default under this Agreement. Should such default

occur, CP may terminate this Agreement, after giving written notice thereof to BMPC and allowing thirty (30) days to elapse after such notice, unless in the meantime such default shall have been remedied. In addition to any other right or remedy it may have, upon notice, CP may indefinitely suspend or terminate the rights of BMPC to conduct its Activities if such breach is endangering the safety of persons or railway operations.

(19) No term, covenant or provision in this Agreement or right hereunder or in respect of will be deemed to have been waived by CP, except by express waiver in writing signed by CP.

(20) If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms of this Agreement shall not be affected thereby, but shall be valid and enforceable to the fullest extent permitted by law. This Agreement shall be construed in accordance with the laws of the State of New York without regard to that State's conflict of law rules.

(21) This Agreement shall commence on the Effective Date and continue until completion of BMPC's Activities unless terminated by either party on giving not less than ninety (90) days' written notice to the other party.

AGREED AND ACCEPTED as of the date written below (the "Effective Date"):

DELAWARE AND HUDSON RAILWAY COMPANY, INC.
d/b/a Canadian Pacific

Signed: _____

Title: _____

Date: _____ October 10, 2017

JAMES CLEMENTS
VICE-PRESIDENT
STRATEGIC PLANNING &
TRANSPORTATION SERVICES

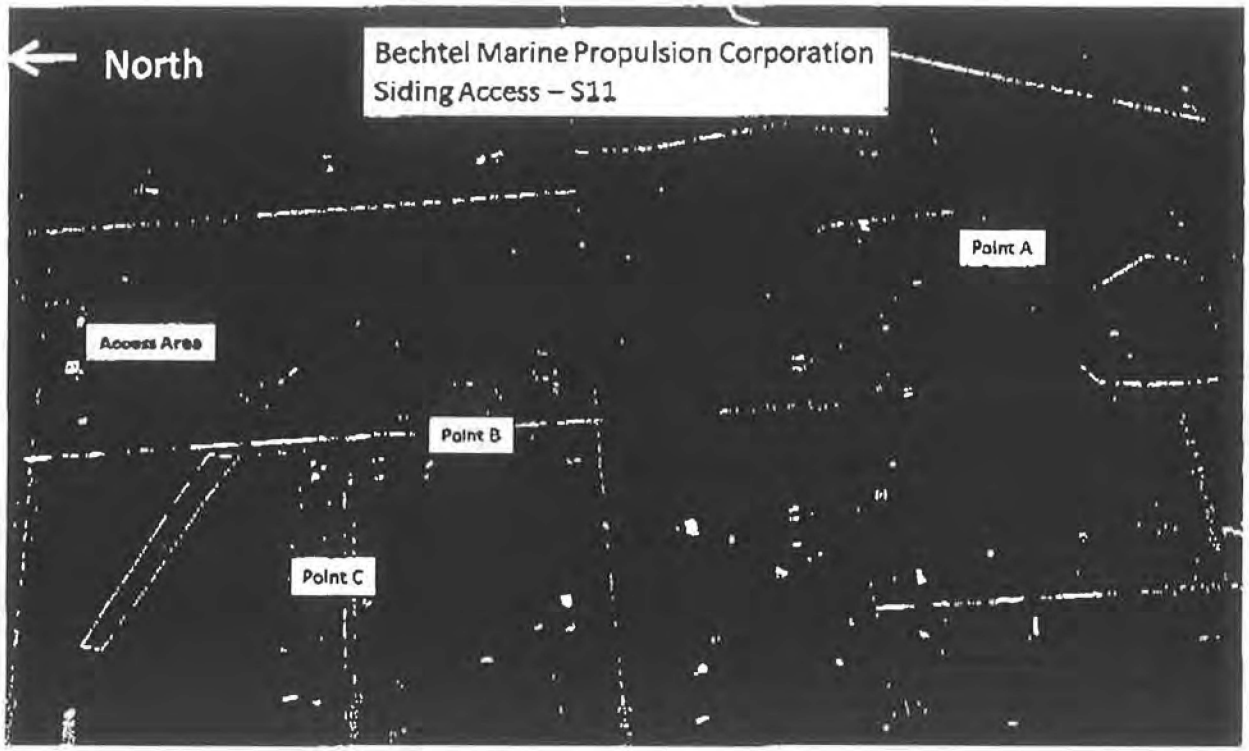
BECHTEL MARINE PROPULSION CORPORATION

Signed: _____

Title: Managing Counsel/Assistant Corporate Secretary

Date: October 9, 2017

EXHIBIT A
Depiction of Premises



Rotated view illustrating additional detail

EXHIBIT B
Minimum Safety Requirements for Contractors Working on Railway Premises

Minimum Safety Requirements for Contractors Working on CP Property in the United States

Approval Authority:	Corporate Risk	**Effective Date:**	April 1, 2007
Version:	2.0	**Revision Date:**	October 1, 2017

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At Canadian Pacific (CP), safety is an integral part of the way we do business. We expect everyone working on Canadian Pacific's property to be unconditionally committed to safety. Safety must be given top priority and will take precedence over deadlines, production schedules, and all other considerations.

1.1 Application

1.1.1 These Minimum Safety Requirements apply to all Contractors and other persons performing Work or otherwise providing services to Canadian Pacific on CP Property in the U.S.

1.1.2 These Minimum Safety Requirements cannot be waived or altered, in whole or in part, without a prior Risk Assessment specific to the Work being conducted, and written consent has been provided by Manager-in-Charge.

1.1.3 Notwithstanding the foregoing, these Minimum Safety Requirements do not apply to other railroad companies who only operate trains on CP Property under various trackage or interchange agreements.

1.1.4 Further notwithstanding the foregoing, these Minimum Safety Requirements may not apply to Work or services provided in CP office premises, in which case, CP's Minimum Safety Requirements for Contractors Working in CP Offices may apply.

2.1 Definitions

2.1.1 In these Minimum Safety Requirements, the following capitalized terms shall have the ascribed meaning below:

(a) **"Applicable Legislation"** means all applicable legislation, regulations, by-laws, codes, rules, standards, policies, procedures, promulgated by any federal, state, and municipal governmental body, including those of its agencies, having authority over CP and, or a Contractor in relation to the Work in the matter of health and safety of the person, property and, or the environment;

(b) **"Canadian Pacific"** or **"CP"** means Canadian Pacific Railway Company Ltd., and its subsidiaries and affiliates, and includes each of their respective directors, officers, employees, agent, and representatives;

(c) **"CP Personnel"** means CP's employees, agents, and representatives;

(d) **"CP Property"** means any building, facility, yard, track, right of way or other property owned or controlled by CP;

(e) **"Contractor"** means the company or person, and their respective employees and authorized agents, representative and subcontractors who are providing goods or services to CP;

(f) **"Contractor Personnel"** means the Contractor's employees, and authorized agents, representative and subcontractors;

(g) **"Foul of Track"** means being in proximity to a track such that the individual or equipment could be struck by a moving train or track unit, or in any case within 4 feet of the outside of the nearest rail;

(h) **"Hazardous Materials"** means any substance, which is hazardous to persons or property and includes, without limiting the generality of the foregoing:

(i) radioactive, explosive, poisonous, or toxic substances;

(ii) any substance that if added to any water, would degrade or alter the quality of the water to the extent that it is detrimental to its use by man or by any animal, or plant;

(iii) any solid, liquid, gas or odor or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition of the air that endangers the health, safety, or welfare of persons, or the health of animal life, or causes damage to plant life or to property; and

(iv) substances declared to be hazardous, toxic or dangerous under any law or regulation now or hereafter enacted by any governmental authority having jurisdiction.

(i) **"Manager in Charge"** means a CP manager as designated or otherwise identified by CP as being responsible for overseeing the Work to be performed, such Manager in Charge may include, but is not limited to Local CP Management, Superintendents, Chief Engineers, and Project Managers.

(j) **"Mobile Equipment"** means any motorized and self-propelled equipment, excluding railroad equipment and highway vehicles, but including, for example, forklifts, tractors, cranes, ATVs, mules, motorized scissor lifts, telescopic boom lifts, and similar equipment that are not designed to operate or move on railroad tracks;

(k) **"Office Premises"** means any building, facility, or portion thereof, or other premises, whether owned or controlled by CP, which is used solely for clerical or administrative purposes and which does not contain heavy equipment or machinery, as designated by CP from time to time;

(l) **"Qualified and authorized"** means a status attained by a person who has successfully completed any required training and demonstrated proficiency in the duties of a particular position or function and who has been given the right to act.

(m) **"Railroad Equipment"** means trains, locomotives, railcars, on track equipment (track units), hi-rail vehicles and any other equipment designed to operate or move on railroad tracks;

(n) **"Contractors' Site Safety Plan"** means a documented plan which set out how Work is to be conducted in a safe manner, as required by Applicable Legislation, see 3.15 c);

(o) **"Work"** means the provision of products and services and related activities;

(p) **"Work Site"** means any CP Property where CP Personnel or Contractor Personnel are present, or permitted to be present, while engaged in any Work, including any railroad equipment, mobile equipment and highway vehicles operated by or used to convey a person engaged in such Work.

2.2 Interpretation & Application

2.2.1 Where legislation is referred to in these Minimum Safety Requirements, it shall include all amendments and replacements thereto as promulgated from time to time.

2.2.2 Where standards, such as those of the American National Standards Institute (ANSI), are referred to in these Minimum Safety Requirements, they shall include all amendments and replacements thereof from time to time.

2.2.3 Where there is any ambiguity, inconsistencies, or omissions between or among any agreements with CP, expressed or implied; any Applicable Legislations; any applicable CP policies and

practices; and any applicable industrial standards and practices, Contractor and Contractor Personnel shall adhere to that which is most stringent and current.

[redacted]

3.1 General Compliance

3.1.1 Contractor shall be fully and solely responsible for ensuring the health and safety of Contractor Personnel and for ensuring that its Work and other activities do not compromise the health and safety of CP Personnel or any other party, the protection of the environment, the protection of CP's property and those of any other party, and do not interfere with the safety of CP's railroad operations.

3.1.2 Contractor shall comply with and shall ensure all of Contractor Personnel are trained and qualified to safely perform the Work and that they comply with all Applicable Legislation pertaining to the protection against fire, safety, health, and environmental hazards, and with any license, permits, authorizations issued by the respective authority. Contractor shall provide CP with written certification that Contractor's safety program required by 49 CFR Part 243 has been approved by the Federal Railroad Administration (FRA) where applicable.

3.1.3 Contractor shall comply with and shall ensure all of Contractor Personnel comply with all terms and conditions of all agreements, expressed or implied, between Contractor and CP, and all applicable CP policies and practices.

3.1.4 Contractor shall provide Contractor Personnel, at its own expense, any and all safety equipment required to protect against injuries during the performance of the Work and shall ensure that Contractor Personnel are knowledgeable of and utilize safe practices in performing the Work.

3.1.5 The Contractor shall have a copy of the following documents at the Work Site at all times, and shall produce them as and when requested by CP:

(a) These Minimum Safety Requirements for Contractors Working on CP Property;

(b) Licenses, certifications, permits, training records or other documents required by Applicable Legislation or these Minimum Safety Requirements;

(c) Site Safety Plan to include Emergency Response Plan Procedures, see 7.1.1.c, 16.1.1, 16.4.3;

(d) Contractor's Emergency Information Sheet (see Attachment A); and

(e) Any additional documents required by Contract or by agreement with Manager in Charge.

(f) Employee identification (eRailsafe badge – see 9.1.1)

3.2 Compliance Assurance

3.2.1 CP reserves the right to observe, inspect, test and audit Contractor and Contractor Personnel for compliance with all requirements herein, and to demand and receive all relevant records, documentation, and materials evidencing compliance, at any time, and from time to time.

3.2.2 Failure of the Contractor or Contractor Personnel to comply with any applicable provisions herein may be considered a material breach, and in addition to all other remedies available, CP may without prejudice:

(a) take over control of that Work or activity;

(b) order the Work to stop; and/or

(c) order Contractor Personnel to leave CP Property.

3.2.3 Upon the earlier of the completion of the Work, the expiration of the applicable agreement, or the request of a Manager In Charge, Contractor and Contractor Personnel shall return all identification, badges, access cards, and decals, issued or provided by CP to the Manager In Charge.

[redacted]

4.1 General Requirements

4.1.1 Prior to starting any Work on CP Property, the Contractor must have a written Site Safety Plan that identifies:

(a) all applicable legislation, rules, policies and work practices in relation to the work being performed;

(b) specific hazards and controls that are associated with the work being performed for CP, for example:

(i) Construction, maintenance or inspections of buildings;

(ii) Working on or adjacent to railroad tracks;

(iii) Maintenance or Inspection or railroad tracks, crossings or signal systems;

(iv) Operating Railroad Equipment on CP tracks; or

(v) When/where Contractor Personnel work directly with or in proximity (time or space) to CP Personnel; and

(c) methods of verifying compliance.

4.1.2 The Contractor will provide Manager-In-Charge with a copy of this Site Safety Plan on reasonable request.

4.1.3 The Contractor must be able to demonstrate an awareness of applicable legislation, rules, policies and work practices in relation to the work being performed.

[redacted]

5.1 Minimum Training & Qualifications

5.1.1 At its sole cost and expense, Contractor shall ensure that all Contractor Personnel be fully trained and qualified for the Work they will be performing. Contractors and Contractor Personnel shall meet, or exceed, all Applicable Legislation requirements relating to training and qualification, including but not limited to the requirements of 49 CFR Part 243.

5.1.2 Additionally, Contractor Personnel training and qualification shall meet or exceed all applicable Industry standards.

5.2 Proof of Training & Qualification

5.2.1 Contractor Personnel shall at all times have proof of such training and qualifications and shall produce them as and when requested by the Manager In Charge.

5.2.2 CP reserves the right to inspect qualification certificates, licenses, training records and/or Work-history records for any Contractor Personnel, and, or to be provided with copies thereof, on reasonable request.

[redacted]

6.1 General Requirements

6.1.1 Prior to beginning Work, all Contractor Personnel shall participate in a CP authorized safety orientation, including on-site orientation presented by the Manager In Charge or designate.

6.1.2 Any time the scope of Work, location, condition or supervision changes, Contractor Personnel may be required to attend additional safety orientation sessions.

6.1.3 After successful completion of such safety orientation, Contractors must be able to produce company identification or an eRailsafe photo identification badge authorizing access to CP Property unescorted for the purposes of conducting Work. The eRailsafe identification card shall be worn or be made visible at all times, or produced upon request and cannot be transferred under any circumstances.

[redacted]

7.1.1 Contractor Personnel shall attend all Job Briefings as and when conducted. Contractor Personnel shall be solely and fully responsible for understanding the content of the Job Briefing, and at a minimum shall:

(a) have an understanding of the scope of Work to be performed and an appreciation of the nature of the location, environment, and conditions where such Work is to be performed;

(b) be aware of specific or unusual hazardous condition, existing or potential and the control measures required to protect against, control, mitigate, or where possible, avoid said hazard; and

(c) have an emergency response plan/evacuation procedures.

7.1.2 Where Contractor Personnel are working directly with or in proximity (time or space) to CP Personnel, job briefings must include both CP Personnel and Contractor Personnel, and any other affected third parties. The job briefing shall identify nature and extent of the interaction between the Work being performed by Contractor Personnel, and those performed by CP Personnel or other third parties. Contractor Personnel shall inform CP Personnel, and any other third parties of known or potential unsafe conditions and hazards that may be created by, resulting from, or inherent in their Work and the corresponding preventative, mitigation, and/or control measures at all job briefings prior to commencing Work, or as soon as Contractor Personnel becomes aware of such conditions.

7.1.3 In all situations, all Contractor Personnel are expected to:

(a) continually identify hazards and assess risk of hazards and to continually and clearly communicate all hazards to the Manager In Charge and to all other parties that may be affected at job briefings, and at any other time as and when appropriate or necessary;

(b) take actions that are within their assigned responsibility to eliminate or control hazards and risks; and

(c) immediately notify their supervisor or the Manager In Charge of hazards that pose unacceptable risk that they are unable to eliminate or control.

Where Contractor Personnel are unable to eliminate or control a hazard, Contractor Personnel shall take interim measures to protect people, property, equipment and the environment until the hazard can be properly assessed and appropriate corrective actions taken.

[redacted]

8.1 General Requirements

8.1.1 Contractor and Contractor Personnel shall be solely responsible for identifying and complying with all Applicable Legislation. At a minimum, Contractor and Contractor Personnel shall comply with the federal legislations set out below which list is intended solely for general guidance, and not as a comprehensive list of all Applicable Legislation.

8.1.2 Additionally, the Association of American Railroads (AAR) is an industry association which can provide support and guidance on matters related to railroad safety and the transportation of hazardous materials.

8.2 Transportation of Hazardous Materials

8.2.1 When Work involves the handling or transportation of hazardous materials (hazmat), that Work must comply with Hazardous Materials Transportation Act and regulations administered by the Pipeline and Hazardous Materials Safety Administration (PHMSA).

8.2.2 Contractors shall be solely responsible for ensuring that all Contractor Personnel who handles, offers for transport and/or transports hazmat by any transportation mode are trained and hold a valid training certificate or is working under the direct supervision of someone who is trained and holds a valid training certificate. That training must be based on the Work that the person is expected to perform and the hazmat that the person is expected to handle, offer for transport or transport.

8.2.3 All U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations are published in Chapter I of title 49 of the Code of Federal Regulations (49 CFR).

8.3 Railroad Work

8.3.1 When Work involves the construction, alteration, operation, inspection and maintenance of any part of the general railroad system of transportation, that Work must comply with the Federal Railroad Safety Act and regulations administered by the Federal Railroad Administration (FRA).

8.3.2 Contractors shall be solely responsible for ensuring that all Contractor Personnel who perform railroad Work are trained and qualified in accordance with those regulations and hold valid certificates when required.

8.3.3 All FRA regulations are published in Chapter II of title 49 of the Code of Federal Regulations (49 CFR).

8.4 Occupational Safety & Health

8.4.1 Any Work being performed that may create a risk to the health and safety of any person, including CP Personnel and Contractor Personnel, when not covered by FRA regulations shall be governed by U.S. Department of Labor regulations administered by Occupational Safety and Health Administration (OSHA).

8.4.2 All OSHA regulations are published in Chapter XVII of title 29 of the Code of Federal Regulations (29 CFR).

8.5 Environmental Protection

8.5.1 Where Work is being performed that may impact the environment, that Work must comply with all applicable federal state, and local government legislation, regulations and standards.

8.5.2 Federal legislation is generally administered by the Environmental Protection Agency. A compilation of those laws and regulations can be accessed at http://www.epa.gov/lawsregs/

[redacted]

9.1.1 All Contractor Personnel must have personal identification and/or eRailsafe credentials authorizing access and in their possession at all times while on CP Property, and present them for review to any Manager In Charge, other CP managers and employees, Police Officer, security guard, or regulatory officer upon request:

(a) photo identification (e.g. driver's license); and

(b) proof of employment, document or card; and

(c) CP safety orientation certificate; or

(d) building access pass issued by CP or third party having control over CP premises; or

(e) CP security photo ID card or badge; or

(f) other proof of safety orientation and access authorization issued by CP.

9.1.2 Where any Work requires Contractor Personnel to ride in locomotive or other non-passenger railroad equipment, the Contractor must also possess a CP ACCESS PASS for riding non-passenger railroad equipment, signed by the responsible operating manager. Such a signed pass must be presented to the train crew or operator when boarding the equipment. Failure to possess such a pass will result in the equipment not moving, removal from the equipment, and/or the filing of trespasser charges.

9.2 Security Awareness

9.2.1 Contractor shall conduct employee background checks as is necessary to ensure that Contractor Personnel do not pose a security risk to CP, such security risk includes the risk of the commission of terrorist activities, sabotage, vandalism, theft, and violence. CP reserves the right, at all times, to require that Contractors undertake certain security training and/or performs background checks on Contractor Personnel, prior to allowing such Contractor Personnel to enter onto CP Property.

9.2.2 On request CP can make available a copy of CP's Railway Security Awareness Program for use by Contractor Personnel.

9.3 Firearms & Explosives

9.3.1 Firearms (loaded or empty) are not permitted on CP Property, except for Police officers and other designated government officials when authorized to do so.

9.3.2 No explosives will be permitted on CP Property without written approval by the Manager In Charge.

9.4 Reporting

Contractor Personnel must report any security concern, security incident, criminal activity (known or suspected), suspicious happenings and/or suspicious persons on CP Property to the Manager In Charge or to CP Police Services in accordance with Section 18.

[redacted]

10.1 Drug and Alcohol Prohibition

CP recognizes the problem of alcohol and substance abuse in today's society. This problem poses particular concerns to an employer who is subject to governmental regulations and seeks to promote the safety of the general public. CP has a concern for the safety, health and well-being of its employees as well as an obligation to comply with the United States Department of Transportation (DOT) and Federal Railroad Administration (FRA) regulations. CP will comply with all statutes and regulations administered by the FRA in implementing the required 49 CFR §219 Drug and Alcohol Program. CP also expects employees of other railroads, visitors or contractors to comply with this regulation while on CP property, consistent with federal regulations. If subject to this regulation, Contractor shall be solely responsible for compliance with the 49 CFR Part 219. Contractor shall provide CP with proof of its compliance prior to performing services for CP and continued proof of compliance must be provided to CP immediately upon request. This proof of compliance will include, but will not be limited to, a copy of the 49 CFR §219 Drug and Alcohol Program Plan and FRA Approval Letter and Continued Certification of Compliance and Statistical Reporting. Periodic audits to ensure compliance with these regulations may be performed and cooperation and compliance is expected upon request.

If subject to other DOT modalities and regulations, such as the Federal Motor Carriers Safety Administration (FMCSA), compliance of that modality's drug and alcohol program guidelines will be required and periodic audits to ensure compliance with these regulations may be performed and cooperation and compliance is expected upon request.

10.1.1 Entry onto CP Property when in possession of, or under the influence of alcohol, intoxicants, narcotics, or controlled substances is strictly prohibited. Controlled substances include all Schedule 1 drugs (such as marijuana and "medical marijuana") and synthetic/designer drugs and/or any intoxicants or products labeled "not intended for human consumption".

10.1.2 The sale, trade, and/or offer for sale alcohol or controlled substances are prohibited.

10.1.3 Additionally, Contractor Personnel shall be free of any condition which may in any way adversely affect alertness, concentration, responsiveness, or the ability react calmly and responsibly to safety hazards.

10.1.4 CP reserves the right to request drug and/or alcohol tests for Contractor Personnel as and where required or permitted by law.

10.2 Inappropriate Behavior

10.2.1 CP is committed to maintaining a work environment that supports the dignity of all individuals. No person working at CP may be subjected to any form of discrimination or harassment, including sexual harassment.

10.2.2 Acts or threats of violence are unacceptable at all times on CP Property. Uttering of threats or committing acts of violence will result in the removal of the responsible Contractor Personnel from CP Property, termination of the Contract, and/or criminal charges.

10.2.3 Horseplay, practical jokes, fighting or any other activity that may create a safety hazard is not permitted.

10.3 Electronic Entertainment and Communication Devices

10.3.1 The use of personal entertainment devices, including portable audio and video devices such as compact DVD, CD, video game players, tablets and MP3 players, is prohibited:

(a) while Working on CP Property;

(b) while transporting CP Personnel, whether on and off CP Property; and

(c) while operating any CP highway vehicle, railroad equipment or mobile equipment, whether on and off CP Property.

10.3.2 The use of electronic communication devices, including cell phones, Smart Phones, Blackberries, walkie-talkies, PDAs, GPS navigation units, portable computers, tablets and similar devices, is prohibited:

(a) while operating any highway vehicle, unless it is stopped and parked in a safe location;

(b) while transporting CP Personnel, whether on and off CP Property;

(c) while operating or assisting in the operation of any railroad equipment or mobile equipment;

(d) while operating power tools, equipment or machinery;

(e) when Foul of Track for any reason;

(f) wherever use is prohibited by signage or by a CP manager; or

(g) whenever use of such a device creates an unsafe condition.

10.3.3 Notwithstanding the foregoing, company cell phones, radios, walkie-talkies, GPS units, tablets and other communication devices may be used solely for the conduct of business when authorized by the CP Manager in Charge and where not prohibited by state or municipal legislation. Any electronic communication device may be used when it is necessary to communicate an emergency condition.

10.4 Smoking

10.4.1 Smoking, including the use of e-cigarettes is prohibited on all CP Property, except for CP designated outdoor smoking areas.

11

11.1 Work Clothing

11.1.1 The Contractor must ensure that Contractor Personnel wear clothing that meets applicable legislation and is suitable to perform the work safely.

11.2 Personal Protective Equipment (PPE)

11.2.1 The Contractor shall ensure that Contractor Personnel wear personal protective equipment required by applicable legislation, regulations, codes and industry standards as necessary to protect against personal injuries while on railroad property. All personal protective equipment shall meet applicable legislation and standards and shall be in good condition and be properly fitted.

11.2.2 The following mandatory personal protective equipment ("PPE") shall be supplied by the Contractor at its own expense, and shall be worn at all times by Contractor Personnel while on CP Property:

(a) safety hard hat, meeting ANSI 89.1 standards, except in office buildings or in enclosed vehicles or equipment;

(b) safety footwear with protective toe caps and puncture resistant soles, meeting ASTM F2413 standards.

(c) safety glasses with permanently attached side shields meeting ANSI Z87.1 standards In office buildings or enclosed highway vehicles. Note- transition lenses are not permitted;

(d) high visibility fluorescent outerwear with retro reflective striping (meeting ANSI/ISEA 107 Class 2 standards are preferred) not covered by other clothing or equipment, except where necessary for safety reasons such as where fall protection or pole climbing equipment is being used; and

(e) any other PPE as required by applicable legislation or referenced standard, or as otherwise required to protect Contractor Personnel from injuries.

11.2.3 Contractor and Contractor Personnel shall be solely and fully responsible for assessing the risks related to the work and determining whether additional PPE may be required such as:

(a) Nomex or Proban fire-retardant protective gear when performing certain Transportation of Dangerous Goods (TDG) work and/or handling certain Hazardous Materials, or performing specialized work.

(b) hearing protection when working in any area where noise exposure levels:

(i) are consistently equal to or greater 85 dBA;

(ii) exceed 115 dBA at any time; and

(iii) any other work areas where posted, or so notified by CP management.

(c) respiratory protection where Contractor Personnel may be exposed to occupational dusts/particulates, fumes, mists, gases and vapors, in which case, in which case Contractors must have a written Respiratory Protection Program that meets or exceeds applicable legislation;

(d) additional eye and face protection meeting ANSI standard Z87.1 (i.e. face shields, impact/splash goggles, welding/cutting goggles and welding helmets); and

(e) fall protection systems and equipment meeting appropriate ANSI Z359 standards as required by applicable legislation and as appropriate for the related fall hazards.

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12.1 Contractor's Responsibilities for the Protection of Railroad Traffic and Property

12.1.1 Where the Work Site is in close proximity to, or is located on, above, or below railroad tracks, special attention, care and precautions shall be taken to ensure the safety of all Contractor Personnel, CP Personnel, all other third parties and to protect CP's property and railroad operations.

12.1.2 Contractor shall ensure that Contractor Personnel is made aware of all unique and inherent hazards in working near, on, above or below railroad tracks and shall ensure that all Contractor Personnel are fully trained and equipped to work safely.

12.1.3 Contractors who perform inspection, maintenance or repair to railroad tracks or track structures must be trained in accordance with FRA On Track Safety Rules (FRA 49 CFR Part 214, Subpart C - Roadway Worker Protection Regulations).

12.1.4 Contractors will not be allowed to foul a track unless:

(a) They have been properly advised of the On Track Safety awareness procedures;

(b) A railroad employee who is qualified to provide protection is present at the work site, or.

(c) The Contractor has personnel present who are specifically trained, qualified and authorized to provide that protection.

12.1.5 All work shall be organized or executed in such a manner as to ensure no interference with the regularity and safety of railroad operations. No step or sequence of any Work that might directly

or indirectly affect the safe movement of railroad traffic shall be started without the approval of the Manager in Charge.

12.1.6 No temporary structure, materials, or equipment shall be permitted closer than 12 feet to the nearest rail of any track without prior approval in writing of the Manager in Charge.

Contractor Personnel shall at all times remain alert to the movement of trains, rolling stock and other railroad equipment.

12.1.7 Contractor Personnel shall be especially alert in yards and terminal areas as

(a) Railroad equipment that appears to be stationary may be moving;

(b) the rate of movement of railroad equipment may be faster than it appears;

(c) Railroad equipment change tracks often; and movements may be occurring simultaneously on adjacent tracks.

12.1.8 The Contractor shall, at all times, conduct its operations in a wholly responsible manner to avoid damage to the CP's tracks or property.

12.2 50 Feet Clearance Requirement

12.2.1 All Work shall be performed as far away from railroad tracks as possible.

12.2.2 Unless authorized by CP, Contractor Personnel, equipment, and vehicles are not permitted to be within 50 feet of the closest track.

12.2.3 In the event Work must be carried out within 50 of the closest track written authorization must be obtained from the Manager in Charge, and Contractor Personnel must still remain at the maximum practicable distance from all railroad tracks at all times.

12.2.4 When crossing tracks, Contractor Personnel shall ensure a minimum of 50 feet separation between standing railroad equipment, stay at least 15 feet away from the end of the nearest equipment, and look both ways before crossing tracks, and if clear, walk at a right angle to the tracks.

12.2.5 No work activities or processes are allowed within 50 feet of the track while trains are passing through the work site unless specifically authorized.

12.3 Flagging Protection

12.3.1 When the Work requires Contractor Personnel to be within 50 feet of any railroad tracks, Contractor or Contractor Personnel shall notify and obtain the written approval of the Manager in Charge in advance of the intended start date, and when approved, shall only perform Work strictly in accordance with all terms and conditions of that approval.

12.3.2 Unless otherwise indicated by the Manager in Charge, proper protection against the movement of trains, rolling stock and other railroad equipment shall be deemed required at all times whenever Work or Contractor Personnel must be within 50 feet of the closet track. Protection may be provided only by a qualified CP employee through use of a flag person.

12.3.3 Where CP determines that flagging is required, then Work must be strictly conducted under the direction of a CP flag person or such other person designated by the Manager In Charge.

12.3.4 Contractor Personnel shall ensure that there is clear communication at all times between Contractor Personnel and any CP flag person. Contractor Personnel shall ensure that they are aware of:

(a) flagging distance limits;

(b) time limits; and

(c) any adjacent tracks where movement of railroad equipment may still occur.

12.3.5 Contractor Personnel shall not assume that a train movement is being stopped or cleared unless clear communication is received directly from the CP flag person.

12.3.6 A job briefing between the CP flag person and all Contractor Personnel must occur before beginning any Work on or Foul of Track.

12.3.7 Blue signal protection is used to indicate that CP or Contractor Personnel are working on, under or between railroad equipment and movement of trains or other railroad equipment is prohibited. Blue signals must not be tampered with or obstructed. Blue signals can only be removed by the person or group of persons who originally applied it. Application, use, and removal of blue signals, when appropriate, may only be done under the authorization and guidance of the Manager in Charge.

12.3.8 Red flag protection is used to indicate that CP or Contractor Personnel are working on or foul of track, or the track is out of service and movement of trains or other railroad equipment is prohibited. Red flags must not be tampered with or obstructed. Application, use, and removal of red flags, when appropriate, may only be done under the authorization and guidance of the Manager in Charge.

12.4 Working on or near Tracks

12.4.1 When authorized to perform Work foul of track or otherwise be near railroad tracks, Contractor Personnel shall ensure all Contractor Personnel, equipment, and vehicles are kept as far away from railroad tracks as practicable, and shall at all times:

(a) be alert to train movements and shall expect the movement of trains, engines, cars, or other mobile railroad equipment at any time, on any track, and in any direction, even if they appear to be stationary or in storage;

(b) not rely on others to protect them from train movement;

(c) stay at least 15 feet away from the ends of railroad equipment when crossing the track;

(d) ensure a minimum of 50 feet separation prior to crossing between Railroad Equipment;

(e) look both ways before crossing tracks, and if clear, walk at a right angle to them.

(f) never climb on, under or between railroad equipment;

(g) be aware of the location of structures or obstructions where track clearances are close;

(h) not stand on the track in front of an approaching engine, car or other equipment;

(i) stand at least 20 feet from the track(s) when there is a passing movement of trains, engines, cars, or other mobile railroad equipment, to prevent injury from flying debris or loose rigging and shall observe the train as it passes and be prepared to take evasive action in the event of an emergency;

(j) not stand on or between adjacent tracks in multiple track territory when a train is passing;

(k) not walk, stand or sit on the rails, between rails or on the end of ties, unless absolutely necessary. As the rail surface can be extremely slippery, personnel must step over the rails when crossing tracks. Personnel shall also be aware railroad ties can also be slippery and that railroad ballast can shift while walking on top of it. Situational awareness and use of proper footwear is important;

(l) not remain in a vehicle that is within 50 feet of a passing train unless specifically authorized, or where this is not possible.

(m) keep away from track switches as remotely operated switch points can move unexpectedly with enough force to crush ballast rock. Personnel shall stay away from any other railroad devices they are unsure of. Personnel shall not disturb or foul the ballast at any time.

12.5 Equipment on or near tracks

12.5.1 Contractor Personnel shall not be Foul of Track with any piece of equipment without a CP flag person or other authorized track protection;

12.5.2 Contractor Personnel shall not move equipment across the tracks except at established road crossings, or unless under the protection and authorization of a CP flag person and only if the Work Site has been properly prepared for such a move. Tracked equipment will require a CP flag person any time railroad tracks are crossed.

12.5.3 Contractor Personnel shall not move equipment across railroad bridges or through tunnels, except as expressly authorized and only under such conditions as stipulated by the Manager in Charge.

12.5.4 When there is passing rail traffic, Contractor Personnel shall move equipment away from the tracks at least 50 feet, or where not possible, park the equipment as far away from the tracks as possible, exit to the side away from the track where the movement is taking place, and walk to a safe a distance.

12.5.5 When there is passing rail traffic, buckets, shovels, and loads on cranes must be lowered to the ground to rest, and cranes without a load must have their load line tightened or retracted to prevent movement.

12.6 Railroad Signs, Signals, Flags and other Communication Infrastructure

12.6.1 Signs, signals and flags shall not be obstructed, removed, relocated, disabled or altered in any way without proper authorization and qualification.

12.6.2 Only qualified Contractor Personnel who are authorized by CP are permitted to operate switches, derails, electric track mechanisms, signal and communication systems or other track control appliances.

12.6.3 Railroad pole lines carry electric power and should be treated as any other power lines.

12.6.4 The Contractor shall keep all Contractor Personnel informed of current weather conditions. Personnel shall stay alert for possible high water conditions, or flash floods. During severe weather conditions:

(a) Personnel shall be prepared to take cover in the event of a tornado

(b) Personnel shall not work while lightning is occurring

(c) If storm conditions arise unexpectedly, Contractor Personnel shall ensure that equipment is in the clear of the tracks and secured before seeking cover. Contractor Personnel shall stay away from railroad tracks when visibility is poor, such as during fog or blizzard conditions.

12.7 Excavation

12.7.1 Before starting excavation operations, the Contractor shall ascertain that there are no underground wires, fiber optic cables, pipelines or other utilities which could be damaged or, if present, that such installations are properly protected. Fiber optic cables are present on most segments of the right-of-way. Prior to commencing any excavation, the Contractor shall contact the proper authority CP and/or public utility to obtain the necessary permit and to locate and protect such cables or other underground utilities.

12.7.2 Excavations shall not be left unattended unless they are properly protected; and the Manager in Charge shall be notified.

Any Contractor Personnel discovering a hazardous or potentially unsafe condition which may affect the safe passage of railroad traffic must advise CP Police immediately:

CP Police – 1-800-716-9132

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13.1 General Requirements

13.1.1 If at any time Contractor's Work involves the use, handling, storage, or disposal of Hazardous Materials ("Handling of Hazardous Materials"), Contractor Personnel must inform the Manager in Charge.

13.1.2 Contractors shall ensure that all Contractor Personnel are fully trained in the Handling of Hazardous Materials and that Contractor and Contractor Personnel are in full compliance with all Applicable Legislation, and as directed by the Manager In Charge.

13.1.3 Contractor Personnel shall have appropriate processes, systems and controls in place to prevent or otherwise mitigate potential environmental, health and safety risks associated with the Handling of Hazardous Materials.

13.2 Access to Safety Data Sheets (SDS)

13.2.1 Prior to beginning any Work that may expose CP Personnel to Hazardous Materials, Contractor or Contractor Personnel shall:

(a) provide a copy of the respective SDS to the Manager in Charge; and

(b) keep a copy of the SDS at the work site and ensure that it is readily available at all times.

13.3 Hazardous Material Incident or Spill

13.3.1 In the event of a hazardous material incident or spill, the Contractor must:

(a) ensure that no Contractor or CP Personnel have or will be exposed;

(b) take all reasonable actions to contain the spill;

(c) respond in accordance with its emergency response plan; and

(d) notify CP immediately in accordance with Section 18 below.

14.1 Highway Vehicles

14.1.1 The following requirements apply to all highway vehicles, when operated on CP Property; or used to transport CP Personnel.

14.2 Regulations and Inspection

14.2.1 Before using a highway vehicle, Contractor Personnel shall:

(a) complete a pre-trip inspection;

(b) maintain an inspection log;

(c) ensure periodic inspections are completed at official testing locations as required;

(d) ensure the vehicle is maintained and in safe operating conditions at all times; and

(e) ensure the vehicle is in compliance with applicable motor vehicle regulations and license requirements.

14.2.2 Vehicle maintenance, inspection records and logs must be made available to the Manager In Charge on request.

14.3 Vehicle Operator Requirements

14.3.1 Operation of highway vehicles is restricted to those Contractor Personnel who are licensed, qualified and authorized to do so. Such Contractor Personnel shall be responsible for the safety of all passengers at all times. For greater certainty, such Contractor Personnel shall:

(a) hold a valid license for the class of vehicle being operated, in accordance with applicable local, state and federal requirements, and

(b) strictly comply with all posted traffic signs, signals, and all shall obey all applicable legislation; and

(c) maintain the required driver log, and make the log available to the Manager In Charge on request, and

(d) comply with the requirements on the use of electronic devices as set out in Section 10 above.

14.4 Driving on CP Property

14.4.1 In addition to the requirements set out above, while on CP Property, Contractor Personnel shall:

(a) travel only on designated roadways unless otherwise instructed;

(b) keep daytime running lights on (if so equipped);

(c) not exceed 15 mph unless otherwise posted;

(d) come to a full stop at all blind corners, rail and roadway crossings;

(e) yield the right of way to all Mobile Equipment and other non-highway equipment or service vehicles;

(f) not operate vehicles (or any internal combustion equipment) inside buildings or enclosed structures unless adequate ventilation is provided;

(g) not park Foul of Track unless on-track protection is provided;

(h) not leave vehicles running unnecessarily;

(i) park only in pre-determined or designated areas;

(j) always use the parking brake (or wheel chocks) when leaving an unoccupied vehicle running; and

(k) where safe and practicable, pull vehicles through or back into marked parking spaces to avoid reverse collisions when exiting.

(l) prior to operation of a vehicle the driver must conduct a walk around of the vehicle to identify any obstacles, clearance restrictions, or adjacent vehicles that may interfere with executing a safe movement.

14.4.2 All Contractor Personnel who will be operating a highway vehicle or Mobile Equipment in any CP intermodal facilities must complete a Driver Safety Orientation program prior to first entry, and from time to time thereafter as directed by the Manager In Charge.

14.5 Seat Belts

14.5.1 Seat belts must be worn while operating or riding in any such equipped vehicle, or mobile equipment.

14.6 Loads

14.6.1 Contractor Personnel shall ensure vehicles are loaded according to weight and dimensional requirements as authorized by state regulations and permits, and properly load and secure tools, material, equipment and freight to avoid shifting, falling, leaking or otherwise escaping from vehicles during operation.

14.7 Riding in CP Vehicles

14.7.1 Contractor Personnel are prohibited from operating or riding in any CP vehicles unless authorized to do so, or in case of emergency.

15.1 General Safety Requirements Respecting All Tools, Equipment and Machinery

15.1.1 Contractor Personnel shall ensure that all tools, equipment, and machinery used be:

(a) in compliance with all Applicable Legislation;

(b) in good working order, properly serviced and maintained;

(c) safe for their proposed use and used only for purposes specified by the manufacturer;

(d) operated and maintained only by persons properly trained and qualified for that duty;

(e) seat belts must be worn while operating or riding any such equipped mobile equipment;

(f) equipped with appropriate safety devices (e.g. lights, horns, back-up alarms, safety beacons); and

(g) prevented from moving, through use of the hand brake, wheel blocking, wheel chocking and/or a derail, where applicable.

15.1.2 The Contractor shall provide adequate lighting when performing work between sunset and sunrise.

15.1.3 Use of CP tools, equipment and machinery by Contractor Personnel is prohibited unless specifically authorized by local CP management.

15.2 Hazardous Energy Control- Lockout

15.2.1 Contractor Personnel shall employ Lockout/Tagout procedures as required to eliminate the accidental or unexpected start-up, energizing, or release of stored (residual) energy during maintenance, repair and/or servicing activities.

15.2.2 All tools, equipment and machinery must be made safe and isolated from all energy sources rendering the machine, equipment, or process inoperative prior to performing maintenance, repair or servicing related tasks.

15.2.3 No Contractor Personnel can remove any CP applied lock or tag, including bad-order tag.

15.2.4 Notwithstanding the foregoing, if Contractor's Work may create an energy hazard to any CP Personnel, then all affected parties must follow the requirements set forth in CP's Lockout – Hazardous Energy Control Policy and Code of Practice.

15.2.5 If CP Personnel and Contractors are jointly performing maintenance, repair or servicing activities on the same machine, equipment or using the same energy source, then a multi-lock hasp must be applied with individual locks and tags affixed (as per CP's Lockout – Hazardous Energy Control Policy and Code of Practice).

15.3 Confined Space

15.3.1 Qualified and authorized Contractor Personnel must follow all required confined space entry procedures in accordance with applicable legislation and standards prior to entering into a confined space.

15.3.2 Rescue procedures and equipment must readily available when required to enter a confined space.

15.4 Electrical Safety Requirements

15.4.1 In addition to the hazardous energy control lockout requirements above, all electrical Work must comply with Applicable Legislation, National Electrical Code (NEC), and National Fire Protection Association (NFPA) requirements.

15.4.2 Contractor Personnel Working on electrical systems must:

(a) if in proximity to CP Personnel, inform them of:

(i) existing or potential electrical hazards;

(ii) any specific additional personal protective equipment that may be required;

(iii) applicable safe work practices;

(iv) applicable emergency and evacuation procedures; and

(v) apply lock out procedures as per section above on Hazardous Energy Control-Lockout

(b) have practices, procedures and training that comply with:

(i) Applicable sections of the NEC and NFPA electrical safety standards;

(ii) Any other Applicable Legislation; and

(c) not operate or allow cranes or other mobile equipment to approach closer to any live electrical power line than is permitted by OSHA regulations (29 CFR 1910.333).

15.5 Lifting Devices

15.5.1 All lifting devices, including but not limited to jacks, cranes, cables, slings, chains and hooks shall:

(a) meet Applicable Legislation governing design, inspection, maintenance and operation;

(b) be safety certified and labeled or tagged with load capacity limits where required;

(c) have sufficient capacity for the planned lift;

(d) have sufficient footing or support area to properly distribute the load during a lift.

15.6 Welding and Torch Cutting

15.6.1 When welding or torch cutting, Contractor Personnel shall:

(a) be properly trained and qualified;

(b) ensure that all closed containers have been properly purged;

(c) direct flame or sparks away from other Workers, equipment and flammable material;

(d) have a fire extinguisher readily available;

(e) keep compressed gas and oxygen cylinders stored in a secure, vertical position, with regulators removed and caps applied, labeled properly and located in vented cabinets or other designated locations.

15.7 Explosive Actuated Tools

15.7.1 Only Contractor Personnel who are qualified and licensed in accordance with Applicable Legislation, and authorized by CP, may use explosives or explosive actuated tools.

15.8 Unattended Equipment or Machinery

15.8.1 Tools, Equipment and Machinery shall not be left unattended at any time and shall not be stored on CP Property, unless expressly permitted pursuant to a written agreement with CP or by the Manager In Charge in writing, and where so permitted, Contractor shall ensure that:

(a) storage shall be restricted to the designated area, or as otherwise specified by CP.

(b) all such tools, equipment and machinery shall be secured in a safe position well clear of all tracks to prevent accidental contact with trains and moving equipment and to not restrict train crew sightlines;

(c) as much as possible, tools, equipment and machinery shall be stored in locations out of public view.

16.1 Emergency Response Plan

16.1.1 The Contractor must maintain a current emergency response plan and make it available to CP on request. Emergency response plans must include at a minimum:

(a) contractor reporting procedures in the event of an incident or spill;

(b) emergency response contacts and phone numbers, including phone numbers for CP incident reporting and local CP managers (See Attachment A); and

(c) containment measures to be taken in the event of an incident or spill.

16.2 Initial Response

16.2.1 Initial response to any emergency condition must follow the following sequence:

(a) Protect the safety and security of all individuals and communities

(b) Provide environmental protection and mitigation

(c) Conduct incident investigation and evidence preservation

(d) Restore railroad operations

16.3 First Aid

16.3.1 Contractor Personnel must have sufficient First Aid qualified personnel and the required First Aid kit and any other required First Aid equipment at the Work Site, suitable for the crew size, nature of Work being performed and location, all of which shall, at a minimum, comply with OSHA regulations (29 CFR 1910.266).

16.4 Fire Protection

16.4.1 The Contractor must have appropriate fire extinguishers suitable (i.e., type, size and quantity) for nature of the work being done, in compliance with applicable legislation, and be readily available at all times on:

(a) the work site; and

(b) all Contractor equipment, machinery and highway vehicles.

16.4.2 Contractor Personnel shall ensure that all necessary precautions are taken to prevent fires, including the following:

(a) storing flammable material (e.g., paper, rubbish, sawdust, oily or greasy rags, etc.) in proper containers;

(b) storing and transporting fuel, gasoline or other flammable liquids in approved containers. Use of unapproved containers is prohibited;

(c) proper disposal of flammable material daily;

(d) preventing static electricity when dispensing or transferring flammable liquids by using proper grounding and bonding techniques;

(e) avoid using cutting or welding torches during the last one-half hour of shifts, if possible;

(f) taking special precautions with fusees, including:

(i) store and transport in approved containers;

(ii) do not allow fusees to come in contact with any combustible material, including railroad ties or wooden timbers; and

(iii) fully extinguish fusees before leaving the location where used;

(g) promptly advise CP management of any fire on CP Property; and

(h) fully extinguish or provide protection for any fire prior to leaving the Work Site.

16.4.3 Contractors Working on the CP right-of-way where a high risk of fire exists (e.g., during rail grinding, rail welding) must have:

(a) appropriate fire prevention and suppression plans (including emergency numbers for CP, local firefighters and fire control districts); and

(b) additional firefighting equipment and trained Contractor Personnel on site, as required by Applicable Legislation or the Manage In Charge.

[redacted]

17.1 Reportable Injuries

17.1.1 Reportable injuries include any personal injury to:

(a) Contractor Personnel;
(b) any CP Personnel; or
(c) to any third party on CP Property.

17.2 Reportable Accidents

17.2.1 Reportable accidents include any occurrence that results in:

(a) damage to railroad tracks, right of way, buildings or other CP Property;

(b) damage to railroad equipment;

(c) damage to CP highway vehicles;

(d) release of hazardous material;

(e) spill or loss of transported commodities; and

(f) any threat to the environment.

17.3 Reportable Incidents

17.3.1 Reportable incidents include:

(a) unintended movement of railroad equipment;

(b) failure to provide track protection for Workers when required;

(c) movement of railroad equipment beyond authorized limits;

(d) operation of railroad equipment by an unqualified person;

(e) unauthorized handling of a track switch;

(f) damage, vandalism or tampering with any railroad signals, structures or railroad safety device;

(g) seepage, leakage, spills of, or other contamination from, Hazardous Materials;

(h) actual, threaten or suspected security related incidents;

(i) slides, washouts or other on-track obstructions; or

(j) any occurrence that may disrupt the movement of trains or affect safe rail operations.

18.1 Emergency Reporting

18.1.1 In the case of an emergency, Contractor Personnel must call:

(a) 911, where this emergency response system exists, or

(b) the local police, fire or emergency department; and

(c) In all cases, CP Police Services Communication Center at toll free 1-800-716-9132.

(d) In all cases, US Operations Center at toll free 1-800-766-4357

18.2 Accident, Incident, Injury Reporting

18.2.1 When an accident, incident or injury occurs on CP Property, the Contractor must:

(a) immediately report it to the Manager In Charge, or to CP's Operations Center 1-800-766-4357; and CP Police Services Communication Center at toll free 1-800-716-9132, and

(b) follow all instructions given to protect the scene.

18.2.2 CP is obligated to report Contractor Personnel injuries occurring on CP property to the Federal Railroad Administration (FRA). Any state or required regulatory reporting remains the Contractor's responsibility.

18.3 Information to Report

18.3.1 Information required with the initial report includes:

(a) type of incident;

(b) date and time of occurrence;

(c) location (mileage, subdivision, building, yard or other physical description);

(d) identity of person(s) involved or injured (company & name);

(e) description of any hazardous materials involved;

(f) type & unit number of any railroad equipment or vehicle involved;

(g) description of occurrence, damage and/or injury, and cause if known;

(h) description of any emergency response;

(i) name and contact information of person making the report; and

(j) any such other information that CP may require.

18.4 Environmental Incidents and Spills

18.4.1 In the event of an environmental incident or spill that could have a negative impact on the environment, the Contractor must immediately:

(a) report the incident to the Operations Center, the Manager in Charge, and the designated CP Contact as per the governing agreement relating to the Work;

(b) take all reasonable actions to contain the spill;

(c) respond in accordance with its emergency response plan; and

(d) provide CP with the following information;

(i) description of location and surrounding area, including any sensitive environmental areas nearby (e.g., rivers, parks, sewers);

(ii) type and quantity of substance released;

(iii) cause of spill or deposit, if known; and

(iv) details of any immediate action taken or action proposed to be taken to contain spill and recover substance.

18.5 Additional Contractor Requirements

18.5.1 Contractor and Contractor Personnel must:

(a) ensure an appropriate emergency response is initiated;

(b) protect any evidence until released by the CP Manager In Charge;

(c) cooperate fully with any CP investigation;

(d) cooperate fully with any investigating government agency; and

(e) notify CP if information is requested by any investigating government agency.

19.1 Acknowledgement

19.1.1 Contractor and Contractor Personnel who Work on CP Property shall be deemed to have read and understood the content of these Minimum Safety Requirements For Contractors Working On CP Property, as amended from time to time, and to agree to be bound by them.

19.1.2 These Minimum Safety Requirements For Contractors Working On CP Property are subject to change without prior notice. The most current version of these Minimum Safety Requirements can be viewed at www.cpr.ca or by contacting the Manager In Charge.

NOTES:

Work Safely; we all go Home Safe.

BOYLE EXHIBIT NO. 3

(DJB-3)

Bechtel Marine Propulsion Corporation
Post Office Box 79
West Mifflin, PA 15122-0079

MC-184

March 5, 2018

Cassandra P. Quach, General Counsel
Canadian Pacific Railways
7550 Ogdon Dale Road SE
Calgary Alberta
Canada T2C 4X9
Subject:

Dear Ms. Quach:

Re: Purchase and Sale of Railroad Spur in Ballston Spa, NY

The Naval Reactors Program (a joint U.S. Department of Navy/Department of Energy organization) and its Naval Reactors Program Prime Contractor, Bechtel Marine Propulsion Corporation (BMPC), have been engaging with Canadian Pacific since 2016 regarding the next planned use of a railroad spur at Eastern Avenue in Ballston Spa, NY. Use of the Ballston Spa, NY railroad spur is necessary for maintenance of a key nuclear training platform used by U.S. Navy personnel, which is vital to U.S. national security. This spur has been used by the Naval Reactors Program for similar projects in the past, most recently in 2004. Since October 2017, the Naval Reactors Program and BMPC have been diligently pursuing transfer of ownership of the spur from Canadian Pacific to the Naval Reactors Program.

The Naval Reactors Program recently invested approximately $300,000 in rail spur refurbishment to ensure timely and safe use for future shipments. In addition, after receiving Naval Reactors Program approval, BMPC retained outside real estate counsel and has provided counsel with deeds and maps in furtherance of the purchase of the spur. Significant time and funding have been devoted to these efforts. BMPC and the Naval Reactors Program intend to continue diligently and in good faith toward the transfer of ownership of the railroad spur in Ballston Spa.

When the Naval Reactors Program seeks to acquire real property, it must do so in accordance with fiscal law and regulation, and it must follow a defined process involving other stakeholders which is time consuming. The Naval Reactors Program is not able to independently acquire real property, therefore Department of Energy Certified Realty Specialists outside of our Program are being consulted.

At a minimum, several actions must be completed prior to acquisition of the rail spur including:

- Engaging external legal support (Completed, BMPC has already performed initial title searches through outside counsel)
- Engaging DOE certified realty specialists (Completed)
- Land surveys
- Deed/title reviews
- Security and safety plans
- Environmental assessments
- Historical preservation assessments
- Independent appraisal
- Government approvals
- U.S. Department of Justice reviews

Although the typical timeline could take on the order of five to seven years, the involved government agencies have agreed to a compressed schedule, with additional options being pursued to further reduce the schedule to less than two years, to support acquisition in a timely manner. Given the extent of the required actions for acquisition of the rail spur, it is unlikely that the transfer of the spur will be complete prior to shipments needed to support the prototype maintenance. The shipments begin arriving during the first two weeks of June 2018. Therefore, in order to provide Canadian Pacific Railway with the appropriate guarantees, we request you sign the negotiated and agreed to User Agreement to cover work performed at the spur for the needed shipments. The User Agreement, in conjunction with the protections discussed below, would provide indemnification and sufficient protections to Canadian Pacific Railway.

The shipments are covered by the Price-Anderson Nuclear Industries Indemnity Act, which establishes a system of financial protection for persons who may be liable for a nuclear accident or incident and for persons who may be injured. This law provides the government authority to give Canadian Pacific financial protection for legal liability resulting from the unlikely event of an incident arising out of the shipments. The relevant portion of the Price-Anderson Act, 42 U.S.C. § 2210(d)(1)(A), states that the Secretary of Energy may enter into agreements of indemnification under this subsection with any person who may conduct activities under a contract with the U.S. DOE that involve risk of public liability and that are not subject to financial protection requirements under other parts of the Atomic Energy Act.

The Naval Reactors Program safety record is impeccable. The Program takes extraordinary measures to prevent nuclear incidents from occurring (which includes transportation) and maintains an outstanding record of over 162 million miles safely steamed on nuclear power. The Program currently operates 101 reactors and has accumulated over 7,000 reactor-years of operation. A leader in environmental protection, the Program has published annual environmental reports since the 1960s, showing that the Program has not had an adverse effect on human health or on the quality of the environment. Because of the Program's demonstrated reliability, U.S. nuclear-powered warships are welcomed in more than 150 ports of call in over 50 foreign countries. The Naval Reactors Program has also safely made over 870 container shipments of naval spent nuclear fuel since 1957.

During a call on February 20 between Canadian Pacific (Kristie Riddle) and Naval Reactors Program (Mark Salamon and John Snell), Ms. Riddle indicated that Canadian Pacific did not intend to comply with its common carrier obligations, contrary to your statements to me. She indicated that Canadian Pacific would not transport the United States Government's cargo until the land purchase was completed. Requiring a shipper to purchase land in order to transport an item is not in compliance with the common carrier obligation. I trust this was a misunderstanding and that Canadian Pacific will perform its obligations as we are performing ours.

As stated earlier, use of the railroad spur is a matter of our U.S. national security as it supports the maintenance of an essential nuclear platform necessary for the qualification of highly trained sailors. BMPC and the Naval Reactors Program will continue to act in good faith and pursue the acquisition of the railroad spur. Again, we request you sign the negotiated and agreed to User Agreement and support these needed shipments.

D Boyle

Donald J. Boyle
BMPC Managing Counsel

BOYLE EXHIBIT NO. 4

(DJB-4)

ACCESS AGREEMENT

THIS AGREEMENT made this 9th day of May, 2018 (the "**Effective Date**").

BETWEEN:

DELAWARE AND HUDSON RAILWAY COMPANY, INC.
d/b/a Canadian Pacific
("CP")

AND

BECHTEL MARINE PROPULSION CORPORATION
("BMPC")

WHEREAS CP owns railway operating property situated in the Town of Ballston Spa in the State of New York (as identified herein) that connects with CP Canadian Subdivision at Mile 31 (the "**Railway Line**");

AND WHEREAS BMPC is party to United States Department of Energy ("**DOE**") Contract No. DENR0000031 dated September 18, 2008 ("**DOE Contract**") governing BMPC's operation of the Naval Nuclear Laboratory at or near Schenectady, New York;

AND WHEREAS to fulfill BMPC's obligations under the DOE Contract, BMPC wishes to use a portion of CP's railway property (the "**Access Area**" as defined herein) to unload empty shipping containers (STCC 3491940 and 3499759) from rail cars (the "**Operations**") that have been transported via CP's railway lines;

AND WHEREAS the U.S. Government, BMPC, and CP are negotiating in good faith the potential acquisition of the Access Area and CP's railway line serving the Access Area for the purpose of BMPC loading rail cars with loaded shipping containers with radioactive materials (STCC 4929106 and 4929147), the parties acknowledge that certain laws and regulations govern purchases made by the U.S. Government and its contractors. Attached hereto as Schedule E, for information purposes only, is a list of milestones describing the actions that must take place and be approved for a sale to occur;

AND WHEREAS the parties hereto have agreed that BMPC's use of the Access Area for such Operations shall be subject to the terms, covenants and conditions herein;

NOW THEREFORE, the parties agree as follows:

ARTICLE 1- DEFINITIONS

1.1 "**Access Area**" means the portion of the railway property between Point A and Point B where BMPC can conduct its unloading Operations, as identified on the Plan attached as Schedule "B".

1.2 "**BMPC**" means the party or parties of the second part as set out above, both jointly and severally, and its officers, employees, executors, invitees, administrators, contractors, agents, successors and assigns.

1.3 "**DOE**," including its officers, employees, executors, administrators, successors and assigns has the meaning provided in the Recitals.

1.4 "**DOE Contract**" has the meaning provided in the Recitals.

1.5 "**Effective Date**" has the meaning provided on page 1 of this Agreement.

1.6 "**Empty Shipping Containers**" means shipping containers with Standard Transportation Commodity Codes ("STCC") 3491940 and 3499759.

1.7 "**Environmental Law**" means the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., the Clean Water Act, 33 U.S.C. §§ 1251 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., the Safe Drinking Water Act, 42 U.S.C. §§ 330f et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted.

1.8 "**Fees**" has the meaning as provided in Article 6.1 herein.

1.9 "**FRA**" means the Federal Railroad Administration, or any successor.

1.10 "**Hazardous Substance**" means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law.

1.11 "**Improvement"** means any temporary or permanent building, structure, fencing or other work constructed, erected or placed on, under or below the Access Area but does not include the Track Materials.

1.12 "**Liabilities**" has the meaning provided in Article 4.2 herein.

1.13 "**Managerial Personnel**" has the meaning provided in Article 4.2(d) herein,

1.14 "**Nuclear Incident**" has the meaning provided in 42 U.S.C. § 2014(q).

1.15 "**Operations**" has the meaning provided in the Recitals.

1.16 "**Point A**" identifies the beginning of the Access Area at Milepost 31.32 (unless otherwise identified in Schedule "B" to this Agreement).

1.17 "**Point B**" identifies the end of the Access Area (unless otherwise identified in Schedule "B").

1.18 "**Products**" means radioactive materials with Standard Transportation Commodity Codes ("STCC") 4929106, and 4929147.

1.19 "**Public Liability**" has the meaning provided in 42 U.S.C. § 2014(w).

1.20 "**Schedule A**" means the insurance schedule marked Schedule A that is attached hereto and which forms part of this Agreement.

1.21 "**Schedule B**" means the plan marked Schedule B that is attached hereto depicting the Access Area and identifying Points A and B and which forms part of this Agreement.

1.22 "**Schedule C**" means the Road Access terms and conditions marked Schedule C that is attached hereto and which forms part of this Agreement.

1.23 "**Schedule D**" means the Nuclear Hazards Indemnity Agreement marked Schedule D that is attached hereto and which forms part of this Agreement.

1.24 "**Schedule E**" means a listing of milestones related to the acquisition of the Access Area and the railway line between Milepost 30.92 and Milepost 31.32 marked Schedule E that is attached hereto.

1.25 "**Term**" has the meaning provided in Article 7.1.

ARTICLE 2 - ACCESS AND USE

2.1 CP grants to BMPC a non-exclusive license to enter upon and use the Access Area for the purpose of preparing the site and transferring the Empty Shipping Containers and taking actions in furtherance of a potential purchase of the Access Area (such as, but not limited to, environmental assessments or appraisals). The rights under this license are in common with CP and all other parties having a right to use the Access Area as may be permitted by CP from time to time, subject to the terms in this Agreement. The times and manner in which the Access Area shall be used shall be controlled by and under the direction of CP. This Agreement does not permit BMPC to move rail cars or conduct any railway operations. For clarity and the avoidance of doubt, the parties expressly acknowledge and agree that this license does not permit the presence of loaded shipping containers containing Products or a loaded heat exchanger (STCC 3443109) anywhere on the Access Area, or the loading and/or unloading of rail cars with a loaded heat exchanger or with loaded shipping containers containing Products. The foregoing

exclusion does not apply to Empty Shipping Containers that contain de minimis amounts of Product residue.

2.2 Except as incidental to the equipment used by the heavy hauler transporting Empty Shipping Containers from the Access Area, BMPC agrees that it will not bring, keep, store, load, unload or transfer any Hazardous Substances on the Access Area. The foregoing exclusion does not apply to Empty Shipping Containers that contain de minimis amounts of Product residue.

2.3 BMPC will be responsible to provide, at its own expense, all equipment required for its Operations. BMPC agrees that this license does not permit the use of the Access Area for Product, equipment or other storage purposes, and will leave the Access Area in a neat and tidy condition, free and clear of all Product, waste material, debris and rubbish, after conducting its Operations, all to the reasonable satisfaction of CP. BMPC further agrees to promptly remove any Improvements it has placed on the Access Area upon written request of CP at the end of the Term of the Agreement.

2.4 CP or its agent, at BMPC's expense, shall provide train flagging protection, if either BMPC or CP determines flagging protection is required during BMPC's Operations. BMPC shall pay CP's customary charges for such services within thirty (30) days after receipt of a written invoice. BMPC understands and acknowledges that advance notice is required to arrange for flagging protection.

2.5 BMPC shall provide CP with an unclassified briefing related to the security plan for Operations on the Access Area. CP acknowledges that security plans are under the control of the U.S. Government and are distributed on a need-to-know basis only to those persons with DOE security clearance.

2.6 BMPC's use of the Access Area shall not interfere with CP's railroad operations and shall not occur within 25 feet of the centerline of CP's Railway Line.

2.7 BMPC confirms that it, and all employees and contractors involved in the Operations, will comply with CP's *Customer Safety Handbook*, which is available at http://www.cpr.ca/en/customer-resources-site/Documents/customer-safety-handbook.pdf.

2.8 BMPC shall be responsible to obtaining access to the Access Area.

2.9 BMPC shall provide physical security for the Access Area in compliance with all applicable federal, state, and municipal laws, rules, and regulations. CP security services are not required; however, CP reserves the right to provide its own security at its own expense or as mutually agreed between CP and BMPC. BMPC shall provide the CP Police Service ("CPPS") with appropriate information with as much advance notice as possible for situational awareness.

2.10 When used by BMPC, BMPC shall repair and maintain, at its expense, the Access Area in good repair and condition, clear of grass, weeds, combustible material, snow and ice,

as required by Section 9.1 of the Customer Safety Handbook to ensure good and safe operation on the Access Area. CP, acting reasonably, shall determine whether the condition of the Access Area is satisfactory. CP shall have the right to require BMPC to carry out such repairs as are, in the opinion of CP, necessary to properly maintain the Access Area.

ARTICLE 3 - CLEARANCES

3.1 BMPC shall observe and fully comply with all current laws, orders, regulations, and rules or which may hereafter come into force, including CP or other engineering standards, relating to railways, sidings, or buildings or structures over sidings or adjacent thereto, including without limitation, the clearance requirements addressed in Section 8 of CP's Customer Safety Handbook. BMPC shall not encroach within such clearance requirements without the prior written consent of CP, which consent CP may withhold at its sole discretion, and in accordance with any other approval procedures and requirements.

ARTICLE 4 - LIABILITY

4.1 The Price Anderson Act Amendment indemnifies DOE contractors and subcontractors. CP is a subcontractor to BMPC, a contractor for the DOE. Schedule D describes the indemnification against any and all claims for Public Liability arising out of or resulting from a Nuclear Incident which are based upon, arise out of or are connected with the use of the Access Area by BMPC, CP or this Agreement.

4.2 For all other claims not involving Public Liability arising out of or resulting from a Nuclear Incident, which are based upon, arise out of or are connected with the use of the Access Area or this Agreement, including but not limited to (i) injuries to or death of any-and-all persons whomsoever, including without limitation BMPC's employees, officers, agents, contractors, subcontractors, CP's employees, officers, agents, contractors, subcontractors, or any other third parties, (ii) any damage to or destruction of property to whomsoever belonging, including property owned by, rented to, or in the care, custody, or control of the parties hereto or other third party property (including without limitation, engines, rolling stock and all other equipment and their contents), (iii) claims arising under any Environmental Law, and (iv) claims caused by any third party, acts of God, acts of public enemies, flood, rockslides, landslides, snow-slides, washouts, avalanches, storm, earthquake, fire or explosion, industrial dispute, war, sabotage, riot, or insurrection (collectively, "**Liabilities**"):

a) Except as provided in Article 4.2(c), CP shall be reimbursed for all Liabilities (and reasonable expenses incidental to such Liabilities, including litigation costs).

b) All litigation costs, including counsel fees, judgments and settlements shall be segregated and accounted for separately. In order to be reimbursed, CP will comply with 10 CFR Part 719, Contractor Legal Management Requirements. Where the U.S. Government or its officers, agents or representatives are

referenced within 10 CFR Part 719, CP shall understand such references to be to BMPC, which has contractual privity with the U.S. Government.

c) Notwithstanding any other provision of this agreement, CP shall not be reimbursed for liabilities to third parties, including its employees, and directly associated costs which may include but are not limited to litigation costs, counsel fees, judgments and settlements which were caused by CP managerial personnel's:

1) Willful misconduct;

2) Lack of good faith; or

3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business.

d) The term "CP's managerial personnel" means the CP's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of:

1) All or substantially all of the CP's business;

3) All or substantially all of the CP's operation at any one plant or separate location; or

3) A separate and complete major industrial operation.

e) BMPC's liability under Article 4.2(a) are subject to the availability of appropriated funds. Nothing in this Agreement shall be construed as implying that the U.S. Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

4.3 For purposes of this Article 4, "CP" shall mean CP, its parents and corporate affiliates, and each of their officers, directors, employees, agents and insurers.

4.4 The provisions of this Article 4 shall survive the termination of this Agreement.

ARTICLE 5 - INSURANCE

5.1 BMPC agrees to maintain the insurance coverage set out in Schedule A.

ARTICLE 6 - FEES

6.1 BMPC shall pay to CP, a license fee for the use of the Access Area, of **Seventeen Thousand Nine Hundred Thirty-Six Dollars ($17,936.00)** per year, subject to

adjustment as provided below, (collectively referred to as the "**Fees**"). The Fees shall be payable, in advance, on the 1st day of May in each year during the continuance of this Agreement. The Fees shall be pro-rated for any period less than one year.

6.2 The Fees shall be increased each year during the Term on the anniversary of the Effective Date by three (3%) percent.

6.3 In addition to the amounts due to the CP under this Agreement, BMPC shall reimburse CP within thirty (30) days of receipt of CP's invoice for any CP-paid value added, sales, goods and services, or similar tax which may be imposed pursuant to any federal or state legislation which is or may be enacted.

6.4 The Fees include an amount representing the real estate taxes, special assessments, stormwater fees, taxes and fees assessed against the Access Area. BMPC shall be solely responsible to pay any and all business taxes, taxes attributable to the operation of equipment or activities performed by BMPC on the Access Area, and any tax, fine, fee, not directly related to the real property comprising the Access Area.

6.5 The Fees do not include other charges related to the transportation, movement and handling of BMPC's products via CP's railway lines.

ARTICLE 7 - TERM AND TERMINATION

7.1 This Agreement shall commence on the Effective Date and continue until October 31, 2021 unless terminated by either party on giving not less than ninety (90) days' written notice to the other party (the "**Term**").

7.2 If BMPC fails to pay any amount due under this Agreement, or is in breach of any term of this Agreement then BMPC shall be in default under this Agreement. Should such default occur, CP may terminate this Agreement, after giving written notice thereof to BMPC and allowing thirty (30) days to elapse after such notice, unless in the meantime such default shall have been remedied. In addition to any other right or remedy it may have, upon notice, CP may indefinitely suspend or terminate the rights of BMPC to conduct its Operations if such breach is endangering the safety of persons or railway operations.

7.3 Upon termination, BMPC shall immediately remove all of its property including Improvements from the Access Area and leave the Access Area in a neat and clean condition free and clear of all permitted Improvements, waste material, debris and rubbish, all to the reasonable satisfaction of the CP. If BMPC fails to comply CP may remove and clear same and any cost and expense incurred by such removal and clearance by the CP plus an administration and supervision fee of ten percent (10%) shall be paid by BMPC immediately upon demand.

7.4 Subject to the foregoing clean-up and removal obligations, from and after termination of this Agreement, BMPC shall cease to have any right to use or to enter upon the Access Area.

ARTICLE 8 - NOTICE

8.1 All notices or communications required hereunder shall be given by courier or facsimile, or if mailed by registered mail, postage prepaid, and addressed to the other party as follows:

To CP:
Canadian Pacific
Industrial Development
120 South 6th Street
Suite 800
Minneapolis, MN 55402
Attention: Regional Manager
Fax #: (612) 904-5917

With a copy to:
Canadian Pacific
Legal Services
120 South 6th Street
Suite 800
Minneapolis, MN 55402
Attention: General Counsel – U.S.
Fax #: (612) 904-5971

To BMPC:
Bechtel Marine Propulsion Corporation
PO Box 1072
West Mifflin, PA
Attention: Manager, Acquisition Management
Fax #: (412) 476-7320

With a copy to:
Bechtel Marine Propulsion Corporation
PO Box 1072
Schenectady, NY 12301-1072
Attention: Managing Counsel
Fax #: (518) 396-6469

or such other address as may be furnished from time to time by either party. Any notice, if delivered by courier or facsimile, shall be deemed to have been given or made on the date delivered or the date that a confirmation of receipt of the facsimile was recorded by the sender and if mailed correctly, shall be deemed to have been received on the third (3rd) business day after mailing

ARTICLE 9 - NO REGISTRATIONS

9.1 BMPC shall not file or register, nor permit or cause to be filed or registered, this Agreement or any caveat, encumbrance or other instrument of any kind against title to the Access Area or any other lands of CP. The rights granted to BMPC under this Agreement constitute a license only and shall not create an interest in land.

ARTICLE 10 - ASSIGNMENT

10.1 The rights and provisions of BMPC under this Agreement shall not be transferred or assigned in whole or in part except with the prior written consent of CP, which shall not be unreasonably withheld. Notwithstanding the foregoing, if the DOE awards a subsequent Naval Nuclear Laboratory contract to a different entity, this Agreement may be assigned to the successor contractor at the direction of the DOE upon CP's receipt of not less than thirty (30) days' prior written notice from BMPC or its successor contractor. CP's consent to such assignment shall not be unreasonably withheld.

ARTICLE 11 - MISCELLANEOUS

11.1 BMPC shall, at its own expense, comply with all applicable laws, by-laws, rules, orders, directions, ordinances, and regulations, including applicable Environmental Law.

11.2 Termination of this Agreement, for any reason, including default shall not release the parties from any obligations of liabilities incurred during the continuance of this Agreement.

11.3 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This license does not interfere with, waive, impair or supersede any rights of the U.S. Government, its agents or assigns, including its rights as a shipper utilizing common carrier service.

11.4 This Agreement shall be construed in accordance with Federal contract law for clauses based on federal law or regulation such as those in the Liability section and the laws of the State of New York without regard to its conflict of law rules.

11.5 This Agreement may not be modified or amended except in writing signed by the parties.

11.6 No term, covenant or provision in this Agreement or right hereunder or in respect of will be deemed to have been waived by either party, except by express waiver in writing signed by that party.

11.7 The headings and numbering introducing sections in this Agreement are inserted for convenience only and in no way define or construe the scope or intent of such section.

11.8 This Agreement contains the entire agreement of the parties with respect to the Access Area and, supersedes and cancels all prior agreements and understandings, oral or written, with respect thereto.

The parties hereto have executed this Agreement on the date first above written.

DELAWARE AND HUDSON RAILWAY COMPANY, INC.
d/b/a CANADIAN PACIFIC

Per: _____

Name James Clements

Title VP Strategic Planning & Transportation Services

I have the authority to bind the corporation

BECHTEL MARINE PROPULSION CORPORATION

Per: _____

Name _____

Title _____

I have the authority to bind the corporation.

SCHEDULE A — INSURANCE

1. BMPC shall at its own cost and expense, obtain and maintain, and cause its contractors engaged in connection with this Agreement to obtain and maintain, during the term of this Agreement, policies of:

   a) Commercial General Liability Insurance policy with an inclusive limit of not less than **Five Million Dollars ($5,000,000.00)** per occurrence for bodily injury and property damage, or any other increased amount as CP may reasonably require upon conducting reviews from time to time. Such insurance shall specifically state by its wording or by endorsement:

      i. CP and its associated or affiliated companies (and the Directors, Officers, employees, agents and trustees of all of the foregoing) as an additional insured with respect to obligations of BMPC, under this Agreement and incidental thereto;

      ii. "cross liability" or "severability of interest" clause which shall have the effect of insuring each entity named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;

      iii. blanket contractual liability, including the insurable liabilities assumed by BMPC under this Agreement;

      iv. products & completed operations;

      v. employers liability; and

      vi. shall not exclude operations on or in the vicinity of the railway right of way.

   b) Automobile public liability and property damage insurance in an amount not less than **Five Million Dollars ($5,000,000)** all-inclusive covering the ownership, use and operation of any motor vehicles and trailers licensed for use on public highways and which are owned, non-owned, leased or controlled by BMPC and their agents and used in regards to this Agreement.

2. BMPC shall comply in all respects with the workers' compensation legislation of the state in which the Access Area is located, and upon request from CP, provide written confirmation from the applicable workers' compensation authority that BMPC is in good standing with such authority.

3. Prior to the effective date of this Agreement, and upon the insurance renewal date thereafter, BMPC shall furnish to CP certificates of insurance evidencing the above coverages. Insurance coverage shall be endorsed to provide CP with not less than thirty (30) days' written notice in advance of cancellation, material change or amendments restricting coverage. Upon request, BMPC shall provide CP with certified copies of the insurance policies, Such notice shall be by registered mail to the specific attention of:

Canadian Pacific Railway Company, Insurance Compliance, P.O. Box 100085 — C5, 1 Ebix Way, Duluth, GA 30096. Alternatively, such notice can be sent by email to CPail@ebix.com.

4. The acquisition and maintenance of insurance policies by BMPC shall in no manner limit or restrict the liabilities incurred by BMPC under the provisions of this Agreement.

North
Bechtel Marine Propulsion Corporation
Access Agreement Schedule B
MP 30.92
Access Area
Point A
MP 31.32
Point B

SCHEDULE "C" — ROAD ACCESS

Terms and Conditions for Road Access over Railway Property

1. **Proposed Use**. Prior to BMPC's use of any Access Road on CP property to access the Access Area, BMPC agrees to provide CP Business Development with relevant information about the type, weight, and width of its vehicles, machinery and/or equipment, likely to use the Access Road, as well as the frequency of use, to enable CP to determine whether the proposed vehicles and proposed use are appropriate for the proposed route (i.e., physical dimensions, road crossings and/or crossing surfaces). BMPC shall not use the Access Road until CP Business Development has approved such use in writing. As a condition of such approval, CP may install at BMPC's expense, or require BMPC to install, improvements including fencing, lockable gates or barriers to prevent the public from using the Access Road and accessing the Access Area.

2. **Access Road**. Upon CP's approval under Section 1, BMPC may use the access route outlined in the plan attached hereto as Exhibit A ("**Access Road**"), for the sole purpose of an access roadway for BMPC, the DOE, their contractors, and their employees and their vehicles to access the Access Area as identified in this Agreement. BMPC's use of the Access Road shall be subject to the terms and conditions of this Agreement including Schedule "C", and be in common with CP and others entitled thereto from time to time.

3. **Maintenance**. When used by BMPC, BMPC agrees to maintain the Access Road, at its expense, in good repair and condition, clear of vegetation, debris and snow as required to ensure that the Access Road is open for permitted vehicle traffic and to ensure the unobstructed and safe movement of vehicles on the Access Road. When used by BMPC, BMPC will be responsible for any grading, upgrades or maintenance necessary to ensure the Access Road meets the standard necessary for its required use, including without limitation grading of or upgrades to the Access Road surface to accommodate the type and frequency of BMPC's vehicles.

4. **Not a Public Road**. The Access Road shall at all times remain the private property of CP and in no circumstances shall any portion of the Access Road be treated by BMPC or its employees as a public road. BMPC shall not invite or permit any other parties or members of the public other than its employees or contractors (as necessary) to use the Access Road.

5. **Safety**. The parties acknowledge and agree that CP and its railway lines (including the Access Road) are subject to the jurisdiction of the Federal Railroad Administration and railway safety laws, including but not limited to the Railway Safety Act and its regulations. BMPC agrees that it shall exercise the rights under this Agreement in a careful manner and shall not interfere with CP's railway operations including the use of the Access Road by CP, its employees, agents, contractors and invitees. CP also reserves the right to:

   a. prohibit BMPC, its employees, or contractors from operating specific machinery or equipment over the Access Road not identified by BMPC or permitted by CP under Section 1;

b. eject BMPC, any BMPC employee, or BMPC contractor (along with any vehicles, machinery and/or equipment under their control) from the Access Road if CP, in its sole reasonable opinion, determines that such use brings into question issues of safety, interferes with or endangers CP's operations, or adversely impacts the Access Road; and

c. evacuate and temporarily close the Access Road in the event of an emergency (including derailment) for such period of time as CP deems appropriate.

6. **Covenants. BMPC agrees**:

a. it shall not build, erect or place any structures or improvements of any kind on the Access Road, except as expressly agreed with CP;

b. the Access Road shall be kept clear at all times so that vehicles and equipment may safely pass and BMPC further agrees not to allow any vehicles or equipment to be parked or stationary on the Access Road at any time, except with CP's express written consent;

c. except during Operations, it shall not use the Access Road for the storage of any goods or materials;

d. it shall keep any locked gate (if any) at the Access Road securely closed and locked. The gate shall only be opened for the passage of vehicles to and from the Access Area;

e. observe and fully comply with all laws, regulations and orders in force, or which come into force during the term of this Agreement in the use of the Access Road (including but not limited to the requirement for vehicle operators to hold a valid driver's license), and further, to comply with all CP directives and safety bulletins including the strict observance to speed limits while using the Access Road;

f. it will not do or permit any act or neglect which may in any manner, directly or indirectly cause injury or damage to the Access Road or the railway property;

g. to notify CP's Police Communication Center at 800-716-9132 promptly in the event of any damage to or obstructions present on the Access Road.

7. Liability and Insurance.

7.1 The provisions of Article 4 and Schedule "A" of this Agreement apply to this Schedule "C".

8. **Term and Termination**. Subject to the terms and conditions in this Schedule "C", BMPC may use the Access Road during the term of this Agreement. Upon termination of the Access Agreement for any reason, BMPC's right to use the Access Road shall concurrently terminate, and BMPC agrees that, although no formal demand shall have been made by CP, it shall immediately vacate the Access Road, remove all personal property, vehicles and equipment, and leave the Access Road in a neat and clean

condition all to the reasonable satisfaction of CP. Notwithstanding any other provision of this Agreement, in addition to any other right or remedy it may have, upon notice, CP may temporarily suspend, indefinitely suspend or terminate the rights of BMPC to use the Access Road, in the event a) BMPC breaches the terms and conditions in this Schedule "C", and has not remedied the default within thirty (30) days after CP has given written notice thereof; or b) BMPC's breach of the terms and conditions in this Schedule "C", or its use of the Access Road is endangering the safety of persons or railway operations

SCHEDULE "D"
NUCLEAR HAZARDS INDEMNITY AGREEMENT

(a) Authority. This Schedule is incorporated into this Agreement pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)

(b) Definitions. The definitions set out in the Act shall apply to this Schedule "D".

(c) Financial protection. Except as hereafter permitted or required in writing by DOE, BMPC and CP will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that BMPC and CP provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to BMPC and CP by DOE.

(d)

(1) Indemnification. To the extent that BMPC, CP, and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify BMPC, CP, and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this Schedule; and (ii) such legal costs of BMPC, CP, and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170d. of the Act, as that amount may be increased in accordance with section l70t., in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or $500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this Agreement.

(2) The public liability referred to in subparagraph (d)(1) of this Schedule is public liability as defined in the Act which (i) arises out of or in connection with the activities under this Agreement, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

(e)

(1) Waiver of Defenses. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, BM1PC and CP, on behalf of themselves and other persons indemnified, agree to waive any issue or defense as to charitable or governmental immunity.

(2) In the event of an extraordinary nuclear occurrence which:

(i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

(ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or

(iii) Arises out of or results from the possession, operation, or use by BMPC, CP, or a subcontractor of a device utilizing special nuclear material or byproduct material, during the course of the contract activity; or

(iv) Arises out of, results from, or occurs in the course of nuclear waste activities, BMPC and CP, on behalf of itself and other persons indemnified, agrees to waive:

(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:

1. Negligence;

2. Contributory negligence;

3. Assumption of risk; or

4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;

(B) Any issue or defense as to charitable or governmental immunity; and

(C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(v) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.

(vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this Agreement is being carried on, and any contractor-owned or controlled facility, installation, or site at which BMPC is engaged in the performance of contractual activity under this Agreement.

(3) The waivers set forth above:

(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

(ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;

(iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

(vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(vii) Shall be effective only with respect to those obligations set forth in this Schedule and in insurance policies, contracts or other proof of financial protection; and

(viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under

(A) the limit of liability provisions under subsection 170e. of the Act, and

(B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) Notification and litigation of claims. BMPC and CP shall give immediate written notice to DOE of any known action or claim filed or made against BMPC, CP, or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, BMPC and CP shall furnish promptly to DOE, copies of all pertinent papers received by BMPC and CP or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, BMPC, CP, and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of BMPC, CP, or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is

undertaken by DOE, BMPC, CP, or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) Continuity of DOE obligations. The obligations of DOE under this Schedule shall not be affected by any failure on the part of BMPC to fulfill its obligation under this Agreement and shall be unaffected by the death, disability, or termination of existence of BMPC or CP, or by the completion, termination or expiration of this Agreement.

(h) Effect of other clauses. The provisions of this Schedule shall not be limited in any way by, and shall be interpreted without reference to, any other provision of this Agreement, provided, however, that this Schedule shall be subject to any provisions that are required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

(i) Civil penalties. BMPC, CP and their subcontractors and suppliers who are indemnified under the provisions of this Schedule are subject to civil penalties, pursuant to section 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders. If BMPC or CP are not for-profit contractors, as defined by section 234Ad.(2) the total amount of civil penalties paid shall not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under this Agreement.

(j) Criminal penalties. Any individual director, officer, or employee of BMPC, CP, or of their subcontractors and suppliers who are indemnified under the provisions of this Schedule are subject to criminal penalties, pursuant to section 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.

(k) Inclusion in subcontracts. BMPC and CP shall insert this Schedule in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this Schedule shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section l70b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

(l) Effective Date. The DOE Contract was in effect prior to August 8, 2005 and contains the clause at DEAR 952.250-70 (JUNE 1996) or prior version. The indemnity of paragraph (d)(1) is limited to the indemnity provided by the Price-Anderson Amendments Act of 1988 for any nuclear incident to which the indemnity applies that occurred before August 8, 2005. The indemnity of paragraph (d)(l) of this clause applies to any nuclear incident that occurred on or after August 8, 2005. BMPC's liability for violations of the Atomic Energy Act of 1954 under this Agreement is that in effect prior to August 8, 2005.

Schedule E

Responsible Party	Milestone	Timing
Canadian Pacific & BMPC	Execute Access Access Agreement, Permission to Access and Indemnification (including CP agreement to Appraisal, survey, EA, Cultural assessment, historical assessment, etc.)	+0 days
USG/BMPC	Initial Contact with Army Corps as Government Purchasing Agent NR/NRLFO is engaged with Agency Certified Realty Specialist (CRS) personnel to facilitate acquisition planning.	+10 days
USG	Acquiring agency provides request(s) for documentation to CP to support NEPA and historic preservation processes.	+45 days
USG	Establish Acquisition Plan and Interagency Agreement - The Army Corps of Engineers (ACOE) will review all of the information and prepare a plan, including delegation of actions (such as survey, EA, etc.) and establishes a projected timeline to support the acquisition. NR/NRLFO is actively working with the CRS and ACOE in developing the acquisition plan.	+45 days
ACOE	Notice to landowner of proposed acquisition.	+60 days
ACOE	Initiate title work.	+60 days
ACOE	Initiate Appraisal Process (ACOE to confirm length of process)	+60 days
CP	CP provides any documentation needed for NEPA and Historic Preservation Act processes.	+90 days
ACOE/BMPC	Survey – VERIFY SUFFICIENCY OF PROCESS WITH ACOE BMPC will write a scope of work and place a contract with an appropriate surveyor. Site visits will be coordinated with CP. Once completed, the survey will be submitted to BMPC and then to the ACOE for their review.	BMPC has initiated actions for the work scope and the contracting process with the A&E firm. USG approval to proceed is pending.
USG	Acquiring Agency has results of environmental surveying and sampling.	+120 days
ACOE	Completion of title report and title commitment; commence attorney review and pre-acquisition opinion.	+180 days
ACOE/Appraisal Company	ACOE receives appraisal report and initiates appraisal review.	+180 days
USG	Acquiring agency completes NEPA and historic preservation work in support of its obligations.	+180 days
ACOE	ACOE completes appraisal review. Attorney review and pre-acquisition opinion on title completed.	+210 days

ACOE	Formal offer letter issued by ACOE after concurrence by acquiring agency.	+240 days
ACOE/CP	Complete Negotiations on Purchase	+300 days
ACOE/CP	Parties complete closing process after completion of negotiations.	+360 days

The parties agree to work in good faith to expedite completion of the milestone tasks in advance of the timelines listed above in order to ensure completion of the land sale prior to any non-empty moves.

BOYLE EXHIBIT NO. 5

(DJB-5)

DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, U. S. ARMY CORPS OF ENGINEERS
2 HOPKINS PLAZA
BALTIMORE, MD 21201

October 18, 2018

Real Estate Division
Civil Projects/IIS Support Branch

Ms. Kristine Williams
Director, Real Estate
Canadian Pacific Railroad
7550 Ogden Dale Road SE
Calgary, AB T2C 4X9

Dear Ms. Williams:

In connection with activities at the Naval Reactors Laboratory Field Office in West Milton, New York, the United States is investigating the potential acquisition of lands owned by Canadian Pacific (CP) and identified in local tax records as: a portion of Town of Ballston tax lot no. 239-1-16; Town of Milton tax lot no. 216-2-7; and Village of Ballston Spa tax lot no. 216.33-1-32.1. The Government would anticipate a State of Maine transaction where CP will retain an easement to provide common carrier service over the line. The proposed acquisition will be accomplished by the United States Army Corps of Engineers acting on behalf of the United States Department of Energy/National Nuclear Security Administration (DOE).

Prior to acquiring the property, the United States will need to complete preliminary acquisition activities which include a site survey, title research, environmental investigation (which have been on-going) and an appraisal. As provided by Public Law 91-646, as amended, the government's appraisal will be used to establish the fair market value of the property.

Once these activities have been successfully completed, and upon direction of the DOE, this office will present you with a Department of the Army Offer to Sell, for the full fair market value of the estates and interests to be acquired. Fair market value is defined as the price the property would bring in a sale between a willing seller and a willing buyer, neither being obligated to act.

If you have any questions regarding the acquisition, please contact Mr. Stan Graham at (410) 962-6710, or via email at Stanley.Graham@usace.army.mil.

Sincerely,

HOMESLEY.CRAIG.R.1231317925

Digitally signed by HOMESLEY.CRAIG.R.1231317925
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=USA, cn=HOMESLEY.CRAIG.R.1231317925
Date: 2018.10.17 14:35:37 -04'00'

Craig R. Homesley
Chief, Civil-IIS Projects
Real Estate Division

BOYLE EXHIBIT NO. 6

(DJB-6)

James Clements
Vice-President
Strategic Planning &
Transportation Services

7550 Ogden Dale Road SE
Calgary Alberta
Canada T2C 4X9

T 403 319 7470
E James_Clements@cpr.ca

November 27, 2018

Craig R. Homesley
G.R. 1231317925
Chief, Civil-IIS Projects
Real Estate Division
Department of the Army
Baltimore District, U.S. Army Corps of Engineers
2 Hopkins Plaza
Baltimore, MD 21201

Dear Mr. Homesley:

This letter responds to you offer letter dated October 18, 2018 regarding the U.S. Government's purchase from Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific ("CP") of a rail line known as the Ballston Spa Spur and the adjoining property used for loading/unloading (collectively, the "Spur").

As you may know, in October 2017, CP and Bechtel Marine Propulsion Corporation ("BMPC)", acting as agent for the U.S. Government, executed a letter of intent regarding the rehabilitation and purchase of the Spur. That letter confirmed CP's willingness to enter into an agreement to allow "BMPC to commence track rehabilitation work immediately while CP and BMPC negotiate in good faith the sale by CP and the purchase by BMPC, or such other appropriate party, of the subject spur." Since executing that letter, CP has engaged in good faith negotiations for the sale of the Spur.

Your letter of October 18, 2018 reconfirms the Government's commitment to acquiring the property. However, it suggests that the acquisition would be structured as a so-called *State of Maine* transaction, *i.e.*, CP would sell the property but retain a freight rail operating easement and common carrier obligation over the regulated rail line portion of the Spur. As we have repeatedly stated over the course of these negotiations, a *State of Maine* approach is not acceptable and is inconsistent with prior commitments to acquire the Spur. Such an approach leaves open the possibility that other shippers will demand that CP provide rail service on the Spur which could interfere with rail service to the Government.

Given the nature of the commodity that the Government is moving, as well as the economics, CP believes it is in the interest of both parties that we permanently foreclose the possibility of other shippers on the Spur by converting the Spur to Government-owned private track through the STB's abandonment process prior to the sale. This would put the Government in full control over the Spur. No one could demand rail service on the line or otherwise access the property without the Government's consent. The Government could maintain security and control of the property, and make whatever improvements it wishes. This process requires CP to file for

abandonment authority of the regulated portion of the Spur, *i.e.*, the rail line between MP 31.32 and the connection to CP's main line (the loading/unloading facilities are not regulated and, therefore, not subject to STB exit licensing requirements).

In our view, the Government's apparent preference for a *State of Maine* transaction is based on an unfounded concern regarding the nature of CP's obligations following the sale of the Spur. Specifically, it is our understanding that the Government's interest in a *State of Maine* transaction is premised on the mistaken belief that CP would no longer be required to provide common carrier service to the loading and unloading tracks if CP abandoned the Ballston Spa Spur and the Government purchased the property outright. We are confident, however, that under the circumstances and consistent with longstanding Surface Transportation Board ("STB") precedent and customary practice, CP would continue to have the common carrier obligation to provide rail service to the Government over the Government-owned private track to the loading/unloading tracks, provided those tracks are maintained in safe condition and can be reached without interference by the shipper. CP's common carrier obligation to provide service to the loading/unloading tracks would be enforceable at the STB.

Nevertheless, to allay the Government's concern, CP has proposed that its commitment to provide service to the loading/unloading tracks be memorialized in a long term private siding agreement. Such a contractual commitment provides the Government with additional assurance. It also would give the Government additional options for seeking relief in the extremely unlikely event that CP fails to honor its obligations.

In light of the above, CP is preparing to file at the STB for abandonment authority for the regulated portion of the Spur. CP remains committed to selling the Spur to the Government. It is our sincere hope that we can reach agreement on the terms of that acquisition in the near future without further delay.

Sincerely,

James Clements
VP Strategic Planning & Transportation Services

BOYLE EXHIBIT NO. 7

(DJB-7)

FLUOR.

Fluor Marine Propulsion, LLC
Post Office Box 1072
Schenectady, NY 12301-1072

January 29, 2019

James Clements
VP Strategic Planning & Transportation Services
7550 Ogden Dale Road – SE
Calgary Alberta
Canada T2C 4X9

Dear Mr. Clements:

On October 18, 2018, Mr. Craig R. Homesley, Chief, Civil – IIS Projects, Real Estate Division, U.S. Army Corps of Engineers, sent a letter to Ms. Kristine Williams, Director, Real Estate Canadian Pacific Railroad (CP) addressing the United States Government's (Government) potential acquisition of the Ballston Spa Industrial Track (BSIT). You replied to Mr. Homesley's letter to Ms. Williams in your letter dated November 27, 2018, a copy of which I received on December 17, 2018. Mr. Homesley referred your concerns regarding a State of Maine sales transaction and prior communications to me. My references below to the "Government" include the current and previous management and operating contractors of the Naval Nuclear Laboratory (NNL), Bechtel Marine Propulsion Corporation and its successor Fluor Marine Propulsion, LLC, for ease of understanding.

The NNL is operated on behalf of the Naval Nuclear Propulsion Program (NNPP, also known as Naval Reactors), an integrated joint program of the United States Navy and the U.S. Department of Energy. The mission of the NNPP is to provide militarily effective nuclear propulsion plants and ensure their safe, reliable, and long-lived operation. My letter to CP (Quach) of March 5, 2018 (enclosed) explains the importance of the NNPP mission and CP's vital role in that mission. The letter also describes the extensive investment the NNPP made in refurbishing the BSIT, at CP's request, to ensure the timely and safe delivery of its shipments, as well as a summary of the processes the Government must follow and complete to permit the potential acquisition of real estate.

Threatened Abandonment/Alternatives

You assert in your letter that CP plans to institute proceedings at the STB to abandon the BSIT. The Government strongly urges CP to reconsider its plans. The BSIT is a defense connector line to the Strategic Rail Corridor Network (STRACNET). The STRACNET and its defense connector lines are the civil rail lines most important to the national defense. The Government will vigorously oppose any efforts by CP to abandon the BSIT because your plans undermine critically important national defense interests related to the ongoing refueling at the Kesselring Site and the training of Navy sailors for the fleet. These upcoming shipments are vital to the national defense, and any delays could cause irreparable harm to defense readiness.

Corrections to the November 27, 2018 Letter

Your letter contains several assertions that are incorrect, four of which I will specifically address.

First, you assert that the Government's potential acquisition of the BSIT pursuant to a *State of Maine* sales transaction is inconsistent with a prior "commitment" by the Government to acquire the BSIT. This assertion is inaccurate and rests upon a faulty premise. As you are aware, as noted by the Government on numerous occasions, and as referenced in the enclosed letter and Access Agreement of May 9, 2018, the Government may not legally commit to the purchase of real estate prior to the completion of certain due diligence and related actions. The parties have been working in good faith to develop the potential for an acquisition; this is not the same as a commitment. Further, when the Government and CP began discussions in 2017 concerning the Government's potential acquisition of the BSIT, CP did not inform the Government that the BSIT was a common carrier rail line. The Government became aware of this fact when conducting its independent regulatory due diligence in April 2018. Following this discovery, the Government informed CP that it would continue to conduct its due diligence with regard to the potential acquisition of the real property, as previously contemplated, and that it considered the Government's best interest would be served by CP's post-sale retention of its common carrier obligation to provide service over the BSIT. While CP has noted that it would prefer a private agreement for service to continued common carrier service, it has affirmed throughout the discussions between the parties that the Government could rely upon CP to continue to provide service into the future in good faith. Thus, contrary to your assertions, the Government's position has been entirely consistent throughout this process. It appears that CP simply disagrees with the Government's view of what is in the best interest of the Government with regard to carrier service.

Second, you assert that the regulated portion of the BSIT does not include the BSIT track that the Government currently uses to load/unload trains, an area you refer to as the "loading/unloading" area. That assertion is incorrect. The pertinent administrative records – records the Government has provided to CP – clearly show that the regulated portion of the BSIT includes the current loading and unloading area.

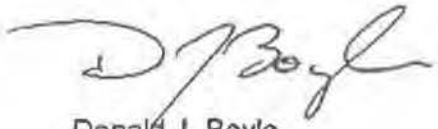
Third, you assert that if CP abandoned the BSIT, and if the Government purchased and operated the BSIT as a private line, CP would continue to have a common carrier obligation to provide service to the Government over the BSIT and, if CP refused to voluntarily provide this service, the Surface Transportation Board (STB) would have the jurisdiction to order CP to provide it. This assertion is incorrect. The governing legal authorities – authorities the Government has provided CP – clearly show that CP would have no post-abandonment common carrier obligation to voluntarily provide service over the BSIT from the main line switch to the end of the track, nor would the STB have any jurisdiction to force CP or another carrier to provide this service. That outcome changes if the parties enter into a properly structured *State of Maine* sales transaction. Using that format, CP would retain its common carrier obligation to provide service over the BSIT and the Government would retain its right to seek STB enforcement of CP's common carrier service obligations. You also observe that if CP retains a *State of Maine* common carrier obligation it will have an obligation to serve all shippers on the BSIT. That is correct but the only shipper on the BSIT for many years has been the Government and, in the most unlikely event that any new shippers materialize, it will provide new business opportunities for CP – a positive, not a negative, outcome for CP.

Fourth, you assert that CP is willing to provide post-abandonment service over the BSIT pursuant to a private siding agreement, a contractual commitment you characterize as providing the Government with additional assurance of service. This assertion is inaccurate because, among other things, you fail to mention that CP's proposed private siding agreement permits CP to terminate its contractual service commitment for any reason on thirty days' notice. As such, a private siding agreement would provide less, not more, assurance of service, and less recourse in the event of CP's failure to reasonably perform.

The Government remains willing and ready to continue to pursue its due diligence to support potential purchase of the BSIT pursuant to a *State of Maine*-type sales transaction. Such an approach would seem to satisfy both the Government's needs and those of CP, in that CP would be alleviated of its ownership interest in the BSIT (and any potential expenditures associated with keeping the BSIT in service) and the government would continue to receive common carrier service vital to the national security of the United States as a matter of regulatory law, rather than involuntary contract service.

The Government is also willing to discuss other potentially mutually acceptable approaches to meeting the needs of the parties, including entering into an agreement with CP similar to the one used by the parties to settle the 1980 BSIT abandonment proceedings. Finally, the Government is willing to pursue a pre-litigation Surface Transportation Board-supervised mediation. Kindly advise if CP is willing to consider any of these options.

Sincerely yours,



Donald J. Boyle
General Counsel

Enclosures: As stated.

cc: Craig Homesley
Cassandra Quach
Marie van Uitert
Clifford Nunn
Mark Salamon
Stanley Graham

BOYLE EXHIBIT NO. 8

(DJB-8)

James Clements
Vice-President
Strategic Planning &
Transportation Services

7550 Ogden Dale Road SE
Calgary Alberta
Canada T2C 4X9

T 403 319 7470
E James_Clements@cpr.ca

March 7, 2019

Donald J. Boyle
General Counsel
Fluor Marine Propulsion, LLC
PO Box 1072
Schenectady, NY 12301-1072

Re: Ballston Spa Proposed Transaction

Dear Mr. Boyle:

This letter responds to your letter dated January 29, 2019 regarding the U.S. Government's purchase from Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific ("CP") of a rail line known as the Ballston Spa Spur and the adjoining property that includes the loading/unloading track.

First, I want to respond to the U.S. Government's assertion that, based on the administrative record, the loading/unloading track is regulated trackage. That assertion is demonstrably incorrect. Loading/unloading, team, and siding tracks are statutorily exempted from STB regulation. 49 U.S.C. § 10906 ("The Board does not have authority under this chapter over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks"). The loading/unloading track's use, history, and physical characteristics all indicate that it is exempt track. The administrative record referenced in your letter further confirms that the trackage is exempt. That record distinguishes the regulated rail line, a portion of which was subject to abandonment, from the "RAILROAD'S team loading/unloading facility." August 7, 1980 Agreement between DOE and CP ("1980 Agreement") (copy enclosed). The map attached to the 1980 Agreement identifies the loading/unloading track as "SIDING SERVING DEP'T OF ENERGY," which connects to the "TRUNCATED BALLSTON INDUSTRIAL SPUR." 1980 Agreement, Appendix A. Additionally, the administrative record identifies MP 31.32 as the new endpoint for the regulated portion of the Truncated Ballston Spa Industrial Spur. Accordingly, the loading/unloading track, which extends from MP 31.32, clearly is not regulated.

Also, I want to address the U.S. Government's concerns regarding the "draft" private siding agreement. Specifically, your letter expresses concern that the termination provision would give CP the right to terminate its contractual service commitment on 30 days' notice. As CP has indicated, however, CP is willing to provide longer term assurances and is certainly

willing to discuss changes to the draft private siding agreement's termination provision in order to provide such assurances.

We continue to disagree with the U.S. Government's view on the common carrier obligation and STB jurisdiction, which we believe ignores relevant precedent. Nevertheless, we appreciate the Government's efforts to find alternative solutions that would address both parties concerns, including the suggestion that NS serve Ballston Spa directly via trackage rights. Although CP is not interested in the NS approach, in the same spirit, CP is willing to explore the following resolution: CP would sell the loading/unloading facilities to the U.S. Government, while retaining ownership of the regulated rail line. As CP would retain ownership over the regulated trackage, *i.e.*, the rail line from CP's mainline to MP 31.32 on the Ballston Spa Spur, the transaction would not be subject to STB jurisdiction. CP would retain a right of first refusal should the government subsequently seek to resell the property. Further, the transaction would be subject to the parties entering into a mutually agreeable private siding agreement. CP would continue to have the obligation to provide rail service to the U.S. Government to the loading/unloading trackage and, we believe, would allay the concerns expressed in your letter.

We are hopeful that this alternative approach will be acceptable to the U.S. Government. If, however, the parties are unable to come to an agreement, CP is prepared to pursue abandonment of this little used rail line at the STB. On this issue, we note that your letter invokes national security as a basis for opposing abandonment. We think that this concern is misplaced the U.S. Government would continue to be entitled to receive rail service provided that it purchase the rail line and loading/unloading trackage as CP has offered.

We would like to resolve this matter as soon as possible. Please let me know latest by March 22, 2019 if the U.S. Government is interested in pursuing the transaction outlined above.

Sincerely,

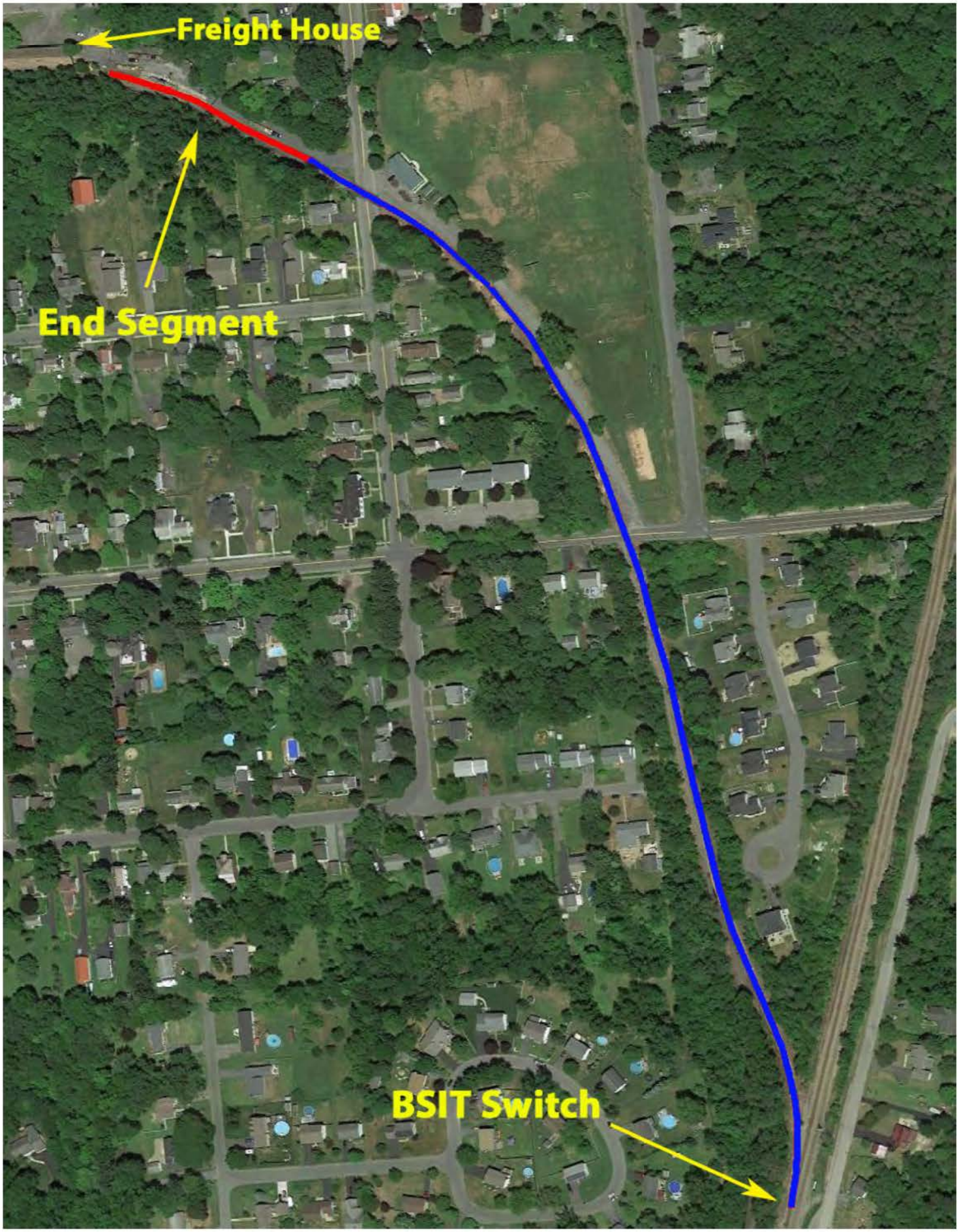
James Clements
VP Strategic Planning & Transportation Services

Enclosure

cc: Craig Homesley
Cassandra Quach
Marie van Uitert
Clifford Nunn
Mark Salamon
Stanley Graham

BOYLE EXHIBIT NO. 9

(DJB-9)


Freight House
End Segment
BSIT Switch

BOYLE EXHIBIT NO. 10

(DJB-10)

From: Marie van Uitert <Marie_van_Uitert@cpr.ca>
Date: March 14, 2019 at 2:06:34 PM EDT
To: "Gundermann, Bernhard E (Contractor)" <Bernhard.Gundermann@unnpp.gov>, "Boyle, Donald J (Contractor)" <Donald.Boyle@unnpp.gov>
Cc: Cassandra Quach <Cassandra_Quach@cpr.ca>
Subject: Follow-up re 3/8/19 Ballston Spa Site Visit

Dear Bernie an Don:

Thank you for meeting at the Ballston Spa site on Friday, March 8, 2019. I am writing to follow up on several issues that we discussed.

First, we appreciate your explanation as to why the government is under the misimpression that the loading/unloading trackage is regulated trackage. We understand that the government's position is based on the government's survey and on an apparently ambiguous reference in the initial abandonment application filed in AB 156 (Sub-No. 9F). The government survey measured from the current connection to the mainline to determine the end of the regulated trackage. As discussed, however, the connection to the mainline was moved after 1980. Accordingly, the survey does not accurately reflect the location of the beginning and end points of the regulated Ballston Spa Spur trackage. Further, the government appears to be relying on an ambiguity in the initial application regarding the location of MP 30.76. However, the remainder of the abandonment record clarifies the location of MP 30.76. The 1980 Agreement between D&H and the government, for example, contains a map that identifies the location of MP 30.76, the regulated rail line to be abandoned and the end point of the regulated rail line to be retained. It also identifies the trackage that terminates at the warehouse as "Siding Serving Dept of Energy To Be Retained."

In addition to the abandonment record, Surface Transportation Board (STB) precedent leaves no doubt as to the status of the "Siding" as exempt trackage. *See e.g., Battaglia Distributing Co., Inc. v. Burlington Norther RR Co.*, STB FD No. 32058 (STB served June 27, 1997) (2,600 foot track that served only one shipper, was stub ended, terminated at a warehouse wall, and received relatively modest amount of traffic was exempt trackage). The "Siding" here is a relatively short, stub ended piece of track that terminates at a shipper warehouse, has very little traffic and has historically been used only for loading and unloading as indicated in the 1980 Agreement (the agreement refers to the trackage both as "Siding" and as "team loading/unloading facility").

Second, as to the term of the private siding agreement, as we discussed and as indicated in James Clements's March 7, 2019 letter to Don Boyle, CP is agreeable to a long term agreement. We propose an initial ten- year term that would be subject to automatic renewal. We will provide draft language for your consideration under separate e-mail. Please let me know if this addresses the government's concern.

Third, as to the government's concern that the STB have jurisdiction over CP's obligation to provide service to the loading/unloading track, STB precedent is clear that the STB has jurisdiction over the performance of the common carrier obligation. This is true regardless of the existence of a private siding agreement. CP is willing to engage in STB sponsored mediation to

address this and any other concern. If the government is interested in pursuing this path, I propose that our outside counsel coordinate on the mechanics and reach out to the STB together.

Lastly, I want to reassure you that CP is fully committed to fulfilling its common carrier obligation to the government. We trust the government is equally committed to finalizing the sale of the unregulated track prior to the first non-emptymove.

Please let me know if you have any questions and how the government wants to proceed.

I'm traveling Friday-Monday for work but we need to move quickly to meet the requirements of Schedule E to the Siding Access agreement. I'm currently sitting on the line for our usual 2 pm eastern call to keep things moving and touch base on Mr. Jess's work at the site on Friday. Are you joining? I'll jump off in a few minutes to call you.

Marie van Uitert
Legal Counsel - US
O 612-851-5665
120 South 6th Street, Suite 800
Minneapolis, MN 55402

---------- IMPORTANT NOTICE - AVIS IMPORTANT ----------
-- Computer viruses can be transmitted via email. Recipient should check this email and any attachments for the presence of viruses. Sender and sender company accept no liability for any damage caused by any virus transmitted by this email. This email transmission and any accompanying attachments contain confidential information intended only for the use of the individual or entity named above. Any dissemination, distribution, copying or action taken in reliance on the contents of this email by anyone other than the intended recipient is strictly prohibited. If you have received this email in error please immediately delete it and notify sender at the above email address. Le courrier electronique peut etre porteur de virus informatiques. Le destinataire doit donc passer le present courriel et les pieces qui y sont jointes au detecteur de virus. L' expediteur et son employeur declinent toute responsabilite pour les dommages causes par un virus contenu dans le courriel. Le present message et les pieces qui y sont jointes contiennent des renseignements confidentiels destines uniquement a la personne ou a l' organisme nomme ci-dessus. Toute diffusion, distribution, reproduction ou utilisation comme reference du contenu du message par une autre personne que le destinataire est formellement interdite. Si vous avez recu ce courriel par erreur, veuillez le detruire immediatement et en informer l' expediteur a l' adresse ci-dessus. ---------- IMPORTANT NOTICE - AVIS IMPORTANT ----------

BOYLE EXHIBIT NO. 11

(DJB-11)

FLUOR®

Fluor Marine Propulsion, LLC
Post Office Box 1072
Schenectady, NY 12301-1072

Legal

March 25, 2019

Ms. Marie van Uitert
Canadian Pacific Railway
Via FAX

Dear Ms. van Uitert:

This email responds to your March 14 email concerning the regulatory status of the Ballston Spa Industrial Track ("BSIT") and Mr. Clements' letter of March 7. We understand that CP's current position is that the portion of the BSIT from the mainline switch to a point just west of Eastern Avenue is a regulated common carrier line, but that the Government, in your words, is under "the misimpression" that the remaining section of the BSIT (from the point west of Eastern Avenue to the end of the track) is not a regulated rail line. As we explained at our meeting on March 8, we think any "misimpressions" are those held by CP, not the Government. We provide a rationale for our understandings below. Fundamentally though, we suggest that the issue of whether the track is regulated, and to what extent the track is regulated, is central to structuring any transaction. Given that unresolved central question, we suggest that it would be in the parties' best interests to seek a ruling from the STB now in a declaratory order proceeding rather than delaying resolution. As part of the process, we anticipate the STB will require mediation in which the parties would participate.

As we discussed, in 1980, D&H requested authority to abandon the BSIT, which D&H repeatedly described in all of its ICC record filings as starting at the D&H main line switch at "Mile Post A 30.76 (Valuation Station 1626+83)" and terminating at "Mile Post A 31.79 (Valuation Station 1681+20)," a distance of 1.03 miles or 5,437 feet. D&H noted in all of its 1980 ICC filings that shippers, including the Government, were using only the portion of the BSIT from the main line switch to "an old freight house" located at MP A 31.32, where a team unloading track was located. (*E.g.*, Application at 6-7). The Government and other shippers objected to D&H's abandonment of the portion of the BSIT they were using – from the main line switch to the old freight house. In response to these objections, D&H amended its initial abandonment Application to withdraw its request to abandon the 0.56 mile portion of the BSIT shippers were using – from the main line switch to the old freight house – and the ICC approved the Application as amended, granting D&H authority to abandon the segment of the BSIT from the old freight house west to the end of the line, *i.e.*, from MP A 31.32 to milepost A 31.79. Today, the BSIT extends from the main line switch at Valuation Station 1626+83 for approximately 0.55 miles, terminating shortly before the location of the old freight house. This line is currently a line of railroad subject to STB regulation and conforms to the ICC's directive

that D&H not abandon that portion of the BSIT between the main line switch and the old freight house.

1. In your email, you first assert that the Government's position is wrong because it measures the 0.55 distance between the current switch and the end of the BSIT whereas "the connection to the mainline was moved after 1980." CP has offered no support for this position and it appears to be clearly wrong because (i) the current switch remains located at Val Station 1626+83, which is the location referenced in the text of all of D&H's filings (and all of the ICC's 1980 decisions) as the location of the D&H/BSIT switch; and (ii) all of the Val Maps we have reviewed, as well as historic satellite images going back to the mid-1960's, show the mainline switch was situated at its current location (Val Station 1626+83) long before 1980.

2. Secondly, you assert the Government is wrong because "the government appears to relying on an ambiguity in the initial application regarding the location of MP 30.76." There is no "ambiguity" in the 1980 ICC case record concerning D&H's representations to the ICC about the location of MP 30.76. In its May 1980 Application, D&H represented that Milepost A 30.76 was located at Val Station 1626+83, which it further identified as the location of the D&H mainline/BSIT switch. This starting point was used for all of CP's additional mileage references in its Application, including the location of the old freight house at MP A 31.32 (0.56 miles from the switch) and the end of the BSIT at MP A 31.79, Val Station 1681+20 (1.03 miles/5,437 feet from the main line switch). You then claim that D&H subsequently clarified this "ambiguity" by including a schematic attached to the August 7, 1980 Rail Service Agreement between the Department of Energy ("DOE") and D&H, which you assert shows that MP A 30.76 was located at Val Station 1622+53, not 1626+83 -- *i.e.*, approximately 430 feet south of the Val Station 1626+83; that the parties (and the ICC) understood that the main line switch was located at Val Station 1622+53, not 1626+83; and that the portion of the BSIT that was abandoned ends approximately 0.55 miles from Val Station 1622+53 – roughly the location where you now assert the regulated portion of the BSIT ends.

As we explained at our meeting, the schematic shows that the D&H/BSIT switch is located at Val Station 1626+83. More importantly for present purposes, the day after the Rail Services Agreement was agreed to (August 7, 1980), D&H filed an Amendment and Partial Withdrawal of its Application ("Amended Application") at the ICC on August 8, 1980 where D&H represented to the ICC that it is was amending its Application by withdrawing that portion of the Application from "Mile Post A 30.76 (Valuation Station 1626+83)" to "MP 31.32." *Id*. at 1, 2. If, as CP now posits, D&H believed the BSIT main line switch was located at Val. Station 1622+53, not 430 feet to the north at Val. Station 1626+83, it certainly would have so informed the ICC in its Amended Application – which it did not do – and, if, as CP now posits, D&H intended to correct the record by stating that Milepost A 30.76 was located at Val. Station 1622+53, or that Val. Station 1626+83 was located at MP A 30.84, it certainly could have done so in its Amended Application – but it did not. Instead, D&H continued to represent to the ICC in its Amended Application that the main line switch was located at Val. Station 1626+83, which D&H continued to represent was located at MP A 30.76. D&H also represented in its Amended Application that "[s]ince the only segment of the line that DOE as well as all other users of the line are actually concerned with is the segment between MP 30.76 and MP 31.32, DOE and Applicant have entered into an agreement which will enable Applicant to continue rail freight

service on such portion of the line." *Id*. at 3. And, in the Rail Service Agreement itself, the parties acknowledged that the line segment DOE and other shippers had historically used was the segment from the main line switch to "RAILROAD'S team loading/unloading facility located at Milepost A 31.32 . . . which facility is .55 miles from the connection of said track with RAILROAD'S main line" (*id*. at 1) and that D&H would continue to provide "public rail freight service" over this "truncated" BSIT segment "in accordance with RAILROAD'S common carrier obligation." *Id*. at 4.

The ICC proceeded to approve D&H's Amended Application in its decision served on Oct. 15, 1980. Consistent with CP's representations in its Application and Amended Application, the ICC granted D&H's request to withdraw its abandonment request for that portion of the BSIT between "milepost A 30.76 (Valuation Station 1626+83)" (*id*. at 1) and "milepost A 31.32." *Id*. at 2. The ICC also observed that "[s]ince the only segment of the line that DOE as well as other users of the line are actually concerned with, is the segment between milepost 30.76 and milepost 31.32, DOE and D&H have entered into an agreement which will enable D&H to continue to provide service on such portion of the line." *Id*. at 1.

The record in the 1980 Abandonment proceedings demonstrates that D&H represented, and the ICC accepted, that the D&H/BSIT main line switch was located at Val. Station 1626+83 (which D&H consistently represented to the ICC was located at Milepost A 30.76) and that the ICC approved D&H's withdrawal of its initial application between the main line switch and MP A 31.32 (which D&H consistently represented was the location on the BSIT where D&H was loading and unloading cars by the old freight house). The ICC did not consider, as CP now contends, an abandonment application where the main line switch was located at Val Station 1622+53 nor find that the regulated portion of the BSIT stops prior to the old freight house, as CP now contends.

3. Finally, CP notes that the schematic attached to the 1980 Rail Service Agreement contains a notation referring to the portion of the BSIT west of Eastern Avenue (but before the old freight house) as a "Siding Serving Dep't of Energy To Be Retained." As we understand your contention here, CP maintains that this section of the BSIT is not a regulated rail line because it may at one time have been an unregulated siding adjacent to D&H's 1.03 mile regulated line. Even if this was true – and, based upon its review to date, the Government does not know whether that was the case or not – the ICC's 1980 order granted D&H's request to withdraw its request to abandon its regulated rail line between the main line switch and the old freight house. Today, there is only a single line between the main line switch and the old freight house – there is no single line with an adjacent siding track. D&H certainly had the ability to relocate its regulated line near the old freight house (assuming that is what it did), including a relocation using the former siding as a component part of the remaining single line regulated rail line between the main line switch and the old freight house, but what D&H could not do in 1980, and CP cannot do today, is to end-run its common carrier obligations to provide service between the main line switch and the old freight house by declaring a portion of the currently configured single line regulated BSIT routing between the main line switch and the old freight house is now an exempt spur.

4. In his March 7 letter, Mr. Clements raised the possibility of selling only the segment of the BSIT CP asserts is unregulated, and the Government asserts is regulated, while CP retains ownership of the remaining portion of the BSIT, which CP concedes is a regulated common carrier line. The sale of this end-segment of the BSIT fits within the Government's requirements of purchasing only the land it needs. We note such an acquisition -- regardless of the STB's ultimate disposition of the parties' dispute -- may require that CP grant the Government an easement over the connecting segment of the BSIT to ensure the Government's property right of access to the BSIT segment it purchases,, which would otherwise be landlocked -- as well as agreement on all other transaction terms necessary to guarantee CP service to and from the BSIT track area currently used to load and unload trains

Mr. Clements' letter also requested a right of first refusal. According the US Army Corps of Engineers, reserving a right of first refusal would fall between very tricky to impossible. The specifics of the reversion would need to be worked out in great detail. For instance: transfers between federal interests would not be subject to such a right; transfers to lower governments (state, county, etc.) may be subject to statutory and regulatory requirements. The Government would like to understand the specific scenario CP wishes to avoid by retaining a reversionary interest so that we can explore your request further with the appropriate governmental resources.

Should you have further questions, I can be reached at 518.395.4255.

Sincerely,

/s

Donald J. Boyle
General Counsel

COUNSEL'S EXHIBIT

(CE)

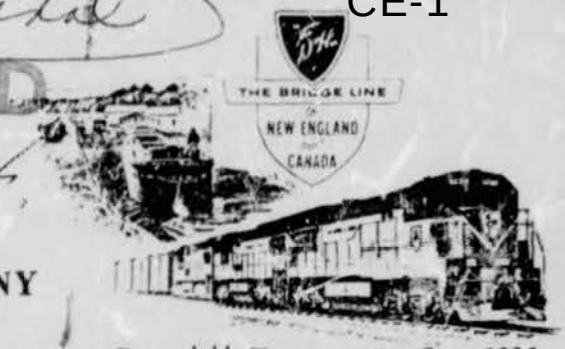
CE-1

Original

FILED

OCT 11 1979

INTERSTATE COMMERCE COMMISSION



DELAWARE AND HUDSON RAILWAY COMPANY

ALBANY, NEW YORK 12207

Dependable Transportation Since 1823

KINGA M. LaCHAPELLE
Assistant General Attorney

518-471-5445

October 5, 1979

Interstate Commerce Commission
12th and Constitution Avenues
Washington, D.C. 20423

Attention: Mr. Philip Israel
Deputy Director
Section of Finance

RE: DELAWARE AND HUDSON RAILWAY COMPANY NOTICE OF INTENT TO ABANDON OR DISCONTINUE SERVICE NO. AB-156(Sub-No. 8F), AB-156(Sub-No. 9F)

Dear Sir:

I am enclosing the above Notice of Intent to Abandon or to Discontinue Service, pursuant to 49 CFR 1121.30(a)(1).

Notification of the other requisite parties prescribed by §1121.30 is being made contemporaneously with this filing. Publication for three consecutive weeks, in conformity with the requirements of the section is being presently arranged.

Since there are no stations located on the lines, posting will be made at the station through which service is received or would have been received for the line.

Affidavits of publication service and posting will be provided as soon as available.

RECEIVED OCT 15 1979 LIST

Very truly yours,

Kinga M. LaChapelle

Kinga M. LaChapelle

Encl.

NO. AB 156(Sub-No. 8F)
NO. AB 156(Sub-No. 9F)

NOTICE OF INTENT TO ABANDON OR TO DISCONTINUE SERVICE

Delaware and Hudson Railway Company hereby gives notice that on or about November 6, 1979 it intends to file with the Interstate Commerce Commission, Washington, D.C. 20423, an application for a certificate of public convenience and necessity permitting the abandonment of:

(1) A line known as the Saratoga Industrial Track which extends from M.P. A 36.08 (Val. Sta. 9+93) to M.P. A 37.46 (Val. Sta. 83+00) in the City of Saratoga Springs, Saratoga County, in New York State, constituting a total distance of 7,307 feet or 1.38 miles. There are no agency or terminal stations on this line. No. AB 156 (Sub-No. 8F).

(2) A line known as the Ballston Spa Industrial Track which extends from M.P. A 30.76 (Val. Sta. 1626+83) in the Town of Ballston, Saratoga County, in New York State to M.P. A 31.79 (Val. Sta. 1681+20) in the Town of Milton, Saratoga County in New York State constituting a total distance of 5,437 feet or 1.03 miles. There are no agency or terminal stations on this line. No. AB 156 (Sub-No. 9F).

The reason for the proposed abandonment is that traffic on the lines is at such a level that the operating expenses and the costs of maintenance and taxes far exceed the revenues received for the limited number of carloads of merchandise either received or originated. Therefore, the continued operation over the line constitutes an economic hardship upon the company. No new traffic is expected to be developed.

The lines of railroad have appeared on the system diagram map in Category 1 (section 1121(b)(1) since April 24, 1979.

No railroad employees will be affected by the proposed abandonment.

Any interested person, in response to this notice, is entitled to take either of the following actions:

1. File with the Interstate Co-merce Commission written comments containing:

   (a) Exact name and address of the commenting party;

   (b) Brief statement of interest in the abandonment or discontinuance proceeding;

   (c) Specific statement of position and summary of evidence with regard to any or all of the following:

      (1) Intent to offer financial assistance;

      (2) Environmental impact;

      (3) Impact on rural and community development;

      (4) Suitability of the properties for other public purposes; and

      (5) Recommended provisions for protection of the interests of employees.

Written comments will be considered by the Commissioner in all proceedings in developing conditions and in determining whether to conduct an investigation on its own motion. In the event an investigation is conducted, then the commenting party may participate in the proceeding as its interests may appear.

2. File with the Interstate Commerce Commission a petition requesting that the application and proposed abandonment be investigated.

   The petition to investigate shall be in the form of a verified statement, and at minimum, contain:

   (a) Identification of petitioner including its name, address, and business;

   (b) Statement of petitioner's interest in the abandonment or discontinuance proceeding; whether petitioner uses the involved service; and if it does not, information with respect to the group or public interest it represents

(c) Specific reason(s) for requesting the institution of an investigation, including information with respect to petitioner's reliance on the involved service, with allegations of fact supported by an affidavit of personal knowledge of the facts.

(d) Any rebuttal of information or material submitted by applicant; and

(e) Request for oral hearing and reasons therefor if desired.

Upon receipt of a petition to investigate, the Commission shall determine the extent of the investigation to be instituted. Those parties filing petitions to investigate should be prepared to participate actively in either oral hearings or via the submission of additional material in the form of verified statements. Parties seeking information concerning the filing of petitions should refer to 49 CFR 1121.36.

Petitions to investigate and written comments should indicate the proceeding designation No. AB 156 (Sub-No. 8F) for the Saratoga Industrial Track and No. AB 156(Sub-No. 9F) for the Ballston Spa Industrial Track, and should be filed with the Interstate Commerce Commission Washington, D.C. 20423, no later than December 11, 1979. Interested persons may file either a written comment or a petition to investigate with the Commission to become a party to this abandonment proceeding. A copy of each petition to investigate or written comment shall be served upon the representative of the applicant Kinga M. LaChapelle, 40 Beaver Street, Albany, New York 12207. Replies to comments or petitions, the latter shall be in the form of a verified statement, shall be filed with the Commission no later than December 21, 1979, and shall be served on all commenting parties and petitioners. The original and 2 copies of all petitions, comments and replies shall be filed with the Commission together with a certificate of service.

In the event a petition to investigate prepared in accordance with the above instructions is filed, then the Commission will conduct an investigation of the abandonment. Written comments filed with the Commission will be considered by the Commission in all proceedings in developing conditions and in determining whether the

Commission should conduct an investigation on its own motion in the event no petition to investigate is filed. Additionally, if an investigation is conducted then parties filing comments may participate in the investigation as their interests may appear.

Persons desiring further information concerning abandonment procedures may contact the Interstate Commerce Commission's Section of Finance, Office of Proceedings or refer to the full abandonment and discontinuance regulations at 49 CFR 1121. Persons desiring information concerning financial assistance for the continued operation or acquisition of the involved line should contact the Commission's Rail Services Planning Office. The carrier's representative to whom inquiries may be made is Kinga M. LaChapelle. A copy of each application will be available for public inspection on or after November 6, 1979 at the Saratoga Freight Agency, Delaware and Hudson Railway Company, P.O.Box 343, Saratoga Springs, New York 12866. The carrier shall furnish a copy of the application to any interested person proposing to file a written comment or petition to investigate, upon request.

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 1979, I served a copy of Delaware and Hudson Railway Company's Notice of Intent to Abandon or Discontinue Service No. AB 156(Sub-No. 8F) upon the parties listed below, by certified mail, properly addressed with postage prepaid.

Honorable Hugh L. Carey
Governor
State of New York
The State Capitol
Albany, New York 12224

Honorable William C. Hennessy
Commissioner
Department of Transportation
State of New York
1220 Washington Avenue
State Campus Building 5
Albany, New York 12226

Mr. Joel Aronson, Manager
Standard Builders Supplies
P.O. Box 371
Saratoga Springs, New York 12866

Mr. Morris Aronson
Standard Furniture
P.O.Box 417
Saratoga Springs, New York 12866

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 1979, I served a copy of Delaware and Hudson Railway Company's Notice of Intent to Abandon or Discontinue Service No AB-156(Sub-No. 9F) upon the parties listed below, by certified mail, properly addressed with postage prepaid.

Honorable Hugh L. Carey
Governor
State of New York
The State Capitol
Albany, New York 12224

Honorable William C. Hennessy
Commissioner
Department of Transportation
State of New York
1220 Washington Avenue
State Campus Building 5
Albany, New York 12226

T. A. Geleta, Traffic Specialist
Knolls Atomic Power Laboratory
P.O. Box 1072
Schenectady, New York 12301

Mr. A. Haskell, Traffic Manager
Tufflite Plastics Company
19 Law Street
Ballston Spa, New York 12020

Mr. Robert Shock, President
Tufflite Plastics Company
Ballston Spa, New York 12020

Mr. John Lang, General Manager
Pettit Equipment, Inc.
Saratoga Road, R.D.#1
Ballston Spa, New York 12020

Mr. John E. Psurling, Manager
Ballston Agway, Inc.
Farm and Home Store
R.D.#8
V Corners
Ballston Spa, New York 12020

Laquidara, Inc.
P.O.Box 264
Ballston Spa, New York 12020

CE-9

LAW OFFICES
MULHOLLAND, HICKEY, LYMAN, McCORMICK, FISHER & HICKEY
SUITE 400, 1125 FIFTEENTH STREET, N.W.
PHONE (202) 833-8855
WASHINGTON, D.C. 20005

TOLEDO OFFICE
741 NATIONAL BANK BLDG.
TOLEDO, OHIO 43604

EDWARD J. HICKEY, JR.
WILLIAM J. HICKEY
MICHAEL S. WOLLY
THOMAS A. WOODLEY

CLARENCE M. MULHOLLAND
RICHARD R. LYMAN
EDWARD J. McCORMICK, JR.
DONALD W. FISHER
RAYMOND J. SWEENEY

FILE IN DOCKET

November 20, 1979

Agatha L. Mergenovich, Secretary
INTERSTATE COMMERCE COMMISSION
12th & Constitution Streets
Washington, D. C. 20423

RE: DELAWARE & HUDSON RY. CO. — ABANDONMENT — LINE KNOWN AS BALLSTON SPA INDUSTRIAL TRACK EXTENDING FROM M.P. A 30.76 IN TOWN OF BALLSTON, SARATOGA COUNTY, N.Y. TO M.P. A 31.79 IN TOWN OF MILTON, SARATOGA COUNTY IN N.Y., IDENTIFIED AS AB 156, SUB. 9F

Dear Ms. Mergenovich:

Enclosed for filing please find the original and two (2) copies of Comments of Railway Employes' Department and Request for Appropriate Employee Protective Conditions.

As noted in the attached Certificate of Service, a copy has been duly served on the representative designated by the Applicant to receive such comments.

Would you please stamp the additional enclosed copy of this letter as received and return same to us so that our files will be complete.

Your assistance in this matter is appreciated.

Sincerely yours,

MULHOLLAND, HICKEY, LYMAN,
McCORMICK, FISHER & HICKEY

FILED
NOV 23 1979
INTERSTATE COMMERCE COMMISSION

RECEIVED
NOV 23 1979

Thomas A. Woodley

TAW/pac
Enclosures:

CE-10

FILE IN DOCKET

DELAWARE AND HUDSON RAILWAY COMPANY

ALBANY, NEW YORK 12207

Dependable Transportation Since 1823

KINGA M. LaCHAPELLE
Asst. General Attorney

May 1, 1980

Interstate Commerce Commission
12th and Constitution Avenues
Washington, D. C. 20423

Attention: Mr. Philip Israel
Deputy Director
Section of Finance

RE: DELAWARE AND HUDSON RAILWAY COMPANY APPLICATION FOR ABANDONMENT OF A LINE OF RAILROAD AB 156-9F

RECEIVED PROCESS SERVING BRANCH MAY 2 2 PM '80

Dear Sirs:

I am enclosing:

1. Original and 6 copies of the above application.
2. Notice of Intent to Abandon.
3. Affidavit attesting to compliance with the notice requirements of 49 C.F.R. 1121.30.
4. Delaware and Hudson Railway Company voucher in the amount of $700.00 for a standard long form application in conformity with 49 C.F.R. 1124.33(e).
5. Certificate of Service of the Application by first class mail on the Governor of the State of New York, The Commissioner of the New York Department of Transportation, and parties of record.

RECEIVED MAY 5 2 PM '80

518-462-7003

6. A copy of the application is deposited at the Saratoga Agency Station, the only station through which business for the line would be received.

Very truly yours,

Kinga M. LaChapelle

Kinga M. LaChapelle

Encl.

(original)

CE-12

BEFORE THE

INTERSTATE COMMERCE COMMISSION

0-126A152

File

Date MAY 5 1980

Fee $ 200.00

ICC Washington, D. C.

FILE IN DOCKET

APPLICATION

OF

DELAWARE AND HUDSON RAILWAY COMPANY

AB 156 (SUB-NO. 9F)

APPLICATION OF DELAWARE AND HUDSON RAILWAY COMPANY UNDER TITLE 49 U.S.C.§10903 AND 49 C.F.R. 1121.33 FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING THE ABANDONMENT OF ITS BALLSTON SPA INDUSTRIAL TRACK, SARATOGA COUNTY, NEW YORK

L. E. I

MAY 5 1980

COMMERCE COMMIS

FINANCE DOCKET NO.

Kinga M. LaChapelle
Attorney for Applicant
Delaware and Hudson
Railway Company
40 Beaver Street
Albany, New York 12207

RECEIVED
I.C.C.
3 26 PM '80
ADMINISTRATION BR.

Dated: May 1, 1980

BEFORE THE

INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO.

AB 156 (SUB-NO. 9F)

APPLICATION OF DELAWARE AND HUDSON RAILWAY COMPANY UNDER TITLE 49 U.S.C. §10903 AND 49 C.F.R. 1121.33 FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING THE ABANDONMENT OF ITS BALLSTON SPA INDUSTRIAL TRACK

Comes now Delaware and Hudson Railway Company (hereinafter called Applicant) and respectfully petitions the Interstate Commerce Commission, under the provisions of Title 49 U.S.C. §10903, for a certificate that the present and future public convenience and necessity permit the abandonment of Applicant's Ballston Spa Industrial Track in Saratoga County, New York from a point in the Town of Ballston at Mile Post A 30.76 (Valuation Station 1626+83) to Mile Post A 31.79 (Valuation Station 1681+20) in the Town of Milton, Saratoga County, a total distance of 1.03 miles.

Although the designation of the line bears the title of "Industrial Track," due to the fact that the

line had at one time formed a part of the main line of Applicant's rail line, this application is being filed. The main line had been relocated in the 1960's pursuant to a New York State crossing elimination program. The realignment of the main line on a path west of the original route left two unconnected spurs, one at the North and one at the South. The line between them was eliminated along with numerous crossings. The Ballston Spa Industrial Track constitutes the Southern remnant of the old main line. A separate and contemporaneous application is filed for abandonment of the Northern remnant, which is the Saratoga Industrial Track under AB 156 (Sub-No. 8F).

In support of its petition, Applicant respectfully shows:

(a)(1) The exact corporate name of Applicant is Delaware and Hudson Railway Company.

(2) Applicant is a carrier by railroad engaged in the transportation of property in the States of New York, Pennsylvania, and Vermont, subject to the provisions of the Interstate Commerce Act.

(3) Applicant is a wholly owned subsidiary of Dereco, Inc., a holding company, the stock of which is owned by the Norfolk and Western Railway Company (N&W). In Finance Docket No. 21510 the inclusion of Applicant into the N&W System was authorized by the Interstate Commerce Commission in 1968. Although Applicant is part

of the N&W System, it is operated as a totally separate railroad company with separate management, offices and operations.

(4) Certificate is hereby requested permitting the abandonment of a portion of a line of railroad known as the Ballston Spa Industrial Track located in the County of Saratoga which extends from M.P. A 30.76 (Val. Sta. 1626+83) in the Town of Ballston to M.P. A 31.79 in the Town of Milton in Saratoga County.

(5) Proposed effective date of abandonment is on or before June 3, 1980.

(6) A detailed map showing the line to be abandoned is attached hereto, made a part hereof and labeled Appendix "A".

(7) The line has been included in Category 1 on Applicant's System Diagram Map in conformity with 49 C.F.R. 1121.20 to .23. It was first listed on the System Diagram Map as potentially subject of abandonment on April 24, 1979. A copy of the line description which accompanies the system diagram map is attached hereto, made a part hereof and labeled Appendix "B".

(8) The reason abandonment of the line is sought is that the losses suffered by Applicant in providing service on the line constitute an increasing and

annually recurring drain upon its financial resources. There are no overhead movements on the line.

From January 1, 1978 to April 30, 1980, a period of 28 months, applicant handled 51 cars on the line, 31 in 1978, 18 in 1979 and 2 in February of 1980. These figures show more than any other factor the drastic decline in business. From July of 1979 no cars were either originated or terminated on the line until the two cars handled in February 1980.

On October 5, 1979 Applicant filed a Notice of Intent to Abandon the line after it became evident that business in the last half of 1979 had fallen drastically. Upon information gathered by its sales force, the prospects for business picking up significantly were not good. After the Notice had been filed several meetings, conversations and communications passed among the users involved, the representatives of the community and applicant. A myriad of alternatives to abandonment were examined but no solution has been found. The data pursuant to R.S.P.O. standards was developed for the line to show the degree of financial detriment rendering service on the line causes to Applicant. (See Exhibit 1). The data was prepared for these meetings in the last two months of 1979. Since that time the only business on the line were two cars, each to a different user. The

study covers a period between November 1978 and October 1979. Though the last month for which the study is conducted is more than six months prior to the filing of the application, since no traffic was handled on the line between the end of the study period, that is October 31, 1979 and February of 1980, shifting the focus of the study would only show greater deficits than it already shows. Therefore, due to the fact that significant effort would have to be expended to shift the focus the result of which would not benefit the position of any opponent to this petition, applicant respectfully requests that the study be accepted as is. Should the Commission at a later time determine that such re-focusing is needed, applicant will promptly comply. However, at this time, it appears that any re-focusing would only increase the detrimental effect of the loss of business already shown to exist.

Applicant was in a deficit position with respect to its net railway operating income by $9,682,000 for the calendar year of 1978 and by $[illegible],103,000 for 1979. If Applicant is ever to reestablish its financial viability it must take affirmative action to eliminate the constant drain on its resources that providing service on unprofitable branch lines such as the Ballston Spa Industrial Track present.

The evidence provided in this application will show that the decline in traffic is drastic and that the traffic which does exist is either non-compensatory or when, in and of itself compensatory, it is too sporadic to be able to support the maintenance of the line.

Applicant anticipates significant opposition to this application. It is being filed with the specific purpose to request the assistance of the Commission to arrive at a solution to the problem facing both applicant and the users of the line which is that applicant cannot indefinitely provide service at a loss. Some alternate solution to continuation of the service in the manner presently required must be found. Despite the efforts expended by all concerned in this matter no such solution has yet been found.

(9) Correspondence should be sent to:

Kinga M. LaChapelle
Assistant General Attorney
Delaware and Hudson Railway Company
40 Beaver Street
Albany, New York 12207

(b) The description of the line must be broken down into two parts. The line, as it extends from the point of switch on the present main line to a point .56, meets or almost meets Federal Railroad Administration Class I standards.

At this point, there is located an old freight house, presently owned by Tufflite Plastics Company, one of the users of the line. It is used as a warehouse. The area immediately adjacent to the warehouse, is a team delivery area where most of the traffic has been handled for the past sixteen months.

The line as it extends from the warehouse to the end at M.P. A 31.79 (Val. Sta. 1681+20) does not meet Federal Railroad Administration Class I standards. It has not been used for about 18 months. In order to bring the entire line up to FRA Class I standards, an estimated 1447 ties, 468 feet of rail and 1195 tons of ballast would be needed at an approximate cost of $ 35,882. Additional cost would of course have to be incurred for, tie plates, spikes, and other incidental items. The rehabilitation of the line may be broken down into three segments: crossing rehabilitation, track rehabilitation and turnouts. There are six crossings on the line two between the warehouse and the main line and four between the warehouse and the end of the line. The cost to rehabilitate the two crossings before the warehouse is estimated at $22,160, and to rehabilitate the two crossings beyond the warehouse is estimated at $24,520. The total cost for bringing the entire line up to FRA Class 1 standards

would be approximately $ 159,080 , for materials $ 52,460 and for labor $ 106,620. To rehabilitate the line between the warehouse and the main line alone would be approximately $ 87,580 , $ 28,510 for materials, and $ 59,070 for labor.

(2) Applicant does not believe that the line could be operated profitably even if necessary deferred maintenance and rehabilitation were performed. The most significant costs incurred on the branch are real estate taxes and transportation costs. Present maintenance of way and structures costs for the base year constitute only 20% of the total on branch costs. Rehabilitation would neither affect car costs nor measurably affect crew costs, and would not reduce property taxes. These costs form more than 75% of the total on branch costs. The on branch costs constitute 63% of the avoidable loss from operation, therefore, even if the maintenance costs were significantly reduced, the profitability of the lien would not measureably improve.

(c)(1) In the past 28 months, Applicant operated an average of 2 trains a month over the branch. The average over the last 12 months has fallen to 1.7 and in the last six months 3 trains were operated, to place two cars.

(2) The line is 1.03 miles long though it has not been operated upon for the full distance for some time. Approximately .56 miles from the point of switch on the main line of applicant, there is a team delivery facility where the majority of the traffic is received or forwarded. Service beyond this point has not been rendered in approximately one year to 18 months.

(3) Either 1 or 2 locomotive units are operated to render service on the line depending on the circumstances. The service is being provided by a crew out of Mechanicville generally doing work in Saratoga.

(4) The carload commodity groups tonnage on the line for the base year was as follows:

Commodity Group	No. of Cars	Total Tonnage	Per Car Tonnage
30 - Plastics	4	20.75	5.2
22 - Textiles	7	144.55	20.5
34 - Fencing	1	28.3	28.3
24 - Lumber	1	21.25	21.25
35 - Generators	4	184.25	46.06
37 - Machinery	1	6.17	6.17
20 - Feed	1	53.4	53.4

(5) There is no overhead bridge traffic on the line.

(6) The crew providing the service consists of four men each.

(7) The level of maintenance is approximating, or at, Federal Railroad Administration Class I level for most of the line used in the past eighteen months.

(8) No significant changes have been made in operation in the last five years other than providing all service at the old freight house .56 miles from the beginning of the line.

(9) The predominant reason for the decline in traffic on the line is that a preponderance of the compensatory traffic which was on the line, was lost to truck competition so that except for the heavy loads being handled for Knolls Atomic Power Lab, all other traffic is predominantly light loading, low revenue commodity in nature.

An indication of the loss of the more compensatory commodities is the fact that in 1979 the largest carload by commodity handled, that is textiles, which have an average revenue ton value of 20.5 tons per car was only handled because of a trucking strike. The largest numbers of cars handled were of plastics with a per car revenue ton value of 5.2. Virtually the only compensatory traffic

handled on the line is generators for Knolls Atomic Power Lab, and an occasional car of feed for Agway. The numbers of cars handled for Knolls however, are so low, 3 in 1978, 4 in 1979, and none in 1980, that this traffic alone can not support the service on the line.

(d)(1) The revenue and cost data for the base year as prepared is attached as Exhibit 1, with the understanding that if the Commission should determine that a refocusing is desirable such will promptly be prepared. Waiver of the condition is, however prayed for herein as not materially affecting the ultimate results of the study.

(2) The computation made for the two calendar years preceding and for applicable part of 1980 is a combination of the R.S.P.O. methods and an allocation process. It is attached as Exhibit 2.

(3) The estimated subsidy is calculated on two bases. One is on the basis that a subsidy of the entire line would be involved and the other in the event abandonment of only the part of the line beyond the warehouse is granted and subsidy of the line between the warehouse and the main line is offered. The two methods of establishing estimated subsidy amounts are attached as Exhibits 3(a) and 3(b) respectively.

(4) The effect upon Applicant's net railway operating income for the two calendar years and the available part of the present year if the abandonment were granted would be very slight but positive. Applicant's net railway operating income for 1978 was a loss of $9,682,000.00 for 1979, a loss of $6,103,000 and for the first quarter of 1980 it was a loss of $732,000 Applicant is making an effort to correct, one by one, all the cash draining services it provides. Only by turning each drain on its income into a net positive income producing operation can the financial viability of the Applicant be established. The argument has been repeatedly made that this operation is only a drain to the tune of $7,000 which is insignificant. The innumerable similar circumstances and their existence for many years is largely responsible for the present condition of Applicant as well as the plight of the railroad industry as a whole. Actually, if the line would in the long run be subsidized, it would in effect not be a subsidy of the Applicant but of the business benefiting from the service rendered. To this point it has been applicant who has subsidized these businesses by providing service at a lower cost than it cost applicant to perform it.

The overall effect therefor on Applicant's financial condition would be positive, whether abandonment or subsidy would be the result.

(5) N/A.

(e)(1) There are no stations located on the line.

(2)

Significant User	Commodity	Car Loads 1978	1979	1980	Total
Knolls Atomic Power Lab	Generators	3	4	-	7
Tufflite Plastics Company	Plastics	25	4	1	30
Pettit Equipment Inc.	Machinery	1	1	1	3
Laquidara, Inc.	Lumber	-	1	-	1
Agway	Feed	3	1	-	4
*McNeal Fence Construction Co.	Fabricated	-	1	-	1
*Ballston Knitting Company	Textiles	-	5	-	5

Total - 51 cars in 28 months

1.8 cars a month

10 cars during base year.

* McNeal Fence Construction Co. and Ballston Knitting Company had inadvertently been omitted from the list of users served with the Notice of Intent to Abandon. Service upon them is made this day of both the Notice and the Application. Due to the fact that this proceeding will more than likely involve a hearing and the fact that extensive publication of the notice was provided, Applicant hereby prays that the Commission find that it had nevertheless substantially complied with CFR Title 49 Part 1121 subpart C. These users will still have ample time to file objections or requests to investigate should they desire to do so.

(3) The alternate means of transportation available to the affected users is by truck, with the exception of Knolls Atomic Power Lab. Due to the excessive weights per unit of cargo handled this user would experience great difficulty in handling over the road movements directly from point of origin. Although significant efforts were made to find a suitable routing, none have yet been found.

With respect to the remaining users, they have already turned to truck transportation for the most part. The only commodities left for Applicant to handle are those which are non-compensatory by truck. Unfortunately, except for the occasional car for Agway, they are also non-compensatory for rail.

The highway system in the area is highly developed due to the predominantly tourism oriented character of the locality. Most of the heavy industry upon which Applicant depended in the past has departed the northeastern part of New York State.

(4) Extensive negotiations have been held with the significant users, representatives of the community and the Department of Transportation of the State of New York to attempt to find alternate solutions to abandonment.

The line was offered for sale to the Knolls Atomic Power Laboratory and to the municipality. No interest

in any such purchase was shown nor was there any indication that an offer of subsidy would be made.

There appears no objection from any sector to abandonment of the line from the old freight house, to the end of the branch. The objections already manifested are to the abandonment of the line between the point of switch on the main line and the old freight house. Efforts were made to seek to relocate the team delivery track to a point on the line by retaining a short spur, but this appeared unacceptable to Knolls Atomic Power Laboratory.

All parties concerned have expended extensive efforts in seeking a solution to the problem of the non-compensatory nature of most of the traffic and the costly service being provided. No solutions have been reached.

Providing the service on the branch is costing Applicant over $7,000 annually. It is making even the compensatory traffic non-compensatory.

(5) The property proposed to be abandoned may be useful for recreational or other public purposes. If this application for abandonment is granted, the State of New York as well as the municipalities involved will have the opportunity to exercise their statutory preferential right to acquire the property pursuant to §18 of the New York Transportation Law for whatever public purpose they may deem it suitable.

Part of the line sought to be abandoned to wit 1,100 feet of rail located at the very end of the line farthest from the mail line point of switch is not owned in fee by Applicant and will revert to the municipality upon abandonment of the line for railroad purposes. The part of the line which would so revert is suitable for the public use of a street or roadway.

(f) The abandonment of the line in question will not have a measureable impact on the environment since any use contemplated will conform to the use to which the surrounding area is predominantly devoted. Furthermore the line had not been subject to extensive use in the recent past and therefore the environmental impact, if any, will be insignificant. In effect, any environmental impact which might occur will be beneficial.

(g) N/A.

(h)(1) See attached Appendix C.

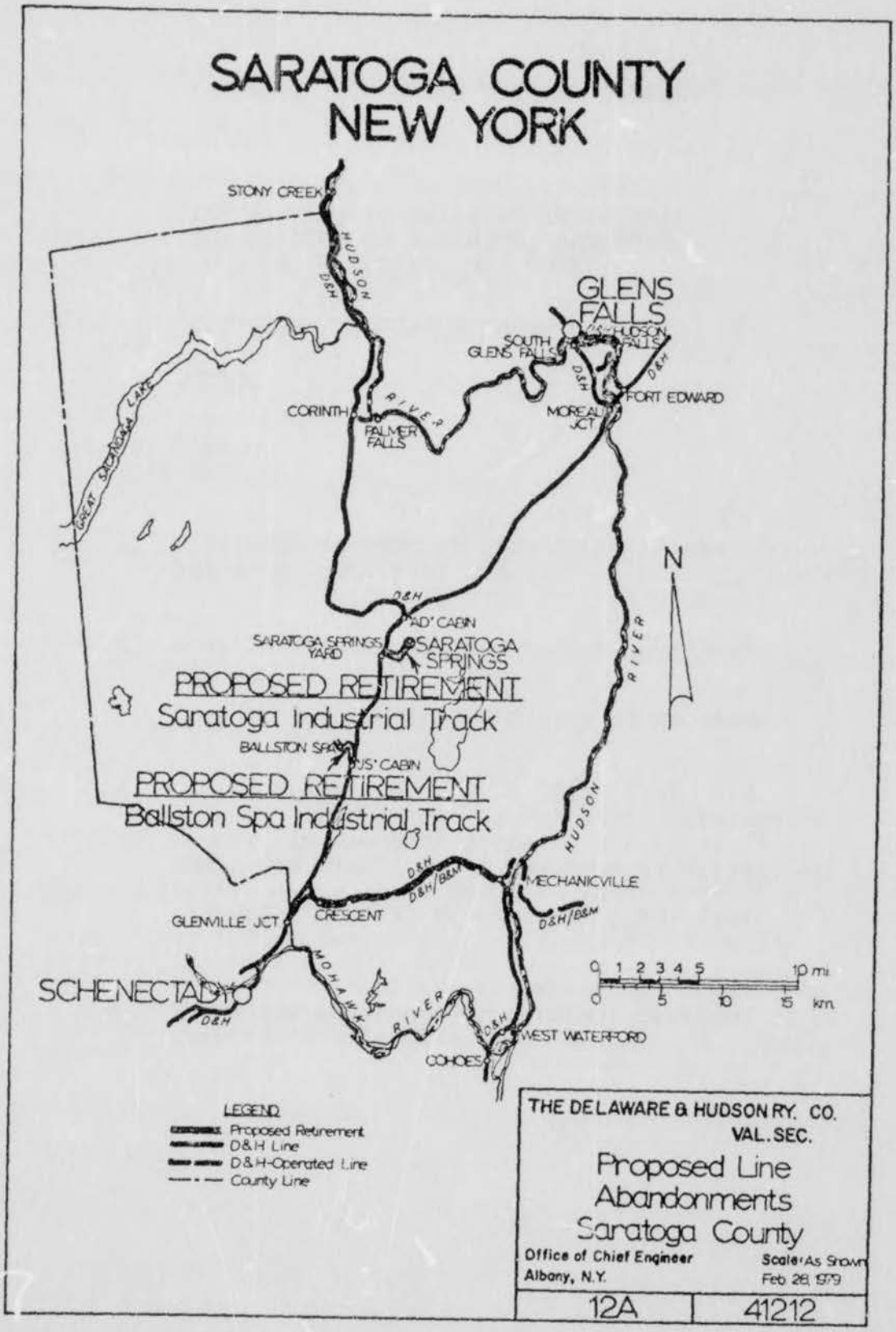
(2) See attached Appendix D.

(i) Applicant will submit any additional information to support its application which the Commission may require.

DELAWARE AND HUDSON RAILWAY COMPANY

By Lingh L. LaChapelle

APPENDIX "A"


SARATOGA COUNTY
NEW YORK
STONY CREEK
HUDSON
D&H
GLENS FALLS
HUDSON FALLS
SOUTH GLENS FALLS
D&H
D&H
FORT EDWARD
CORINTH
RIVER
PALMER FALLS
MOREAU JCT
GREAT SACANDAGA LAKE
N
D&H
"AD" CABIN
SARATOGA SPRINGS YARD
SARATOGA SPRINGS
PROPOSED RETIREMENT
Saratoga Industrial Track
BALLSTON SPA
"JS" CABIN
PROPOSED RETIREMENT
Ballston Spa Industrial Track
RIVER
HUDSON
D&H
D&H/B&M
MECHANICVILLE
D&H/B&M
GLENVILLE JCT
CRESCENT
SCHENECTADY
D&H
MOHAWK
RIVER
D&H
WEST WATERFORD
COHOES
0 1 2 3 4 5 10 mi.
0 5 10 15 km.
LEGEND
Proposed Retirement
D&H Line
D&H-Operated Line
County Line
THE DELAWARE & HUDSON RY. CO.
VAL. SEC.
Proposed Line
Abandonments
Saratoga County
Office of Chief Engineer
Albany, N.Y.
Scale: As Shown
Feb 28, 1979
12A
41212

APPENDIX "B"

DELAWARE AND HUDSON RAILWAY COMPANY

DESCRIPTION OF BALLSTON INDUSTRIAL
TRACK, TOWN OF BALLSTON, NEW YORK
TO TOWN OF MILTON, NEW YORK

CATEGORY 1 - DISCONTINUANCE (AB156- 9F)

ICC Regulation
1121.21

a. A certain portion of line known as the Ballston Industrial Track.

b. Line is located in the State of New York.

c. Line is located in the County of Saratoga.

d. Line extends from M.P. A 30.76 (Val. Sta. 1626+83) in the Town of Ballston, Saratoga County, in New York State to M.P. A 31.79 (Val. Sta. 1681+20) in the Town of Milton, Saratoga County in New York State constituting a total distance of 5,437 feet or 1.03 miles.

e. There are no agency or terminal stations located on this line.

DELAWARE AND HUDSON RAILWAY COMPANY

GENERAL BALANCE SHEET

FEBRUARY 29, 1980 - 1979

ASSETS	February 29, 1980	February 29, 1979	Increase or (Decrease)
CURRENT ASSETS:			
701 Cash	$ 863 878	$ 1 007 739	$ (143 861)
702 Temporary Cash Investments	900 000	800 000	100 000
703 Special Deposits	673 499	3 604 795	(2 931 296)
704 Loans and Notes Receivable	412 494	311 123	101 371
705 Accounts Receivable; Interline and Other Balances	7 025 544	5 849 085	1 176 459
706 Accounts Receivable; Customers	2 226 105	2 178 742	47 363
707 Accounts Receivable; Other	5 262 249	4 012 942	1 249 307
708 Interest and Dividends Receivable	9 980	8 847	1 133
708.5 Receivables from Affiliated Companies	585 043	203 191	381 852
709 Accrued Accounts Receivable	8 162 747	6 479 442	1 683 305
709.5 Allowance for Uncollectible Accounts	(25 000)	(8 000)	(17 000)
710 Working Funds	12 477	12 477	-
711 Prepayments	693 383	897 551	(204 168)
712 Material and Supplies	6 087 641	5 277 973	809 668
713 Other Current Assets	135 301	312 587	(177 286)
Total Current Assets	33 025 341	30 948 494	2 076 847
SPECIAL FUNDS:			
715 Sinking Funds	4 504	-	4 504
717 Other Funds	295 758	293 291	2 467
Total Special Funds	300 262	293 291	6 971
INVESTMENTS:			
721 Investments and Advances; Affiliated Companies			
(1) Stocks	3 054 851	3 055 851	(1 000)
(5) Investment Advances	1 041 503	1 159 954	(118 451)
722 Other Investments and Advances			
(1) Stocks	36 588	36 588	-
(4) Unsecured Notes	1 236 843	1 594 428	(357 585)
Total Investments	5 369 785	5 846 821	(477 036)
TANGIBLE PROPERTY:			
731 Road and Equipment Property	87 675 261	87 439 777	235 484
735 Accumulated Depreciation; Road and Equipment Property	(22 547 220)	(19 398 689)	(3 148 531)
Net Road and Equipment Property	65 128 041	68 041 088	(2 913 047)
732 Improvements on Leased Property	5 088 967	5 091 189	(2 222)
733 Accumulated Depreciation; Improvements on Leased Property	(601 146)	(533 431)	(67 715)
Net Improvements on Leased Property	4 487 821	4 557 758	(69 937)
Total Carrier Property	69 615 862	72 598 846	(2 982 984)
737 Property Used in Other Than Carrier Operations	491 916	519 529	(27 613)
Total Tangible Property	70 107 778	73 118 375	(3 010 597)
OTHER ASSETS AND DEFERRED DEBITS:			
741 Other Assets	405 683	384 889	20 794
743 Other Deferred Debits	1 152 367	665 484	486 883
Total Other Assets and Deferred Debits	1 558 050	1 050 373	507 677
TOTAL ASSETS	$110 361 216	$111 257 354	$ (896 138)

( ) Denotes Red Figure
Office of Comptroller
April 16, 1980

DELAWARE AND HUDSON RAILWAY COMPANY

GENERAL BALANCE SHEET

FEBRUARY 29, 1980 - 1979

LIABILITIES AND SHAREHOLDERS' EQUITY	February 29, 1980	February 29, 1979	Increase or (Decrease)
CURRENT LIABILITIES:			
752 Accounts Payable; Interline and Other Balances	$ 4 789 663	$ 3 127 787	$ 1 661 876
753 Audited Accounts and Wages Payable	8 108 628	6 237 948	1 870 680
754 Accounts Payable; Other	404 432	561 353	(156 921)
755 Interest Payable	750 672	699 435	51 237
757 Payables to Affiliated Companies	24 074	22 084	1 990
759 Accrued Accounts Payable	21 803 870	18 865 22.	2 938 647
761.5 Other Taxes Accrued	924 011	867 034	56 977
763 Other Current Liabilities	1 410 080	2 880 004	(1 469 924)
764 Equipment Obligations and Other Long-Term Debt due Within One Year			
Notes Payable	-	2 989 667	(2 989 667)
Mortgage Bonds	500 000	476 427	23 573
Equipment Obligations			
Conditional Sale Agreements	1 440 753	1 974 678	(533 925)
Total Current Liabilities	40 156 183	38 701 640	1 454 543
LONG-TERM DEBT DUE AFTER ONE YEAR:			
765 Funded Debt Unmatured			
(b) Notes Payable			
(c) Mortgage Bonds			
The D&H R.R. Corp. - First and General Mortgage 5½% Bonds, Series A, due 1983	46 221 253	38 530 944	7 690 309
First and General Mortgage 9½% Bonds, Series B, due 1983	3 209 000	4 187 573	(978 573)
Held by Agent	-	6 750 000	(6 750 000)
Deposited and Cancelled	-	(1 750 000)	1 750 000
First and General Mortgage 9¼% Bonds, Series C, due 1990	-	(5 000 000)	5 000 000
Held by U.S.R.A.	9 250 000	9 250 000	-
First and General Mortgage 9¼% Bonds, Series D, due 1990	(9 250 000)	(9 250 000)	-
Held by U.S.R.A.	3 200 000	3 200 000	-
First and General Mortgage 9½% Bonds, Series E, due 1990	(3 200 000)	(3 200 000)	-
Held by U.S.R.A.	600 000	600 000	-
First and General Mortgage 9¼% Bonds, Series F, due 1990	(600 000)	(600 000)	-
Held by U.S.R.A.	1 200 000	1 200 000	-
766 Equipment Obligations	(1 200 000)	(1 200 000)	-
(2) Conditional Sale Agreements			
769 Accounts Payable; Affiliated Companies	1 431 826	2 880 411	(1 448 585)
Total Long-Term Debt Due After One Year	1 650 000	1 550 000	100 000
	52 512 079	47 148 928	5 363 151
OTHER LONG-TERM LIABILITIES:			
771 Accrued Liability; Pension and Welfare	2 763 124	2 866 984	(103 860)
774 Accrued Liability; Casualty and Other Claims	1 542 435	1 200 705	341 730
782 Other Liabilities	910 440	981 254	(70 814)
Total Other Long-Term Liabilities	5 215 999	5 048 943	167 056
DEFERRED CREDITS:			
783 Deferred Revenue - Transfers from Government Authorities	3 832 129	4 020 949	(188 820)
784 Other Deferred Credits	1 367 175	813 480	553 695
786 Accumulated Deferred Income Tax Credits	-	221 099	(221 099)
Total Deferred Credits	5 199 304	5 055 528	143 776
SHAREHOLDERS' EQUITY:			
791 Capital Stock			
(1) Common Stock (Par Value $1,000 per Share)	1 000 000	1 000 000	-
795 Other Capital			
Paid-in Surplus	41 262 700	41 262 700	-
798 Retained Earnings; Unappropriated			
Retained Income (Exclusive of Current Year's Income Account)	(33 320 768)	(24 624 243)	(8 696 525)
Current Year's Income Account	(1 664 281)	(2 336 142)	671 861
Total Shareholders' Equity	7 277 651	15 302 315	(8 024 664)
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$110 361 216	$111 257 354	$ (896 138)

( ) Denotes Red Figure
Office of Comptroller
April 16, 1980

DELAWARE AND HUDSON RAILWAY COMPANY

Income Statement and
Comparison with Business Plan and Previous Year
Stated in Thousands

March						Three Months Ended March 31.					
1980				1979		1980				1979	
Actual	Business Plan	Favorable (Unfavorable) Variance Amount	%	Actual	Favorable (Unfavorable) Variance Amount	%		Actual	Business Plan	Favorable (Unfavorable) Variance Amount	%	Actual	Favorable (Unfavorable) Variance Amount	%
							RAILWAY OPERATING REVENUES							
$10 214	$10 029	$ 185	1.8	$ 8 627	$ 1 587	18.4	Freight Revenue	$28 058	$26 942	$ 1 116	4.1	$22 234	$ 5 824	26.2
77	112	(35)	(31.3)	95	(18)	(18.9)	Miscellaneous Revenue	296	336	(40)	(11.9)	382	(86)	(22.5)
35	-	35	-	(9)	44	-	Operating Subsidies	260	-	260	-	207	53	25.6
19	-	19	-	20	(1)	(5.0)	Amortization of Deferred Subsidies	58	-	58	-	58	-	-
10 345	10 141	204	2.0	8 733	1 612	18.5	Total Operating Revenues	28 672	27 278	1 394	5.1	22 881	5 791	25.3
							RAILWAY OPERATING EXPENSES							
1 411	1 475	64	4.3	1 325	(86)	(6.5)	Way and Structures	4 294	4 245	(49)	(1.2)	3 884	(410)	(10.6)
							Equipment							
883	931	48	5.2	687	(196)	(28.5)	Per Diem, Mileage, Etc. - Net	2 860	2 874	14	.5	2 270	(590)	(26.0)
319	445	126	28.3	332	13	3.9	Frt. Car & Loco. Leases - Net	975	1 173	198	16.9	1 001	26	2.6
1 699	1 585	(114)	(7.2)	1 443	(256)	(17.7)	Other	4 979	4 991	12	.2	4 309	(670)	(15.5)
							Transportation							
1 296	1 225	(71)	(5.8)	733	(563)	(76.8)	Train Fuel	3 671	3 212	(459)	(14.3)	1 825	(1 846)	(101.2)
3 460	3 282	(178)	(5.4)	3 070	(390)	(12.7)	Other	9 832	9 618	(214)	(2.2)	8 661	(1 171)	(13.5)
938	881	(57)	(6.5)	823	(115)	(14.0)	General and Administration	2 793	2 661	(132)	(5.0)	2 453	(340)	(13.9)
10 006	9 824	(182)	(1.9)	8 413	(1 593)	(18.9)	Total Railway Operating Expenses	29 404	28 774	(630)	(2.2)	24 403	(5 001)	(20.5)
339	317	22	6.9	320	19	5.9	Net Revenue from Rwy. Operations	(732)	(1 496)	764	-	(1 522)	790	-
113	287	(174)	(60.6)	93	20	21.5	OTHER INCOME	307	432	(125)	(28.9)	348	(41)	(11.8)
6	9	3	33.3	9	3	33.3	MISCELLANEOUS DEDUCTIONS FROM INCOME	62	27	(35)	(129.6)	72	10	13.9
446	595	(149)	(25.0)	404	42	10.4	Income Available for Fixed Charges	(487)	(1 091)	604	-	(1 246)	759	-
380	386	6	1.6	346	(34)	(9.8)	FIXED CHARGES	1 111	1 119	8	.7	1 032	(79)	(7.7)
66	209	(143)	(68.4)	58	8	13.8	Net Income Before Income Taxes	(1 598)	(2 210)	612	-	(2 278)	680	-
-	-	-	-	-	-	-	INCOME TAXES	-	-	-	-	-	-	-
$ 66	$ 209	$ (143)	(68.4)	$ 58	$ 8	13.8	Net Income	$(1 598)	$(2 210)	$ 612	-	$(2 278)	$ 680	-
							DEPRECIATION & RETMTS. INCLUDED ABOVE							
Cr. 60	42	(102)	(242.9)	53	(113)	(213.2)	Way and Structures	26	126	(100)	(79.4)	39	(13)	(33.3)
134	125	9	7.2	136	(2)	(1.5)	Equipment	404	375	29	7.7	408	(4)	(1.0)
74	167	(93)	(55.7)	189	(115)	(60.8)	Total Depreciation and Retirements	430	501	(71)	(14.2)	447	(17)	(3.8)
$ 140	$ 376	$ (236)	(62.8)	$ 247	$ (107)	(43.3)	Net Income Excl. Depn. & Retmts.	$(1 168)	$(1 709)	$ 541	-	$(1 831)	$ 663	-
							PER CENT OF OPERATING REVENUES							
13.6	14.6	1.0		15.2	1.6		Way and Structures	15.0	15.6	.6		17.0	2.0	
28.0	29.2	1.2		28.2	.2		Equipment	30.8	33.1	2.3		33.1	2.3	
46.0	44.4	(1.6)		43.5	(2.5)		Transportation	47.1	47.0	(.1)		45.8	(1.3)	
9.1	8.7	(.4)		9.4	.3		General and Administration	9.7	9.8	.1		10.8	1.1	
96.7	96.9	.2		96.3	(.4)		Total Operating Ratio	102.6	105.5	2.9		106.7	4.1	
Cr. 1.1	Cr. 2.8	(1.7)		Cr. 1.1	-		Other Income	Cr. 1.1	Cr. 1.6	Cr. (.5)		Cr. 1.5	Cr. .4	
.1	.1	-		.1	-		Miscellaneous Deductions from Income	.2	.1	(.1)		.3	.1	
3.7	3.8	.1		4.0	.3		Fixed Charges	3.9	4.1	.2		4.5	.6	
99.4	98.0	(1.4)		99.3	(.1)		Grand Total	105.6	108.1	2.5		110.0	4.4	
34.8%				37.4%			% of Payroll to Railway Operating Rev.	37.4%				42.7%		
43.1%				46.3%			% of Labor Cost to Railway Oper. Rev.	46.3%				53.1%		

(-) Denotes Red Figure
Office of Comptroller
April 18, 1980

APPENDIX D
Page 1 of 2

DELAWARE AND HUDSON RAILWAY COMPANY

Income Statement and
Comparison with Business Plan and Previous Year
Stated in Thousands

December								Twelve Months Ended December 31,							
1979				1978				1979				1978			
Actual	Business Plan	Variance Amount	Variance %	Actual	Variance Amount	Variance %		Actual	Business Plan	Variance Amount	Variance %	Actual	Variance Amount	Variance %	
							RAILWAY OPERATING REVENUES								
$ 9 248	$7 735	$ 1 513	19.6	$ 6 900	$2 348	34.0	Freight Revenue	$99 528	$93 060	$ 6 468	7.0	$82 399	$17 129	20.8	
104	107	(3)	(2.8)	121	(17)	(14.0)	Miscellaneous Revenue	1 290	1 315	(25)	(1.9)	1 272	18	1.4	
78	-	78	-	59	19	32.2	Operating Subsidies	1 187	-	1 187	-	970	217	22.4	
19	-	19	-	20	(1)	(5.0)	Amortization of Deferred Subsidies	231	-	231	-	292	(61)	(20.9)	
9 449	7 842	1 607	20.5	7 100	2 349	33.1	Total Operating Revenues	102 236	94 375	7 861	8.3	84 933	17 303	20.4	
							RAILWAY OPERATING EXPENSES								
1 736	1 118	618	55.3	1 489	247	16.6	Way and Structures	18 124	17 800	324	1.8	13 947	4 177	29.9	
2 868	2 431	437	18.0	2 317	551	23.8	Equipment	32 939	29 615	3 324	11.2	28 280	4 659	16.5	
3 989	3 575	414	11.6	3 876	113	2.9	Transportation	46 939	42 268	4 671	11.1	42 195	4 744	11.2	
972	853	119	14.0	854	118	13.8	General and Administration	10 337	9 993	344	3.4	8 948	1 389	15.5	
9 565	7 977	1 588	19.9	8 536	1 029	12.1	Total Railway Operating Expenses	108 339	99 676	8 663	8.7	93 370	14 969	16.0	
(116)	(135)	19	-	(1 436)	1 320	-	Net Revenue from Rwy. Operations	(6 103)	(5 301)	(802)	-	(8 437)	2 334	-	
193	43	150	348.8	98	95	96.9	OTHER INCOME	1 680	839	841	100.2	1 255	425	33.9	
13	9	4	44.4	220	(207)	(94.1)	MISCELLANEOUS DEDUCTIONS FROM INCOME	111	95	16	16.8	423	(312)	(73.8)	
64	(101)	165	-	(1 558)	1 622	-	Income Available for Fixed Charges	(4 534)	(4 557)	23	-	(7 605)	3 071	-	
362	359	3	.8	350	12	3.4	FIXED CHARGES	4 163	4 191	(28)	(.7)	4 062	101	2.5	
(298)	(460)	162	-	(1 908)	1 610	-	Ordinary Income	(8 697)	(8 748)	51	-	(11 667)	2 970	-	
-	-	-	-	-	-	-	INCOME TAXES ON ORDINARY INCOME	-	-	-	-	-	-	-	
-	-	-	-	-	-	-	PROVISION FOR DEFERRED TAXES	-	-	-	-	-	-	-	
(298)	(460)	162	-	(1 908)	1 610	-	Ordinary Income Including Income Taxes	(8 697)	(8 748)	51	-	(11 667)	2 970	-	
-	-	-	-	-	-	-	EXTRAORDINARY ITEMS - NET	-	-	-	-	-	-	-	
$ (298)	$ (460)	$ 162	-	$(1 908)	$1 610	-	Net Income	$(8 697)	$(8 748)	$ 51	-	$(11 667)	$ 2 970	-	
							DEPRECIATION & RETMTS. INCLUDED ABOVE								
32	42	(10)	(23.8)	41	(9)	(22.0)	Way and Structures	240	504	(264)	(52.4)	486	(246)	(50.6)	
135	128	7	5.5	136	(1)	(.7)	Equipment	1 621	1 536	85	5.5	2 038	(417)	(20.5)	
167	170	(3)	(1.8)	177	(10)	(5.6)	Total Depreciation and Retirements	1 861	2 040	(179)	(8.8)	2 524	(663)	(26.3)	
$ (131)	$ (290)	$ 159	-	$(1 731)	$1 600	-	Net Income Excl. Depn. & Retmts.	$(6 836)	$(6 708)	$ (128)	-	$ (9 143)	$ 2 307	-	
							PER CENT OF OPERATING REVENUES								
18.4	14.2	4.2		21.0	(2.6)	-	Way and Structures	17.8	18.8	(1.0)		16.4	1.4		
30.4	31.0	(.6)		32.6	(2.2)		Equipment	32.2	31.4	.8		33.3	(1.1)		
42.2	45.6	(3.4)		54.6	(12.4)		Transportation	45.9	44.8	1.1		49.7	(3.8)		
10.3	10.9	(.6)		12.0	(1.7)		General and Administration	10.1	10.6	(.5)		10.5	(.4)		
101.3	101.7	(.4)		120.2	(18.9)		Total Operating Ratio	106.0	105.6	.4		109.9	(3.9)		
Cr. 2.0	Cr. .5	Cr. 1.5		Cr. 1.4	Cr. .6		Other Income	Cr. 1.7	Cr. .9	Cr. .8		Cr. 1.1	Cr. .2		
.1	.1	-		3.1	(3.0)		Miscellaneous Deductions from Income	.1	.1	-		.5	(.4)		
3.8	4.6	(.8)		5.0	(1.2)		Fixed Charges	4.1	4.4	(.3)		4.8	(.7)		
103.2	105.9	(2.7)		126.9	(23.7)		Grand Total	108.5	109.2	(.7)		115.7	(5.2)		
37.9%				46.5%			% of Payroll to Railway Operating Rev.	41.8%				44.5%			
47.2%				57.7%			% of Labor Cost to Railway Oper. Rev.	51.9%				55.2%			

( ) Denotes Red Figure
Office of Comptroller
January 18, 1980

SUMMARY

BALLSTON SPA RSPO STUDY
CFR 49 (1978) §1121.40-6

§1121.46
SUBMISSION OF REVENUE AND COST DATA

Revenues Attributable for:	Base Year: Nov. 1978 to Oct. 1979
1. Freight Originated and/or terminated on Branch	$13,017.77
2. Bridge Traffic	N/A
3. All other Revenue and Income	967.00
4. Total Revenue Attributable	$13,984.77

Avoidable Costs for:

5. On-Branch Costs	
a. Maintenance of Way and Structures	$ 982.62
b. Maintenance of Equipment	36.86
c. Transportation	1,216.97
d. General Administration	-0-
e. Deadheading, Taxi and Hotel	-0-
f. Overhead Movements	N/A
g. Freight Car Costs	536.67
h. Return on Investment-Locomotives	42.69
i. Revenue Taxes	4.77
j. Property Taxes	2,000.00
Total	$ 4,820.58

6.	Off-Branch Costs	$16,765.43
7.	Total Avoidable Costs	$21,586.01
	Subsidization Costs for-	
8.	Rehabilitation	
9.	Administration Costs	N/A
10.	Casualty Reserve Account	N/A
11.	Total Subsidization Costs	
	Return on Value for	
12.	Valuation of Property	
	a. Working Capital	N/A
	b. Income Tax Benefits	N/A
	c. Net Liquidation Value	N/A
13.	Rate of Return	N/A
14.	Total Return on Value	N/A
15.	Avoidable loss from Operations	$ 7,601.24
16.	Estimated Subsidy	N/A

SUMMARY

BALLSTON SPA RSPO STUDY
CFR 49 (1978) §1121.40-6
COMBINED RSPO STUDY AND STATISTICAL ALLOCATION

§1121.46
SUBMISSION OF REVENUE AND COST DATA

Revenues Attributable for:	January 1, 1978 THROUGH April 30, 1980
1. Freight Originated and/or terminated on Branch	$ 33,303.26
2. Bridge Traffic	N/A
3. All other Revenue and Income	2,175.75
4. Total Revenue Attributable	$ 35,479.01

Avoidable Costs for:

5. On-Branch Costs	
a. Maintenance of Way and Structures	$ 2,210.90
b. Maintenance of Equipment	82.94
c. Transportation	2,738.18
d. General Administration	0
e. Deadheading, Taxi and Hotel	0
f. Overhead Movements	N/A
g. Freight Car Costs	1,438.73
h. Return on Investment-Locomotives	96.69
i. Revenue Taxes	10.73
j. Property Taxes	4,500
Total	$ 9,639.44

6.	Off Branch Costs	$45,000.79
7.	Total Avoidable costs	$54,640.23

SUMMARY

BALLSTON SPA RSPO STUDY
CFR 49 (1978) §1121.40-6
AND SUBSIDY ESTIMATE (PARTIAL)

§1121.46
SUBMISSION OF REVENUE AND COST DATA

Revenues Attributable for:	Base Year: Nov. 1978 to Oct. 1979
1. Freight Originated and/or terminated on Branch	$13,017.77
2. Bridge Traffic	N/A
3. All other Revenue and Income	967.00
4. Total Revenue Attributable	$13,984.77

Avoidable Costs for:

5. On-Branch Costs	
a. Maintenance of Way and Structures	$ 982.62
b. Maintenance of Equipment	36.86
c. Transportation	1,216.97
d. General Administration	-0-
e. Deadheading, Taxi and Hotel	-0-
f. Overhead Movements	N/A
g. Freight Car Costs	536.67
h. Return on Investment-Locomotives	42.69
i. Revenue Taxes	4.77
j. Property Taxes	2,000.00
Total	$ 4,820.58

6. Off-Branch Costs	$16,765.43
7. Total Avoidable Costs	$21,586.01
Subsidization Costs for-	
8. Rehabilitation	$ 87,580.00
9. Administration Costs	N/A
10. Casualty Reserve Account	N/A
11. Total Subsidization Costs	$ 87,580.00
Return on Value for	
12. Valuation of Property	
a. Working Capital	197.86
b. Income Tax Benefits	0
c. Net Liquidation Value	$38,198
13. Rate of Return	0
14. Total Return on Value	0
15. Avoidable loss from Operations	$ 7,601.24
16. Estimated Subsidy	$95,181.24

VERIFICATION

State of New York)
) ss.
County of Albany)

William W. Collins makes oath and says that he is Vice President-Administration and Strategic Planning of the Delaware and Hudson Railway Company, applicant herein; that he has been authorized by the applicant to verify and file with the Interstate Commerce Commission the foregoing application in AB 156 (Sub-No. 9F); that he has carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; that he has knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of his knowledge, information and belief.

Wm. W. Collins

Subscribed and sworn to before me
in and for the State and County above named, this first day of May 1980.

Stephen LaMalfa
Notary Public
State of New York

STEPHEN LAMALFA
Notary Public in the State of New York
Commission Expires March 30, 1981

STATE OF NEW YORK)
) SS.:
COUNTY OF ALBANY)

KINGA M. LaCHAPELLE, being duly sworn, deposes and says:

1. She is Attorney for Delaware and Hudson Railway Company, the Applicant herein.

2. That on March 31, 1980 she served a copy of the Notice of Intent to Abandon Service by certified mail on:

Honorable Hugh L. Carey
Governor
State of New York
The State Capitol
Albany, New York 12224

Honorable William C. Hennessy
Commissioner
Department of Transportation
State of New York
1220 Washington Avenue
State Campus, Building 5
Albany, New York 12226

T. A. Geleta, Traffic Specialist
Knolls Atomic Power Laboratory
P. O. Box 1072
Schenectady, New York 12301

Mr. A. Haskell, Traffic Manager
Tufflite Plastics Company
19 Law Street
Ballston Spa, New York 12020

Mr. Robert Shock, President
Tufflite Plastics Company
Ballston Spa New York 12020

Mr. John Lang, General Manager
Pettit Equipment, Inc.
Saratoga Road, R. D. #1
Ballston Spa, New York 12020

Mr. John E. Psurling, Manager
Ballston Agway, Inc.
Farm & Home Store
R. D. #8
V Corners
Ballston Spa, New York 12020

Laquidara, Inc.
P. O. Box 264
Ballston Spa, New York 12020

3. That she had the said Notice of Intent to Abandon published once in each consecutive 3 weeks in a newspaper of general circulation in Saratoga County. Copies of the Certificates of Publication will be forwarded upon receipt to be attached hereto and made a part hereof and labeled Appendix "A".

4. That she had the notice posted in the Saratoga Agency Station, Delaware and Hudson Railway Company, P. O. Box 343, Saratoga Springs, New York 12866.

Sworn to before me this 1st
day of May 1980.

Notary Public
State of New York

STEPHEN LAMALFA
Notary Public in the State of New York
Commission Expires March 30, 19[illegible]

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 1980, I served a copy of the Application on the parties listed below, by first class mail, properly addressed with postage prepaid.

Honorable Hugh L. Carey
Governor
State of New York
The State Capitol
Albany, New York 12224

Honorable William C. Hennessy
Commissioner
Department of Transportation
State of New York
1220 Washington Avenue
State Campus, Building 5
Albany, New York 12226

T. A. Geleta, Traffic Specialist
Knolls Atomic Power Laboratory
P. O. Box 1072
Schenectady, New York 12301

Mr. A. Haskell, Traffic Manager
Tufflite Plastics Company
19 Law Street
Ballston Spa, New York 12020

Mr. Robert Shock, President
Tufflite Plastics Company
Ballston Spa, New York 12020

Mr. John Lang, General Manager
Pettit Equipment, Inc.
Saratoga Road, R. D. #1
Ballston Spa, New York 12020

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Ballston Agway, Inc.
Farm & Homes Store
R. D. #8
V Corners
Ballston Spa, New York 12020

Laquidara, Inc.
P. O. Box 264
Ballston Spa, New York 12020

Mr. Ken Fischer, President
McNeal Fence Construction Company
P. O. Box 70
Burnt Hills, New York 12027

Ballston Knitting Company
P. O. Box 30
Ballston Spa, New York 12020

Attention: Mr. Walter J. Mooney, Jr.
President

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 1980, I served a copy of the Notice of Intent to Abandon or Discontinue Service upon the parties listed below.

Eugene M. LaChapelle

Mr. Ken Fischer, President
McNeal Fence Construction Company
P. O. Box 70
Burnt Hills, New York 12027

Ballston Knitting Company
P. O. Box 30
Ballston Spa, New York 12020

Attention: Mr. Walter J. Mooney, Jr.
President

CE-47

TUFFLITE

FILE IN DOCKET

INTERSTATE
COMMERCE COMMISSION
RECEIVED
MAY 9 1980
5
ADMINISTRATIVE SERVICES
MAIL UNIT

May 7, 1980

Interstate Commerce Commission
Washington, DC 20423

Reference: NO. AB 156 (Sub-No. 9F)

Gentlemen:

I am president of Tufflite Plastics, Inc., 19 Low Street, Ballston Spa, NY 12020. We have, at the present time, two siding agreements with the D & H Railroad in Ballston Spa. We object to the proposed abandonment or discontinuance of rail service. In 1978, our corporation shipped and received a total of twenty five rail cars from these two sidings. We have been through a recessionary period in 1979, and our present usage is down. We feel, however, that our business will again increase and we will need to maintain rail service in Ballston Spa, NY.

We request an investigation of D & H to abandon. We realize that D & H has financial problems, and we want to work with them in a positive manner, so that we can all survive in an adverse economic climate.

As a small corporation (50 employees), in Saratoga County, NY, we realize the value of keeping people viably employed. All of the existing businesses in the community that use rail service, I'm sure, will work to help D & H so that jobs that depend on rail service can be kept in place.

TUFFLITE PLASTICS INC. 19 LOW STREET · BALLSTON SPA, NEW YORK 12020 · (518) 885-5321

TUFFLITE

Interstate Commerce Commission
Page 2
May 7, 1980

In this county, we also have a major effort underway to attract new industries, and help existing ones expand. The Saratoga Economic Development Corporation has been in operation for 20 months now and we have created over 500 new manufacturing jobs, and had new industries commit to more than $9,000,000 worth of new capitol investments.

All of the above should help the economic climate for Saratoga County, and in turn, the D & H Railroad.

Yours truly,
TUFFLITE PLASTICS, INC.

Robert W. Schock
President

RWS:nb
cc; Kinga M. LaChapelle
The Honorable J. Bruno NYS Senate
The Honorable Walter Floss NYS Senate
The Honorable B. D'Andera NYS Assembly
Steven Boggess NYS Senate

TUFFLITE PLASTICS INC. 19 LOW STREET BALLSTON SPA, NEW YORK 12020 · (518) 885-5321

CE-49

FILE IN DOCKETS

DELAWARE AND HUDSON RAILWAY COMPANY

ALBANY, NEW YORK 12207

Dependable Transportation Since 1823

KINGA M. LaCHAPELLE
Asst. General Attorney

May 14, 1980

INTERSTATE
COMMERCE COMMISSION
RECEIVED
MAY 16 1980
8
ADMINISTRATIVE SERVICES
MAIL UNIT

Interstate Commerce Commission
12th and Constitution Avenues
Washington, D. C. 20423

Attention: Mr. Philip Israel
Deputy Director
Section of Finance

RE: DELAWARE AND HUDSON RAILWAY COMPANY APPLICATIONS FOR ABANDONMENT OF SARATOGA INDUSTRIAL TRACK - AB 156 (SUB-No. 8F) - AND BALLSTON SPA INDUSTRIAL TRACK AB 156 (SUB-NO. 9F)

RECEIVED
PROCESSING
BRANCH

Gentlemen:

Enclosed is original and 6 copies of the Affidavit of Publication of the Notice of Intent to Abandon relative above abandonments to be attached to the applications as indicated.

Very truly yours,

Kinga M. LaChapelle

Kinga M. LaChapelle

Enc.

cc: All parties of record

518-402-7003

CE-50

LEGAL ADVERTISING

NOTICE
NO. AB 156 (Sub. NO. 8F)
NO. AB 156(Sub-No. 9F)
NOTICE OF INTENT TO ABANDON OR TO DISCONTINUE SERVICE

Delaware and Hudson Railway Company hereby gives notice that on or about May 1, 1980 it intends to file with the Interstate Commerce Commission, Washington, D.C. 20423, an application for a certificate of public convenience and necessity permitting the abandonment of:

(1) A line known as the Saratoga Industrial Track which extends from M.P. A. 36.08 (Val. Sta. 9+93) to M.P. A. 37.46 (Val. Sta. 83+00) in the City of Saratoga Springs, Saratoga County, in New York State, constituting a total distance of 7,307 feet or 1.38 miles. There are no agency or terminal stations on this line. No. AB 156 (Sub. No.8F).

(2) A line known as the Ballston Spa Industrial Track which extends from M.P. A. 30.76 (Val. Sta. 1626+83) in the Town of Ballston, Saratoga County, in New York State to M.P. A. 31.79 (Val. Sta. 1681+20) in the Town of Milton, Saratoga County in New York State, constituting a total distance of 5,437 feet or 1.03 miles. There are no agency or terminal stations on this line. No. AB 156 (Sub. No. 9F.)

The reason for the proposed abandonment is that traffic on the lines is at such a level that the operating expenses and the costs of maintenance and taxes far exceed the revenues received for the limited number of carloads of merchandise either received or originated. Therefore, the continued operation over the line constitutes an economic hardship upon the company. No new traffic is expected to be developed.

The lines of railroad have appeared on the system diagram map in Category 1 (Section 1121 (b) (1) since April 24, 1979.

No railroad employees will be affected by the proposed abandonment.

Any interested person, in response to this notice, is entitled to take either of the following actions:

1. File with the Interstate Commerce Commission written comments containing:

(a) Exact name and address of the commenting party;

(b) Brief statement of interest in the abandonment or discontinuance proceeding;

(c) Specific statement of position and summary of evidence with regard to any or all of the following:

(1) Intent to offer financial assistance;

(2) Environmental impact;

(3) Impact on rural and community development;

(4) Suitability of the properties for other public purposes; and

(5) Recommended provisions for protection of the interests of employees.

Written comments will be considered by the Commissioner in all proceedings in developing conditions and in determining whether to conduct an investigation on its own motion. In the event an investigation is conducted, then the commenting party may participate in the proceeding as its interests may appear.

2. File with the Interstate Commerce Commission a petition requesting that the application and proposed abandonment be investigated.

The petition to investigate shall be in the form of a verified statement, and at minimum, contain:

(a) Identification of petitioner including its name, address, and business;

(b) Statement of petitioner's interest in the abandonment or discontinuance proceeding, whether petitioner uses the involved service, and if it does not, information with respect to the group or public interest it represents.

(c) Specific reason (s) for requesting the institution of an investigation, including information with respect to petitioner's reliance on the involved service, with allegations of fact supported by an affidavit of personal knowledge of the facts.

(d) Any rebuttal of information or material submitted by applicant; and

(e) Request for oral hearing, and reasons therefor if desired.

Upon receipt of a petition to investigate, the Commission shall determine the extent of the investigation to be instituted. Those parties filing petitions to investigate should be prepared to participate actively in either oral hearings or via the submission of additional material in the form of verified statements. Parties seeking information concerning the filing of petitions should refer to 49 CFR 1121.36.

In the event a petition is filed, preparing in accordance with the above instruction is filed, then the Commission will conduct an investigation of the abandonment. Written comments filed with the Commission will be considered by the Commission in all proceedings in developing conditions and in determining whether the Commission should conduct an investigation on its own motion in the event no petition to investigate is filed. Additionally, if an investigation is conducted then parties filing comments may participate in the investigation as their interests may appear.

Persons desiring further information concerning abandonment procedures may contact the Interstate Commerce Commission's Section of Finance, Office of Proceedings or refer to the full abandonment and discontinuance regulation at 49 CFR 1121.

Petitions to investigate and written comments should indicate the proceeding designation No. AB 156 (Sub No.8F) for the Saratoga Industrial Track and No. AB 156 (Sub. No. 9F) for the Ballston Spa Industrial Track, and should be filed with the Interstate Commerce Comission, Washington, D.C. 20423, no later than June 3, 1980. Interested persons may file either a written comment or a petition to investigate with the Commission to become a party to this abandonment proceeding. A copy of each petition to investigate or written comment shall be served upon the representative of the applicant Kinga M. LaChapelle, 40 Beaver Street, Albany, New York 12207. Replies to comments or petitions, the latter shall be in the form of a verified statement, shall be filed with the Commission no later than June 13, 1980.

Persons desiring information concerning financial assistance for the continued operation or acquisition of the involved line should contact the Commission's Rail Services Planning Office. The carrier's representative to whom inquiries may be made is Kinga M. LaChapelle. A copy of each application will be available for public inspection on or after November 6, 1979 at the Saratoga Freight Agency, Delware and Hudson Railway Company, P.O. Box 342, Saratoga Spring, New York 12866. The carrier shall furnish a copy of the application to any interested person proposing to file a written comment or petition to investigate, upon request.

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 1980, I served a copy of Delware and Hudson Railway Company's Notice of Intent to Abandon or Discontinue Service No. AB 156 (Sub. No. 8F) upon the parties listed below, by certified mail, properly addressed with postage prepaid:

Honorable Hugh L. Carey
Governor
State of New York
The State Capitol
Albany, New York 12224

Honorable William C. Hennessy
Commissioner
Department of Transportation
State of New York
1220 Washington Avenue
State Campus Building, 5
Albany, New York 12226

Mr. Joel Aronson, manager
Standard Builders Supplies
P.O. Box 371
Saratoga Springs, New York 12866

Mr. Morris Aronson
Standard Furniture
P.O. Box 417
Saratoga Springs, New York 12866

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 1980, I served a copy of Delaware and Hudson Railway Company's Notice of Intent to Abandon or Discontinue Service No. AB 156 (Sub. No. 9F) upon the parties listed below, by certified mail, properly addressed with postage prepaid:

Honorable Hugh L. Carey
Governor
State of New York
The State Capitol
Albany, New York 12224

Honorable William C. Hennessy
Commissioner
Department of Transportation
State of New York
1220 Washington Avenue
State Campus Building, 5
Albany, New York 12226

T.A. Geleta, Traffic Specialist
Knolls Atomic Power Laboratory
P.O. Box 1072
Schenectady, New York 12301

Mr. A. Hasken, Traffic Manager
Tuftilite Plastics Company
19 Law Street
Ballston Spa, New York 12020

Mr. Robert Shack, President
Tuftilite Plastics Company
Ballston Spa, New York 12020

Mr. John Lang, General Manager
Pettit Equipment, Inc.
Saratoga Road, R.D. No. 1
Ballston Spa, New York 12020

Mr. John E. Peurling, manager
Ballston Agway, Inc.
Farm and Home Store
R.D. No. 8
Corners
Ballston Spa, New York 12020

Laquidara, Inc.
P.O. Box 244
Ballston Spa, New York 12020
4/7,14,21-31

STATE OF NEW YORK } ss:
COUNTY OF SARATOGA }

APPENDIX "A"

Dorothy Romano, being duly sworn, deposes and says: that She is the principle clerk of THE SARATOGIAN the official newspaper; that the foregoing notice was published in said newspaper on April 7, 14, 21, 1980 and date date

Dorothy Romano

Subscribed and sworn to before me this 1st day of May, 1980

Commissioner of Deeds, Saratoga Springs, N.Y. 12866

CE-51

FILE IN DOCKET

Department of Energy
Washington, D.C. 20585

MAY 21 1980

Expedited Handling Requested

The Honorable Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Delivery By Hand

RE: Application of Delaware and Hudson Railway Company Under Title 49 U.S.C. §10903 and 49 C.F.R. 1121.33 for a Certificate of Public Convenience and Necessity Authorizing the Abandonment of its Ballston Spa Industrial Track, AB 156 (Sub-No. 9F)

Dear Ms. Mergenovich:

The United States Department of Energy (DOE) hereby requests the Commission to extend the June 5, 1980 deadline for interested persons to file petitions to investigate the above-entitled Delaware and Hudson Railway Company (D & H) abandonment application. DOE requests an extension to Monday, July 7, 1980 for it to file any petition to investigate. DOE has been authorized by Ms. Kinga M. LaChapelle, counsel of record for the D & H, to say that the D & H consents to this request for an extension.

The Knolls Atomic Power Laboratory, which is operated for the Naval Reactors Branch of DOE, must rely upon the nearby Ballston Spa Industrial Track for periodic shipments in and out of that facility of extremely large and heavy loads of nuclear reactor equipment. Because continued use of this track is considered vital by DOE, discussions between DOE and D & H about possible alternatives to the proposed abandonment now are underway. If a satisfactory alternative can be agreed to, an investigation by the Commission could be avoided. Because it is impractical to evaluate potential alternatives and conclude discussions prior to that date, an extension to Monday, July 7, 1980 is requested.

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COMMISSION

So that DOE may avoid the necessity to prepare and file a verified petition to investigate by June 5, 1980, prompt attention to this request would be appreciated. Please notify the undersigned of the action taken on this request by telephone at 252-8700.

Very truly yours,

Omer F. Brown, II

Omer F. Brown, II
Attorney
Office of the General Counsel

cc: Ms. Kinga M. LaChapelle
Assistant General Attorney
Delaware and Hudson Railway Company
40 Beaver Street
Albany, New York 12207

CE-53

THE SENATE
STATE OF NEW YORK
ALBANY 12247

FILE IN DOCKET

WALTER J. FLOSS, JR.
SENATOR 59TH DISTRICT
CHAIRMAN, SUBCOMMITTEE ON
SMALL BUSINESS CONCERNS

65 COURT STREET - ROOM 213
BUFFALO, NEW YORK 14202
716 842 2369

LEGISLATIVE OFFICE BLDG
ROOM 905
ALBANY, NEW YORK 12247
518 455 3161

INTERSTATE
COMMERCE COMMISSION
RECEIVED

MAY 28 1980

ADMINISTRATIVE SERVICES
MAIL UNIT

MAY 29 1980

May 19, 1980

Interstate Commerce Commission
Twelfth and Constitution Avenues
Washington, D. C. 20423

Reference: No. AB 156 (Sub - No.9F)

Gentlemen:

I have recently been made aware of a situation that gravely concerns me. The proposal by the D & H Railroad to abandon or discontinue service to two rail sidings in Ballston Spa, N. Y. will severely impact on the small businesses located on these lines.

While no one will arque against the necessity for the railroad to operate at a profitable level, a close look at this particular situation will show a future for these sidings with a considerably increased number of rail cars shipped. In view of this projection, I request an investigation of the D & H Railroad proposal to abandon this service.

I thank you for your consideration in this matter.

Sincerely,

Walter Floss

WALTER J. FLOSS, JR.

WJF/spm

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COMMERCE
COMMISSION

Rm. 5349 CE-54

FILE IN DOCKET

Before the

INTERSTATE COMMERCE COMMISSION

Finance Docket No. _____

AB 156 (Sub-No. 9F)

VERIFIED STATEMENT AND PETITION OF THE
UNITED STATES DEPARTMENT OF ENERGY
TO INVESTIGATE THE
APPLICATION OF DELAWARE AND HUDSON RAILWAY
COMPANY UNDER TITLE 49 U.S.C. § 10903 AND
49 C.F.R. 1121.33 FOR A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING
THE ABANDONMENT OF ITS BALLSTON SPA
INDUSTRIAL TRACK

Joseph DiStefano
Assistant General Counsel for
General Litigation

Omer F. Brown, II
Attorney

Office of the General Counsel
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Attorneys for Petitioner

Alan I. Handwerker
Attorney
Office of the Chief Counsel
Schenectady Naval Reactors Office
U.S. Department of Energy

Of Counsel

Due Date: June 9, 1980

RECEIVED
JUL 2 1980
CAPTURE & LIST

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INTERSTATE
COMMERCE
COMMISSION

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OFFICE OF THE SECRETARY

The United States Department of Energy (hereinafter "DOE") submits this verified statement and petition requesting the Commission to investigate the application of the Delaware and Hudson Railway Company (hereinafter "D&H") under Title 49 U.S.C. § 10903 and 49 C.F.R. 1121.33 for a Certificate of Public Convenience and Necessity authorizing the abandonment of D&H's Ballston Spa Industrial Track in Saratoga County, New York and to postpone the proposed effective date of said abandonment. In support of this request, DOE states:

I.

DOE is an executive department of the Federal Government with offices, among other places, at 1000 Independence Avenue, S.W., Washington, D.C. 20585. Pursuant to Section 309 and related provisions of the Department of Energy Organization Act of 1977, 42 U.S.C. §§ 7101 et seq., an organizational unit of DOE, the Division of Naval Reactors, is responsible for research, design, development, health, and safety matters pertaining to naval nuclear propulsion plants and assigned civilian power reactor programs. As part of this responsibility, DOE enters into contracts with private industry to operate Federal Government-owned facilities and purchases related services, such as transportation. One such Federal Government-owned facility is the Knolls Atomic Power Laboratory, which is operated by the General Electric Company.

II.

A major activity of the Knolls Atomic Power Laboratory is the operation of a facility in West Milton, New York known as the Kesselring Site. The Federal Government's investment in the Kesselring Site, land and facilities is approximately three-quarters of a billion dollars. There are approximately 600 contractor employees and 1,500 naval personnel

regularly employed at the site. At the Kesselring Site are four nuclear reactors of the type used by the United States Navy. These nuclear reactors are used for developmental work and to train United States Navy personnel in the operation of nuclear-powered submarines and surface ships. Continued operation of the Kesselring Site is essential to the Federal Government's defense programs. Such operation requires periodic shipments in and out of extremely large and heavy loads of nuclear reactor equipment. Shipment of this equipment by any mode other than rail is completely impractical for more than very short distances.

III.

The Ballston Spa Industrial Track, which D&H proposes to abandon, is approximately 6 miles from the Kesselring Site. DOE relies upon use of the Ballston Spa Industrial Track for periodic shipments, and its abandonment would cause substantial injury. The short highway route between the Ballston Spa Industrial Track and the Kesselring Site now can accommodate shipments of the size and weight that are required for operation of the Kesselring Site. There are no alternative rail sidings capable of handling shipments of the size and weight that are required for operation of the Kesselring Site. Furthermore, the weight and size of shipments that are required at the Kesselring Site cannot be moved over other existing roads from any other siding due to physical and/or regulatory restrictions. Paragraph (9)(e)(3) of D&H's application specifically admits DOE's reliance upon the Ballston Spa Industrial Track as follows:

> (3) The alternate means of transportation available to the affected users is by truck, with the exception of Knolls Atomic Power Lab. Due to the excessive weights per unit of cargo handled this user would experience great difficulty in handling over the road movements directly from point of origin. Although significant efforts were made to find a suitable routing, none have yet been found.

IV.

DOE now anticipates that the following shipments from points outside the State of New York to the Kesselring Site will use the Ballston Spa Industrial Track over the next five years:

Number of Rail Cars	Approximate Total Weight
20 - 25	2,000 Tons

The figures are presented to demonstrate DOE's continuing reliance upon use of the Ballston Spa Industrial Track, but they are estimates that may vary depending upon the varying use made of the materials shipped to the Kesselring Site.

V.

A Commission investigation and oral hearing would afford DOE the opportunity to demonstrate to the Commission in greater detail that the service D&H proposes to abandon is relied upon by DOE and is vital to the national security and to provide any further information required by the Commission to assist it in finding that the present and future public convenience and necessity does not permit the abandonment of the Ballston Spa Industrial Track.

WHEREFORE, the United States Department of Energy respectfully requests that the Commission by proper order:

(a) Investigate the D&H application to abandon its Ballston Spa Industrial Track;

(b) Hold an oral hearing on the D&H application;

(c) Postpone the proposed effective date of the abandonment for the period of time necessary to complete the investigation; and

(d) Grant to DOE such other and further relief as this Commission may deem just and proper.

Respectfully submitted,

JOSEPH DiSTEFANO
Assistant General Counsel for
General Litigation

Omer F. Brown II

OMER F. BROWN, II
Attorney

Office of the General Counsel
U.S. Department of Energy
1000 Independence Avenue, S.W
Washington, D.C. 20585

Attorneys for Petitioner

ALAN I. HANDWERKER
Attorney
Office of the Chief Counsel
Schenectady Naval Reactors Office
U.S. Department of Energy

Of Counsel

Please Advise of Action
by Telephone
(202-252-8700)

Dated: June 6 , 1980

VERIFICATION

STATE OF NEW YORK
COUNTY OF SCHENECTADY } ss

BARRY M. ERICKSON, being duly sworn, deposes and says that (1) he is Manager, Schenectady Naval Reactors Office, U.S. Department of Energy, Schenectady, New York 12301, the petitioner herein; (2) he has been authorized by the petitioner to verify and file with the Interstate Commerce Commission the foregoing statement and petition; (3) he has knowledge of the facts and matters relied upon in the foregoing statement and petition; and (4) he has read the foregoing statement and petition of the United States Department of Energy to investigate the application of the Delaware and Hudson Railway Company and knows the contents thereof, and the same are true to the best of his knowledge, information and belief.

Barry M. Erickson

Subscribed and Sworn to before me this 30th day of May, 1980.

Peter R. Van Allen

PETER R. VanALLEN
Notary Public, State of New York
Residing in Broome County
My Commission Expires March 30, 1982

Certificate of Service

I hereby certify that I have served a copy of the foregoing document entitled "Verified Statement and Petition of The United States Department of Energy to Investigate the Application of Delaware and Hudson Railway Company Under Title 49 U.S.C. § 10903 and 49 C.F.R. 1121.33 for a Certificate of Public Convenience and Necessity Authorizing the Abandonment of its Ballston Spa Industrial Track," by mail, upon the following, this 6th day of June 1980:

Ms. Kinga M. LaChapelle
Assistant General Attorney
Delaware and Hudson Railway Company
40 Beaver Street
Albany, New York 12207

Omer F. Brown, II

Omer F. Brown, II
Attorney
Office of the General Counsel
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

CE-61

Department of Energy
Washington, D.C. 20585

JUN 16 1980

Ms. Phyllis Johnson Ball
Room 5380
Energy and Environment Branch
Interstate Commerce Commission
Washington, D.C. 20423

Delivery By Hand

Re: Application of Delaware and Hudson Railway Company Under Title 49 U.S.C. §10903 and 49 C.F.R. 1121.33 for a Certificate of Public Convenience and Necessity Authorizing the Abandonment of its Ballston Spa Industrial Track, AB 156 (Sub-No. 9F)

Dear Ms. Ball:

In accordance with your telephone request last week, the United States Department of Energy (DOE) herewith submits additional information in support of DOE's position in opposition to the above-entitled application.

As stated in DOE's Verified Statement and Petition filed on June 6, 1980, a Commission investigation and oral hearing would afford DOE the opportunity to demonstrate to the Commission in greater detail that the service the Delaware and Hudson Railway Company proposes to abandon is relied upon by DOE and is vital to the national security.

Also enclosed for your convenience is a copy of a resolution in opposition to the proposed abandonment adopted on May 20, 1980 by the Board of Supervisors of Saratoga County, New York.

If you would like any additional information, please do not hesitate to call me at 202-252-8700.

Very truly yours,

Omer F. Brown, II

Omer F. Brown, II
Attorney
Office of the General Counsel

Enclosures:
As stated

cc: Ms. Kinga M. LaChapelle

Information Concerning the Use by the
U.S. Department of Energy of the
Delaware and Hudson Railway Company
Ballston Spa Industrial Track

1. What size trucks (height, weight and width) are used to carry loads from the railroad siding to the Department of Energy's Kesselring Site?

   Answer: The Department of Energy uses the D & H Railway Ballston Spa industrial track to load and unload unusually large and heavy loads. These loads weigh 40 tons and up and vary in height, weight, and width. Accordingly, the trucks we use vary with the load carried. We are enclosing, for ICC information, a drawing of a truck which has been used at various times to haul our oversize loads (Enclosure 1).

2. What is the average number of trucks the Department of Energy utilizes in shipping the loads from the Ballston Spa industrials track to the Kesselring Site?

   Answer: The number of trucks we use varies with the number of rail cars utilized and the kinds of loads carried thereon. As a general estimate, if there is a shipment consisting of one rail car, one truck will be utilized for transportation to the Kesselring Site.

3. What route does the Department of Energy now follow in transporting shipments from the railroad siding to the Kesselring Site?

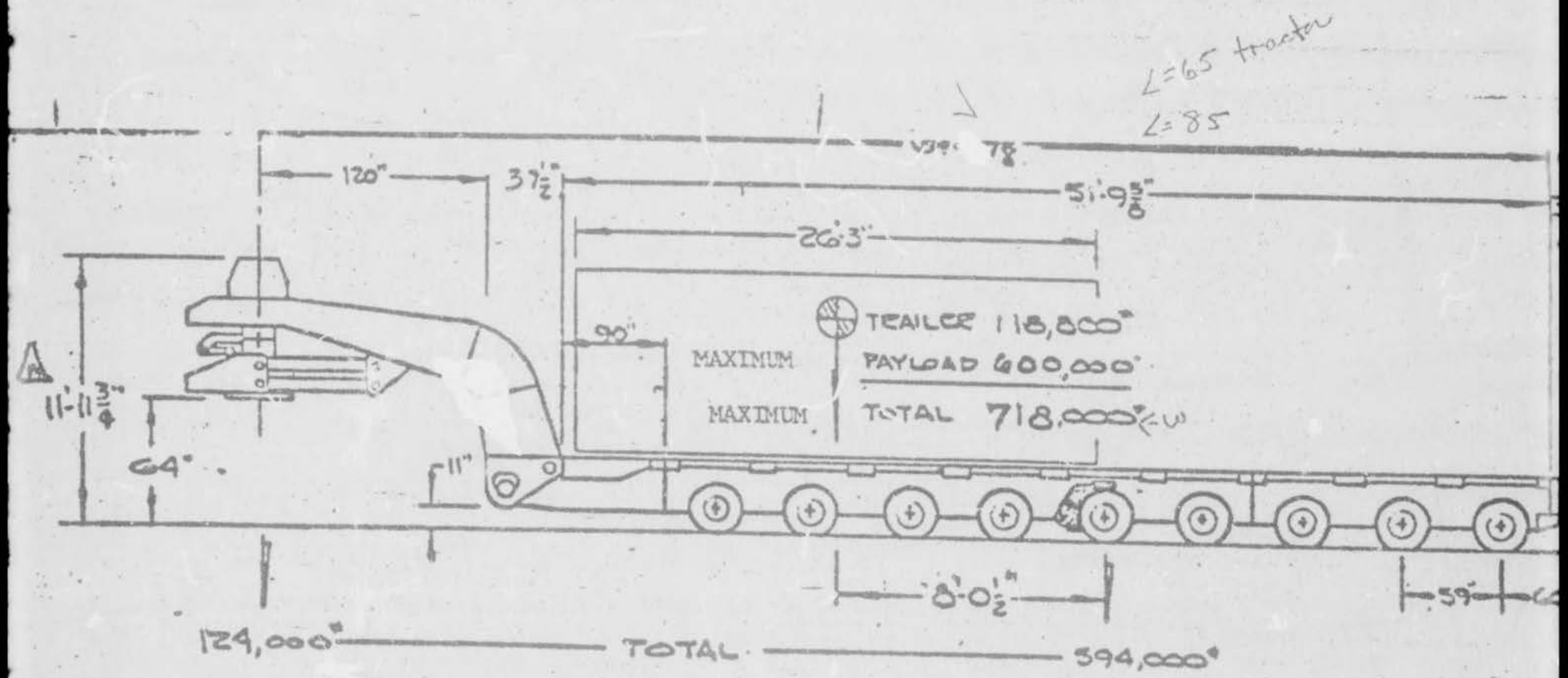
   Answer: Attached is a map showing the highway route taken from the Ballston Spa industrial track to the Kesselring Site (Enclosure 2). The route that the Department of Energy uses is the exclusive highway route over which large and heavy loads can be shipped to the Kesselring Site. When the Department of Energy first started making shipments from the D & H Railway siding to the Kesselring Site, we were required to get, and still must obtain, State and local permits to ship oversize loads. The local governments agreed on the route that we currently follow and upgraded the highway accordingly to support the extreme size and weight shipped thereon. It would probably be impossible for DOE to obtain local oversize load permits for shipments over any other area highway since this would involve road upgrading and other route modifications (as discussed in our answer to question #5) that local agencies would be unwlling to undertake.

4. What percent of traffic is hazardous (radioactive)?

   Answer: Approximately once every 10 years a radioactive shipment involving one or two pieces of heavy industrial equipment is made.

5. If the Department of Energy were able to use the Saratoga Springs loading site, by what route would DOE move the loads?

   Answer: It is physically impossible to transport our oversize loads by truck from Saratoga Springs to the Kesselring Site. In addition, due to problems discussed in our answer to Question #3, bridge capacities are inadequate for such loads and there is insufficient clearance with overhead lights and wires.


∠=65 tractor
∠=85
78
120"
37½"
51'-9⅝"
26'-3"
90"
TRAILER 118,800#
MAXIMUM PAYLOAD 600,000#
MAXIMUM TOTAL 718,000#
11'-11¾"
64"
11"
8'-0½"
59"
124,000#
TOTAL
594,000#

East Galway
Mosherville
Rock City Falls
County Airport
M I L T O N
West Milton
Galway Lake
G A L W A Y
Galway
Scotch Church
MONTGOMERY CO.
SCHENECTADY COUNTY
C H A R L T O N
B A L L S
Charlton
To Scotia
Charwood Manor

Gordon

CE-66

RESOLUTION NO. 254

Requesting an Investigation by the Interstate Commerce Commission Relative to the Proposed Abandonment by the Delaware & Hudson Railroad of Such Railroad's Spurs in the Village of Ballston Spa and the City of Saratoga Springs.

By Messrs. Brown and Sewell:

WHEREAS, by its Resolution No. 415 of November 20, 1979, this Board of Supervisors requested the Interstate Commerce Commission (ICC) to give serious consideration to the adverse economic factors to be occasioned by the proposed abandonment by the Delaware & Hudson Railroad Corporation of its spurs in the Village of Ballston Spa, New York, and the City of Saratoga Springs, New York, and

WHEREAS, on several dates in April 1980, there was published in the Saratogian newspaper a "Notice of Intent to Abandon or to Discontinue Service" (1) a line known as the Saratoga Industrial Track, and (2) a line known as the Ballston Spa Industrial Track, and

WHEREAS, among the actions that may be taken by interested persons is, pursuant to such Notice, the filing with the ICC of a petition requesting that the application and proposed abandonment be investigated, and

WHEREAS, the County of Saratoga is an interested person and it, along with other persons, are desirous of there being a full and complete investigation relative to the proposed abandonments; now, therefore, be it

RESOLVED, that the Chairman of this Board be and he is hereby authorized and directed to file an appropriate verified statement requesting an investigation by the ICC of the proposed abandonment and requesting a full public hearing on the facts and issues.

BUDGET IMPACT STATEMENT

No budget impact.

STATE OF NEW YORK)
COUNTY OF SARATOGA) ss:

I, ARDIS ANDERSON, Clerk of the Board of Supervisors of Saratoga County, do hereby certify that the foregoing is a true copy, and the whole thereof, of a resolution duly adopted by the Board of Supervisors of said county, on the 5th day of May, 1980.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed hereto the official seal of said Board of Supervisors this 31st day of May, 1980

Ardis Anderson

CE-67

Environmental Assessment

Record of the environmental
analysis relating to:

AB 156 (Sub-No. 9F)

DELAWARE AND HUDSON RAILWAY COMPANY ABANDONMENT
IN THE TOWNS OF BALLSTON AND MILTON, NY

prepared by:
Energy and Environment Branch

INTERSTATE COMMERCE COMMISSION
Office of Policy and Analysis
Washington, D.C. 20423

INTERSTATE COMMERCE COMMISSION

OFFICE OF POLICY AND ANALYSIS

ENERGY AND ENVIRONMENT BRANCH

ENVIRONMENTAL ASSESSMENT

AB 156 (Sub-No. 9F)

DELAWARE AND HUDSON RAILWAY COMPANY ABANDONMENT
IN THE TOWNS OF BALLSTON AND MILTON, NY

The Delware and Hudson Railway Company has filed application to abandon a line known as the Ballston Spa Industrial Track in the Town of Milton, Saratoga County, NY, a total distance of 1.03 miles. A map of the affected area is attached as an appendix to this document. Applicant claims essentially that the line is no longer financially viable.

The Ballston Spa Industrial Track constitutes the Southern remnant of the old main line. A separate and contemporaneous application is filed for the northern remnant, which is the Saratoga Industrial Track (AB 156 (Sub-No. 9F)). A separate environmental assessment is being prepared on the Saratoga segment.

Applicant's environmental report has been utilized in the preparation of this assessment. Information has been verified to the extent practicable. Additionally, the following State agencies have been consulted:

New York State Department of
Environmental Conservation
Wildlife Resource Center

New York State Department of
Transportation
Rail Division

U.S. Department of State
Planning and Federal Programs

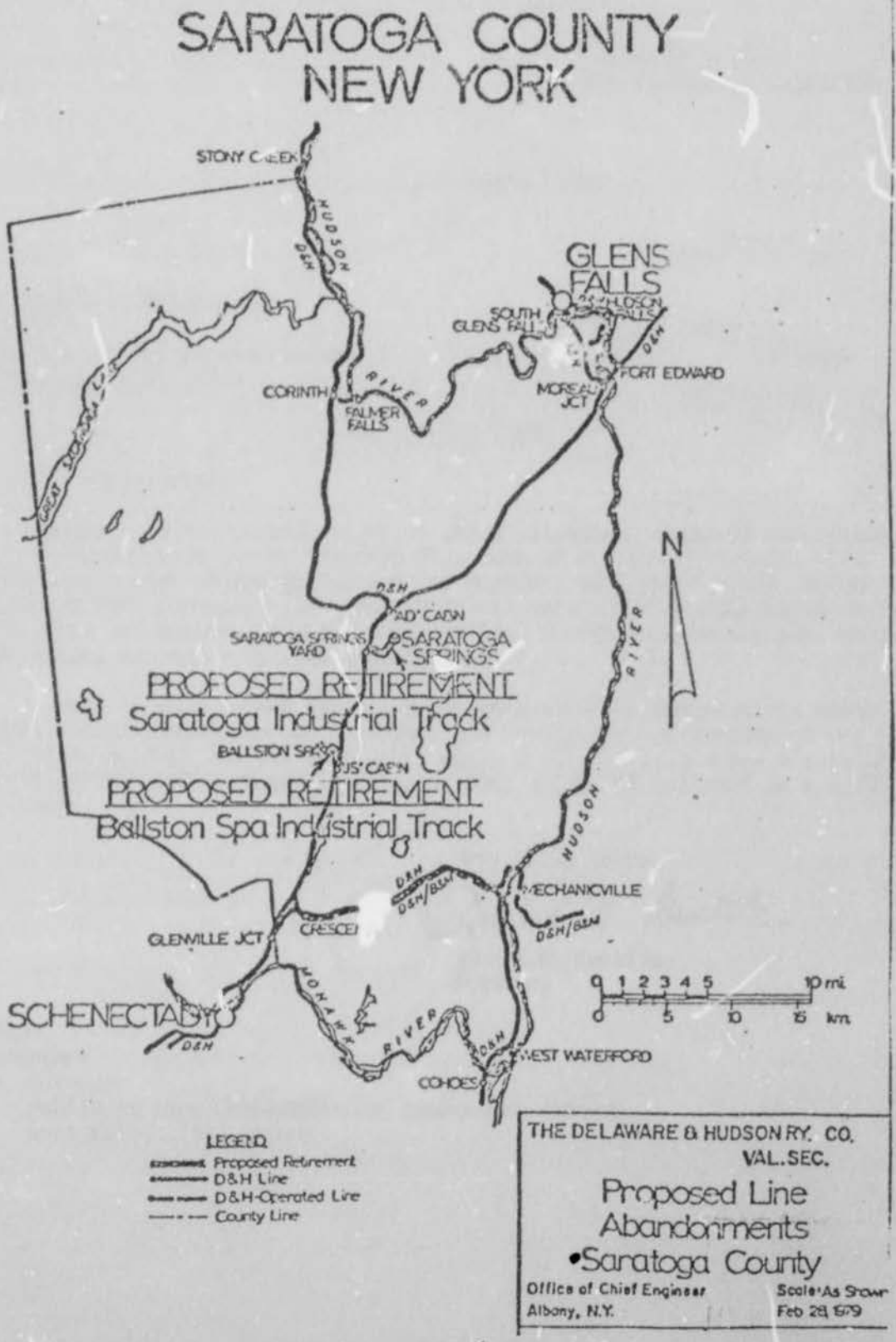
Replies, if any, from these Agencies to informational requests are attached as appendices to this document.

Our analysis has revealed that there may be significant environmental impacts as a result of the proposed action. These impacts are associated with the movement of commodities of excessive weight and size over roads which the Department of Energy (DOE) maintains cannot handle this traffic. In addition, a small percentage of the shipments are radioactive. Insufficent information is on hand through which a concrete determination of any significance can be made. Information pertinent to this determination has been requested and should be made available in the future.

Diversion of traffic, other than those of excessive weight and size, to other rail carriers or other transportation modes is not expected to alter substantially existing transportation systems or patterns, energy consumption, air quality, noise levels, or accident rates.

Based on the foregoing, we recommend an investigation on environmental grounds. It is not anticipated that such investigation will otherwise delay processing of the case under applicable statutory time constraints.

FIGURE 1


SARATOGA COUNTY
NEW YORK
STONY CREEK
HUDSON
D&H
GLENS FALLS
SOUTH GLENS FALLS
FORT EDWARD
CORINTH
RIVER
PALMER FALLS
MOREAU JCT
N
D&H
SARATOGA SPRINGS YARD
SARATOGA SPRINGS
PROPOSED RETIREMENT
Saratoga Industrial Track
BALLSTON SPA
PROPOSED RETIREMENT
Ballston Spa Industrial Track
HUDSON
RIVER
D&H
D&H/BGW
MECHANICVILLE
D&H/BGW
GLENVILLE JCT
CRESCENT
SCHENECTADY
D&H
MOHAWK
RIVER
D&H
WEST WATERFORD
COHOES
0 1 2 3 4 5 10 mi
0 5 10 15 km
LEGEND
Proposed Retirement
D&H Line
D&H-Operated Line
County Line
THE DELAWARE & HUDSON RY. CO.
VAL. SEC.
Proposed Line Abandonments
•Saratoga County
Office of Chief Engineer
Albany, N.Y.
Scale: As Shown
Feb 28, 1979

CE-71

MP

SERVICE DATE

JUN 27 1980

INTERSTATE COMMERCE COMMISSION

DECISION

Docket No. AB-156 (Sub-No. 9F)

DELAWARE AND HUDSON RAILWAY COMPANY -ABANDONMENT-- IN THE TOWNS OF BALLSTON AND MILTON, NY

Decided: June 25, 1980

On May 5, 1980, the Delaware and Hudson Railway Company (D&H) filed an application for a certificate of public convenience and necessity permitting the abandonment of a line of railroad known as the Ballston Spa Industrial Track which extends from milepost A 30.76 (Valuation Station 1626+83) in the Town of Ballston, Saratoga County, NY, to milepost A 31.79 (Valuation Station 1681+20) in the Town of Milton, Saratoga County, NY, constituting a total distance of 5,437 feet or 1.03 miles.

The application is governed by 49 U.S.C. 10903 and by the Commission's Regulations Governing the Abandonment of Railroad Lines and Discontinuance of Service, 49 C.F.R. Part 1121.

Public notice of the abandonment application was served, posted and published by the applicant in accordance with the notice requirements set forth in Section 1121.30 of the Regulations. Subsequently, a petition to investigate the proposed abandonment was filed by the United States Department of Energy (DOE).

In addition, comments have been filed by the Railway Labor Executives' Association (RLEA), Railway Employes' Department (RED), Tufflite Plastics, Inc., and Honorable Walter J. Floss, Jr., Senator, State of NY.

Senator Floss's pleading does not include the required proof of service upon the applicant. I shall, however, allow Senator Floss to be considered a party of record but will not treat his submission as a comment since it does not meet all the requirements. Any future submission by Senator Floss should include the appropriate certificate of service upon the applicant.

On May 30, 1980, the New York State Department of Transportation filed a comment in support of the application.

The environment and energy impacts of this action have been examined and found potentially to be significant. Areas of consideration included, but were noy limited to, energy consumption, air, water and noise pollution, and public safety. Environmental concerns focus on transport of radioactive materials and cargo of excessive weight and size.

The environmental document which addresses these conclusions is available upon request to: Energy and Environment Branch, Room 5377, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 275-7916. Interested persons may comment on this matter by filing their statements in writing on or before the 40th day after the service date of this decision.

Applicant shall publish the above findings and notice of availability in the local newspaper of the affected area and inform (by letter) the Energy and Environment Branch that this has been accomplished within three weeks of the date of service of the decision.

It is ordered:

1. An investigation into the proposed abandonment is instituted.

2. The proposed effective date of the abandonment is postponed pending the investigation.

3. This proceeding will be handled under modified procedure, and the parties must comply with the applicable provisions of Section 1100.43(b), 1100.44(b), and 1100.45-1100.52 inclusive, of the General Rules of Practice except that the original and one copy of any statement made pursuant to Section 1100.51 shall be filed with the Commission.

4. By August 11, 1980, applicant must file verified statements in support of the application. Protestants must file verified statements in opposition to the application by September 10, 1980, and applicant must file verified statements in reply by September 30, 1980.

5. Each statement filed with the Commission shall be cerified to show that a copy has been served on all parties of record (shown in the appendix to this decision).

6. Except when good cause has been shown, preliminary motions and requests for cross-examination of witnesses or for other relief will not be acted upon prior to the date which all verified statements are required to be filed.

By the Commission, Gary J. Edles, Director, Office of Proceedings.

Agatha L. Mergenovich

AGATHA L. MERGENOVICH,
Secretary.

(SEAL)

APPENDIX

Information which should be contained, in addition to all other information deemed relevant by Protestant, in protestant's verified statement:

1. Identification of protestant by name and address.

2. If protestant is a corporation, local or state entity, the name, title or position of officer or official filing protest shall be given.

3. A detailed statement of protestant's interest in the abandonment or discontinuance proceeding, identifying the locations and nature of protestant's business; whether protestant uses the involved service; and if it does not, information with respect to the group or public interest it represents.

4. If protestant is a shipper, detail information with respect to protestant's reliance on the service proposed to be abandoned including rail carload commodity group tonnage shipper or received at any station on the line in each of the last two calendar years and that part of the current year for which such information is available; and, protestant's tonnage shipped or received by other means of transportation including shipments by any alternate rail lines, reasons for shipping by such other means, and the detailed increased cost, if any, of such shipment over the cost of shipment by rail.

5. What other rail lines, if any, are located in the directly affected area. In the best judgment of protestant, what is the relationship of these other lines to the line proposed to be abandoned (i.e., only other line serving area, interchange or connecting line, etc.) The ability of protestant to relocate or make use of such alternate rail line. If rail or non-rail alternatives are not available or suitable, state circumstances in detail.

6. If the protestant is a State or local entity, any local, regional or State-wide developmental plans for the directly affected area should be submitted and explained. Data which demonstrates the effects of the proposed abandonment upon the human environment and rural and community development should be submitted. Such data should include a detailed description of all transportation services (rail, motor, water, air) available to the affected communities including a detailed description of the nature of the operations and the highway network in the proximate area.

7. A narrative summary of reasons for opposing the abandonment.

8. If oral hearing is requested, state specifically what, if any, additional information would be presented.

AB-156 (Sub-No. 9F)
Omer F. Brown. II, Attorney
U.S. Dept of Energy - 1000 Indep. Ave
Wash, DC 20585 S.W.

AB-156 (Sub-No. 9F)
Hon. J. L. Bruno, Chairman*
Standing Com. on Consumer P
State of New York - Senate
Albany NY 12247

AB-156 (Sub-No. 9F)
*Senator Walter J. Floss, Jr.
Legislative Office Bldg. - Rm 905
Albany, NY 12247

AB 156 Sub 9
Kinga M. LaChapelle
40 Beaver St.
Albany, NY 12207

AB-156 (Sub-No. 9F)
Louis Rossi
1220 Washington Avenue, State Campus
Albany, NY 12232

AB-156 (Sub-No. 9F)
Robert W. Schock, President
Tufflite Plastics Inc. - 19 Low St.
Ballston Spa, NY 12020

* NOT A PARTY OF RECORD

APPENDIX

AB-156 Sub 9
Rail Financial & Geg. Asst.
Dept. of Transportation
1220 Washington Ave.
Albany, NY. 12232

AB-156 Sub 9
Dir. Richard J. Schiefelbein
Rail Service Planning Office
1900 L. St N.W. 5th Fl.
Washington, DC. 20036

AB- 156 Sub 9
U.S. Dept. of Interior
Bur. of Outdoor Recreation
Washington, DC. 20240

AB-156 Sub 9

U. S. Geological Survey
1934 Newton Sq. E.
Reston, VA. 22070

AB-156 Sub 9

Howard M. Wilchins
925 L'Enfant Plaza S.W.
Washington, DC. 20595

AB-156 Sub 9
G. Justen Williams
Fed RR. Admin RM. 5415
400 7th St. S.W.
Washington, DC. 20590

* NOT A PARTY OF RECORD

INTERSTATE COMMERCE COMMISSION SERVICE OF PROCESS	SERVICE DATE 6/27/80 DOCKET NO. AB156-9F
TOTAL NUMBER SERVED 9 INITIALS OF CLERK MAKING SERVICE	ADDITIONAL CASES TO BE SERVED

On the above date a copy of the attached

[ ] ENTIRE COMMISSION DECISION (EC) [ ] NOT [ ] INITIAL DECISION (ID)
[ ] ORAL HEARING ASSIGNMENT [ ] DIVISION DECISION (D)
[ ] CERTIFICATE, PERMIT, LICENSE [ ] REVIEW BOARD DECISION (RB)
[✓] MODIFIED PROCEDURE ASSIGNMENT (MP) [ ] OTHER

was sent to the parties listed below and those shown on the attached list or order[1/]

REGIONAL MANAGING DIRECTORS: [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5 [ ] 6

ADDITIONAL INFORMATION

KUNKEL TPTN. SR., INC.
425 13th St., N. W., Rm. 523
Washington, D. C. 20004

title RR-1

Delaware & Hudson Ry. Co.
Kunkel Tptn. Sr., Inc.

1/For certain Modified Procedure and other Orders, the service list may be printed on the reverse of the Order.

CE-77

DELAWARE AND HUDSON RAILWAY COMPANY

ALBANY, NEW YORK 12207

Dependable Transportation Since 1823

KINGA M. LaCHAPELLE
Asst. General Attorney

August 8, 1980

Interstate Commerce Commission
12th and Constitution Avenues
Washington, D. C. 20423

Attention: Mr. Philip Israel
Deputy Director
Section of Finance

FILE IN DOCKET

RE: ABANDONMENT OF BALLSTON SPA INDUSTRIAL SPUR
AB 156 (SUB-NO. 9F)

Dear Sirs:

Enclosed please find original and six copies of the Amendment and Partial Withdrawal of Delaware and Hudson Railway Company's Application to Abandon its Ballston Spa Industrial Spur as filed in the above proceeding.

Copies are being served on all parties of record contemporaneously with this filing.

Very truly yours,

Kinga M. LaChapelle

Kinga M. LaChapelle

Encl.

RECEIVED
INTERSTATE COMMERCE COMMISSION
AUG 11 4 16 PM '80
FINANCE SUPPORT UNIT
OFFICE OF PROCEEDINGS

RECEIVED
INTERSTATE COMMERCE COMMISSION
AUG 14 7 31 AM '80
PROCESS SERVING BRANCH

518-462-7003

CE-78

RECEIVED
OFFICE OF PROCEEDINGS
AUG 11 1980
INTERSTATE COMMERCE
COMMISSION

BEFORE THE

INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO.

FILE IN DOCKET

AB 156 (SUB-NO. 9F)

APPLICATION OF DELAWARE AND HUDSON RAILWAY COMPANY UNDER TITLE 49 U.S.C. §10903 AND 49 C.F.R. 1121.33 FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING THE ABANDONMENT OF ITS BALLSTON SPA INDUSTRIAL TRACK

AMENDMENT AND PARTIAL WITHDRAWAL

RECEIVED
INTERSTATE COMMERCE
COMMISSION
AUG 11 4 16 PM '80
FINANCE SUPPORT
UNIT
OFFICE OF
PROCEEDINGS

Kinga M. LaChapelle
Attorney for Applicant
Delaware and Hudson
Railway Company
40 Beaver Street
Albany, New York 12207

DATED: August 8, 1980

BEFORE THE

INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO.

AB 156 (SUB-NO. 9F)

APPLICATION OF DELAWARE AND HUDSON RAILWAY COMPANY UNDER TITLE 49 U.S.C. §10903 AND 49 C.F.R. 1121.33 FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING THE ABANDONMENT OF ITS BALLSTON SPA INDUSTRIAL TRACK

AMENDMENT AND PARTIAL WITHDRAWAL

On May 1, 1980, Delaware and Hudson Railway Company, the Applicant herein had filed an application for a certificate of convenience and necessity seeking permission to abandon Applicant's Ballston Spa Industrial Track in Saratoga County, New York from a point in the Town of Ballston at Mile Post A 30.76 (Valuation Station 1626+83) to Mile Post A 31.79 (Valuation Station 1681+20) in the Town of Milton, Saratoga County, a total distance of 1.03 miles.

Applicant hereby amends its application with respect to that portion of the line known as the Ballston Spa Industrial Track which extends from MP A 31.32 to MP 31.39 converting it to a summary application.

With respect to abandonment of such portion of the line in question, Applicant believes there are no objections by any party and any objections hitherto registered related substantively exclusively to abandonment of the portion of the line which extends from MP 30.76 to MP 31.32.

Applicant hereby withdraws so much of its application as relates to abandonment of the portion of the line which extends from MP 30.76 to MP 31.32.

In support of its amended application Applicant respectfully shows that:

1. Applicant filed its application to abandon the entire Ballston Spa Industrial Spur on May 1, 1980.

2. On June 27, the Commission issued a decision instituting an investigation into the matter upon the petition of the United States Department of Energy (DOE).

3. Comments were filed in opposition by several persons.

4. Prior to Applicant's filing of the Application and during the entire period up to the present date, Applicant and DOE had been diligently seeking alternate solutions to alleviate the financial burden on Applicant and thereby make abandonment unnecessary.

5. Since the only segment of the line that DOE as well as all other users of the line are actually concerned with is the segment between MP 30.76 and MP 31.32, DOE and Applicant have entered into an agreement which will enable Applicant to continue rail freight service on such portion of the line.

6. Pursuant to said agreement the service on the line shall be maintained in the manner in which it has been hitherto rendered in conformity with Applicant's common carrier obligation.

7. Under the terms of said agreement Applicant agreed to and hereby does withdraw so much of its application to abandon the Ballston Spa Industrial Spur as relates to the segment that extends from MP 30.76 to MP 31.32.

8. Requisite copies of said agreement are being filed with the Commission contemporaneously with this Amendment and Partial withdrawal.

9. With respect to the portion of the line which extends beyond MP 31.32 to MP 31.79, which is the end of the branch, Applicant seeks to amend its application to convert it to a Summary Application based on the understanding that no objections, material or otherwise, exist to abandonment by Applicant of such segment.

10. In the June 27th decision of the Commission, the time by which Applicant was required to file verified statements in support of its application was August 11, 1980. In as much as Applicant withdraws its application in part and amends it in part, Applicant prays that the requirement for such verified statements be waived.

11. If Applicant's understanding is correct and in fact no objections exist to abandonment of the portion tween MP 31.32 and MP 31.79 the decision to investigate as such portion need not be acted upon and applicant requests at it be rescinded.

12. This amendment and partial withdrawal of the application will not significantly affect the environment.

Therefore, Applicant requests that the Commission permit the re-classification of the application filed as a "Summary Application" to abandon a portion of Applicant's Ballston Spa Industrial Spur which extends from MP 31.32 to MP 31.79; Applicant hereby partially withdraws its application

insofar as such application relates to the portion of line which extends from MP 30.76 to MP 31.32.

Respectfully submitted,

Kinga M. LaChapelle

KINGA M. LaCHAPELLE

CERTIFICATE OF SERVICE

I hereby certify that on August 8, 1980, I served a copy of the Amendment and Partial Withdrawal upon the parties listed below.

Gloria M. LaChapelle

Honorable Hugh L. Carey
Governor
State of New York
The State Capitol
Albany, New York 12224

Honorable William C. Hennessy
Commissioner
Department of Transportation
State of New York
1220 Washington Avenue
State Campus, Building 5
Albany, New York 12226

T. A. Geleta, Traffic Specialist
Knolls Atomic Power Laboratory
P. O. Box 1072
Schenectady, New York 12301

Mr. A. Haskell
Traffic Manager
Tufflite Plastics Company
19 Law Street
Ballston Spa, New York 12020

Mr. Robert Shock, President
Tufflite Plastics Company
Ballston Spa, New York 12020

Mr. John Lang, General Manager
Pettit Equipment, Inc.
Saratoga Road, R. D. #1
Ballston Spa, New York 12020

Mr. John E. Psurling, Manager
Ballston Agway, Inc.
Farm & Home Store
R. D. #8
V Corners
Ballston Spa, New York 12020

Laquidara, Inc.
P. O. Box 264
Ballston Spa, New York 12020

Mr. Ken Fischer, President
McNeal Fence Construction Company
P. O. Box 70
Burnt Hills, New York 12027

Ballston Knitting Company
P. O. Box 30
Ballston Spa, New York 12020

Attention: Mr. Walter J. Mooney, Jr.
President

Mr. Edward J. Hickey, Jr.
Mulholland, Fisher & Hickey
1125-15th Street, N.W.
Suite 400
Washington, D.C. 20005

Richard C. Focht
Chief Counsel
Department of Energy
P. O. Box 1069
Schenectady, New York 12301

Dir. Richard J. Schiefelbein
Rail Services Planning Office
1900 L. Street, N.W. 5th Floor
Washington, D. C. 20036

Mr. Lawrence Gordon
Municipal Center
Ballston Spa, New York 12020

Mr. Stephen Boggess
905 Legislative Building
Albany, New York 12247

Mr. Alan Handwerker
U. S. Department of Energy
Box 1069
Schenectady, New York 12301

Mr. Peter Van Allen
G. E. Knolls Atomic Power Laboratory
Box 1072
Schenectady, New York 12301

Mr. Joseph R. Simone
Greater Saratoga Chamber of Commerce
Broadway
Saratoga Springs, N. Y. 12866

Mr. John Anderson
N. Y. S. DOT Region 1
84 Holland Avenue
Albany, New York

Assemblyman Robert D'Andrea
108th Assembly District, Room 325
Legislative Office Building
Albany, New York 12248

Mr. Joe D'Andrea
c/o Congressman Gerald B. Solomon
Gaslight Square
Saratoga, New York

Omer F. Brown, II
Attorney
Office of the General Counsel
U. S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D. C. 20585

Senator Walter J. Floss, Jr.
Legislative Office Bldg., Room 905
Albany, N. Y. 12247

Louis Rossi
1220 Washington Avenue, State Campus
Albany, New York 12232

Rail Financial & Geg. Asst.
Dept. of Transportation
1220 Washington Avenue
Albany, New York 12232

U. S. Dept. of Interior
Bur. of Outdoor Recreation
Washington, D. C. 20240

U. S. Geological Survey
1934 Newton Sq. E
Reston, Va. 22070

Howard M. Wilchins
925 L'Enfant Plaza, S.W.
Washington, D. C. 20595

G. Justen Williams
Fed. RR Admin. Rm 5415
400 7th St., S.W.
Washington, D. C. 20590

Hon. J. L. Bruno, Chairman
Standing Com. on Consumer Protection
State of New York - Senate
Albany, New York 12247

VERIFICATION

State of New York)
) ss.
County of Albany)

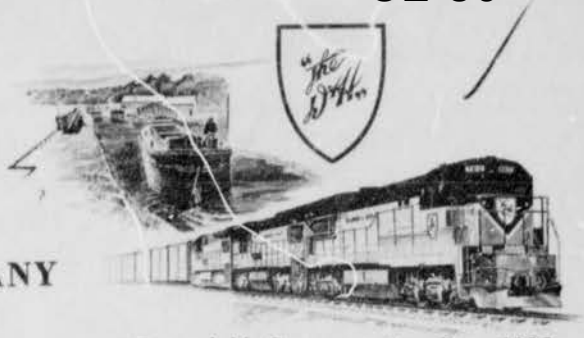
William W. Colline makes oath and says that he is Vice President-Administration and Strategic Planning of the Delaware and Hudson Railway Company, applicant herein; that he has been authorized by the applicant to verify and file with the Interstate Commerce Commission the foregoing Amendment and Partial Withdrawal in AB 156 (Sub-No. 9F); that he has carefully examined all of the statements in the application; that he has knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of his knowledge, information and belief.

Subscribed and sworn to before me
in and for the State and County above named, this
eighth day of August, 1980.

Notary Public
State of New York

STEPHEN LAMALFA
Notary Public in the State of New York
Commission Expires March 30, 19[illegible]

CE-89



DELAWARE AND HUDSON RAILWAY COMPANY

ALBANY, NEW YORK 12207

Dependable Transportation Since 1823

KINGA M. LaCHAPELLE
Asst. General Attorney

August 8, 1980

RECEIVED INTERSTATE COMMERCE COMMISSION
AUG 11 4 17 PM '80
FINANCE SUPERVISOR UNIT OFFICE OF PROCEEDINGS

Interstate Commerce Commission
12th and Constitution Avenues
Washington, D. C. 20423

Attention: Mr. Philip Israel
Deputy Director
Section of Finance

FILE IN DOCKET

RE: ABANDONMENT OF BALLSTON SPA INDUSTRIAL SPUR
AB 156 (SUB-No. 9F)

DELAWARE AND HUDSON RAILWAY COMPANY - UNITED STATES DEPARTMENT OF ENERGY RAIL SERVICE CONTINUATION AGREEMENT

Sirs:

Enclosed please find six copies of the above agreement in conformity with paragraph 8 of Delaware and Hudson's Amendment and Partial Withdrawal application.

Very truly yours,

Kinga M. LaChapelle

Kinga M. LaChapelle

Encl.

518-462-7003

AB 156 Sub 9

FILE IN DOCKET

CE-90

RAIL SERVICE AGREEMENT

This agreement made and entered this 7th day of August, 1980 by and between

The UNITED STATES DEPARTMENT OF ENERGY acting by and through its Schenectady Naval Reactors Office, hereafter referred to as "DOE" with offices at Knolls Atomic Power Laboratory, River Road, Schenectady, New York 12301

and

The DELAWARE AND HUDSON RAILWAY COMPANY, hereafter referred to as "RAILROAD", a Delaware Corporation with its principal offices at 40 Beaver Street, Albany, New York 12207

RECEIVED INTERSTATE COMMERCE COMMISSION AUG 11 4 17 PM '80 FINANCE DIVISION OFFICE OF PROCEEDINGS

WITNESSETH THAT:

WHEREAS, DOE has operated for 25 years and continues to operate a facility currently valued at three quarters of a billion dollars in West Milton, New York known as the Kenneth A. Kesselring Site (KAK); and

WHEREAS, one of the major purposes of the KAK Site is to serve as a development and test site for various naval nuclear reactor prototypes; and

WHEREAS, the operation of the KAK Site requires periodic shipments of extremely large and heavy loads of nuclear reactor equipment which due to their extreme size and weight must be shipped by rail; and

WHEREAS, DOE has been using RAILROAD'S team loading/unloading facility located at Milepost A 31.32 on RAILROAD'S line known as the Ballston Spa Industrial Track for approximately 26 years, which facility is .55 miles from the connection of said track with RAILROAD'S main line; and

WHEREAS, the Ballston Spa Industrial Track team loading/unloading facility is, in the opinion of DOE, the sole and exclusive area from which the

large and heavy reactor equipment loads can be transported by truck to and from the Kesselring Site; and

WHEREAS, the RAILROAD has on or about May 1, 1980 filed with the Interstate Commerce Commission (ICC) an Application, #AB156 SUB NO. 9F entitled: "Application Of Delaware And Hudson Railway Company Under Title 49 U.S.C. §10903 and 49 C.F.R. 1121.33 For A Certificate Of Public Convenience And Necessity Authorizing The Abandonment Of Its Ballston Spa Industrial Track", due to financial losses suffered on said Industrial Track during the past two years; and

WHEREAS, such application encompasses RAILROAD'S operation over the entire Ballston Spa Industrial Track, but DOE's needs only extend to receiving railroad carrier service over the first .55 miles of such track; and

WHEREAS, DOE wishes to avoid abandonment of the Truncated Ballston Industrial Spur and therefore has taken steps to enable rail freight service to be continued thereon; and

WHEREAS, this agreement is authorized by and has been negotiated under P.L. 95-91 and other applicable laws in the interest of common defense and security,

NOW THEREFORE, in consideration of the mutual convenants and the compensation herein enumerated, the parties hereto agree as follows:

ARTICLE ONE

DEFINITIONS - The following words and phrases shall have the following meanings ascribed to them unless the context clearly determines otherwise: "Maintenance" means the normal and regular work, in conformance with the ICC accounting definition of maintenance, required to keep a rail facility in the condition necessary to continuously perform the level of rail freight

service required by this agreement.

"Ballston Spa Industrial Track" means that portion of the D & H line marked on the map submitted as Appendix "A". Said track runs from a point in the Town of Ballston at Milepost A 30.76 to Milepost A 31.79 in the Town of Milton, Saratoga County, a total distance of 1.03 miles.

"Truncated Ballston Industrial Spur" means that portion of Ballston Spa Industrial Track that extends from Milepost A 30.76 to the Tufflite Plastics Company Warehouse at Milepost A 31.32 as identified in the attached Appendix "A".

"Rehabilitation" means the work required in addition to maintenance, including capital improvements, to improve or upgrade the condition of the Truncated Ballston Industrial Spur up to Class I Track Standards as provided under 49 C.F.R. 213.

"FRA Class I" means that level of track safety as defined by the ICC in 49 C.F.R. 213 et. seq.

"DOE" or "Department" means the United States Department of Energy or any duly authorized representative thereof, including the Contracting Officer

"Contracting Officer" means the person executing this contract on behalf of the Government and includes his successor or any duly authorized representative of any such person.

"Cost of Providing Service" shall mean and include all costs of providing service as are defined and included in the Rail Service Planning Office (RSPO) Standards as reimbursable.

"Rail Facility and Rail Facilities" collectively means track, bridges, signals, switches, structures and related railroad transportation property located on the line over which rail freight service is to be provided pursuant to this agreement as identified in Appendix "A" hereof.

"Rail Freight Service" means the service to be hereafter provided and which is comparable to that which has been provided in the past to all customers desiring to receive such at the team facility.

"Agreement Year" shall mean the twelve month period beginning with the effective date hereof or any subsequent year for which DOE exercises its renewal option.

"Operating Losses" shall mean the excess of attributable costs of providing service over revenues.

"Extra Revenues" or "Net Income" shall include such revenues as are in excess of the costs of providing service.

ARTICLE TWO

SERVICE, MAINTENANCE, MANAGEMENT AND CONTROL

Section 201. RAILROAD shall continue to provide DOE, during the term of this agreement, with public rail freight service on the Truncated Ballston Industrial Spur up to the RAILROAD'S team loading/unloading facility located at Milepost A 31.32. Such rail freight service includes carriage of all shipments into and out of said team facility as required by DOE and in accordance with the RAILROAD'S common carrier obligations.

Section 202. RAILROAD shall be responsible, at its own expense, for providing all maintenance on the Truncated Ballston Industrial Spur and shall continue to maintain said track at the level at or exceeding FRA Class I Standards.

Section 203. RAILROAD shall have exclusive authority to promulgate and adopt rules and regulations for the operation of the rail freight service consistent with any applicable Federal, State and Local Laws and/or regulations.

Section 204. RAILROAD shall be responsible for requesting safety waivers, or transfers of such waivers at any time when FRA Class I Safety Standards

are not met.

Section 205. Nothing in this agreement in any way effects or alters RAILROAD'S responsibility to provide rail freight service to the General Public on the Truncated Ballston Industrial Spur.

ARTICLE THREE

REHABILITATION

Section 301. RAILROAD agrees to perform, in accordance with the work schedules submitted by RAILROAD pursuant to Section 302, all rehabilitation work contained in its Rehabilitation Plan, incorporated herein as Appendix "B".

Section 302. Within ten (10) days after the effective date of this agreement, RAILROAD agrees to submit detailed work schedules which set forth the times when rehabilitation work will be commenced and completed.

Section 303. Payment for the rehabilitation will be made by DOE to RAILROAD upon presentation of detailed bills therefor in accordance with RAILROAD Rehabilitation Plan and Article Five of this agreement.

ARTICLE FOUR

PAYMENT FOR OPERATING LOSSES

Section 401. If RAILROAD incurs any operating losses as a result of its continued operation of the Truncated Ballston Industrial Spur during any agreement year, DOE agrees to reimburse the RAILROAD for such losses in an amount up to but not to exceed $6,000 per agreement year.

Section 402. In order to support any operating losses claimed under Section 401 RAILROAD agrees to provide DOE quarterly financial reports as required by 49 C.F.R. 1121.47.

Section 403. Payment of any operating loss incurred by RAILROAD on the Truncated Ballston Industrial Spur will be made at the end of any given

agreement year and only when supported by Reports sufficient under ICC regulations to evidence such loss.

ARTICLE FIVE

PAYMENT FOR REHABILITATION

Section 501. DOE will pay RAILROAD, upon presentation of good and proper invoices, for work done pursuant to RAILROADS' rehabilitation plan, (Appendix "B") rehabilitation expenses up to but not to exceed $45,000 during the first agreement year of this agreement.

Section 502. If the ceiling amount of $45,000 is not expended during the first agreement year, and if DOE exercises its option to renew this agreement, any unused money can be used for rehabilitation during any subsequent agreement year. In no event shall the total amount of reimbursable rehabilitation expenses for the agreement years within a period of five calendar years of the effective date of this agreement exceed $45,000 unless agreed to in writing by the parties.

Section 503. Payment for rehabilitation expenditures made pursuant to RAILROADS' rehabilitation plan will be made within thirty (30) days from the date of presentation of the invoices required by Section 501 of this agreement.

ARTICLE SIX

CONTRACT TERM, RENEWAL OPTION AND RENEGOTIATION

Section 601. Term. This agreement shall be in effect for one (1) full year from the effective date hereof as determined by Article Nineteen below.

Section 602. Renewal Option. DOE retains the option to renew this agreement on a year to year basis at the rates and Terms and Conditions contained herein. DOE shall notify RAILROAD by certified mail at least forty-five days in advance of the beginning of the second year, and each successive year thereafter for which renewal is sought, that DOE wishes to continue the agreement for one additional year.

Section 603. Renegotiation. Thirty (30) days after written notice by either party, this agreement may be opened for renegotiation but rail service shall continue and allocable payments accrue under the terms of this agreement. The effective date of contract modifications shall be mutually agreed to, but shall be no sooner than the first practical date by which RAILROAD can adjust its accounting records.

ARTICLE SEVEN

SUSPENSION OF ABANDONMENT APPLICATION. As a condition of this agreement, RAILROAD agrees to withdraw its abandonment application #AB156 SUB NO. 9F, or in the alternative agrees to withdraw its abandonment application for the portion of the line between the main line and Milepost A 31.32, during the time that this agreement remains in effect. This article in no way affects RAILROADS' right to petition the ICC for abandonment of its Ballston Spa Spur past the Tufflite Plastic Company Warehouse (Milepost A 31.32).

ARTICLE EIGHT

Section 801. Liability. When any loss, damage, destruction, injury or death occurs and results in a claim against the RAILROAD and/or the DOE, wherein a ground for the claim being asserted against DOE is DOE's contractual arrangement under this agreement, RAILROAD hereby agrees to defend, indemnify, and hold the DOE harmless from any such loss or liability including all related costs and counsel fees.

Section 802. RAILROAD agrees that its relationship with DOE under this agreement is as a Common Carrier and independent contractor.

ARTICLE NINE

Section 901. RAILROAD agrees that all rates and tariffs currently in effect will continue during the term of this agreement except that nothing contained herein shall prevent RAILROAD from seeking general or specific rate

increases or to take any other allowable steps RAILROAD deems appropriate to make the traffic handled by RAILROAD over the line compensatory.

ARTICLE TEN

AUDIT AND RECORDS AND INSPECTIONS

Section 1001. Accounting Reports - Record Keeping. RAILROAD will allow auditors of the DOE, Defense Contract Audit Agency, or of any government agency having jurisdiction over RAILROAD to audit all the records of the RAILROAD that were used to determine the revenue and costs related to this agreement. RAILROAD will also allow inspection of the rail facilities and the equipment used thereon by the authorized agents of the DOE or its representative upon reasonable notice.

ARTICLE ELEVEN

REPRESENTATION AND WARRANTIES

(a) RAILROAD represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and is duly authorized to do business in the State of New York;

(b) RAILROAD has the full power and authority to enter into this agreement and to carry out the functions which it has undertaken in this agreement;

(c) All corporate and other proceedings required to be taken by or on the part of RAILROAD to authorize RAILROAD to enter into this agreement and perform the rail freight service have been duly taken; and

(d) The execution of this agreement and the operation of the rail freight service will not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or government body.

(e) The Contracting Officer executing this agreement for DOE warrants that

he has authority to enter into contracts committing the DOE to the expenditure of public funds pursuant to applicable laws, policies and regulations, in amounts not to exceed $25,000,000.

ARTICLE TWELVE

Section 1201. Entire Agreement. This agreement and the Appendix A & B annexed hereto contain the entire agreement of the parties and supersedes any and all prior agreements or oral understandings between the parties.

Section 1202. Amendment. No term or provision of this agreement may be changed or amended unless signed by the RAILROAD and the DOE.

Section 1203. Notices. Any notice required under this agreement may be sent to the parties at the addresses set forth below:

DOE - Manager
U.S. Dept. of Energy
P.O. Box 1069
Schenectady, NY 12301

RAILROAD - General Manager
Delaware and Hudson Railway Company
40 Beaver Street
Albany, NY 12207

ARTICLE THIRTEEN

EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

(a) RAILROAD agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under this contract, unless the DOE authorizes their prior disposition, have access to and the right to examine any directly pertinent books, documents, papers, and records of the RAILROAD involving transactions related to this contract.

(b) RAILROAD further agrees to include in all the contracts in conjunction with this contract a provision to the effect that the Contractor thereunder agrees that the Comptroller General of the United States or any of his duly authorized

representatives shall, until the expiration of 3 years after final payment under said contract, unless the DOE authorizes their prior disposition, have access to and the right to examine any directly pertinent books, documents, papers, and records of Contractor thereunder, involving transactions related to the said contract. The term "contract" as used in this clause excludes (1) purchase orders not exceeding $10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(c) The periods of access and examination described in (a) and (b) above, for records which relates to litigation or the settlement of claims arising out of the performance of this contract, or costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

(d) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

ARTICLE FOURTEEN

OFFICIALS NOT BE BENEFIT

No member of or delegate to Congress or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

ARTICLE FIFTEEN

COVENENT AGAINST CONTINGENT FEES

The RAILROAD warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide

employees or bona fide established commercial or selling agencies maintained by the RAILROAD for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE SIXTEEN

PERMITS AND LICENSES

Except as otherwise directed by the Contracting Officer, the RAILROAD shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory and political subdivision in which the work of this contract is performed.

ARTICLE SEVENTEEN

ASSIGNMENT OF AGREEMENT

RAILROAD agrees not to assign, transfer, convey, sublet or otherwise dispose of this agreement or any part thereof, or of RAILROAD'S right, title or interest therein or its power to execute such agreement without the prior written consent of DOE.

ARTICLE EIGHTEEN

CONVICT LABOR

In connection with the performance of the work under this Order, RAILROAD agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2)) and Executive Order 11755, December 29, 1973.

ARTICLE NINETEEN

Effective Date. This agreement is effective this 11th day of August , 1980.

In Witness Whereof the parties hereto have caused this agree-

ment to be executed and attested by their duly authorized officers on the date and year first above written.

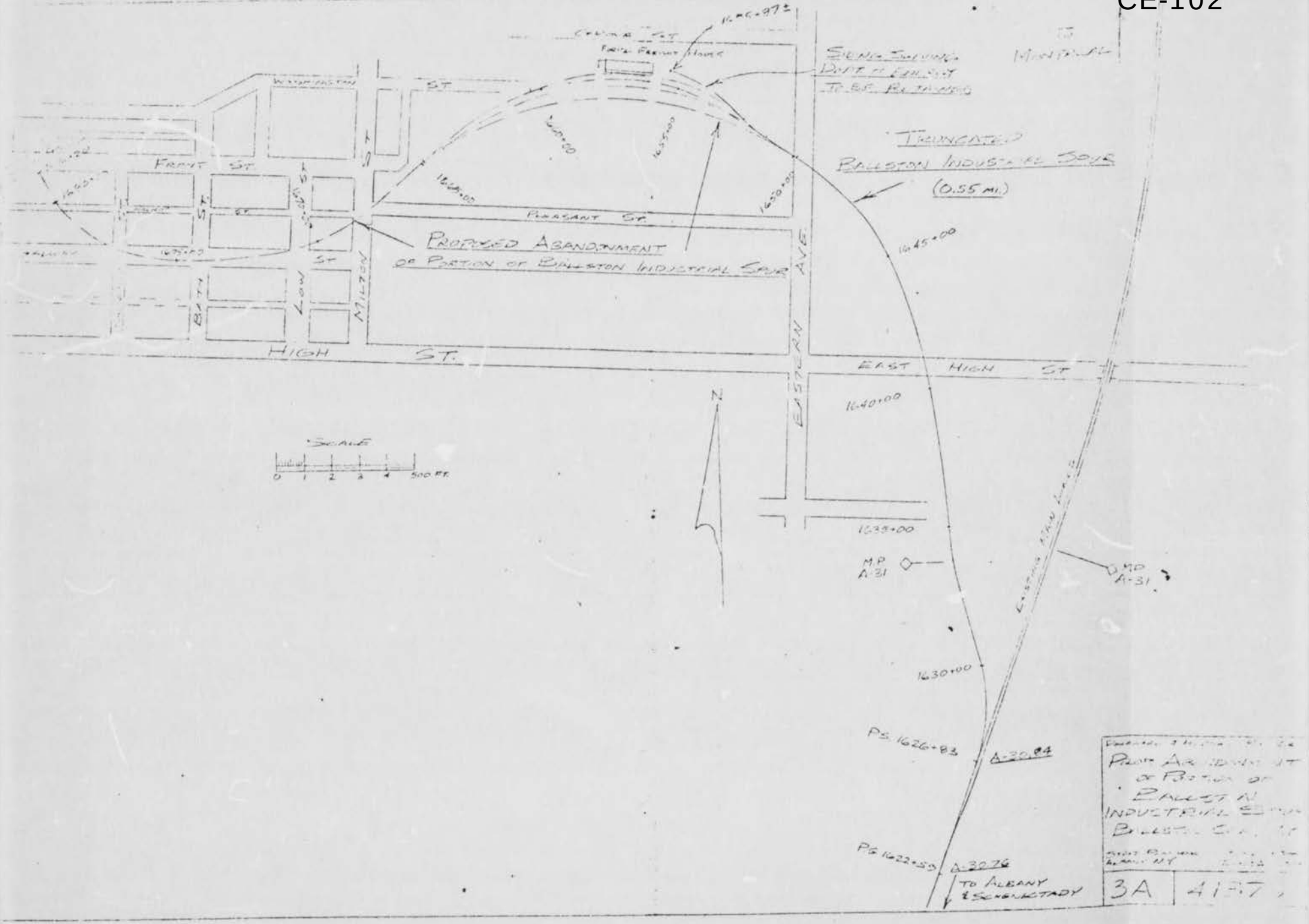
UNITED STATE DEPARTMENT OF ENERGY

Barry M. Erickson
Manager
Schenectady Naval Reactors Office

DELAWARE AND HUDSON RAILWAY COMPANY

ATTEST:

CE-102


WASHINGTON ST
FRUIT ST
LOW ST
BATH ST
HILTON ST
PLEASANT ST
HIGH ST.
EASTERN AVE
EAST HIGH ST
PROPOSED ABANDONMENT
OF PORTION OF BALLSTON INDUSTRIAL SPUR
TRUNCATED
BALLSTON INDUSTRIAL SPUR
(0.55 MI.)
SIGNAL SHOWING
DIST TO EXISTING
TO BE RELOCATED
1645+00
1640+00
1635+00
1630+00
1625+00
1620+00
M.P. A-31
PS 1626+83
A-30.04
PS 1622+50
A-30.76
TO ALBANY & SCHENECTADY
N
SCALE
0 1 2 3 4 500 FT.
PROPOSED ABANDONMENT OF PORTION OF BALLSTON INDUSTRIAL SPUR
3A
41-57

APPENDIX B

REHABILITATION PLAN FOR TRUNCATED BALLSTON INDUSTRIAL SPUR

RAILROAD intends to rehabilitate said Industrial Spur to FRA Class I Standards pursuant to its Rail Service Agreement with DOE of which this Rehabilitation Plan is a part. RAILROAD estimates that the materials and labor listed below will be required for the rehabilitation of said Industrial Spur (including the two grade crossings that are a part thereof) and these estimates constitute the RAILROAD'S Rehabilitat[illegible]an.

1. Renew Ties & Surface Point Switch to Freight House

400	ea.	Cross Ties	@	15.65	=	6260
225	ea.	90# Tie Plates	@	2.50	=	563
1600	ea.	Track Spikes	@	.20	=	320
150	ea.	N.T. Ballast	@	3.60	=	540
		Total Material				$ 7683.00

Labor:

Install Cross Ties	400	@	1.75 MH	=	700
Surface Track		@	.3 MH	=	276
	976 MH	@	15.00	=	$14,640.00

Total Labor	-	$14,640.00
Total Material	-	7,683.00
		$22,323.00

APPENDIX B - Cont'd.

2. Rebuild Eastern Ave. Grade Crossing

Material:

2.7	GT	115# Rail	@	367.00	GT	=	991
4	PR	115#/90# Comp. Jcs.	@	192.00	PR	=	768
50	EA	Cross Ties	@	15.65	EA	=	783
100	EA	115# Lundie Tie Plates	@	2.85	EA	=	285
200	EA	Track Spikes	@	.20	EA	=	40
180	LF	Switch Timber	@	1.80		=	324
110	EA	12" Lag Spikes	@	.25		=	32
94	SY	Filter Fabric	@	2.40		=	226
90	NT	Ballast	@	3.60		=	324
17	NT	Asphalt in place	@	30.00		=	1360
		Total Material					$ 5133.00

Labor:

Remove and Build Track	78'	@	4	MH	=	312
Build Crossing	45'	@	3.5	MH	=	158
						470

470 MH @ $15.00 = 7050

Total: $ 5133.00
7050.00

$12183.00

APPENDIX B - Cont'd.

3. Rebuild E. High Street Grade Crossing

Material:

2.7	GT	115# Rail	@	367.00	=	991
4	PR	115#/90# Comp. Jts.	@	192.00	=	768
43	EA	Cross Ties	@	15.65	=	673
86	EA	115# Lundie Tie Plates	@	2.85	=	245
175	EA	Track Spikes	@	.20	=	35
120	LF	Switch Timber	@	1.80	=	216
72	EA	12" Lag Spikes	@	.29	=	21
65	NT	Ballast	@	3.60	=	234
72	SY	Filter Fabric	@	2.40	=	173
11	NT	Asphalt in place	@	80.00	=	880
		Total Material				$4326.00

Labor:

Remove and Build Track	78'	@	4 MH	=	312
Building Crossing	30'	@	3.5 MH	=	105
					417

417 MH @ $15.00 = $6255

Total: $ 4,236.00
6,255.00

$ 10,491.00

SUMMARY

High Street Grade Crossing	=	$ 10,491.00
Eastern Ave. Grade Crossing	=	12,183.00
Point Switch to Freight House	=	22,323.00
Grand Total		$ 44,997.00

CE-106

GENERAL ELECTRIC

KNOLLS ATOMIC

POWER LABORATORY

GENERAL ELECTRIC COMPANY, BOX 1072, SCHENECTADY, NEW YORK 12301
Phone (518) 393-6611, TWX 710-442-2979

INTERSTATE
COMMERCE COMMISSION
RECEIVED
AUG 20 1980
4
ADMINISTRATIVE SERVICES
MAIL UNIT

August 18, 1980

Honorable Agatha L. Mergenovich
Secretary, Interstate Commerce Commission
Washington, D. C. 20423

FILE IN DOCKET

Re: Delaware and Hudson Railway Company
Abandonment of Ballston Spa Industrial Spur AB 156 (SUB-NO. 9F)

Dear Ms. Mergenovich:

It is my understanding that the proposed abandonment referenced above has been modified by D&H. I wish to advise you that General Electric Company, Knolls Atomic Power Laboratory, has no objection to abandonment of the segment of the line which extends from MP 31.32 to MP 31.79.

Very truly yours,

Peter R. Van Allen

Peter R. Van Allen
Counsel

PVA/ss

cc: Kinga M. LaChapelle, Esq.
Delaware and Hudson Railway Company
Albany, New York 12207

RECEIVED
INTERSTATE COMMERCE
COMMISSION
AUG 22 10 56 AM '80
INTERSTATE COMMERCE SUPPORT
CORRESPONDENCE UNIT
OFFICE OF
COMMISSION PROCEEDINGS

CE-107

SERVICE DATE
OCT 15 1980

RB#5

INTERSTATE COMMERCE COMMISSION

CERTIFICATE AND DECISION

AB-156 (Sub-No. 9F)

DELAWARE AND HUDSON RAILWAY COMPANY--ABANDONMENT--IN THE TOWNS OF BALLSTON AND MILTON, NY

Decided: September 30, 1980

On May 5, 1980, the Delaware and Hudson Railway Company (D&H) filed an application for a certificate of public convenience and necessity permitting the abandonment of a line of railroad known as the Ballston Spa Industrial Track which extends from milepost A 30.76 (Valuation Station 1626+83) in the Town of Ballston, Saratoga County, NY, to milepost A 31.79 (Valuation Station 1681+20) in the Town of Milton, Saratoga County, NY, constituting a total distance of 5,437 feet or 1.03 miles.

A petition to investigate was filed by the United States Department of Energy (DOE) and a comment was filed by Tufflite Plastics, Inc. in opposition. The New York State Department of Transportation filed a comment in support of the application. Comments were also filed by certain labor organizations.

On June 27, 1980, the Commission issued a decision instituting an investigation into the proposed abandonment on environmental grounds.

On August 11, 1980, D&H filed an amendment to its application requesting abandonment only with respect to that portion of the line known as the Ballston Spa Industrial Track which extends from milepost A 31.32 to milepost 31.79 and request withdrawal to abandonment of the portion of the line which extends from milepost 30.76 to milepost 31.32.

Since the only segment of the line that DOE as well as all other users of the line are actually concerned with, is the segment between milepost 30.76 and milepost 31.32, DOE and D&H have entered into an agreement which will enable D&H to continue rail freight service on such portion of the line. Under the terms of said agreement D&H agreed to and hereby does withdraw so much of its application to abandon the Ballston Spa Industrial spur as related to the segment that extends from milepost 30.76 to milepost 31.32.

By letter dated August 8 and 12, 1980, respectively, DOE and Tufflite indicated that they had no objection to the abandonment application as so amended and therefore withdraw their opposition. Accordingly, the amended application may be processed on an uncontested basis. The remaining portion of the proposed abandonment will be dismissed.

Since operations of the line in question results in a loss to applicant and there are no users who desire continued service, the abandonment should be granted.

The record contains no evidence that the amended abandonment will have a serious adverse impact on rural and community development; that the properties are suitable for other public purposes; or that the abandonment will have an adverse environmental impact.

Therefore, we find:

1. Abandonment of said line will not result in a serious adverse impact on the rural and community development of Saratoga County, NY.

2. The property is not suitable for other public purposes.

3. This action will not significantly affect the quality of the human environment or conservation of energy resources.

It is certified: The present and future public convenience and necessity permits the abandonment by D&H of its line of railroad known as the Ballston Spa Industrial Track which extends from milepost A 31.32 to milepost 31.79, subject to the conditions for the protection of employees discussed in Oregon Short Line R. Co.-Abandonment Goshen, 360 I.C.C. 91 (1979).

It is ordered:

1. The remaining portion of the abandonment which extends from milepost 30.76 to milepost 31.32 is dismissed.

2 The decision of the Commission, Gary J. Edles, Director, served June 27, 1980, is vacated.

3. In the absence of continuing non-labor opposition, we waive the requirements of Section 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final, and notice of our findings may be submitted for publication in the Federal Register immediately. Also, within 10 days after receiving an appropriate filed notice that an offer of financial assistance is being considered, applicant shall comply with informational requirements of Section 1121.38(a) of the Regulations.

4. All correspondence to the Commission with respect to offers of financial assistance for the continued operation or acquisition of the subject line shall contain an appropriate reference to this proceeding, and the following notation shall be typed in boldface on the lower left hand corner of envelopes containing such correspondence: "Section of Finance, AB-RSCP".

5. Subject to the conditions as set forth above and provided no offer for continued rail operations is received, actual abandonment may be effected by D&H after the effective date of this certificate and decision.

6. In the event abandonment is effected, tariffs applicable to the line herein may be canceled upon not less than 10 days' notice to this Commission under Section 6 of the Act, and when filing schedules cancelling tariffs applicable to that line, D&H shall refer to this certificate and decision by date and docket number.

7. If the authority granted by this certificate and decision is exercised, D&H shall submit two copies of the journal entries showing the retirement of the line from service, and shall advise this Commission in writing, immediately after abandonment of the line of railroad, of the date on which the abandonment actually took place.

8. If the authority granted in this certificate and decision is not exercised within one year from its effective date, it shall be of no further force and effect.

9. This certificate and decision shall be effective 45 days after the date of publication of notice in the Federal Register unless otherwise ordered by this Commission.

By the Commission, Review Board Number 5, Members Krock, Taylor, and Williams (Board Member Taylor did not participate)

Agatha L. Mergenovich

AGATHA L. MERGENOVICH,
Secretary.

(SEAL)

CE-110

INTERSTATE COMMERCE COMMISSION SERVICE OF PROCESS	SERVICE DATE OCT 15 1980
	DOCKET NO. AB-156-9F
TOTAL NUMBER SERVED 14	ADDITIONAL CASES TO BE SERVED
INITIALS OF CLERK MAKING SERVICE Ta	

On the above date a copy of the attached

[ ] ENTIRE COMMISSION DECISION (EC) [ ] NOTICE [ ] INITIAL DECISION (ID)
[ ] ORAL HEARING ASSIGNMENT [ ] DIVISION DECISION (D)
[ ] CERTIFICATE, PERMIT, LICENSE [✓] REVIEW BOARD DECISION (RB)
[ ] MODIFIED PROCEDURE ASSIGNMENT (MP) [ ] OTHER

was sent to the parties listed below and those shown on the attached list or order[1/]

REGIONAL MANAGING DIRECTORS: [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5 [ ] 6

ADDITIONAL INFORMATION

Title RR-1

Delware & Hudson RR. Co.
Kunkel Tptn. Service, Inc.
425-13th St., NW Rm-523
Washington, DC 20004

1/For certain Modified Procedure and other Orders, the service list may be printed on the reverse of the Order.

ICC-1042 (3/80)

CE-111

AB-156 (Sub-No. 9F)
Louis Rossi
1220 Washington Avenue, State Campus
Albany, NY 12232

AB-156 Sub 9
Dir. Richard J. Schiefelbein
Rail Service Planning Office
1900 L. St. N.W. 5th Fl.
Washington DC. 20036

AB-156 (Sub-No. 9F)
Robert W. Schock, President
Tufflite Plastics Inc. - 19 Low St.
Ballston Spa, NY 12020

AB-156 Sub 9

U.S. Dept. of Interior
Bur. of Outdoor Recreation
Washington, DC. 20240

AB-156 Sub 9
U.S. Geological Survey
1934 Newton Sq. E.
Reston, VA. 22070

AB-156 Sub 9

Howard M. Wilchins
925 L'Enfant Plaza S.W.
Washington, DC. 20595

AB-156 Sub 9
G. Justen Williams
Fed RR. Admin Rm. 5415
400 7th St. S.W.
Washington, DC. 20590

AB-156 Sub 9F
Omer F. Brown, II
1000 Independence Ave., S. W.
Washington, D. C. 20585

AB-156(Sub-No. 9F)
hon. . . L. Bruno, Chairman*
Standing Com. on Consumer P
State of New York - Senate
Albany, NY 12247

AB-156 Sub 9F
Joseph DiStefano
1000 Independence Ave., S. W.
Washington, D. C. 20585

AB-156 (Sub-No. 9F)
*Senator Walter J. Floss, jr.
Legislative Office Bldg. - Rm 905
Albany, NY 12247

AB-156 Sub 9F
Alan I. Handwerker
1000 Independence Ave., S. W.
Washington, D. C. 20585

AB 156 Sub 9
Kinga M. LaChapelle
40 Beaver St.
Albany, NY 12207

AB-156 Sub 9
Rail Financial & Reg. Asst.
Dept. of Transportation
1220 Washington Ave.
Albany, NY. 12232

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