



**BOSTON & MAINE CORPORATION
MAINE CENTRAL RAILROAD COMPANY
SPRINGFIELD TERMINAL RAILWAY COMPANY**

IRON HORSE PARK
NO. BILLERICA, MASS. 01862

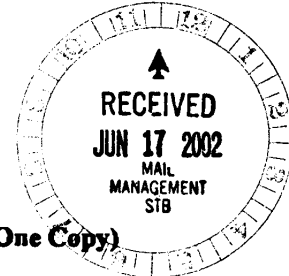
**LAW DEPARTMENT
(978) 663-1029**

205638

June 17, 2002

Vernon A. Williams
Secretary
United States Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

**By Fax: (202) 565-9004 (One Copy)
and Federal Express**



**Re: STB Finance Docket No. 33697, National Railroad Passenger Corporation—
Petition for Declaratory Order—Weight of Rail**

Dear Secretary Williams:

Enclosed for filing please find an original and ten (10) copies of the *Reply of the Boston and Maine Corporation, the Springfield Terminal Railway Company and the Portland Terminal Company to the National Railroad Passenger Corporation's Motion for Extension of Time.*

Thank you for your attention to this matter. Please feel free to contact me if you should have any questions or comments.

Sincerely,

Robert B. Culliford
Corporate Counsel

cc: Service List

**ENTERED
Office of the Secretary**

JUN 17 2002

Part of
Public Record

**BEFORE THE UNITED STATES
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 33697



**NATIONAL RAILROAD PASSENGER CORPORATION—
PETITION FOR DECLARATORY ORDER—
WEIGHT OF RAIL**

**REPLY OF THE BOSTON AND MAINE CORPORATION, THE SPRINGFIELD
TERMINAL RAILWAY COMPANY AND THE PORTLAND TERMINAL COMPANY
TO THE NATIONAL RAILROAD PASSENGER CORPORATION'S MOTION FOR
EXTENSION OF TIME**

On June 14, 2002, the Boston and Maine Corporation, the Springfield Terminal Railway Company and the Portland Terminal Company (hereinafter referred to collectively as "Guilford") received a Motion for Extension of time filed by the National Railroad Passenger Corporation (hereinafter referred to as "Amtrak"). Despite being aware since May 9, 2002 that it would be afforded ten days in which to file its Rebuttal, Amtrak now comes before the Board to request an additional seven days in which to respond to Guilford's filing.¹ In support of this request, Amtrak asserts that Guilford's Reply in Opposition raises substantial issues, and that Amtrak and its consultants need additional time in which to formulate a response. Of course, Amtrak's arguments in support of this extension have little basis in fact, and offer yet another example of Amtrak's willingness to spin the truth to disguise its own shortcomings.²

¹ Pursuant to 49 C.F.R. §1104.3(b), Amtrak should have requested additional time to respond prior to the due date of Guilford's Reply in Opposition, particularly where Amtrak was well aware of the substance of Guilford's submission and the schedules of its representatives.

² Interestingly, when Amtrak first requested an extension from Guilford, a basis of that request was that one of its representatives would be on vacation during the original ten-day period afforded Amtrak for filing its Rebuttal. No mention of that basis appears in Amtrak's Motion for Extension of Time.

More particularly, Amtrak claims that it needs additional time to respond because of the three expert studies submitted by Guilford in support of its Reply in Opposition. Of course, Amtrak fails to mention that the substance of Mr. Brake's and Dr. Zarembski's testimony was previously disclosed to both Amtrak and the Northern New England Passenger Rail Authority (hereinafter referred to as "NNEPRA") at the March 7, 2002 meeting referred to by Amtrak. *Amtrak Motion for Extension of Time*, at 3. Furthermore, Guilford also previously outlined its objections in writing to Amtrak and NNEPRA on November 1, 2001 and March 18, 2002, respectively. Exhibits A and B attached hereto. Accordingly, other than the discussion of the track modulus testing performed by Guilford from May 21-22, 2002, the substance of Guilford's Reply in Opposition should not come as a surprise to Amtrak, its consultants or NNEPRA. Guilford merely expanded on what it had already made clear to Amtrak and NNEPRA; that the methodology employed in performing the September and November track modulus testing had little relation to the methodology approved by the Board, and that the results of this altered testing methodology were seriously flawed. As a result, it is difficult to understand Amtrak's need for additional time to respond to Guilford's argument, particularly where these arguments were disclosed to Amtrak some three months before Amtrak's Rebuttal would be due under the Board's Procedural Schedule. Rather, Amtrak has offered no supportable reason for a continued delay in these proceedings, a delay that is in direct contradiction of the Board's May 9th Scheduling Order.³

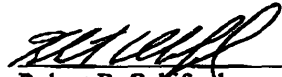
³ "Consequently, in the interest of moving this already protracted proceeding forward, the Board will adjust the proposed schedule so that Guilford's Reply would be due 30 days from the date of service of this decision, and Amtrak's reply would be due 10 days after Guilford files its reply." *May 9, 2002 Scheduling Order*, at 2.

CONCLUSION

For the reasons set forth above, Guilford requests that the Motion for Extension of time filed by Amtrak and NNEPRA be denied.

Dated: June 17, 2002

Respectfully submitted,



Robert B. Culliford
Law Department
Guilford Rail System
Iron Horse Park
North Billerica, MA 01862
(978) 663-1029

Counsel for:

The Boston and Maine Corporation,
The Springfield Terminal Railway
Company,
and The Portland Terminal Company

EXHIBIT A

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NNEPRA Employee

207-780-1001

P.3

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10:Guilford Rail System

FAX:978-663-6907

PAGE 2



BOSTON & MAINE CORPORATION
MAINE CENTRAL RAILROAD COMPANY
SPRINGFIELD TERMINAL RAILWAY COMPANY

IRON HORSE PARK
NO. BELLERICA, MASS. 01867

EXECUTIVE DEPARTMENT
(978) 663-1186

November 1, 2001

Michael J. Murray
Executive Director
Northern New England Passenger Rail Authority
55 Fore Street
Building 30
Portland, ME 04101

Re: Track Modulus Testing

Dear Mike:

I am in receipt of your letter dated October 23, 2001, in which Amtrak and NNEPRA dispute our assessment that the recent track modulus testing has not satisfied the criteria established by the Board for passenger operations at speeds of up to 79 miles per hour. In support of this position, you claim that, "...the data generated during the TLV's runs, which was provided to Guilford's engineers, indicate that the deflection criterion (.28 inches or less) was satisfied on well over 99% of the line."

Although the test results provided to GRS do not support this blanket statement, we should address some preliminary issues before discussing our analysis of this data. First, I was somewhat surprised that NNEPRA has now taken on the role of spokesman for Amtrak, since NNEPRA supposedly had no direct involvement in the proceedings before the STB. Accordingly, NNEPRA's assumption of this role under the present circumstances is particularly troubling because our concerns arise from the fact that the recent testing had little or no relation to the program presented for approval by Amtrak at the STB. Consequently, since NNEPRA has historically claimed to have little direct involvement in the STB proceedings, I do not believe that NNEPRA is the proper party to explain: (a) the significant discrepancies between the proposed testing program and the actual testing performed; or (b) the failure to perform static testing at a substantial number of those locations where both the proposed and the revised deflection criteria were exceeded. Nevertheless, since NNEPRA has apparently elected to finally assume a leadership role, I would ask that you review the following and provide me with your thoughts as soon as possible. In addition, since your letter appeared to be based upon information that GRS has yet to review, I would appreciate a copy of the reports/data relied upon in reaching

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NNEPRA Employee

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PAGE 3

these conclusions, including the report promised by the TTCI Scope of Work within 15 days of completion of the testing.

As you should know, the need to perform the recent testing originally arose as a result of the disagreement over our belief that 132-pound rail was necessary to support safe passenger operations, and NNEPRA's belief that the use of this weight of rail would be prohibitively expensive. To resolve this disagreement, the parties agreed to present the following issue to the Board:

Applying the engineering standards agreed to by NNEPRA and Railroad [Guilford] in the Rehabilitation Agreement, with particular reference to the engineering standards of the American Railway Engineering Association [now AREMA] specified therein, what is the appropriate weight of rail to be installed on the Rail Line in order to ensure safe, consistent and continuous operation of Amtrak trains at speeds of up to 79 miles per hour? *(emphasis added)*

As a result, throughout the Board proceedings to decide the speed at which Amtrak trains could operate on this line, the AREMA standards were the basic premise underlying each party's submissions, including the following representations by Amtrak in the latest round at the STB:

1. Deflection data gathered the first two days are used as a guide for where to test for track modulus because there is a high correlation between the two. *A location with significant track deflection can generally be expected to have a comparatively low track modulus.*
2. The AREMA maximum deflection criteria of *.25 inches* will be used as the limiting value at which a follow up track modulus measurement will be performed. Where the TLV detects deflection greater than this amount, it will place a paint mark at the location in question.
3. Analysis of the TLV's output deflection data, combined with subsequent track inspection to spot the paint marks left by the TLV, will identify where the limiting deflection criterion has been exceeded and where follow up inspections are required.
4. The test plan also provides for testing any suspected low modulus areas by static means. *This testing provides an additional way of assuring that the overall results are of sufficient accuracy.*
5. TTCI has developed the TLV so that the relative track deflection that it measures closely correlates with absolute track deflection. *The best test of this will occur when stationary measurements are made at locations where the relative track deflection data recorded by the TLV indicates that an absolute measurement should be made (because preset relative deflection limits are exceeded).*
6. In fact, the limit should be .28 inches, but TTCI will use .25 inches to be conservative.

Based upon these representations, the Board found the following:

1. But as FRA points out, using the dynamic test at 10 miles per hour to locate parts of the line with lower than average track modulus *will demonstrate the particular points at which a static test needs to be performed.*

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2. As FRA points out, the test procedure that *Amtrak has proposed* is both reasonable and practical, and it should provide sufficient data to evaluate the average or nominal track modulus along the Plaistow-Portland line following rehabilitation.
3. We find: Track modulus testing on the Plaistow-Portland line through the use of the TLV *in the manner described by Amtrak* is a reasonable and practical method of testing the track to determine whether the level of rehabilitation described in our prior decisions has been met.

With this background in mind, as well as the limited information that has been provided to GRS to date, we do not believe that the recent testing performed by TTCL was done in accordance with the plan proposed to the STB. This position is based upon the following:

1. Based upon your October 23rd letter, the recent testing used a limiting value of *.28 inches* to identify areas where static testing should be performed, as opposed to the limiting value of *.25 inches* proposed by Amtrak. Despite this commitment to a specific limiting value, without any consultation with the STB, GRS or FRA, the value was unilaterally changed during the testing, which is unsupportable. Moreover, this limiting value *exceeds* the AREMA *maximum* deflection criterion, as defined by Amtrak in its submissions to the Board. Finally, Amtrak also had previously informed the Board that *.28 inches* is the appropriate limiting factor, but in any event *.25 inches* would be used during testing to be conservative and to ensure that all areas with potentially low track modulus would be identified for static testing. Apparently, this plan was abandoned somewhere along the way.
2. As represented to the Board, at each location where the TLV detected a deflection greater than *.25 inches*, Amtrak planned to apply a paint mark, and subsequent track inspection would spot where those marks were located so that the *required* follow up static inspections would be performed. Obviously, on this issue the recent testing failed miserably. First, very few paint marks were applied, even though approximately 464 locations over approximately 70 miles were identified as having a deflection greater than *.28 inches*. Second, despite the large number of locations identified, and the willingness of GRS to allow the TLV to remain on our lines for additional time, static testing was performed in only 12 "zones", covering feet, as opposed to the miles that were identified. Clearly, this is a depressingly small portion of the area that should have been tested.
3. There is also no justification for failing to perform static tests at all areas where the deflection was greater than *.28 inches*, much less *.25 inches*, because Amtrak's submission stated several times that: (a) this static testing would be required; (b) there is a high correlation between high deflection and low track modulus; and (c) the best method to ensure the accuracy of the TLV methodology would be to perform such testing.
4. Your letter also claims that NNEPRA is essentially ignoring those areas where low track modulus values were identified, because those areas are "very short (typically 10 feet or less)". We are not aware that the Board provided that "very short" areas of low track modulus were exempt from the Board's requirements, and we disagree that those locations should be ignored. Moreover, GRS would submit that these areas should be identified as being indicative of potentially larger problems, although the rather cursory

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NNEPRA Employees

207-780-1001

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FAX:978-663-6907

PAGE 5

Notwithstanding our concerns that the recent testing effectively ignored the vast majority of those locations where the rail line likely fails to meet the required standards, the point of this letter is to make known our objections to the fact that the testing was not performed in the manner approved by the STB. In short, Amtrak, with the support of NNEPRA and Trainriders Northeast, requested that the Board decide that: (a) the proposed testing methodology was reasonable and practical; and (b) once an adequate track modulus is demonstrated using this method, no further track modulus testing would be necessary. While the Board did ultimately decide that this proposed testing was reasonable, NNEPRA then remarkably condoned the performance of the recent testing in a manner that had little or no relation to the method approved by the Board. As a result, today there are still two issues outstanding: (a) the testing has yet to be performed in the manner described by Amtrak, and approved by the Board; and (b) consequently, until the proper testing is performed, the criteria established by the Board to allow passenger service at speeds greater than 59 miles per hour have not been satisfied.

Based on the foregoing, GRS will not allow any passenger operations at speeds greater than 59 miles per hour until acceptable results are obtained by performing testing in the manner presented to, and approved by, the STB. While we appreciate NNEPRA's offer to bring back the TLV for more static testing in November, this offer simply misses the point; which is that static testing will not correct the fact that the initial TLV testing was not performed pursuant to the Board's decision. Accordingly, while NNEPRA is free to conduct additional static testing in the near future, we would suggest that NNEPRA also plan to conduct the appropriate testing sometime in the spring or summer (the optimal time for such testing, according to Amtrak) of 2002.

With regard to the movement of the TLV consist in regular freight service, we will agree to this request, provided that we do not have a repeat of the events that surrounded the original movement of this consist. As you may recall, Guilford spent a great deal of time and effort to track and locate this consist during the last movement, with little assistance from NNEPRA or TTCI. In fact, a full day and a half was wasted while this consist was turned to accommodate the needs of TTCI, which could have been avoided had NNEPRA provided the proper shipping and placement information. Moreover, despite the original plan to conduct testing for a maximum of three days, in reality this testing took six days, unnecessarily interfering with our freight operations. Finally, the relative lack of interest by NNEPRA personnel in such an important project continues to trouble Guilford. More particularly, we believe that NNEPRA should be more committed to monitoring the next round of testing, and should spend more than a brief visit on the consist. Otherwise, we risk a repeat of the insufficient testing that was performed during September, which will ultimately require even more testing in the future.

Thank you for your attention to this matter. Please feel free to contact me if you should have any questions or comments.

Sincerely,


David A. Fink
Executive Vice President

EXHIBIT B

MAR-18-2002 04:43PM
W L O V E J U N I E

FROM-

TO: MICHAEL J. MURRAY

PH: 978-663-1213

T-018 P.002/008 F-036
PAGE 2



BOSTON & MAINE CORPORATION
MAINE CENTRAL RAILROAD COMPANY
SPRINGFIELD TERMINAL RAILWAY COMPANY

IRON HORSE PARK
NO. BILLERICA, MASS. 01822

**EXECUTIVE DEPARTMENT
(978) 663-1186**

3/18/02

Michael J. Murray, P.E.
Executive Director
Northern New England Passenger Rail Authority ("NNEPRA")
58 Fore Street, Building 30
Portland, ME 04101

Re: Track Modulus Testing

Dear Mike:

Thank you for your letter of March 11, 2002 detailing the position of Amtrak and NNEPRA with regard to the track modulus testing performed during September and November of 2001. I was somewhat surprised to hear from you directly regarding our meeting since you had no involvement with the discussion that took place on March 7th. Nevertheless, after reviewing your letter, I have the following comments in response to the specific items discussed:

1. As I reviewed in detail in my November 1st letter to you, we do not agree that the Board's June 29th decision provided Amtrak and NNEPRA with the discretion to significantly alter the testing plan presented in, and approved by, the Board. Rather, we believe that Amtrak was required at least substantively adhere to its representations that the testing plan presented would produce reliable results, and was not authorized to change this methodology after the Board proceedings were concluded. This unilateral change to the testing methodology is essentially an admission by Amtrak and NNEPRA that the testing would *not* produce reliable results, and we find your arguments to the contrary unconvincing. In short, if the manner of testing proposed to the Board were in fact reliable, there would be no need to significantly change it in the three months that elapsed between the Board's decision and the beginning of testing.

Remarkably, despite admitting that the representations to the Board with regard to the reliability of the initial testing plan were incorrect, Amtrak and NNEPRA would now have us believe that the manner of testing that was actually performed did produce reliable results. However, our review of the data provided by TTCI shows that the testing was performed arbitrarily to reach a predetermined conclusion, which resulted in several significant areas of

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PAGE 3

low track modulus being missed. Therefore, we do not agree that the results satisfy the condition imposed by the Board in order to operate at speeds of up to 79 miles per hour. In support of this position, our objections to the testing methodology actually employed include, but are not limited to, the following:

- A. The information reviewed by Guilford shows that there were 26 locations over 14 miles that exceeded the deflection criteria ultimately utilized by TTCI. Unfortunately, TTCI in its report only identified 14 such spots, despite having access to the same data made available to Guilford, indicating that TTCI did not thoroughly review the testing data. Even more troubling, however, is that, of the 40 follow up static tests that were performed, only two were conducted at locations identified by TTCI as exceeding the deflection criteria of .27 inches. Accordingly, it is apparent that (a) the test results produced by TTCI are not reliable; and (b) this haphazard approach to static testing is a clear indication that TTCI, NNEPRA and Amtrak were more concerned with appearing to comply with the Board's order than actually determining reliable track modulus values along the line.
- B. The reliance by TTCI solely upon dynamic deflection data and statistical relationships to identify areas of low track modulus not only contravenes the Board's order, but also shows the significant variation between results obtained from dynamic testing (which is relative) and static testing (which is absolute). As an example, the data produced by TTCI for testing Zone One shows that static measurements over this section of track resulted in a 25 foot average modulus value of 1,758 lb./in./in. By comparison, the results produced by TTCI using its regression analysis of the dynamic test data for the same stretch of track produced a 25 foot average modulus value of 2,926 lb./in./in, which led TTCI to omit this location from its list of Track Modulus Exceptions. Therefore, despite Mr. Staplin's and Dr. Christner's representations to the Board in their Verified Statements that the absolute data would control the determination of track modulus values, TTCI instead relied upon relative data only, even though the results of this approach resulted were statistical variations as high as 66%.
2. I find it somewhat ironic that NNEPRA and Amtrak dispute our claim that we were not informed of the manner in which the testing would actually be performed, particularly in light of the fact that the methodology continued to change during the actual testing. However, I also do not believe that this point is relevant, for the simple reason that we explained our concerns in my November 1st letter, yet the testing was done a second time in a manner that was inconsistent with the Board's order. Accordingly, we did make it clear that we did not understand the basis for the revised testing methodology, and despite our objections no explanation for these discrepancies was forthcoming until our meeting of March 7th.
3. With regard to your claims purporting to justify the use of a 25 foot averaging approach, please note the following:
 - A. Despite our objections to this approach, it is now known that TTCI identified 25 feet as the average value as he used because it represents the deflection basin resulting from the front two (two) axes of a locomotive using a track modulus value of 2,750 lb./in./in.

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However, the data generated during TTCI's testing was the result of a single axle load, which results in a deflection basin of 16.17 feet using a track modulus value of 2,750 lb./in./in. (The length of the deflection basins are exclusive of speed and magnitude of load.) Therefore, because the deflection data was produced with a single axle wheel load, TTCI should have used 16.17 feet as the value at which to average the recorded deflection data. The results of this error will be to dampen the effects of the deflection data, thereby reducing the number of locations that would be identified as not satisfying the applicable AREA criteria. Accordingly, to allow us to accurately assess the extent of the dampening caused by the use of this 25 foot average, please have TTCI provide me with a copy of the 16.17 foot average relative deflection data in electronic format for both the September and November testing.

- B. Amtrak also failed to disclose the full extent of the unreliability of the 25 foot averaging method in the Board, particularly the fact that this approach skews the test results by "averaging an average". In other words, using a 25 foot averaging serves to disguise locations of low track modulus, such as the ones at issue here. This result occurs because the modulus values have been obtained by field testing, both static and dynamic, and the actual deflection of the track already accounts for any variation in modulus in the influence zone of the test (i.e. the region where the track deflects under the test load).
- C. The 25 foot moving average is fundamentally wrong when applied to analysis of rail stresses, since the rail failure (fatigue, fracture, etc.) is a point process. Rail failure develops and occurs at a single location on the rail, not over a 25 foot (or any other) length. Therefore, averaging the track modulus over 25 feet (when the measured modulus values are obtained by testing that already reflects any actual local variation in track modulus) results in a value that significantly distorts (and reduces) the calculated (but not the actual) stresses in the rail. Since modulus values of approximately 1,800 lb./in./in. or less result in rail stresses that are below the AREA allowable value of 25,000 psi, it is critical that these locations of high stress not be "averaged" out by an artificial averaging process that has no justification in either theory or in the published literature. Additionally, the importance of identifying locations of high stress is discussed below because of its relevance to track safety.
4. Given the items discussed in this letter, and our previous comments relating to our concerns with track safety, I am astounded that NNEPRA and Amtrak continue to question Guilford's commitment to the safe operation of its railroad. Simply put, we believe that the issue of track modulus is related to track safety, particularly because it is verifiable determinant of the ability of the track structure to support rail operations. Therefore, rather than callously disregard the Board's determination that the track structure must meet the necessary criteria to support speeds of up to 79 miles per hour, we continue to believe that NNEPRA and Amtrak must show conclusively that the Board's condition has been satisfied. To do this, NNEPRA and Amtrak are required to prove that the AREA criteria have been met to show that this line segment can safely, continuously and consistently support these increased speeds.

Unfortunately, the arbitrary and inconsistent manner in which Amtrak and NNEPRA have sought to satisfy this requirement does little to alter our belief that safety is not a priority to these organizations. In fact, Amtrak and NNEPRA seem to be committed to evading this

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FROM-
GUILFORD RAIL SYSTEM

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Board's mandate, as evidenced by the decision to ignore the vast majority of TTCI's findings by requesting to operate at speeds of up to 79 miles per hour over areas identified by TTCI as having low track modulus. Moreover, we were surprised to hear Mr. Stuplin express his opinion that we do not operate a "modern railroad" despite our rehabilitation of the line in accordance with the ARRA specifications, and question whether he himself truly believes that operations at 79 miles per hour are warranted on this line.

I would also note again that TTCI has completely disclaimed any responsibility for the contents of the report upon which NNEPRA and Amtrak rely so heavily. We believe that if track modulus were not a safety issue, TTCI would not be so hesitant to stand behind its assessment that the track modulus values along this line meet the requirements imposed by the Board. Unfortunately, this disclaimer is also consistent with the efforts by Amtrak and NNEPRA to evade responsibility for any incidents on the line by claiming that such an incident would be the result of maintenance issues, and not track modulus issues. We strongly object to this strategy, and would point to our history of safe operations as support for our position that the line will be maintained properly. Additionally, if Amtrak and NNEPRA intend to limit our ability to monitor safety by ignoring the track modulus issue, we will not be held responsible for the consequences of Amtrak's and NNEPRA's actions.

Moreover, the testing also revealed that 75 of the relative deflections measured during the testing were found to be so great that the ARRA allowable stress in the base of the rail due to flexure will now be exceeded if the service operates at up to 79 miles per hour. This condition presents the possibility of a significant safety issue, and must be addressed by Amtrak and NNEPRA in order to operate the service at the higher speeds.

In short, we believe that we have a duty to operate the safest railroad possible, and until the track modulus values are shown to be sufficient with any degree of reliability, we will not allow Amtrak to operate at the increased speeds.

Thank you for your attention to this matter. Please feel free to contact me if you should have any questions or comments.

Sincerely,


David A. Pink
Executive Vice President

cc: Jared L. Kohnert, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of June, 2002, I caused to be served by the means indicated below a copy of the foregoing Reply to Motion for Extension of Time of the Boston and Maine Corporation, the Springfield Terminal Railway Company and the Portland Terminal Company on the following:

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(by Federal Express)

National Association of Railroad Passengers
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Robert B. Culliford