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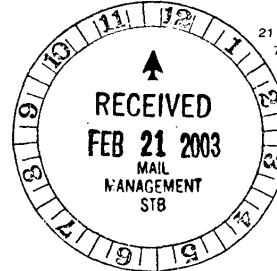
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February 21, 2003

### VIA HAND DELIVERY

Mr. Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street, N.W., Room 700  
Washington DC 20423

**FILED**

FEB 21 2003

**SURFACE  
TRANSPORTATION BOARD**

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

Dear Mr. Williams:

Yesterday we filed a Petition for Reconsideration and the Verified Statement of Roger D. Bergeron on behalf of the respondents Springfield Terminal Railway Company, Boston and Maine Corporation, and Portland Terminal Company in the above-captioned proceeding. Those documents were filed with facsimile copies of the signature pages. The original signature pages now have arrived and I enclose an original and ten copies of each such page.

Also, we inadvertently omitted the \$150 filing fee, however, and a check for that sum, payable to the Surface Transportation Board, is enclosed.

I apologize for any inconvenience.

Sincerely,

Eric L. Hirschhorn

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FEB 21 2003

**SURFACE  
TRANSPORTATION BOARD**

Enclosures

**ENTERED**  
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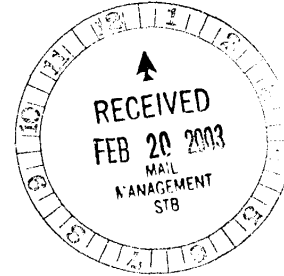
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### VIA HAND DELIVERY

Mr. Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street, N.W., Room 700  
Washington DC 20423

**FILED**  
FEB 21 2003

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

Dear Mr. Williams:

Please find enclosed for filing in the above captioned proceeding an original and ten copies of a Petition for Reconsideration and the Verified Statement of Roger D. Bergeron, filed on behalf of the respondents Springfield Terminal Railway Company, Boston and Maine Corporation, and Portland Terminal Company. One additional copy of the package is enclosed. I would appreciate your receipt-stamping that copy and returning it to our legal assistant.

Facsimile copies of the signature pages accompany these two documents. The originals will be filed as soon as possible. Please call me with any questions regarding this matter. Thanks for your assistance.

Sincerely,

Eric L. Hirschhorn

Enclosures

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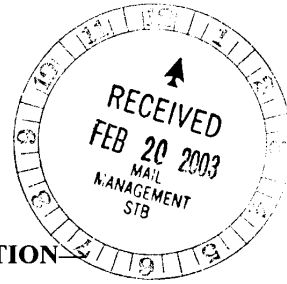
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BEFORE THE UNITED STATES  
SURFACE TRANSPORTATION BOARD

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FEB 21 2002

FINANCE DOCKET NO. 33697



**SURFACE  
TRANSPORTATION BOARD**

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

**FILED**

FEB 21 2003

**SURFACE  
TRANSPORTATION BOARD**

**Petition of Boston and Maine Corporation,  
Springfield Terminal Railway Company,  
and Portland Terminal Company  
for Reconsideration**

**ENTERED  
Office of Proceedings**

FEB 21 2003

**Part of  
Public Record**

Pursuant to 49 C.F.R. pt. 1115, the Boston and Maine Corporation, Springfield Terminal Railway Company, and Portland Terminal Company (collectively, "Guilford") hereby petition for reconsideration of the decision served January 31, 2003 ("*Weight of Rail III*"). Specifically, Guilford seeks clarification that nothing in *Weight of Rail III* is intended to render the Federal Railroad Administration's ("FRA") regulatory framework for railroad safety inapplicable to Amtrak's operation over Guilford's line between Plaistow, NH, and Portland, ME ("the Line"), and that FRA, rather than this Board, has jurisdiction over any safety-related issues that might arise in respect of such operation.

The FRA's track safety standards, 49 C.F.R. pt. 213 (2002), are not absolute. They are "*minimum* safety requirements" that "do[] not restrict a railroad from adopting and enforcing *additional or more stringent* requirements not inconsistent with [such minimum requirements]." 49 C.F.R. § 213.1(a) (2002) (emphasis added); *accord* Track Safety Standards, 63 Fed. Reg. 33992, 34000 (1998); Verified Statement of Roger D. Bergeron ("*Bergeron V.S.*"), ¶ 6. Indeed, "railroads are both *encouraged* and *expected* to maintain higher standards." U.S. DEP'T OF

TRANSPORTATION, FEDERAL RAILROAD ADMIN., TRACK SAFETY STANDARDS COMPLIANCE MANUAL (“TSS Manual”), at p. 5.2 (Jan. 1, 2002) (emphasis added); *accord* Bergeron V.S. ¶ 6.

Moreover, the FRA minimum requirements “apply to specific track conditions existing in isolation,” 49 C.F.R. § 213.1(a) (2002) (emphasis added), and “combinations of track conditions, while individually not in violation of any standard, can nonetheless present a hazard to the safe movement of trains,” TSS Manual at p. 5.2.

Further, and perhaps most important, FRA’s regulatory framework operates on the expectation that those regulated will exercise informed discretion in light of particular conditions that may obtain from time to time. Bergeron V.S. ¶ 6. In part, this reflects the fact that “track structures . . . are continually changing in response to the loads imposed on them by traffic and the effects of weather.” Track Safety Standards, 63 Fed. Reg. 33992, 33995 (1998). In particular, the FRA regulations require that Guilford vest in a qualified person “[w]ritten authorization . . . to prescribe remedial actions to correct or safely compensate for deviations from the requirements in [FRA’s track safety regulations],” 49 C.F.R. § 213.7(a) (2002), and otherwise to require Guilford to take such safety measures as such qualified person deems necessary or appropriate.

Guilford is concerned that some may find *Weight of Rail III* to be ambiguous, and that the decision might be construed to require Guilford to permit Amtrak passenger trains to operate at seventy-nine miles per hour over the Line regardless of track, weather or other germane conditions. Bergeron V.S. ¶ 3. If true, such an inflexible requirement would be at odds with the rules and standards of the Federal Railroad Administration (“FRA”), with Guilford’s long standing rules and standards—which, as expressly envisaged by the FRA, err on the side of caution in rail operations—and with the practices of every rail owner in the United States. *Id.*

The National Railroad Passenger Corporation (“Amtrak”) is to operate passenger trains over the Line on behalf of the Northern New England Passenger Rail Authority (“NNEPRA”). *Id.* ¶ 4. By agreement between Guilford and Amtrak, the Line has been rehabilitated to meet the standards for FRA Class 4 track and is to be maintained to those standards. *Id.*

The Amtrak-Guilford agreement provides in section 2.2 that the schedules and consists of Amtrak’s trains “shall be compatible with the physical capabilities of [Guilford],” in section 2.3 that the services provided to Amtrak “shall give due regard to [Guilford’s] speed, weight, and similar operating restrictions and rules and safety standards,” and in section 3.2 that Guilford will allow Amtrak trains to operate “at the maximum safe speeds permissible for then-existing track conditions under applicable federal standards.” *Id.* ¶ 5.

Moreover, Amtrak did not even *request* an absolute right to travel at 79 miles per hour. Rather, it asked to be “*authorized* to operate . . . at speeds *up to* 79 miles per hour,” National Railroad Passenger Corporation’s Motion for Further Clarification of the Board’s October 22, 1999 Decision (“Amtrak Motion”) at 1 (Apr. 12, 2002) (emphasis added), and that Guilford be ordered “to *permit*” such operation, *id.* at 2 (emphasis added). Amtrak expressly acknowledged that safety depends in large measure “on periodic visual inspections by experienced railroad maintenance personnel, and on mechanized inspections using a track geometry car,” *id.* at 35—“the kinds of inspections that all railroads rely upon to determine whether track conditions are suitable for their proposed operations,” *id.* at 38; *accord* National Railroad Passenger Corporation’s Rebuttal Brief and Evidence in Support of its Motion for Further Clarification of the Board’s October 22, 1999 Decision (June 27, 2002), at 41.

The FRA’s track safety standards, which appear in part 213 of the FRA regulations, are neither absolute nor static. *Bergeron V.S.* ¶ 6. Rather, they are minimum standards that the FRA

expects that railroads, exercising their sound discretion, will exceed where appropriate or prudent. *Id.* Indeed, the entire FRA regulatory framework for rail safety is premised on this expectation, for FRA recognizes that no standards, however detailed, can anticipate every eventuality. *Id.*

The FRA's submissions in this proceeding say only that 115 pound rail will support passenger train operation at seventy-nine miles per hour. *Id.* ¶ 7. The FRA does *not* say—and Guilford does not believe that it would say—that seventy-nine miles per hour is an appropriate speed on a Class 4 line in all instances or under all circumstances. *Id.* The FRA also does not suggest, even remotely, that this Board should detract from the FRA's oft-repeated direction that rail owners are “encouraged and expected to maintain higher standards” than the minimum levels in the FRA regulations and the FRA's Track Safety Standards Manual. *Id.*

For example, Guilford, like every other rail owner in the United States, issues a daily speed summary for each of its lines. *Id.* ¶ 8. Every employee involved in railroad operations must have this document in his or her possession before beginning work each day. *Id.* In addition, speed and other operational limitations are imposed on a daily basis by posted bulletins or by oral communication, as conditions require. *Id.* These limitations are the result of observations by, and consultations among, qualified personnel responsible for maintaining and renewing track and infrastructure (e.g., bridges, signals, crossing protections). *Id.*

There is never a day—for Guilford or any other railroad—when some such limitations are not imposed on at least some segments of track. *Id.* ¶ 9. These determinations are made by the maintaining party. *Id.*; 49 C.F.R. § 213.5(a) (2002). Thus, where Guilford operates trains over lines maintained by Amtrak, Guilford accepts and adheres to any limitations that Amtrak

may impose. *Bergeron V.S.* ¶ 9. The same is true anywhere that Guilford—or any other railroad—operates over track maintained by another party. *Id.*

In addition to addressing acute conditions by such means as the daily speed summary, and consistent with FRA's regulatory approach and expectations, Guilford long has imposed certain general standards and tolerances that are more restrictive than the FRA minimums. *Id.* ¶ 10. These are intended to reflect the particular operational, geographic and climatic conditions of Guilford's system. *Id.*

For example, Guilford's curve elevation and gage requirements are stricter than the FRA minimums. *Id.* ¶ 11. Also, Guilford has developed (and FRA has approved) installation and maintenance rules for continuous welded rail that are unique to Guilford and its particular circumstances. *Id.* Guilford tests its rail for internal defects well beyond what the FRA requires. *Id.*

Guilford's inspectors also must take environmental conditions into account in deciding whether any restrictions are appropriate. *Id.* ¶ 12. Rain can soften a track bed, temperature changes can cause rail (particularly continuous welded rail) to buckle or to pull apart, the freeze/thaw cycle affects track geometry, and so forth. *Id.*

These are but a few examples of the many types of variations from FRA's minimum standards that every railroad employs or imposes every day. *Id.* ¶ 13. Guilford is no exception, and Guilford does not believe that the Board intended to make Guilford an exception. *Id.* The only issue before the Board (and the only issue on which FRA commented), was whether 115 pound rail can, under proper circumstances, support—on a continuing basis—speeds of seventy-nine miles per hour. None of the many other safety factors addressed in the extensive FRA

regulations, *see* 49 C.F.R. pts. 213-240 (2001), the TSS Manual, the AREMA standards, or elsewhere was addressed by this Board or by FRA in this proceeding.

Finally, Guilford consistently has had one of the best safety records in its class in the nation. *Bergeron V.S.* ¶ 14. This year it is receiving the gold Harriman Award for having the lowest rate of personal injuries per worker-hour in its class. *Id.* Guilford has achieved this preeminent record through its commitment to safety, above and beyond the minimum requirements set by the FRA. *Id.*

As Guilford has indicated throughout this proceeding, its concern is for the safety of passengers, the citizens who use the many public and private grade crossings on the line in question, railroad employees and others, not to mention the risks of property damage and traffic disruptions in the event of a derailment. Guilford seeks clarification because *Weight of Rail III* conceivably can be read as treating the FRA's minimum requirements—for example, those establishing maximum train speeds for specified classes of track—as absolute standards that Guilford may not vary, in the interest of safety, where Amtrak traffic over the Line is concerned. *Weight of Rail III* says, for example, that “subject to FRA’s safety jurisdiction, Guilford *must* permit Amtrak to operate . . . at FRA Class 4 speeds,” *Weight of Rail III* at 1 (emphasis added), that the Board “*order[s]* Guilford to permit Amtrak to operate at FRA Class 4 speeds,” *id.* at 4 (emphasis added), and that “[s]ubject to FRA’s track safety requirements, Guilford *must* allow Amtrak to operate . . . at speeds of up to 79 mph,” *id.* at 5 (emphasis added).

On the other hand, Mr. Patrick Crawford of the STB staff stated in his presentation to the January 31, 2003 Board meeting that “[i]f Guilford has safety concerns regarding a specific section of track, FRA has jurisdiction to consider that issue.” That statement, however, does not

appear in the text of *Weight of Rail III*. A copy of Mr. Crawford's statement, downloaded from the STB's web site, is annexed to this petition as Exhibit 1.

Guilford believes that the Board in rendering its decision, and FRA in its submissions to the Board, intended to preserve—as indicated in Mr. Crawford's statement—the discretion that the FRA regulations and standards vest in every railroad in the United States, for this approach is the essence of the FRA regulatory framework and philosophy. *Bergeron V.S.* ¶¶ 6, 13, 15. Guilford fears, though, that if it is misreading *Weight of Rail III*, it may find itself caught between a supposed requirement that Amtrak traffic be permitted to travel at 79 mph (the maximum speed permitted under the FRA regulations and the Guilford-Amtrak operating agreements), on the one hand, and the stated, safety-based expectations of FRA that railroads will exercise informed discretion where rail safety is concerned, on the other.

Although the Board sought FRA's advice before issuing *Weight of Rail III*, that advice was limited to the suitability of 115 pound rail and the adequacy of Amtrak's testing of the Line. The Board has not sought FRA's advice regarding other safety matters such as those discussed above, and Guilford is not asking the Board to do so. All Guilford seeks is clarification that *Weight of Rail III* doesn't detract from the normal FRA regulatory framework for railroad safety<sup>1</sup> and that any safety issues arising in the normal course of events are to be dealt with in the context of that framework, with FRA involvement as necessary.

---

<sup>1</sup> FRA is entrusted with "carry[ing] out all railroad safety laws of the United States," 49 U.S.C. § 103(a) (2000), including specifically those relating to safety appliances, signal systems, locomotives, accidents and incidents, and hours of service, 49 U.S.C. § 103(c) (2000); 49 C.F.R. § 1.49(c) (2002) (delegating Secretary of transportation's rail safety duties to FRA). FRA has jurisdiction over the speed that Amtrak trains may travel on the Line, 49 U.S.C. § 24308(d) (2000), and Amtrak is subject to the same safety standards and regulatory framework as all other railroads, 49 U.S.C. § 24301(d) (2000); *see* 49 C.F.R. pt. 209, app. A (2002).

Guilford accordingly asks that the Board grant this petition and clarify that (1) the decision is not intended to detract from the exercise of discretion demanded by the FRA regulations, the TSS Manual, and other safety standards and recommendations, and (2) safety issues involving Amtrak's use of Guilford's line are—here as for every other rail line throughout the United States—for resolution among Guilford, Amtrak and the FRA within the context of FRA's rules, standards and expectations.

Respectfully submitted,

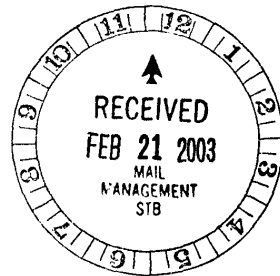


Robert B. Cullford  
Law Department  
Guilford Rail System  
Iron Horse Park  
North Billerica MA 01862  
978-663-1039

*Attorney for The Boston and Maine  
Corporation, The Springfield Terminal  
Railway Company, and The Portland  
Terminal Company*

Dated: February 20, 2003

295759.3



## **EXHIBIT 1**

- ByCategory
- ByDate
- ByRelease
- BySpeech

## Speeches/Testimony/Statements Grouped by Date

Previous Next Expand All Collapse All Search

| Date Title                                                                                                                                                                                                                      | Author                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| ▼ 01/31/2003                                                                                                                                                                                                                    |                                                                     |
| <u>Chairman Nober's Statement - 1/31/03 STB Voting Conference</u>                                                                                                                                                               | Roger Nober                                                         |
| <u>Vice Chairman's Opening Statement - 1/31/03 STB Voting Conference</u>                                                                                                                                                        | Vice Chairman Burkes                                                |
| <u>Staff Statements - AB-565 (Sub-No. 11X) - STB Voting Conference</u>                                                                                                                                                          | Josephine Gomillion                                                 |
| <u>Staff Statements - EP No. 282 (Sub-No. 20) - STB Voting Conference</u>                                                                                                                                                       | Patrick Crawford                                                    |
| <u>Staff Statements - FD No. 33697 - STB Voting Conference</u>                                                                                                                                                                  | Patrick Crawford                                                    |
| <del><u>Staff Statements - FD No. 33995 - STB Voting Conference</u></del>                                                                                                                                                       | <del>Alan R. Weinstein</del>                                        |
| <u>Staff Statements - FD No. 34114 - STB Voting Conference</u>                                                                                                                                                                  | Patrick Crawford                                                    |
| <u>Staff Statements - FD No. 34178 - STB Voting Conference</u>                                                                                                                                                                  | Paul H. Markoff                                                     |
| <u>Staff Statements - FD No. 34304 - STB Voting Conference</u>                                                                                                                                                                  | Melanie B. Yasbin                                                   |
| ▼ 07/31/2002                                                                                                                                                                                                                    |                                                                     |
| <u>Senate Committee on Commerce, Science, and Transportation, Subcommittee on Surface Transportation and Merchant Marine</u>                                                                                                    | Linda J. Morgan                                                     |
| ▼ 03/27/2002                                                                                                                                                                                                                    |                                                                     |
| <u>TESTIMONY OF LINDA J. MORGAN<br/>CHAIRMAN, SURFACE TRANSPORTATION BOARD<br/>AT A FIELD HEARING OF - THE SENATE COMMITTEE ON<br/>COMMERCE, SCIENCE, AND TRANSPORTATION ON RAIL<br/>FREIGHT TRANSPORTATION IN NORTH DAKOTA</u> | Chairman Morgan                                                     |
| ▼ 06/29/2001                                                                                                                                                                                                                    |                                                                     |
| <u>Chairman Morgan's Testimony Before the Senate on New Major Rail Merger Rules</u>                                                                                                                                             | Chairman Morgan                                                     |
| ▼ 05/22/2001                                                                                                                                                                                                                    |                                                                     |
| <u>Chairman Morgan's Speech to House Railroad Subcommittee</u>                                                                                                                                                                  | Chairman Morgan                                                     |
| ▼ 04/05/2001                                                                                                                                                                                                                    |                                                                     |
| <u>ORAL ARGUMENT ON MAJOR RAIL MERGER RULES<br/>OPENING REMARKS</u>                                                                                                                                                             | CHAIRMAN LINDA J. MORGAN                                            |
| <u>Opening Statement for the Oral Argument in Ex Parte No. 582 (Sub-No.1)</u>                                                                                                                                                   | Commissioner Wayne O. Burkes                                        |
| ▼ 03/21/2001                                                                                                                                                                                                                    |                                                                     |
| <u>Testimony of<br/>Senate Committee on Commerce, Science, and Transportation<br/>Subcommittee on Surface Transportation and Merchant Marine<br/>Hearing on the Surface Transportation Board</u>                                | Linda J. Morgan, Chairman<br>of the Surface<br>Transportation Board |
| ▼ 09/12/2000                                                                                                                                                                                                                    |                                                                     |
| <u>Chairman's Testimony on Freight Rail Competition</u>                                                                                                                                                                         | Chairman Morgan                                                     |

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Jan 31 FD 33697 rev. o.s.wpd

Voting Conference Statement  
STB Finance Docket No. 33697  
NATIONAL RAILROAD PASSENGER CORPORATION-PETITION FOR  
DECLARATORY ORDER-WEIGHT OF RAIL

Good morning Chairman Nober, Vice-Chairman Burkes, and Commissioner Morgan.

In a 1999 decision in this proceeding, the Board required Guilford Rail System to permit Amtrak to operate at speeds of up to 79 miles per hour over a Guilford line in New England, provided that Amtrak rehabilitate the line to a certain track modulus value. Track modulus is a measure of the vertical stiffness of the track.

In a 2001 decision, we ordered Guilford to allow Amtrak access to the line so it could test the track to determine whether it had been sufficiently rehabilitated. In that decision, we also found that Amtrak's chosen testing methodology was reasonable and practical.

Amtrak's testing demonstrated that 99.95% of the line had a sufficient track modulus value. Nevertheless, Guilford has not accepted the test results and has not allowed Amtrak to operate at up to Federal Railroad Administration (FRA) Class 4 speeds of 79 miles per hour. Therefore, in 2002 Amtrak asked the Board to rule that, in light of the test results, sufficient rehabilitation had been achieved and Guilford must allow Amtrak to operate over its line at FRA Class 4 speeds.

Guilford argues that the testing was unreliable and that its results are inaccurate. It further argues that Amtrak has not complied with the conditions of access that the Board imposed.

In matters of rail safety, we give substantial deference to FRA, which has significant expertise, experience, and primary responsibility regarding railroad track safety standards. In July and October 2002 comments, FRA found that the testing was reasonable and that its results were accurate. Because FRA is satisfied with the testing process, the draft decision before you proposes that the Board accept the test results and order Guilford to permit Amtrak to operate at FRA Class 4 speeds. If Guilford has safety concerns regarding a specific section of track, FRA has jurisdiction to consider that issue.

Finally, the Board's goal in these proceedings has been to resolve matters related to line access and rehabilitation, and to allow safety issues to remain with FRA. Because this goal has been met, the draft decision before you also proposes that the Board end its involvement in the matter and discontinue this proceeding.

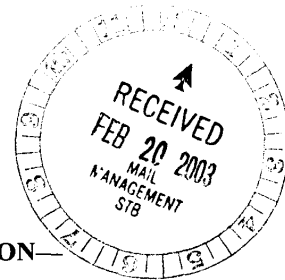
We would be happy to address any questions you might have.

Thank you.

**FILED**  
FEB 21 2003  
SURFACE  
TRANSPORTATION BOARD

BEFORE THE UNITED STATES  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33697



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

ENTERED  
Office of Proceedings

FEB 21 2003

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Public Record

**Verified Statement of Roger D. Bergeron  
in Support of Petition for Reconsideration**

**FEE RECEIVED**  
FEB 21 2002  
SURFACE  
TRANSPORTATION BOARD

Roger D. Bergeron, being duly sworn, states as follows:

1. I am the Assistant Vice President of Engineering for the Guilford Rail System ("Guilford") and make this statement in support of Guilford's petition for reconsideration of this Board's order of January 31, 2003 in this proceeding ("*Weight of Rail III*").

2. I have been employed by Guilford, and by the Boston and Maine Corporation before it was acquired by Guilford, for more than thirty years. All those years have been spent in the field of rail operation and safety. I am designated as a "qualified person to supervise restorations and renewals of track" pursuant to 49 C.F.R. § 213.7(a), and have responsibility for maintaining the operational and engineering safety throughout the Guilford system.

3. I have been advised that *Weight of Rail III* conceivably might be construed to mean that Guilford must permit Amtrak passenger trains to operate at seventy-nine miles per hour over Guilford's line between Plaistow, New Hampshire, and Portland, Maine ("the Line"), regardless of track, weather or other conditions. If true, such an inflexible requirement would be at odds with the rules and standards of the Federal Railroad Administration ("FRA"), with Guilford's long standing rules and standards—which, as expressly envisaged by the FRA, err on

the side of caution in rail operations—and with the practices of every rail owner in the United States.

4. The National Railroad Passenger Corporation (“Amtrak”) is to operate passenger trains over the Line on behalf of the Northern New England Passenger Rail Authority (“NNEPRA”). By agreement between Guilford and Amtrak, the Line has been rehabilitated to meet the standards for FRA Class 4 track and is to be maintained to those standards.

5. The Amtrak-Guilford agreement provides in section 2.2 that the schedules and consists of Amtrak’s trains “shall be compatible with the physical capabilities of [Guilford],” in section 2.3 that the services provided to Amtrak “shall give due regard to [Guilford’s] speed, weight, and similar operating restrictions and rules and safety standards,” and in section 3.2 that Guilford will allow Amtrak trains to operate “at the maximum safe speeds permissible for then-existing track conditions under applicable federal standards,”

6. The FRA’s track safety standards, which appear in part 213 of the FRA regulations, are neither absolute nor static. Rather, they are minimum standards that the FRA expects railroads, exercising their sound discretion, to exceed where it is prudent to do so. Indeed, the entire FRA regulatory framework for rail safety is premised on this expectation, for FRA recognizes that no standards, however detailed, can anticipate every eventuality. That is, although FRA’s regulatory framework *begins* with the minimum standards of the FRA regulations and other FRA guidance, FRA’s regulatory philosophy depends fundamentally on the exercise by trained and qualified personnel of informed discretion in matters of rail safety.

7. The FRA’s submissions in this proceeding say only that 115 pound rail will support passenger train operation at seventy-nine miles per hour. The FRA does *not* say—and in my experience, would not say—that seventy-nine miles per hour is an appropriate speed on a

Class 4 line in all instances or under all circumstances. The FRA also does not suggest, even remotely, that this Board should detract from the FRA's oft-repeated direction that rail owners are "encouraged and expected to maintain higher standards" than the minimum levels in the FRA regulations and the FRA's Track Safety Standards Manual ("TSS Manual").

8. For example, Guilford, like every other rail owner in the United States, issues a daily speed summary for each of its lines. Every employee involved in railroad operations must have this document in his or her possession before beginning work each day. In addition, speed and other operational limitations are imposed daily by posted operational bulletins or by oral communication as conditions require. These limitations are the result of observations by, and consultations among, qualified personnel responsible for maintaining and renewing track and infrastructure (e.g., bridges, signals, crossing protections).

9. In my experience, there is never a day—for Guilford or any other railroad—when some such limitations are not imposed on at least some segments of track. These determinations are made by the maintaining party. Thus, where Guilford operates trains over lines maintained by Amtrak, Guilford accepts and adheres to any limitations that Amtrak may impose. The same is true anywhere that Guilford—or any other railroad—operates over track maintained by another party.

10. In addition to addressing acute conditions by such means as the daily speed summary, and consistent with FRA's regulatory approach and expectations, Guilford long has imposed general standards and tolerances that are more restrictive than the FRA minimums. These are intended to reflect the particular operational, geographical and climatic conditions of Guilford's system.

11. For example, Guilford's curve elevation and gage requirements are stricter than the FRA minimums. Also, Guilford has developed (and FRA has approved) installation and maintenance rules for continuous welded rail that are unique to Guilford and its particular circumstances. Guilford tests its rail for internal defects well beyond what the FRA requires.

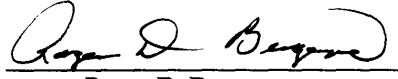
12. Guilford's qualified inspectors also must take environmental conditions into account in deciding whether any restrictions are appropriate. Rain can soften a track bed, temperature changes can cause rail (particularly continuous welded rail) to buckle or to pull apart, the freeze/thaw cycle affects track geometry, and so forth.

13. These are but a few examples of the many types of variations from FRA's minimum standards that every railroad employs or imposes every day. Guilford is no exception, and I do not believe that the Board intended to make Guilford the lone exception. My understanding is that the only issue before the STB in this proceeding (and the only issue on which FRA commented), was whether 115 pound rail can, under proper circumstances, support—on a continuing basis—speeds of seventy-nine miles per hour. *None* of the many other safety factors addressed in the extensive FRA regulations, the TSS Manual, the AREMA standards, or elsewhere was addressed by this Board or by FRA in this proceeding.

14. Finally, Guilford consistently has one of the best safety records in its class in the nation. This year it is receiving the gold Harriman Award for having the lowest rate of personal injuries per worker-hour in its class. Guilford has achieved this preeminent record through its commitment to safety, above and beyond the minimum requirements set by the FRA.

15. Given my many years of experience dealing with the FRA and its regulatory framework, I don't believe that FRA intended that this Board make a singular exception to the general propositions that FRA's regulations establish minimum safety standards and that

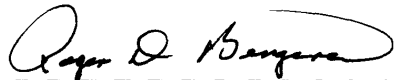
qualified personnel retain discretion to establish stricter standards where circumstances make that necessary or advisable.

  
Roger D. Bergeron

State of Massachusetts  
County of Middlesex

SS:

Roger D. Bergeron, being duly sworn, deposes and says that he has read the foregoing statement, and that to the best of his knowledge, the facts therein are true.

  
Roger D. Bergeron

Sworn to before me this  
20<sup>th</sup> day of February 2003.

  
Notary Public

My commission expires March 28, 2003

295760.3

## CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2003, I caused to be served by the means indicated below a copy of the foregoing documents on the following:

Nathaniel M. Rosenblatt  
Farrell, Rosenblatt & Russell  
61 Main Street, Suite 1  
Bangor, Maine 04401  
(by Federal Express)

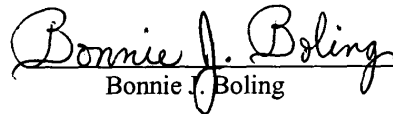
George W. Mayo, Jr.  
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Washington, D.C. 20004  
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S. Mark Lindsey, Esquire  
Chief Counsel  
Federal Railroad Administration  
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Washington, D.C. 20590  
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National Association of Railroad Passengers  
c/o Mr. Ross Capon  
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Bonnie J. Boling