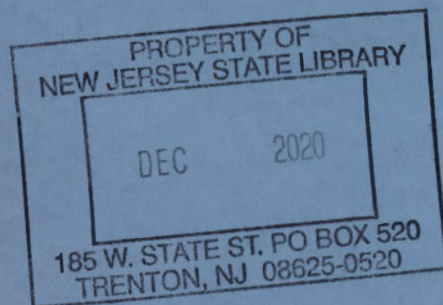
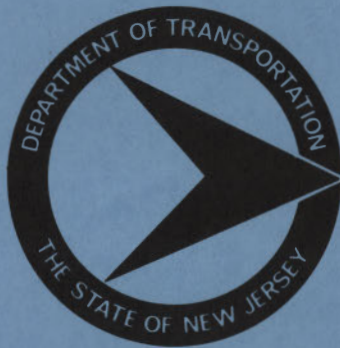


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FINAL SYSTEM PLAN: ITS IMPACT ON NEW JERSEY COMMUTER RAIL SERVICES



**NEW JERSEY DEPARTMENT
OF TRANSPORTATION**

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PREFACE

This paper analyzes the impact of the Final System Plan (FSP) issued by the United States Railway Association (USRA), pursuant to the Regional Rail Reorganization Act of 1973 (the Act), upon New Jersey's extensive commuter rail services. The Act had specified that one of the goals of the FSP should be that the requirements of efficient commuter rail service be met. The FSP has not met them. Unfortunately, with regard to commuter rail service the Act did not provide enough explicit guidance. USRA has taken advantage of that lack of guidance to adopt a policy whereby the new "for-profit" rail carrier created by the FSP, would, in part, pin its predictions for financial viability upon shifting substantial costs to the passenger authorities. The alternative posed by the FSP to the success of this policy is discontinuance of most passenger service. The New Jersey Department of Transportation (NJDOT) estimates, that if the FSP's passenger service recommendations were fully implemented by 1977 the State would be burdened with \$11 million in additional commuter rail service costs. However, USRA's figures for the shifting of added costs to passenger service suggest that the cost impact in New Jersey may be more dramatic. Efforts are underway to obtain USRA's precise projection for New Jersey commuter rail costs.

NJDOT advocates that the following legislative steps be taken to correct the biased and superficial treatment afforded commuter rail service by the FSP:

1. ConRail be required to accept for 180 days after conveyance those commuter rail service agreements it now disavows, which are in effect immediately prior to the conveyance of rail properties.

2. The Rail Services Planning Office (RSPO) be directed to develop standards for commuter rail service agreements.

3. One hundred eighty (180) days subsequent to conveyance, ConRail would be required to maintain commuter rail service for which a state offered a rail passenger service continuation subsidy in conformity with RSPO standards.

4. Special federal operating assistance be provided to the commuter authorities to hold them harmless for three years for increased costs attributable to the FSP and to ConRail to hold it harmless for any losses incurred during its 180 days of operation under existing agreements.

5. Special federal capital assistance be provided to the commuter authorities, from sources independent of UMTA's current funding allocations, to enable the authorities to develop substitute rail service for any jeopardized by implementation of the FSP.

6. Insulation of State and regional or local transportation authorities from any pass-through of any deficiency judgment entered against ConRail for

passenger service properties purchased by ConRail
for conveyance to such authorities.

7. Creation of a regional board with appropriate
NJDOT representation for governance of the Trenton-New
York Penn Station segment of Northeast Corridor.

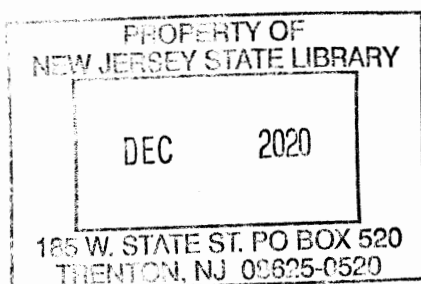
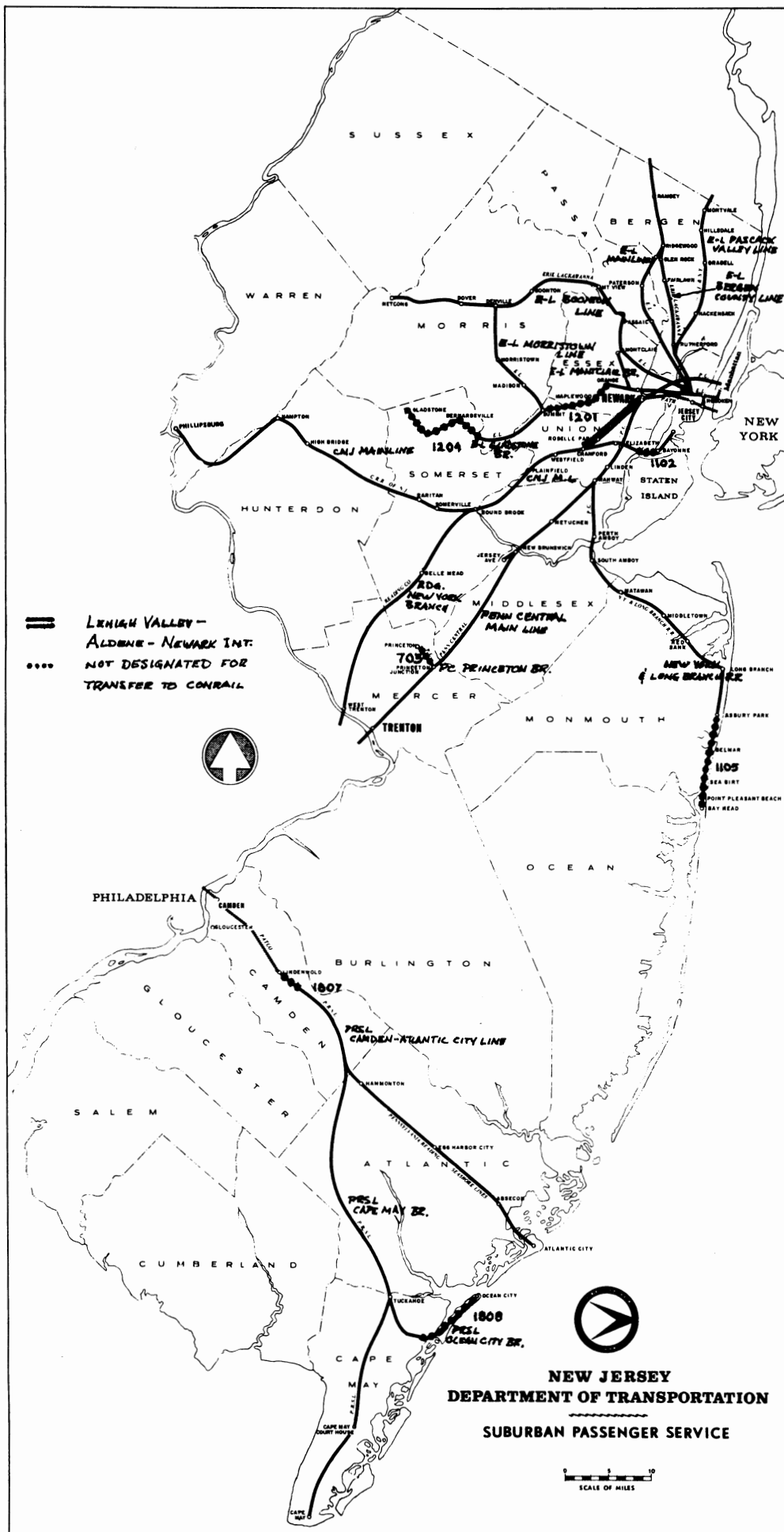


EXHIBIT A



THE FINANCING OF RAIL COMMUTER SERVICE IN NEW JERSEY

The Commuter Operating Agency (COA) in the NJDOT contracts for rail commuter service, pursuant to N.J.S.A. 27:1A-15 et seq., with the Trustees of the Erie Lackawanna Railway Company (EL), the Trustees of the Central Railroad Company of New Jersey (CNJ), the Trustees of the Penn Central Transportation Company (PC), and the Pennsylvania Reading Seashore Lines (PRSL). A map depicting the commuter rail service lines financially supported by the COA, as well as other commuter services in the State, is set forth in Exhibit A on the foregoing page. The COA may pay up to the full cost of providing the service, plus a return on investment of 6 percent. All profits above full cost plus return on investment must be divided equally between the carrier and the COA. The COA may also contract with carriers for improvements to capital facilities in consideration for the continuance of specified passenger service. Each contract must specify the passenger service which the carrier is required to operate, including timetables, train consists and fare tariffs applicable to the service.

El Service

EL provides rail commuter service between communities in Bergen, Passaic, Essex, Morris and Somerset counties and Hoboken, New Jersey, where passenger make connections with the

Port Authorites Trans Hudson Corporation (PATH) for destinations in midtown and downtown Manhattan. The passenger facilities surrounding the Hoboken Terminal comprise USRA Designation Id. #6801. Communities in Essex, Morris and Somerset counties are also provided with service to Newark. At present, no El rail commuter service provides direct rail access to midtown Manhattan.

This EL service is divided into the diesel service serving Bergen, Passaic, Essex and Morris counties and the electric service serving Essex, Morris and Somerset counties. The diesel service is provided over three lines, the Pascack Valley Line serving eastern Bergen County, the Main Line-Bergen County Line serving western Bergen County and Passaic County, and the Boonton Line serving Morris, Passaic and Essex counties. The electric service is provided over the Morristown Line serving Morris and Essex counties, and its connecting lines, the Montclair Branch serving Essex County and the Gladstone Branch serving Somerset County. The Morristown Line includes USRA line segment #1201 between Summit and Orange; the Gladstone Branch includes USRA line segment #1204 between Millington and Gladstone.

The number of per weekday trains and passengers carried in 1974 by EL commuter service is as follows:

<u>Erie Lackawanna</u>	<u>Trains per weekday</u>	<u>East</u>	<u>West</u>
Pascack Valley Line	12	3,570	3,184
Main Line-Bergen County	65	8,555	8,573
Boonton Line	25	3,230	3,281
Morristown Line, including Montclair and Gladstone branches	<u>162</u>	<u>20,135</u>	<u>20,503</u>
TOTAL	264	35,490	35,541

EL has received financial assistance from the State of New Jersey for its rail commuter services since 1961. In the early years of this relationship, the EL sought discontinuances of a number of commuter rail services. Payments since 1961 now total in excess of \$80 million. In Fiscal Year 1975 (July 1, 1974 through June 30, 1975), the COA paid the EL, pursuant to its passenger service contract, \$17,229,000. That agreement, entered into July 1, 1967, provides that the COA shall pay the EL an amount for each fiscal year equal to the net avoidable costs from suburban passenger service for the preceding calendar year. Furthermore, the agreement provides that, insofar as future legislative appropriations will permit, the COA shall make expenditures to carry out a minimum capital improvement program. To date, the diesel services have been re-equipped with new cars and locomotives and the COA is in the process of implementing federal grants for a project to re-equip and re-electrify the EL's electrified lines. Table 2, *infra*.

Of significance in the context of the Act is the fact that the agreement is terminable upon a year's notice in writing by either party transmitted by June 30 to be effective the subsequent June 30. Neither party has ever exercised the option. The agreement has been modified three times, the final amendment becoming effective June 18, 1974. At that time the COA agreed

to pay the EL for the contracted service on a current basis rather than one based upon preceding calendar year costs.

CNJ Service

CNJ provides rail commuter service over its Main Line from Phillipsburg to Newark Penn Station via the Lehigh Valley between Cranford and Hunter and the PC, pursuant to 1964 trackage rights agreements with the Lehigh Valley Railroad Company and PC. This service covers communities in Warren, Hunterdon, Somerset and Union counties. At Newark, passengers can make connections to midtown Manhattan via PC Main Line service and PATH and via PATH to downtown Manhattan. This service utilizes a key segment of Lehigh Valley double track railroad between the Aldene connection at Cranford and the Lehigh's connection with the PC Main Line in Newark (Hunter). A shuttle operates on the CNJ's Main Line between Bayonne in Hudson County through Elizabeth to Cranford in Union County. This shuttle service traverses Newark Bay over the CNJ's Newark Bay Bridge, USRA Line Segment #1102.

CNJ also operates rail commuter service over The New York and Long Branch Railroad (NY & LB) (joint venture owned by CNJ and PC) from communities on the North Jersey Coast from Ocean County, through Monmouth, Middlesex and Union counties to Newark Penn Station. There, passengers may also make PC Main Line and PATH connections to midtown and downtown Manhattan. The NY & LB

includes USRA Line Segment #1105 between Asbury Park and Bay Head. In addition to trackage of the NY & LB, the North Jersey Coast service is operated over a short piece of CNJ trackage north of the Raritan River, and pursuant to trackage rights agreements over the PC's Perth Amboy and Woodbridge branch and the PC Main Line between Rahway and Newark Penn Station.

The total number of per weekday trains and passengers carried in 1974 by the CNJ is as follows:

<u>The CNJ</u>	<u>Trains per weekday</u>	<u>East</u>	<u>West</u>
Main Line (including Bayonne Shuttle)	62 (plus 41)	7,474	7,350
New York & Long Branch	<u>14</u>	<u>3,695</u>	<u>4,121</u>
TOTAL	117	11,169	11,471

The State of New Jersey has been providing financial assistance to the CNJ since 1961 for its commuter rail operations. The sum paid now exceeds \$72 million. During Fiscal Year 1975, the State paid the CNJ, \$13,731,000 pursuant to a service agreement, dated July 1, 1973. The July 1, 1973 interim operating agreement required the CNJ to operate specified passenger service through midnight June 30, 1974 in consideration of payment by the COA of a base amount per month subject to adjustment in accordance with principles outlined in the agreement. This compromise agreement had followed a bitterly fought legal effort by the Trustee to discontinue passenger service without regulatory authority approval.

After a threatened cessation of all rail services by the Trustee, the July 1, 1973 agreement was amended and extended for a period of five months by a contract dated July 1, 1974, wherein the parties negotiated a shared cost approach to the determination of CNJ's loss in providing passenger operations. After still another threatened cessation of all rail services by the Trustee, the July 1, 1973 agreement was further extended until June 30, 1975 by a contract dated December 1, 1974. This agreement recited that the CNJ and COA had agreed to have the United States Department of Transportation (USDOT) make binding determinations as to the appropriateness of cost allocations between freight and passenger service and that it and the July 1, 1974 agreement would be amended in accordance with said determinations. In addition to the binding determinations, the USDOT was to make recommendations as to whether the present compensation and revenue components of the agreement were fair and equitable.

In April, 1974 USDOT determined that the proper method of reimbursement is based upon long term avoidable costs. Since the COA had been paying the CNJ pursuant to a method approximating full cost, USDOT determined that the CNJ was being over-compensated by approximately \$1,100,000 per year. This amount, USDOT recommended, could be considered return on investment to the CNJ. The COA also has been contributing funds,

up to \$2.7 million, for the rehabilitation of track, roadbed and signal system on the CNJ Main Line, pursuant to an agreement dated July 8, 1974.

Four extension agreements have recently been executed extending support for the CNJ service through September 30, 1975 at previous cost allocations. Each party reserved its rights against the other to retroactive claims based upon the right to enforce the USDOT determinations or such other claims as they may have.

Service over the NY & LB is provided by both the CNJ and the PC. Reimbursement for this service accordingly falls partially under the CNJ payments and partially under the PC payments, set forth below. In each case the basis for determining passenger costs is in accordance with the methodology used for the parent carrier (i.e. CNJ or PC, as the case may be). In addition, the State has expended more than \$3.7 million for upgrading the NJ&LB during the past four years.

A further extension of the existing contract through the mandatory conveyance date or June 30, 1976 is currently before the COA.

PC Service

PC provides a rail commuter service over its Main Line, a portion of the Northeast Corridor, from Trenton in Mercer County, through Middlesex, Union and Essex counties, to New York Penn-Station. This service includes stops at Princeton Junction, New Brunswick, Metuchen, Elizabeth and Newark. Service also originates

at the Jersey Avenue Park-and-ride, South of New Brunswick. The branch lines between Princeton and Princeton Junction, USRA Line Segment #703, is used to bring passengers to the commuter and Amtrak intercity service on the Main Line. Additional commuter trains to Newark and Manhattan are operated from South Amboy in Middlesex County to Manhattan over the Perth Amboy & Woodbridge branch and the Main Line west of Rahway. PC also provides rail commuter service, for the North Jersey Coast, supplementary to that provided by the CNJ. The PC's service provides direct access to New York Penn Station.

The total number of per weekday trains and passengers carried by PC in 1974 is as follows:

<u>PC</u>	<u>Trains per weekday</u>	<u>East</u>	<u>West</u>
Main Line	83	21,488	20,317
South Amboy	20	1,094	908
North Jersey Coast	<u>20</u>	<u>6,384</u>	<u>6,132</u>
TOTAL	123	28,966	27,357

PC received financial operating assistance from the State from 1961-1965, and again from 1970-1975, in a total amount of \$29,398,242. During Fiscal Year 1975, the State paid PC \$10,199,000, pursuant to Interim Service Agreement No. 2, dated September 1, 1973.

The financial arrangements between the COA and PC have been marked by consecutive short term agreements. By a lease agreement, dated July 1, 1965, the COA agreed to furnish the

PC with 80 passenger cars over a specified period of time and the PC agreed to operate passenger service until June 30, 1977. The COA also agreed, subject to the availability of funds, to make expenditures for operating expenses and other capital improvements in equipment and facilities as specified in future agreements between the parties. On September 1, 1970, the parties contracted for the performance of previously deferred maintenance and improvements to various facilities.

Superseding certain provisions of the July 1, 1965 lease agreement and in contemplation of a long term Operating Agreement, the COA and PC entered into an Interim Agreement, dated January 1, 1973, terminable upon execution of the Operating Agreement or automatically on August 31, 1973, whichever occurred first.

Effective September 1, 1973, PC and COA entered into Interim Agreement No. 2. This agreement, the outside term of which was June 30, 1974, provided that COA would make monthly payments to PC at agreed negotiated rates pending accord on a method for determining costs attributable to contracted passenger service in the proposed Operating Agreement. The cost philosophy to be used was to follow that being established in litigation for an Amendment Agreement between AMTRAK and PC. To date, the basis of the AMTRAK-PC Amendment Agreement has not been established by the PC Reorganization Court. Consequently, provisions calling for the determination of costs

on that basis are not in place. Accordingly, the parties agreed to extend and amend Interim Agreement No. 2 providing for the continuation of service through June 30, 1975. Further extensions of Interim Agreement No. 2 beyond June 30, 1975 to September 30, 1975 are awaiting approval of the PC Reorganization Court. A new extension and amendment of Interim Agreement No. 2 is presently before the COA. It is based on a basically avoidable cost philosophy and is to be effective through the conveyance date, or June 30, 1976, is presently before the COA.

PRSL Service

PRSL provides rail commuter service over its lines between communities in Atlantic and Cape May counties and Lindenwold, where connecting trains are available on the Lindenwold High Speed Line operated by the Delaware River Port Authority Transit Company for travel to Camden and Philadelphia. PRSL service is operated over USRA Line Segment #1808, between Ocean City and Palermo, and USRA Line Segment #1807, between Lucaston and Lindenwold.

This service consists of the following number of trains per weekday: Atlantic City line, 6; Cape May line, 2. The number of passengers carried per weekday in 1974 approximates 300 one way.

Since 1963 the State of New Jersey has provided the PRSL financial assistance for its rail commuter service and payments now total more than \$4.5 million. In Fiscal Year 1975, the State paid PRSL \$800,000 pursuant to a service agreement, dated July 1, 1973. That agreement, which was originally to terminate June 30, 1974, based compensation on the net avoidable cost of PRSL passenger service. This contract has been extended several times through September 30, 1975. A proposal to extend the contract through December 31, 1975 is currently before the COA.

Joint Reading-CNJ Service

The Reading Company (Reading) provides rail commuter service from Philadelphia to West Trenton, through Mercer and Somerset counties, and then to Newark Penn Station. Reading operates this service without any financial assistance contract with the COA. The service consists of two trains in each direction on weekdays only and carries approximately 370 passengers per day in each direction. The service operates over Reading tracks from its origin to Bound Brook where, pursuant to a trackage rights and cost sharing agreement with the CNJ, the service proceeds to Cranford and thence, pursuant to trackage rights agreements with the Lehigh Valley and PC, to its terminus, Newark Penn Station. Passengers then may make PC Main Line or PATH connections to midtown or downtown Manhattan. This service utilizes, as does the CNJ, a key segment of double track railroad

between Cranford (Aldene) and a connection with the PC Main Line in Newark. This segment is owned by the Lehigh Valley Railroad Company. At present the CNJ portion of the costs of operating this service is reimbursed in the contract between the CNJ and the COA. In August 1975 Reading petitioned the United States Railway Association for permission to discontinue this passenger service, as well as all of its other passenger services.

Capital Assistance Program

New Jersey has invested large sums in the maintenance and development of commuter rail services. Table I below provides a description of the capital assistance programs the State or related agencies have completed or are embarked upon in efforts to maintain or develop commuter rail service in New Jersey.

Budgetary Considerations

The COA has budgeted for Fiscal Year 1976 financial assistance for commuter rail service to the following carriers in the following amounts:

EL	\$22,800,000
PC	16,600,000
CNJ	15,700,000
PRSL	<u>800,000</u>
TOTAL	\$55,900,000

The COA expects to receive \$35 million in operating assistance funds from the Urban Mass Transportation Administration, pursuant to Section 5 of the Urban Mass Transportation Act of 1964, as amended. Some \$13 million reimburses the State for a portion of its public transportation outlays in Fiscal Year 1975; some \$21.9 million will be distributed for Fiscal Year 1976. Receipt of these funds is contingent upon successful negotiation of a labor protective agreement. The COA's Section 5 applications show that these federal funds will be used to defray commuter rail service costs as follows:

	<u>1975</u>		
	<u>Section 5 Funds</u>	<u>State Funds</u>	<u>Total</u>
EL	\$4,448,672	\$12,780,328	\$17,229,000
CNJ	3,840,411	9,890,589	13,731,000
PC	2,746,971	7,452,029	10,199,000
PRSL	<u>246,697</u>	<u>553,303</u>	<u>800,000</u>
TOTAL	\$11,282,751	\$30,676,249	\$41,959,000

	<u>1976</u>		
	<u>Section 5</u>	<u>State</u>	<u>Total</u>
	<u>Funds</u>	<u>Funds</u>	
EL	\$ 7,645,662	\$15,154,338	\$22,800,000
CNJ	6,347,330	9,352,670	15,700,000
PC	4,369,202	12,230,798	16,600,000
PRSL	<u>--</u>	<u>432,000</u>	<u>432,000</u>
TOTAL	\$18,362,194	\$37,169,806	\$55,532,000

The COA is currently acting on proposals for extensive fare increases on contracted commuter rail service. Those increased were to become effective October 1, 1975. These proposals were necessitated by a \$9 million shortfall below anticipated needs legislative appropriations for financial assistance to railroad and bus companies. At the Legislature's request for additional time to study the situation, the COA is expected to suspend implementation of the fare increases until December 1, 1975.

Capital funds in New Jersey for public transportation development are about to become extremely tight. With the exception of a \$10 million appropriation for the Woodcrest Station Project of the Delaware River Port Authority Transit Corporation, the only funds for capital expenditures in the State are the remaining proceeds of the 1968 \$200 million public transportation

bond issue. As shown in Table I some \$106,120,600 of these funds have been expended or obligated to construct new railroad stations and parking lots, carry out various projects of rehabilitation and purchase passenger cars, locomotives and buses. Of the remaining \$93,879,400, \$83,600,000 has been designated to match proposed federal capital grants: \$47,600,000 for EL re-electrification and re-equipping . \$25,000,000 for NY&LB electrification and re-equipping and \$11,000,000 for purchase of new and used buses to upgrade the New Jersey bus industry. All except \$92,800 of the remaining \$10,279,400 has been designated for various other public transportation projects. A recent report of the Governor's Capital Needs Study Commission indicates the pressing need for massive additional expenditures for public transportation capital projects in the State. In response to that report, legislation has been enacted for a November 1975 public referendum on a bond issue, which includes \$300 million for public transportation capital expenditures.

CAPITAL ASSISTANCE PROGRAM FOR
NEW JERSEY COMMUTER RAIL SERVICES
(IN THOUSANDS)

EL PROJECTS

<u>Sponsor</u>	<u>Description</u>	<u>Funding Source</u>		<u>Total Cost</u>	<u>Status</u>
		<u>Federal</u>	<u>State</u>		
State of New Jersey	32 New Diesel Locomotives and 155 Passenger Cars		\$41,459	\$41,459	Complete
State of New Jersey	26 Reconditioned Passenger Cars		1,354	1,354	Complete
State of New Jersey	Improvements to 26 Stations		1,262	1,262	Complete
State of New Jersey	Littleton Rd. Park-and-Ride Station and Parking Lot		334	334	In Plan- ning stage
State of New Jersey	Montclair Connection Station Station and Parking Lot	\$1,512	756	2,268	In Design stage
State of New Jersey	200 MU Electric Passenger Cars, Reelectrification	232,376	58,094	290,470	Bids in- vited for 160 cars, Consultant selected for reelectri- fication
Port Authority of New York & New Jersey	Direct Rail Access to N.Y. Penn Station	120,000 30,000 <u>Port Authority</u>		150,000	Under design capital grant application to UMTA being prepared
	Subtotal	-	\$353,888 \$103,259 \$30,000 <u>Port Authority</u>	\$487,147	

CAPITAL ASSISTANCE PROGRAM FOR
NEW JERSEY COMMUTER RAIL SERVICES
(IN THOUSANDS)

PC PROJECTS

<u>Sponsor</u>	<u>Description</u>	<u>Funding Source</u>		<u>Total Cost</u>	<u>Status</u>
		<u>Federal</u>	<u>State</u>		
State of N.J.	105 MU Electric Passenger Cars	\$25,394	\$12,698	\$38,092	Complete
State of N.J.	Metro Park Station High Level Platform and Parking Lot	1,279	1,339	2,618	Complete
State of N.J. & Boro. of Metuchen	New Metuchen Passenger Station & High Level Platform	1,014	412	1,521	Plans ready additional \$2,500 required
		Borough 95			
State of N.J.	New Trenton Station		2,273	2,273	Complete
State of N.J.	Princeton Junction Station Parking Lot		400	400	Complete
State of N.J.	Reconstruction of Rahway Railroad Station		1,034	1,034	Complete
State of N.J.	Elizabeth Reconstruction		235	235	Complete
Port Authority of NY & NJ	Newark Penn Station Renovation	\$12,000	<u>Port Authority</u>	12,000	Agreements in process
	Subtotal -	\$27,687	\$18,391	\$58,173	

CAPITAL ASSISTANCE PROGRAM FOR
NEW JERSEY COMMUTER RAIL SERVICES
(IN THOUSANDS)

CNJ PROJECTS

<u>Sponsor</u>	<u>Description</u>	<u>Funding Source</u>		<u>Total Cost</u>	<u>Status</u>
		<u>Federal</u>	<u>State</u>		
State of N.J.	Aldene Plan-connection of CNJ tracks into Penn Station Newark	\$ 4,323	\$ 4,057	\$ 8,380	Complete
State of N.J.	146 Reconditioned Passenger Cars		4,811	4,811	Complete
State of N.J.	11 Reconditioned Rail Diesel Cars		1,970	1,970	
State of N.J.	Improved Passenger Train Handling Facilities		293	293	Complete
State of N.J.	Rehabilitation of Passenger Stations		228	228	Complete
State of N.J.	Rehabilitation of Main Line Track		2,800	2,800	In Process
State of N.J.	Installation of Radios on Passenger Equipment		67	67	Complete
State of N.J.	Train Dispatching Consolidation		37	37	Complete

State of N.J.	Water Pollution Cor- rection at Raritan	414	414	Capital Grant Application Filed with UMTA
Port Authority of N. Y. & N. J.	Extension of PATH to Plainfield	200,000 \$147,000 <u>Port Authority</u>	347,000	
	Subtotal	-	\$204,323	\$161,677 \$366,000

CAPITAL ASSISTANCE PROGRAM FOR
NEW JERSEY COMMUTER RAIL SERVICES
(IN THOUSANDS)

NY & LB PROJECTS

<u>Sponsor</u>	<u>Description</u>	<u>Funding Source</u>		<u>Total Cost</u>	<u>Status</u>
		<u>Federal</u>	<u>State</u>		
State of N.J.	48 Reconditioned Passenger Cars		\$ 2,446	\$ 2,446	Complete
State of N.J.	Little Silver Parking Lot		423	423	Complete
State of N.J.	Rehabilitation of Highway Crossings and Station Platforms		1,750	1,750	In Process
State of N.J.	Construction of New Matawan Station		3,000	3,000	In Design Stage
State of N.J.	Water Pollution Correction at Bay Head		392	392	Complete
State of N.J.	Middletown Station Parking Lot		707	707	Complete
State of N.J.	Rehabilitation of Bridges	3,200	1,850	5,050	In Process
State of N.J.	Rehabilitation of Track		1,943	1,943	In Process
State of N.J.	Bay Head Tie Replacement		106	106	Complete

State of N.J.	Purchase of 50 MU Electric Passenger Cars and Electrification from South Amboy to Red Bank	99,686	25,297	124,982	Capital Grant Application Filed with UMTA
	Subtotal -	\$102,886	\$37,914	\$140,800	

CAPITAL ASSISTANCE PROGRAM FOR
NEW JERSEY COMMUTER RAIL SERVICES
(IN THOUSANDS)

PRSL PROJECTS

<u>Sponsor</u>	<u>Description</u>	<u>Funding Source</u>		<u>Total Cost</u>	<u>Status</u>
		<u>Federal</u>	<u>State</u>		
State of N.J.	Rehabilitation of 10 Rail Diesel Cars		\$,750	\$,750	Complete
GRAND TOTAL	-	\$688,784	\$174,991	\$1,052,870	
	Borough of Metuchen	95			
	Port Authority of New York & New Jersey	\$189,000			

FSP AND ITS EFFECTS ON NEW JERSEY
COMMUTER RAIL SERVICES

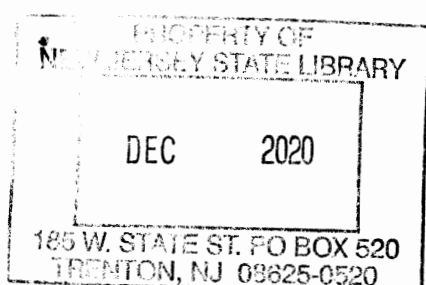
On July 26, 1975, USRA issued the FSP as mandated by the Act. The FSP describes a program for providing an adequate and economically self-sustaining regional rail system for the Northeast and Midwest portions of the United States. One of the goals Congress established for the FSP was the effectuation of "the movement of passengers...in rail transportation in the region in the most efficient manner consistent with safe operation, including the requirements of commuter and intercity rail passenger service..." Section 206(a)(7) (emphasis supplied). Included as a separate chapter in the FSP were recommendations for continuation of intercity and commuter rail operations. The Interstate Commerce Commission has observed that the FSP's treatment of commuter rail service does not meet this goal.

FSP recommendations for commuter rail service fall into three principal categories: the effect of commuter service agreements, principles for assigning costs to passenger vs. freight service, and the Northeast Corridor. Major points affecting the State of New Jersey in each of these categories are as follows:

Commuter Service Agreements

Ownership

1. Commuter authorities should purchase or lease those lines over which they are the dominant user.



Operations

2. ConRail is obligated to operate commuter rail services on property transferred to it pursuant to the Act.
3. ConRail would be available to operate commuter services on properties not transferred to it.
4. The commuter authorities have the option of choosing a carrier other than ConRail.

Contractual Obligations

5. The Act requires that with respect to properties transferred pursuant to the Act, passenger service financial support agreements must be honored if they were in force at the time of passage of the Act and are still in effect. Section 303(b)(2).
6. Pursuant thereto, ConRail will assume the EL contract with the COA for operation of suburban passenger service in New Jersey and New York.
7. On properties not transferred pursuant to the Act, such pre-existing agreements must be honored. Section 304(c)(2)(B).
8. Financial support agreements for commuter services over properties to be transferred pursuant to the Act which were in effect at the time of enactment but whose terms have been extended during the planning process have been deemed not binding upon ConRail.

9. Consequently, the FSP identifies the following New Jersey financial support agreements for commuter services as not binding upon ConRail:
- All PC services operated in the New York-Newark area for the account of NJDOT.
 - All CNJ services operated in the New York-Newark area for the account of NJDOT.
 - All PRSL services operated in the Philadelphia area for the account of NJDOT.
10. Although ConRail is "obligated" to provide these commuter rail services, new financial support agreements will have to be negotiated prior to conveyance if present service is to be continued. The State of New Jersey assumes the discontinuance to which the FSP is referring is one pursuant to an order of an appropriate regulatory authority.
11. Reading service between Philadelphia, Pa. and Newark, N.J. via Bound Brook, N.J. is not presently under contract with NJDOT. The FSP recommends that ConRail seek a satisfactory financial support arrangement for the provision of this service; if such agreements are not executed by the time of conveyance, petition for discontinuance of the service should be filed with the proper regulatory authority.

12. ConRail should negotiate, where possible, with the various commuter authorities for new operating agreements with payments by each appropriate authority essentially on a "net avoidable cost" basis, with a provision penalizing the authorities for "freight train delay" and in accordance with the cost sharing "principles" set forth below.

Passenger - Freight Cost Sharing "Principles"

1. ConRail has the responsibility to provide satisfactory passenger service on all lines in its system in accordance with the various principles for sharing ownership and operating costs recommended by USRA.
2. Passenger service should not be subsidized by freight service and ConRail should not be burdened with any passenger deficit.
3. Passenger operations should have priority over freight operations.
4. The exclusive user of a facility should be its owner and should bear the full ownership, maintenance, and operating costs of the facility.
5. Where freight and passenger operators both use a facility, the dominant user should own the facility and bear all the costs of that facility except those which could be avoided if the minority user were not present.

6. To determine the dominant user, all passenger services, both intercity and commuter, should be considered as one entity and all freight services, regardless of carrier, should be considered as one entity.
7. In instances where two or more passenger entities jointly use an exclusive passenger facility, the responsibility for allocating costs on an equitable basis should be with the users.
8. Where passenger and freight operators both use a facility on an equal basis, the costs of owning and using the facility should be shared equitably.
9. Passenger entities should make their own arrangements for financing.

Northeast Corridor

1. The responsibility for provision of intercity passenger service resides with Amtrak.
2. Passenger and through freight operations should be separated in the Northeast Corridor between New York and Washington. Operationally, this separation will be accomplished by providing a through freight route comprised of segments of the B & O, Reading, Lehigh Valley, and CNJ. This through freight route includes the double track segment of the Lehigh Valley between Aldene and Newark required by CNJ passenger service and joint CNJ-Reading passenger service.

3. Freight operations should not be expected to bear the costs of the purchase of the direct capital costs associated with eliminating freight interference with the passenger operation on the Northeast Corridor.
4. Amtrak will acquire the Northeast Corridor properties where passenger service operates.
5. Responsibility for continuation of commuter service in the Northeast Corridor should be resolved between Amtrak and the various commuter agencies on an equitable basis.
6. Full operational control of Northeast Corridor traffic should be vested with Amtrak, i.e., it should be responsible for all signaling, dispatching and maintenance in the Corridor.
7. ConRail should provide operating crews, maintenance, personnel and line management support under contract as requested and required by Amtrak.
8. The Federal Railroad Administration recommends that a Disputes Board be created which would be charged with reconciling disputes on the Corridor between the intercity, commuter and freight services. The composition of the Disputes Board is not revealed in the FSP.

Undesignated Passenger Lines

The following line segments in New Jersey which presently carry commuter passenger service are not designated for acquisition by ConRail:

- Nassau to Princeton on PC Princeton Branch (703).
- Asbury Park to Bay Head Junction on NY & LB (1105).
- Palermo to Ocean City on PRSL Ocean City Branch (1808).
- Lindenwold to Lucaston on PRSL (1807).
- Hunter to Newark Interchange on Lehigh Valley Newark Branch.
- Bayonne "BV" to Elizabethport "FH" on CNJ Newark Bay Bridge (1102).
- Hoboken to West End on all EL lines.
- Orange to Summit on EL Morris Line (1201).
- Millington to Gladstone on EL Gladstone Branch (1204).

All of the above track segments adjoin track segments designated for transfer to ConRail. In each case, existing passenger service operates from designated to undesignated segments or vice versa, and in most cases use of the undesignated properties is essential to the continued provision of any of the service. See Table 2 below. ConRail is obligated to operate commuter rail service over the designated segments.

The FSP and the Act assure the continuation of passenger service over the undesignated properties of EL. Section 304(c)(2)(B). As for the undesignated segments owned by PC, CNJ and PRSL, the COA could offer a rail service continuation

STATUS OF NEW JERSEY COMMUTER RAIL PASSENGER SERVICES
UNDER USRA FINAL SYSTEM PLAN

<u>Railroad and Service</u>		<u>Included in ConRail Line</u>	<u>Included in ConRail in N.E. Through Freight Alternative Routing Corridor</u>	<u>Part of N.E. Psngr. (& Local Frt.) Corridor (Washington-NY)</u>	<u>Not Included on ConRail Lines (Light-Density Branches)</u>
<u>Train Series Number</u>	<u>Origin and Destination</u>				
<u>PENN CENTRAL (PC)</u>					
1100	Bay Head-New York	Asbury Park-Rahway		Rahway-N.Y.C.	Bay Head Jct.-Asbury Park
3600	South Amboy-New York	South Amboy-Rahway		Rahway-N.Y.C.	
3700	New Brunswick-New York			New Brunswick-N.Y.C.	
3800	Trenton-New York			Trenton-N.Y.C.	
3900	Rahway-New York			Rahway-N.Y.C.	
4100	Princeton Branch				Princeton-Princeton Jct.
<u>CENTRAL RAILROAD COMPANY OF NEW JERSEY (CNJ)</u>					
800	Raritan-Bayonne	Raritan-Nwk. Bay Bridge			Nwk. Bay Bridge-Bayonne
5300	Bay Head-Newark	Asbury Park-Rahway		Rahway-Newark	Bay Head Jct.-Asbury Park
5400	Raritan-Newark	Raritan-Aldene	Aldene-Hunter	Hunter-Newark	
5700	Phillipsburg-Newark	Phillipsburg-Aldene	Aldene-Hunter	Hunter-Newark	
5800	Cranford-Newark	Cranford-Aldene	Aldene-Hunter	Hunter-Newark	
5900	Plainfield-Newark	Plainfield-Aldene	Aldene-Hunter	Hunter-Newark	
<u>READING COMPANY (RDG)</u>					
5600	Philadelphia-Newark	Bound Brook-Aldene	Nesh. Falls-Bound Br. Aldene-Hunter	Hunter-Newark	
<u>PENNSYLVANIA-READING SEASHORE LINE (PRSL)</u>					
100	Atlantic City-Lindenwold	Atlantic City-Lucaston			Lucaston-Lindenwold
200	Ocean City-Tuckahoe	Palermo-Tuckahoe			Ocean City-Palermo
300	Cape May-Lindenwold	Cape May-Lucaston			Lucaston-Lindenwold

STATUS OF NEW JERSEY COMMUTER RAIL PASSENGER SERVICES
UNDER USRA FINAL SYSTEM PLAN

<u>Railroad and Service</u>		<u>Included in ConRail</u>	<u>ConRail in N.E.</u>	<u>N.E. Psngr.</u>	<u>Not Included on ConRail</u>
<u>Train</u>	<u>Origin and</u>	<u>Line</u>	<u>Through Freight</u>	<u>(& Local Frt.)</u>	<u>Lines</u>
<u>Number</u>	<u>Destination</u>		<u>Alternative</u>	<u>Corridor</u>	<u>(Light-Density Branches)</u>
			<u>Routing Corridor</u>	<u>(Washington-NY)</u>	
<u>ERIE LACKAWANNA RAILWAY COMPANY (EL)</u>					
100	Montclair-Hoboken	Montclair-West End			West End-Hoboken
300	Summit-Hoboken	Orange-West End			Summit-Orange
400	Gladstone-Hoboken	Millington-Summit			West End-Hoboken
		Orange-West End			Gladstone-Millington
500	Morristown-Hoboken	Morristown-Summit			Summit-Orange
		Orange-West End			West End-Hoboken
600	Dover-Hoboken (via	Dover-Summit			Summit-Orange
	M&E)	Orange-West End			West End-Hoboken
1000	Netcong-Hoboken	Netcong-West End			West End-Hoboken
	(via Boonton Line)				
1000	Dover-Hoboken (via	Dover-West End			West End-Hoboken
	Boonton Line)				
1100	Suffern-Hoboken	Suffern-West End			West End-Hoboken
1200	Waldwick-Hoboken	Waldwick-West End			West End-Hoboken
1600	Spring Valley-Hoboken	Spring Valley-West End			West End-Hoboken
50's	Port Jervis-Hoboken	Port Jervis-West End			West End-Hoboken

subsidy rental to the estates to assure continued use of their properties in commuter rail service. Section 304(c)(2)(A). Due to a quirk in the Act, these rental arrangements will have to be in effect more than two weeks prior to the conveyance date.

Capacity Constraint Projection: Aldene to Newark

The ICC in its evaluation of the Final System Plan points out that USRA's plans for the Lehigh Valley trackage between Aldene and Newark interlocking project a freight density of up to 37 freight trains per day. At this time over this same trackage 54 daily CNJ and Reading commuter trains are operated pursuant to a pre-Act trackage rights agreement. The I.C.C. concludes:

"There is not sufficient capacity to handle the projected freight traffic in addition to the commuter traffic. Successful rerouting of all of the present Corridor through-freight service cannot be achieved until the capacity constraint east of Aldene is relieved." I.C.C., Evaluation of U.S. Railway Association's Final System Plan, p. 22.

The USRA Supplemental Report to the FSP, issued September 1975, acknowledges that combined freight and commuter traffic volumes to and from Newark will exceed the capacity of the Lehigh Valley route. The Supplemental Report alters the final structure of the FSP's operating plan with the following statement at p. 16:

"The Central of New Jersey (CNJ) line has been retained as a second route. Passenger traffic between Aldene and Newark might be rerouted via the CNJ to Elizabeth and the PC with a new connection being constructed between the CNJ and PC at Elizabeth."

FISCAL IMPACT OF FSP UPON NEW
JERSEY COMMUTER RAIL SERVICES

In testimony before the House Subcommittee on Transportation and Commerce, on September 9, 1975, USRA Board Chairman Arthur Lewis forcefully stated that unless passenger service contracts are straightened out within six months, ConRail would move to discontinue these services. He said that otherwise passenger service would prove to be "an enormous drain on ConRail." Moreover, Chairman Lewis specifically asked the House Subcommittee to include in its report on the FSP a specific recommendation approving the cost sharing "principles" enunciated in the FSP. These statements underscore the FSP's recommendation that the shifting of substantial costs from ConRail to the commuter authorities must be implemented if the FSP's forecasts of financial viability for ConRail are to be fulfilled. The I.C.C. report on the FSP pointedly observes that FSP pro forma financial forecasts for ConRail show a marked increase, in constant dollars, from 1973 to 1976 in anticipated receipts from passenger revenues and subsidies. The report observes that the commuter authorities and the taxpayers are to be required to support this aspect of ConRail's financial well-being. Interstate Commerce Commission, Evaluation of the U.S. Railway Association's Final System Plan, p. 35.

To implement this substantial shift of costs the FSP recommends a maximum bargaining posture for ConRail within the confines of its statutory "obligation" to continue to provide existing commuter services over lines which are required for freight service (FSP, p. 45). The FSP recommends that ConRail negotiate a new operating agreement with agencies, such as the COA, in accordance with the FSP's model and cost sharing "principles" relative to the PC, CNJ, PRSL and Reading operations. The FSP further states that these negotiations must be completed prior to conveyance if these commuter rail services are not be threatened with discontinuance proceedings.

The provisions of the model agreement proposed in the FSP are that the commuter authorities will pay basically the net avoidable costs of providing commuter passenger service. (FSP p. 45, ftn. 3). At this level, NJDOT would have no quarrel with the FSP, as the majority of COA operating assistance funds for commuter rail operations in New Jersey are now paid on this basis. Note, however, that the COA net avoidable cost determinations do not include consideration of "estimated charges for freight train delay attributable to passenger service." This factor is included in the USRA model agreement, notwithstanding the FSP's cost sharing "principle" that passenger service should have priority over freight operations. No formula or mechanism for qualifying freight train delay is presented.

Beyond the model agreement, NJDOT is particularly troubled by the cost implications of the FSP "principle" that the dominant user of a facility should own it and bear all costs of maintaining and operating the facility - except those which could be avoided if the minority user were not present. (FSP pp. 40-41). In other words, where passenger service is dominant, freight service rather than passenger service is treated as avoidable and pays avoidable costs, while passenger service bears the base costs of the facility. For example, on a double track railroad in which one track is required for freight service but two for passenger service, the passenger service would now be charged for the maintenance and ownership costs for two tracks instead of one. This reversal of cost allocation would be repeated many times throughout the railroad cost accounting process.

USRA does not specify the means by which the dominant user should be determined. Depending on the measures chosen, passenger service could be considered to be the dominant service in suburban New Jersey for most, if not all, operations on the EL, CNJ Main Line, PC Main Line, NY&LB and PRSL. In this connection, NJDOT anticipates that ConRail will move to terminate the October 1, 1967 COA-EL agreement by June 30, 1977, because it is based upon the principle that commuter service is avoidable. In light of ConRail's substantial bargaining power and announced determination to succeed financially by shifting costs to the commuter authorities, NJDOT is gravely concerned about leaving the determination of these measures to the bargaining process.

Most significantly, were the dominant user principle imposed upon all New Jersey suburban passenger services by July 1, 1977, the fiscal year impact upon operating assistance costs would be severe. Under this "principle", maintenance and operating costs and return on investment paid by the COA for commuter rail operations would increase by more than \$8 million for a year at 1974 cost levels. Using the USRA table of inflation factors (FSP, pg. 84), at 1977 cost levels the added annual burden to New Jersey from imposition of the "dominant user principle" will be about \$11 million or about 35 percent higher. This represents a 20 percent increase above the COA's current \$55 million assistance levels for commuter rail service in New Jersey. In all equity, should the FSP passenger service recommendations be implemented, the federal government should provide impact funds to the authorities for several years to enable them to adjust their budgets to meet new costs attributable to such implementation.

Another concern centers upon FSP policy that ConRail's freight operations should not be expected to bear the costs of eliminating freight interference with passenger operations on the Northeast Corridor. (FSP, p. 60). One can only infer that Amtrak and the commuter agencies which use the Corridor are to bear those costs. At this time NJDOT does not know the total costs involved in the freight by-pass, how much of these costs might be attributed to the Trenton-Newark Corridor segment and what pass-through policy Amtrak will adopt. See ICC Evaluation, p. 19.

Still a further concern to NJDOT is the potential ripple effect of the passenger dominant theory upon general corporate costs. If passenger service is dominant for a given line in ConRail, what effect, if any, does that have upon the portion of ConRail general corporate costs to be assigned to the service? Will ConRail executive office, legal staff, accounting, real estate, and other general office expenses be analyzed on a net passenger avoidable cost basis or on some other basis? The answers to these questions also carry heavy dollar ramifications, but the FSP is silent on them.

FSP recommendations that nine rail properties used in New Jersey commuter rail service not be designated for transfer to ConRail may also create additional fiscal demands on New Jersey's mass transportation capital funds, which are in short supply at this moment. NJDOT may find it to its advantage to purchase these lines in order to continue, in the most efficient manner, the present commuter rail operations. The net liquidation value assigned by the FSP to these properties is approximately \$1.2 million. It should be noted that this \$1.2 million is applicable only to purchases made pursuant to designations to ConRail in the FSP of an option to purchase these properties for conveyance to NJDOT. This low-cost procedure may, however, not be available to NJDOT. This could be most unfortunate since the estates have announced that they value these properties at five to ten times higher than USRA has. USRA officials have

informed NJDOT that in any purchase made pursuant to this option-and-transfer mechanism ConRail would require the State to indemnify it for any deficiency judgment entered against it by the Special Court as a result of a finding of insufficient value assigned to the purchased commuter rail property. Such a contractual requirement would disable NJDOT from using this mechanism, because no public official in the State may enter into an agreement with an unliquidated contingent liability for which a sufficient reserve appropriation cannot be established.

As indicated above, the FSP will cause a potential capital burden to fall upon New Jersey as a result of the capacity constraint resulting from maintenance of CNJ and Reading passenger service on a diversion of freight traffic to the double-track Lehigh Valley property between Aldenē and Newark. The cost to build a third track between these points to accommodate all this traffic has been estimated at approximately \$60 million.

In summary then, the FSP's recommendations can impose a severe burden on the financial assistance program supporting New Jersey's commuter passenger service. Included in this burden are the following major components:

Charges for freight train delay attributable to passenger service. The impact as yet has been nowhere quantified. Methodology for estimating these costs will have to be de-

veloped through analysis and negotiation. No dollar figure is available but it could well be very substantial.

Facility maintenance and operations costs and return on investment in situations where passenger service is identified as dominant. The estimated added annual dollar impact on New Jersey in 1977, at 1977 level costs, is approximately \$11 million. This result is, in fact, discriminatory to commuter rail service. Not only will freight service not "cross-subsidize" passenger service but passenger service will be making a financial contribution to freight service over and above the net maintenance, operating and ownership savings which could be realized if the service were not continued.

General corporate overhead costs. The fiscal impact will depend on how this category of costs is treated in situations where passenger service is dominant. The potential added cost exposure for New Jersey is severe.

Purchase or lease of passenger carrying lines excluded from ConRail. The estimated dollar impact on New Jersey is \$1.2 million if these lines are purchased from ConRail; if, as may be nec-

essary, these properties are purchased directly from the estates, the purchase price could be considerably higher. Cost of easing capacity constraint on Lehigh Valley. The estimated cost of building a third track between Aldene and Newark on the Lehigh Valley to accommodate existing commuter and diverted freight traffic is \$60 million.

LEGAL AND LEGISLATIVE ISSUES
PRESENTED BY FSP

USRA converted its statutory obligation to respect the requirements of commuter rail service into the following principles enunciated in the FSP:

1. ConRail has the responsibility to provide satisfactory passenger service on all lines in its system; and
2. The provision of these services should not be subsidized by freight services and ConRail should not be burdened with any passenger deficit.
3. The commuter authorities must reach agreement with ConRail on passenger service contracts by conveyance date; if they do not do so ConRail will move to discontinue service.

As indicated above, certain commuter rail services in New Jersey are operated over segments of lines that have not been designated in the FSP for transfer to ConRail. The railroad estates owning these segments are expected to avail themselves of the Act's "quickie" discontinuance and abandonment procedures with respect to these segments as soon as possible. See Section 304(a) and (b). Under these procedures, not sooner than 30 days following the effective date of the FSP, the trustees may give notice of an

intent to discontinue service on a date certain which is not to be less than 60 days after the date of such notice. Thus, if the FSP becomes effective November 9, 1975, notices of discontinuance of commuter rail service over non-designated rail properties could be issued by December 9, 1975, and become effective by February 8, 1976. Discontinuance of commuter rail service over these rail properties could take place unless:

1. With respect to EL properties, the COA makes an offer to the estate (and presumably an operating agreement with ConRail) to continue service under the existing, binding agreement; and
2. With respect to properties on other railroads in reorganization, an offer to the estate (and presumably an operating agreement with ConRail) to continue service pursuant to a rail service continuation subsidy. Section 304(c)(2)(A) or (C).*

*The disparate timetables for discontinuance of service and mandatory conveyance create an anomaly. A rail service continuation subsidy must be offered by February 8 in order to prevent a discontinuance on that date. Yet, on the connecting commuter service over properties to be transferred to ConRail, the properties shall remain in the hands of the estates until February 27, the mandatory conveyance date. Thus, it would appear that the COA may be required to enter into a one-month operating agreement with the estate for the non-designated lines and then an operating agreement with ConRail to be effective on the conveyance date for service over the connected designated and undesignated segments. It would be preferable for all agreements, required by the act, to be effective on conveyance date. NJDOT, therefore, suggests that the Act be amended to provide that the date of discontinuance under Section 304(b)(1) and the mandatory conveyance date be identical.

The FSP recognizes the EL passenger agreement, dated October 1, 1967, as amended and supplemented, as binding upon ConRail. Pursuant to Section 303(b)(2), USRA views that agreement as an arrangement with a State under which financial support from such State was being provided at the time of enactment of the Act.

The FSP does not recognize the COA's contracts with PC, CNJ or PRSL as falling within the scope of Section 303(b)(2), although it is undisputed that the COA was providing financial support to the PC, CNJ and PRSL on January 2, 1974, pursuant to agreements which still exist. The FSP distinguishes the EL contract from the others on the ground that the former, even though it was significantly amended in June 1974, has remained in effect from January 2, 1974 to the issuance of the FSP and will continue to be in effect past the conveyance date. The COA's service agreements with the other carriers since the enactment of the Act contained a series of expiration dates falling subsequent to January 2, 1974, which expiration dates have been extended without interruption. This is an USRA position which the State of New Jersey may ultimately have to challenge in the courts.

The apparent stability gained from the FSP's recognition of the EL contract as binding is mainly illusory. This is so because the current EL agreement contains a provision whereby the contract may be terminated on June 30, 1977 upon notice of either party's

desire to do so.

The FSP places ConRail in an extremely strong bargaining position against the commuter authorities whose passenger service contracts it does not recognize as binding. To accomplish this, USRA has interpreted the Act to require the FSP to obligate ConRail to provide all rail service on a rail property which is designated for transfer to ConRail. Compare Sections 302(b) (ConRail directed to operate rail service over designated rail properties) and 304(a)(1)(A) (rail service may be discontinued if the FSP does not designate that it be operated). Thus, on the one hand, ConRail has "obligated" itself to operate these commuter rail services and cannot discontinue them without approval from the appropriate regulatory body; on the other hand, this interpretation of the Act deprives the commuter authority of the ability to offer a binding rail service continuation subsidy for passenger service, the standards for which have been (or could be set) by a neutral party, the Rail Services Planning Office, Section 304(c)(2)(A). Without the power to bind ConRail to a known set of guidelines, with the concomitant promise of commuter rail stability, the determination of contracted terms remains substantially where it has been - in the unpredictable arena of contract bargaining between the commuter authorities and a giant railroad which only begrudgingly considers itself

obligated to provide the service. This FSP designation of commuter rail service on included properties may also be challenged in the courts as a perversion of the FSP's goal with regard to meeting the requirements of commuter rail service.

Although the FSP set forth its proposals in a model agreement for negotiation with the commuter authorities, these are recommendations only and do not have the force of law upon ConRail. Were ConRail, a "for-profit" corporation, to suffer financial reverses in the near future, the commuter authorities have no protection against a ConRail effort to shift even more costs upon them. Even in the short term, a commuter authority appears dependent upon ConRail's interpretation of the ambiguous set of FSP cost sharing "principles" described above. Under present arrangements, ConRail, a self-interested negotiating party, will be left to decide what standards of measurement determine a passenger dominant line and what costs ConRail intends to shift to the passenger dominant user. NJDOT fears that after the FSP's freight restructuring is implemented the issue of freight or passenger dominance on particular lines will be more open to dispute than it now is. The resolution of these issues would best be left to a neutral party, such as the Rail Services Planning Office.

Another legal question calling for legislative solution is whether once the FSP has designated a rail property and the services provided thereon, does Section 304(e) prevent discontinuance of any of those services for at least two years after the FSP-designed rail system has been in operation. At pg. 223, the FSP seems to indicate that USRA construes Section 304(e) and 302(b) to assure that ConRail will operate all designated rail service over designated rail properties for at least two years. This is still another matter that may ultimately have to be adjudicated.

Still another statutory issue arises from the following possibility. After two years of operation, ConRail may desire to abandon, pursuant to Section 304(e), a rail property, such as the CNJ Main Line, over which freight and passenger service shall have been operated initially, but due to the FSP-phased restructuring of freight routes the line may become insignificant in the movement of freight. It might be argued that at that point a Section 304(c)(2)(A) rail service continuation subsidy offer - an automatic bar to discontinuance - would no longer be available to the State. See Sections 304(a)(1)(A) and 304(c)(1). This is another element of instability that needs legislative correction.

As indicated above, NJDOT has two other fiscal concerns that can and should be cured by action of the U.S. Congress. The first is the pass-through to state transportation agencies of that portion of a deficiency judgment entered against ConRail resulting from a Special Court finding of a valuation inadequacy by USRA with respect to property purchased for use in passenger service. The Congress should provide insulation from the pass-through for the acquiring state transportation agencies. The second is the possibility that the constraint created on the Lehigh Valley trackage between Aldene and Newark by the super-imposition of diverted Corridor freight traffic upon existing commuter operations will necessitate the construction of an expensive third above-ground track. The passenger service, operating pursuant to a binding pre-Act trackage rights agreement, cannot legally be dislodged. Therefore, Congress should provide reimbursement to the State authority, from sources other than existing Urban Mass Transportation Administration funds, for construction of the third track or an equivalent amount to be disbursed toward development of a substitute public transportation service.

NORTHEAST CORRIDOR

The Northeast Corridor (or PC Main Line), from Trenton to New York City, is an object of intense interest to New Jersey. The COA financially supports extensive commuter rail services which operate either wholly or partially over the Corridor. See Table 2. In addition, the State has invested substantial capital in the improvement of stations and other facilities on the Corridor. See Table 1. The PC Main Line passenger service has been fully re-equipped with modern equipment in the past 10 years. As can be seen from Table 1, the State, either through NJDOT or the Port Authority of New York and New Jersey, is planning for substantial capital investment on the Corridor itself or on passenger lines ancillary to it: for example, the pending applications for extension of electrification on the NY&LB and the plans for providing direct rail access to New York Penn Station for Erie Lackawanna riders. Thus, NJDOT has a large stake in decisions to be made by Congress concerning ownership, management and operation of passenger service and facilities in the Corridor.

The FSP recommends that Amtrak assume a wider role in the affairs of the Corridor. It is to acquire or lease the Northeast Corridor; it further recommends that Amtrak will be vested with full operational control of Corridor traffic, i.e., signaling, dispatching and maintenance in the Corridor. The FSP does not directly address the questions of whether Amtrak should assume

the responsibility for operating commuter service; how costs should be allocated between Amtrak's intercity services and commuter services; and the institutional arrangements for assuring the commuter operating authorities that their interests are not trampled by Amtrak.

In testimony before the House Subcommittee on Transportation and Commerce on September 11, 1975, Paul Reistrup, President of Amtrak, stated that full operational control over traffic in the Corridor is a "prerequisite." He stated that:

"Based on the principle that the best solution, wherever it can be achieved, is the single-system single-operator solution - and this should conform with the interests of the commuter agencies as well - the final outcome could involve Amtrak in commuter train operations of the Corridor as well as on the main-line spine of the corridor routes."

NJDOT is sympathetic to this view. It would welcome operational consolidation of all commuter services on the Corridor as well as those feeding into it. In the latter category are the NY&LB and CNJ services. NJDOT's support for Mr. Reistrup's position is leavened, however, by a concern that in this consolidation of operations over the Corridor New Jersey must retain a fair share of the decision-making power over activities and policies in the Corridor which affect it. It must be remembered that the Corridor is also the spine of New Jersey's commuter operations. Among all commuter agencies New Jersey probably uses the Corridor more intensively than any other. New Jersey's

concerns over fare policy, scheduling, points served, employee implementation of policy and, most important, access to the PC trackage east of Newark and New York Penn Station require institutional recognition.

The FSP, in recommending that Amtrak should be designated as the single operating entity responsible for coordinating freight and passenger service on the Corridor, mentions, but does not endorse, the Federal Railroad Administration's proposal for formation of an independent Disputes Board to reconcile major differences between intercity, commuter and freight users. An early draft of the Federal Railroad Administration's Corridor FSP implementation legislation provides for a three member board. The Chairmen of the Interstate Commerce Commission and the National Mediation Board and the Secretary of Transportation are each given the power to appoint one member. NJDOT totally rejects this composition of the Disputes Board. If there is to be any Disputes or Appeals Board, it must adequately represent the interests of the commuter authorities using the Corridor.

The allocation of costs on the Corridor between passenger and freight operations and, in turn, between commuter and intercity passenger services is of critical importance to NJDOT. In its calculations of the cost impact of the FSP upon New Jersey commuter operations, NJDOT found that shifts in cost allocations on the Corridor would result in the biggest cost increases. The recent record of Amtrak's dealings with Penn Central on the Corridor

and the COA's dealings with Penn Central over the cost of commuter services shows that cost allocation on the Corridor is a most knotty problem. The FSP states as one of its cost-sharing "principles" that to determine the dominant user for rail properties which support freight, intercity passenger and commuter services "all passenger services, both intercity and commuter, should be considered as one entity, and all freight services, regardless of carrier, should be considered as one entity." This principle is designed to assure that passenger service on the Corridor is deemed the dominant user, and thus will be required to absorb all ownership costs. The FSP leaves to Amtrak and the commuter agencies the task of resolving cost allocations between themselves on an equitable basis.

Another cost allocation problem may arise from the FSP's determination that ConRail should not (and presumably Amtrak should) absorb certain costs incurred in clearing the Corridor of through-freight traffic. It has been suggested that Amtrak may try to pass through a portion of these costs to the commuter agencies. NJDOT shall staunchly oppose any such pass-through as it is largely Amtrak's plans for expanded intercity service which are responsible for creating the freight capacity problems necessitating establishment of an alternate freight route.

NJDOT takes the position that all contracted commuter service on the Corridor should be considered avoidable. It bases that contention on the fact that federal legislation mandates the maintenance of intercity service on the Northeast Corridor through New Jersey into New York Penn Station; furthermore, the FSP mandates the continuation of full freight service on the Corridor in the short term and local freight services in the long run. The commuter service should, therefore, not be required, in any operating agreement, to absorb Amtrak's service on debt incurred in development of a freight bypass.

As can be seen from the foregoing, the process of determining cost allocations, on the Corridor in particular, should prove difficult. For this reason, NJDOT supports a plan which delegates to an impartial agency, the Rail Services Planning Office, the task of developing standardized guidelines for the determination of rail passenger subsidies.

NJDOT also seeks prompt support for the further development of its Corridor - related capital projects, such as Erie Lackawanna direct rail access to New York Penn Station, the renovation of Newark Penn Station, and improvement in access to Metro Park station. It is hopeful that additional funding may be made available for federal financing of Corridor commuter service improvements and that local development initiatives not be unduly restricted by whatever entity finally governs the Corridor.

Institutional Proposal

NJDOT suggests that the Congress establish a regional board composed of NJDOT, PA of NY&NJ, MTA and Amtrak (in the latter's capacity of owner and operator of intercity service). Voting power on the regional board would be weighted to reflect various measures of density of use of the Corridor between its jurisdictional limits, Trenton and Sunnyside Yard. The board would govern the Corridor within its jurisdictional limits. NJDOT would contract for commuter services with an operating affiliate of Amtrak or another available party. Disputes between commuter and intercity services could be appealed from the regional board to an Appeal Board, chaired by the Secretary of Transportation. The other members of the Appeals Board would be NJDOT, MTA and Amtrak.

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