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**Excerpts From Stipulation Among  
Counsel Dated December 20, 1974**

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION—BERGEN COUNTY

STIPULATION

UNITED STATES TRUST COMPANY  
OF NEW YORK, etc.

*v.*

THE STATE NEW JERSEY, et al.

The undersigned hereby stipulate, for the purposes of this action only, and subject to objections as to relevance, that the following statements are true and admissible into evidence.

I. THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

1. By virtue of Chapter 130 of the Laws of New Jersey of 1917 and Chapter 426 of the Laws of New York of 1917, the two States established study commissions to cooperate in making a thorough investigation of the conditions of the Port of New York, to submit a comprehensive report recommending the proper policy to be pursued for the best interest of the entire Port of New York, and to determine the legislation, State and Federal, necessary to make such recommendations effective "to the end that said Port shall be efficiently and constructively organized and furnished with modern methods of piers, rail and water freight, and adequately protected in the event of war."

2. The two State Commissions thereafter organized themselves into a single body known as the New York, New Jersey Port and Harbor Development Commission (the "Commission"). On December 16, 1920, the Commission issued a joint report summarizing its work, discussing Port conditions and setting forth a proposed compact and com-

*Excerpts From Stipulation Among Counsel  
Dated December 20, 1974*

prehensive plan and maps and drawings depicting its findings and proposals. (Stip. 1) \* \* \*

3. The 1920 Report outlined the chaotic, diverse, inadequate and congested Port facilities existing in 1920 restricting the flow of goods by railroad, steamship and motor truck in the Port area. Extensive discussions of the freight handling problems of carriers are contained in the 1920 Report. Except in passing, the 1920 Report did not deal with passenger transportation plans or facilities but rather the Report recommended proposed solutions to the problems involved in the movement of freight and commodities brought into, out of, and through the Port District. (Stip. 2) \* \* \*

4. The 1920 Report recommended the adoption of a Compact between the two States, establishing a Port District and creating a Port Authority. It included an extensive discussion of the legal precedents concerning Congressional and State powers over interstate commerce. The Report stated:

“Permissive or restrictive, as the case may be, the power of Congress over the instrumentalities of interstate traffic is exclusive, when in a specific case it has been exercised. But this latter limitation, coupled with the broad police power of the State and its control of intrastate commerce, has left to New York and New Jersey a broad field within which they may act without express Federal consent. It is hoped, of course, by securing congressional approval of any plan which may be adopted, to avoid future conflict with the Federal authority over interstate unification and control of the Port. But for the present the States may act alone.” At p. 446.



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5. In response to the recommendations of the 1920 Commission and pursuant to the Laws of New Jersey of 1921, Chapter 151 and the Laws of New York of 1921, Chapter 154, commissioners of both States were appointed with authorization to enter into an agreement or compact in the form specified in the statute and to seek the consent of Congress in respect of the agreement. On April 30, 1921 the Compact between the two States (N.J.S.A. §§32:1-1 to 24; N.Y. Unconsol. Laws §§6401-6423) relating to the Port Authority of New York and New Jersey (the "Port Authority") was actually signed. Congressional consent to "each and every part and Article" of the Compact was obtained effective August 23, 1921. (Public Resolution No. 17, 67th Congress, First Session (42 Stat. 174)).

6. The Compact provided in part as follows:

The Preamble of the Compact states that "a better coordination of the terminal, transportation and other facilities of commerce in, about and through the port of New York, will result in great economies, benefiting the nation, as well as the states of New York and New Jersey" and that "the future development of such terminal, transportation and other facilities of commerce will require the expenditure of large sums of money, and the cordial cooperation of the states of New York and New Jersey in the encouragement of the investment of capital, and in the formulation and execution of the necessary physical plans." Article II of the Compact creates the Port of New York District comprising an area of about 1500 square miles in both states centering about New York harbor. Article III establishes the Port Authority as "a body corporate and politic, having the powers and jurisdiction hereinafter enumerated, and such other and additional powers as shall be conferred upon

*Excerpts From Stipulation Among Counsel  
Dated December 20, 1974*

it by the legislature of either state concurred in by the legislature of the other, or by act or acts of congress." Article IV states that the Port Authority shall consist of six Commissioners, three from each State.\* The Commissioners were to be chosen "in the manner and for the terms fixed and determined from time to time by the legislature of each state respectively." Article VI of the Compact vests in the Port Authority "full power and authority to purchase, construct, lease and/or operate any terminal or transportation facility within" the Port District and authorizes the Port Authority "to borrow money and secure the same by bonds or by mortgages." Article VII provides that the Port Authority "shall have such additional powers and duties as may hereafter be delegated to or imposed upon it from time to time by the action of the legislature of either state concurred in by the legislature of the other" and further provides "the Port Authority shall not pledge the credit of either state except by and with the authority of the legislature thereof." Article XI requires the Port Authority to make plans for the development of the Port District supplementary to or amendatory of any plan theretofore adopted. Article XII authorizes the Port Authority to "make recommendations to the legislatures of the two states or to the congress of the United States, based upon study and analysis, for the better conduct of the commerce passing in and through the Port of New York." Article XV of the Compact provides that "Unless and until the revenues from operations conducted by the Port Authority are adequate to meet all expenditures, the legislatures of the two states shall appropriate, in equal amounts, annually for the salaries,

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\* By Chapter 244, Laws of New Jersey of 1930 and Chapter 419, Laws of New York of 1930 the number of Port Authority Commissioners was increased from six to twelve.

*Excerpts From Stipulation Among Counsel  
Dated December 20, 1974*

office and other administrative expenses, such sum or sums as shall be recommended by the Port Authority and approved by the governors of the two states, but each state obligates itself hereunder only to the extent of one hundred thousand dollars in any one year.”\* Article XXII defines “transportation facility” to include “railroads, steam or electric, motor truck or other street or highway vehicles, tunnels, bridges, boats, ferries, carfloats, lighters, tugs, floating elevators, barges, scows or harbor craft of any kind, aircraft suitable for harbor service, and every kind of transportation facility now in use or hereafter designed for use for the transportation or carriage of persons or property” and defines “railroad” as “including railways, extensions thereof, tunnels, subways, bridges, elevated structures, tracks, poles, wires, conduits, power houses, substations, lines for the transmission of power, car barns, shop yards, siding, turnouts, switches, stations and approaches thereto, cars and motive equipment.”

7. By Laws of New Jersey of 1922, Chapter 9 and Laws of New York of 1922, Chapter 23, a Comprehensive Plan for the development of the Port of New York was adopted by the New Jersey and New York Legislatures. The Comprehensive Plan received the consent of Congress. Ch. 277, Public Res. No. 66, July 1, 1922, 42 Stat. 822. The Comprehensive Plan sets forth the development program initially envisioned for implementation by the Port Authority.

8. In the Comprehensive Plan of 1922, unification of terminal operations and facilities, consolidation of shipments, adaptation and coordination of existing facilities, im-

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\* The States paid the administrative expenses of the Port Authority through the year 1934. 1935 was the first year in which the Port Authority became self-supporting.

*Excerpts From Stipulation Among Counsel  
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provement of commercial rail, truck and water facilities and other freight handling improvements are set forth as principles to govern the development of the Port Authority. The Comprehensive Plan proposed to establish direct freight connections between New Jersey and Manhattan to furnish "the most expeditious, economical and practical transportation of freight especially meat, produce, milk and other commodities comprising the daily needs of the people." (N.J.S.A. 32:1-29). Section 8 of the 1922 Comprehensive Plan statutes denies the Authority the power to levy taxes or assessments, and provides that the bonds or other securities issued by the Port Authority shall at all times be free from taxation by either State. (Stip. 4-9) \* \* \*

11. The Progress Report of the Port Authority, 1923, made the following statements concerning congressional consent to the Compact and Comprehensive Plan:

"Some of these powers were such as the States could grant without further action by Congress, but as carrying out many of the steps involved in the Comprehensive Plan by the Port Authority would necessarily involve matters of interstate commerce and the interstate carriers engaged therein, it was deemed of importance by the Commissioners that Congress—which has paramount power over interstate commerce—should give the sanction of Federal authority to the plan, and the Legislatures of both States, therefore, directed the Port Authority to apply to Congress for such power. . . .

"It was only upon the consummation of this step [congressional consent] that the Port Authority became fully equipped to exercise the powers out-

*Excerpts From Stipulation Among Counsel  
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lined in the compact and intended to be conferred by the two States.

“The Comprehensive Plan is now legally authorized by the two States and the Congress of the United States and the police powers of the States and the interstate commerce power of the Congress are joined in effectuating the definite plan, with one coordinating body as the State and Federal instrumentality.”

12. Pursuant to the Compact, Comprehensive Plan and subsequent amendments and supplements thereto, the Port Authority operates all of the interstate vehicular tunnels and bridges in the Port District (which include the Holland Tunnel, the Lincoln Tunnel, the George Washington Bridge, the Bayonne Bridge, the Goethals Bridge and the Outerbridge Crossing).

The Holland Tunnel had been constructed by separate State commissions pursuant to a compact between the States which received the consent of Congress. Chapters 49 and 50, Laws of New Jersey of 1918 and Chapters 70 and 178, Laws of New York of 1919, consented to by Congress, Chapter 11, Public Resolution No. 10, 66th Congress (S.409) (1919). In 1930 the Holland Tunnel was transferred to the Port Authority in order to enable it to honor its obligations to bondholders in the face of deficits incurred in connection with the Arthur Kill, George Washington and Bayonne Bridges and Inland Terminal No. 1. Chapter 247, Laws of New Jersey of 1930 and Chapter 421, Laws of New York of 1930.

Also pursuant to the 1921 Compact, the 1922 Comprehensive Plan and subsequent amendments and supplements thereto, the Port Authority owns and/or operates the fol-

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lowing facilities: Newark International Airport, Teterboro Airport, La Guardia Airport, John F. Kennedy International Airport, two heliports; Port Newark, the Hoboken Port Authority Marine Terminal, the Elizabeth Port Authority Marine Terminal, the Columbia Street Marine Terminal, the Erie Basin Port Authority Marine Terminal and a Mid-Manhattan Consolidated Passenger Ship Terminal; the Port Authority Bus Terminal, the George Washington Bridge Bus Station, the Newark and New York Union Motor Truck Terminals; the Port Authority Trans-Hudson System (operated for the Port Authority through its wholly owned subsidiary, the Port Authority Trans-Hudson Corporation) and the World Trade Center. (Stip. 10-12)

\* \* \*

II. NEW JERSEY'S PUBLIC TRANSPORTATION REQUIREMENTS.

A. Demographic and Transportation Factors.

\* \* \*

3. The following is an excerpt from the 1972 Master Plan of the New Jersey Department of Transportation:

“New Jersey is now the most densely populated State in the Nation. Its problems of urbanization will continue to mount along with its growth in population, industry, commerce and recreational facilities and with the State's increasing importance as the geographic center of the Northeast ‘megalopolis.’

“In the past, this growth has meant:

“The highway system has been unable to keep pace with travel demand. The density per lane-mile of daily travel has increased by 56.7 percent over the past 20 years.

“Paradoxically, coincident with a significant decline in suburban passenger rail service, there

*Excerpts From Stipulation Among Counsel  
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has been, in recent years, an increased public demand for improved commuter rail service. At present, during the morning peak hour over 54,000 people make the trip between New Jersey and Manhattan by rail.

“Bus service has shown a continual decline in the last decade, yet in the morning peak hour more than 55,000 persons travel by bus from New Jersey to Manhattan.

“A 32 percent increase\* in population through 1990 will result in the changing of more than 1,300 square miles of land from rural use to urban use.

“By 1990, motor vehicle registrations in the State will rise to 5,384,000—up 42 percent.

“Annual vehicle miles of travel on the State Highway System will increase 109 percent through 1990, registering a total of 28.1 billion vehicle miles.

“As a result of increased personal income and leisure time there will be a significant increase in recreation-oriented travel on the State’s highways.

“Passenger rail patronage will experience a 75 percent increase to total 626 thousand daily riders in 1990.

“Bus ridership will increase to 1.6 million daily riders by 1990, an increase of 24 percent.

“A comprehensive plan to meet the 20-year needs resulting from this growth in the future is estimated to cost almost \$7.0 billion. It includes:

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\*The latest official projection of the State of New Jersey is for a 27 percent increase during the same period (Population Estimates for New Jersey, July 1, 1973, p. 16) [footnote added by stipulation].

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“The highway plan will total \$4.276 billion including \$900.0 million for completion of the Interstate System, \$1.866 billion for the construction of other freeways, \$734 million to dualize presently undivided facilities, \$588.0 million for widenings and \$188 million to correct troublesome spot locations.

“On the State’s passenger rail system, including commuter rail and rapid transit, the costs will amount to \$1.897 billion.

“An additional \$278 million is the estimated cost to provide bus riders of the State with adequate, modern service.

“The above breakdown of estimated costs does not include the anticipated escalation in costs over the 20-year time frame of the plan.

“PASSENGER RAIL SERVICES

“The commuter railroad system is operated by five companies which provide service to an average of 166,130 weekday passengers on a total of 467 route miles.

“Rapid transit services are provided by two public agencies\* and one public company\*\* on a total of 26 route miles providing service to an average of 192,400 weekday passengers.

“The total network of passenger rail systems provide service to 15 of the State’s 21 counties, the ex-

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\*Port Authority operates PATH and the Delaware River Port Authority operates PATCO. [footnote added by stipulation]

\*\*Transport of New Jersey operates the Newark subway. [footnote added by stipulation]



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ceptions being Burlington, Cumberland, Gloucester, Salem, Sussex and Warren Counties.\*

“In 1950, there were approximately 1,100 route-miles of track in existence in the State providing commuter service to 20 counties, and there were more than 349,000 passenger trips a day. The decline in service over the past 20 years has resulted in only 467 route-miles of track remaining in use today, providing service to 15 counties with only 166,000 passenger trips daily.

“However, existing rapid transit facilities provide service for an additional 192,000 passengers per day. Total rail utilization now averages 358,000 passenger trips per day.

“Although there has been a significant decline in annual rail trips between New Jersey and New York, rail patronage during the commuter peak periods has remained constant.

“While still providing service, the Penn Central, Reading and Lehigh Valley Railroads have gone into bankruptcy in recent months. The Central Railroad of New Jersey has been in bankruptcy since 1967. (Stip. 17-20)

\* \* \*

“THE CORRIDOR STATE

“While the above indicators can be related to growth within the State’s boundaries, New Jersey also is in the unusual position of experiencing considerable travel across her boundaries. Because of this, New Jersey has been aptly termed the ‘Corridor State.’

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\*Subsequent to the 1972 Report rail passenger service has been renewed to Warren County. [footnote added by stipulation]

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“This considerable interstate movement is attributable in part to New Jersey’s location in the geographic center of megalopolis. The influence of the great urban centers of New York City and Philadelphia has caused the number of people crossing between New Jersey and Pennsylvania to be ranked highest in the Nation while the movements between New Jersey and New York is second highest.

“The largest single movement—commuter travel between New Jersey and Manhattan—amounts to 480,000 person-trips daily. Of this number, slightly less than 50 percent use some form of public transit—rail or bus. The morning and evening peak-hour movements are especially significant. During one peak hour in the morning more than 123,000 commuters cross the Hudson River into Manhattan. Of this total, 87 percent use some form of public transit.

“While the commuter problem is not as severe between the Camden area and Philadelphia, the same trend has emerged. One result has been the construction of the Lindenwold High Speed Line aimed principally at meeting the demand for interstate commuter travel.

“With the expectation that many of New Jersey’s rural areas will become suburban ‘bedroom communities’ for highly concentrated urbanized areas, it is expected that the density of travel across the State’s borders will become even more significant in the future. (Stip. 20-21)

\* \* \*

“Before a plan can be developed outlining a solution to serve the transportation needs of the State, a set of objectives—specific goals toward which effort is directed—must be derived. Such a listing of

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objectives can lead to policy guidelines defining the atmosphere in which transportation needs can be met.

“TRANSPORTATION OBJECTIVES

“Provide a transportation network equitable to all segments of the State populace

“Increase comfort and convenience of travel

“Reduce adverse impacts on the natural environment

“Promote desired pattern of land development

“Increase safety

“Reduce travel time and cost per trip

“Provide a choice of travel modes

“Be realistic in terms of physical, social, financial and environmental restraints

“POLICY GUIDELINES

\* \* \*

“COMMON CARRIER

“Maintain and strengthen the existing rail and bus system by replacing obsolete equipment.

“Improve the efficiency and quality of rail and bus operations.

“Extend service to areas deficient in service.

“Improve coordination within the total transportation system. (Stip. 22)

\* \* \*

“CORE SECTOR

“The core sector includes all of Hudson County, Newark, and the adjacent portions of the municipalities surrounding Newark. Travel in this sector has several distinct patterns. The Newark portion is

*Excerpts From Stipulation Among Counsel  
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heavily oriented to the Newark Central Business District, with a relatively low level of travel to Manhattan. The Hudson County portion of the sector has a large amount of local, relatively short distance, travel. Trips to Manhattan are most prevalent from the area north of the Lincoln Tunnel. Most travel in the core sector is by bus. The only major rail movements are on PATH, between southern Hudson County and Manhattan, and on the Newark subway. Rail improvements in this sector will be designed to improve travel to and within the Newark CBD and to solve the specialized problem of access to Newark Airport.

“NEWARK AIRPORT ACCESS—Rail access to Newark Airport will be designed to provide service to a variety of points including Manhattan and the Newark central business district.

“This access would be provided by an extension of the tracks of the Port Authority Trans-Hudson Corporation—(PATH) from the present terminus in Penn Station—Newark. A transfer station will be located on airport property west of the Newark Airport terminal complex. This station will permit passengers to transfer to and from the proposed Inter-Terminal Transportation System (ITTS) which will inter-connect the three terminal buildings of the new complex.

“The rail access proposal will connect with and use tracks on the Central Railroad of New Jersey right-of-way near Elizabethport Yard and will continue westward to a terminus that must be determined. A park-ride facility near the crossing of the CNJ main line and the Garden State Parkway is one possible

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terminus. Extension of the service to either Plainfield or to the Raritan area is also being considered.

“CENTRAL SECTOR

“The Central Sector includes the area of the State extending from New Jersey Route 3 and U.S. Route 46 on the north to and including the New Jersey Turnpike between Perth Amboy and Bordentown on the South. Suburban rail service is provided in three major corridors by the Morris and Essex Line of the Erie Lackawanna, including the Gladstone Branch; the Main Line of the Jersey Central and the Main Line of the Penn Central. Additional suburban service is provided on the Greenwood Lake and Montclair Branches of the Erie Lackawanna and the New York Branch of the Reading. Travel in this area is largely oriented to Manhattan with a secondary focus at Newark. The majority of commuter travel to Manhattan is by rail, with some bus travel to midtown Manhattan. Most travel to Newark is by bus, with rail travel important only for the longer distances.

“Rail service in the central sector is oriented to three Manhattan entry points. These points of entry are the Penn Central tunnel and the Midtown and Downtown PATH tunnels serving the 33rd Street and World Trade Center areas respectively. Access to Newark is at two points; the Erie Lackawanna and Penn Stations. With the exception of the Morris and Essex, all lines have access to all Manhattan entries. The only direct service provided to Penn Station, Manhattan, is from the Penn Central Main Line. Access from other lines to Penn Station, New York, as well as all access to Manhattan via

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PATH, requires a transfer. One of the principal goals of planning for this sector is to improve Manhattan access, including access to Penn Station, New York, for all lines and direct service to some point on Manhattan for all lines. (Stip. 24-25)

\* \* \*

“FINANCIAL CONSIDERATIONS

“The ability of the Department to successfully implement this Master Plan over the next 20 years is tied inextricably to the annual funding of its construction programs.

“The financing of highways, under existing federal programs, is fundamentally different from the programs for the other modes in that it is based on annual apportionments to the various states based on a pre-set formula—whereas UMTA [Federal Urban Mass Transportation Administration] and FAA furnish federal capital funds on a grant basis for each proposed project for which an acceptable application has been filed.

“Fiscal projections based on historic data assure that normal transportation funding will have to be augmented by substantial amounts of additional monies annually.

“As stated earlier in the report all indicated costs are based on present day estimates and have not been escalated to reflect inflationary costs. No attempt has been made to establish priorities during the development of the Master Plan. Consequently, the individual projects have not been scheduled or programmed. It would therefore, not be realistic to attempt to expand the cost of the individual components without precise knowledge as to the year of contract award.

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“On the other hand, it would be fair to assume that the economic history of this country proves there will be an increase in these costs over the next 20 years.

“FUNDING GAP TO IMPLEMENT 20 YEAR PLAN

Highway Construction	\$4276.0	
Federal and State Matching Programs	2332.0	
Deficiency		-\$1944.0
Railroad Passenger Service	\$1897.0	
Federal UMTA Grants	1264.7	
Local Matched Share (State)		-\$ 632.3
Bus Service	\$ 278.0	
Federal UMTA Grants	185.3	
Local Matched Share (State)		-\$ 92.7
Airport Development Program	\$ 49.0	
Federal Aviation Administration Grants	24.5	
Local Matched Share (State)		-\$ 24.5
<u>TOTAL FUNDING GAP</u>		<u>\$2693.5</u>

(All Amounts in Millions)”. (Stip. 27-28)

\* \* \*

6. The four private companies which operate commuter railroad services in New Jersey are all being reorganized under federal bankruptcy laws. Three of these four companies reported operating at a deficit in 1960; they attributed their deficits to losses incurred on passenger rail mass transit operations even though one had lower passenger losses than when it operated at a profit and another's deficit was twice as large as its passenger loss. (Farley Committee Hearings, January 26, 1961, pp. 17-22). The four railroads reported to Highway Commissioner Palmer the following results for 1959 and 1960:

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	<u>1959 passenger deficit</u>	<u>1959 corporate profit or deficit</u>	<u>First 11 months of 1960 corporate profit or deficit</u>	<u>Estimated 1960 passenger deficit</u>
Pennsylvania	(\$37,000,000)	\$ 7,200,000	(\$ 5,000,000)	(\$32,000,000)
Erie Lackawanna	(\$ 8,000,000)	(\$10,000,000)	(\$16,000,000)	(\$ 8,100,000)
Reading	(\$ 7,000,000)	\$ 1,800,000	\$ 1,100,000	(\$ 7,000,000)
Central	(\$ 6,300,000)	(\$ 2,800,000)	(\$ 3,400,000)	(\$ 6,000,000)

7. Reorganization proceedings for the Central Railroad Company of New Jersey were instituted in 1967, for the Penn Central Transportation Company and for the Reading Company in 1970 and for the Erie Lackawanna Railway in 1972. (1973 Program, page 17). The 1973 [New Jersey Department of Transportation Transit Development] Program (Exhibit I) published on September 1, 1973, said of these proceedings:

“In several cases, the Federal District Courts have instructed the railroad companies to prepare plans for the cessation of passenger and freight service, and in these cases, it is the policy of the State of New Jersey to impress upon the federal courts the necessity of continuing most of these rail services.” (1973 Program, page 17).

“Cessation of mass transportation services in these urban areas [refers to the Philadelphia as well as the New York City area] would produce intolerable conditions on the personal lives of the residents of the areas. The State is now directed by the federal government to reduce the levels of air pollution in these areas to a significant degree within the next five years. It has been determined that the existing basic rail and bus systems will fail within the next



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few years unless a major investment in capital facilities, equipment, and operating subsidies is provided by the public." (1973 Program, page 19).

8. On January 2, 1974, Congress enacted the regional Rail Reorganization Act of 1973 (45 U.S.C. §701 *et seq.*). Congress found and declared in this statute that: "Essential rail service" in the midwest and northeast region is provided by railroads that are insolvent and attempting to undergo reorganization under the Bankruptcy Act; "this essential rail service is threatened with cessation or significant curtailment because of the inability of the trustees of such railroads to formulate acceptable plans of reorganization"; the public convenience and necessity require adequate and efficient rail service in this region "to meet the needs of commerce, the national defense, the environment and the service requirements of passengers, United States mail, shippers, States and their political subdivisions, and consumers"; "continuation and improvement of essential rail service in this region is also necessary to preserve and maintain adequate national rail services and an efficient national rail transportation system"; "rail service and rail transportation offer economic and environmental advantages with respect to land use, air pollution, noise levels, energy efficiency and conservation, resource allocation, safety, and cost per ton-mile of movement to such extent that the preservation and maintenance of adequate and efficient rail service is in the national interest"; and that these needs could not be met without substantial federal participation. Among the goals of the federal plan for reorganization and modernization of the railroads in the northeast corridor are: the establishment of improved high-speed rail passenger service; the utilization of those modes of

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transportation in the region which require the smallest amount of scarce energy resources and which can most efficiently transport energy resources; the attainment and maintenance of any environmental standards, particularly the applicable national ambient air quality standards and plans established under the Clean Air Act Amendments of 1970; and the movement of passengers and freight in rail transportation in the most efficient manner consistent with safe operation, including the requirements of commuter and intercity rail passenger service.

The Act established the United States Railway Association, which was authorized to carry out the purposes of the Act and in furtherance thereof to issue bonds, debentures, securities or other obligations guaranteed by the Secretary of Transportation, with the maximum aggregate amount of obligations outstanding at any one time not to exceed \$1.5 billion. Pending implementation of the final system plan, the Secretary of Transportation was authorized to expend up to \$85 million to be paid to the trustees of railroads in reorganization for the continued provision of essential transportation services by such railroads.

With respect to local rail service, Congress found and declared (45 U.S.C. § 762) that: "The Nation is facing an energy shortage of acute proportions in the next decade"; "railroads are one of the most energy-efficient modes of transportation for the movement of passengers and freight and cause the least amount of pollution"; "abandonment, termination, or substantial reduction of rail service in any locality will adversely affect the Nation's long-term and immediate goals with respect to energy conservation and environmental protection." Accordingly, the Secretary was directed to provide financial assistance to States or local or

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regional transportation authorities for the purpose of rail service continuation subsidies, 70% of which is to be paid by the federal government and 30% of which is to be paid by the affected State. Federal funding up to \$90 million total per year for 2 years is authorized. The Secretary was authorized to issue regulations within 90 days to put this program into effect. Such regulations have not yet been promulgated. On December 16, 1974 the Supreme Court of the United States upheld the constitutionality of the Act.

9. Pursuant to the Regional Rail Reorganization Act of 1973 the United States Railway Association has submitted a plan recommending that approximately 300 miles of trackage owned by bankrupt railroads in New Jersey be abandoned. (Stip. 30-35) \* \* \*

In October 1974, Alan Sagner, the New Jersey Commissioner of Transportation publicly stated that even if the final federal plan called for a reduction of 150 miles of rail lines in New Jersey, "that could have a disastrous impact on our economy and environment." At the request of Governor Byrne, the New Jersey Legislature approved for submission to the voters of New Jersey in the November, 1974 elections a proposed \$100 million rail preservation bond issue that would allow the State to purchase railroad rights-of-way that would be abandoned under the federal plan. This bond issue was defeated in the November, 1974 election by a vote of 893,622 to 854,083.

10. In September, 1974 Commissioner Sagner stated publicly:

(1) The State of New Jersey has not yet spent \$106 million of the mass transportation bond issue of \$200 million authorized in 1968. The bulk of this money is expected to be obligated within the next year on the reelectrification of

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and the purchase of 200 new commuter cars for the Morris & Essex Division of the Erie-Lackawanna Railroad, electrification of the New York and Long Branch Railroad from South Amboy to Red Bank and the purchase of 1,500 new buses and 300 used buses, but \$68 million of the total funds is expected to remain contractually uncommitted as of July 1, 1975.

(2) According to 1970 census figures 3.6% of the 2,839,545 people in New Jersey who work commute by railroad.

11. In support of a \$200 million proposed bond issue for highways, Commissioner Sagner said in his question and answer release of September, 1974:

“1. We should not ask for new money for public transportation projects until we have met the following criteria:

“We have obligated the money the voters authorized in 1968; we hope to do this within a year. We developed a *comprehensive* public transportation plan that will show the voters what type of public transportation service will be available after the expenditure of necessarily large sums of capital. This study is underway, but will take at least a year to complete. We should also, at that time, be able to predict the annual operating subsidy needed to maintain the public transportation system. The voters should be prepared to undertake this obligation when they approve a project.”

“2. Improving the roads without providing a mass transit alternative will encourage a greater use of cars and will add to the problem of air pollution when we are trying to reduce it. Isn't that correct?

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“The Department is developing public transportation programs, but no matter what is done, individual cars will be used for the foreseeable future. The New Jersey Energy Office and the Tri-State Regional Planning Commission have publicized statements indicating that congestion, as opposed to free-moving traffic, increases pollution.

“3. Some groups say the highway safety and improvement bond issue would do nothing for mass transit. Is that true?

“The most vital and widespread form of mass transit now and in the foreseeable future is the bus. The bus travels on highways.

“4. If the highway projects are so important, why aren't you willing to make this a combined highway-public transit bond issue, if only to get the support of the public transit advocates, and thereby give the highway portion a better chance of approval?

“As explained, it would be irresponsible to request funds *now*, for a public transportation bond issue as the public transportation money is not needed *now*. Proposing a combined highway safety and improvement public transit bond issue to win support of the public transit advocates and environmentalists would not be honest. A serious problem in government today is the inability of the citizens to trust public officials. In the long run such tactics would result in the Department losing credibility and support for all future efforts.” (Stip. 36-39) \* \* \*

B. The Energy Crisis

1. On February 4, 1974, the New Jersey Legislature enacted the Emergency Energy Fair Practices Act of

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1974 (L. 1974, c. 2, amended and supplemented by L. 1974, c. 6). Section 2 of this Act stated: "The Legislature finds and determines that because of world conditions and the manner in which energy sources and fuels are allocated and distributed that an energy shortage now exists and may continue for the foreseeable future." Section 3 of the Act authorized the Governor "to proclaim by Executive Order the existence of an energy emergency" and to establish a State Energy Office and appoint an Administrator with broad powers to control the use and distribution of all fuels.

2. On February 5, 1974, Governor Byrne issued Executive Order No. 1 in which he proclaimed the existence of an energy emergency, created the State Energy Office and established the position of Administrator of that Office.

3. On or about March 14, 1974, a civil action entitled *Byrne, et al. v. Simon, et al.*, Civ. No. 74-372, was instituted in the United States District Court for the District of New Jersey in which the complaint alleged that the State of New Jersey had not received from the Federal Energy Office an equitable allocation of gasoline for the month of March 1974.

4. In support of an application for an Order to Show Cause, plaintiffs in *Byrne v. Simon* submitted an affidavit dated March 13, 1974 by Richard W. DeKorte, who had been appointed Administrator of the New Jersey Energy Office. Paragraph 4 of that affidavit stated:

"In many communities there were wholesale closings of service stations. As a result, large numbers of people were totally unable to obtain gasoline and therefore were prevented from either engaging in

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their respective employments or from obtaining necessary food supplies, medical services, and other necessities of life. An already high unemployment rate was threatened with further increases. This was due to the fact that many employers were not able to obtain deliveries of necessary products and were faced with situations where many employees were either tardy or not coming in at all. Obviously, there were severe economic dislocations in the business community.

“In those areas where a few retail gasoline stations were in fact open, it was commonplace to observe long lines of cars extending on to the public roads of New Jersey that were waiting for gasoline. Ingress and egress to homes and commercial establishments on many occasions were blocked. Traffic on said roads were severely disrupted. The threat of serious accidents not only to property but more importantly to life was constantly present. And tensions and emotions were rising to dangerously high levels. State and local law enforcement personnel were on alert in order to be prepared for public safety problems of the worst magnitude.

“Emergency services were severely cut back. It was not uncommon to learn of local law enforcement personnel, first aid personnel, and fire fighting personnel that were not able to obtain sufficient quantities of motor gasoline that allowed them to be anywhere near the minimum state of readiness that is necessary for them to carry out their responsibilities.”

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There is no shortage of gasoline in the State of New Jersey as of December, 1974.

5. In a news release issued on December 3, 1973 the Regional Plan Association commented on the relationship of the energy crisis to transportation [in the tri-state New York urban region]: (Stip. 43-45) \* \* \*

“ENERGY FOR TRANSPORTATION

“Fuel for transportation has shown the second largest absolute growth, following that for electricity generation.

*Passenger*

“Passenger transportation consumption rose from 367 trillion Btu of gross input in 1950 to 904 trillion Btu in 1970. This increase is attributable to five factors:

“1. *Population growth* accounts for 32 percent of the increased consumption.

“2. *More autos per capita and longer trips* (mostly by air) resulted in more miles of travel per person, which explains 26 percent of the increase in fuel use. The frequency with which people make trips increased somewhat, mostly due to wider automobile ownership. The length of the average trip increased considerably mostly due to more trips to and from points outside the Region.

“3. *The shift away from buses and rail vehicles* toward more energy intensive modes, such as autos, and airplanes, accounts for 20 percent of the increase.

“4. *Declining vehicle occupancy*—fewer persons per car, per bus or rail car, accounts for 12 percent.



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"5. *The increasing energy-intensity of each mode of travel*—more gasoline needed per mile—because of higher performance, more air conditioning, etc. explains 10 percent.

*Energy Use of Modes of Travel*

"*Bus* is the least energy-intensive mode, requiring about 2,300 Btu per passenger mile of travel.

"*Rail*, combining both electric and diesel-electric traction, uses 2,600 Btu of Gross input per passenger mile but carries passengers more than three times faster than a bus in return for the 15 percent higher use of energy per passenger.

"*Subways*, with 3,100 Btu per passenger mile, are more energy-intensive because of the stop-and-go operation, which wastes much energy in braking. New devices to eliminate some of this waste are being tested by the Metropolitan Transportation Authority.

"*Auto*, using 6,500 Btu per passenger mile in 1970, was twice as intensive as the subway.

"*Air*, using 11,600 Btu per passenger mile, uses twice as much energy as the auto.

"*Taxi-cabs and private airplanes* (general aviation) are most energy-intensive." (Stip. 48-49) \* \* \*

6. The United States consumes 18 million barrels of petroleum a day, but produces only 11 million of those barrels from domestic sources. The difference is made up by imports. Presidential Message to Congress on the En-

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ergy Crisis, U.S. Code. Cong. and Admin. News, 93rd Cong., 2d Sess. at 31, 32 (Feb. 21, 1974, monthly ed.)

7. President Nixon went on to say:

“We must also face the fact that when and if the oil embargo ends, the United States will be faced with a different but no less difficult problem. Foreign oil prices have risen dramatically in recent months. If we were to increase our purchase of foreign oil, there would be a chronic balance of payments outflow which, over time, would create a severe problem in international monetary relations.” *ibid* at 36.

8. President Nixon also noted that the United States would “continue to be vulnerable to interruptions of foreign imports.” *ibid*.

9. President Nixon further noted that Project Independence had been put forward to phase out dependence upon high priced foreign oil, with its attendant risk of economic breakdown at the will of oil producers. Project Independence entails three concurrent tasks: expansion of domestic energy supplies; conservation; and new energy research. On conservation, the President wrote, “We must reduce demand by eliminating non essential energy use and improving the efficiency of energy utilization.” *ibid*. President Nixon stated: “It is now widely recognized that the development of better mass transit systems may be one of the key solutions to both our energy and environmental problems.” *ibid* at 42. (Stip. 50-51) \* \* \*

12. According to figures compiled from Survey of Current Business, and BP Statistical Review, automotive gasoline comprises roughly 40% of the total demand for oil.

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C. Health and Environmental Factors

1. In 1950, pursuant to a resolution of the Senate and General Assembly, a legislative commission was created to study air pollution in New Jersey and to recommend legislation. (House Concurrent Resolution No. 16; Senate Concurrent Resolution No. 9, 1951)

2. The commission referred to in the immediately preceding paragraph issued a report to the New Jersey State Legislature in March, 1952 which included a review of air pollution conditions and legislation in other states and recommendations for air pollution abatement legislation in New Jersey. The 1952 report pointed out that air pollution was caused by a variety of activities and that industry alone was not responsible for it (Report, p. 28). The 1952 report specifically noted that emissions from automobiles contributed to air pollution. (See, for example, Report pp. 38, 67)

3. New Jersey enacted in 1953 The Smoke Control Code of New Jersey, N.J. Rev. Stat. 26:3-69.6, which prohibits emission of smoke of a certain density. The Smoke Control Code of New Jersey was subject to adoption by reference by local Boards of Health and was not enforceable until adopted.

4. The New Jersey Bureau of Adult and Occupational Health instituted in 1953 a comprehensive air sanitation program. The three objectives of that program were to assist in the establishment of local control of air pollution, to conduct air sanitation research, and to provide technical and scientific assistance in solving the problem of excessive air pollution.

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5. In 1954, the New Jersey Air Pollution Control Act was enacted into law (Chapter 212, Laws of New Jersey of 1954). Under its provisions, an Air Pollution Control Commission was appointed by the Governor as an agency of the State Department of Health. The Commission was empowered to promulgate and amend codes to control and prohibit air pollution in the State. The State Department of Health had the responsibility of controlling air pollution in accordance with any code, rule or regulation promulgated by the Commission.

6. President Dwight Eisenhower in 1955 noted in his special health message:

“As a result of industrial growth and industrial development, the atmosphere over some population centers may be approaching the limit of its ability to absorb air pollutants with safety to health.”

Congress enacted in the same year the Air Pollution Control—Research and Technical Assistance Act which authorized the Department of Health, Education and Welfare, through the United States Public Health Service, to utilize the resources of the Federal Government and to cooperate with State and local governments and educational institutions in the preparation and execution of programs of research into the problem of air pollution. Senate Report No. 389, May 27, 1955 stated that one of the reasons for the legislation was the serious nature of the air pollution problem. (Senate Report pp. 2457, 2559)

7. A study was conducted in the summer and fall of 1957 by the Interstate Sanitation Commission of smoke and air pollution in certain areas of New York and New Jersey.

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The study found, among other things, that, although there were many sources of air pollution in Newark, the primary source at the point sampled was traffic gases. The primary source of air pollution in Manhattan was also found to be motor vehicle traffic.

“A study of air pollution by the Interstate Sanitation Commission in 1957 confirmed that there is considerable transport of air contaminants across the New York and New Jersey state boundaries in both directions, depending on wind and weather conditions.

“The prevailing wind direction is north-westerly. This means that even if the New York City Department of Air Pollution Control were to attain 100 per cent effectiveness in its work against local sources of air pollution, New York City would still have an air pollution problem of substantial magnitude, and one which will continue to grow.” (Stip. 52-56) \* \* \*

8. In the 1950's New York State conducted several state-wide surveys to assess New York's air pollution problem. One of these studies begun in 1952 by the Joint Legislative Committee on Pollution Control culminated in the passage of the Air Pollution Control Act in 1957 (Article 12-A, Chapter 931, Laws of New York). This Act amended the Public Health Law and was designed to safeguard the State's air resources by (a) detecting, controlling or abating existing air pollution and (b) preventing new air pollution. Administration of the act was delegated to the Air Pollution Control Board which was created within the New York State Department of Health. The Board has

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the power to adopt and enforce rules and regulations for prevention and control of air pollution. Other important board functions include provision of advisory technical consultation services; development and conduct of demonstration programs in cooperation with communities; training local personnel, and supervision of air pollution control education.

9. In March 1960, the City Administrator of the City of New York issued a report entitled "Air Pollution Control: Organization and Operation." This report stated:

"We find . . . there is little evidence of any absolute decline in the amount of air pollution as a result of the department's activities. The best that can be said is that the volume of pollutants would probably have been greater if there had been no control program . . ."

\* \* \*

15. The United States Clean Air Act, as amended in 1970, requires the Administrator of the Environmental Protection Agency to establish national primary and secondary air quality standards for air pollutants. 42 U.S.C. §1857C-4. Primary ambient air standards shall be such as "are requisite to protect the public health." 42 U.S.C. §1857C-4(b)(1). Secondary ambient air quality standards "shall specify a level of air quality the attainment and maintenance of which . . . is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air." 42 U.S.C. §1857-4(b)(2).

16. Pursuant to Section 107(b) of the Clean Air Act, 42 U.S.C. §§1857-1857(1), the Commissioner of the National Air Pollution Administration has been delegated authority

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to issue air quality criteria reports to facilitate formulation of standards on the basis of up-to-date scientific knowledge concerning the full range of effects of pollutants. The National Air Pollution Control Administration issued its reports, Air Quality Criteria For Carbon Monoxide, Publication No. AP-62 (1970) and Air Quality Criteria for Hydrocarbons, Publication No. AP-64 (1970) pursuant to that authority. The current levels of these pollutants in the air of the New Jersey-New York-Connecticut metropolitan region are in excess of federally-mandated standards.

17. Air Quality Criteria for Carbon Monoxide, National Air Pollution Control Administration Pub. No. AP-62 (1970), stated that "the largest single source of CO (carbon monoxide) is the exhaust of motor vehicles, both gasoline and diesel powered." (AP-62 page 4-2). In the New York Metropolitan area, an estimated 95.5% of all CO emissions came from transportation. (*Ibid.* page 4-6). Air Quality Criteria for Hydrocarbons, National Air Pollution Control Administration Publication No. AP-64 (1970), stated that, on average, 70 percent of hydrocarbon emitted into the air came from transportation sources. (AP-64 page 2-14). (Stip. 58-60) \* \* \*

20. The Federal report on carbon monoxide found that low concentrations of COHb [carboxyhemoglobin] in the blood of experimental subjects produced impairment in time-interval discrimination, changes in visual acuity and relative brightness threshold, and an impairment in capacity to perform psychomotor tests. (AP-62 at pages 8-51, 8-52).

21. The Federal report on carbon monoxide found that the following cardiovascular changes have been observed at COHb levels above 5%:

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“Increased cardiac output, systemic arterio-venous oxygen-content differences, systemic oxygen extraction ratios, myocardial arterio-venous oxygen-content difference, and coronary blood flow in patients without coronary heart disease.” (AP-62 at page 8-52).

22. The Federal report on carbon monoxide noted that

“the population group most susceptible to the adverse effects of atmospheric CO can be predicted on a physiological basis to include those persons most sensitive to a decrease in oxygen supply: (1) people with severe anemia due to the already limited supply of oxygen-carrying hemoglobin; (2) those with cardiovascular disease and the resultant impairment of circulation; (3) those with abnormal metabolic states such as thyrotoxicosis or fever, which result in increased oxygen demands; (4) those with chronic pulmonary disease; and (5) the developing foetus.” (AP-62 at page 9-8).

23. The Administrator established national primary and secondary ambient air standards for carbon monoxide which he judged necessary to “protect the public health.” 40 CFR § 50.2. The standards call for concentrations no greater than 10 mg. per cubic meter (9 parts per million) at a maximum eight hour concentration not to be exceeded more than once a year, and 40 mg. per cubic meter (35 parts per million) at a maximum one hour concentration not to be exceeded more than once a year. 40 CFR § 50.8.

24. The Federal report on carbon monoxide noted:

“No long-term human studies on experimental CO exposures have been reported, although there are



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data on occupational exposures. Brief exposures to high levels of CO have produced effects on the central nervous, vascular, and respiratory systems." (AP-62 at pages 8-46)

"In many of the human studies, the brief exposures to very high levels of CO make it difficult to relate the observed effects to equilibrium COHb levels. For long-term exposure to CO, certain effects such as increased hematocritis, hemoglobin levels, and blood volume may be present, but the available data are inadequate to draw firm conclusions concerning the significance of all of these changes." (AP-62 at pages 8-51)

"Long-term experimental exposure of humans to CO may produce certain adaptive effects such as increased hemoglobin levels and hematocritis, but the available data are inadequate to draw firm conclusions. Such effects have been observed in animals. There is a definite need to further evaluate the effect of cigarette smoking on the central nervous system and cardiovascular system, as well as the possible 'adaption' of the cigarette smoker to CO." (AP-62 at pages 8-52)

"Research on the physiology of CO in the human body has provided considerable information on both endogenous CO production and on the effects of CO at various cellular and microcellular levels. Our knowledge of the effects of CO on enzyme systems and tissue oxygenation, however, is far from complete. In addition, mechanisms of CO catabolism in the body remains undefined. The uptake of CO dur-

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ing varying time periods and with changes in activity must be further demonstrated.

“Studies of the effects of CO on human behavior and performance need both clarification and replication. Definition and sophistication of parameters sensitive to changes in blood hemoglobin merit considerable attention as a prerequisite to better defining the influence of CO on human performance.” (AP-62 at page 10-5)

25. The federal report on hydrocarbons, National Air Pollution Control Administration Publication No. AP-64, covers “the class of hydrocarbons . . . which exist in the atmosphere in the gas phase.” The report notes that “[m]any of these compounds may enter into atmospheric photochemical reaction processes leading to the products and manifestations associated with photochemical air pollution.” (AP-64 at page 2-1). Motor vehicles are responsible for 49 percent of hydrocarbon emissions. (AP-64 at page 2-12).

26. The hydrocarbon report notes that “health effects (including eye irritation), vegetation damage, material damage, and visibility reduction have all been associated with the products that result from the interaction of hydrocarbons within the nitrogen dioxide atmospheric photolytic cycle.” (AP-64 at page 5-1). (Stip. 61-64) \*\*\*

28. The Administrator of the Environmental Protection Agency set national primary and secondary ambient air quality standards for hydrocarbons which he judged necessary to “protect the public health”. 40 CFR § 50.2 et seq. These standards call for maximum concentrations of 160 mg. per cubic meter (0.24 ppm) for a three hour concen-

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tration (6-9 A.M.) not to be exceeded more than once a year. 40 CFR § 50.10. Implementation of this standard is necessary to achieve the national standards for photochemical oxidants, which are produced by reactions with hydrocarbons. The national primary and secondary air quality standards for photochemical oxidants call for concentrations of 160 mg. per cubic meter (0.08 ppm) maximum one hour concentration, not to be exceeded more than once per year. 40 CFR § 50.9. (Stip. 65) \* \* \*

The [hydrocarbon] report concluded that:

“Our present state of knowledge does not demonstrate any direct health effects of the gaseous hydrocarbons in the ambient air on populations, although many of the effects attributed to photochemical smog are indirectly related to ambient levels of these hydrocarbons.” (AP-64 at page 8-4&5)

“. . . it has been demonstrated that ambient levels of photochemical oxidants which do have adverse effects on health, are a direct function of gaseous hydrocarbon concentrations; and when promulgating air quality standards for hydrocarbons, their contribution to the formation of oxidants should be taken into account.” (AP. 64 at page 8-5).

30. Pursuant to section 107(a) of the Clean Air Act, as amended, the Administrator of the Environmental Protection Agency is required to “designate as an air quality control region any interstate area or major intrastate area which he deems necessary or appropriate for the attainment or maintenance of ambient air quality standards.” 42 U.S.C. § 1857C-2(c).

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31. Exercising his administrative authority, the Administrator has designated the New Jersey-New York-Connecticut Interstate Air Quality Control Region. The region comprehends most of the Port District, including Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Somerset and Union Counties as well as extensive sections of Connecticut and New York State. 40 CFR § 81.13.

32. Section 107(a) of the Clean Air Act, as amended, provides that "each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for each State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State." 42 U.S.C. § 1857C-2 (a).

33. Pursuant to Section 107 of the Clean Air Act, as amended, the Administrator shall, if a State does not submit an implementation plan, or submits an inadequate plan, and subject to certain opportunities for extension, formulate his own implementation plan to achieve the national ambient air quality standards in the affected part of the air quality control region. 42 U.S.C. § 1857C-5(c).

34. The State of New Jersey has not formulated a plan, satisfactory to the Administrator, to achieve compliance with the federally mandated national ambient air quality standards for carbon monoxide or photochemical oxidants (hydrocarbons) within its portion of the New Jersey-New York-Connecticut Air Quality Control Region.

35. The Environmental Protection Agency on November 13, 1973 promulgated implementation plans for New Jersey

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dealing with carbon monoxide and hydrocarbons as set forth in 38 Federal Register 31388 to 31400. Since that date many changes have been made, most of them postponing dates of compliance. Negotiation between the Federal Environmental Protection Agency and the Department of Environmental Protection is going on to determine whether other changes are to be made. Judicial notice may be taken of the Plan and related materials in the Code of Federal Regulations and the Federal Register.

The State has openly opposed many of the provisions of the proposed plan. There does not appear to be a present intention on the part of the New Jersey authorities charged with air quality control to submit an alternative plan.

36. Since February 1, 1974, when the New Jersey mandatory auto emission testing program went into effect there has been a 20% reduction in carbon monoxide concentration in New Jersey's air. Reporting on this accomplishment, Russell E. Train, Environmental Protection Agency Administrator, praised New Jersey as a national leader in air pollution control. A spokesman for the State Bureau of Air Pollution Control stated that the 20% reduction in carbon monoxide levels brought the content of the contaminant from four parts per million in the first six months of 1973 down to 3.3 parts per million in the first six months of this year. The spokesman said that the improvement in air quality is bringing the State closer to the standards the federal government has told New Jersey to meet by 1977. However, he noted that the State may have to take further steps to reduce air pollution caused by auto emissions to meet the stringent requirement.

There was a similar decline in carbon monoxide concentration in New York City, which does not have an automo-

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tive emission testing program. At the Queensboro Bridge, carbon monoxide concentrations were 20.8 parts per million in June 1973 and 15.5 parts per million in June 1974, a 25 per cent improvement. In February 1973, the figure was 15.9, while in February 1974 it was 13.5. On Canal Street, the carbon monoxide reading in January 1973 was 9.6 and in January 1974 it was 7.1. In June 1973 the concentration was 9.3 and in June 1974 the concentration was 10.1. According to an article appearing in the December 3, 1974 issue of *The Star Ledger*, New York Environmental Protection "officials confirmed that auto pollution was less during the period of the gas shortage." The article also stated:

"Having only 10 months' experience with mandatory emission control testing, and this coinciding with a period of generally curtailed driving because of an energy crisis, neither federal EPA nor [New Jersey] DEP officials can make a convincing case for the experimental program."

III. HISTORY OF RAPID TRANSIT IN THE PORT DISTRICT.

A. Prior to 1962.

1. Chapter 591 of the Laws of New York of 1921 created a commission to prepare "a preliminary plan and report, including estimates, for the combination, improvement and extension of existing rapid transit railroads, street surface railroads, and \* \* \* omnibus lines and any railroad used for local service, operating between a point or points within the city of New York and a point or points within the county of Westchester, \* \* \* and for otherwise improving, by new construction or otherwise, the transportation facilities between the city of New York and the county of Westchester."

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2. Chapter 104 of the Laws of New Jersey of 1922 established a commission to study and report upon plans for providing a comprehensive scheme of rapid transit between various communities in northern New Jersey and the City of New York. The preamble to the aforesaid act contained legislative findings as follows:

“WHEREAS, By act of the Legislature entitled ‘An act to authorize a commission to enter into compact or agreement with the State of New York for the development of the port of New York,’ passed April seventh, one thousand nine hundred and twenty-one, a commission now exists for the development of a comprehensive plan for the development of said port; and

“WHEREAS, Said comprehensive plan in its consideration of transportation problems does not include the problem of passenger traffic in the territory covered by said port development plan; and

“WHEREAS, Said problem of passenger traffic should be considered in co-operation with the port development commission so as to develop an efficient system of rapid passenger transit between the New Jersey municipalities lying within the territory covered by said port development plan and between said respective municipalities and the city of New York.”

3. Pursuant to the aforesaid statute and subsequent joint resolutions passed by the New Jersey Legislature, a North Jersey Transit Commission undertook a comprehensive study of the rapid transit needs of a nine county

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area of New Jersey. The 1925 report of the Commission stated:

“. . . New Jersey must give immediate and thoughtful consideration to its transit problem in order that its growth and prosperity shall be continued and in order that its natural development may not be retarded.

“Already the nine northern counties of New Jersey are confronted with a serious situation and that situation is growing more serious each year.

“If the solution of the transit problem is delayed longer . . . (t)he result would be disastrous to New Jersey.

“This transit problem is one of great magnitude and many complexities. Its solution lies almost as much on the New York side of the river as in New Jersey.

“The State of New Jersey must change the present inharmonious, inefficient and almost impossible transit chaos to a comprehensive, efficient and workable whole that will adequately serve commuters to New York as well as properly build up this section of the State.”

The report favorably considered the establishment of a double loop system connecting all the railroads of North Jersey to a direct New York City system running from lower Manhattan to 59th Street.

4. On January 15, 1926, the North Jersey Transit Commission presented a comprehensive plan to meet the mass



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transit crisis of northern New Jersey. The 1926 report stated that:

“Northern New Jersey has an acute transit problem.

“The need for relief is so urgent that temporary measures must be resorted to at once if permanent and more comprehensive plans cannot be carried out in the very near future.”

The 1926 report recommended an Inter-State Loop Line, a Meadows Transfer Station, direct rapid transit access to New York City, Hudson and Manhattan Railroad extensions in New Jersey and the extension of New York rapid transit service to New Jersey. (Stip. 66-73)

\* \* \*

7. In 1927 the New Jersey Legislature, stating that it was acting “under and pursuant to the provisions of the [Port Authority] compact,” “authorized and directed” the Port Authority “to make such plans for the development of said district supplementary to or amendatory of the comprehensive plan heretofore adopted by the Legislatures of the two States . . . as will provide adequate interstate and suburban transportation facilities for passengers traveling to and from one State to the other within the said district, and from one part of the said district to another, sometimes referred to as commuter or suburban passenger traffic, to the end that travel between the various parts of the port district may be made more convenient, practicable and economical for those residing in one region in the port district and doing business in another region thereof.” The Port Authority was also directed to “submit, as a part

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of its report, a legal plan for the financing of the said improvements through the Port of New York Authority as the corporate municipal instrumentality of the two States or otherwise." This legislation, which became Chapter 277 of the Laws of New Jersey 1927, was signed by Governor Moore of Jersey and was approved in 1928 by the New York Legislature but was vetoed by Governor Alfred E. Smith, who issued the following statement in support of his veto:

"NOT APPROVED.

"This bill aims to authorize and direct the Port of New York Authority to study the interstate suburban passenger problem of the metropolitan district with a view to enlarging the comprehensive port plan so as to comprehend suburban traffic relief.

"There can be no question as to the urgent need of working out a solution of the suburban passenger traffic problem in the metropolitan district. The present railroad stations and traffic facilities in New York City, so far as suburban transportation is concerned are already hopelessly inadequate and no hope for the future lies in the efforts to expand these facilities. On the other hand, I am satisfied that no solution can be found by merely dumping suburban passengers at the outlying parts of the city and forcing them into the already overcrowded city subway and elevated systems. Some solution must be found along the lines of an entirely new suburban subway system through which suburban trains can be operated connecting New Jersey, Westchester and Long Island with New York City

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and with each other. Various attempts to solve this problem have been made through special legislative commissions and through private agencies and organizations. The solution now proposed is that the Port of New York Authority finance these facilities through the issuance of bonds similar to the bonds issued to finance the various Hudson River and Staten Island bridges.

“No one can question my interest in and support of the Port of New York Authority. I was a member of this authority by appointment of Governor Miller between my first and second terms as Governor and represented the authority at Albany when the comprehensive plan for port development was adopted by our State Legislature. I have been and am vitally interested in carrying out this comprehensive plan. It has been a source of great satisfaction to me to see the soundness of the financial principles back of the Port Authority demonstrated in the building of the great bridges which are now under way. On the other hand, it has been a great disappointment to me to find that the opposition of the railroads has prevented to date the making of real progress in working out the program of freight distribution in the port which always has been the main object and purpose of the Port of New York Authority. I am satisfied that the Port Authority should stick to this program and I am entirely unwilling to give my approval to any measure which at the expense of the solution of the great freight distribution problem will set the Port Authority off

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on an entirely new line of problem connected with the solution of the suburban passenger problem.

“For the above reasons, the bill is disapproved.

(Signed) ALFRED E. SMITH”

8. The Port Authority’s 1928 Annual Report stated:

“In its last annual report, the Port Authority advised that creation of the Suburban Transit Engineering Board had resulted in wholehearted cooperation between the various public agencies of the Port District and the railroads concerned with the problem, and recommended that the cooperative efforts of these associated interests being devoted to a solution of this difficult problem, be fostered and encouraged, and further suggested as a helpful measure to this end, the passage of legislation by the State of New York concurring with New Jersey in its direction to the Port Authority, as contained in Chapter 277, Laws of 1927.

“An appropriate bill to this end was passed by the New York Legislature at the 1928 session but met with the Governor’s veto. This failure of this legislation resulted in no funds being made available to the Port Authority for specific purposes of suburban rapid transit.

“However, upon mature consideration, the Commissioners of the Port Authority resolved to continue the Suburban Transit Engineering Board and its support thereof to the extent funds available might permit. The reasons therefor are contained in the following resolution adopted at a meeting of

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the Commissioners, June 11, 1928, which provided in part:

“Since the adoption in 1922 of the statutory Comprehensive Plan by the two states, dealing with the transportation of freight, the States of New York and New Jersey have, by various acts, added to the said Plan the building and operation by the Port Authority of four bridges over which passengers are to be carried by vehicles and/or rail;

. . . . .

“The Commissioners of the Port Authority have found in their studies that no adequate or effective interstate transportation development can take place without taking full account of transportation of passengers as well as of freight throughout the Port District;

. . . . .

“At many points in the statutory Comprehensive Plan, problems arise as to which rail or bridge facilities shall be used primarily for freight or primarily for passenger service, and which for both.” (Stip. 75-78) \* \* \*

10. On February 27, 1928, the North Jersey Transit Commission issued its annual report for the year 1927. The report recognized:

“. . . the growing impatience of the public with the discomforts, indecencies, delays and money losses caused by present means of travel . . . and is prosecuting its work with due regard to the urgency of the problem.

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“Better transportation for some 350,000 daily commuters between their homes in this state and their work in New York . . . is an acute present problem, the solution of which is vital to the welfare of an army of our citizens.”

The report noted “with keen satisfaction . . . a significant achievement during the past year in respect to the commuter problem”—during a conference between the North Jersey Transit Commission and the Commissioners of the Port Authority, “decision [was] reached that the bi-state character of the Port of New York Authority enabled it to function admirably as a co-ordinating agency between the various official bodies severally engaged in the study of the commuter problem in different parts of the Metropolitan District of New York and New Jersey.” The report announced the formation of the Suburban Transit Engineering Board (including the Port Authority) to act as a central agency of transit commissions, railroads, and allied state bodies concerned with the problem of commuter transportation. Negotiation between the North Jersey Transit Commission and the Port Authority brought about a contract between the two agencies under the terms of which financial support was jointly provided for the Suburban Transit Engineering Board. The formation of the latter Board permitted the North Jersey Transit Commission to devote its entire effort toward the development of a New Jersey system leaving the interstate problem to the Suburban Board, which included the Port Authority. (Stip. 79-80) \* \* \*

23. In a 1951 report [submitted to Governor Driscoll, L. Alfred Jenny, consulting engineer] traced the history of previous plans to develop rapid transit facilities commenc-

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ing in the 1890's. Mr. Jenny listed 16 separate plans, including six of his own between 1921 and 1951. Mr. Jenny noted that the 1920 Plan of the New York-New Jersey Port and Harbor Development Commission (the "Red Book") had stated, "Our Port problem is primarily a railroad problem . . . therefor, the comprehensive plan to evolve which this Commission was created is essentially a railroad plan. . . . A complete reorganization of the railroad terminal system is the most fundamental physical need of the Port of New York. . . . The most pressing element of the entire port problem is that of railroad service to and from Manhattan." Mr. Jenny further noted that "although 30 years have elapsed since, and our problem has grown very much worse, we still have done nothing to solve it." Noting that the Port Authority's March 1, 1937 report had stressed the desirability of the development of rapid transit facilities for northern New Jersey, Mr. Jenny stated: "This sound advice was given a decade and a half ago, yet no one has paid any attention to it, not even the Port Authority itself. On the contrary, it has actually worked for more highway traffic, which it had admitted would never solve our problem, and even today, it is talking of building more vehicular facilities instead of endeavoring to do the railroad job it was created to do over three decades ago." Mr. Jenny also noted that on December 1, 1950, a commuter organization of passengers of the Central Railroad had issued a report, following a conference with Port Authority officials, which stated, "The general aim of the Port Authority seemed to be that of avoiding transit problems." In reference to the existing situation he stated:

"For three decades we have been making plans, and spending money in an effort to solve this prob-

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lem. All we have to show for this effort is a series of partial and ineffective and expensive solutions, and a few overall and coordinated plans. However, none of these have even been accepted as the solution, to say nothing of having any part of these plans effectuated. We are, therefore, no better off today than we were 30 years ago when the two states decided that the problem was so serious as to warrant the creation of an Authority to solve it.

“Today the situation is very much worse than it was 20, or even 10 years ago. Some railroad tracks have been taken up, many trains have been eliminated and in some cases as many as 50% fewer trains are being run than was the case 3 decades ago, while in some instances we only have about 10% as many, or even fewer, trains than we had then. Fares have more than doubled in the meantime, and train speeds have been reduced. Anyone with the understanding of the economic need of these regions must agree that we can not tolerate this condition any longer. We must take positive and effective action.

“. . . We must stop trying to solve this vast and serious problem by introducing ineffective and poorly conceived half-way measures, and which always showed a large deficit, and we must undertake the task of solving it in the only and proper manner in which it can be solved. We must provide an overall solution, throughly coordinated, and include therein all possible revenue producing features and arrange the facilities in such a manner that the best possible and maximum use can be made. We must also stop using the poorly conceived projects as a base for



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discussion, as has too often been done, and then simply say, it cannot be done. That is a very poor excuse for the past failure to produce the proper facilities." (Stip. 93-95) \* \* \*

36. In the 1958 session of the New Jersey State Legislature, Assembly Bill No. 16 was introduced which provided that the Port Authority would take over and financially develop, improve and operate the interstate rapid rail transportation of passenger traffic between New Jersey and New York. In response to this bill, the Port Authority submitted a statement by its Commissioners on November 24, 1958. In a letter accompanying its statement, the Port Authority summarized its position:

"At the outset we must state, as we have stated repeatedly in the past, that we are unanimously opposed to the adoption of Assembly No. 16 or any legislation which would attempt to involve the Port Authority in any way in the deficits of rail rapid transit.

"Our letters of May 29 and September 11 and the attached statement, all contain detailed facts and figures that completely refute the unsound, impracticable and legally impossible recommendations of Assembly No. 16, which would attempt to direct the Port Authority to take over, finance, develop, improve and operate 'rapid rail transportation of passenger traffic' in the Port of New York District.

\* \* \*

"In our judgment, any involvement of the Port Authority in rapid transit would have disastrous consequences for the people of the two States and for

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their joint heritage,—the Port District of New Jersey and New York. Such involvement would cause the Port Authority to default on contractual commitments which the Port Authority must honor for the continued development of the public facilities of the Port District—land, sea and air—which will require the Authority to borrow over \$700,000,000 of capital funds during the next five years. These contractual commitments, made with the express authorization of the two States, involve the following of our facilities:

- Elizabeth-Port Authority Piers
- Brooklyn-Port Authority Piers
- Port Newark
- George Washington Bridge  
(second level, plaza improvements and approaches)
- Washington Heights Bus Passenger Facility
- Bergen County Expressway
- New York International Airport
- Newark Airport
- La Guardia Airport
- Narrows Bridge
- Erie Basin-Port Authority Piers

“In addition, any involvement of the Port Authority in rapid transit could well lead to the destruction of the Port Authority as a useful agency of the two States for the continued development of essential facilities on a self-supporting basis and without burden to the general taxpayer.

“It has been suggested: (1) that the heavy deficits of the New Jersey commuter railroads and the cost

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of developing a new and comprehensive rapid transit system should be assumed by the Port Authority, which could absorb these deficits by use of revenues from its present operations; and (2) that if these rail transit deficits—present and future—proved to be more than the Port Authority's overall revenues could absorb, they could be 'made up' by increasing the existing Hudson River tolls and discontinuing the present commutation rates across the George Washington Bridge and through the Holland and Lincoln Tunnels. It also has been suggested that such deficits could be made up by increasing the charges at Port Authority terminal facilities. Another suggestion calls for a bi-State (New Jersey, New York and Connecticut) subsidy to the Port Authority to make up the operational and capital deficits of rail transit.

"By way of summary of our previous communications and our current statement, we must respectfully submit to your Committees again that:

- "1. It is legally, financially and contractually impossible for the Port Authority to assume the railroads' increasingly heavy deficits from all or part of commuter operations, or the cost of developing a new and comprehensive interstate rail rapid transit system.
- "2. Even if it were legally and contractually possible, very quickly the assumption of rail transit deficits by the Port Authority, the self-supporting agency of the two States, would cripple and destroy the Authority's credit. It would thereby bring to a halt the program now being carried out by the Port Authority on behalf of the two

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States for the continued development of their essential public marine and inland terminal facilities, airports and interstate arterial systems.

- “3. The imposition of the deficit financing of rail transit upon motorists would constitute an unfair tax upon a particular group of citizens. A toll increase to 75 cents for all automobiles, including those of regular commuters, and a corresponding increase for all other users of the Hudson River crossings would be required just to meet the 1957 deficits of the New Jersey commuter railroads. If these deficits were to be viewed realistically to include the financing of rapid transit deficits in New Jersey, New York and, as has been suggested, in Connecticut, the users of the Hudson River crossings, and we presume, other river crossings and turnpikes in the tri-State area, would have to pay a bill for railroad and transit deficits amounting to a sum that might reach as high as \$150 million a year.
- “4. It is impossible, as has been suggested, for the Port Authority to alter existing contracts for charges to users of Port Authority airports, truck terminals, bus terminals, and marine terminals, in any attempt to impose upon them a part of the rail transit deficits. These charges have been established by leases and agreements which may not be altered unilaterally.
- “5. A New Jersey subsidy of the Port Authority for rail rapid transit purposes is a proposal that commuter deficits be paid by the taxpayers.

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We find it difficult to believe that this Legislature would support a bill that proposed that the taxpayers of the State of New Jersey should subsidize Port Authority operation to the extent of from \$12 million to \$20 million or more a year. Furthermore, the Port Authority would cease to be an effective instrumentality of the two States if it were to become a subsidized agency.

“In the attached statement we set forth our detailed reasons for these conclusions and describe how the Port Authority finances its projects, the way in which the market for its revenue bonds operates, and the projects to which it is committed over the next five years. Our statement also demonstrates the legal and financial impossibility of the assumption by the Port Authority of any or all of the rail transit deficits, and reviews how and why the assumption of such deficits would destroy Port Authority credit.

“To finance Port Authority projects we must sell revenue bonds. The security for such bonds is limited to the revenues which the Port Authority develops and receives from its public projects and from the reserves established from those revenues in accordance with the statutes and our contracts with our bondholders. People will buy Port Authority bonds only so long as they have confidence that our revenues will be sufficient to pay interest and principal on such bonds and create sufficient reserves for protection against contingencies and adverse devel-

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opments that might impair the security of the Authority's bonds.

"Under our contracts with our bondholders, the Port Authority's reserves and the revenues from present facilities are pledged and committed. They cannot, as a matter of law and contract, be diverted to the development of a deficit rail transit system or for the underwriting of deficits of the New Jersey commuter railroads."

\* \* \*

"Two results would flow from such continuing subsidy, possibly unanticipated by their proponents, but certainly destructive to the continued usefulness of the Port Authority.

"First of all, prospective investors of Port Authority obligations would conclude that the subsidized Port Authority operation was only a first step in a process of involvement, and that an attempt to divert the reserves and revenues of the Authority would be certain to follow. No investment counsellor who has heretofore advised his clients to purchase Port Authority bonds on the basis of its record of self-support could so counsel them again in the face of this threat. Port Authority interest rates would be forced up at once and at the very minimum certain public facilities, for which commitments have been made with the authorization of the two States, would have to be abandoned because the increased cost of borrowing would put them beyond the possibility of self-support.

"Your Committees well know that the essence of the Port Authority has been its long tradition of non-

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political corporate management guided by sound business principles in the operation of public facilities which have been placed on a self-supporting basis. This tradition has been respected by successive administrations of the two States over the past 37 years.

“The Port Authority concept is completely incompatible with a power in the Authority to spend tax monies for the raising of which it would have no fiscal or political responsibility. In the case of tax-supported public facilities, the determination of the many considerations which are involved in their operation properly lie with the taxpayers who pay that operation. The Port Authority mechanism, while dependent on legislative authorization and gubernatorial control, must weigh operating decisions against their legal, financial and economic implications to the Authority. That mechanism, therefore, cannot at the same time fit both a subsidized railroad operation and the operations of self-supporting port facilities. The Authority could not possibly observe two standards of management with respect to its operations. The non-business considerations which are completely correct for setting policy for a tax-subsidized railroad operation could in no event be kept out of the agency’s other operations, which would be managed by the same Commissioners and the same administrative staff. Thus, the ultimate result of a subsidy would be to destroy not only the self-supporting financial management of the Authority but also its managerial efficiency.”

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37. The following is an excerpt from the statement by the Commissioners of the Port of New York Authority dated November 24, 1958:

“The Commissioners of the Port Authority are unanimously opposed to Assembly No. 16 and to any other legislation which would attempt to involve the Port Authority in any way in responsibility for rapid transit.

PORT AUTHORITY ASSUMPTION OF TRANSIT DEFICITS  
IS LEGALLY AND FINANCIALLY IMPOSSIBLE

“This opposition is based on the conclusion of the Commissioners that: (1) It is legally, financially and contractually impossible for the Port Authority to assume the railroads’ increasingly heavy deficits from commuter operations or the cost of developing a new and comprehensive rail rapid transit system; and (2) The assumption of rail transit deficits by the Port Authority, the self-supporting agency of the two States, would immediately cripple and very quickly destroy the program of the two States now under way for the continued development of their essential public port and harbor facilities, airports, and interstate arterial systems.

\* \* \*

“In addition to the General Reserve Fund, various special reserve funds have been created as a result of contractual commitments with bondholders in support of the various issues of Port Authority bonds. As in the case of the General Reserve Fund, the Authority may apply moneys in the Special Reserve



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Funds for purposes relating only to those of its bonds secured by a pledge of the General Reserve Fund, including purposes relating to facilities financed by such General Reserve Fund Bonds.

“All Port Authority revenues not applied to operation and maintenance and debt service *must* be paid into one or another of these reserve funds. There are no excess revenues which are free of this contractual commitment to bondholders.

“Generically, Port Authority bonds may be classified as ‘municipal bonds’. However, the vast majority of municipal bonds are general obligation bonds secured by the tax levies of the particular unit issuing such bonds. The marketability of such bonds has little to do with the specific purpose of the particular issue but rests primarily upon the tax record and future prospects of the entire community within the taxing jurisdiction. Unlike tax-supported obligations, however, the marketability of the Port Authority bonds has a very direct relationship to the facilities for which the borrowing is made.

“Moreover, in addition to the revenue prospects of the facility itself, the prospective Port Authority bondholder weighs the financial strength of the Port Authority by an examination of its record of meeting required and anticipated debt retirement, the Authority’s reputation for financial management and its record of administration with respect to the ratios of expenses to revenues.

“The factors enumerated above can be determined by examination of the record and simple calculation.

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Not so readily determined and identified, however, is the 'confidence' that the holders of Port Authority bonds have historically demonstrated. Three factors have contributed to this confidence. First, all groups of facilities, including those that were initially deficit facilities, have been brought into the area of complete self-support. Second, the Port Authority has always honored both its express and implied obligations to its bondholders. Third, its management has been characterized by stability and continuity and its financial policies have earned the respect of investors.

\* \* \*

"Late in 1951 the Commissioners of the Port Authority met again with Governor Driscoll of New Jersey to discuss a suggestion which had been advanced that the Port Authority might undertake the financing of an electrified rail transit system between New York and New Jersey. The Commissioners noted the facts developed in the many studies which had been undertaken, including the conclusions of the New Jersey Legislative Committee of 1941, and expressed the conviction that any suggestion that the Port Authority was about to take over or to be asked to take over the interstate rapid transit service would have a most serious effect on its credit.

"The Port Authority Commissioners pointed out that the principle of self-support is the whole strength of the Port Authority's ability to carry forward the programs of terminal and transportation development entrusted to it by the two States on a revenue bond basis; that the Port Authority's

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credit structure would be seriously impaired if there was any implication that the Port Authority was even considering the financing of rail transit; that any amendments to the Port Compact under which the Port Authority would have recourse to public subsidy from tax levying sources in support of its projects would destroy the entire concept and character of the Authority.

“DISASTROUS EFFECT UPON PORT AUTHORITY CREDIT

“Even if it were possible to ignore the legal and financial impossibility of the Port Authority assuming responsibility for commuter rail deficits as described above, such involvement would have a disastrous effect on Port Authority credit. This statement represents not only the considered judgment of the Commissioners of the Port Authority, but it is supported by views expressed by other responsible persons in the investment and banking field, who as a practical matter, are the controlling influence upon the receptivity of bondholders to Port Authority investment. Their views are uniform that the introduction of rapid transit deficits into the Port Authority’s overall financial responsibility would have the effect of seriously impairing the Port Authority’s credit standing.

“For instance, Mr. E. B. Rockwell of Halsey, Stuart and Company (co-managers of an investment banking syndicate which consistently bids on Port Authority bonds) wrote to the Treasurer of the Port Authority on July 23, 1958 as follows:

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'In our opinion any assumption of responsibility on your part for rail rapid transit in the New York area would, on almost any conceivable terms, be harmful to the present investment standing of the Port bonds and would adversely affect the ability of the Port Authority to finance in the future on terms as favorable as hitherto. In our opinion, it is most essential for the preservation of The Port of New York Authority to be completely free of any responsibility whatsoever for rail rapid transit in this area.'

"Mr. Reginald M. Schmidt of Blyth and Company (co-managers of another syndicate which consistently bids on Port Authority bonds) also wrote to our Treasurer on July 16, 1958 in part as follows:

'If the Port of New York Authority is to continue expanding its present facilities and other facilities that lend themselves economically to sound revenue bond financing, it would be fatal to the Port's credit if they undertook to finance transit systems by pledging its surplus revenues and general reserve fund.'

"In support of the statements made by these municipal bond experts who both underwrite and purchase our bonds, we quote in part from an editorial from the June 30, 1958 edition of 'The Daily Bond Buyer,' which is the trade paper for municipal dealers all over the country. This editorial stresses the serious effect which transit responsibility would have on the Port Authority's credit.

'One of the few real efforts toward a solution of the mass transportation problem of the New York-

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New Jersey Metropolitan Region has been delayed because the New Jersey Legislature has adjourned until next November, without completing action on the proposed formation of the Metropolitan Transit District. An identical bill was adopted by the New York Legislature early this year and signed by Governor Harriman, but it will take effect only if New Jersey also acts. The measure squeaked by the New Jersey Senate, but the chances of approval by the Assembly are believed to be dim.

‘It is regrettable that formation of such a bi-state agency, comparable in some ways to the Port of New York Authority, will be delayed and perhaps defeated in the end. Mass transportation is the universal problem of the “exploding cities” of the United States and many other countries. In the United States it is more formidable than anywhere else. Ever more penetrating studies show that it has some general aspects, but also many that are peculiar to each separate Metropolitan Region.

‘The Port of New York Authority has often been assailed for its aloofness, but the Port Authority has excellent reasons and spelled them out plainly early this month in a series of analyses of commuter railroad deficits, the experience of transit systems in other Metropolitan Areas, and the effect on its own credit and activities of any attempt to participate. As to the latter, there are impassable legal obstacles and the financial results would be ruinous. The Port Authority therefore frankly declared that creation of the proposed

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Transit District is the only action that can assure progress this year on the New York-New Jersey transit problem.'

"These statements were made by responsible investment banking leaders. For all practical purposes they are the controlling influences of our credit. We can sell Authority bonds only through these syndicates and on such terms as the syndicates believe are required to make them marketable.

"Obviously, these market analysts would regard any Port Authority involvement in rapid transit as a financial disaster. If the Port Authority can be compelled to assume a deficit operation of any sort, even one not approaching the rail transit deficit in size, investors would have a right to assume that the Authority was becoming the dumping ground for deficit operations of all types. The Authority's credit could not survive such a breach of its investors' present confidence that the Port Authority will restrict its operations to facilities which it believes can eventually be made self-supporting. The importance of this lies in the fact that it transcends arguments as to the size of the present transit deficit. To investors it would make no difference whether the proposal was to force a \$2,000,000 or a \$12,000,000 or a \$20,000,000 annual deficit on the Port Authority. Confidence is the essence of credit and it would be gone.

"Flattering though they may be, suggestions that the Port Authority's 'technical know-how and managerial experience' would somehow dissipate rail tran-

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sit deficits will not stand serious examination. Nor would prospective purchasers of Port Authority obligations be lulled into disregarding the uniform record of large and increasing rail transit deficits by the mere fact that the Port Authority's 'managerial experience' had been brought into the picture.

"The impact of a loss of credit would not be limited to the Port Authority's future financing. Outstanding bonds would immediately sell at a discount and the holders of the \$500 million of outstanding Port Authority bonds, who purchased them on the assumption that only those facilities would be undertaken which are self-supporting or capable of self-support, would suffer serious losses. At the very minimum this involves a breach of the Authority's moral obligation to these bondholders and one which the Legislatures will want to consider."

38. On January 9, 1959, a joint report on the proposed Metropolitan Rapid Transit District and Port Authority statutes was issued by the New Jersey Assembly Committees on Highways, Transportation and Public Utilities and on Federal and Interstate Relations. The report noted that the MRTC bill did not specifically mention the Port Authority by name as it did other agencies, such as the New York Transit Authority; that the implicit proposal of the Metropolitan Rapid Transit Commission bill to use local property taxes as the primary method of financing "was a wholly unrealistic proposal [as] the municipalities and counties comprising the district . . . are now involved in a substantial effort to find a way to reduce the tax burden on real estate"; the proposed organizational structure of the

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Metropolitan Rapid Transit District was “most disturbing” and “provided less control over the Board than exists in the hands of stockholders in a private corporation”; and that supporters of the Metropolitan Rapid Transit Commission plan had come to recognize the many serious defects in the structure of the agency and otherwise. The report also stated that many of those who originally felt that the Port Authority should undertake the entire mass transit obligation had come to realize that in light of all the circumstances that could not be justified at that time. The report further stated:

“There can be no question that the carrying on of a transit function was well within the Port Authority Compact terms and well within the present powers. However, two extremely important factors mitigate against any present assignment of the task to the Port Authority by law. First, as of now no one can say with certainty what the size of an operating deficit would be. While the Port Authority no doubt could undertake an activity which would involve a deficit—even a permanent one—it could only do so if there were real assurance that the size of the deficit would be such that there could be no doubt of its ability to absorb it. As pointed out by the Supreme Court in the *Weehawken* case, 14 N.J. 570, the design of the Port Authority rests on two concepts: that by a pooling of facilities in one agency, activities which by themselves could not succeed financially could be undertaken, and that the aggregate pooled operation of all facilities should be self-supporting. It is this last factor that mitigates against A-16. If there were sufficient assurance that



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the aggregate operation would continue to be self-supporting, and sufficiently so as not to tend to impair or adversely affect the efficiency or credit of the Port of New York Authority, it would be a question of policy for the Legislature to decide whether to assign to the Port of New York Authority a function that would make it more expensive to borrow money. The committees are satisfied that this is the context in which Mr. Tobin's testimony that the Port Authority could not, legally or financially, undertake commuter operations, must be read. The same comment is to be applied to the Memorandum of Understanding between MRTA and the Port of New York Authority. There can be no doubt of the propriety of assigning a transit function to the Port Authority if there were proof of an adequately clear and convincing nature by competent estimates that the predictable deficits of the transit operations would be sufficiently less than predictable net revenues from other operations as not to impair existing contractual obligations with bondholders or the overall ability, credit and efficiency of the Port of New York Authority. Evidence of this kind was not presented, nor can it be until there is formulated a general plan with sufficient detail. At that time, reasonably reliable estimates will be possible, and the Legislature can then determine whether and to what extent the Port of New York Authority should be directed to undertake a major operating or financial role in its effectuation. The concept of a transit district agency was accordingly agreed upon as the most suitable one to accomplish the task.

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“At the same time, it was felt that the Port Authority should give the district every conceivable aid that might advance its work, and the substitute bill expressly so provides. We have no doubt that the Port Authority can be of tremendous aid and it is in the public interest, as well as in the proper discharge of its own duties that it will provide it wholeheartedly. In addition, it is conceivable that some kind of Port Authority participation in some part or parts of the plan is desirable and feasible without requiring it to assume the entire deficit. This is most likely to take the form of planning, constructing and financing some of the essential facilities. Some of them may even be modest deficit operations of a predictable nature, such as parking facilities at junction or transfer points, at rail line stations, or more substantial ones such as stations, interconnections, bridges, tunnels and the like, with the assurance, however, that Port Authority contractual obligations to bondholders and overall efficiency and credit would not be impaired. It may even be able, at the start, to provide office space for the district so that it may get quickly under way.

“At the emergency and interim stages, it is clear that implementation, in the sense of actual operation, should continue to be by the railroads and other carriers. The district will serve as a focal point or integrating device through which all arrangements may be made. Conceivably, it could arrange for issuance of the passenger tickets for use on the commuter network, if that should offer any cost-saving advantage. Beyond these two stages, however, no one can predict what assignments should be made.

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Implementation of the more permanent general plan will need to await the experience obtained from the interim plan and the design of the general plan itself. The substitute bill is drawn to provide all needed flexibility.”

39. By Chapter 13 of the Laws of New Jersey of 1959 and Chapter 420 of the Laws of New York of 1959, the States of New Jersey and New York entered into a compact with the consent of Congress. Public Law 86-302; 73 Stat. 575 (1959). The compact created the New York-New Jersey Transportation Agency as a body “corporate and politic” which would “serve as a public agency of the states of New York and New Jersey in dealing with matters affecting public mass transit within and between the two states.” §3.1. In entering into this compact, the Legislatures specifically found:

“Provision for efficient and proper transportation of commuters and other persons by public transit methods within the New York-New Jersey metropolitan area is essential in the public interest.

“Recent trends toward decay of existing systems, particularly in respect to transportation services crossing the Hudson river, have created a condition of impending emergency requiring prompt action on an interim basis for the establishment of an operating system designed mainly on the best use of existing facilities and equipment at the least financial hardship upon the operators thereof consistent with public needs, pending the development of a proper and acceptable general plan.

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“Present uncertainties as to the nature and extent of any acceptable and feasible general plan, as well as to the capital and operating cost of the same, require that such questions be inquired into upon the basis of experience accumulated in the operation of an interim plan. The preparation and execution of an interim plan as well as the preparation of a general plan can and should be accomplished by a metropolitan transit district to serve as a regional agency of the States and to have the full assistance, support, co-operation and participation by all persons and agencies, private and public, of any 1 or more of the States within the proper limits of its own functions and duties.” (Stip. 110-126) \* \* \*

40. On September 21, 1959 by Public Law 86-302, 73 Stat. 575, Congress, pursuant to a joint resolution, consented to the Compact entered into between the State of New York and the State of New Jersey for the creation of the New York-New Jersey Transportation Agency. The congressional consent provided:

(a) The right to alter, amend, or repeal the joint resolution was expressly reserved.

(b) Any long-range plan, when adopted by concurrent legislation of the compacting states, shall be submitted to Congress for its consent before such long-range plan becomes effective. (Stip. 127) \* \* \*

The Compact provided that the agency was to continue in existence until June 13, 1961, but that its existence could continue thereafter as concurrent legislation might provide (Article 4, §4.6). In 1961 the Legislatures of both States

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extended the agency's duration to June 30, 1966. Ch. 55, Laws of N.J. 1961; Ch. 273, Laws of N.Y. 1961. There was no subsequent legislation extending the existence of the agency beyond 1966.

41. By Chapter 25 of the Laws of New Jersey of 1959 and Chapter 638 of the Laws of New York of 1959 the Legislatures of the two States provided that "upon the election by either State . . . the Port Authority shall be authorized and empowered" to purchase and own railroad cars for the purpose of leasing them to commuter railroads within the electing State. The statutes expressly prohibit the Authority from borrowing money for the purchase of such cars until the electing State has guaranteed payment of both principal and interest on the obligations issued for that purpose.

New York immediately chose to have the Port Authority proceed on its behalf to purchase railroad cars for lease to the commuter railroads of that State. Ch. 639, Laws of New York of 1959. Pursuant to this program, as later implemented by a 1961 New York constitutional amendment, the Port Authority has presently outstanding over \$90 million in New York State-guaranteed railroad car bonds and has purchased for lease to commuter railroads within the State 467 air conditioned passenger cars and 8 locomotives. 1972 Port Authority Annual Report, 15. The State of New Jersey has not taken legislative action to participate in this commuter car program.

42. By Chapter 14 of the Laws of New Jersey of 1959, a Division of Railroad Transportation was created and established as a part of the State Highway Department in order to improve rail transportation in the State. The Legislature found:

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“(a) Many of the railroads serving this State are seeking to curtail or eliminate much of their commuter and passenger railroad service.

“(b) Railroad transportation is the most efficient means of moving large groups of people in a short space of time such as is necessary, particularly, during the rush hours at the commencement and close of each working day.

“(c) Adequate commuter and passenger railroad service throughout the State is essential for the welfare and prosperity of the people of the State.

“(d) It is therefore imperative that the State lend its assistance in seeking a solution to the problems confronting the railroads in connection with commuter and passenger service and to insure continued operation of adequate commuter and passenger railroad services.” (Stip. 128-130) \*\*\*

47. In 1960 the New York City Transit System had an operating deficit in excess of \$20 million, exclusive of annual debt charges of \$87 million which was subsidized by the taxpayers of New York City. The aggregate deficit from commuter operations of the New York Central, New Haven, Long Island Railroads and Staten Island Rapid Transit Railway was estimated at between \$10 million and \$15 million annually for the year. New York City taxpayers' subsidies of the Staten Island Ferry operations were approximately \$6 million. Thus, in 1960, the total of commuter railroad and rail transit deficits in the New York-New Jersey area approached \$128 million of which \$87 million was for capital debt charges.

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48. On January 1, 1962 the Division of Railroad Transportation, New Jersey State Highway Department, issued its Second Annual Report and Recommendations entitled "Will We Emerge?"

"The rail carriers' 'illness' has become a progressive one, reaching a crisis in the last decade. In our own State, as in some other sections of the country, railroads were caught in a squeeze between rising costs and declining income. The State and the municipalities have been reluctant to allow the railroads to be relieved of property taxes. Grandiose plans developed by worried officials, numerous traffic consultants and private groups have also been ineffective. The Public simply was not convinced that the situation was serious enough to warrant the expenditure of the hundreds of millions of dollars most of the transit plans required."

THEN AND NOW

"The Public's attitude appeared to be 'Why worry?' It was easier and more 'entertaining' to complain about transit deficiencies than to do something about them before they became a serious menace.

"New Jersey railroads grasped at a 'last, drastic remedy' for survival. In an attempt to avail themselves of the advantages of the Federal Transportation Act of 1958, some lines applied to be relieved of passenger operations, specifically commuter service. Unless this could be accomplished, they warned, they would have to go out of business.

"Realizing that loss of rail commuter service would be a blow to our State's economy far more serious

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than any natural catastrophe yet experienced, our State Administration determined to do something about assisting the railroads. Prior attempts had met with general public apathy, and even antagonism in some quarters. The 'sins of the father'—dating back to some of the early railroad promoter tycoons—had left their imprint on the public mind.

TRANSPORTATION DIVISION

“Accordingly, a Division of Railroad Transportation was created within the Highway Department and given a two-fold task—to preserve essential rail service and to improve it where possible. The New Jersey commuter crisis of 1958-59 created a problem which could not be ‘put on the shelf’ as had been the practice over the years. The New Jersey Highway Department, possessing a background of experience with transportation in its broadest sense, knew full well the futility of even attempting to accommodate the tremendous volume of this ‘Corridor State’ on its existing highway system.

“The first stage of the project—a ‘stop-gap’ action only—has been accomplished. The State contracted with the carriers for continuation of essential passenger service for the fiscal year 1960-61 and again, without any appreciable fare increase, until August 29, 1962.

SERVICE ASSURED

“Rail transportation for our citizens has thus been assured by contract payments—subsidies, if you will. A definition of subsidy reads: ‘A government grant



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to a private enterprise considered of benefit to the public.' The action taken and the incentive could not be better expressed.

"The Highway Department, cognizant of its responsibility for the movement of people and of goods by all available means of land transportation, has to date furnished some twelve million dollars from road construction funds for this purpose.

"Had the Department not made this sacrifice of the equivalent of two miles of highway (average cost of N.J. modern highways is \$6,250,000 per mi.), it would have been faced with a shut-down of rail passenger service and the impossible task of making immediately available adequate highways to accommodate an additional 266,000 passenger trips daily. This just couldn't be done, either from the standpoint of funds or time.

\* \* \*

"After a considerable period of successfully avoiding all attempts to involve it in rail transit, the Port of New York Authority was finally persuaded by our Division of Railroad Transportation to assume the acquisition, rehabilitation and operation of the H & M, even though the revitalized line might fail to record a profit. The Authority still resisted extending its operations beyond H & M's main stem necessitating further forceful negotiations before extensions and rail transfer stations were included.

"Rehabilitation of this vital interstate commuter facility must be assured before other programs outlined herein can be initiated. It would be the height

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of folly to proceed with such improvements without first taking this essential step.

“The Port of New York Authority, its fiscal structure maintained by income from tax-free vehicular crossings of the Hudson River largely at the ‘expense’ of rail transportation, is the proper agency to rehabilitate the H & M and provide suitable extensions to connect it with other North Jersey commuter railroads. The Division is negotiating terms of necessary legislation with the State of New York and the Port of New York Authority to accomplish this.”

B. Acquisition of the Hudson and Manhattan Railroad Company by the Port Authority

1. In 1908, the Hudson and Manhattan Railroad Company, a privately-owned concern, began operating a railroad facility between Hoboken and Manhattan. Service between Hudson Terminal and Jersey City commenced in 1909 and the service was extended to Newark in 1911. The Railroad was in financial difficulty for many years, and although formal bankruptcy proceedings against it did not commence until 1954, the Railroad was insolvent from the early 1930's.

2. In 1959 the United States District Court for the Southern District of New York approved a reorganization plan which left the company with enough cash to continue operations for two years but without funds to provide needed capital improvements. *In re Hudson & Manhattan R.R.*, 174 F. Supp. 148 (S.D.N.Y. 1959), *affirmed sub. nom. Spitzer v. Stichman*, 278 F.2d 402 (2d Cir. 1960). (Stip. 136-140). \* \* \*

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3. In 1960, the New Jersey Senate created a bi-partisan committee under the chairmanship of Senator Frank S. Farley (the "Farley Committee") to conduct "a full and unlimited investigation" of the Port Authority. The Committee was authorized and directed to study "the entire financial structure and operations" of the Authority and to determine "whether or not the said Port of New York Authority is fulfilling its statutory duties and obligations." (Senate Resolution No. 2, 1960; Senate Resolution No. 7, 1961)

4. During the Farley Committee hearings, Dwight R. G. Palmer, New Jersey State Highway Commissioner, testified on January 26, 1961 in part as follows: (Stip. 141-42)

\* \* \*

"There has been a multiplicity of studies, countless commissions and associations engaged in surveys of our metropolitan areas. A perusal of these reports impresses one with the great detail and statistics of the majority of the reports. The supervisors of such compilations undoubtedly were sincere and felt they were pursuing the proper course and yet, years after all these facts were presented, we find ourselves about to go 'down the drain' trafficwise.

"Most of these plans proposed expenditures that staggered the imagination. The likelihood of ever converting such plans into 'pay dirt' and a practical solution had about as much chance as would the financing of Captain Stormfield's visit to Heaven, as described by Mark Twain.

"So, gentleman, in 1959 our commuter problem was brought into sharper focus by the action of the U.S.

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Supreme Court permitting the New York Central Railroad to discontinue ferry service from Weehawken to Manhattan. This same year a rush of service curtailments and fare increase petitions flooded our regulatory agencies and one of our busiest New Jersey commuter railroads posted notice that all service would be discontinued.

“Governor Meyner then assigned the problem to me, first directing my associates and me to provide vehicles of transportation for those 3,000 odd commuters that otherwise would have been stranded when the Weehawken ferry shut down. Within a few months our Legislature responded by establishing the Division of Railroad Transportation. We had adopted a new philosophy; that the job of the Highway Department was one of moving people and goods—not just providing highway alignments for vehicles to travel. This concept was the keystone of the integration of transport facilities in New Jersey, for we recognized that the suburban railroads were essential allies of the Highway Department in meeting the daily peak travel demands of our citizens. We had not worked long with the problem before we realized that the essential ingredient needed to aid in the solution of our problem was money. Conscious of the general rejection of the Metropolitan Rapid Transit Commission plan to tax real estate to meet deficits in its proposals, we developed a different approach. An examination of the operation of the New Jersey Turnpike indicated the availability of sufficient surplus funds to take care of rail transportation difficulties as well as other transport needs, and do this after meeting commitments to all holders of Turnpike

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securities. However, the public decreed otherwise and denied to us the use of these funds. After the defeat of the referendum we reviewed our studies of the rail passenger situation. The results of these studies were set forth in detail in our report to the Governor and Legislature dated April 4, 1960. This report recommended that in order to forestall a complete breakdown of rail services that the carriers be placed under contracts to operate specified trains at established rates. The contracts, we hoped, would assure a continuity of service for our citizens even though they were considered a 'temporary expedient' to be pursued, say, for a period of three to five years, during which time a long range improvement plan could be put into effect.

"Legislation enabling such contracts was introduced in the Senate in May of 1960. It was passed with dispatch in both houses, the legislature exhibiting a keen understanding of the problems and the seriousness of the consequences should the State fail to take action to ease the financial burdens of the rail carriers.

"In the north metropolitan area our recommendations included consolidation of the Jersey Central and the Pennsylvania passenger services over the New York and Long Branch operating the trains through to Pennsylvania Station, Manhattan and a rerouting of all the main line service of the Jersey Central to Penn Station in Newark. Certain of these suggestions are still under study. We also recommended that the Port Authority play a significant part in improving the facilities for the interstate

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movement of our citizens. In this regard I am fully aware that there are those who suggest that the Port Authority should take over the financial responsibility and deficits of all commuter railroads in New Jersey and New York even at the risk of jeopardizing the Authority's credit standing and depleting its reserves below levels set by indenture agreements.

“Considerable time has been devoted to reviewing the Port Authority's capabilities, as well as responsibilities, insofar as commuter rail transit is concerned. Our conclusion as stated in the April [1960] report was that:

‘The Port of New York Authority should not, in our opinion, be handed New Jersey's rail problem, nor should it become responsible for the New York subway system or for rail transportation for Westchester or Long Island. We are certain however, that the interstate aspects of the rail movement of persons and goods such as purchase and lease of new Hudson and Manhattan commuter cars and the purchase of the existing interstate railroad ferry boats, do come within their obligations. The foregoing fully recognizes the importance of maintaining the Port of New York Authority's commitments and credit requirements.’

“In other words, we became convinced that the Port Authority's responsibility in the rail transit field should be concerned principally with the interstate aspects of the problem as the Authority is an interstate or bi-state agency. Our recommendations were consistent with that philosophy.

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“I arrived at this conclusion relying on years of experience in private enterprise. My career has been one of a business man in the industrial field where the courageous survived—where the complacent were left behind and where competition took care of the rest. I have had responsibilities of meeting a payroll—a payroll that each year sought to improve the standards for our workers—and to satisfy the demands of shareholders also. The Port Authority in my opinion must make money and accumulate reserves for the rainy day if it is to be equipped to meet the needs of our two states of New York and New Jersey. It does not have general taxing powers. Its only taxes are the tolls it collects from the users of its facilities. Its shareholders are the public, you and I, and the institutions that buy the bonds. Since the cost of financing often determines the feasibility of a project it stands to reason that you and I get more for our toll dollar in the way of modern and safe facilities if we make certain that the credit rating of the Authority remains intact. Now let’s talk specifics for a moment. The Authority has sizeable revenues and reserves today. While I don’t have the 1960 figures, reports are that gross revenues in 1959 totaled \$105 million and the several reserve funds totaled \$71 million. Now as soon as ‘reserve funds’ are mentioned it is assumed by some that such reserves are ‘available’ or uncommitted. Such is not the case. These revenues and reserves are pledged and committed by contract to the investors in Port Authority bonds as security for the re-payment of those bonds and for contingent liability in connection therewith and they

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may not legally be diverted. For instance, to strengthen its credit position the Commissioners of the Authority have adopted a policy to commit retention of reserves in an amount equal to two year's debt service. The \$71 million in all Port Authority reserve funds at the end of 1959 was just about equal to the following two year's debt service on all bonds. The Authority is required to hold in reserves 10% of its outstanding indebtedness—this amount at the end of 1959 was \$57 million. Such revenues and reserves cannot be regarded as uncommitted funds. Diversion of these funds moreover might jeopardize the carrying out of future work authorized by the Legislatures of New Jersey and New York by inviting higher financing costs. Certainly the consequences of such an effect, from the standpoint of the growth and prosperity of this area, must be carefully considered.

“The matter of the pooling of net revenues from all the Port Authority's facilities, as authorized by the Senate in 1931, has received some attention of late. By pooling the revenues, a credit base was established to facilitate financing of projects like the bus terminal serving New Jersey commuters, the third tube of the Lincoln Tunnel, the Hoboken Piers, Port Newark, Port Elizabeth and Washington Heights Bus Terminal which will principally serve New Jersey commuters. Indeed, it is the pooling of such revenues, as I see it, that will permit financing the purchase and rehabilitation of the H & M Railroad. It is clear to me that the action of the New Jersey and New York Legislatures in author-



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izing the pooling of Port Authority revenues and the creation of reserves has made it possible to provide many public transportation facilities that we may not have had otherwise. With the needs for expanded and additional transport projects rearing up in every direction it seems that the principles which enabled the Authority to accomplish so much in so short a time and so efficiently should prevail.

“Now most of us realize that the matter of credit is not an exact science. The credit of an organization depends on quite a few factors; past performance, efficient management and caliber of personnel and markets for the product the institution has to sell; and last but not least—what investors think of the operation as a financial risk. It is, in the final analysis, the practical assessment of being repaid money that they lend to it. This latter reason, I am certain, is why the Port Authority last September, in presenting to this Committee the plan to acquire the Hudson and Manhattan Railroad, talked in terms of what might be done rather than to state positively what would be done. You will remember that they said the Port Authority might be able to sell bonds for the acquisition and modernization of the Hudson and Manhattan Railroad and at the same time continue the financing of the States’ vital port development programs, provided investors could be given assurance that investments in rail transit matters would be limited. The Authority also wanted assurance that the key recommendations in our April report would materialize and pointed out that fair financial terms for both the purchase of

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the H & M properties and the Pennsylvania Railroad operating agreements must be obtained. As I see it from my personal point of view acquisition of the H & M is a must. All our plans hinge on it. To insist on terms unacceptable to investors or terms that invite high interest costs might cause delays that will render our efforts 'too little and too late.' It gets down to how badly we need the H & M—do we want it on the investors terms or not at all—it seems to me it is almost as simple as that.

“The H & M railroad provides a vital link in our interstate transport network. It is essential to both states that it not only continue but that it be rehabilitated to more conveniently serve our citizens. The cost of purchase, renovation and a new fleet of cars may be over \$80,000,000. The H & M is in the last phase of reorganization, that when accomplished, will separate the Manhattan Real Estate from the Railroad properties. The reorganization document now before the I.C.C. provides that sufficient cash be transferred to the separated Railroad Company to permit normal operation for a period of only two years. Extraordinary demands on its resources such as a prolonged strike, would substantially shorten the period it could operate without public assistance. We did not include the H & M in our contract program because of its interstate nature. We have insisted that it be put under bi-state regulation and that its rehabilitation be a bi-state venture. The Port Authority is the logical agency to do this—it has agreed, as just outlined.

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“I feel certain that you gentlemen of the Legislature have been and will be increasingly in touch with our transportation needs. I am also convinced that the Port Authority’s responsibilities will be better met by preserving a sound credit base. (Stip. 142-48) \* \* \*

“Q. BY SENATOR FARLEY: And taking a hypothetical case—if perchance the Port were in a position financially to handle the commuter service, what would happen to the railroads involving passenger and freight service in this particular area of northern New Jersey? Would they go bankrupt?

“A. Well, the Port Authority has gone on record as feeling that mass transportation’s maintenance is absolutely essential. That is contrary to some of the references that I have seen recorded. The Port Authority in itself, with its bridges and its tunnels, and its H & M could, under no circumstances in our considered opinion—although we are not experts, sir—meet the needs of our State insofar as transportation is concerned, and in our opinion their efforts should be confined to the bi-state, interstate aspects, and we, with the carriers themselves, energizing the assistance in each state, would not certainly from our state interest in the Port Authority wish to see them engage in taking over the Long Island Railroad, the New Haven that comes into Manhattan, and the New York Central with all the extenuating circumstances. (Stip. 149-50) \* \* \*

“Q. BY SENATOR DUMONT: Commissioner, when the Port Authority made its proposal in September,

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at our hearings then, to take over the Hudson & Manhattan Tubes, they surrounded their proposal with certain restrictions which, so far as I could tell, were designed to eliminate any real obligation on the part of the Port Authority beyond taking over the Hudson & Manhattan Tubes, at least so far as the railroad field was concerned. Do you consider those restrictions that they surrounded this proposal with as reasonable ones?

“A. Yes, I do. And I have so stated in my proposal and I do it purely on the basis of what experience I may have had in the field of finance and industry, and of what we are hoping to obtain and acquire in the future in the expansion of facilities that the Port can supply.

“Q. So that you feel if they were to carry out this proposal and purchase the Hudson & Manhattan and do all the rehabilitation that's necessary, they would be doing a, shall we say, satisfactory job, at least in your opinion so far as carrying out their obligation in the railroad field?

“A. I would say this: 1. That they would be doing a fabulous job and accomplishing something that has been talked about for 40 years and which no one as yet has had the courage to tackle and which now is within our grasp. My feeling also is this, in talking with various Commissioners and talking with people in the financial district, that this is not a decision of the Port Authority as such, of a rebellion against going further into transportation, but of the investor, you and I if you will, although we are not

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investing this morning whether or not we are willing to loan money to finance obligations that have such distressing characteristics as the present situation. And even the Hudson & Manhattan, which some believe can be brought into a position of profit, which with what little I know I greatly doubt,—it is presently contemplated that there will be a loss of at least some \$5 million a year in that operation, and probably a total laying in of risk capital of some \$80 million. And it seems impossible, from all of my direct—and not through any other channels—direct contacts, to observe that money could be loaned for even the acquisition of the H & M in the event there was not some assurance that this just wasn't one bite of the cherry and that further transportation business was all to be pulled together. I think it's simply a question of whether the investor says yes or no and at the present time my observation is that the investor says no unless he has that limitation.

“I think, so far as the Port Authority is concerned, that [if] the State felt that they wanted to guarantee the bonds, the investor's bond, then the investor, of course, would be tickled to death to do it. And I think that their capabilities and efficiency are perfectly adequate to even tackle such an encumbrance as this whole transit situation.”

5. The following is an excerpt from the testimony before the Farley Committee on January 26, 1961 of E. T. Moore, then President of the Central Railroad of New Jersey:

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“The Port Authority should be just as willing to promote and help to retain essential freight and passenger rail transportation as they are to promote highway and air transportation. The Port Authority is currently sponsoring a study, with the cooperation of railroads, for the consolidation of the railroad marine operations and if this study indicates that such a consolidation is economically sound and in the public interest, the Port Authority should assist in bringing it about. I believe, however, it would be most unwise to expect the Port Authority to take over the whole burden of mass transportation in the New York metropolitan bi-state area.

“The Port Authority, historically, has had the obligation of providing bridges and tunnels for a convenient crossing of the Hudson River. Their extensive facilities have syphoned the profitable portion of this trans-Hudson traffic from the railroads who originally provided the sole means of the river crossing. They should now take the unprofitable with the profitable and assume their full obligation of providing whatever facilities might be essential in the public interest to transport people and vehicles across the Hudson between New Jersey and New York in the metropolitan area. The Port Authority should unquestionably acquire and rehabilitate the Hudson & Manhattan Railroad, which would eliminate the need for antiquated ferry service which is expensive to operate and does not meet present-day transportation needs.”

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6. Port Authority Commissioner James C. Kellogg testified at the Farley Committee hearings at the request of and on behalf of all of his fellow Commissioners. The following is an excerpt from his testimony on January 27, 1961:

“On November 24, 1958, the Commissioners, appearing before a joint hearing of two Committees of the New Jersey General Assembly, submitted a rather complete outline of our views of the rail commuter transit problem and transit deficits. We reviewed the Port Authority’s continuing studies of the rapid transit problem in this bi-State metropolitan area over the past thirty years and we submitted a summary of the experience of other metropolitan areas in dealing with their own transit problems. Our report also reviewed the reasons why the Commissioners had no choice but to be unanimously opposed to the adoption of any legislation which would have attempted to involve the Port Authority in the deficits of commuter railroads and rapid transit without limitation or other assurances.

“At the outset, I would like to re-affirm our view that both rail and highway transportation are essential to the economic welfare of the people of the New Jersey-New York metropolitan region. It was for this reason that the Port Authority made \$800,000 available to the Metropolitan Rapid Transit Commission to undertake a comprehensive interstate transit survey. We do not now, nor have we ever regarded arterial highway or our own bus terminal services for the accommodation of New Jersey commuters as substitutes for a program of maintaining

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and improving rail passenger facilities between New Jersey and Manhattan and throughout the Port District.

“No single one of these programs is a substitute for any of the others since each is important in handling various types of passenger traffic at different times of the day and of the week. An analysis of the relative numbers of passengers using the various modes of trans-Hudson transportation clearly illustrates this point. The automobile plays a significant role in the handling of trans-Hudson passengers on week ends and in non-commuting hours, as it does throughout the nation. The great importance of the common carriers in trans-Hudson commuter transportation becomes apparent, however, from an examination of the relative passenger volumes during the rush hour each weekday. In that hour only 15 per cent of all trans-Hudson passenger movement to Manhattan is by automobile, and more than half of these automobiles are destined for points other than the central business district of Manhattan south of 59th Street. The balance of this peak-hour traffic into Manhattan, 85 per cent, is handled by mass transit—that means railroads and buses, with 46 per cent of the passengers served by rail and 39 per cent by bus.

“Thus, there is no question that rail services are of extreme importance in terms of commuter travel. At the same time, as we suggested to the Legislature in 1958, an attempt to solve the problem of improving commuter rail facilities would be of no value if it were to result in the destruction of the ability of the



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Port Authority to continue its comprehensive program of providing, on a self-supporting basis, the indispensable modern port, transportation and terminal facilities. For without these essential facilities, the Port of New Jersey-New York could not continue its predominant position and assure the future prosperity of its people.

“For more than thirty years, the Port Authority has been engaged in studies of all aspects of terminal and transportation facilities and services within the New Jersey-New York metropolitan area. We have continuously searched for solutions to the commuter railroad problem in the form of physical plans which could adequately serve the commuting public and which, at the same time, could be developed on a self-supporting basis. These studies and our conclusions have been submitted to the Legislatures of the two States. No formula for making commuter railroads self-supporting in this area or in any other metropolitan area throughout the country, has ever been found either by the Port Authority, any other public agency or the railroads themselves. All of these studies of rail transit inevitably have concluded that their operation and improvement involve large deficits and that public financial assistance or subsidy is the only method of continuing these critical public services.

“There is universal agreement that essential commuter railroad services must be maintained. For New Jersey and New York, the years 1959 and 1960 were highly significant in the long history of the problem. For the first time, public assistance to all

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the Port District commuter railroads has been forthcoming through constructive programs developed in both States. In New York, programs providing for tax relief and for new commuter cars for the New York railroads are in force, and Governor Rockefeller has just announced a four-state program to keep the New Haven Railroad in operation. In New Jersey, a total of \$6,000,000 of State funds in the current fiscal year has been appropriated for allocation to the commuter railroads under annual service contracts which guarantee the continuation of this State's essential railroad services.

"In contrast, however, the Hudson and Manhattan Railroad, the interstate rail transit link, has been excluded specifically from the programs of both States for financial assistance to the railroads. Yet it has been experiencing the most serious financial difficulties. Indeed, it is now emerging from bankruptcy under a plan of reorganization which makes it doubtful that the railroad could remain in operation for more than two years.

"The Port Authority always has maintained that the H&M must be kept in operation. This railroad handles more than 31 million passengers a year. Of its 55,000 daily passengers in one direction, it regularly carries about 35,000 New Jersey commuters to and from Manhattan during the peak periods each day.

"At the opening of these hearings, Commissioner Dwight Palmer, on the basis of his intensive studies of the commuter problem, outlined his transit pro-

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gram for the State and his own conclusions and those of his Division of Railroad Transportation with respect to the possibility of the Port Authority's participation in meeting the interstate portion of the problem in the light of both the Authority's financial capacity and the limitations of its credit.

"In his April 1960 report to Governor Meyner and the Legislature, Commissioner Palmer stated that 'The Port of New York Authority should not, in our opinion, be handed New Jersey's rail transportation problem, nor should it become responsible for the New York subway system or for rail transportation for Westchester or Long Island.' At the same time Commissioner Palmer urged that the Port Authority and the Division of Railroad Transportation work out some plan through which the Authority would be able to participate in some aspect of the interstate commuter rail problems, expressing his complete understanding that such Port Authority participation must fully recognize 'the importance of maintaining The Port of New York Authority's commitments and credit requirements.'

"In his statement at the opening of these hearings, Commissioner Palmer reviewed the testimony given before this Senate Commission on September 27, 1960 by our Executive Director who had been authorized by the Commissioners of the Port Authority to review with you the progress on the studies and proposals for possible purchase, reconstruction and operation of the H&M by the Port Authority that have been under consideration by Commissioner Palmer and our staff throughout the past year.

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“Commissioner Palmer pointed out that the revenues and reserves of the Port Authority have been pledged in accordance with the statutes of the two Legislatures and that they cannot legally be diverted to purposes over and beyond those specified in its bond covenants and guarantees.

“We were gratified, however, to be able to advise this Commission last September that, within the framework of these outstanding covenants and guarantees, we have been able to suggest certain legal and financial assurances which, if adopted by the Two States, might make it possible for the Port Authority to acquire, modernize and operate the H&M. We advised you at that time that the Port Authority would go forward immediately with a full-scale study of all aspects of this proposal with the hope that such a study could be completed by the end of 1960.

“My fellow Commissioners have requested me to give you a report on the tentative conclusions of this study. I might say that the study has been undertaken on a top priority basis by the Port Authority staff with the assistance of the consulting engineering firm of Coverdale & Colpitts. One of their partners is here today.

“During the course of the study, our staff consulted with the Division of Railroad Transportation in the New Jersey State Highway Department and its counterpart, the Office of Transportation in the State of New York. We also discussed and reviewed various phases of the study with officials of the Jersey Central, Pennsylvania and Erie-Lackawanna Railroads. We consulted throughout the study with