

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

officials of the H&M and made numerous and detailed inspections of its entire system.

“Our studies confirm what the Trustee of the H&M has stated about the ‘antiquated and inefficient’ facilities and the ‘worn out’ rolling stock and other equipment of his railroad. A large and costly capital improvement program therefore will be necessary to bring the bankrupt H&M to proper standards of efficient and reliable service. The H&M has suffered from the same economic and technological changes in the American transportation system that have adversely affected every other commuter railroad in the country. Despite repeated fare increases, these changes have brought about abandonments, service curtailments, neglect and deterioration of plants and equipment—equipment that has long since been depreciated on the books of the railroad companies and that normally would have been scrapped many years ago.

“It is not surprising, therefore, that the H&M, including the railroad, terminal and real estate properties, valued by the Securities and Exchange Commission less than a year ago at \$20,500,000, will require on the basis of our studies, a total capital expenditure of about \$63,000,000 for rehabilitation and modernization of the plant and for purchase of new cars. This does not include the cost of acquiring the properties. If this \$63,000,000 improvements expenditure is made, we believe that the public will enjoy comfortable, modern and reliable rail transit service across the Hudson River.

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

“I would like to outline briefly what the Commissioners of the Port Authority believe can be accomplished for the H&M passengers: (1) if the Legislatures of New Jersey and New York enact the legislation which would make it possible for the Port Authority to finance such a project; (2) if it is possible to acquire at a fair and realistic value the dilapidated properties of the H&M; and (3) if—and this is very important—the Pennsylvania Railroad makes it possible for the Port Authority, as a public agency, to continue to utilize the tracks of the Pennsylvania Railroad under the terms of the present agreement for the joint operations of the two railroads between Jersey City and Newark.

“Without the full cooperation of the Pennsylvania Railroad in agreeing in the public interest to the continued use by the H&M of the tracks of the Pennsylvania Railroad, under their existing agreements with the H&M, these plans for the reconstruction and public operation of the H&M cannot be accomplished. So, too, the project depends upon the ability of the Port Authority to acquire the bankrupt properties of the H&M on fair and realistic terms. Both of these railroad companies have been very active in their efforts to either divest themselves of their commuter operations or to obtain public financial support for their continuance. We trust, therefore, that they will be anxious to cooperate in making it possible for the two States to rehabilitate and continue the H&M services.

“If, then, it becomes possible for the Port Authority to acquire, rehabilitate and operate the H&M, we

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

would propose to undertake a major rehabilitation program immediately which could be completed within approximately three years after the time that the Port Authority acquired title to the H&M properties.

"Our studies indicate that approximately \$30,000,000 will be necessary to improve the physical plant of the railroad, an additional \$24,000,000 to purchase new cars and \$9,000,000 to rehabilitate the Hudson Terminal buildings in lower Manhattan, making a total of \$63,000,000.

"The railroad's physical plant, as I have noted, over a long period of time has been permitted to deteriorate very badly. I might say that this plant deterioration has reached the point where major interruptions of H&M service occur and may be expected to increase.

"The Port Authority's \$30,000,000 program for rehabilitation of the physical plant would include the immediate and necessary replacement of the railroad's obsolete signal system with a modern installation that would permit not only a greater number of trains, but safer and more reliable operation.

"It would provide an entirely new, modern power distribution system which would eliminate the frequent and time-consuming delays now experienced by H&M commuters as a result of power failures.

"It would include major rehabilitation and refurbishing of the H&M passenger stations.

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

"The modernization job would also include extensive track maintenance work which would assure a smoother and more pleasant ride.

"Substantial improvements to the present car storage yards and maintenance shops as well as the provision of an entirely new storage yard and maintenance facilities to handle the additional rolling stock would be necessary.

"From time to time, and as recently as last September, the H&M has been forced to close down because of the inability of the inadequate and obsolete drainage system to function properly during serious flooding conditions. This situation would be corrected by the replacement or rehabilitation of all drainage pumps and water discharge lines in the tunnels.

"The Port Authority staff's inspection and study as well as the study and conclusions of our engineering consultants indicate conclusively that H&M's entire fleet of old cars should have been scrapped some time ago. It must be completely replaced. No less than 110 of these cars are over 50 years old and all of this old fleet has been in service for more than 32 years.

"We would purchase 186 of the most modern rapid transit cars available to replace the H&M's antiquated cars. They would be airconditioned, well-lighted, have attractive interior design and afford the best qualities in passenger comfort."

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

“In addition to the replacement of this obsolete equipment, 102 new cars would have to be provided for the increased traffic which would be, and we believe could be, handled by the ‘new’ H&M system. This increase in traffic would result from the consummation of Commissioner Palmer’s plan to bring Jersey Central passengers into Pennsylvania Station, Newark, where they would have a direct and convenient transfer across the platform to the H&M. The new H&M cars would also be needed for additional service between Hoboken and lower Manhattan if and when the Erie-Lackawanna ferry service were abandoned.

“Under the existing operating agreements with the H&M, the Pennsylvania Railroad would provide 51 of this total of 288 new cars to handle their share of passenger responsibilities to and from Newark. All of the remaining 237 new cars would be provided by the Port Authority at a cost of about \$24,000,000.

“Again, if the Legislatures make it possible for us to finance this H&M project, all of these 288 modern rapid transit cars, with the cooperation of the Pennsylvania Railroad, could be rolling within a three-year period.

“With this \$63,000,000 expenditure to rebuild and rehabilitate the Hudson and Manhattan for our generation and for the future, we will have brought into being, in accordance with Commissioner Palmer’s plans, a modern and dependable rail connection with Manhattan for the 53,000 daily New Jersey commuters, as compared to the present volume of 35,000

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

commuters, who would transfer to the H&M from the Jersey Central, Pennsylvania and Erie-Lackawanna Railroads or utilize only the H&M service from Essex and Hudson Counties.

“The costs and other burdens of commuter service on these privately owned railroads will have been substantially reduced as a result of Commissioner Palmer’s proposals for service improvements and modifications. These savings to the commuter railroads should in turn reduce the future cost for New Jersey taxpayers of service contracts with the State’s principal rail carriers.

“I might note also that practically everything of basic importance that was sought to be accomplished in the plan proposed in 1958 by the Metropolitan Rapid Transit Commission for a five hundred million dollar bi-State transit loop connecting up the principal New Jersey commuter railroads, is met by this proposal for the reconstruction and extension of service on the H&M, and *it can be accomplished without State or municipal subsidy.*

“Travel times for commuters and other riders on the Jersey Central, Pennsylvania and Erie-Lackawanna will be at least as good as, and in many cases better than, those they experience today. In addition, passengers using the modernized H&M will be assured frequent, reliable and comfortable service.

“Insofar as northern New Jersey and particularly the City of Newark are concerned, Commissioner Palmer’s plan for bringing Jersey Central passen-

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

gers into Pennsylvania Station, Newark, will provide a new, direct and fast rail transit connection, never available before, between the residential areas of western Union County, Somerset County and Hunterdon County and the center of Newark. Thus the plan, together with the reconstructed H&M, will make Newark the focal point of a vastly improved and expanded commuter transit service.

“There is, of course, no possibility whatsoever that either the Port Authority or any one else could operate the H&M on a self-supporting basis. The bankrupt H&M has not paid a dividend since 1932; it has not been able to meet the interest on its bonded indebtedness and has been in receivership since 1954. This is not intended to reflect upon the past management of the railroad, since its inability to earn even the interest on its bonded indebtedness is paralleled by many transit systems all over the country.

“On September 26, 1960, the day before our Executive Director advised this Commission that the Port Authority would consider acquisition of the H&M, the market value of the railroad and its properties as appraised by the price of its outstanding securities was a little more than \$13,000,000. I might note that the speculative value of these H&M bonds has shown an increase of over 50% in the four months since that announcement, to a total market value of about \$20,000,000 today. This speculation obviously has taken place on the basis of our indication that the Port Authority might be willing to pay approximately that sum to acquire the H&M.

Excerpts From Stipulation Among Counsel
Dated December 20, 1974

“After this study of the whole situation with all of its variables and contingencies, the Commissioners of the Port Authority are assuming that the acquisition, rehabilitation and operation of the H&M will involve an annual deficit to the Authority of about \$5,000,000.

“I should add that this anticipated deficit assumes that every possible effort would be made to maintain the present fare structure.

“With the pooling of Port Authority revenues through our General Reserve Fund (which reflects the policy of the two States with respect to the future development of the public terminal and transportation facilities of the bi-State Port), we are of the opinion that an annual deficit of this magnitude can be carried by our other facilities.

“On this estimate of the H&M losses, and if we are able to satisfy prospective investors by statutory assurances that this proposal will not involve the Authority's General Reserve Fund in any other or further commuter deficit operations, we believe we can conscientiously certify, as we must under our indentures, that this financing will not impair the Port Authority's credit. On the other hand, if we are not in a position to cite such statutory assurances to those from whom we will have to borrow the money, and therefore, we are not in a position to make such a certification, we obviously would not be in a position to borrow money for the acquisition, let alone the improvement, of the H&M. Indeed, any attempt to direct the Port Authority to acquire and

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

operate the H&M without such statutory assurances would so damage Port Authority credit as to put it beyond our ability to borrow money for any other Port Authority project.

"I am sure that the members of this Commission appreciate that neither the Commissioners of the Port Authority nor anyone else can divert the existing Port Authority revenues to any new project or facility, or use them, except in strict accordance with the specific provisions of our outstanding contractual agreements with investors. These explicit statutory and contractual controls require that all Port Authority revenues must first be used to meet the operating and maintenance costs of the facilities which produce them. The net operating revenues must then be applied to the principal and interest payments on the specific bonds for which they have been pledged; then all of the remaining balance must be paid into specified reserve funds.

"The monies in these reserve funds are legally available only to fulfill contractual commitments to holders of bonds secured by a pledge of reserves. The General Reserve Fund may not be pledged in support of bonds to finance a new facility under circumstances where the pledge would materially impair the Authority's sound credit standing.

"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 from this contractual commitment to bondholders.

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

“The most important pledges that the Port Authority has made to its bondholders are those relating to the issuance of bonds for new projects. These pledges were necessary since otherwise the security could be diluted, not only through the raiding of revenues and reserves, but just as disastrously by the unlimited issuance of bonds which have such revenues and reserves as their primary source of repayment.

“It is because of this that the Port Authority had to covenant with its bondholders not to issue Consolidated Bonds supported by the General Reserve Fund for any new facility unless it can be demonstrated that, including the new facility, net revenues will be sufficient to cover by at least 1.3 times the maximum interest and principal payments due in any future year. Furthermore, bonds for a new facility cannot be issued with a pledge of the General Reserve Fund unless the Port Authority Commissioners certify that the issuance of the new bonds will not materially impair the sound credit standing of the Authority, the investment status of the Authority's bonds, or the ability of the Authority to fulfill its commitments and undertakings. Such protections for investors under open-end revenue bond issues are not uncommon.

“Applied to the H&M proposal, I would like to make it clear that the question of whether or not we can borrow the \$83,500,000 which is required, is not simply a question of whether or not we would have to pay a higher rate of interest on these funds. We can only submit to you the unanimous view of the

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

Commissioners of the Port Authority that there is no possibility whatsoever of borrowing the money at all without a statutory assurance to investors that any future Port Authority responsibilities in the field of commuter rail transport over and above the present and existing interstate Hudson and Manhattan railroad system will not involve a pledge of the Port Authority's General Reserve Fund.

"I say to you as a New Jersey Commissioner, and with all the sincerity that I can command, that there is nothing arbitrary or doctrinaire about this conclusion. It simply represents the realities of investment financing and the Port Authority's credit. My business is investment financing and I say to you gentlemen that I could not sell a single Port Authority bond without such an assurance. If my responsibility were on the other side of the table, I would not buy a Port Authority bond that did not contain such an assurance.

* * *

"At this point, and on a different phase of the subject, I might say that in our estimates of annual deficits of the H&M, we have included an amount equal to the real estate taxes now being paid on H&M properties in New Jersey and in New York City. We would propose that whatever statute is adopted should contain an authorization to cover this situation. This would be along the lines of the existing statutory provisions which permit the Port Authority to enter into agreements with municipalities to make payment in lieu of real estate taxes on prop-

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

erties acquired and owned by the Authority. Under the existing statutes these payments may be equal to the sum last paid as real estate taxes upon such property prior to its acquisition by the Port Authority. All of our existing agreements with New York and New Jersey municipalities under these statutes are in that maximum amount.

"We have, of course, kept Governor Meyner's office advised as to the progress of these studies through his liaison officer with the Port Authority, Commissioner Palmer. So too, Governor Rockefeller's office has been kept informed both through his Executive Secretary, Dr. William Ronan; his counsel, Mr. Robert MacCrate, and the Director of the Office of Transportation, Mr. Arne Wiprud.

"If and when the statutory authorization permitting the Port Authority to go forward with this program is adopted by the New Jersey and New York Legislatures and signed by the Governors, we are prepared to initiate negotiations with the reorganized Hudson and Manhattan company looking toward a final determination of the purchase price of the facility.

"Following the adoption of such authorization, we would also undertake formal discussions with the Pennsylvania Railroad for the continuance of existing agreements between the Pennsylvania and H&M on the joint operations of the two railroads to and from Newark. We assume that the Pennsylvania will be willing to continue these agreements with the Port Authority, a public agency of the two States, on the

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

same terms and arrangements as they now have with the privately owned H&M.

“In the normal course of events, we would hope that the Port Authority might be able to acquire and commence the operation and rehabilitation program of the H&M before the end of 1961.”

BY SENATOR FARLEY:

“Q. Mr. Kellogg, I notice in the latter part of your statement, you said you must be given assurance by the Legislature that if they directed the Port to proceed to purchase this property, they must make a pledge to the bondholders there be no further projects involving rail. Now I appreciate that if the Legislature directs you to enter into a contract involving the issuance of bonds, there will be no impairment of obligations of contract, but I must call to your attention and the members of your Commission that one Legislature cannot bind a subsequent Legislature involving policy. If, perchance, may I illustrate—ten, fifteen, twenty years from now the respective legislatures of New York and New Jersey importune your Port Authority Commission to do something in addition involving public service, one legislature cannot bind another involving policy. Do you follow me? A. I do.

“Q. I appreciate the legal end of it involving obligation of contract, but in your statement that you be given assurance that no further services should be required of you involving rail forever hereafter—and how this legislature could bind a subsequent leg-

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

islature I do not know. A. We'd have to say that to the bondholders, the ones that were going to purchase the new bonds that we as Commissioners believe that this would not endanger the 1.3 ratio.

* * *

BY SENATOR COWGILL:

"Q. I want to clear one thing up. I got a little confused there for a minute on that policy business—in the event that the H and M were acquired on the basis of statutes passed by New Jersey and New York, they would not be called upon, that is, the Port Authority would not be called upon, to go into any further commuter problems of other roads. If bonds were issued under such legislation, you would not be able to issue any further bonds for anything else unless you were willing to certify that it would not— A. That's correct. It wouldn't say that the bonds couldn't be issued with a state guarantee later on for something else or something of that type, freight or anything else.

"Q. It seems to me on that basis, that you enter a contract on the basis of legislation passed, that contract is going to stand and some later legislature is not going to be able to change it. A. That's right.

SENATOR FARLEY:

"My question, Senator, was—and I appreciate we cannot impair obligations: In effect, would any commitment with the present legislature estop or attempt to estop any legislation involving public needs in the future?" [No answer was given at this point].

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

7. This point was repeated during a colloquy between Senator Farley and Commissioner Clancy on Jan. 27, 1961:

SENATOR FARLEY:

"I say to you as a commissioner representing New Jersey we too have a responsibility of making sure that this is done thoroughly, intelligently and in a way that would be feasible and practical. It was testified today by Mr. Kellogg that the Port should not be bound by any other demand from the State Legislature relative to rail service. I pointed out to him—and may I say to you as a lawyer—we well appreciate that any direction we give you by enacting legislation, we could not impair any obligation such as contracts of bond issues. Likewise, you as a lawyer know that one legislature cannot bind the other involving policy five, ten, or twenty years hence.

A. I appreciate that.

"Q. So that when this Committee makes its report, we are not exonerating the Port from any responsibility for any demand for future public service by either the New York or New Jersey legislature. I want you to appreciate that fact.

A. I appreciate that fully and I am aware of the fact if a situation such as that would arise in the future, that would be a matter that we would have to discuss on its own merits with a future Governor and future legislature.

"Q. That's right.

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

MR. TOBIN:

"May I say something?"

SENATOR FARLEY:

"I want to call you, Mr. Tobin, relative to this situation. If you want to interject something at this time, we will be very happy to have you do so.

MR. TOBIN:

"You might want to know that this legislative assurance, as Commissioner Kellogg pointed out, would only apply to future commuter operations and only limits the use of the pledge of the general reserve fund. It only limits the pledge of the general reserve fund, nothing else. It would not typically bar Port Authority participation where some other scheme of guarantee of the bonds or something like that—

SENATOR FARLEY:

"That would have to depend on its own merit or demerit and then be considered. But I call to your attention as a Commissioner the problem of the Legislature.

MR. CLANCY:

"I am aware of the problem, but, of course, the action that is taken now with reference to the Hudson and Manhattan would not necessarily of itself bar future participation in the problem generally. It would, however, not be possible if that future par-

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

ticipation involved any impairment of this reserve fund.

8. At the [Farley Committee hearings], Austin Tobin, Executive Director of the Port Authority, testified in part as follows: * * *

“Q. Mr. Tobin, if my recollection is correct, speaking of the Hudson and Manhattan proposal—is my recollection correct that you were quoted whether accurately or not in the newspapers in '59 and '60 that the Port of New York Authority should not involve itself in the rail commuter problem and further that it should not undertake a deficit operation? A. Well, Senator, those statements had to do with the proposal that the Port Authority be directed to take over the whole commuter rail transit problem, which from any standpoint that we could envision it was legally and financially and every other way completely impossible. They did not have to do with this new idea developed between Commission Palmer's office and our office that this might be possible if some sort of an assurance—that we might be able to sell what we are talking about, like one hundred million dollars worth of bonds for commuter service if the bond buyers could be given some assurance as to where they were going and what the limits of their involvement were.

“Q. Would you say, Mr. Tobin, that this proposal, as suggested by you at the original meeting of this Committee, is a departure from the original attitude of the Port Authority with respect to the rail commuter problem? A. I think that certainly the idea

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

of being able to go into the problem to some extent, provided the bondholder on the other side could be given some assurances, certainly is a new concept.

“Q. Would you tell me what prompted the Port Authority to, shall I say, change its attitude in this respect? A. Well, I can’t—

“Q. Or perhaps you have already answered that.

A. I think I have, Senator. I can’t emphasize how earnestly—I know, I’ve lived through it through the years. The Port Authority has studied and studied and studied and worked on the possibilities of what it could do or could not do in commuter rapid transit service and has always come up against that concrete wall of the impossibility of selling bonds in the deficit commuter railroad field.

“And you will recall that a couple of years ago we did work out an involvement, if you will, in the commuter rapid transit field in New York under which New York, in the first phase of the program, is advancing \$20 million with which we are buying railroad equipment, really as the agent of the State of New York. And then it has a second phase which just was passed in the New York Legislature for the the second time yesterday and will be on the ballot in November by way of a constitutional amendment, under which the State would guarantee the Port Authority a special issue of Port Authority bonds put out for the purchase of rail equipment.

“So, as we have studied this thing through the years we have been able to evolve and develop, which we have been trying to do, new financial schemes

Excerpts From Stipulation Among Counsel
Dated December 20, 1974

and devices under which it was possible for us to participate and to do what we always wanted to do and to play our part in it.

“Now since certainly in all realism the idea of a guarantee of a special issue of Port Authority bonds in New Jersey is probably quite impossible and since, with the State’s financial problems, it would have been hard to think of the State advancing money to the Port Authority to initiate such a program as the State of New York did, here is another financial plan that we have diligently worked out with Commissioner Palmer’s help and encouragement, and starting from his initial idea in his report of March 1960 that we simply buy and lease to the Hudson and Manhattan some eight and a half million dollars worth of cars—oddly enough that was impossible—and yet we came to you in September on the basis of conferences and studies that have been going on between the Highway Department and ourselves since February 1960, with a plan which made an \$80 million participation possible where an \$8½ million participation was not.

“Q. But the Port Authority now is firm in its resolution that it can handle a deficit operation.

A. If we can go to the bondholders with your approval—

“Q. With these restrictions. A.—and say, you don’t have to worry beyond this point, because beyond that point they wouldn’t worry.”

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

MR. TOBIN:

“As Commissioner Kellogg testified and Commissioner Palmer testified, we can’t get along without these existing rail lines. The problem, as I see it, is to maintain and preserve them and improve them as best we can and stay away from these ‘wild blue yonder’ \$500 and \$600 million plans of new transit systems, but the New York-New Jersey area must have the continued service on these existing rail lines and can’t do without them. There has been tremendous accommodation of the growth of the population by the buses, but it would just be chaos and impossible today if we tried to transfer the people that come in by rail now on the Jersey Central and the Pennsylvania and the Erie-Lackawanna and, in other areas, the Long Island and the New Haven to buses. It can’t be done. It becomes an absolutely essential public service, just as real and essential as streets and water and all of the other necessities of urban life are to us. And we are all in both legislatures and in the public recognizing that this has become a public problem and the programs we have been discussing here for the last two days, both here and the references to them in New York and the references to them on the Federal level, are all recognition that this has become a public problem and people must be able to get back and forth to work. Also, none of us can ask indefinitely private companies to take these staggering losses—and they are staggering.”

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

9. The Farley Committee record included a letter dated February 10, 1959 from Austin J. Tobin, Executive Director of the Port Authority to the Governors of New York, New Jersey and Connecticut and the Mayor of New York City, which concluded as follows:

*"The Port Authority Cannot Undertake Transit
Responsibilities*

"It has been suggested from time to time that the Port Authority should be the agency charged with financial responsibility for rail transit in the metropolitan area, or at least with its trans-Hudson phase. In their recent Statement to the New Jersey Assembly, the Commissioners of the Port Authority dealt with this subject at length (pages 1 to 11), and submitted in conclusion 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; and that
- (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 States for the continued development of their essential pub-

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

lic marine and inland terminal facilities, airports and interstate arterial systems.

“Within the framework adopted by the two States in the Port Treaty of 1921, the Port Authority has developed a system of essential public transportation and terminal facilities in the bi-state New York-New Jersey Port District. The projects which make up this system have all been planned, constructed and operated within the completely self-supporting requirement of the two States, and without recourse to any funds derived from the taxing power or the credit of either State or any of its political subdivisions.

“Under this program six interstate bridges and tunnels between New York and New Jersey, the four major metropolitan airports and a heliport, four inland terminals (for buses, truck and railroad freight) and a \$125 million system of modern docks and piers on both the New York and New Jersey sides of the harbor have all been provided and function as essential elements in the public transportation and terminal system of the region.

“Under present contractual commitments, the Port Authority will, during the next five years, build other essential facilities and additions to existing facilities including the second level of the George Washington Bridge and the Washington Heights Bus Passenger Facility, the Narrows Bridge, the Brooklyn-Port Authority Piers, the Elizabeth-Port Authority Piers, the completion of New York International Airport, and the complete modernization of

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

LaGuardia Airport. This program, which will require the Authority to borrow over \$700 million of capital funds in the next five years, is based on express authorizations of the Legislatures and Governors of both New York and New Jersey. All these projects and facilities, like the facilities already in operation, will be self-supporting and can be financed only on such a basis. It has been overwhelmingly demonstrated that rail transit is not and can never be in this category.

“The Port Authority has, therefore, been obliged to state unequivocally that it cannot assume any financial responsibility for rail passenger transportation in the Port District. We have also noted that, even if it were legally and contractually possible, the assumption of the large and ever-increasing deficits of rail commutation would quickly destroy the Port Authority’s credit and bring to a halt the entire present and future program of port and regional development which it is carrying forward on behalf of the two States. It is an ironic fact that the assumption of rail passenger deficits would not only destroy the Authority’s vital programs of self-supporting transportation and terminal facilities, but would also destroy the Port Authority’s ability to finance rail transit itself.

“Port Authority Assistance in Solving the Problem

“Even though it is thus impossible for the Port Authority to participate financially in any degree to the solution of the rail commutation problem, the Authority, for many years, has assisted in the study

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

of the problem and in the search for a solution. We stand ready today, as always, to assist in any way possible in the search for solutions to the mass transit problem in either its trans-Hudson aspect or in its over-all relation to the region as a whole."

10. In testimony before the Farley Committee on May 5, 1961 Mr. Tobin testified:

"SENATOR FARLEY: What is your plan involving the Hudson and Manhattan?

"MR. TOBIN: In the general plan that has been discussed with the legislatures and is the subject of discussion with both legislatures now, the Port Authority would propose to purchase the Hudson and Manhattan and to completely reconstruct and rehabilitate it. It would cost in excess, we estimate, of \$80,000,000 to \$85,000,000 to do that. It would require some 280 new cars. The plans are closely integrated with those of Commissioner Palmer for the general New Jersey commuter program. It requires a completely new signalling system and the construction also of certain new car facilities. We would plan in connection with it to pay full taxes now being paid in both states on the Hudson and Manhattan properties. We would take over as part of it the Hudson Terminal Buildings, not so much for their revenue aspects because even after you reconstruct them, they wouldn't appear to do much more than break even. But that banjo terminal of the Hudson and Manhattan is constructed inside those terminal buildings and their electrical power sub-stations, some of them, are in there and it's really

Excerpts From Stipulation Among Counsel
Dated December 20, 1974

a simpler operation to take over the buildings than to try to separate the pepper and the salt as between who owns the first floor and the second floor and work that all out.

“This would require identical legislation in both states which, of course, is under active discussion. It would also require—we have advised the legislatures—some form of limitation to bondholders. In other words, nobody in their right mind would buy a Port Authority bond at the time that the Port Authority is going into the commuter rapid transit system with set and established losses that outside of the city subway system today amount to about \$30,000,000 a year. Now nobody is going to buy that kind of an open-end revenue bond. But we believe that we can peddle a Port Authority commuter railroad bond if you permit us to go to the fellows who buy the bonds and say ‘We are going to do this job and we can’t argue with you the job won’t lose money, but the Legislature has assured you that we won’t go in it beyond some point, which under the discussions about the bill which was introduced in the Assembly in New Jersey was that the Legislature would agree with our bondholders that it’s an odd way to express financing, but that we wouldn’t commit ourselves to projects that we thought would lose in total more than 10 per cent of the general reserve fund.’ Now the general reserve fund is \$70,000,000 and it should be in about two or three years at about \$100,000,000. It has to be 10 per cent of the outstanding bonds and there are close to \$700,000,000 bonds outstanding now and there will be

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

\$1,000,000,000 in Port bonds outstanding in a couple of years. So 10 per cent would be \$10,000,000. In other words, we would be able to say to the vice president of a trust company about to buy a Port Authority bond, 'Don't be afraid of this. It is a losing project, but the Legislature assures you that they won't ask us to go in it beyond a point where we are losing more than'—if there's \$100,000,000 in bonds out—'\$10,000,000.'

"Now, on the Hudson and Manhattan, I estimate we will lose \$5,000,000 a year.

"SENATOR FARLEY: . . . Under the general bonding procedures that you follow, why do you make the point that it would be difficult to sell bonds by having to tell the purchasers that this would be a loss operation when you have been able to sell bonds before for loss operations and when you sell them as a general bond and not as a specific bond for the H & M?

"MR. TOBIN: Well, we have never gone into any field before where we couldn't look a bondholder in the face and say, 'We honestly believe that we can make this self-supporting and that you'll get your money back.' We have been wrong. In the case of the motor truck terminals, certainly we were wrong. And those terminals by themselves have not earned enough and without the pooling of the general reserves wouldn't be enough. But here is a point where you enter a field where no one seriously argues that you can do anything with commuter rapid transit with its 20 hour a week service but lose money and lose money big.

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

“They know also that the commuter railroads around New York and New Jersey now are losing currently \$30,000,000 a year and those are pretty nearly correct figures—they are not ICC formula figures. Now, as you move into that field, the whole market can panic on you and you are selling in a highly competitive securities market where the trust officer for the bank—all of this money in these large amounts are in charge of fellows carrying the responsibility of investing other people’s money—he doesn’t have to buy this morning a Port Authority bond; he has three or four bonds put in front of him that are of equal or better rating and that are just as fine a yield and in just the same general category if he is diversifying his portfolio. Senator, he isn’t going to bother arguing with me as to whether or not we will be able to pull through in this field of commuter transit deficits—he isn’t going to be able to argue with me that he needn’t worry that in the future the legislatures would never ask the Port Authority to take on any more commuter deficits. In this competitive field, he isn’t going to bother—he doesn’t have to bother. And that’s the reality of the situation.

“I know and I have reason to believe that some of the Senators sitting here know of a very large investor of Port Authority bonds who has already put them on the market because of this type of discussion and it’s not an isolated case. So the credit situation that we face as we move into this new deficit field in which the City of New York typically on its subways loses \$125,000,000 a year alone—as

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

we move in, no one is going to lend you money for 30 years without some statutory assurance of just how far we're going."

11. The following is an excerpt from the report dated June 28, 1963 of the Farley Committee:

"Peat, Marwick, Mitchell & Co., the accounting firm which made the audit of the records of the Port of New York Authority for the Committee, has submitted to the Committee its written report together with supplemental oral information.

"The basic framework and philosophy of the Port Authority with respect to its financing policies and its adherence to the principle of administering self-supporting facilities are soundly conceived. For example, the auditors reminded us that the General Reserve Fund and the pooling of revenues are the means selected by the States' Legislatures to enable the Authority:

'To finance its operations as a single enterprise rather than having to finance each of its facilities separately relying solely on the merits of that facility alone. The general reserve makes it possible for the Authority to finance new facilities which otherwise could not be financed without resorting to either state or other outside assistance in the form of advances, subsidies, guarantees or the like.'

"And after reviewing the Authority's financial structure the auditors concluded 'that few of its facilities would have been financially feasible without the ability to pool revenues of all facilities.'

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

“The auditors also stress that the single enterprise financial structure of the Authority has an important bearing on the Authority’s accounting procedures. The auditors report that:

‘The Authority’s financial structure is based on a single enterprise, pooling of revenues concept. Individual facilities are not financed independent of the rest of the Authority. The facilities contribute their revenues for debt service according to their earning power without regard to the amount of bonds which were issued for their construction. For these reasons any presentation of net revenues after debt service for individual facilities is not based on actual fact. As pointed out by the Authority in submitting its report, such a presentation can only be based on arbitrary assumptions.’

“COMMUTER RAPID TRANSIT

“On September 27, 1960, at the first public hearing of this Committee, pursuant to Resolution No. 7, The Port of New York Authority announced that it would undertake an immediate study of the feasibility of that agency acquiring, modernizing and operating the Hudson and Manhattan Railroad. This was the first public expression by the Port Authority of its willingness to share in the responsibility of meeting the commuter rapid transit requirements in the area of northern New Jersey.

“At the September 27 hearing, the Port Authority suggested that:

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

'The Port Authority might be able to sell bonds for the acquisition and modernization of the Hudson & Manhattan Railroad and continue the financing of the States' vital port development program:

- '(a) if investors could be given contractual assurance, with statutory protection, that the Port Authority's responsibilities in the field of commuter rail transit would be confined to the present and existing interstate Hudson & Manhattan Railroad systems;
- '(b) if all the Hudson & Manhattan Railroad system, including the Hudson Terminal properties could be acquired on the basis of their present realistic market values;
- '(c) if the operating agreements between the Hudson & Manhattan and the Pennsylvania Railroad could be transferred to the Port Authority on reasonable financial terms, permitting the continued use by Hudson & Manhattan trains of the Pennsylvania Railroad's tracks, stations and other facilities between Jersey City and Newark;
- '(d) if Commissioner Palmer's recommendation of linking the Jersey Central Railroad via the Lehigh Valley tracks with the mainline of the Pennsylvania Railroad would be carried out, thus making it possible for Jersey Central commuters to transfer at Newark, either to the Hudson & Manhattan service to downtown

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

Manhattan or the Pennsylvania's uptown service to Penn Station in New York; Commissioner Palmer's plan also envisaged the eventual handling by the Hudson & Manhattan of all interstate commuters from the Erie and Lackawanna Railroads now coming into the rail terminal at Hoboken, many of whom presently use the railroad ferry to Manhattan.'

"In concluding his statement on the prospects of acquiring the Hudson & Manhattan Railroad the Executive Director of the Port Authority, Mr. Austin J. Tobin stated that:

'The Commissioners have asked me to assure you, Mr. Chairman and the members of this Committee, that the Port Authority will continue to pursue this matter to the end that we may make a report and recommendations to the Governors and to the Legislatures of New Jersey and New York. It is our hope that this may be possible before the end of this year.'

"The Port Authority's study of the Hudson and Manhattan Railroad was concluded in January, 1961. The results of that study and the Port Authority's announcement that it would be able to go forward with the Hudson & Manhattan project with appropriate authorizations were made public by this Committee's public hearing in Newark on January 27, 1961. At that hearing, James C. Kellogg, III, Vice Chairman of the Port Authority testified as to the Authority's ability to go forward with the acquisition and rehabilitation of the Hudson & Manhattan.

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

“Vice-Chairman Kellogg and Mr. Tobin were questioned at length by members of this Committee on all aspects of its proposed program to acquire the bankrupt railroad. In addition the Committee heard testimony on this date and the preceding day from commuter groups, railroad representatives, individuals and civic associations on various aspects of the prospective transit responsibility of the Port Authority. These hearings, which were devoted exclusively to the subject of commuter rapid transit, resulted in a conviction on the part of this Committee that the Port Authority’s proposed program to acquire and improve the Hudson & Manhattan equipment and facilities was sound and in the best interests of the people of this State.

“During 1961, the New York State Legislature enacted legislation which empowered the Port Authority to proceed with the acquisition, modernization and operation of the Hudson & Manhattan Railroad and coupled in the same bill an authorization for the Authority to undertake the development of a World Trade Center on the east side of lower Manhattan. The bill contained no statutory covenant to protect Port Authority credit against future transit responsibilities which would divert its railroad deficits to revenues and reserves pledged to its bondholders. This legislation proved unacceptable to New Jersey because of the manner in which these two projects were ‘packaged’ in one statute and because the absence of such a statutory covenant, in our judgment, endangered the future utility of the Port Authority to the 2 States. Accordingly, an

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

impasse developed in 1961 between the States of New York and New Jersey on the appropriate form of legislation for these two projects.

“This Committee was convinced that the credit problem which had been pointed out by the Port of New York Authority was a valid and real one and that the Port Authority could not assume responsibility for the complete burden of the deficit-ridden commuter railroad problem in the area of northern New Jersey and New York. If the Port Authority were to receive such unrestricted responsibility, there is no question but that its sound credit position would be seriously impaired, if not destroyed, and it would become impossible for the Authority to continue to move forward either with such a rail program or with other vital transportation and terminal facilities and other facilities of commerce desired by the 2 States in continuing the Port Authority’s tradition as a public agency.

“As a result of lengthy discussions and firm insistence by the New Jersey Division of Railroad Transportation that Port Authority operation of the Hudson & Manhattan Railroad must extend beyond the main stem, which was concurred in by New York State conferences, the following program was adopted as acceptable to the States of New York and New Jersey:

1. Extending the Port Authority’s authorization beyond the present Hudson & Manhattan Railroad system;

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

2. Limiting the authorization at this time to extensions of that system within a delineated area to permit over-the-platform transfer of passengers between the Hudson & Manhattan Railroad and the major passenger railroads operating in New Jersey;
3. Limiting by a constitutionally-protected statutory covenant with Port Authority bondholders the extent to which the Port Authority revenues and reserves pledged to such bondholders can in the future be applied to the deficits of possible future Port Authority passenger railroad facilities beyond the original Hudson & Manhattan Railroad system;
4. Measuring that limit by 10% of the amounts of the Port Authority's General Reserve Fund at the time (or 1% of its equity, if larger, in that Fund and in its bridges and tunnels and other facilities owned and operated by it) so that a new deficit ridden passenger railroad facility can be added to the Port Authority's General Reserve Fund family of facilities (and thus be able to syphon off the pledged revenues of the self-supporting facilities and the pledged reserves accumulated therefrom) only if the estimated annual deficit of all Port Authority passenger railroad facilities, including the proposed new one, do not exceed the limiting figure at the time; and
5. Permitting enlargement beyond the limiting figure only to the extent of state guarantees of

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

Port Authority deficit from passenger railroad facilities.

“Late in 1961, a proposal was made to shift the location of the proposed World Trade Center to the west side of Manhattan and to integrate it physically with and directly above the lower Manhattan terminal of the Hudson & Manhattan Railroad. This program had appeal for the State of New Jersey and, in effect, meant that the Port Authority’s improvement of the Hudson & Manhattan system, including its extensions, and the World Trade Center were, in fact, one integrated project. By this time, general agreement among the officials of both the States of New York and New Jersey had also been reached on the extent of the use of the Port Authority’s revenues and reserves in meeting transit deficits. Thus, the way had generally been cleared for prompt legislative action by both States authorizing the Port Authority to proceed as rapidly as practicable with the single project—the World Trade Center and the Hudson Tubes and its extensions.

“It was with a great deal of satisfaction that the full membership of this Committee sponsored the legislation authorizing the Port Authority to proceed with this project, one of the most important statutes ever to be enacted by the New Jersey State Legislature. On February 13, 1962, both Houses of the Legislature passed this bill by unanimous votes (with one abstention in each House) and Governor Hughes signed the Bill on the same day.

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

Soon thereafter New York enacted the same Legislation.

“By virtue of its thorough investigation of all aspects of the Port Authority’s operations, and its work with the Port Authority and with the public officials of both States this Committee was enabled to evaluate and to participate in bringing about a Port Development project which, in our opinion, will be of inestimable value to the citizens of the State of New Jersey and the Metropolitan area.

“Our Committee has been impressed with the performance and untiring efforts of the Port Authority Commissioners both of New Jersey and New York toward insuring the maintenance and growth of our great Port. The efficiency of the Executive Director, Austin J. Tobin, and members of his staff has made possible our thorough, frank and productive research of an Agency which in its record of performance is excellent.

“CONCLUSIONS

“The Committee has discharged its assignment under Senate Resolution No. 7. In connection with the first branch of that resolution, we have studied the entire financial structure and operations of the Port Authority, including the receipts and disbursements of its funds. We find the structure appropriate to the assignments which the State Legislatures have made to the Port Authority and soundly devised to achieve the lowest possible cost for borrowed money. We are conscious that the Port

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

Authority, having no taxing power, can operate only by continuing the cycle of borrowing money to provide facilities which yield revenues which repay the borrowings and establish the reserves to permit additional borrowings. We are mindful that in the original Compact of 1921 the 2 States recited that the cooperation of the States was required 'in the encouragement of the investment of capital.' The Authority has in our judgment balanced the public necessities against the needs to attract private capital which can only be attracted by a sound credit and confidence in efficient management.

"In studying the receipts and disbursements of funds we were led to consider the entire internal organization of the Port Authority and its control to achieve efficiency and economy. We retained outside professional auditors to make a complete and disinterested audit of the Port Authority. On the basis of their report we have concluded that the Port Authority employs good business techniques and follows sound and prudent management policies and practices to the end that the public is best served, and that the policies employed by the Port Authority operate to minimize its construction and operating costs, to develop fully its revenues other than bridge and tunnel tolls and to avoid favoritism in any of its business transactions. The internal policies of the Authority are soundly conceived, clearly contained in written instructions and complied with by the Port Authority staff. The auditors studied the particular sensitive areas of purchasing contracts and concession letting, the rental

Excerpts From Stipulation Among Counsel
Dated December 20, 1974

of space, the procurement of insurance, the acquisition of real property and related fields. On the basis of their report we are satisfied that the Port Authority's techniques are soundly conceived and efficiently followed.

"Initially we assumed that it was possible to achieve detailed reporting of net operating results facility by facility not only after operating expenses but after debt service as well. The auditors' report has explained why this is not possible without arbitrary assumptions. We therefore conclude that the Port Authority has performed its duty to report properly on the financial results of its operations when it combines the debt service of facilities which have been soundly combined for financing purposes. We have considered the question of the size of the Port Authority from the point of view of its assets and revenues. We find that the size of the Port Authority is commensurate with its responsibilities vested by the Legislatures and with the growth and progress of the Northern New Jersey—New York metropolitan area which it serves.

"Also with regard to the first branch of the Senate Resolution No. 7, the Commission has studied the use and distribution of the surplus revenues of the Port Authority to determine how they may best 'inure to the benefit of the citizens of this State.' We conclude that the best use of such surplus revenues is to provide the credit base which will permit the financing and effectuation of such additional facilities as the two State Legislatures wish from time to time to achieve without taxation and through

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

the instrumentality of the Port Authority. The General Reserve Fund Statutes of 1931 established that policy and unquestionably the policies should be continued. The concept of the Port Authority articulated by the Investigating Committee of 1940 reflected that approach and that legislative judgment was vindicated by the record of growth and achievement of the Port Authority over the past two decades. We are in accord with these findings.

“With regard to the third branch of our authorizing resolution, we have studied the responsibility and accountability of the Port Authority to the Legislature of this State and to its citizens. We have established that the Port Authority is accountable to this Legislature and that accountability was evidenced by the complete responsiveness of the Port Authority to all of the requirements of this Committee in pursuing its investigation. It is recommended, however, that the Port Authority furnish to the Legislatures the Minutes reflecting their activities at the same time they are furnished to the Governors of the respective States.

“As required in the Compact, the Port Authority annually submits a report to the Legislatures setting forth in detail the operations and transactions conducted by it. Upon receipt of this report we urge that the Legislature, through its regularly established committees, annually invite officials of the Authority to appear before them to answer questions and to provide any further information on the operations and activities of the Authority. We believe such a regular and personal report and examination would expedite the work of the Legislature, and also would provide the public with useful

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

information regarding the Authority and would emphasize the continuous responsibility and accountability of the Port Authority to the respective Legislatures.

“With regard to the responsibility and accountability of the Port Authority to the citizens of New Jersey, it is clear that this responsibility and accountability must continue to be through the Governors and Legislatures of the two States.

“The Port Authority has attempted to keep the Governors advised as to such of its proposals as it deems controversial before they are adopted so as to obtain the benefit of the thinking of the respective Governors’ viewpoints and avoid the necessity of veto and modification to meet the Governors’ objections. The veto of the Governor continues as a most effective instrument for assuring that the policy of the Port Authority cannot depart from the policy of either State. We observe that the Governors have not hesitated to use the veto power when they deemed it appropriate.

“With regard to the final item of the third branch of our authorizing resolution, we have investigated whether or not the Port Authority is fulfilling its statutory duties and obligations. We have concluded that the Port Authority has not exceeded the powers vested in it by the two States and that it has met all of its obligations and fulfilled its statutory duties. The sole exception was the commencement of the Third Tube of the Lincoln Tunnel under existing authorization to construct the facility. The Legislature subsequently amended the statutes to bring this project within the Authority’s statutory duties. It

Excerpts From Stipulation Among Counsel
Dated December 20, 1974

will be remembered that the initial compact and even the comprehensive plan of 1922 were mere charters of ultimate goals. The Legislatures have directed the Port Authority's course by specific statutes from year to year. By granting and withholding particular authorizations they have set the limits within which the Port has operated.

"Over the years the Port Authority has developed and grown into a full-fledged economic entity of proportion and maturity in the fulfillment of programs designed for the progress and development of the States which authored its existence. While the Authority is a great contributor to progress, and development of the States which authored its existence, at the same time it serves as a barometer portending trends and marking goals for the future. We feel that the Port Authority has been a constructive influence in the economic life of the State and so long as it maintains its traditions and standards of public service, and at the same time continues to manifest a sensitivity and responsiveness to public need and progress, it should be given official encouragement and support in its endeavors.

Respectively submitted,

By:

FRANK S. FARLEY, Chairman
WAYNE DUMONT, JR.
WILLIAM E. OZZARD
RICHARD R. STOUT
JOSEPH W. COWGILL
JOHN A. LYNCH
WILLIAM F. KELLY, JR.
DONAL C. FOX"

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

12. The following is an excerpt from the 1960 Annual Report of the Port Authority:

“HUDSON & MANHATTAN RAILROAD

“In September 1960, the Port Authority outlined a proposal for financing the purchase, modernization, and operation of the Hudson & Manhattan Railroad. This development was the result of a series of meetings and discussions between Dwight R. G. Palmer, New Jersey State Highway Commissioner, and the Port Authority, starting in February 1960, which sought to find a means by which the Authority could assist in the solution of the trans-Hudson rail transit problem and still carry out the essential self-supporting port development program authorized by the two States.

“The Hudson & Manhattan, which provides an essential trans-Hudson commuter service for 31 million passengers a year, began operations in 1908. It provides services between Newark, Jersey City and Hoboken in New Jersey and New York City through two branches—one to the Hudson Terminal in downtown Manhattan and the other uptown to 33rd Street and Sixth Avenue. The H&M has been in bankruptcy since 1954. Under the proposed plan of reorganization of the company which is expected to be put into effect in 1961, the railroad and real estate activities would be separated. It is doubtful whether, under this plan, the railroad could remain in operation for more than two years.

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

“PORT AUTHORITY STUDY CONDUCTED

“Following the September announcement, the Port Authority initiated a comprehensive study to analyze all aspects of possible Port Authority acquisition, modernization and operation of the Hudson & Manhattan.

“The study was devoted to a thorough analysis of the plant and equipment presently in service, including the need for complete rehabilitation of stations, tracks, and the railroad’s signal and power systems. The study revealed that such a rehabilitation for the railroad alone would cost about \$30,000,000. Similar study of the need to rehabilitate and modernize the Hudson Terminal Buildings in lower Manhattan indicated that capital improvements of about \$9,000,000 would be required.

“The study also revealed that all of the old fleet of H&M cars, from 32 to 52 years old, should be replaced. A total of 288 modern and air-conditioned cars would have to be purchased as replacements and to provide for the anticipated additional service required under Commissioner Palmer’s plans for consolidating and re-routing of certain New Jersey commuter rail services. This would add another \$24,000,000 to the rehabilitation cost of the Hudson & Manhattan.

“The capital requirements for complete rehabilitation, therefore, would amount to approximately \$63,000,000, not including the cost of purchasing all of the Hudson & Manhattan properties. The Port Authority pointed out to a New Jersey Senate Com-

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

mission that in the bankruptcy proceedings of the Hudson & Manhattan Railroad Company the court had approved an SEC finding that the price which might be realized upon a sale to a private corporation of H&M properties, including the Hudson Terminal Buildings, would not be more than \$20,500,000. Thus, the total capital cost of such an acquisition and modernization program should approximate \$83,500,000 and would assure safe, comfortable, reliable trans-Hudson commuter service for our generation and the future.

“DEFICIT OPERATION

“Our studies concluded that there is no possibility that either the Port Authority or any other organization could operate the H&M on a self-supporting basis. After taking into consideration all of the variables and contingencies, our studies indicated that the acquisition, rehabilitation, and operation of the H&M by the Port Authority would involve an estimated annual deficit to the Authority of about \$5,000,000—with every effort being made to maintain the present fare structure.

“STATEMENT OF THE VICE-CHAIRMAN

“Upon completion of the study, Port Authority Vice-Chairman James C. Kellogg, III, in a statement on January 27, 1961 before a New Jersey Senate Commission, presented for the consideration of the Commission and the Governors and Legislatures of New Jersey and New York, the findings of the study together with the view of the Commissioners of the

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

Port Authority on the type of authorization by the two States which would permit the Port Authority to finance the acquisition, modernization, and operation of the Hudson & Manhattan Railroad.*

“In this regard, Commissioner Kellogg stated:

‘With the pooling of Port Authority revenues through our General Reserve Fund (which reflects the policy of the two States with respect to the future development of the public terminal and transportation facilities of the bi-State Port), we are of the opinion that an annual deficit of this magnitude (\$5,000,000) can be carried by our other facilities.

‘On this estimate of the H&M’s losses, and if we are able to satisfy prospective investors by statutory assurances that this proposal will not involve the Authority’s General Reserve Fund in any other or further commuter deficit operations,** we believe we can conscientiously certify, as

“*The Port Authority has no present effective legislative power would would enable it to undertake the financing and effectuation of such a facility. As a bi-State agency, the Port Authority is able to proceed with undertakings only when they have been authorized under concurrent legislation passed by both the States of New Jersey and New York.”

“**The State of New York on April 6, 1961, enacted legislation sponsored by Governor Rockefeller on the subject of Port Authority acquisition, improvement and operation of the Hudson Tubes and related properties and of the effectuation by the Port Authority of a World Trade Center. The New York legislation was in the form of a single act authorizing the Port Authority to effectuate these two facilities which the act describes as ‘combined port development facilities’ upon the terms and conditions set forth therein. This act contains no covenant with, or assurance to, Port Authority bond-

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

we must under our indentures, that this financing will not impair the Port Authority's credit . . .'

"The Vice-Chairman went on to testify that the Commissioners of the Port Authority might, therefore, be able to sell bonds for the acquisition and modernization of the Hudson & Manhattan Railroad and to continue the financing of the two States' vital port development program: (1) if the Legislatures of New Jersey and New York enact the legislation which would make it possible for the Port Authority to finance such a project; (2) if it is possible to acquire at a fair and realistic value the dilapidated properties of the H&M; and (3) if the Pennsylvania Railroad makes it possible for the Port Authority, as a public agency, to continue to utilize the tracks of the Pennsylvania Railroad under the terms of the present agreement for the joint operations of the two railroads between Jersey City and Newark.

holders on the subject of future Port Authority responsibilities in the field of commuter rail transit.

"In the State of New Jersey Assembly No. 519, sponsored by the Governor, would authorize the Port Authority to acquire, improve and operate the Hudson & Manhattan Tubes and related properties, and contains a proposed covenant by the two States and with certain Port Authority bondholders purporting to limit the application of pledged Port Authority revenues and reserves for commuter railroad purposes to purposes in connection with the Hudson Tubes. This bill would permit the application of such pledged Port Authority revenues and reserves in the future for any other commuter railroad as to which certain certifications would have first been made by the Port Authority.

"In the opinion of Port Authority General Counsel and Bond Counsel, the New York act will not become effective upon the enactment of New Jersey Assembly Bill A-519 and if New Jersey Assembly Bill A-519 is enacted, such bill will not become effective without further New York legislation of like effect."

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

“Throughout the Hudson & Manhattan study the Port Authority worked closely with Commissioner Dwight R. G. Palmer in his capacity as head of the Division of Railroad Transportation of New Jersey. The Governor’s Office in New York State and the Director of the New York State Office of Transportation, Mr. Arne C. Wiprud, were consulted as the study and proposal moved forward. In his statement before a New Jersey Senate Commission, Commissioner Palmer endorsed the findings of our study, stating that ‘from my personal point of view, acquisition of the H&M is a must. All our plans hinge on it.’ In addition, the New York-New Jersey Transportation Agency, of which Commissioner Palmer and Mr. Wiprud are the two official members, recommended to the Governors of New York and New Jersey that their States take immediate action to authorize the Port Authority to acquire, modernize and operate the Hudson & Manhattan Railroad. They termed this proposal ‘the key to any plan for the solution of the trans-Hudson commuter problem.’” (Stip. 171-195)

13. The following is an excerpt from the 1961 Annual Report of the Port Authority:

* * *

“FINANCIAL ASSURANCES

“The proposal to assume responsibility for Hudson Tubes deficits constituted a marked departure from the policy of the two States to authorize the Port Authority to undertake only such facilities as were capable of eventual self-support. The inevitable deficits from the Hudson Tubes facility can be

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

met only from the pooled revenues and reserves derived from the self-supporting facilities of the Port Authority. These revenues and reserves have all been pledged to the holders of outstanding bonds the proceeds of which have financed the public facilities now operated by the Port Authority.

“The undertaking of any additional public facilities by the Port Authority requires the ability to pledge these revenues and reserves for the new bonds which may be issued to effectuate such additional facilities. The Port Authority could not propose to dilute these revenues and reserves by the Hudson Tubes deficits and preserve its credit unless bondholders, present and prospective, could be assured that the dilution would be maintained within manageable proportions.

“After careful consideration the Board was of the opinion that the deficits anticipated for the basic Hudson Tubes system would be within the limits which prospective investors would accept without a downward revaluation of the Port Authority's credit. On the other hand the possibility of unlimited Port Authority responsibility for all Port District commuter railroad deficits far exceeded such limits.

“During 1961 various proposals were discussed with representatives of the two Governors and the legislative leaders of the two States and the Port Authority to agree on minimum financial assurances which might be included in any authorizing legislation so as to preserve the Port Authority's ability, with unimpaired credit, to continue to discharge its responsibilities to the people of the two States.

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

“As the year ended, agreement was crystallizing on a formula which would limit the ability of the Port Authority to pledge or apply any of its revenues or reserves already pledged to bondholders for new bonds to finance an additional railroad facility beyond the basic Hudson Tubes system, unless the additional facility could be certified by the Port Authority Commissioners to be self-supporting or else to involve permitted deficits within certain specified limits. Generally, the limit was an amount which, when added to the deficits on prior Port Authority passenger railroad facilities including the Hudson Tubes, would produce a total not exceeding 10 per cent of the amount in the General Reserve Fund with certain adjustments. Agreement was crystallizing also that such financial assurances would take the form of a bi-state statutory covenant which would not be subject to impairment by either the Port Authority or the States.

“With agreement approaching at the end of the year on the form and content of the financial assurances, the site of the World Trade Center, and the extent of authorized Hudson Tubes extensions, there was a good prospect for early bi-state agreement on the necessary legislation to effectuate the unified World Trade Center-Hudson Tubes project.*”

*“On February 13, 1962, the New Jersey Legislature unanimously passed, and Governor Hughes signed, legislation authorizing the Port Authority, upon concurrence by New York, to go forward with the combined Hudson Tubes-World Trade Center project. This statute included covenants with bondholders along the lines described in the text. Identical legislation was finally adopted by the New York Legislature on March 7, 1962. It will require Governor Rockefeller’s signature to become law.”

Excerpts From Stipulation Among Counsel
Dated December 20, 1974

14. In early 1962, New York and New Jersey enacted legislation authorizing the Port Authority to construct the World Trade Center near the Hudson River and to take over the Hudson & Manhattan Railroad "as a unified project" on the basis of detailed legislative findings of the needs for this project. See N.J.S.A. §§ 32:1-35.50 *et seq.* As part of this statute (N.J.S.A. §§ 32:1-35.55), the two States enacted the following provision:

"The 2 States covenant and agree with each other and with the holders of any affected bonds, as hereinafter defined, that so long as any of such bonds remain outstanding and unpaid and the holders thereof shall not have given their consent as provided in their contract with the port authority, (a) the 2 States will not diminish or impair the power of the port authority (or any subsidiary corporation incorporated for any of the purposes of this act) to establish, levy and collect rentals, tolls, fares, fees or other charges in connection with any facility constituting a portion of the port development project or any other facility owned or operated by the port authority of which the revenues have been or shall be pledged in whole or in part as security for such bonds (directly or indirectly, or through the medium of the general reserve fund or otherwise), or to determine the quantity, quality, frequency or nature of the service provided in connection with each such facility; and (b) neither the States nor the Port authority nor any subsidiary corporation incorporated for any of the purposes of this act will apply any of the rentals, tolls, fares, fees, charges, revenues or reserves, which have been or shall be pledged

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

in whole or in part as security for such bonds, for any railroad purposes whatsoever other than permitted purposes hereinafter set forth."

15. Governor Rockefeller's statement issued in connection with this legislation provided in part:

"March 27, 1962

"The enactment of this measure concludes an agreement between the States of New York and New Jersey which is of first-rank importance to the economic well-being and development of the New York-New Jersey metropolitan region and to the continued vitality of this region as a major center of job opportunities.

"Under this legislation, which is in the form of a single bill, the Port of New York Authority is authorized to undertake a unified port development project, which will include the establishment and construction of a World Trade Center on the lower west side of Manhattan, the acquisition and rehabilitation of the Hudson Tubes, and extensions and improvements of the Hudson Tubes service.

"Both components of the unified port development project are aimed at one goal, the continued economic vitality and prosperity of the bi-state metropolitan region.

* * *

"The salvaging of the Hudson & Manhattan Railroad and the extension and improvement of its service is of vital importance of the commuters of both States.

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

* * *

“The need for this measure is apparent:

* * *

“Hudson Tubes

“Adequate commuter rail transportation is essential to prevent the economic strangulation of metropolitan New York.

“This State has a vital economic stake in the maintenance and improvement of rail commuter service between New Jersey and Manhattan.

“The Hudson and Manhattan Railroad has been, over the years, an unsuccessful operation. It has not offered the effective trans-Hudson commuter rail service that is so urgently needed.

“Under this bill the Port Authority will take over the Hudson Tubes and do the kind of job that is called for.

* * *

“This single bill unifies both components of the port development project physically by relocating the World Trade Center complex, previously planned on the east side of lower Manhattan, to an area on the west side encompassing the present H & M Railroad Terminal. The existing terminal buildings will be removed. The tracks will be realigned to increase allowable train speeds, platforms will be expanded to increase train capacities, lobby and concourse facilities will be reconstructed and new, modern terminal facilities will be provided.

* * *

Excerpts From Stipulation Among Counsel
Dated December 20, 1974

“To preserve the Port Authority’s credit strength the bill includes a covenant by the two States that additional deficit financing of future railroad projects will only be undertaken within the financial limits set forth in their covenant.

“The bill authorizes the City of New York and the Port Authority to agree on the use of urban renewal powers in the effectuation of the project and provides for agreements by the Port Authority with the municipalities concerned to hold the municipalities harmless from loss of taxes on property acquired for the project.

“I take great pleasure in approving this legislation which completes the authorization for The Port of New York Authority to proceed with this great public program. It represents the bringing of many resources to bear in solving most serious problems peculiar to the great bi-state metropolitan area.

“The bill is approved.

Nelson A. Rockefeller”

16. “Affected bonds” were defined by the 1962 statute to include all bonds secured in whole or in part by the General Reserve Fund of the Port Authority. All Port Authority Consolidated Bonds issued since 1952 have been secured by the General Reserve Fund under the terms of the Consolidated Bond Resolution adopted October 9, 1952.

17. “Permitted purposes” were defined to include: “(i) the Hudson tubes as authorized and limited on the effective date of this covenant and agreement, (ii) railroad freight

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

transportation facilities or railroad freight terminal facilities, (iii) the construction, installation and maintenance of railroad tracks and related facilities on vehicular bridges owned by the port authority, (iv) any other railroad facility established, acquired, constructed or otherwise effectuated by the Port Authority (including but not limited to Hudson tubes extensions) as to which the port authority shall have first certified either that said other railroad facility is self-supporting as hereinafter defined or, if not, that at the end of the preceding calendar year the general reserve fund contained an amount equal to 1/10 of the par value of bonds of the port authority which were outstanding at said year end and which were legal for investment as defined in the general reserve fund statutes and that the group of facilities consisting of such other railroad facility and of all prior other railroad facilities will not produce deficits in excess of permitted deficits as hereinafter defined."

18. With respect to permitted purpose (iv), a passenger railroad facility would be deemed to be "self-supporting" if the "amount estimated by the port authority for the ensuing 10 years to be the average annual net income (computed without deduction of debt service) derived from or incidental to such facility equals or exceeds the amount estimated by the port authority for such 10 years to be the average annual debt service upon bonds for purposes in connection with such proposed facility."

19. If a passenger railroad facility [other than the Hudson Tubes, as defined in the statute, or a facility situated upon a vehicular bridge owned by the Port Authority] was not "self-supporting," then none of the revenues or reserves of the Port Authority (no matter how substantial)

Excerpts From Stipulation Among Counsel
Dated December 20, 1974

could be used for that passenger railroad facility beyond the "permitted deficits" of the facility.

20. "Permitted deficits" were defined to mean that the total estimated deficit (after including estimated debt service) for "the ensuing 10 years" as certified in writing by the Governors of the two States of the Hudson Tubes system as authorized and existing at the time of the 1962 legislation and of any additional non "self-supporting" passenger railroad facility could not exceed one-tenth of the General Reserve Fund as of the calendar year prior to the certification.

21. On September 1, 1962, following enactment of the Hudson Tubes-World Trade Center legislation referred to above, the Port Authority, through a wholly-owned subsidiary (Port Authority Trans-Hudson Corporation), assumed ownership and operating responsibilities over the Hudson Tubes. The Commissioners' 1962 certification made with respect to the acquisition of the PATH System was made on the basis of an opinion of A. Gerdes Kuhbach, the Director of Finance of the Port Authority, which was prepared at the request of the Commissioners. (Stip. 201-209) * * *

22. The 1962 Annual Report of the Port Authority (p. 32) stated:

"The Port Authority became a rail transit operator at 12:01 a.m. on September 1, 1962, when the Port Authority Trans-Hudson Corporation (PATH), a subsidiary of the bi-state agency, acquired title to and began operation of the Hudson

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

Tubes, the former Hudson & Manhattan Railroad System.

“The assumption of responsibility for operating and rehabilitating the H&M system was the signal for the commencement of a projected \$150,000,000 modernization program to change this rundown but key interstate rapid transit line into an efficient, convenient, and dependable public transportation service.

“Proposals for the acquisitions and rehabilitation of the Hudson & Manhattan were first publicly advanced by the Port Authority in September, 1960, following intensive studies of the Port District commuter rail situation over a period of many years.

“The Hudson & Manhattan, in bankruptcy since 1954 and hampered by obsolete and inadequate facilities and equipment, faced abandonment. In view of the key role which the line played in the Port District’s transportation system, such abandonment could not be permitted.

“It was on this note that the Port Authority proposed late in 1960 that it should be authorized to acquire, operate and rehabilitate the H&M. At the same time, the Port Authority advised that investors in its bonds should be given adequate safeguards by the Legislatures of New Jersey and New York against the irreparable impairment of Port Authority credit which would result if there were no limit to the Port Authority’s future involvement in additional deficit undertakings.”

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

23. Neither the 1963 nor the 1964 annual reports of the Port Authority referred to the 1962 Covenant, but subsequent reports explicitly referred to the Covenant.

24. The 1971 Annual Report of the Port Authority (page 57) stated:

“The 1962 statutes adopted by the Legislatures of the two States, which authorized Port Authority acquisition of the interstate Hudson and Manhattan Railroad, specifically recognized and met the fundamental need of protecting the credit of the Port Authority to insure that it could continue its self-supporting programs so vital to the economy of the two States in accordance with the directives of the two Legislatures. The Legislatures recognized that the credit of the Port Authority would be impaired if the Authority undertook responsibility for the operation of such a perpetual deficit facility, unless the States entered into a contract with the Authority bondholders which gave assurance that additional deficit financing of future railroad projects would be undertaken only within specific financial limits.”
(Stip. 210-212) * * *

26. The 1973 Annual Report of the Port Authority (Stipulation, Exhibit III) stated:

“The 1962 statutes adopted by the Legislatures of New York and New Jersey, which authorized Port Authority acquisition of the interstate Hudson and Manhattan Railroad, provided by way of a statutory covenant with the holders of affected bonds that deficit financing of additional passenger railroad

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

facilities would be undertaken only within specific financial limits.

“Effective May 10, 1973, the two States amended the 1962 statutes to provide that this statutory covenant shall not apply to the holders of obligations issued by the Authority after such date. Thus, the covenant does not apply to the holders of \$100 million Consolidated Bonds, Fortieth Series, issued by the Authority on June 20, 1973, or to the holders of \$100 million Consolidated Bonds, Forty-first Series, issued by the Authority on October 9, 1973, nor does the covenant apply to the holders of the Authority’s promissory notes issued in an aggregate of \$100 million to fourteen banks and trust companies in connection with the December, 1973 bank loan. The last issue of Port Authority obligations to which the statutory covenant attached was \$150 million Consolidated Bonds, Thirty-ninth Series, due 2007, issued by the Authority on February 9, 1972. As recommended by Governor Byrne, a bill intended to repeal the statutory covenant with respect to all outstanding bonds has been introduced in the New Jersey Legislature. This bill provides that it is to take effect upon the enactment of concurrent New Jersey-New York legislation and a similar bill has been introduced in New York. Litigation is currently pending in New Jersey and New York seeking to invalidate the existing statutory covenant. Cross motions for summary judgment have been made by plaintiffs and by defendant Port Authority in both the New Jersey and New York actions. In addition, United States Trust Company of New York is joined

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

as a defendant in the New Jersey action as Trustee for the 40th and 41st Series of the Authority's Consolidated Bonds, as the holder of a significant amount of outstanding obligations of the Authority, and as a class representative on behalf of the holders of all outstanding bonds of the Authority, and has joined in the Authority's motion for summary judgment."

27. In 1973, PATH served 25.4 percent fewer passengers than in 1972 because of a nine week strike called by the Brotherhood of Railway Carmen. Following the strike settlement, PATH returned to service with 20 percent fewer riders and soon returned to a level 12 percent below 1972. It was only at the end of 1973, with the impetus of the energy crisis that PATH traffic returned to a level only 2 percent below 1972. (see Exhibit III, page 15). According to the 1973 Annual Report submitted by PATH to the Interstate Commerce Commission, the net operating deficit of PATH in 1973 was \$17,322,355*. The total 1973 deficit as reported to the Interstate Commerce Commission was \$22,733,475, which included interest on unfunded debt in the amount of \$6,281,934, which was charged to PATH by the Port Authority to reflect an amount equivalent to the Port Authority's interest cost on the investment in PATH's road and equipment, including the terminal facilities at the World Trade Center and the Journal Square Transportation Center. The total cumulative deficit of PATH through the end of 1973, as reported to the Interstate Commerce Commission, was \$125,079,735*. (Stip. 212-214) * * *

* These figures do not include general administration expenses. The Port Authority has been advised by the ICC that it will have to amend its 1973 and prior year reports to reflect, as well as include in all future reports, the cost of general administration expenses.

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

In 1973, using the Port Authority's accounting procedures, the PATH deficit was \$24,913,000, calculated as follows:

Gross Revenues	\$ 9,426,100
Operating Expenses	27,596,100
Net Operating Deficit	18,170,000
Debt Service*	6,743,900
Deficit	<u>\$24,913,900</u>

The main difference between the ICC figures and the above figures are: (1) the ICC figures do not include general administrative expenses of \$4,274,600, whereas the Port Authority's figures do; (2) the ICC figures include depreciation of \$2,556,200, whereas the Port Authority's figures do not; and (3) the ICC figures include only interest, on capital investment, of \$6,281,900 whereas the Port Authority's figures include both principal and interest of \$6,743,900.

PATH in fact has incurred an annual deficit after debt service for each of the last five years in excess of 10 percent of the General Reserve Fund. Accordingly, under the

* A certain amount of certain Consolidated Bond issues has, since 1962, been allocated by the Treasurer of the Port Authority to PATH. The figure in the above chart represents the debt service on the aggregate amount of such allocations, excluding such allocations attributable to construction in progress, which is capitalized until completion. Thus the debt service figure in the above chart includes allocations attributable to PATH Condemnation Payments, World Trade Center Terminal, Passenger Cars and Other Completed Rail Rapid Transit, and excludes allocations attributable to work in progress at Penn Station-Newark and on rail rapid transit and almost all of the Journal Square Transportation Center which was put in service in 1974. See Chart on p. [684a] for principal amounts invested.

Excerpts From Stipulation Among Counsel
Dated December 20, 1974

terms of subparagraph (b) of the 1962 Covenant, the Port Authority would have been precluded from applying any of its revenues or reserves to any other deficit passenger railroad operations.

28. The Port Authority referred to the existence of the 1962 Covenant in the Official Statement issued in connection with each of the Consolidated Bond financings subsequent to the enactment of the 1962 Covenant.

A preliminary Official Statement was usually distributed to the underwriting group, certain selected dealers and financial institutions approximately a week prior to the commencement of an offering. The final Official Statement was distributed to each original purchaser of Consolidated Bonds either prior to or with delivery of the Bonds or confirmations thereof. The annual report of the Port Authority is also distributed broadly. For example, 11,700 copies of the 1973 Annual Report have been distributed, including copies to all New York and New Jersey legislators, all Port District Congressmen and Senators, 750 copies to media representatives and 1,800 copies to a list of dealers in municipal bonds, registered bondholders, banks, trust companies, insurance companies and other financial institutions. Those on the latter list have specifically expressed interest in receiving the report.

29. The Port Authority has invested \$185,800,000 of its own funds in PATH as of December 31, 1973. The accumulated ICC operating deficits of PATH totals \$125,000,000, of which approximately 17 million constitutes depreciation. The breakdown of the \$185,800,000 capital investment of the Port Authority is as follows:

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

PORT AUTHORITY OF NEW YORK AND NEW JERSEY
CAPITAL INVESTMENT IN PATH
THROUGH DECEMBER 31, 1973
(In Millions of \$)

Journal Square Transportation Center	\$ 28.5
Condemnation Payments	54.7
PATH Terminal at W.T.C.	37.8
Passenger Cars	35.4
Other Rail Rapid Transit—completed	27.0
Penn Station Newark—in progress	.3
Rail Rapid Transit—in progress	2.1
	\$185.8

(Stip. 215-218) * * *

30. Under the aegis of the Port Authority, PATH became one of the nation's most modern and efficient rapid transit systems. It was the first rail transit system in the world to be fully air-conditioned. In 1973, when PATH was shut down by a strike for two months, PATH carried more than 30,000,000 passengers with an overall on time performance of 97.2 percent. (1973 Port Authority Annual Report, page 11.) PATH carries more than 70 percent of all passengers entering New York City by rail from New Jersey. (PATH—Plainfield Information Booklet, page 2.)

31. The current levels of peak hour traffic carried from Hoboken and from Newark are the highest ever in the history of the system. Even in the late 1920's when the H&M carried nearly three times as many daily passengers, the peak hour demand at Hoboken totalled about 12,500 (vs. 16,000 today) and at Newark approximately 4,000 (vs. 7,300

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

today). The costs incurred for crews and equipment are determined principally by peak hour requirements. Nearly one-half of PATH's current weekly traffic is carried in the two peak hours. The basic PATH interstate fare has remained at 30 cents since October 31, 1961. (Stip. 219) * * *

At a meeting on June 7, 1973, the New York and New Jersey Commissioners voted unanimously to increase the PATH fare from 30 cents to 50 cents because of increased operating costs, the 1972 deficit of \$20,090,000 and the expectation that there would be no substantial increase in traffic. Neither of the Governors exercised his veto power over the proposed increase. During the following three months Governor Rockefeller of New York was enlisting support for the proposed \$3.5 billion transportation bond issue in New York. A strong opponent of a prior New York proposed bond issue which failed, Mr. Theodore H. Kheel, publicly suggested that his prior strong support of the 1973 bond issue would be re-evaluated if Governor Rockefeller did not change his position regarding the proposed PATH increase. Governor Rockefeller sent Mr. Kheel a letter evidencing his support for only a 5 cents PATH fare increase and Mr. Kheel was quoted as saying that the New York Commissioners would "knuckle under to the Governor". *N.Y. Post*, September 26, 1973.

On September 21, 1973 Governor Rockefeller issued a statement to the effect that the PATH increase should be limited to 5 cents rather than the 20 cent increase approved by the PATH Commissioners and not vetoed by the Governors. At a meeting on September 26, 1973, all five New York Commissioners, contrary to their position four months earlier, voted to limit the proposed increase to 5 cents. The New Jersey Commissioners, however, voted in

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

the negative, and since a majority vote of the Commissioners of each state is necessary for Port Authority action, the proposed fare increase application remained at 20 cents. Mr. Kheel, however, continued his support of the 1973 New York Bond issue, and was quoted as stating that "I can't ask Governor Rockefeller to do more than deliver all the Commissioners of New York State, and that he did. . . ." *N.Y. Post*, September 27, 1973.

In February 1974, Commissioner Sagner appeared on behalf of Governor Byrne at the ICC Hearing on the PATH fare increase to state New Jersey's opposition to the PATH fare increase to 50¢. On February 14, 1974, following the stated opposition by Governor Byrne and Governor Wilson to the PATH fare increase, the Port Authority Commissioners voted unanimously to rescind their request to the ICC to approve the increase in the PATH fare. The PATH fare has remained at thirty cents. The present fare charged by the federally subsidized AMTRAK from Newark to Penn Station New York City is \$1.00; the present Penn Central fare between those stations is \$.75.

C. 1971 Bi-State Legislation

1. In April 1970, Governors Cahill and Rockefeller announced a joint program to increase the Port Authority's role in mass transportation by building a rail link to John F. Kennedy International Airport and extending PATH to Newark International Airport and other parts of New Jersey. According to the April 20, 1970 issue of *The (Newark) Evening News*, Governor Cahill said "one purpose of the legislation that will be introduced in both state bodies will be to erase the authority's impression that as long as the PATH system is operating at a loss the author-

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

ity is absolved from any further responsibility for mass transit." Governor Cahill was also said to have noted that the Port Authority interprets the PATH legislation as absolving it from any further responsibility for mass transit and to have stated that the new bill will express "the intent of both legislatures that the PA do more in the area of mass transportation."

2. In March 1971, two days of joint hearings were held in New York and New Jersey by the New York State Assembly Committee on Corporations, Authorities and Commissions and the Autonomous Authorities Study Commission of the New Jersey State Legislature with respect to the relationship of the Port Authority to mass transportation. At the outset of the hearings, New York State Comptroller Levitt pointed out that the net revenues of the Port Authority increased from \$68 million in 1961 to \$115 million in 1970. During the ten-year period, the amount applied to interest on debt and scheduled long-term debt retirement ranged from \$34 million to \$54 million a year; over the ten-year period approximately \$454 million in funds were available beyond interest and scheduled principal repayments and during the three prior years, approximately \$55 million to \$60 million a year was left. A large proportion of these moneys, almost \$360 million, was applied by the Port Authority to capital construction through short-term borrowings.

Austin Tobin, then Executive Director of the Port Authority, testified at length concerning the history of the Port Authority and its credit requirements. Mr. Tobin noted that the Port Authority had been working on rail access to Kennedy Airport "for many years, and we have a concrete plan on that, that we are in the course of moving

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

forward on it." With respect to a Newark Airport rail link, Mr. Tobin said, "there still might be some possibility in a PATH extension in some way, or in a Jersey Central extension. We are not optimistic on some of the PATH, we are not optimistic, and think that the other way would do a better job, but that is in the process." Mr. Tobin also stated that the PATH deficit "will go up to \$30 million a year."

Mr. Tobin further stated that if the tolls on the Port Authority's bridges and tunnels were doubled, "I don't think we would lose many vehicles . . . my judgment is that you wouldn't, other than raising holy political hell, if we just looked at it from the traffic standpoint, it wouldn't affect much." Mr. Tobin said that if the tolls were doubled, the increased revenues to the Port Authority would be "between \$50 million and \$70 million." Mr. Tobin also stated that if the Legislatures "wish to change the nature" of the Port Authority and "give us the same type of State resources and back-up as the Metropolitan Transportation Authority has, and has to have, . . . we are ready to take on anything that you will give us the tools to work with, and be delighted. We will work within the public field, and it is just as much fun for us to run choo-choos as airports." Mr. Tobin further stated that various other authorities engaged in mass transportation such as the San Francisco Bay Authority, the Metropolitan Transportation Authority, the Chicago Authority, the Boston Area Authority and Authorities in Detroit and Montreal are all supported by the taxing power of the State. (Stip. 220-224) * * *

Assemblyman Koppell of New York referred to a report by the First National City Bank which suggested the appropriateness of imposing higher and economically more reasonable charges for the use of highways and river

Excerpts From Stipulation Among Counsel
Dated December 20, 1974

crossings in order to transfer badly needed added revenues to mass transit use. Mr. Tobin replied that "the penny surpluses from the tunnels and bridges are picking up the immense deficits from PATH." Mr. Koppell stated that the First National City Bank report specifically points out that tolls have been stable for 30 years and that the Hudson crossing tolls were fifty cents at a time when subway fares were a nickel; now subway fares cost six times as much*, while the tunnel and bridge tolls are the same. Mr. Tobin stated that an increase in bridge and tunnel tolls is opposed by every public official that is in any way concerned with traffic and that if the tolls were doubled, "it could not go under the law [to] mass transit anyway . . . we could use them for other facilities supported by the General Reserve Fund, but you could not, under the law and the constitution, use them for mass transit facilities." (Stip. 225-226) * * *

There was extensive discussion concerning the possible repeal of the 1962 Covenant. Assemblyman Koppell asked whether the Covenant could be repealed "not only for the future, but for the past" on the basis of the legislative finding "that in the exercise of our right to protect the people of the two states, we find that this covenant stands in the way of the proper development of mass transportation facilities, which is essential to the people's good and welfare." (Stip. 227-228) * * *

* The subway fare as of December, 1974 is \$.35 [footnote added by stipulation.]

Excerpts From Stipulation Among Counsel
Dated December 20, 1974

Charles Wodehouse, Chairman of the Railroad Committee and member of the Executive Committee of the New Jersey Citizens Transportation Council, stated:

“It should go without saying that the continuing strangulation with which this area is faced due to clogged roads and lack of transit necessary to relieve that condition, absolutely must be met head on, and now, if the area is to survive as a job-producing, revenue-producing complex to support its population.”

Mr. Wodehouse made “a special request that plans and action go forward without delay for high-speed transit for Newark and the New York Airports.” (Stip. 229) * * *

3. The hearings included the following chart that had been submitted to the Farley Committee in 1961 with respect to the net revenues and investment of the Port Authority in each of its facilities as of December 31, 1960, together with the number of years that each facility operated at a loss.

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

PORT OF NEW YORK AUTHORITY INVESTMENTS AND REVENUES

As Submitted to Senator Frank S. Farley, Chairman, New Jersey Senate
Committee Created to Investigate the Port of New York Authority.

(000 Omitted)

Facility	Total Investment		Net Revenues			
	As of 12/31/60	After Completion of Constrn. Program Under Way	Year 1960	Cumulative Amount	Yrs. in Svc.	Years in Deficit Oper.
N.Y. Intl. Airport	\$ 288,500	\$425,000	\$ 7,177	\$ 16,966	14	7
LaGuardia Airport	27,205	90,000	(65)	1,123	14	7
Newark Airport	39,383	50,000	(527)	(9,296)	13	13
Teterboro Airport	10,540		(439)	(4,162)	12	12
Heliports	706		(103)	(288)	7	7
Grain Terminals, Grain Elevators, & Columbia St. Pier	3,734		(99)	1,040	15	3
Port Newark	62,249	125,000	498	4,908	13	3
Erie Basin Piers	8,930		266	405	3	—
Hoboken Piers	17,807		352	1,442	9	4
Brooklyn Piers	60,971	90,000	(197)	(431)	5	4
Elizabeth	9,452	150,000	(Not yet in operation)			
PA Building	22,457		636	(3,040)	28	21
N.Y. Truck Terminal	9,923		(284)	(5,459)	11	11
Newark Truck Term.	8,120		(391)	(2,065)	11	10
N.Y. Bus Terminal	26,272	45,000	(4)	(5,476)	11	11
Holland Tunnel	57,950		3,049	82,871	30	—
Lincoln Tunnel	184,062		(83)	16,357	24	10
Geo. Washington Br.	143,680	260,000	9,207	99,424	30	8
Staten Isl. Bridges	30,590	45,000	209	(14,724)	33	22
Total	\$1,012,500		\$19,202	\$179,592		

Note: Parentheses denote deficits.

(Stip. 231-232) * * *

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

5. In June 1971, the Legislatures of New York and New Jersey enacted legislation authorizing the Port Authority to extend passenger rail transportation to Kennedy International Airport and to Newark International Airport and Cranford (Chapter 245, Laws of New Jersey of 1971). While this legislation was pending, the Port Authority obtained opinion letters from the New York firms of Hawkins, Delafield & Wood (May 3, 1971) and Davis Polk & Wardwell (June 3, 1971), which concluded that the proposed rail extensions were subject to the provisions of the 1962 Covenant (and could not be financed out of Port Authority revenues or reserves unless "self-supporting"—PATH alone having used up all of the "permitted deficits") even if the Legislatures were to amend the statutory definitions of "air terminals" (1947 Laws of New York, Ch. 802, §3; N.J.S.A. 32:135.3) so as to bring the proposed rail extensions within those definitions. (Stip. 233) * * *

7. On December 8, 1971, the First Boston Corporation, having been commissioned to do so earlier in 1971 by the Port Authority, issued a Passenger Rail Transportation Study. In analyzing the proposed airport rail links, First Boston noted "The essential problem which is posed by these undertakings is created in the statutes and resolutions by which the Port Authority is bound; and particularly the joint State covenants of 1962, which in effect prohibit the Port Authority's involvement in additional passenger transportation projects unless they are self-supporting." According to the First Boston Study the 1962 Covenant "precludes general credit financing of any passenger transportation project, no matter how desirable, for which projects show an operating profit below debt service requirements." Since federal funds could be provided only

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

for construction of new facilities on a matching basis and not for operating expenses, "any project would have to cover its operating and maintenance costs and a large portion of debt service from the fare box." The study stated that the project could be financed by the Port Authority under existing statutes and resolutions if:

"(1) it were self supporting, or

"(2) if a legal opinion is obtained (which may require litigation) supporting either theory under (A) and (B) above [the "airport adjunct" theory or a theory that financing of passenger rail mass transit could be considered "to or for the benefit" of Consolidated Bondholders], or

"(3) the project does not incur (along with present PATH deficits) an aggregate annual deficit in excess of 10% of the General Reserve Fund.

"This third approach opens three possibilities:

"(A) Application of federal urban passenger rail transportation projects. The Urban Mass Transportation Act of 1970 provides for sizeable grants for acquisition or construction of new facilities on a matching basis; grants, however, are not to be applied to operating expenses. Therefore, any project would have to cover its operating and maintenance costs and a large portion of debt service from the fare box. Depending, however, on the particular project's projected revenues and the grants obtained, the Port Authority might be able to effectuate pas-

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

senger rail transportation projects with such assistance. In particular, airport rail links could probably benefit from these grants, but, once again, their costs would have to be detailed to determine if, with these grants, they would be self-supporting or within the 10% aggregate deficit limitation.

- “(B) An increase of PATH fares to a level sufficient to cover the present and projected PATH deficits, thus permitting an amount equal to 10% of the General Reserve Fund moneys to be applied to other passenger rail transportation projects. The PATH per-passenger loss for 1970 was approximately 35¢. If the PATH fare were increased by this much, assuming that future traffic patterns and operating expenses were to remain the same, there would be no deficit at all resulting from PATH operation, and the Port Authority might incur up to an annual deficit of about \$12.7 million on other passenger rail transportation projects. Although a 35¢ increase is impractical, any increase up to that amount would free a proportional amount of the 1962 mass transit limitation as measured by 10% of the General Reserve Fund for use in other passenger rail transportation projects. Because annual deficits of PATH have been increasing over the years since its acquisition (e.g., an increase from \$10.9 million to \$12.3 million for 1968 to 1969 and from \$12.2 million to \$13.2 mil-

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

lion for 1969 to 1970), fare increases would probably need to be escalating, depending on the rate of PATH expense increases. The importance of the ability of the Port Authority to raise fares on PATH to reduce the deficits below the statutory maximum can only be determined after the cost and engineering figures on the proposed rail links are completed and any resulting deficits are known.

“(C) Use of additional financing capacity engendered by growth of the General Reserve Fund. At the rate of future financing contemplated by the Port Authority, the General Reserve Fund will grow at about \$10 million per year—this means that about \$1 million per year would be added to the allowable annual deficit to be incurred in passenger rail transportation projects. Even if deficits of PATH were not to increase over the next few years, this contribution alone is really too small to enable significant participation by the Port Authority in deficit passenger rail transportation projects.”

“We do not have enough information on the Airport rail link project to quantify whether the dollars which might be released for deficit passenger rail transportation under (A), (B), (C) or a combination thereof would represent a sum of money sufficient for successful completion of the project.”

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

The study also discussed two ways of financing beyond the provisions of current resolutions and statutes. One involves the imposition of what might be called a mass transportation "surcharge" and the other involves use of funds already being generated by the Port Authority. Each, however, would require 60% approval of the aggregate of outstanding Consolidated Bond holders. The study discussed three programs, one of which falls in the first category, and the other two in the second, as follows:

- "(1) Increase the tolls on all Port Authority bridges and tunnels by some percentage, say 50%, and deposit the revenues into a 'transportation fund', this fund to meet debt service on a series of bonds financing passenger rail mass transportation. (A portion could be retained to cover expenses of the program.) This diversion of funds would require approval of 60% of the Consolidated Bond holders, in that the use of these funds for passenger rail transportation purposes is prohibited by the 1962 Covenant and is limited by the Series Resolution of each issue of Consolidated Bonds.

"The States of New York and New Jersey would then guarantee to the Port Authority *any difference between gross revenues collected after toll increases and higher gross revenues collected before toll increases*. This would bring into being a State financial contingent liability and would require legislative authorization; a *direct* guarantee of revenues creates a debt on the part of the state and would require a voter referendum and legislative

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

action in New Jersey and a constitutional amendment (which itself requires approval of two successive legislatures before submission to a voter referendum) in New York; a moral obligation similar to that of the New York State Urban Development Corporation or New York Housing Finance Agency to make up the difference in revenues would not require such extensive legislative action and voter approval but would only require approval by both legislatures. Therefore, a law providing for a direct guarantee by the States would probably take 18 months or more to enact, whereas moral obligation could be obtained much faster. There is not much of a possibility that such an obligation would have to be honored unless traffic patterns were temporarily altered because of the fare increase, or unless automobile traffic patterns generally in and out of New York City were to change radically, perhaps not immediately but conceivably in the next 10 or 20 years. In this regard, the New York State Comptroller has asked assurances before lending his support in the cases of moral obligation created heretofore that these obligations have only the remotest possibility of being honored. It should be noted that a 50% increase in tolls would produce approximately \$40,000,000 of additional revenues and, thereby, \$430,000,000 in debt issuing capability. These figures are based on 1970 traffic and, while an increase in the fare might temporarily level off

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

or reduce traffic, use of these facilities should increase in the years ahead.

“The \$40,000,000 of additional revenue projected to permit about \$430,000,000 of debt capital is based on a 6% interest cost, the debt to mature in approximately 40 years, and the approximate \$40,000,000 annual transportation surcharge to cover annual debt service 1.4 times. The facts that the Port of New York Authority will continue to retain its current income (\$1.00 round trip) on the bridges and tunnels, that there would be a two-State moral guarantee these revenues will not decrease from their recent highest levels, and there is the probability of increase in these revenues through additional traffic, should enable the Port of New York Authority Consolidated Bonds to remain a highly rated investment security. Since the Consolidated Bond Reserve Fund and the General Reserve Fund have been left intact for building the equity for future Port projects, this plan might be more palatable to the present holders of the Port Authority Consolidated Bonds than would the next plan discussed.

“The major advantage of this plan is that the bonds secured by these toll increases would sell readily; their security, of course, would depend on tunnel and bridge traffic, but the new bonds would have a first lien on any increased amount of fares of these facilities.

Excerpts From Stipulation Among Counsel
Dated December 20, 1974

“There are several drawbacks to this approach, however: (a) a monetary inducement (similar to that required in Triborough Bridge experience) would be necessary simply to make bond holders ‘go to the trouble’ of consenting to the amendment by sending in their proxy statement. This consideration would be affected by the distribution of the issue. (b) The difference made up by the States might dwindle since gross revenue guarantees do not provide for the increases in operating expenses incurred in operation of the bridges and tunnels. An additional fare increase might therefore be required to provide sufficient coverage to permit issuance of any additional Consolidated Bonds. (c) The Port Authority would give up some of its financial independence from the States and could be placed in competition with other State agencies for legislative appropriations. (d) The proceeds of the fare increase would have to be used for limited and specific interstate transportation [sic] purposes to avoid ‘head tax’ problems.

- “(2) An alternative plan, which would not involve state action, involves restructuring the present Consolidated Bond Reserve Fund into a limited size fund (similar to the General Reserve Fund) with excess revenues to flow to a new ‘Transportation Fund’ to be pledged to debt service on a ‘Transportation Bond’ series. The level chosen for the Consolidated Bond Reserve Fund may be a fixed one, or on some

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

sliding scale, as is the General Reserve Fund. The size of the Transportation [sic] Fund created would be fixed also as determined by projects to be undertaken. The flow-through of funds would require approval of 60% of aggregate bond holders, because the use of these funds for passenger rail transportation purposes is prohibited by the 1962 Covenant and is limited by the Series Resolution of each issue of Consolidated Bonds. As in the previous case, some monetary inducement would have to be offered to present bond holders to obtain their consent; once again, the percentage increment in coupon rate would be determined by the distribution of the issues and by the coupon of each Series. It is important to note that all Port facilities would be contributing to the excess revenue flow. (In 1970 excess available revenues of the Port Authority were \$30 million.) However, it should be noted that some of this excess is already pledged to bank loans. This would permit, upon termination of the bank loan agreements, flexibility on the part of the Port Authority Commissioners and the Governors of the two States; if a greater involvement in mass transportation were deemed necessary, tolls, fees, or other charges might be increased (subject in some cases to approval by the U. S. Secretary of Transportation) without recourse to the State legislatures. A careful analysis of projected revenues is, of course, necessary to

Excerpts From Stipulation Among Counsel
Dated December 20, 1974

ensure that debt service on Consolidated Bonds would be covered, and that there would still be a sufficient flow into the Transportation Fund to permit coverage of debt service on passenger rail transportation bonds. This alternative will stand up only if there is sufficient flow of revenues to provide a sizable Transportation [sic] Fund from year to year. Potential bond holders must be assured from projections that the Port Authority can flow through revenues as necessary to meet debt service. Because of the second lien aspect these bonds might be more difficult to sell than those of the first alternative. In addition, assurance must be provided to present bond holders that their security will not be diluted by too many unprofitable projects. Historical revenues (see Exhibit 1), furthermore, show that the Port Authority would be able to support approximately the same amount of passenger rail transportation [sic] debt (without any toll increase) under this plan as it would with a bridge and tunnel toll increase under the previously described plan. While the fare and toll increases of 50% might bring in approximately \$40 million annually (not allowing for increase in operating expense, consequent further toll increase, and possible traffic dropoff), Exhibit 1 shows the excess revenues from all facilities to be about \$30 million in 1970.

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

“If an annual amount of \$30 million continued to be available for debt service on transportation bonds, then, at a rate of 6%, about \$325,000,000 in debt could be supported at a coverage of 1.4 times debt service. This figure does not give consideration to the possible growth in Port Authority normal operating revenues, and the potential savings in current debt charges which might be saved by extending the maturities in refunding part of the bank debt.

- “(3) A third solution would involve a bi-State guarantee of the level of the General Reserve Fund, such that all Consolidated Bond holders would benefit thereby. This would be a moral obligation of the New York State Urban Development Corporation type, and would allow use of funds by the Port Authority at its discretion. This course of action would essentially be a guarantee of the payment of the Port Authority’s debt service, since the General Reserve Fund is maintained from net revenues after debt service. It is felt that bond holder approval of expenditure for rail purposes would *still* be required in the selection of this alternative. The States’ contingent liability would be significantly greater with this approach, and therefore this alternative is the least attractive of the three as to Port Authority autonomy, although perhaps the most appealing to present bond holders.” (Stip 242-251) * * *

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

9. In June 1972 it was reported that on the basis of an engineering cost study by Louis T. Klauder & Associates, the Port Authority and New Jersey Department of Transportation concluded that the proposed extension of PATH via Newark Airport to Cranford was not economically feasible under the terms of subparagraph (b) of the 1962 Covenant. Under the Cranford Plan, the Central Railroad of New Jersey would have continued its commuter operations into Newark from points west of Cranford and would have competed with the Cranford service proposed for PATH.

10. In June 1972, the State of New York passed a bill repealing the 1962 Covenant. Ch. 1003, Laws of N.Y. 1972. Governor Rockefeller's message on the signing of that legislation stated:

"I am approving this bill in order to give incentive to the Port of New York Authority to proceed with urgently needed mass transportation facilities in the metropolitan region.

"Passed with overwhelming bipartisan support in both houses of the Legislature, the bill removes the absolute statutory prohibition against the use of the revenues of the Port of New York Authority for railroad purposes. That statutory covenant, together with the provision of the bi-state compact creating the Authority that neither State will construct competing facilities within the Port District, could forever preclude the two states from undertaking vitally needed mass transportation projects. In removing the present restriction, the bill would

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

not jeopardize the security of Port Authority bondholders or their rights to maintain that security.

“My signature on this bill does not make it law unless the same measure is adopted by the Legislature and approved by the Governor of New Jersey. In the period immediately ahead, I shall be working with New Jersey on this question and will be prepared to suggest and approve amendments to the bill which would preserve the traditional high reputation of the Port Authority’s obligations within the investment community. I would be prepared to submit such amendments either in the next regular session of the Legislature or, if the need arises, at a special session. In the interim, the Commissioners of the Port Authority can proceed with urgently needed mass transportation projects and the construction of the other vital construction activities in which the agency is engaged.

“New York, by the enactment of this measure, is taking an essential step in its long-range effort to realize the full potential of the Port Authority in meeting the total transportation needs of the New York-New Jersey port district. The Port Authority’s active participation in helping to solve the problems of mass transportation in the New York City metropolitan area will inure to the benefit not only of millions of area residents generally, but also to the port facilities operated by the Authority and the workers and businesses that rely on them. This bill is consistent with the original purpose of the Port Authority—to ensure the coordinated development

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

of terminal, transportation and other facilities of commerce in and about the port district for the greater benefit of the people of New York and New Jersey.

"The bill is approved.

Nelson A. Rockefeller"

McKinney's Session Laws of N.Y., 1972 at 3411-12. The State of New Jersey failed to approve the necessary concurrent legislation.

D. The November 1972 Governors' Agreement

1. On November 15, 1972, following a series of meetings among Governors Cahill and Rockefeller and the Commissioners of the Port Authority, the Governors announced agreement on a bi-State plan of major rail mass transportation development by the Port Authority. The Plan provided for the extension of PATH via Newark Airport to Plainfield, direct rail service from Kennedy Airport to New York City and direct rail service to Penn Station, New York for riders of the Erie Lackawanna Railroad in 6 northern New Jersey counties and 2 counties in New York. The estimated total cost of the plan was \$650,000,000 and it was estimated that the Port Authority would invest between \$250,000,000 and \$300,000,000. The Governors also proposed to eliminate subparagraph (b) of the 1962 Covenant with respect to bonds issued subsequent to the enactment of the legislation proposed by the Governors. (Stip. 251-253a) * * *

2. On December 11, 1972 the New Jersey Senate held an information session to consider the Port Authority mass

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

transit bills. * * * Representatives of the Port Authority and of Governor Cahill's office stated that the State of New Jersey would have to commit substantially all of the funds then available to the State of New Jersey from the federal Urban Mass Transportation Administration and, in addition, advance \$40,000,000 of its own funds to be repaid over the 30-35 year life of the Plainfield project. (Stip. 253a) * * *

3. The legislation embodying the 1962 Covenant was amended effective May 10, 1973 by the States of New Jersey and New York (Chs. 207 and 208, Laws of New Jersey of 1972, Ch. 1003, Laws of New York of 1972, Chs. 317 and 318, Laws of New York of 1973), to repeal subparagraph (b) of the 1962 Covenant with respect to bonds issued after the date of the legislation. Section 3 of the New Jersey statute provided:

"The amendment made by section 2 of this act [the repealer] shall not take effect with respect to the covenant and agreement made by the States of New York and New Jersey in clause (b) of the first paragraph of section 6 of both chapter 8 of the laws of New Jersey of 1962 and chapter 209 of the laws of New York of 1962 with the holders of 'affected bonds' (as defined in said section 6) issued and outstanding and unpaid on the effective date of this act." § 3, Ch. 208, Laws of N.J., 1972; N.J.S.A. 32:1-35.55(a).

The introductory statement appended to the New Jersey bill provided:

"This bill provides that an extension of rail transit lines between the city of Newark and the city of

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

Plainfield shall be part of the Hudson tubes extensions.

“In addition, the bill authorizes improvements to railroad lines connecting with PATH to provide for connections between passenger lines and branches of the Erie-Lackawanna Railroad and the Penn Central Railroad. This will result in improved rail transit service and direct access to and from midtown Manhattan for commuters and residents of Bergen, Essex, Passaic, Morris, Somerset and Union counties in New Jersey and Rockland and Orange counties in New York State.

“The bill is also designed to preclude the application of the 1962 covenant to holders of bonds newly issued after the effective date of this act, while maintaining in status quo the rights of the holders of the bonds issued after March 27, 1962 (the effective date of the 1962 covenant legislation) but prior to the effective date of this act.”

4. Port Authority Consolidated Bonds issued prior to May 10, 1973 have varying maturity dates from 1993 to 2007 (unless earlier redeemed).

5. The Erie Lackawanna Direct Access Plan referred to [above] involves the construction by the Port Authority of connecting tracks to Penn Central in Kearny for the Erie Lackawanna Morris & Essex line and in Secaucus for the Bergen County, Pascack Valley and Main lines of the Erie Lackawanna, the construction of a new bridge over the Hackensack River and the construction of a new railroad yard as well as major improvements to Penn Station,

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

New York. Under this proposed service, Erie Lackawanna riders could either go directly to Penn Station in mid-Manhattan or continue to transfer at Hoboken to PATH for lower Manhattan. At present, there is no direct ride into Manhattan for any Erie Lackawanna rider. (Stip. 256-257) * * *

8. During the December 1972 information session conducted by the New Jersey Senate the Port Authority proposed to finance the \$150,000,000 estimated costs of the Lackawanna program by means of a \$100,000,000 federal grant charged to the State of New Jersey and the issuance of \$50,000,000 of Port Authority bonds. The debt service on the Port Authority bonds would be financed by making available to the Port Authority a through charge approximately equal to the existing PATH fare at the time of implementation of the direct service plan. The Erie Lackawanna would be responsible for collecting the through charge either from its passengers or from the operating subsidy paid to the Erie Lackawanna by the State of New Jersey. On this basis it was stated that this proposed plan could be effected within the terms of the 1962 Covenant.

9. The PATH extension to Plainfield via Newark Airport was projected during the December 1972 information session to involve capital costs of \$240,000,000, of which \$150,000,000 would be in the form of a federal grant charged to the State of New Jersey, the Port Authority would invest \$50,000,000 and the State of New Jersey would advance \$40,000,000. Louis Gambaccini, Director of the Department of Rail Transportation of the Port

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

Authority, stated that the Port Authority expected this project to be "barely doable on a self-supporting basis" assuming that these capital funds were available only because the Plainfield project would take over the major portion of the service provided by the Central Railroad of New Jersey and because additional passengers could be served through the construction of a park-ride facility near the Garden State Parkway and by routing the Plainfield extension to a point from which it could serve Newark Airport. Debt service and operating expenses incurred in connection with the Plainfield project would be obtained by PATH directly from passengers on the assumption that the user of the proposed rapid transit service would pay approximately the same fare as was charged by the Central Railroad of New Jersey.

The State of New Jersey's commitment to advance up to \$40 million of the necessary financing is evidenced by the following letter, dated August 10, 1973, from the Governor of New Jersey to the Chairman of the Port Authority:

"Dear Mr. Chairman:

"As you know, New York has now enacted legislation identical with our Chapters 207 and 208, P.L. 1972. The Port Authority is thus authorized, inter alia, to:

"(1) Construct improvements providing for direct rail service to Pennsylvania Station, New York, and

"(2) Provide as a Port Authority Trans-Hudson System (PATH) extension rail link between Newark International Airport and Penn Station, Newark, between Newark International Airport and Plainfield, New Jersey, which will also provide service between Plainfield and Newark.

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

“The projects are more precisely defined in the laws cited above.

“When I joined with Governor Rockefeller in announcing these plans in November, we stated that these plans anticipated that federal mass transit and airport aid funds would be available to cover a substantial portion of the capital improvement costs with the remainder to be covered by Port Authority funds, revenues from the projects and state capital contributions.

“As to the direct rail links of the Erie Lackawanna to Penn Station, New York, you will recall that we contemplate no state contributions and rather envision the amortization of your capital cost (net of Federal Aid) through operating revenues. The PATH extension does, however, involve capital contributions by the State of New Jersey. In this connection it is important to note that this project will obviate significant programmed capital expenditures by the State in connection with Central Railroad of New Jersey main line improvements and that increasing operating subsidies being paid by the State to that railroad will be substantially reduced when the new program has been completed.

“Although the necessary agreements to effectuate all the matters referred to in this letter will be prepared over some period of time, I know that it is essential to your planning that the State of New Jersey confirm its intention to assume a portion of the costs as outlined below. For example, I understand that the Port Authority is presently preparing

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

preliminary applications to the U.S. Department of Transportation for urban mass transportation funds. It is for that reason that I am sending this letter to you today.

“We have agreed that the State of New Jersey will advance up to \$40 million for its share of the capital cost of the PATH extension project. I understand that you have included in the capital cost of this project the cost of all labor protective agreements which may be required under the Urban Mass Transportation Act such as for Central Railroad of New Jersey employees. The capital contribution of New Jersey would be paid over to the Port Authority at the time the project is certified. I understand that the agreement with respect to this advance will provide for repayment to the State of New Jersey from net project revenues after the operation and maintenance and debt service charges have been satisfied.

“While I look to the Port Authority to negotiate for all necessary operating rights, particularly those over the Central Railroad of New Jersey property, I recognize that the successful implementation of the project requires that the C & J operating rights be acquired at minimal cost. I have pledged the State’s complete cooperation in achieving this end.

“As was always contemplated, the State of New Jersey will cooperate fully in securing the necessary Federal aid. To this end the State will act as Federal aid sponsor for the project designed to improve direct access to Pennsylvania Station, New York.

Excerpts From Stipulation Among Counsel
Dated December 20, 1974

“The State will also cooperate with respect to securing Federal aid for the PATH extension project, subject only to our approving the preliminary and final Federal aid application prior to submission. Obviously we must reserve this right of approval since the exact amount of our contribution could be less than \$40 million if a substantial portion of this project could be finally qualified or characterized as an adjunct to the Newark International Airport.

“I trust the Port Authority will continue to progress the planning and design of these projects so that they may be implemented as quickly as possible to the benefit of the people of New Jersey.

Sincerely,

/s/ William T. Cahill
 GOVERNOR”

(Stip. 258-262) * * *

10. The 1973 [New Jersey Department of Transportation Transit Development] Program stated:

“The key to the long-range development of the public transportation plan in the [Hunterdon-Somerset-Middlesex-Union Counties] corridor is the extension of the Port Authority Trans-Hudson (PATH) rapid transit system. It is anticipated that PATH will be extended from its present terminus at Penn Station, Newark to Newark Airport and a proposed transportation center terminal in Plainfield, Union County. The commuter rail operations of the Central Railroad of New Jersey and the Reading will be restricted to points west and south of Plainfield. Commuter bus operations will be realigned to

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

provide feeder service from communities in the PATH service area and various points to the west of Plainfield.

“The institution of PATH service will revitalize the public transportation in the corridor and provide an attractive alternative to the private auto for journey-to-work trips. It is anticipated that PATH will reverse the downward ridership trend in both rail and bus modes. The complementary connecting service will be provided west of Plainfield along the CNJ Mainline and the Reading Company trackage. . . . (Stip. 266-267) * * *

11. A booklet concerning the PATH-Plainfield project, issued by PATH in January 1974, contained the following information “underlin[ing] the importance of the proposed PATH extension”:

“The growth and development of communities along the CNJ Mainline have been spurred directly by the presence of the railroad. They are primarily residential in nature, with a large number of journey to work commuters. The 7,800 passengers who commute each day to Newark and New York City on the CNJ Mainline represent a key economic asset to their communities, earning an estimated \$100 million annually.

“Highway access to this Corridor is extremely inadequate and the area traditionally has needed high capacity transit services. The area continues to be strongly dependent on the CNJ service, supplemented by several commuter bus lines.

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

“Further, the communities in the Corridor, particularly Plainfield, are counting heavily on continued rail service to spur redevelopment programs in the older sections and support the economic health of the entire area.

“The plight of the CNJ, highway congestion, the energy crisis, and the need for continued economic development underline the importance of the proposed PATH extension.

“Substantial benefits will accrue to Newark and Elizabeth as a result of the PATH project. Most important for Newark is direct rail access to Newark International Airport. Although economically unfeasible in the past as a separate service, the changed economics of the Plainfield Service Corridor Project now make airport access possible.

“This rail access will provide increased accessibility to job opportunities for Newark’s large work force and will enhance Newark’s function as the regional center of commerce and industry. Further, the area adjacent to PATH’s Newark International Airport/McClellan Street station will offer Newark opportunities for airport-related development in conjunction with its planned redevelopment programs.

“Elizabeth’s Central Business District also will benefit from direct rail access to the airport, which will be only four minutes away on the PATH extension. Elizabeth’s business community and residents further will benefit from the inauguration of direct rail rapid transit service into Lower Manhattan. . . .

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

“This project will provide significant economic benefits to the entire area from Newark to Plainfield and beyond. The communities along the right-of-way will benefit from improved transit service and the new advantage of direct airport access. This will enhance property values in suburban communities which have developed along the rail right-of-way and stimulate the economic growth of the urban centers. Job opportunities will be created on the transit system and its related facilities and within the off-airport satellite development which is expected to develop. In addition, during the development period, construction will be a significant source of employment for skilled and semi-skilled labor. . . .

“The project is complementary to the anticipated land development in the Plainfield Corridor and consistent with actual or planned land use. This is primarily because communities along the right-of way have developed adjacent land uses in harmony with existing railroad passenger and freight operations. The primary impact will be one of environmental conservation by maintaining and upgrading rail service in the Corridor.

“Based on 1985 traffic estimates, the PATH extension to Plainfield will generate about 9 million automobile and bus miles in travel to and from Corridor stations. By contrast, if rail service is abandoned in the Corridor, an estimated 46.5 million auto and bus miles would be required yearly on the roads leading to Newark and New York City. The saving of 37.5 million vehicle miles per year will result in less highway congestion and less air pollution. In

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

addition, it will be far more efficient in terms of the utilization of scarce energy resources. . . .

“The estimated gross project cost of the Plainfield Corridor Service Project is \$221,510,000, which will be financed in part by an 80 per cent capital grant under the Federal Urban Mass Transportation Program. The 20 per cent local contribution will be provided by the Port Authority Trans-Hudson (PATH) Corporation, through funds of The Port Authority of New York and New Jersey and, if necessary, by a financial advance from the state of New Jersey to be repaid by The Port Authority.

“The PATH extension to Plainfield is planned to be achieved on a financially break-even basis, thus permitting the taxpayers of the State of New Jersey to be relieved of all subsidy obligations for CNJ service in this area. Further, the State will not have to bear the responsibility for capital improvement programs which had been identified for the CNJ in the Corridor.

“Due to the inherent deficit nature of the existing PATH system and legal constraints on the Port Authority, the project cannot be accomplished without the assistance of the Federal grant.”

On April 1, 1974 PATH submitted an application to the federal Urban Mass Transit Administration for a capital grant in the amount of \$201,527,000 to cover 80 per cent of the capital costs of the Plainfield project. That application has been deferred. (Stip. 267-270) * * *

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

12. * * * On October 24, 1974, Frank C. Herringer, the Administrator of UMTA, stated that his agency had deferred action on the application for approximately \$200 million in UMTA funds for the PATH-Plainfield project because the application submitted by the Port Authority in April 1974 failed to include a certification of how the local financial share of approximately \$50 million would be obtained. According to Administrator Herringer, the Port Authority had been advised of this deficiency in June 1974, but had not responded to this advice.

IV. FEDERAL MASS TRANSPORTATION POLICY

* * *

3. In July 1964, Congress enacted the Urban Mass Transportation Act of 1964 (49 U.S.C. §§1601 et seq.), expressing for the first time a federal legislative interest in the support of urban mass transportation systems. In enacting the 1964 act, Congress found (49 U.S.C. §1601 (a)):

“(1) that the predominant part of the Nation’s population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

“(2) that the welfare and vitality of urban areas, the satisfactory movement of people and goods within such areas, and the effectiveness of housing, urban renewal, highway and other federally aided programs are being jeopardized by the deterioration or inadequate provision of urban transportation facilities and services, the intensification of traffic

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

congestion, and the lack of coordinated transportation and other development planning on a comprehensive and continuing basis; and

“(3) the Federal financial assistance for the development of efficient and coordinated mass transportation systems is essential to the solution of these urban problems.”

The purposes of the 1964 act were declared to be (49 U.S.C. § 1601(b)) :

“(1) to assist in the development of improved mass transportation facilities, equipment, techniques, and methods, with the cooperation of mass transportation companies both public and private;

“(2) to encourage the planning and establishment of areawide urban mass transportation systems needed for economic and desirable urban development, with the cooperation of mass transportation companies both public and private; and

“(3) to provide assistance to State and local governments and their instrumentalities in financing such systems, to be operated by public or private mass transportation companies as determined by local needs.”

4. The scope of the 1964 Act was expanded by the Urban Mass Transportation Assistance Act of 1970 on the basis of a finding by Congress (49 U.S.C. § 1601a) “that the rapid urbanization and the continued dispersal of population and activities within urban areas has made the ability of all citizens to move quickly and at reasonable cost an urgent national problem.”

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

5. In November 1974, Congress enacted the National Mass Transportation Assistance Act of 1974, which provides \$11.8 billion over the next 6 years for mass transit capital expenditures and, for the first time, operating subsidies. Of the \$3.975 billion in federal funds for operating subsidies provided by the Act, New Jersey would receive approximately \$177 million, New York City would receive \$563 million and the rest of New York State would receive \$101 million. The federal operating subsidies are required to be matched by an equal amount of State or local tax revenues used for mass transit operations or the undistributed cash surplus, replacement or depreciation funds, cash reserves or new capital provided by a public or private transit system.

The Act contained the following findings by Congress:

“(1) over 70 per centum of the Nation’s population lives in urban areas;

(2) transportation is the lifeblood of an urbanized society and the health and welfare of that society depends upon the provision of efficient, economical and convenient transportation within and between its urban area;

(3) for many years the mass transportation industry satisfied the transportation needs of the urban areas of the country capably and profitably;

(4) in recent years the maintenance of even minimal mass transportation service in urban areas has become so financially burdensome as to threaten the continuation of this essential public service;

(5) the termination of such service or the continued increase in its cost to the user is undesirable,

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

and may have a particularly serious adverse effect upon the welfare of a substantial number of lower income persons;

(6) some urban areas are now engaged in developing preliminary plans for, or are actually carrying out, comprehensive projects to revitalize their mass transportation operations; and

(7) immediate substantial Federal assistance is needed to enable many mass transportation systems to continue to provide vital service.”

On November 19, 1974, during the Senate debate with respect to the Act, Senator Williams, one of the principal sponsors of the Act, stated:

“As we all know, last winter’s shortage of petroleum products created a crisis situation in the United States. We have seen gas station closings, long waits to obtain fuel, complex allocation formulas and the possibility of eventual rationing. And this winter we may once again be confronted with a similar situation.

“One of the ways in which we can combat the energy shortage is by improving urban mass transportation. . . .

“If we are to alleviate the energy crisis, remove traffic congestion and the environmental pollution which results, existing transit systems must be kept in operation, their services expanded and new ones must be built. . . .

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

“Now there is a great national stake in maintaining and improving our Nation’s mass transit programs.

“The issue of mobility and the quality of life afforded thousands upon thousands of our citizens who must depend upon urban mass transportation is at stake.

“To take no action in response to the combined transit and energy crisis would be to condone further deterioration.”

Congressman Minish, another of the principal sponsors of the Act, stated:

“[W]ith our present energy situation and the threat of a renewed crisis in this area, the need for mass transit aid has become ever more critical. Buses and rail cars consume only a fraction of the energy that a private automobile does, yet we cannot expect the commuting public to reduce significantly its use of private cars if we do not provide suitable alternative sources of transportation.

“In conclusion, let me say there is a great national stake in maintaining and improving our mass transit systems. The issue here is the quality of life afforded to millions of our citizens. To take no action at this point, or to defer action, would be, in effect, to condone further deterioration of our environment, our energy status, and our quality of life. This must not be permitted to happen.”

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

Other Senators and Representatives expressed their support for the position of Senator Williams and Representative Minish.

Representative Abzug, speaking in support of the Act, stated:

“This [Federal] commitment to aid and expand existing mass transit systems and develop new ones is an essential ingredient of a rational Federal policy on energy use, economic development in the large urban areas as well as rural areas, and protection of the environment. . . .

“This bill represents a commitment toward the principle of operating subsidies and recognition of the fact that highway spending is the most expensive way to move the least number of people, at a terrible price to masses of our citizens, the viability of our cities, and the quality of our environment.

“Increased mass transit assistance is needed not just as a political response, but as an urgent initiative. It is needed not just to prevent long lines at the gas stations but for the positive good that it can create.

“Transportation affects every segment of our economy and our lives. It affects where people work and what kind of jobs they can get. For the carless poor, it means very basically the right to work because without public transit they cannot get to their jobs. In rural areas, the complete absence of transit services means that the poor cannot have access to health clinics, educational opportunities and jobs.