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July 30, 2015

VIA ELECTRONIC FILING

238952

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

ENTERED
Office of Proceedings
July 30, 2015
Part of
Public Record

Re: **Docket No. AB-550 (Sub-No. 3X),
R.J. Corman Railroad Company/Allentown Lines, Inc. –
Abandonment Exemption -- In Lehigh County, Pa.**

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding is the Reply of R.J. Corman Railroad Company/Allentown Lines, Inc. ("RJC") to James Riffin's "Notice of Intent to File an Offer of Financial Assistance and Motion for Condition."

RJC has understands that the scanned documents attached as Exhibits A and B to today's filing may be difficult to read at best, given the quality of the reproductions. This is because the exhibits are drawn from Interstate Commerce Commission documents reproduced from sub-optimal quality microfiche records housed the Board's library. If so requested, RJC would be willing to supply under separate cover photocopies of the same exhibits, which may prove to be somewhat more legible than the ones appended to today's electronic filing.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,



Robert A. Wimbish
Attorney for R.J. Corman Railroad Company/
Allentown Lines, Inc.

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-550 (SUB-NO. 3X)
R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.
-- ABANDONMENT EXEMPTION --
IN LEHIGH COUNTY, PA.

**MOTION FOR LEAVE TO SUPPLEMENT THE RECORD
AND SUPPLEMENTAL INFORMATION IN RESPONSE TO
JAMES RIFFIN'S NOTICE OF INTENT TO FILE AN
OFFER OF FINANCIAL ASSISTANCE AND MOTION FOR CONDITION**

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**ATTORNEYS FOR R.J. CORMAN
RAILROAD COMPANY/ALLENTOWN
LINES, INC.**

Dated: July 30, 2015

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-550 (SUB-NO. 3X)
R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.
-- ABANDONMENT EXEMPTION --
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**MOTION FOR LEAVE TO SUPPLEMENT THE RECORD
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OFFER OF FINANCIAL ASSISTANCE AND MOTION FOR CONDITION**

On July 14, 2014, James Riffin ("Riffin") filed in this proceeding what he has styled as a "Notice of Intent to File an Offer of Financial Assistance and Motion for Condition" (the "July 14 NOI") to acquire and/or subsidize certain overhead trackage rights that Riffin asserts Delaware and Hudson Railway Company, Inc. ("D&H") continues to possess on an approximately 3.5-mile segment of railroad line (the "Whitehall Segment") that R.J. Corman Railroad Company / Allentown Lines, Inc. ("RJC") proposes to abandon in the above-docketed abandonment petition for exemption proceeding.¹ Riffin's July 14 NOI raises new issues related to the legal and regulatory status of a larger line segment ("Line 503A") of which much of the Whitehall Segment is a part, and includes a request (styled as a motion) for the Board to issue a restrictive condition upon RJC's planned liquidation of the track and right-of-way comprising the Whitehall Segment. Riffin's July 14 NOI, to which RJC believes it is entitled to respond, has prompted RJC to dig deeper into obscure Interstate Commerce Commission ("ICC") records, resulting in the discovery of an old ICC proceeding involving the majority of Line 503A that

¹ The subject Whitehall Segment extends from milepost 93.18 at Allentown, PA, to milepost 96.709 (the end of the line) at Whitehall, PA.

bears upon Riffin's July 14 NOI and his offer of financial assistance ("OFA") ambitions. As set forth herein, RJC requests leave to supplement the record, and RJC then offers for the Board's consideration the additional information that RJC has uncovered.

REQUEST FOR LEAVE TO SUPPLEMENT THE RECORD

As is already reflected in this record, no customer has come forward objecting to RJC's proposed abandonment, and no party has disputed that RJC should be relieved of its common carrier obligation on the Whitehall Segment. However, Riffin contends that D&H possesses overhead trackage rights over the Whitehall Segment and on Line 503A more generally. Moreover, Riffin requests in his July 14 NOI that RJC should not be permitted to salvage the track on the Whitehall Segment or to dispose of the underlying right-of-way at this time, because such actions would thwart Riffin's attempt to acquire or to subsidize D&H's long-inactive trackage rights over Line 503A, which is included as a target of Riffin's OFA effort responsive to D&H's currently-pending "omnibus" trackage rights discontinuance filing in Docket No. AB-156 (Sub-No. 27X).²

In its June 10, 2015 filing in this proceeding, RJC argued in detail that D&H's trackage rights over the Whitehall Segment – and, indeed, D&H's overhead trackage rights over a larger railroad line segment designated by the United States Railway Association's Final System Plan as Line 503A, running along the western bank of the Lehigh River and extending between milepost 93.3 at Allentown and milepost 119.1 at Lehigh, PA – had been extinguished long ago, and, accordingly, that Riffin has no basis today to acquire D&H rights that no longer exist. Riffin has argued, on the other hand, that D&H needed, but has never

² Riffin easily could have and indeed should have presented his motion for a condition sooner than July 14, particularly since Riffin has indicated an intent to file an OFA in the aforementioned AB-156 (Sub-No. 27X) proceeding to which the subject abandonment proceeding may or may not be related, depending upon the Board's upcoming ruling concerning the status of D&H's overhead trackage rights on Line 503A.

obtained, regulatory authority to discontinue its trackage rights on Line 503A, so that those rights may be acquired (under Riffin's peculiar and highly questionable "last man standing" legal theory) or subsidized pursuant to the Board's OFA rules. In support of his argument, Riffin has submitted as an exhibit to his July 14 NOI selected portions of the record in a 1984 Conrail abandonment proceeding docketed as AB-167 (Sub-No. 623N).

Riffin's July 14 NOI (and particularly his motion for a restrictive condition limiting RJC's disposition of its assets) has prompted RJC, essentially an unwitting party pulled into the vortex of Riffin's ill-considered OFA efforts targeting D&H's trackage rights, to delve deeper into ICC records to see if there might yet be more information bearing on D&H's Line 503A trackage rights interests. RJC has discovered that D&H sought and obtained ICC authority more than 30 years ago to discontinue its overhead trackage rights operations over roughly 80% of Line 503A. Although this is admittedly a later point in the Board's evaluation of RJC's abandonment petition, RJC hereby respectfully requests that it be permitted to supplement the record in the interests of ensuring that the Board has a more complete understanding of D&H's legal status with respect to Line 503A, of which, again, the Whitehall Segment is a part.

SUPPLEMENTAL INFORMATION

As the record in this case already establishes, Conrail invoked in 1981 the unique-to-Conrail abandonment processes then available to it under the 3-R Act³ at 45 U.S.C. § 748 to abandon 21.3 miles of the 25.8-mile Line 503A from milepost 98.0 at Catasauqua, PA, northward to milepost 119.3 at Lehighton, PA (the "Lehighton Segment"), pursuant to ICC Docket No. AB-167 (Sub-No. 451N). Conrail's Lehighton Segment abandonment filing mentioned D&H's overhead rights. The ICC's March 11, 1982 decision in that proceeding

³ In this case, Section 308 of the Regional Rail Reorganization Act of 1973 ("3-R Act"), as enacted by Section 1156 of the Northeast Rail Service Act of 1981.

granting Conrail's abandonment request made no mention of D&H's trackage rights whatsoever, suggesting that the ICC granted Conrail's abandonment request absent any condition requiring formal termination of D&H's overhead rights as a prerequisite to track salvage.

Also reflected in the record is that on April 9, 1984, Conrail filed an abandonment application under ICC Docket No. AB-167 (Sub-No. 623N), this time to abandon, among other things, another segment of Line 503A from milepost 96.6 (at about Whitehall, PA) to milepost 98.0 at Catasauqua (the "Catasauqua Segment"). In the transmittal letter accompanying its April 9, 1984 filing, Conrail included a comment concerning the presumed existence of D&H trackage rights over the Catasauqua Segment, indicating that Conrail would not consummate its abandonment unless or until D&H's trackage rights were formally terminated.⁴ On July 19, 1984, the ICC issued a decision in the Sub-No. 623N proceeding granting Conrail's request to abandon the Catasauqua Segment,⁵ once again with no mention of D&H's trackage rights and no condition barring consummation until the discontinuance of D&H's trackage rights.

Not reflected in the record until now is that D&H formally discontinued its trackage rights on the Lehigh Segment in 1984. Therefore, *at a minimum*, the portion of Line 503A from its northern terminus at Lehigh to milepost 98.0 at Catasauqua has been fully abandoned. Specifically, Conrail, acting on behalf of D&H, filed a petition for an exemption in ICC Finance Docket No. 30334 in November of 1983 to discontinue D&H's trackage rights over

⁴ In the interest of full disclosure, Conrail may have remarked about the need for D&H discontinuance authority as a prerequisite to abandonment in light of ICC guidance in a contemporaneous case. Specifically, the ICC has stated in a separate proceeding that D&H's trackage rights over Conrail line segments authorized for abandonment under Section 748 of NERSA may only be terminated by way of formal discontinuance, and that, accordingly, Conrail could not salvage any line segment over which D&H possessed trackage rights absent an ICC-authorized D&H trackage rights discontinuance. See Guilford Transp. Industries, Inc. – Control – D&H Ry. Co., 366 I.C.C. 396, 417 (1982) ("Guilford"). The ICC's pronouncement in Guilford cut against certain arguments regarding NERSA abandonments that RJC had advanced in its June 10 filing, and RJC recognizes that it has an obligation to disclose to the Board case law that may be contrary to RJC's interests. But RJC cannot help but question why the ICC did not address this issue in either the AB-167 (Sub-No. 451N) or AB-167 (Sub-No. 623N) proceedings.

⁵ The ICC's July 19, 1984 decision in the Sub-No. 623N proceeding, which appears not to be part of the record to this point, is attached hereto as Exhibit A.

the 21.3-mile Lehigh Segment, which Conrail then had plans to salvage. The record in the FD 30334 proceeding includes a D&H letter dated June 25, 1982, in which D&H conditionally consented to Conrail's discontinuance filing (on D&H's behalf), subject to certain conditions bearing upon D&H's continued exercise of overhead trackage rights over Conrail's parallel Allentown-Lehigh line on the opposite side of the Lehigh River. Also in the record is a letter from D&H filed with the ICC on February 13, 1984, advising the ICC that D&H "concur in" the trackage rights discontinuance request filed on its behalf for the "Lehigh Branch."

The ICC granted D&H's trackage rights discontinuance exemption in a decision served on April 27, 1984.⁶ The decision did not discuss what affect the formal discontinuance of overhead rights over the majority of Line 503A (the Lehigh Segment) had with respect to D&H's rights generally over Line 503A. Nevertheless, all involved would have perceived that the cessation of all service over the Lehigh Segment and Conrail's subsequent salvage of the same rendered D&H's remaining overhead rights (if any) a practical nullity. In short, D&H's overhead trackage rights designed to provide it with a bridge route between Allentown and Lehigh (and to and from points beyond from either terminus as provided for in the governing agreement) became, by virtue of the regulatory processes recounted above, overhead rights between Allentown and nowhere. Practically speaking, D&H's discontinuance of its overhead rights on any portion of Line 503A would have accomplished the discontinuance of D&H's rights over the entire line segment. The Lehigh Segment's status was made abundantly clear as of Conrail's January 23, 1985 letter filing in the FD 30334 proceeding advising the ICC that D&H's discontinuance of overhead trackage rights was "effectuated" on December 15, 1984.

⁶ The entire record in the subject FD 30334 proceeding as it is available from the Board's library is attached hereto as Exhibit B.

Finally, and in the interest of full disclosure, while Conrail had remarked in filing its AB-167 (Sub-No. 623N) abandonment application for the Catasauqua Segment that D&H would need to obtain corresponding trackage rights discontinuance authorization before salvage could commence, as Riffin has pointed out, RJC can find no record of any D&H discontinuance filing for the Catasauqua Segment or for any other portion of Line 503A south of Catasauqua. Regardless, the majority of the Catasauqua Segment has been removed (except for a portion from milepost 96.709 southward, which was sold to RJC), and it appears that Conrail has taken the position since that the Catasauqua Segment is abandoned along with the Lehighon Segment.

RJC submits herewith the best copies that it can produce relating to the AB-167 (Sub-No. 623N) and FD 30334 proceedings discussed above. RJC acknowledges that the documents it has appended hereto – Exhibit A for the AB-167 (Sub-No. 623N) proceeding materials and Exhibit B for the FD 30334 materials – may be partially or entirely illegible. As explanation, the subject materials were located and reproduced at the Board's library. The Board's records in both proceedings are available only on microfiche, the quality of which is sub-optimal. The photocopy reproductions made directly from these microfiche sources is worse yet, despite best efforts to produce legible copies. Accordingly, if the Board wishes to confirm to its satisfaction the substance of the above-discussed abandonment and discontinuance proceedings, RJC encourages the Board to consult its library records.

NEXT STEPS

RJC explained in its June 10 filing why and how it believes that D&H long ago had terminated its overhead trackage rights on all of Line 503A without the need for a formal discontinuance proceeding. RJC continues to maintain that D&H no longer has trackage rights on any part of Line 503A, and the supplemental evidence that RJC has offered herein provides

additional explanation why RJC may be correct. But we now know that, without question, D&H's overhead rights over the Lehigh Segment of Line 503A (which rights, it is important to recall, entitled D&H to undertake bridge operations from Allentown through to Lehigh only) were legally terminated at least as of December of 1984. The Lehigh Segment of Line 503A has been fully abandoned for over 30 years.

While RJC believes that this new revelation is helpful, certain questions remain. For example, if D&H's discontinuance of trackage rights over the Lehigh Segment was indeed a necessary step in the Conrail abandonment process, then what does the Board make of D&H's theoretical and ineffectual overhead trackage rights on the surviving remnant of Line 503A south of Catasauqua, particularly since D&H appears to have possessed only the right to conduct through, overhead operations over Line 503A, and was not permitted to serve customers at any intermediate points? Did the D&H's rights on Line 503A terminate entirely as a practical outgrowth of the consummation of the separately-docketed Lehigh Segment abandonment and discontinuance, or do they continue to exist south of Catasauqua as a purely technical, regulatory matter. And what does the Board make of the statements contained in the 1980s era proceedings reflecting that D&H had agreed to forsake its Line 503A overhead rights in favor of existing overhead rights on a parallel-running Conrail line east of the Lehigh River?

We know, of course, that D&H has invoked the two-year-out-of-service class exemption process in Docket No. AB-156 (Sub-No. 27X) (currently pending) to discontinue whatever rights D&H may have over the surviving remnant of Line 503A to the extent that such discontinuance authority is even necessary under the circumstances. And, while RJC concurs with D&H that Riffin's "last man standing" theory to acquire such trackage rights (as opposed to subsidizing D&H's retention of those rights for up to a year) is entirely without merit, it is not

yet clear if the Board will permit Riffin to pursue a trackage rights subsidy alternative.⁷

Regardless, RJC fails to understand what public interest would be furthered by Riffin's proposal to acquire or subsidize overhead trackage rights on what remains of Line 503A, which, at best, would take Riffin or D&H from Allentown to a literal dead end at Catasauqua or Whitehall. Again, assuming D&H has any surviving theoretical presence on the southern remnant of Line 503A, RJC understands that D&H has no right under the terms of the governing trackage rights agreement to exit those trackage rights at an intermediate point such as Catasauqua or Whitehall, and so Riffin is seeking to preserve (or "continue," and the OFA provisions would have it) overhead trackage rights that for all practical purposes either ceased to exist entirely or (if the very southern portion of those rights on Line 503A has survived previous abandonments and discontinuances) slipped into irrelevance some 30 years ago.

At best, it would seem that, as a purely hypothetical exercise (considering the patent invalidity of Riffin's OFA efforts), the most that Riffin could do in connection with the subject RJC abandonment proceeding would be as follows: First, Riffin would need to subsidize D&H's presumed trackage rights over rail lines that RJC owns and operates but is not abandoning, although RJC respectfully submits that the board would be permitting an abuse of its OFA processes if it allowed Riffin to pursue such "relief." After all, D&H cannot access Line 503A under any OFA purchase or subsidy agreement absent its exercise of trackage rights to the south and east of Allentown connecting to stub-ended Line 503A. Second, and assuming Riffin's bogus OFA subsidy arrangement would allow D&H to interchange with him at all, Riffin would have to acquire RJC's Whitehall Segment from RJC via a purchase OFA (assuming

⁷ For reasons D&H has separately articulated in its AB 156 (Sub-No. 27X) proceeding, whether presented as a proposal to acquire D&H's trackage rights to subsidize the "continuation" of D&H's trackage rights operations (where there a no such operation to continue), Riffin's OFA proposal is fatally flawed, inappropriate, and should not be allowed to go forward. Accordingly, RJC's discussion here of Riffin-subsidized D&H trackage rights operations addresses only a hypothetical scenario.

that Riffin is a bona fide offeror, which RJC disputes now and would vigorously contest if Riffin were to continue in any effort focusing on the Whitehall Segment).

Riffin has not been clear in this proceeding about the objectives behind his OFA efforts for Line 503A. On the one hand, Riffin seems to target the line segment as part of his grandiose plans to establish (or revive) certain rail service options from northern New Jersey to the Scranton, PA area – but if so, then the abandonment of the Lehigh Segment nullifies that objective. On the other hand, Riffin has made vague and incomplete references to Lafarge North America (“Lafarge”), an industry located on the long-abandoned Lehigh Segment. Riffin cannot access this industry under his D&H trackage rights OFA proposal, because – (1) the line segment connecting with Lafarge (the Lehigh Segment) has been fully abandoned and D&H has terminated its overhead trackage rights over it three decades ago; and (2) he would be contractually precluded from serving Lafarge under the terms of D&H’s trackage rights agreement even if D&H’s overhead rights over the Lehigh Segment continued to exist.

Assuming, as RJC believes it must, that Riffin were to consider a purchase OFA for the Whitehall Segment as an alternative to his misguided and fatally flawed Line 503A trackage rights OFA plan, Riffin would confront the need to explain in much greater detail what purpose his OFA would serve, considering that there are no longer any shippers on the Whitehall Segment (the last active shipper having recently relocated its rail shipping operations to another point on RJC). And Lafarge, located a handful of miles north of the current end of track (whether measured from Whitehall at the end of RJC’s line or from milepost 98.0 at Catasauqua), has been without direct rail service for decades, and is relying – to the best of

RJC's knowledge – on trucks and a truck-rail transload transportation services at a relatively nearby railhead served by Norfolk Southern Railway Company (“NSR”).⁸

RJC, which has been in touch with counsel for Lafarge as a result of this abandonment proceeding, has no reason to believe that Lafarge considers direct rail access via the construction of a new line along the alignment of Line 503A to be a realistic, cost-effective service alternative, and RJC has no reason to believe that Lafarge would support Riffin's possible OFA effort. What is more, of course, any possibility that Riffin would change course and propose to acquire RJC's Whitehall Segment via an OFA process will still leave him a little more than approximately four railroad miles from Lafarge (measured from the current end of track at or near milepost 96.709). To reach Lafarge directly (which Riffin seems to imply is an objective), Riffin would have to construct a new rail line (presumably relying on the property underlying portion of the fully-abandoned Lehigh Segment north of Catasauqua) – a complex, multi-million dollar undertaking to be sure⁹ – obtain STB authorization for the new construction, and secure funding for the same.

So, were Riffin to alter his tactics in light of this new information and pursue an ill-advised Whitehall Segment purchase OFA against RJC, the Board should, at the very least, require him demonstrate not only the financial wherewithal to purchase that line segment for constitutional minimum value (accounting, of course, for RJC's existing arrangement to sell the underlying right-of-way to a willing purchaser in Trestle Redevelopment Partners at an agreed-

⁸ As a side note, assuming that Lehigh Segment had not been fully abandoned, and assuming further that Riffin could have acquired D&H's rights on that line segment under his peculiar legal theory, such rights would not have permitted Riffin (or D&H) to serve Lafarge absent modification of the governing trackage rights agreement's terms.

⁹ It may interest the Board to know that RJC's investigation indicates that NSR, decidedly not one of Riffin's fans, appears to have succeeded to Conrail's fee title interest in the land underlying the fully-abandoned Lehigh Segment. Accordingly, for Riffin to accomplish any plan he may be entertaining to construct a new rail line northward along the alignment of the Lehigh Segment to reach Lafarge, then he would have to deal with NSR.

upon purchase price), but also to demonstrate Lafarge's support for the proposal and Riffin's access to sufficient funding for such an ambitious and costly construction project.

CONCLUSION

Although not ideally-timed, RJC seeks leave to present newly-found information bearing on Riffin's attempt to insert himself into what RJC had believed would be – and still believes should have been – a fairly routine abandonment petition for exemption process. RJC is of a view that the information that it has designed to share with the Board at this late juncture is nevertheless important enough to Riffin's OFA efforts and his motion for a condition that the Board should grant RJC's motion to supplement the record, and accept the balance of this filing into the record.

The supplemental information provided herein regarding 30-year-old abandonment and discontinuance proceedings for the majority of Line 503A is helpful to the Board's analysis here and potentially also in D&H's pending trackage rights discontinuance exemption in the AB-156 (Sub-No. 27X) proceeding, but RJC acknowledges that the supplemental ICC case information supplied herewith answers some questions and highlights others that the proffered cases do not resolve. To the extent that questions remain concerning the potential scope of a Riffin's OFA efforts related to the Whitehall Segment, RJC respectfully requests that the Board provide as much guidance as it can on the issue, addressing both Riffin's current plan to target D&H trackage rights and, in the alternative, any plans he may now entertain toward acquisition of the Whitehall Segment from RJC also by way of a purchase OFA process (which RJC would vigorously challenge). In that regard, RJC hopes that the Board will acknowledge in this proceeding – in a decision that RJC continues to anticipate will still be issued on or before August 19, 2015 – that Riffin's designs on acquiring (or even subsidizing)

D&H's trackage rights over Line 503A amount to a legal nullity in that he would propose to acquire overhead trackage rights to nowhere, because the overhead trackage rights route that D&H had obtained in the late 1970s from Allentown to Lehighon over line 503A ceased to exist for all practical purposes over 30 years ago.

Respectfully submitted,

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**ATTORNEYS FOR R.J. CORMAN RAILROAD
COMPANY/ALLENTOWN LINES, INC.**

Dated: July 30, 2015

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-550 (SUB-NO. 3X)
R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.
-- ABANDONMENT EXEMPTION --
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**MOTION FOR LEAVE TO SUPPLEMENT THE RECORD
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EXHIBIT A

INTERSTATE COMMERCE COMMISSION
 CERTIFICATE AND DECISION

SERVICE DATE
 JUL 19 1984

Docket No. 43-147 (Sub-No. 42)4

CONRAIL ABANDONMENT IN LEHIGH COUNTY, PA

Decided: July 13, 1984

On April 7, 1984, Conrail, Inc. (Conrail) filed an application pursuant to section 105 of the National Rail Reorganization Act of 1973^{1/} to abandon a total of 10.1 miles of track. The abandonment consists of three segments: (a) The Lehigh Valley Secondary Track^{2/} in Catasauqua from 200 feet west of the West Side of the Race Street Bridge, U.G. #95,59 (approximately Milepost 96.5) to the point of prior abandonment (approximately Milepost 96.0); (b) The Ironton Industrial Track (formerly Main Line of Ironton Railroad) from Ironton (approximately Milepost 1.0 to Coplay, the end of the line (approximately Milepost 3.5); and (c) The Ironton Industrial Track from the point of intersection with the former Main Line of the Ironton Railroad (approximately Milepost 0.0) in Egypt to Catasauqua, the end of the line (approximately Milepost 4.2), in Lehigh County, PA.

Under section 308(s) the Commission must grant any application for abandonment filed by Conrail within 90 days after the date such application is filed unless an offer of financial assistance is made pursuant to section 308(d) during that 90-day period.

The time for the filing of offers of financial assistance has expired without a bona fide offer. In the absence of such an offer, an appropriate certificate and decision should be entered.

It is certified: Conrail is authorized to abandon the line described above.

It is ordered:

(1) This certificate and decision is effective upon service.

(2) If the authority granted by this certificate and decision is exercised, Conrail shall advise this Commission in writing, immediately after abandonment of the line of railroad, of the date on which the abandonment actually took place.

By the Commission, the Review Board, Members Carlton, Williams and Dowell.

James H. Bayne
 James H. Bayne
 Secretary

(SEAL)

1/ This section was added by the Northeast Rail Service Act of 1981. Pub. L. 97-35.

2/ The Abandonment includes approximately 1,200 feet of additional Right-of-Way extending westwardly from the Lehigh Valley Secondary Track at Milepost 97.4 to the Junction of the former Lehigh Valley Railroad and Ironton Railroad.

BEFORE THE
SURFACE TRANSPORTATION BOARD

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EXHIBIT B

FILE U

E.D. 31334

BEFORE THE
INTERSTATE COMMERCE COMMISSION

INTERSTATE
COMMERCE COMMISSION

**PETITION OF CONSOLIDATED RAIL CORPORATION
UNDER 49 U.S.C. SECTION 10505
REQUESTING THAT THE TERMINATION BY
DELAWARE & HUDSON RAILWAY COMPANY
OF TRackage RIGHTS OVER PETITIONER'S
LEHIGHTON SECONDARY TRACK
BE EXEMPT FROM THE REQUIREMENTS
OF 49 U.S.C. SECTION 10903**

TO THE INTERSTATE COMMERCE COMMISSION, WASHINGTON, DC:

Consolidated Rail Corporation (Conrail) owns a line of railroad, known as the Lehigh Secondary Track (the Lehigh Line), extending along the west side of the Lehigh River between Catawauqua (milepost 99.0) and Lehigh (milepost 119.3) in Lehigh and Carbon Counties, Pennsylvania. Under an agreement dated April 25, 1979 between Conrail and Delaware and Hudson Railway Company (D&H) the latter was granted trackage rights over certain Conrail lines, including the Lehigh line.

By order served March 11, 1982 in Docket AB 167 (Sub No. 451) the Commission, acting under Section 1156 of the Northeast Rail Service Act of 1981 (NERSA), 45 U.S.C. Section 748, authorized Conrail to abandon the Lehigh line. By letter dated June 25, 1982, the D&H, which has trackage rights over

Conrail's line on the east side of the Lehigh River as well as on the Lehigh line, consented to Conrail's abandonment of the Lehigh line.

The purpose of this petition is to request that the Commission, acting under 49 U.S.C. Section 10505, exempt the termination of the D&H trackage rights between Catsaugus and Lehigh from the requirement of prior approval under 49 U.S.C. Section 10903, et seq. The granting of the aforesaid exemption will permit Conrail to implement the authority granted in Docket AB 167 (Sub No. 451) and to dismantle and abandon the Lehigh line. Unless and until the Commission grants the requested exemption (or approves the termination of the D&H trackage rights under 49 U.S.C. Section 10903) implementation of the Commission's order in Docket AB 167 (Sub No. 451) would be contrary to law. In support of its petition, Conrail represents as follows:

1. On the map which is attached hereto as Exhibit A, the Lehigh line is shown in red.

2. The D&H has conducted no rail operations on the Lehigh line since December, 1981. The D&H trackage rights over this line are bridge or overhead rights, and under its agreement with Conrail the D&H has served no stations, public delivery tracks, or private sidings on the Lehigh line. No D&H traffic originates or terminates on the Lehigh line, and the overhead movements which were formerly routed

over this line are now routed via Conrail's Main Line on the east side of the Lehigh River.

The granting of the exemption herein requested will not affect any shippers or receivers of freight or deprive the public of transportation service, nor will it have any measurable effect on the operating revenues or expenses of either Conrail or D&H. The termination of the D&H trackage rights over the Lehighton line will have no impact on the interest of railroad employees and no effect on the environment or on energy consumption. It will have no impact on other carriers or on the public generally.

3. After the Commission has granted the requested exemption, Conrail will dismantle the Lehighton line and remove and reprocess the rail in order to utilize it in the replacement of rail on other portions of the Conrail system.

4. Application of the regulatory requirements and procedures set forth in 49 U.S.C. Section 10903 et seq., and in the Commission's regulations applicable thereto would involve unreasonable and disproportionate expense and administrative burden and would serve no useful purpose. Approval of the proposed abandonment by the Commission is not necessary to protect or carry out the transportation policy set forth in 49 U.S.C. Section 10101 or to protect shippers from the abuse of market power.

5. Conrail believes that the transaction described above is of the type which Congress intended the Commission

to exempt when it adopted 49 U.S.C. Section 10905 in 1976 and when it amended said section effective October 19, 1980. The legislative history of this section reflects a Congressional purpose to exempt from regulation those transactions in respect to which regulation would serve little or no useful purpose and as to which the expenditure of the Commission's resources would not be necessary to promote the public interest.

6. Attached hereto as Exhibit B is a copy of the letter dated June 25, 1983 in which the D&H consented to the abandonment of Conrail's Lehighton line.

WHEREFORE, Conrail requests that the Commission exempt the proposed termination of trackage rights by the D&H over Conrail's Lehighton Secondary Track from the requirement of approval under 49 U.S.C.A. Section 10903 et seq.

Respectfully submitted,



Charles E. Mechem
Counsel for
Consolidated Rail Corporation
1138 Six Penn Center
Philadelphia, PA 19103
(215) 977-5017

Dated: October 28, 1983

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA :

: SS COUNTY OF PHILADELPHIA

RICHARD B. HASSELMAN, being duly sworn according to law, deposes and says that he has read the foregoing petition, that he knows the contents thereof, and that the factual recitations contained therein are true to the best of his knowledge and belief.

R B Hasselman

RICHARD B. HASSELMAN

Sworn to and Subscribed :
before me this *25th* :
day of October, 1983. :

Raymond C. Mallon
Notary Public

DELAWARE AND HUDSON RAILWAY COMPANY

ALBANY, NEW YORK 12207

Dependable Transportation Since 1832

I. R. WILLIAMS
General Manager

June 25, 1982

Mr. D. N. Nelson
General Manager-Eastern Region
Consolidated Rail Corporation
30th Street Station Building
Philadelphia, Pa. 19104

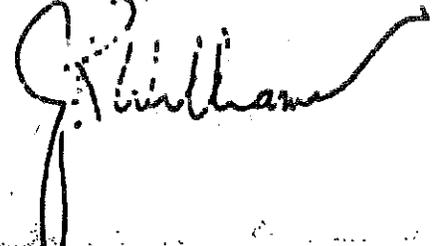
Dear Mr. Nelson:

Your letter of April 7, 1982 regarding the Lehighton secondary track was again discussed in Albany on June 23, 1982. This will be your authority to abandon the trackage described between Mile Post 98.0 and Mile Post 119.3.

It was also agreed that the proposed changes between Allentown and Dupont would be agreeable to the Delaware and Hudson, providing a single track operation is not placed in effect between Dupont and Laurel Run. You were to furnish, when convenient, a proposal for reducing the amount of double track in this territory, at which time we would be receptive to further discussing the installation of a new interlocking.

I would also appreciate a response regarding the Delaware and Hudson's problems, as far as setting off and picking up cars enroute with their own trains, and also, whether or not some consideration will be given to the handling of cars at Allentown.

Sincerely,



Ross & Kraushaar Co., L.P.A.

ATTORNEYS AT LAW
THE STANDARD BUILDING
1110 ONTARIO STREET
CLEVELAND, OHIO 44113
216-801-1913

December 11, 1983

Ms. Agatha L. Mergenovich
Interstate Commerce Commission
12th & Constitution Avenue
Washington, D.C. 20423

Re: Consolidated Rail Corporation
I.C.C. Finance Docket No. 30334

Dear Ms. Mergenovich:

This letter is in opposition to a request by the Consolidated Rail Corporation, identified by the I.C.C. as Finance Docket No. 30334, to be exempted under 49 U.S.C. §10505(g) from the requirements and obligations of 49 U.S.C. 10901 - 10906.

The Brotherhood of Locomotive Engineers (BLE) submits that this Commission does not have the authority under §10505(g) of the Interstate Commerce Act to exempt any rail carrier from the requirements of Section 10903 of the Interstate Commerce Act. Therefore, BLE respectfully submits that the Commission must condition any such exemption by requiring applicant to provide those protections mandated by Section 10903 of the Interstate Commerce Act in order to protect employees who may be affected by the proposed transaction.

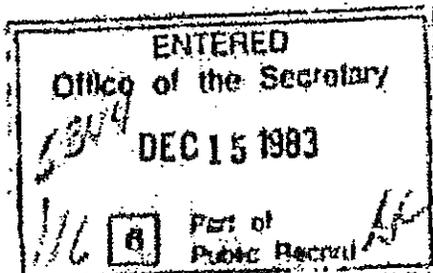
The Brotherhood of Locomotive Engineers informs this Commission that it intends to participate in whatever proceeding the Commission may institute to consider the proposed request for exemption filed by the applicant herein. A copy of this letter has been served upon applicant.

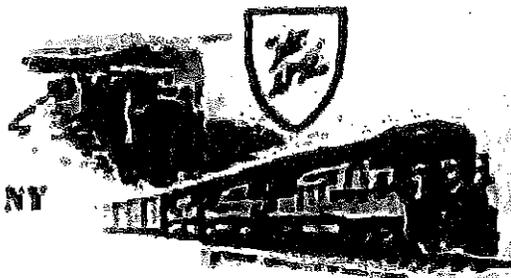
Very truly yours,

Harold A. Ross
Harold A. Ross

HAR:sam

cc: Charles E. Mechem





DELAWARE AND HUDSON RAILWAY COMPANY

ALBANY, NEW YORK 12207

GEORGE H. KLEINBERGER

Dependable Transportation Since 1838

February 9, 1984

Interstate Commerce Commission
12th Street and Constitution Avenue
Washington, D. C.

Attention: Hon. Anatha Mersonovich
Secretary



RE: FINANCE DOCKET NO. 10314 - LEHINGTON BRANCH -
TERMINATION OF TRackage RIGHTS

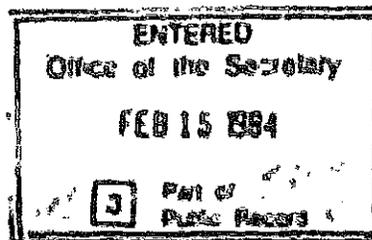
Gentlemen:

Delaware and Hudson Railway Company (D&H) advises the Commission that it concurs in the petition of Consolidated Rail Corporation in the above captioned proceeding. Specifically D&H has no objection to the termination of its common carrier status and trackage rights on the above captioned branch line.

Very truly yours,

George H. Kleinberger
George H. Kleinberger

cc: Charles E. Mehan, Esq.
Senior General Attorney
Consolidated Rail Corporation
1138 Six Penn Center
Philadelphia, PA 19103



March 5, 1984

Mr. James H. Bayne
Acting Secretary
Interstate Commerce Commission
Room 1312
12th and Constitution Avenues, NW
Washington, D.C. 20423

Re: Finance Docket 30334
Lehighton Branch
Termination of Trackage Rights

Dear Mr. Bayne:

It has been called to my attention that the milepost limit specified on Page 1, line 4 of Conrail's petition in the above matter should read 98.0 rather than 99.0. Please treat Conrail's petition as so amended.

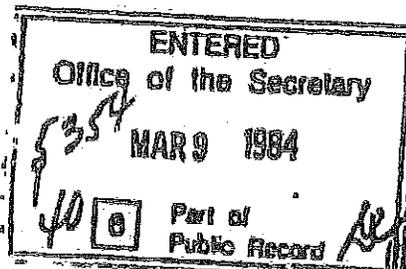
You will note that the June 25, 1982 letter from the D&H which was attached to Conrail's petition states the milepost correctly.

Very truly yours,


Charles E. Mechen
Senior General Attorney
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5017

CEM/km

cc: Kings LaChapelle
General Attorney
Delaware and Hudson
Railway Company
The D&H Building
Albany, NY 12207



APR 27 1984

INTERSTATE COMMERCE COMMISSION

DECISION

FINANCE DOCKET NO. 30334

DELAWARE AND HUDSON RAILWAY COMPANY--DISCONTINUANCE OF
TRackage RIGHTS EXEMPTION--IN LEHIGH AND CARBON COUNTIES, PA

Decided: April 20, 1984

Consolidated Rail Corporation (Conrail) seeks an exemption pursuant to 49 U.S.C. 10505 from the requirements of 49 U.S.C. 10903 et seq. for the Delaware and Hudson Railway Company (D&H) to discontinue trackage rights over 21.3 miles of Conrail's track known as the Lehigh Secondary Track between milepost 98.0 at Catasauque and milepost 119.3 at Lehigh, in Lehigh and Carbon Counties, PA. D&H concurs in the petition. The Railway Labor Executives' Association (RLA) requests imposition of Labor Protection Conditions.

By decision served March 11, 1982, in Docket AB-167 (Sub-No. 451) the Commission, acting under 45 U.S.C. 748, authorized Conrail to abandon the Lehigh line. The D&H has conducted no rail operations on the Lehigh line since December, 1981. The trackage rights over this line are bridge or overhead rights, and under D&H's agreement with Conrail D&H has served no stations, public delivery tracks, or private sidings on the Lehigh line. D&H has no traffic that originates or terminates on the Lehigh line, and the overhead movements which were formerly routed over this line are now routed via Conrail's main line on the east side of the Lehigh River. Upon the discontinuance of operations by D&H, Conrail will dismantle the Lehigh line and remove and reprocess the rail in order to utilize it in the replacement of rail on other portions of the Conrail system.

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations over a rail line without prior Commission approval. However, under 49 U.S.C. 10505 we shall exempt a transaction from our review requirements if we find that (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a, and (2) either (a) the transaction is of limited scope or (b) regulation is not necessary to protect shippers from the abuse of market power.

Exemption would minimize the need for Federal regulatory control over the rail transportation system, expedite regulatory decisions, reduce barriers to exit from the industry, encourage efficient management of the railroads and foster sound economic conditions in transportation.

Since only a 21.3-mile segment of track is involved, the transaction is clearly of limited scope. In addition regulation is not necessary to protect shippers from an abuse

of market power. There are no shippers on the line and those shippers of overhead traffic will continue to be served through DAH use of other Conrail Track.

The Commission has previously determined that Environmental impacts associated with trackage rights are insignificant. 49 C.F.R. 1105.6(c)(7). Discontinuance of this service should also not have any environmental impact. Accordingly, we find that exemption of the discontinuance of trackage rights will not significantly affect either the quality of The Human Environment or Energy Conservation.

Under 49 U.S.C. 10505(g), we may not use exemption authority to relieve a carrier of its obligation to protect the interests of employees under 49 U.S.C. 10903(b)(2). This Exemption is conditioned upon the Employee Protective Provisions in Oregon Short Line R. Co.-Abandonment-Goshen, 360 I.C.C. 91 (1979).

It is ordered:

1. Pursuant to 49 U.S.C. 10505, we exempt discontinuance trackage rights by DAH over the described 21.3 miles of Conrail from the requirements of 49 U.S.C. 10903 et seq., subject to the employee protective conditions in Oregon Short Line R. Co.-Abandonment Goshen, 360 I.C.C. 91 (1979).

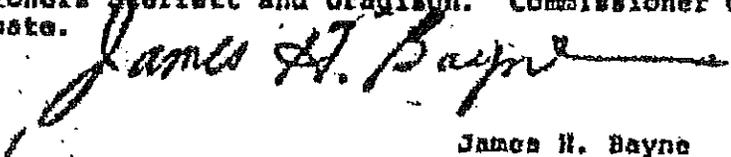
2. Notice shall be published in the Federal Register.

3. Conrail shall notify the Commission within 30 days of consummation.

4. This exemption shall be effective on May 31, 1984.

5. Petitions to stay must be filed by May 10, 1984, and petitions for reconsideration must be filed by May 21, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison did not participate.



James H. Bayne
Acting Secretary

(SEAL)

SERVICE DATE
4-27-84
FD-30334

FD030334/0000/ PA 17040
PENNSYLVANIA COMMISSIONER
BOX 297
109 SOUTH STATE STREET
MILLVILLE

FD030334/0000/ 1279 DEPT: 499
CONSOLIDATED RAIL CORPORATION
1138 SIX PENN CENTER PLAZA
PHILADELPHIA PA 19104

FD030334/0000/ PA 17120
DEPARTMENT OF ENVIRONMENTAL RESOURCES
DIV OF FOR AND SERV
BOX 1467
HARRISBURG

FD030334/0000/ PA 17120
DIRECTOR, HIST & MODEL COMM
BOX 1026
HARRISBURG

FD030334/0000/ PA 17120
DEPT OF ENVIRONMENTAL RESOURCES
P. O. BOX 1467
THIRD AND REILLY STREETS
HARRISBURG

FD030334/0000/ PA 17120
OFFICE OF THE GOVERNOR
STATE CAPITOL BUILDING
HARRISBURG

SERVICE DATE

4-27-84

FD-30334

FD030334/0000/ 3R-13 SC58 PDR
RICHARD L. KILROY
SUITE 408
400 FIRST STREET, N.W.
WASHINGTON DC 20001

FD030334/0000/ 2532 SC58 PDP
GEORGE H. KLEINBENDER
DELAWARE & HUDSON BLDG.
40 BEAVER STREET
ALBANY NY 12207

FD030334/0000/ -3 SC38
LOCAL AND AREA TRANSPORTATION
DEPT. OF TRANS.
COMMONWEALTH & FORSTER STREETS
HARRISBURG PA 17120

FD030334/0000/ 1271 SC58 APR
CHARLES E. MECHEM
1138 SIX PENN CENTER PLAZA
PHILADELPHIA PA 19104

FD030334/0000/ -4 SC59
OFFICE OF POLICY & PLANNING
ROOM 906
FINANCE BUILDING
HARRISBURG PA 17120

FD030334/0000/ -4 SC58
PENNSYLVANIA FISH COMMISSION
P. O. BOX 1673
HARRISBURG PA 17120

FD030334/0000/ -2 SC55
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265
HARRISBURG PA 17120

FD030334/0000/ -4 SC58
DEPT OF ENVIRONMENTAL RESOURCES
BUREAU OF STATE PARKS
P. O. BOX 1467
HARRISBURG PA 17120

FD030334/0000/ 2505 SC58 PDP
HAROLD A. RUSS
THE STANDAR BLDG.
1370 ONTARIO STREET
CLEVELAND OH 44113

FD030334/0000/ -4 SC58
US DEPT OF THE INTERIOR
DIV OF ENVIR AFF
600 ARCH STREET
PHILADELPHIA PA 19106

NRAIL



January 16, 1985

Mr. James H. Bayne
Secretary
Interstate Commerce Commission
Room 1312
12th and Constitution Avenues, NW
Washington, DC 20423

Re: Finance Docket No. 30334
DEH Trackage Rights

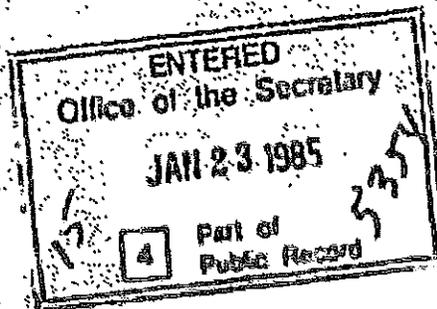
Dear Mr. Bayne:

The discontinuance of trackage rights authorized by the Commission in the above referenced proceeding was effectuated December 15, 1984.

Very truly yours,

Charles E. Meehan
Charles E. Meehan
Senior General Attorney
1138 Six Penn Center
Philadelphia, PA 19103-2959
(215) 977-5017

CEM/kmt



CERTIFICATE OF SERVICE

I hereby certify that on this day, July 30, 2015, a copy of the foregoing filing of R.J. Corman Railroad Company/Allentown Lines, Inc., was served via first class mail, postage prepaid, and by more expeditious means of delivery upon the following party (who is the only party of record aside from counsel for R.J. Corman Railroad Company/ Allentown Lines, Inc.):

James Riffin
P. O. Box 4044
Timonium, MD 21094
jimriffin@yahoo.com

Courtesy copies of this filing are also being supplied to counsel for Delaware and Hudson Railway Company, Inc., Norfolk Southern Railway Company, and Lafarge North America, inasmuch as the substance of this filing may be of interest to these companies.

July 30, 2015



Robert A. Wimbish
Attorney for R.J. Corman Railroad
Company/Allentown Lines, Inc.