

**Before the  
Surface Transportation Board**

**STB DOCKET NO. AB-550 (Sub-No. 3X)**

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**JR - 2  
238446  
ENTERED  
Office of Proceedings  
May 21, 2015  
Part of Public Record**

**R. J. CORMAN RAILROAD COMPANY / ALLENTOWN LINES, INC.  
– ABANDONMENT EXEMPTION –  
IN LEHIGH COUNTY, PENNSYLVANIA**

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**JAMES RIFFIN'S INITIAL COMMENTS**

1. Comes now James Riffin (“**Riffin**”), who herewith provides the following initial comments in the above entitled proceeding.

**SUMMARY OF COMMENTS**

2. The Exemption Notice appears to have a mis-representation on p. 3, detailed below.
  
3. The Delaware and Hudson Railway Company, Inc. (“**D&H**”) has trackage rights over the right-of-way which is the subject of the above entitled abandonment Exemption. If R.J. Corman were to abandon their common carrier obligations on the subject line, then the D&H would be the last remaining carrier on the line. That gives rise to a number of issues, detailed below.

**MISREPRESENTATIONS**

4. On page 3 of the Exemption notice, appears the following statement:

“In 1996, RJC acquired the Subject Line from Conrail pursuant to an Offer of Financial Assistance (“OFA”). See Consolidated Rail Corporation – Abandonment Exemption – in Erie County, NY, AB-167 (Sub-No. 1164X) (STB served Sept. 30, 1996).”

5. The above statement appears to be a mis-representation. As the above statement states, AB-167 / 1164X, is a proceeding involving a line of railroad in Erie County, NY, **not** the subject line, which is located in Lehigh County, PA.

6. While the Erie Line was acquired by R.J. Corman via the Offer of Financial Assistance (“OFA”) procedures, upon information and belief, Riffin believes that the subject line was acquired via a line sale, **not** via an OFA procedure.

7. While the subject line may have been acquired pursuant to FD 35897, Riffin has to date, been unable to verify the proceeding wherein the line was acquired. [No decisions or filings associated with FD 35897 appear on the Surface Transportation Board’s (“STB”) web site.]

**THE LINE IS SUBJECT TO D&H TRACKAGE RIGHTS**

9. Pursuant to an Operating Agreement dated **April 25, 1979**, a copy of which is appended hereto, a copy of which the Delaware & Hudson Railway Company, Inc. (“**D&H**”) put into the record, as Exhibit 2 in a pleading filed on May 8, 2015, in AB 156 (Sub-No. 27X),<sup>1</sup> the D&H has trackage rights over the Line which is the subject of this proceeding.

10. The D&H’s April 29, 1979 Operating Agreement describes the D&H’s trackage rights as follows:

<u>USRA</u> <u>Code</u>	<u>Conveying</u> <u>Carrier</u>	<u>From</u>	<u>To</u>
0503A	LV	Allentown (93.3)	Lehighton (119.1)

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<sup>1</sup> AB 156 (Sub. No. 27X) is a Discontinuance of Trackage Rights Notice of Exemption, filed by the D&H on March 19, 2015. In a decision served on May 13, 2015, the Director of the Office of Proceedings held the AB 156 (Sub. No. 27X) proceeding in abeyance, until further order of the STB. On May 18, 2015, Riffin appealed the Office of Proceedings’s May 13, 2015 decision to the Full STB Board.

11. In an abandonment proceeding filed by Conrail on **November 30, 1981**, docketed AB 167 (Sub. No. 451N), a copy of which is appended hereto, Conrail made the following representation on p. 2 of Conrail's abandonment application:

**"The above-described line will hereafter be referred to as the Subject Line. Delaware & Hudson Railway Company (D&H) has trackage rights over the Subject Line and also over a parallel Conrail line lying to the East."** Bold added.

12. The 'Subject Line' in Conrail's AB 167 (Sub. No. 451N) proceeding, was described as that portion of the former Lehigh Valley RR main line between Catasauqua, PA, near MP 98.0, and Lehigh, PA, near MP 119.3, and was former USRA Line Code 0503A.

13. R.J. Corman, in its abandonment Exemption, described the line that it desires to abandon as being that portion of the former Lehigh Valley RR main line between Allentown, PA, near MP 93.1, and Whitehall, PA, near MP 96.7. The R.J. Corman line was former USRA Line Code 0503A.

14. The Lehigh Valley RR had a massive yard between stations Whitehall and Catasauqua, with Whitehall being on the south side of the yard, and Catasauqua being on the north side of the yard.

15. Over the years, Conrail has sold to non-carriers, the real estate underlying the former Lehigh Valley Yard that was located between Whitehall and Catasauqua.

16. Upon information and belief, Riffin argues that Conrail intended to abandon, and did in fact abandon, its Line Code 0503A common carrier rights and obligations, from the north end of R.J. Corman's rail line, to Lehigh, PA, and that the sole remaining carrier on that portion of the former Lehigh Valley RR Main Line, Line Code 0503A, between the end of R.J. Corman's line of railroad, at or near Whitehall, PA, at or near MP 96.7, and Lehigh, PA, at or near MP 119.3, is the D&H, pursuant to their April 25, 1979 Operating Rights agreement with Conrail.

## **R.J. CORMAN'S LINE IS SUBJECT TO AN OFA PROCEEDING**

17. If the STB grants R.J. Corman authority to abandon its common carrier rights and obligations over its Line between Allentown, PA, and Whitehall, PA, then the D&H would be the last remaining carrier on the line segment abandoned by R.J. Corman.

18. If the D&H is the last remaining carrier on the line segment R.J. Corman desires to abandon, then Riffin would have the right to purchase the D&H's trackage rights over that line segment.

19. If an abandonment proceeding becomes subject to an OFA offer, then whatever line-associated-assets that existed at the time the abandonment proceeding commenced, may not be diminished. See *Railroad Ventures, Inc. v. Surface Transp. Bd.*, 299 F.3d 523 at 552 (6<sup>th</sup> Circuit 2002).

20. An OFA proceeding commences upon the filing of a Notice of Intent to File an OFA.

21. On April 18, 2015, in AB 156 (Sub.-No. 27X), Riffin filed a Notice of Intent to File an Offer of Financial Assistance ("OFA") to subsidize the operation of those portions of the D&H trackage-rights lines where there would be a remaining carrier in the event the D&H's trackage rights were discontinued, and to purchase those portions of the D&H trackage-rights lines where there would not be a remaining carrier in the event the D&H's trackage rights were discontinued.

22. In a May 20, 2015 Supplemental Filing [JR-12] in AB 156 (Sub.-No. 27X), Riffin gave further notice that he desires to either subsidize the D&H's operation over the former Lehigh Valley RR Line Code 0503A, between Allentown, PA, and Lehigh, PA, over those portions of the line segment where the D&H is not / would not be the remaining carrier, or to purchase the D&H's trackage rights over those portions of the line segment where the D&H is / would become the remaining carrier.

23. In its Abandonment Exemption, R.J. Corman indicated that it intended to salvage the line, once abandonment authority is granted.

24. In its Abandonment Exemption, R.J. Corman indicated that it intended to transfer title to the line to a non-carrier.

25. Riffin would suggest that salvaging the line, or conveying title to the line to a non-carrier, **prior** to the abandonment of the D&H's trackage rights over the line, would create a legal quagmire for R.J. Corman. [The line would remain a line of railroad until such time that the D&H's trackage rights had been extinguished. A non-carrier may not acquire a line of railroad without prior STB approval. See 49 U.S.C. 10901 (a)(4). A carrier is liable for any diminution of rail assets that occurs during an OFA proceeding.]

26. In AB 103 (Sub. No. 21X), after Riffin filed an OFA, a railroad bridge that carried the line over a county road, was removed by local government officials, without the knowledge or consent of the rail carrier (Kansas City Southern). In holding that the rail carrier was liable for the removal of the bridge, the STB said the following:

“The Glass Road Bridge.

In a motion to supplement his request to set terms and conditions for the Remainder portion of the Line, Riffin submitted evidence that work to dismantle a bridge on the Remainder—the “Glass Road Bridge,” which apparently carries the Line over Glass Road—had recently been initiated. As noted, the Board directed KCSR to respond to the allegation. KCSR responded on February 8, 2008, noting that an official of Warren County had ordered the bridge to be removed, assertedly based on a conversation some years ago with a “local representative” of the railroad (whose name the official could not recall) to the effect that the County could do so at its own expense.<sup>2</sup> Once KCSR was notified of the actions being taken by Warren County, an official of KCSR promptly notified the County to cease its efforts to remove the bridge.

Riffin has asked us to order KCSR to restore the bridge to its condition prior to the actions of the County. The railroad argues that this would be inappropriate because Riffin assigned no value to the bridge or its component parts in his request to set terms and conditions. At the outset, it should be noted that this issue does not bear on the matter before

us today: the valuation of the property subject to the OFAs. In the Request, Riffin assigned the bridge no value, and that is the value we are assigning to it here, notwithstanding the controversy that has now arisen over how, if at all, KCSR should remedy the situation. Therefore, we will calculate the value of the Line using the evidence accepted by the Board prior to the filings regarding Warren County partially dismantling the bridge.

Nevertheless, we are troubled by the fact that the bridge was partially removed during the pendency of this proceeding. OFAs are designed for continued rail service. Removing or permitting the removal of track or other assets, including bridges, from a railroad right-of-way during the pendency of the section 10904 process tends to undermine that process because it reduces the rail assets in place when the offeror invoked section 10904, and thus can obstruct or impede the efforts of the offeror to provide rail service. See *Railroad Ventures, Inc.—Aban. Exem.—Youngstown, OH & Darlington, PA*, 4 S.T.B. 583 (2000). The fact that a party, or the agency, assigns no monetary value to an intact bridge does not mean that the bridge can be dismantled during the OFA process with no consequences, and does not change the fact that removing the asset might impede the efforts of the offeror to provide the service contemplated by the OFA. And although here the railroad did not itself dismantle the bridge, and it directed Warren County to cease doing so as soon as the matter was brought to its attention, **the railroad nevertheless is ultimately responsible for ensuring that the rail assets in place at the time a notice of intent is filed are preserved during the OFA process.**

Thus, although, as noted above, the partial removal of the bridge does not affect our valuation for purposes of the OFA sale (because neither side assigned any value to it), it is appropriate, if the terms and conditions set here for the sale of the Segment and the Remainder are accepted, to determine the extent, if any, to which the partial removal of the bridge has increased the cost of returning the Remainder to active rail service. Thus, in the event that, within 10 days of the service date of this decision, the Offerors accept the terms and conditions we have established here for the Segment and Riffin accepts the terms and conditions we have established here for the Remainder, Riffin will be permitted to file with the Board by March 24, 2008, evidence that his costs to reestablish service on the Remainder have changed because of the partial dismantling of the bridge. KCSR will have an opportunity to reply by April 14, 2008, to Riffin's evidence, which may include evidence that the bridge was unusable prior to the actions of the County and would have had to have been replaced before service could have been resumed. The Board will then determine what compensation, if any, should be ordered as a result of increased costs of restoring the Remainder to service due to the partial dismantling of the bridge.

KCSR will be directed to preserve all records, photographs, inspection reports, and any other information relevant to the condition of the Glass Road Bridge at the time English's notice of intent to file an OFA was filed with the Board, which was October 2, 2007. We offer no comment on the question of what recourse the railroad might have against Warren County for its action in dismantling the bridge, as that is an issue that should be addressed and resolved by KCSR and the County, if necessary, in the appropriate forum." Slip Op. at 3-4. Bold added.

27. About three miles north of where R.J. Corman's tracks end, there is a Lafarge Cement manufacturing plant, located adjacent to the former Lehigh Valley RR right-of-way. Upon information and belief, Riffin believes that the Lafarge Cement plant had a desire, and continues to have a desire, for rail service. (Upon information and belief, Lafarge asked R.J. Corman for rail service. R.J. Corman indicated that it would provide rail service only if Lafarge paid the cost of putting 3 miles of track back on the ground. Lafarge offered to ship a large quantity of rail cars, but refused to fund the restoration of 3 miles of track. An impasse was reached. Lafarge presently trucks cement to a truck-to-rail transload site.)

28. It is unfortunate that R.J. Corman has become caught up in another Conrail morass.

29. Until the AB 156 (Sub. No. 27X) D&H proceeding concludes, Riffin would suggest that R.J. Corman ask the STB to hold R.J. Corman's Abandonment Exemption in abeyance. That would preserve R.J. Corman's options.

Respectfully,

James Riffin  
P. O. Box 4044  
Timonium, MD 21094  
(443) 414-6210

#### **CERTIFICATE OF SERVICE**

I hereby certify that on the 20<sup>th</sup> day of May, 2015, a copy of the foregoing Initial Comments was served on the parties noted below, by E-mail.

James Riffin

E-mail:

Audrey L. Brodrick: [abrodrick@fletcher-sippel.com](mailto:abrodrick@fletcher-sippel.com)

M.D. 19696

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THIS AGREEMENT made this 27<sup>th</sup> day of April, 1979 between CONSOLIDATED RAIL CORPORATION ("Conrail"), a corporation of the Commonwealth of Pennsylvania, and DELAWARE AND HUDSON RAILWAY COMPANY ("D&H"), a corporation of the State of Delaware.

RECITALS

A. The parties have acquired the right to conduct rail operations over certain lines of railroad hereinafter described ("Joint Lines") as provided in the Final System Plan of the United States Railway Association ("USRA") adopted pursuant to Section 206(c)(1)(B) of the Regional Rail Reorganization Act, as amended ("Rail Act").

B. The Joint Lines were conveyed to Conrail subject to operating rights granted to D&H either by the railroads in reorganization which had conducted rail operations over such properties prior to April 1, 1976, or by persons whose rail properties were operated or leased by railroads in reorganization which had conducted such operations.

C. The parties desire to set forth the terms and conditions for D&H's exercise of operating rights over the Joint Lines.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, intending to be legally bound, the parties do hereby agree as follows:

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ARTICLE I

JOINT FACILITIES

Section 1.01. Description of Joint Lines. This Agreement shall set forth the terms and conditions of D&H's operation over the Joint Lines described in detail on Exhibit A, and included in one of the following Joint Line Routes:

<u>Joint Line Route</u>	<u>Operating Rights Grantor</u>
Oak Island-Freemansburg	Trustees of Lehigh Valley Railroad Company, Debtor
Oak Island-Phillipsburg	Trustee of Central Railroad Company of New Jersey, Debtor
Freemansburg-Lehighton	Trustees of Lehigh Valley Railroad Company, Debtor
Lehighton-DuPont	Trustees of Lehigh Valley Railroad Company, Debtor and Lehigh Coal and Navigation Company, Debtor
Saucon-Lehighton	Lehigh Coal and Navigation Company
Allentown-Reading-Philadelphia	Trustees of Reading Company, Debtor and Allentown Terminal Railroad Company
Sunbury-Rockville	Trustees of Penn Central Transportation Company, Debtor and Trustees of Northern Central Railway Company, Debtor
Lanesboro-Hornell	Trustees of Erie Lackawanna Railway Company, Debtor
Hornell-Buffalo	Trustees of Erie Lackawanna Railway Company, Debtor.

The parties have been unable to agree upon the lines to be included in D&H's operating rights beyond Buffalo "FW" (MP 422.4)

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and shall make a continuing effort to resolve open questions concerning these lines. Either party may, upon prior notice to the other party, request USRA to restate the lines intended to be included in the operating rights designated to D&H beyond Buffalo "FW". The parties agree to be bound by such designation.

Section 1.02. Facility Changes, Additions and Removals.

Conrail shall not remove or shall not alter the Joint Lines if such alteration will increase D&H's cost of operating or the time required under normal conditions for D&H's trains to traverse the Joint Lines. Subject to the foregoing, Conrail may improve or add to the Joint Lines for its own benefit. D&H may request facility changes, additions and betterments to the Joint Lines. Conrail and D&H in good faith shall determine the proportion of benefit to each of them of facility changes, additions and betterments proposed by D&H and if such a determination can be agreed to by Conrail and D&H, each of them shall bear their proportionate cost of such facility changes, additions and betterments. If Conrail, in the exercise of its best business judgment, determines that its proportionate benefit from any such facility change, addition or betterment is less than the amount of the cost thereof which D&H believes should be borne by Conrail, Conrail shall nonetheless make such facility change, addition or betterment at D&H cost and expense if requested in writing by D&H.

ARTICLE II

JOINT LINE OPERATIONS - GENERAL

Section 2.01. Scope of Operations. D&H shall have the right to operate such rail service over the Joint Lines as it may deem necessary or advisable to provide efficient and economical transportation consistent with the Interstate Commerce Act and with its operating authority under the Rail Act including, without limiting the foregoing, pick-up and set-out of bad order cars, necessary repair and servicing of equipment, and the operation of trains, cars or vehicles for inspection and management purposes. D&H and Conrail shall interchange traffic at the Joint Line locations of Buffalo, Binghamton, DuPont, Allentown, Philadelphia, Harrisburg and Oak Island (intermodal only). D&H shall also have the right to interchange cars with other carriers, directly or through switching tariffs or haulage arrangements and to operate onto or off other carriers from points on the Joint Lines between Binghamton and Buffalo, New York; Attica and Groveland, New York; at and within the Buffalo, Black Rock and Niagara Falls, New York, terminal areas; including without limitation the right to interchange with and operate on or off the Philadelphia, Bethlehem and New England Railroad at Bethlehem, Pennsylvania and the Baltimore and Ohio Railroad (Chessie System) at Park Junction (Philadelphia), Pennsylvania. The parties agree, however, to request USRA to state whether D&H

is entitled, as an incident to the grant of its operating rights over the Joint Lines, to switch and classify its cars at intermediate points on the Joint Lines and to interchange cars with other carriers or operate onto or off other carriers at intermediate points on the Joint Lines other than those specified in this Section. The parties agree to be bound by USRA's determination. D&H shall not perform any local freight service on the Joint Lines except at stations published as D&H stations in the Official Open and Prepay Station List No. 93, I.C.C. No. A-58. Conrail shall have the right to admit other parties to the use of the Joint Lines with the prior consent of D&H whose consent shall not be withheld unreasonably.

Section 2.02. Employees.

(a) D&H shall operate its rail service over the Joint Lines with its own employees and at its sole expense subject to such Conrail rules, regulations and orders as shall be applicable to those lines provided that no employee shall engage in such operations over the Joint Lines until he or she shall have been successfully examined on applicable operating rules and regulations by D&H officers qualified by Conrail. This Agreement shall not require the re-qualification of any D&H officer or employee who has been successfully examined on or before the effective date of this Agreement.

(b) D&H shall also have the right to utilize and direct its own employees, at its sole expense, for any

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Section 7.10. Effective Date. This Agreement shall become effective on January 1, 1979, except that any outstanding disputes between the parties relating to events arising out of the operation of the Joint Lines between April 1, 1976 and the effective date of this Agreement shall be settled in accordance with the terms and conditions set forth in this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day and year first above written.

ATTEST:

CONSOLIDATED RAIL CORPORATION

*W. F. ...*  
ASSISTANT SECRETARY

By: *Stuart M. Reed*  
PRESIDENT

DELAWARE AND HUDSON RAILWAY COMPANY

*R. S. Long*

By: *J. P. ...*  
PRESIDENT & CHIEF  
Executive Officer

JOINT LINES

U.S.R.A. Code	Conveying Carrier	From (MP)	To (MP)
<u>Oak Island - Freemansburg (LV)</u>			
0501	LV	Oak Island (6.3)	Newark Interchange (
0502A	LV	Newark Inter- change (11.4)	New Jersey/Pennsylva State Line (76.6)
0502A	LV	New Jersey/Penn- sylvania State Line (76.6)	Freemansburg (85.8)

Oak Island - Phillipsburg (CNJ)

0205	CNJ	Oak Island Jct. (1.7)	Elizabethport (5.5)
0201	CNJ	Elizabethport "FH" (8.9)	Phillipsburg (72.1)

Note: Line Segments 0501, 0502A, 0205 and 0201 are for the purpose of handling intermodal traffic including the right to LV's Oak Island intermodal facility and use of LV's Oak Island yard. The links are connective permitting use between Bethlehem Interlocking and Oak Island via either the LV or CNJ route

Freemansburg - Allentown - Lehigh (LV)

0502A	LV	Freemansburg (85.8)	Bethlehem Interlockin (88.6)
0502A	LV	Bethlehem Inter- locking (88.6)	Allentown (93.3)
0503A	LV	Allentown (93.3)	Lehigh (119.1)

Note: Line Segment 0502A includes the right to interchange with all railroads at Allentown/Bethlehem including the Philadelphia, Bethlehem and New England

Lehigh - DuPont (LV, LC&N)

0503A	LV	Lehigh (119.1)	Fraser (147.1)
0506	LV	Fraser (147.1)	Laurel Run (164.1)
0504	LC&N	Fraser (143.8)	Laurel Run (161.2)
0506	LV	Laurel Run (164.1)	DuPont (175.5)

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Saucon - Bethlehem Junction - Allentown Yard - Lehighton (LC&N)

0302F	LC&N	Saucon Yard	Bethlehem Junction (83.4)
0502F	LC&N	Bethlehem Junction (83.4)	Bethlehem (84.3)
0521	LC&N	Bethlehem (84.3)	Lehighton (114.7)

Note: Line Segment 0502F includes the right to interchange with all railroads at Allentown/Bethlehem, including the Philadelphia, Bethlehem and New England.

Line Segment 0521 includes the right to use Allentown Yard.

Allentown-Reading-Philadelphia (Reading and AT)

0502	AT	"R" Tower (88.2) (Including connecting track, E. Penn Jct.- Burn)	Burn (89.1)
0312	RDG	Burn (35.4) (same as AT Burn (89.1))	Pike (1.1)
0309	RDG	Park (2.4)	Falls (5.4)
0322B	RDG	Falls (5.4)	Reading (Belt Line Jct.) (61.4)
0339	RDG	Blandon (0.0)	Klappert Hall Jct. (13.0)

Sunbury - Rockville (PC, NC)

1314	PC	Kase (286.4)	Sunbury (287.5)
1314	NC	Sunbury (138.7)	Dauphin (93.4)
1314	PC	Dauphin (93.4)	Rockville (90.6)

Note: Line Segment 1314 links with line segments described in Article I, Joint Facilities of Agreement between the parties made November 3, 1978 covering lines between Rockville, Enola, Harrisburg, Perryville and Potomac Yard. Included is the right to interchange with Conrail at, and to use, Enola Yard

Lanesboro - Hornell (EL)

6303	EL	Lanesboro (189.8)	Binghamton "BD" (213.2)
6301	EL	Binghamton "BD" (213.2)	Hornell (331.8)

EXHIBIT A  
2 of 1

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Hornell - Buffalo (EL)

6401	EL	Hornell (331.8)	Buffalo "Union" (418.0)
6401	EL	Buffalo "Union" (418.0)	Buffalo "FW" (422.4)

Note: Line Segment 6401 includes (1) the right to use Bison Yard and to interchange with all railroads including Conrail at Buffalo, and (2) the right to interchange with existing or future railroads between Binghamton "BD" and Buffalo, except Conrail.

6443	EL	North Alexander (395.9)	Attica (401.0)
6441	EL	Groveland (360.2)	North Alexander (360.2)

Note: Line Segment 6441 includes the right to interchange with all connecting railroads.

Abbreviations:

(AT)	Allentown Terminal Railroad Company
(CNJ)	Trustee, Central Railroad Company of New Jersey, Debtor
(EL)	Trustees, Erie Lackawanna Railway Company, Debtor
(LC&N)	Lehigh Coal and Navigation Company
(LV)	Trustees, Lehigh Valley Railroad Company, Debtor
(NC)	Trustee, Northern Central Railway Company, Debtor
(PC)	Trustees, Penn Central Transportation Company, Debtor
(RDG)	Trustees, Reading Company, Debtor

FILED  
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INTERSTATE  
COMMERCE COMMISSION

November 27, 1981

OFFICE OF THE  
SECRETARY  
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DEC 11 3 22 PM '81  
SERVING OFFICE

Mrs. Agatha L. Mergenovich  
Secretary  
Interstate Commerce Commission  
12th and Constitution Avenues, NW  
Washington, DC 20423

Subject: Application Under Section 308 of the Regional Rail  
Reorganization Act of 1973, as enacted by Section  
1156 of the Northeast Rail Service Act of 1981, for  
abandonment of the Lehighton Secondary Track in the  
State of Pennsylvania  
Docket No. AB 167 (Sub. No. 451N)

Dear Mrs. Mergenovich:

Enclosed for filing with the Commission are the original  
and six copies of the above described application. This  
application is submitted under Section 308 of the Regional  
Rail Reorganization Act of 1973, as enacted by Section 1156  
of the Northeast Rail Service Act of 1981.

Copies of the application have been served on the  
agencies and major shippers designated on the attachment to  
this letter.

Please stamp and return the enclosed extra copy of this  
letter to acknowledge receipt.

Very truly yours,

*Charles E. Mechem*  
CHARLES E. MECHEM  
General Attorney  
1138 Six Penn Center Plaza  
Philadelphia, PA 19104  
(215) 977-9017



CEM:em

Before The  
Interstate Commerce Commission

Application of Consolidated Rail Corporation Pursuant to Sections 308(a) and (b) of the Regional Rail Reorganization Act of 1973, as Amended by Section 1156 of the Northeast Rail Service Act of 1981, for Approval of the Abandonment of the Lehigh Secondary Track in Lehigh and Carbon Counties in the State of Pennsylvania :  
: Docket No. AB 167  
: (Sub No. 451N)

To the Interstate Commerce Commission, Washington D.C.:

1) The name of applicant is Consolidated Rail Corporation (Conrail). Correspondence relating to this application should be addressed to Charles E. Mechem, General Attorney, 1138 Six Penn Center, Philadelphia, Pennsylvania 19104.

2) Applicant is a common carrier by railroad subject to the former Interstate Commerce Act (now 49 USCA Subtitle IV) and to the Northeast Rail Service Act of 1981 (NERSA).

3) Conrail files this application pursuant to Sections 308(a) and (b) of the Regional Rail Reorganization Act of 1973 (RRR Act), as amended by Section 1156 of NERSA. A copy of said Section 1156 is attached hereto as Exhibit A.

4) By this application Conrail requests the Commission's approval of the abandonment of the line of rail described below:

Name Of Line: Lehigh Secondary Track

State in which located: State of Pennsylvania

County or Counties: Lehigh and Carbon Counties

Limits of proposed      Catawugus              Lehighton  
Abandonment:              Milepost 98.0              Milepost 119.3

Length of line: 21.3 miles

The above-described line will hereafter be referred to as the Subject Line

Delaware & Hudson Railway Company (D&H) has trackage rights over the Subject Line and also over a parallel Conrail line lying to the East. In recent months the latter line has been used by both railroads to a far greater extent than the Subject Line. Conrail is willing to

sell the Subject Line to the D&H under the procedures and standards established by Section 1156 of NERSA in the event the D&H wishes to purchase the Subject Line.

5) Attached as EXHIBIT B is a map showing the location of the Subject Line.

6) Attached hereto as Exhibit C is a summary, or condensed statement, based on the most recent studies available to Conrail, setting forth (a) "revenues attributable", (b) an estimate of avoidable costs for the Subject Line, and (c) an estimate of the subsidy that would be required to keep the line in operation. Exhibit C includes an estimate of the cost of the work that would be required to preserve the Subject Line in FRA Class 1 condition. Attached hereto as Exhibit D is an estimate of

the value of the Subject Line, including the real estate value of the underlying right-of-way. Pursuant to Section 308(d) of the RRR Act the aforesaid revenue, cost, and subsidy information and valuation estimate will be furnished, on request, to any responsible person other than a recipient of this application who seriously desires to consider making an offer of financial assistance.

7) Within fifteen days after the filing of this application, persons desiring a more detailed statement setting forth the basis upon which the subsidy estimate was calculated, may request such information in writing. Such detailed statement will be furnished within fifteen days after receipt of the request.

8) Finally, if a financially qualified person seriously considering purchase of the subject line submits a request received by Conrail within 15 days after the date of filing of this application, Conrail, within 45 days after the request, will provide an appraisal of the real estate value of the line, together with any adjustments to the estimated subsidy that may be necessitated by the appraisal.

9) All requests for information specified in paragraphs 6, 7, and 8 should be made in writing to C. E. Mechem, Room 1138 Six Penn Center, Philadelphia, Pa. 19104. Copies of such requests should be sent to the Office of Proceedings, Room 4126, Interstate Commerce Commission, Washington, DC 20423.

10) Recipients of this application are advised that the staff of the Interstate Commerce Commission has notified Conrail that any person requesting information or assistance with respect to the abandonment provisions of the Northeast Rail Service Act may contact either the ICC Section of Finance (telephone 202-275-7245) or the Section of Rail Services Planning (telephone 202-275-0826).

11) Conrail believes that the environmental and EPCA requirements of 49 C.F.R. Sections 1108.7(c) and 1106.5(c) are inapplicable to proceedings under Sections 308(a) and (b) of the RRR Act inasmuch as the Commission is neither permitted nor required to exercise any judgment or discretion in acting upon such applications<sup>\*</sup> but rather is required to approve them except when subsidy offers meeting the requirements of 49 USCA Section 10905 have been tendered. In any event, the proposed abandonment is not expected to have any significant impact or effect on (a) transportation patterns, (b) local or regional land use plans, (c) coastal zone management areas, (d) wet lands, flood plains, or agricultural lands, (e) the development or transportation of energy resources, (f) the movement or recovery of recyclables, (g) energy consumption or distribution, (h) motor truck traffic on public highways, (i) wildlife, (j)

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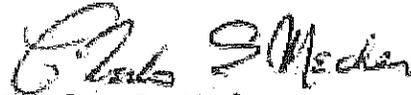
\* See Commonwealth of Pennsylvania, et al v. Federal Maritime Commission, et al, 393 F.Supp. 795 (1975).

National or state parks or forests, (k) historic structures, (l) water courses or water supply, (m) culturally significant locations, or (n) public safety.

Accordingly, applicant believes that approval of the proposed abandonment will not constitute a major Federal action having a significant effect on the quality of the human environment.

WHEREFORE, Applicant requests that the Commission, within 90 days after the filing hereof, approve the abandonment of the Subject Line identified in Paragraph 4 above.

Respectfully submitted,



Charles E. Mechem  
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Philadelphia, PA 19104  
(215) 977-5017

AREA MAP

CONSOLIDATED RAIL CORPORATION

LEHIGHTON SECONDARY TRACK

Cataaugus, MP 98.0, to Lehighon, MP 119.3

