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SERVICE DATE – DECEMBER 12, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34963

JAMES RIFFIN, D/B/A THE RARITAN VALLEY CONNECTING RAILROAD—  
ACQUISITION AND OPERATION EXEMPTION—  
ON RARITAN VALLEY CONNECTING TRACK

Decided: December 11, 2006

On November 21, 2006, James Riffin d/b/a The Raritan Valley Connecting Railroad (Applicant) filed a notice of exemption under 49 U.S.C. 10901 and 49 CFR 1150.31 to acquire and operate an approximately 1.25-mile segment of a railroad line known as the Raritan Valley Connecting Track (Line Code 0326, Sub. No. 1038). The track segment at issue is described as running between the northerly sideline of the Lehigh Valley Line (at former Delaware & Bound Brook milepost 57.25), in Manville Borough, and the intersection of the line with the southerly sideline of the former Raritan Valley Line, now New Jersey Transit's Raritan Valley Commuter Line (at former Delaware & Bound Brook milepost 58.50), in Bridgewater Township, all in Somerset County, NJ. On November 27, 2006, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS) filed a pleading, stating that, because Applicant acknowledges that he already is a rail carrier,<sup>1</sup> the notice of exemption was filed under the incorrect provisions of the statute and regulations.<sup>2</sup> In that pleading, NS asked for a housekeeping stay and for the commencement of a proceeding to allow it to provide more complete information about "the correctness of the legal and factual assumptions underlying the

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<sup>1</sup> See CSX Transportation, Inc.—Abandonment Exemption—in Allegany County, MD (In the Matter of an Offer of Financial Assistance), STB Finance Docket No. AB-55 (Sub-No. 659X) (STB served Aug. 18, 2006) (authorizing James Riffin to be substituted for WMS, LLC, as the purchaser of a rail line).

<sup>2</sup> When a noncarrier seeks Board authority to acquire and operate a railroad line, the governing statutory provision is 49 U.S.C. 10901. A noncarrier invoking the class exemption from the prior approval requirements of that statutory provision may file a notice of exemption under 49 CFR 1150.31. Because Applicant is already a Class III rail carrier, NS states that the governing statutory provision is 49 U.S.C. 10902, and the relevant regulation is 49 CFR 1150.41.

Notice.”<sup>3</sup> On November 28, 2006, W.R. Allen Associates filed a notice of intent to participate and supported the request for a housekeeping stay.

On December 1, 2006 Applicant filed a pleading (as modified on December 6, 2006), asking leave to amend the notice of exemption to correct the applicable statutory authority to 49 U.S.C. 10902 and the corresponding regulation to 49 CFR 1150.41, and tendered a corrected notice. In that pleading, Applicant also opposes NS’s request for a housekeeping stay and states that he does not oppose the commencement of a proceeding if it will explore whether, in the past, Conrail unlawfully sold or abandoned this rail line, absent Board authority. Finally, if such a proceeding is begun, Applicant seeks its consolidation with another pending Board proceeding.<sup>4</sup>

The request for leave to amend the notice of exemption will be granted, and the amended notice will be accepted. Accordingly, the filing date for this notice of exemption is December 6, 2006 (the date of the most recent modification). Under recently adopted changes to the applicable regulation, at 49 CFR 1150.42, the Board will publish the notice in the Federal Register no later than December 22, 2006; the exemption is due to become effective on January 5, 2007; and any stay petitions must be filed no later than December 29, 2006.<sup>5</sup>

In light of the amendment of the notice and the Board’s acceptance of it, the request for stay filed by NS will not be addressed at this time. In addition, Applicant’s request for consolidation of this proceeding with another can be addressed at a later date, if appropriate.

Any party that may wish to seek a stay of the amended notice of exemption, including NS if it decides to renew or supplement its request for stay, should explain why the Board should stay the effectiveness of an exemption to acquire and/or operate a rail line that would simply give permissive authority to consummate a transaction described in the notice of exemption, if and when the parties might have the legal capacity to do so. See Standard Terminal Railroad of New

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<sup>3</sup> NS submitted the verified statement of an employee of Consolidated Rail Corporation (Conrail), indicating that Conrail never sought authority to abandon or discontinue service on this rail line. Consequently, according to NS, Conrail retained common carrier operating authority over the line and that authority was transferred to NS pursuant to the Transaction Agreement approved by the Board in CSX Corp. et al.—Control—Conrail Inc. et al., 3 S.T.B. 196 (1998) (Conrail Control). NS also indicates, however, that Conrail may still retain common carrier operating authority over the line.

<sup>4</sup> The other proceeding is: STB Finance Docket No. 33388 (Sub-No. 100), CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail, Inc. and Consolidated Rail Corporation (concerning whether a particular rail-served facility is within the North Jersey Shared Assets Area approved in Conrail Control).

<sup>5</sup> See Public Participation in Class Exemption Proceedings, STB Ex Parte No. 659 (STB served Oct. 19, 2006, and published at 71 FR 12892 (Oct. 24, 2006)).

Jersey, Inc.—Acquisition Exemption—Rail Line of Joseph C. Horner, STB Finance Docket No. 34551 (STB served Oct. 8, 2004) (the publication of notice and the effectiveness of an exemption does not constitute any finding by the Board concerning the ownership of the property involved); see also Morristown & Erie Railway, Inc.—Operation Exemption—Somerset Terminal Railroad Corporation, STB Finance Docket No. 34267 (STB served Nov. 27, 2002) (denying a stay request notwithstanding the existence of a dispute over whether Somerset Terminal Railroad Corporation possessed the operating rights sought to be acquired). Those proceedings evidently concerned the same property that is the subject of Applicant’s amended notice of exemption.

It is ordered:

1. Applicant’s request for leave to file the amended notice of exemption is granted.
2. Any requests for a stay of the effectiveness of the amended notice of exemption must be filed by December 29, 2006.
3. This decision is effective on its date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary