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SERVICE DATE - LATE RELEASE JANUARY 20, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34392

NEW JERSEY RAIL CARRIER LLC  
– ACQUISITION AND OPERATION EXEMPTION –  
FORMER COLUMBIA TERMINALS, KEARNY, NJ

Decided: January 16, 2004

The Board is lifting the stay of the effectiveness of the exemption invoked by notice filed in this proceeding by New Jersey Rail Carrier LLC (NJ Rail) and is directing that the notice be published in the Federal Register.

BACKGROUND

By notice filed on August 7, 2003, NJ Rail, neither a railroad nor a person in control of a railroad, invoked the class exemption at 49 CFR 1150.31 to lease and to operate railroad track, formerly known as the Columbia Terminals, in the Town of Kearny, Hudson County, NJ. The track begins at a switch connection to a line of Consolidated Rail Corporation (Conrail) in the Town of Kearny and extends over various lengths of track to their stub ends for a total distance of approximately 2,250 feet. NJ Rail proposes to lease the track from Amcol Realty Co., Inc., of Livingston, NJ.

By petition filed on August 12, 2003, the New Jersey Department of Environmental Protection (NJDEP) asked the Board to stay the effectiveness of the exemption to allow the Board to determine whether NJ Rail would be conducting operations as a bona fide rail carrier under 49 U.S.C. 10102(5) or merely as “a shipper in the solid waste disposal industry whose primary intent is to utilize the preemption provision of 49 U.S.C. 10501(b) to evade the State of New Jersey’s environmental safety and health statutes and regulations.” NJDEP argued that the notice was defective in not providing enough of a description of NJ Rail’s planned operations to allow the Board to determine whether NJ Rail will actually be operating as a railroad and whether environmental review by the Board is warranted.

On August 13, 2003, NJ Rail replied in opposition to the NJDEP petition. NJ Rail maintained that the notice was adequate. NJ Rail stated that it intends to operate as a common carrier railroad “handling intermodal shipments in the industrial park which it will serve.” It also stated that it expects to

handle containerized demolition debris and that it proposes to handle lumber, chemicals, aggregates, and other freight tendered for intermodal transportation.

By decision served on August 13, 2003, the Board stayed the effective date of the exemption to obtain additional, more specific information on the operations that NJ Rail proposes to conduct. Because of the stay, the notice of the exemption was not published in the Federal Register as otherwise provided under 49 CFR 1150.32(b).

Opening Statement of NJ Rail. On October 14, 2003, NJ Rail filed a statement urging the Board to vacate the stay and to allow the exemption to become effective. Describing its proposed operations in greater detail, NJ Rail asserts that it will interchange rail traffic with Conrail and will lease whatever locomotives and cars will be required for service to its customers. NJ Rail states that an affiliate, the New Jersey Transloading Company LLC, will operate lifting equipment and will transfer containers among trucks, rail cars, and storage areas on NJ Rail's premises. NJ Rail intends to serve shippers of containerized demolition and construction debris, stone and sand aggregates, lumber, and other transloaded goods from nearby businesses. NJ Rail maintains that it will have no financial interest in the containers or their contents being shipped. NJ Rail cites other proceedings in which the agency authorized entities proposing to commence allegedly similar operations to become rail carriers.

Supporting its position that environmental review is not required, NJ Rail states that: (1) the operation will encourage the movement of freight by rail, with any truck traffic increases being local at the site; (2) the increase in truck traffic at the site will not exceed the Board's threshold for requiring environmental documentation;<sup>1</sup> (3) any debris will be fully enclosed in containers at all times, and there will be no processing or transfer of waste on the premises; (4) containers containing putrescible solid waste will be on site for not more than 72 hours, and containers containing non-putrescible waste will be on site for not more than 10 days; (5) containers will be trucked only from licensed transfer stations; (6) all New Jersey environmental regulations will be observed, including those pertaining to transfer stations; (7) operations at the site will be less extensive than the operations of the prior occupant, a chemical tank farm operated by Columbia Chemicals; (8) the site is zoned for industry, with no nearby schools, hospitals, or shopping centers; and (9) the New Jersey Department of Transportation has recognized the value of the area as a location for intermodal transfers.

NJDEP Reply. On December 5, 2003, NJDEP filed a reply stating that it is satisfied with the additional information provided by NJ Rail and by the representations and commitments made to it by NJ Rail. Based on this information and a detailed settlement agreement between the parties that resolves numerous potential environmental issues and local concerns, NJDEP concludes that NJ Rail's proposed operations are not intended to evade the environmental laws and regulations administered by

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<sup>1</sup> See 49 CFR 1105.6(c)(2) and 1105.7(e)(5).

NJDEP but, rather, that they are intended to be those of a legitimate rail carrier. Consequently, NJDEP does not oppose or challenge NJ Rail's notice of exemption, and it "supports removal of the stay order so that the exemption can be made effective immediately."

Conrail Reply. On December 5, 2003, Conrail filed a reply stating that it currently has no interchange, operating, or lease agreements with NJ Rail but that it is "hopeful" that NJ Rail will be successful in generating interchange traffic between the two carriers.

SEA Analysis. The Board's Section of Environmental Analysis (SEA) has analyzed the information provided by NJ Rail and has concluded that NJ Rail's project is exempt from environmental reporting requirements under 49 CFR 1105.6 and from historical reporting requirements under 49 CFR 1105.8(b)(1) and (3). Based on supplemental information received from NJ Rail on December 9 and 10, 2003, SEA concludes that the truck traffic attributable to the project will not exceed the threshold for triggering the Board's environmental review.

#### DISCUSSION AND CONCLUSIONS

The stay will be removed, the exemption will be allowed to become effective, and notice will be published in the Federal Register. The Board has jurisdiction to exempt this transaction because NJ Rail has sufficiently established on this record that it will be operating in interstate commerce as a bona fide rail carrier under 49 U.S.C. 10102(5). No other party argues to the contrary.

Additional environmental analysis is not required. The Board adopts SEA's conclusion that the truck traffic attributable to the project will not exceed the threshold for triggering environmental review. And there do not appear to be any other potential sources of environmental problems. NJ Rail and NJDEP have entered into a settlement agreement addressing NJDEP's environmental concerns. The agreement is detailed, requiring, for example, full compliance with all New Jersey environmental regulations and imposing limits on the retention of non-putrescible waste. Thus, on this record, no further environmental review is warranted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The stay of the effectiveness of the exemption is removed.
2. Notice of the exemption will be published in the Federal Register.

3. This decision is effective on its date of service.

By the Board, Chairman Nober.

Vernon A. Williams  
Secretary