

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

241466

FINANCE DOCKET NO. 36063

ENTERED
Office of Proceedings
September 9, 2016
Part of
Public Record

**JERSEY MARINE RAIL, LLC
PETITION FOR A DECLARATORY ORDER THAT REHABILITATION
AND OPERATION OF EXISTING TRACKS WITHIN A FORMER RAIL
YARD AND SERVING AN ADJACENT INDUSTRIAL SITE AS A CLASS
III RAIL CARRIER IS AN EXEMPT TRANSACTION
AND
SEEKING EXPEDITED CONSIDERATION**

**PETITIONER'S
REPLY TO COMMENTS BY CONSOLIDATED RAIL CORPORATION**

Consolidated Rail Corporation (Conrail) the Class I common carrier by rail whose tracks connect with those located on Jersey Marine Rail (JMR) leasehold, seeks to delay this proceeding alleging: (i) that the map attached to the Petition creates uncertainty as to JMR's track layout relative to its leasehold property and that it may involve or impinge on Conrail's property, (ii) Conrail has not agreed to interchange with JMR; and, (iii) interchanging with JMR may interfere with Conrail's operations on that line. None of these objections are valid and two violate Conrail's obligations as a common carrier.

The petition filed on August 31, 2016 and the correction filed on September 6, 2016 seeks a declaratory order that Jersey Marine Rail's (JMR) rehabilitation and operation of tracks on its leasehold as a to be formed Class III carrier is an exempt transaction and does not require environmental review. JMR also seeks expedited consideration to meet the needs of interested shippers. The Petition makes it clear that JMR has leased all of the trackage and the land on which that trackage is located or on which a new lead track must be located. JMR seeks to operate and rehabilitate only those tracks and to add one connecting track and connecting switches, all on its existing leasehold. It makes it clear that even interchange of traffic will take place on petitioner's property.

Conrail's first issue is that Conrail believes it is unclear whether JMR's proposed rail operations depend on securing additional property beyond the leasehold. However, the petition and the correction to the petition filed on September 6, make it absolutely clear that all interchange with Conrail and all JMR activity will occur on the leasehold and that the leasehold already contains all the lands needed to accomplish JMR's plans. Rather than argue over the clarity of the map attached to the Petition, JMR is attaching a third map hereto which clearly enhances the outline of the leasehold property and the existing track JMR seeks to rehabilitate and operate showing and showing its relationship to the property line. It is obvious that the only new work needed is a track connecting the three yard tracks to the three spurs in order to avoid using the existing switches and lead which are on Conrail property. All needed land for that is included within JMR's leasehold.

Conrail then asserts that the map provided, Exhibit A to the Petition, corrected as Exhibit A to the Correction, is difficult to read and thus, its operating personnel cannot determine whether JMR's operation will interfere with its current operations of the line. However, the closest Conrail customer served from the Sound Shore line is about 700 feet to the north of the property line of JMR's leasehold. Notwithstanding this however, whether the subject trackage is operated by JMR as a class III carrier or that trackage is retained by JMR's lessor as private sidings, Conrail as a common carrier serving the Sound Shore Line, would be required to serve this trackage. Therefore, significant interference with Conrail's operations, while unlikely, is immaterial, since Conrail is obligated to provide such service in any event.

In JMR's discussions with Conrail the fact that the Sound Shore line is congested due to Conrail's commitments to allow other shippers to use the line as a holding yard for cars which cannot be placed, has been discussed. JMR has informed Conrail, at those discussions, that it is willing to pay for infrastructure, i.e. a passing track, that would alleviate any such congestion. Under such circumstances 49 U.S.C. 11101(a) applies:

A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall provide the transportation or service on reasonable request. A rail carrier shall not be found to have violated this

section because it fulfills its reasonable commitments under contracts authorized under section 10709 of this title before responding to reasonable requests for service. Commitments which deprive a carrier of its ability to respond to reasonable requests for common carrier service are not reasonable.

(emphasis added). With its offer to fund a passing track to render the Sound Shore Line able to serve JMR and others, JMR has rendered §§ A, B and C of 49 U.S.C. §11121 inapplicable. 49 U.S.C §11121 provides that a common carrier by rail must provide facilities needed to handle traffic offered to it provided the cost of doing so does not exceed the profits to be gained from that traffic. JMR has rendered the cost of the facilities needed by Conrail to bypass stored cars on its main track to be small or non-existent. Thus, interference with Conrail's operations caused by commitments made by Conrail which deprive Conrail of the ability to respond to JMR's or its lessor's reasonable requests for common carrier service, would be a condition created by Conrail in violation of 49 U.S.C., 11101(a) and it cannot be a reason to delay approval of JMR's petition.

Finally, Conrail's comment that it has not agreed to interchange with JMR is immaterial.

A rail carrier providing transportation subject to the jurisdiction of the Board under this part shall provide reasonable, proper, and equal facilities that are within its power to provide for the interchange of traffic between, and for the receiving, forwarding, and delivering of passengers and property to and from, its respective line and a connecting line of another rail carrier or of a water carrier providing transportation subject to chapter 137".49 U.S.C. §10742.

Because Conrail will be required to provide an interchange pursuant to 49 U.S.C. Section 10742, the absence of such an agreement at this time is not material to this Petition. Grant of authority to create a Class III carrier is not subject to obtaining an interchange agreement in advance.

Thus, as a common carrier, Conrail must provide service despite any effect that may have on its current operations and it must agree to an interchange with JMR after the granting of the Petition.

Wherefore, there is no confusion as to what the petitioner seeks to do and thus, no reason to delay consideration of this petition.

Dated, New York, N.Y.
September 9, 2016

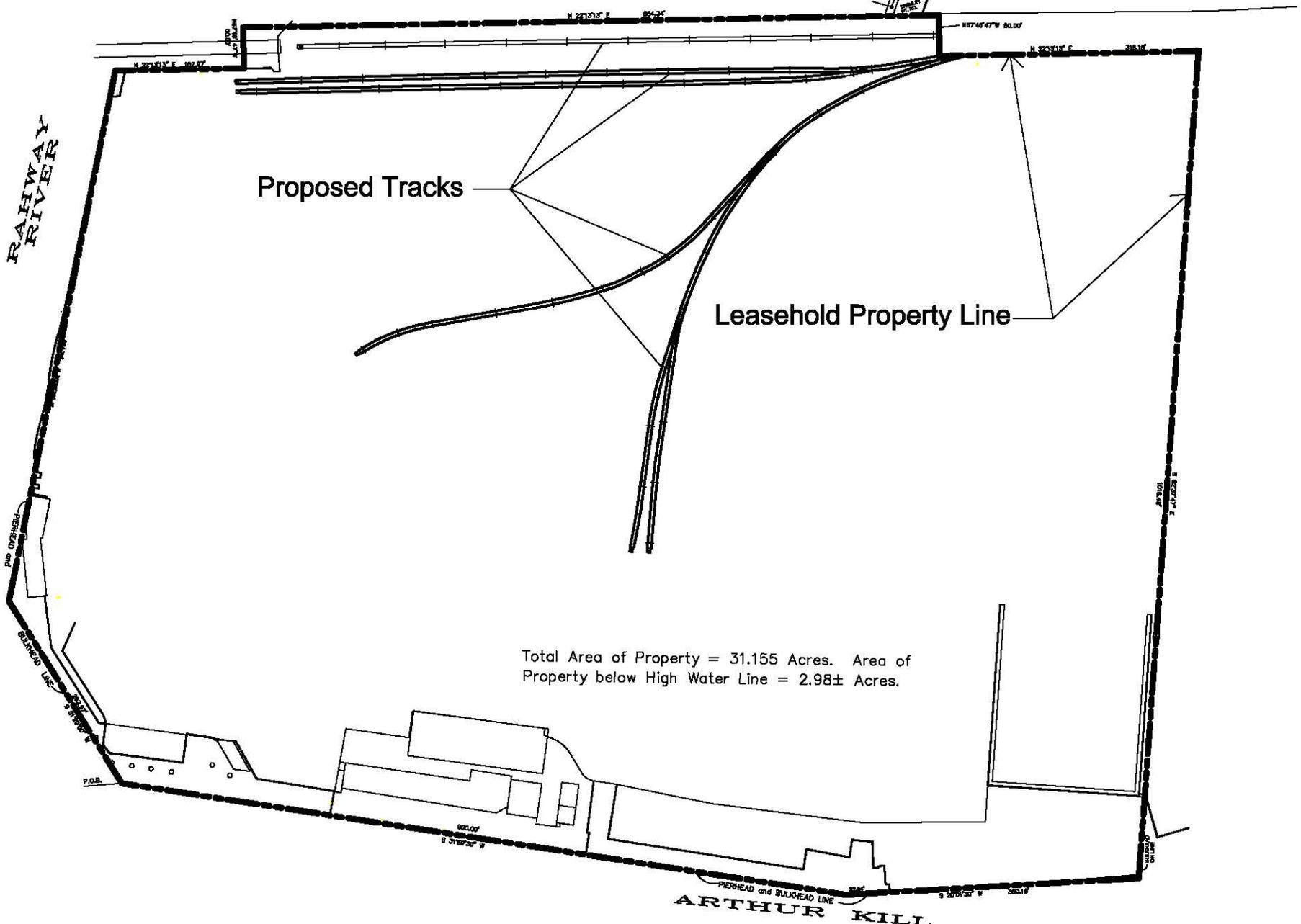
_____/s/_____
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DECLARATION OF SERVICE

John F. McHugh declares that on this 9th day of September, 2016 he mailed a copy of this reply to

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_____/s/_____
John F. McHugh



Proposed Tracks

Leasehold Property Line

Total Area of Property = 31.155 Acres. Area of Property below High Water Line = 2.98± Acres.

JMR Leasehold Property