

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

241435

STB FINANCE DOCKET NO. 36063

ENTERED
Office of Proceedings
September 6, 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
SERVING AN ADJACENT INDUSTRIAL SITE AS A CLASS III
RAIL CARRIER IS AN EXEMPT TRANSACTION
AND
SEEKING EXPEDITED CONSIDERATION¹**

COMMENTS OF CONSOLIDATED RAIL CORPORATION

Consolidated Rail Corporation (“Conrail”) hereby submits these Comments on the Petition for a Declaratory Order (“Petition”) filed on August 31, 2016, by Jersey Marine Rail, LLC (“JMR”) in the above-captioned docket.

Conrail is a Class III railroad and owns and operates assets throughout the State of New Jersey, Commonwealth of Pennsylvania, State of New York, State of Delaware, and State of Michigan. It is indirectly owned by Norfolk Southern Corporation and CSX Corporation, and operates its assets as part of the “shared asset areas,” as defined in Decision 89 of the Conrail Control Transaction, Docket No. 33388.

JMR previously filed a Notice of Exemption (“NOE”) concerning the same issues and property on June 22, 2016, which was docketed as Finance Docket No. 36047. That NOE was rejected by the Board in a decision served on July 21, 2016. JMR then filed a second NOE, docketed as Finance Docket No. 36058, on August 12, 2016. Apparently based on the advice or instructions of the Board, JMR moved to withdraw that second NOE on August 25, 2016. The

¹ The caption above corrects typographical errors in Petitioner’s caption.

Board served notice of its decision granting the motion to withdraw the second NOE on August 30, 2016. The instant Petition was filed the next day.

Conrail neither supports nor opposes the Petition, and in particular takes no position on JMR's legal arguments about whether, under Board precedent, JMR should have been allowed to proceed by notice (*see* Petition at 2, 14, 15), whether the proposal contemplates "an extended or additional rail line" within the meaning of 49 U.S.C. § 10901(a) (*see* Petition at 6), whether the state environmental review materials proffered by JMR suffice here (*see id.* at 7, 14-15; Klempner Decl. ¶¶ 13-14), whether environmental review is required for this proposal (*see* Petition at 8), whether JMR has already "complied with all environmental requirements" (*id.*), and whether JMR's plans satisfy the requirements for an exemption and justify expedited treatment (*see id.*, *passim*).

Instead, Conrail is filing these comments to clarify several potentially relevant issues and to point out that, in light of these issues, the Petition, like the previous NOEs, may be premature.

First, it is unclear whether JMR's proposed rail operations depend on securing additional property beyond its leasehold. On page 1 of the Petition, JMR refers to a "third track" that is "immediately adjacent but just to the east" of its leasehold. On page 2 of the Petition, JMR refers to "three former industrial spurs," but does not state that they are in the leasehold. And JMR also states that it plans to serve facilities to be located "adjacent to its leased trackage." *Id.* at 3.

But elsewhere in the Petition, JMR seems to state that all the tracks are within its leasehold. *See* Petition at 2 ("The tracks and land they are on is leased to JMR . . ."); *id.* at 5 ("The track to be operated will be that existing on the leasehold . . ."); *see also* Klempner Decl.

¶8. The map appended to the Petition sheds little light on this issue because it is very difficult to read.²

In light of the uncertainty about this issue, as well as the absence of details regarding the integration of JMR's proposed trackage into Conrail's existing track, it is not possible to predict whether JMR's proposed trackage would adversely affect current Conrail operations, which, as JMR notes (Petition at 7), include substantial daily volumes on the Sound Shore Line.³

Second, JMR predicates its proposal upon an interchange with Conrail, and JMR's Petition and accompanying declaration may create the erroneous impression that JMR and Conrail have already agreed on the interchange. Thus, on page 6 of the Petition, JMR states, "The Yard connects with Conrail's Sound Shore Line *but the interchange will be on Petitioner's property.*" (Emphasis added.) And JMR's declarant, Mr. Ronald A. Klempner states, "Conrail will interchange with Petitioner on the portion of the trackage which was the southern-most segment of Conrail's Sound Shore Line" Klempner Decl. ¶ 7.

However, there has been no arrangement or agreement reached between JMR and Conrail concerning any such interchange. Moreover, Conrail has concerns about the operational feasibility of establishing such an interchange, including how and where such an interchange would be located and how such an interchange would affect operations on Conrail's Garden State Secondary Line and the heavily-used active portion of the Sound Shore Industrial Track.⁴

² JMR (Petition at 3) incorrectly states that the map is Exhibit B. It is Exhibit A.

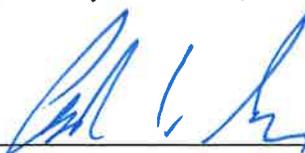
³ JMR states that its projected traffic would not "increase [Conrail's Sound Shore Line] traffic significantly" (Petition at 7), but that is a side issue. The real question, which Conrail is not yet in a position to address because of uncertainties about JMR's plans, is whether JMR's proposed movements and its projected interchange with Conrail would adversely affect the flows of the "heavy rail traffic" (*id.*) that Conrail already moves on the Sound Shore Line.

⁴ Conrail briefly described these assets and the Third Industrial Track within the City of Linden, NJ, on pages 1-2 of its comments on JMR's NOE in Finance Docket No. 36047.

* * *

Although Conrail neither supports nor opposes the instant Petition, Conrail is concerned that the Petition, like the previous NOEs filed by JMR, is premature. At a minimum, Jersey Marine Rail should be required to provide detailed information to the Board and Conrail about where it proposes to interchange with Conrail and about the other issues and questions raised by Conrail in these comments.

Respectfully submitted,



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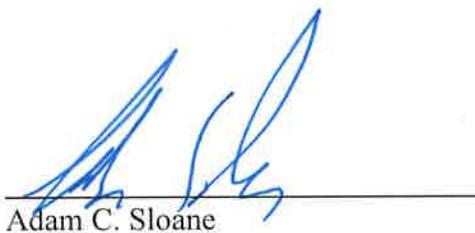
Attorneys for Consolidated Rail Corporation

Dated: September 6, 2016

CERTIFICATE OF SERVICE

I certify that on this 6th day of September, 2016, I caused a copy of the foregoing
Comments to be served on the following by UPS next business day delivery:

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