

STB DOCKET NO. AB-156 (Sub-No. 27X)

239075

**DELAWARE AND HUDSON RAILWAY COMPANY, INC. –
DISCONTINUANCE OF TRackage RIGHTS EXEMPTION --
IN NY, PA, NJ, MD, VA AND DC**

ENTERED
Office of Proceedings
August 18, 2015
Part of
Public Record

JAMES RIFFIN’S REPLY TO

THE COMMENTS IN

ERIC STROHMEYER’S NOTICE OF INTENT TO PARTICIPATE

Note: Eric Strohmeier’s Comments were simultaneously filed in AB 156 (Sub. No. 27X).
Likewise Riffin is simultaneously filling his Reply in AB 156 (Sub. No. 27X).

1. James Riffin herewith replies to the Comments contained within Eric Strohmeier’s “**Strohmeier’s**”) Notice of Intent to Participate (“**Strohmeier’s Notice**”) in the above entitled proceeding.

2. On pp. 5-17 of Strohmeier’s Notice, Mr. Strohmeier correctly noted that Conrail filed to abandon, in two separate filings [AB 167 Sub. No. 451N (for MP 98 to 119), and Sub No. 623N (for MP 96.5 to MP 98)] segments of Line Code 503A, which Line Code 503A lies between Allentown, PA (at MP 93), and Lehighon, PA (at MP 119).

3. And Strohmeier’s Notice also correctly noted that in the 623N proceeding, the I.C.C. added one condition: Conrail was required to file a notice with the I.C.C., telling the I.C.C. the date upon which Conrail consummated its abandonment of the 623N segment.

4. Riffin will confirm, that no notice was found in the Surface Transportation Board’s (“**STB**”) 623N file, indicating the date that Conrail in fact abandoned the 623N segment.

5. Mr. Strohmeyer then argued that if Conrail never in fact abandoned the 623N segment, then when Norfolk Southern acquired its portion of Conrail in *CSX Corp., et. al. – Control - Conrail, Inc., et. al.*, 3 S.T.B. 196 (1998), title to the unabandoned 623N segment would have passed to Norfolk Southern, along with the common carrier rights and obligations associated with the 623N segment.

6. Mr. Strohmeyer’s argument regarding title to the 623N segment, has very strong support from a previous filing by Norfolk Southern in which **Norfolk Southern made the same argument** that Mr. Strohmeyer made, just in a different proceeding, regarding a different line segment. See ‘p. 2’ of Norfolk Southern’s November 27, 2006 filing in *James Riffin, DBA The Raritan Valley Connecting Railroad – Acquisition and Operation Exemption – STB Finance Docket No. 34963*, **a copy of which is attached hereto**, where **Norfolk Southern** argued:

“The attached verified statement of Robert D’Zuro, an employee of Consolidated Rail Corporation (“Conrail”), states that Conrail never filed an application or petition for exemption to authorize the abandonment or discontinuance of the line segment that is the subject of the Notice of Exemption.

It is NS’ belief that, in the absence of abandonment or discontinuance authority, Conrail retained common carrier operating authority over the line and that such 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*”).” Bold added.

7. Given that Conrail was aware that the D&H had operating rights over Line Code 503A, and given that Conrail acknowledged that Conrail’s 623N application to abandon **would not** extinguish the D&H’s operating rights over the 623N segment, there was good legal reason for Conrail **not** to exercise its permissive authority to consummate abandonment of the 623N segment.

8. Which leads one to the conclusion that Norfolk Southern has, at this present time, a common carrier obligation to provide service over the 623N segment (upon reasonable demand), and leads one to the conclusion that the STB presently continues to have jurisdiction over the

623N segment, which jurisdiction will continue unless and until such time that abandonment authority is granted to Norfolk Southern, and exercised by Norfolk Southern, to abandon the 623N segment.

9. And Mr. Strohmeier's argument that Norfolk Southern cannot use Conrail's abandonment authority, is a sound argument, since only Conrail was authorized to use the NERSA statute to effect abandonments, not Norfolk Southern nor CSX.

10. Which leads one to the inescapable conclusion that if the STB were to grant R.J. Corman abandonment authority for the Line Code 503A segment between MP 93 and MP 96.5, as requested by R.J. Corman, then the Line Code 503A segment between MP 96.5 and 98, would become **a stranded segment!**

11. And as Mr. Strohmeier corrected pointed out on pp. 9-10 of Strohmeier's Notice:

“It is well settled that so long as there is a common carrier obligation attached to a particular segment of track, the Board **WILL NOT** allow that segment to become isolated from the rail system as a result of the abandonment of the adjoining segment.” See *Central Oregon & Pacific Railroad, Inc. – Abandonment and Discontinuance of Service – In Coos, Douglas, and Lane Counties, OR*, STB Docket No. AB 515 (Sub-No. 2), slip op. at 12 (Served October 31, 2008). Bold and caps added.

12. So it would appear that still another one of Conrail's “ghosts from the past” has come out of the closet, to haunt this proceeding, the D&H's AB 156 (Sub. No. 27X) proceeding, and potentially Norfolk Southern's FD 35873 proceeding. (Riffin will note for the STB that this same argument has manifested itself in Conrail's AB 167 (1189X) proceeding (where the Hudson Street Industrial Track, Line Code 1440, will become a ‘stranded segment,’ if Conrail receives authority to abandon Line Code 1420.)

13. This presents a bit of a dilemma for R.J. Corman, the D&H, and for Norfolk Southern.

14. It would appear that Norfolk Southern must first file to abandon the 623N segment, receive authority to abandon the 623N segment, then exercise that abandonment authority, **before** the STB can grant R.J. Corman authority to abandon R.J. Corman's segment of Line Code 503A.

15. And if Norfolk Southern files to abandon the 623N segment, that could potentially create a really serious problem with Norfolk Southern's FD 35873 proceeding, since in the FD 35873 proceeding, Norfolk Southern expressly certified that **no abandonments would occur**.

16. This also presents another problem for Norfolk Southern in its FD 35873 proceeding, for in Norfolk Southern's FD 35873 Application, Norfolk Southern **never informed the STB that Norfolk Southern had title to, and a common carrier obligation over, the 623N segment**. This failure to disclose Norfolk Southern's common carrier obligation over the 623N segment, would appear at first blush, to bolster the Protestants' argument that Norfolk Southern's FD 35873 Application was "incomplete" when filed.

17. This strikes Riffin as sufficient 'new evidence' and sufficient 'changed circumstances' to warrant reopening the FD 35873 proceeding, to revisit the argument that Norfolk Southern's FD 35873 Application was "incomplete" when filed.

18. This also strikes Riffin as sufficient 'new evidence' and sufficient 'changed circumstances' to warrant granting Mr. Strohmeier's Petition to Revoke in AB 156 (Sub. No. 27X), since this 'new evidence' decidedly makes the AB 156 (Sub. No. 27X) proceeding even more 'controversial,' and thus even more 'inappropriate for an expedited class exemption' proceeding.

19. As for the AB 156 (Sub. No. 27X) and FD 35873 proceedings, within a few days, Riffin will bring to the STB's attention another detail that was discovered in the FD 31700 file that Riffin filed in those two proceedings: **The D&H has trackage rights from Lurgan (Shippensburg), PA to Hagerstown, MD!** See p. 12 of Riffin's FD 31700 file. [Paragraph

(i)(f) of the D&H's Application in FD 31700, which states:

“(f) Acquisition by D&H Corp. of trackage rights through assignment from D&H over the following lines of CSX Transportation, Inc. (Formerly Baltimore and Ohio Railroad Company and Western Maryland Railway Company): (1) between Shenandoah Junction, WV and Anacostia Junction, Washington, D.C.; (2) **between Lurgan, PA and Hagerstown, MD.**” Bold added.

20. Riffin has said it before, and will say it again: Perhaps it is time for all of the parties to consider having a settlement conference, where the parties can try to figure out how to effect what the parties desire, before any more of Conrail's skeletons come dancing out of the closet to haunt everyone.

21. Riffin will argue that at this point in time, that it would be prudent for the STB to issue its own **housekeeping stay** for this proceeding, the AB 156 (Sub. No. 27X) proceeding, and the FD 35873 proceeding, while the parties try to figure out how to address and resolve these legal issues.

Respectfully,

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

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of August, 2015, a copy of the foregoing Reply to Comments of Eric Strohmeyer, was served on the following parties of record, by E-mail.

James Riffin

Brotherhood of MOW Employees:	Richard Edelman:	REdelman@odsaw.com
Brotherhood of Locomotive Engineers & Trainmen:	Kevin Moore:	bletdiv191@hotmail.com
CNJ / Alma / Pace Glass:	Thomas McFarland:	mcfarland@aol.com
D&H Railways:	Karl Hansen:	karl.hansen@stinsonleonard.com
D&H Railways:	David Rifkind:	david.rifkin@stinsonleonard.com
IAM District Lodge 19:	Jeffrey A. Bartos	Jbartos@geclaw.com
	Kyle A. DeCant	Kdecant@geclaw.com
Genesee & Wyoming, Inc.:	Eric Hocky:	ehocky@clarkhill.com
	Allison M. Fergus:	afergus@gwrr.com
Maryland DOT:	Charles Spitulnik:	cspitulnik@kaplankirsch.com
NY DOT:	Keith Martin:	keith.martin@dot.ny.gov
National Grain & Feed Assoc:	Randall C. Gordon:	ngfa@ngfa.org
National Grain & Feed Assoc:	Thomas Wilcox:	twilcox@gkglaw.com
Norfolk Southern:	Williams Mullins:	wmullins@bakerandmiller.com
PPL Energy:	Kelvin Dowd:	kjd@sloverandloftus.com
PA NE Regional RR Auth:	Lawrence Malski:	lmalski@pnrra.org
Saratoga & N. Creek Ry:	John D. Heffner:	John.Heffner@strasburger.com
Seda-Cog Railroads:	Jeffery K. Stover:	jra@seda-cog.org
U.S. Clay Producers Assoc:	Vincent P. Szeligo:	vszeligo@wsmoslaw.com
Samuel J. Nasca (SMART):	Gordon P. MacDougall	gpmacdo@mindspring.com
R.J. Corman	Audrey L. Brodrick:	abrodrick@fletcher-sippel.com
R.J. Corman	Robert A. Wimbish	rwimbish@fletcher-sippel.com
Eric Strohmeyer		esstrohmeyer@yahoo.com
New Jersey Transit	Alison Fultz	afultz@kaplankirsch.com