

Before the
Surface Transportation Board

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STB DOCKET NO. AB-550 (Sub-No. 3X)

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

R. J. CORMAN RAILROAD COMPANY / ALLENTOWN LINES, INC.
– ABANDONMENT EXEMPTION –
IN LEHIGH COUNTY, PENNSYLVANIA

JAMES RIFFIN’S REPLY TO
THE COMMENTS IN

ERIC STROHMEYER’S NOTICE OF INTENT TO PARTICIPATE

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 Lehigh, 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 17th 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
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November 27, 2006

EXPEDITED ACTION REQUESTED

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
NOV 27 2006
Part of
Public Record



Re: Finance Docket No. 34963, James Riffin, dba The Raritan Valley Connecting Railroad—Acquisition and Operation Exemption; Petition of Norfolk Southern Corporation and Norfolk Southern Railway Company For Housekeeping Stay and Commencement of a Proceeding.

Dear Secretary Williams:

I enclose for filing in the above captioned proceeding an original and ten copies of a Petition of Norfolk Southern Corporation and Norfolk Southern Railway Company For A Housekeeping Stay of the Effectiveness of the Notice of Exemption and For Commencement of a Proceeding.

Because this petition seeks a stay of the effectiveness of a notice of exemption that will soon become effective, Norfolk Southern respectfully request *expedited consideration* of the enclosed petition.

Sincerely,

Richard A. Allen

Enclosures

cc: David Konschnik (by fax)
James Riffin (by Federal Express)
Steven C. Armbrust, Esq.
John K. Enright, Esq.
John V. Edwards, Esq.

ENTERED
Office of Proceedings

NOV 27 2006

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Before The
Surface Transportation Board

Finance Docket No. 34963



JAMES RIFFIN, DBA THE RARITAN VALLEY CONNECTING RAILROAD-
ACQUISITION AND OPERATION EXEMPTION – ON RARITAN VALLEY
CONNECTING TRACK (Line Code 0326, Sub. No. 1038), BETWEEN THE
NORTHERLY SIDELINE OF THE LEHIGH VALLEY LINE (AT FORMER
DELAWARE & BOUND BROOK MP 57.25), 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, IN BRIDGEWATER TOWNSHIP (AT FORMER
DELAWARE & BOUND BROOK MP 58.50), ALL IN SOMERSET COUNTY, NEW
JERSEY, A DISTANCE OF APPROXIMATELY 1.25 MILES

**PETITION FOR OF NORFOLK SOUTHERN CORPORATION AND NORFOLK
SOUTHERN RAILWAY COMPANY FOR A HOUSEKEEPING STAY OF THE
EFFECTIVENESS OF THE NOTICE OF EXEMPTION AND FOR
COMMENCEMENT OF A PROCEEDING**

Norfolk Southern Corporation and Norfolk Southern Railway Company

(collectively, “NS”) hereby petitions the Board to issue a housekeeping stay of the effectiveness of the Notice of Exemption filed in this proceeding on November 21, 2006 and to commence a proceeding in order to permit NS to show that the Notice of Exemption seeks to acquire common carrier operating authority that may in fact belong to NS and to permit the Board fully to consider the issues presented.

The Notice of Exemption seeks an exemption from 49 U.S.C. §10901 to authorize for James Riffin, dba The Raritan Valley Connecting Railroad, to acquire and operate as a common carrier 1.25 miles of railroad line in Somerset County, NJ. The Notice asserts that Mr. Riffin does not own the line and is not certain what entity has title to it, but that

“[a]greements are being negotiated.” Notice of Exemption at 1. The Notice further states:

In a deed dated August 24, 1995, recorded in the Land Records of Somerset County, New Jersey, at Liber BK 2031 folio 320 *et al.*, Conrail transferred all of its title and interest in this portion of the former D&BB line, to Joseph C. Horner, an individual. Mr. Horner in turn has leased this line to Bridgewater Resources, Inc. (“BRI”). If Conrail received authority from the Interstate Commerce Commission to abandon this line segment, then BRI has title to the line. If the Commission did not approve abandonment of this line segment, then Conrail would still have title to the line segment.

Notice of Exemption at 2.

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*”). Furthermore, even in Conrail retains the common carrier authority, NS understands that Conrail is not negotiating to sell it to Mr. Riffin. Accordingly, the Notice of Exemption is based on incorrect premises

NS further believes that the Class Exemption in 49 C.F.R. §1150.31 invoked by the Notice of Exemption is not available to Mr. Riffin because Mr. Riffin is already a carrier by virtue of his recent purchase of a rail line from CSX Transportation, Inc. pursuant to an offer of financial assistance and the Board’s decision in, *CSX Transportation, Inc.—Abandonment Exemption—In Allegheny County, MD—In the*

Matter of An Offer Of Financial Assistance, STB Docket No. AB-55 (Sub.-No. 659X) (served August 18, 2006). Mr. Riffin's acquisition of a rail line in Somerset County, NJ would not be a transaction subject to 49 U.S.C. §10901 or the Class Exemption established by 49 C.F.R. §1150.31.

A housekeeping stay of the effectiveness of the Notice of Exemption until further order of the Board is warranted to permit NS to provide more complete information to the Board regarding the correctness of the legal and factual assumptions underlying the Notice and to give the Board adequate time fully to consider the issues presented. NS has not had sufficient time to do so because the Notice of Exemption was filed only six days ago, on November 21, 2006, just before the Thanksgiving holiday, and was not served on NS or Conrail. The Notice of Exemption itself acknowledges the Mr. Riffin himself is uncertain about which entity has title to the line.

Furthermore, issuance of a housekeeping stay should not prejudice Mr. Riffin or any other party. The Notice of Exemption acknowledges that Mr. Riffin has not concluded the agreements he would need to acquire and operate the line, and there is no indication that any such agreements are imminent.

The Board has frequently issued housekeeping stays in similar circumstances to permit a more complete development of the record and to give it sufficient time fully to consider the issues presented before a notice or decision is permitted to take effect. *See City of Alameda - Acquisition Exemption - Alameda Beltline Railroad*, 2005 STB LEXIS 618, *2-3, STB Finance Docket No. 34798 (Dec. 15, 2005) (“A housekeeping stay of the effective date of the exemption is appropriate to allow time for the parties to provide additional information and for the Board to consider the issues presented in the stay

request.”) *See also, e.g., Keokuk Junction Railway Company d/b/a Peoria & Western Railway - Lease and Operation Exemption - BNSF Railway Company Between Vermont and Farmington, IL*, STB Finance Docket No. 34918 (August 10, 2006); *Buffalo Southern Railroad, Inc. - Acquisition and Operation Exemption - Line in Croton-On-Hudson, NY*, STB Finance Docket No. 34903 (July 3, 2006); *General Railway Corporation d/b/a Iowa Northwestern Railroad Company - Operation Exemption - Line of Dickinson Osceola Railroad Association*, STB Finance Docket No. 34037 (May 25, 2006).

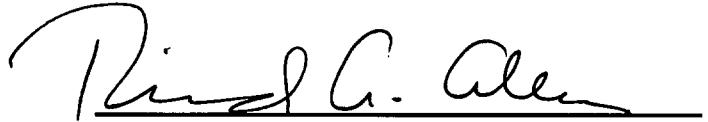
Indeed, in Ex Parte No 659, *Public Participation in Class Exemption Proceedings* (served October 19, 2006), the Board recently lengthened the time before which a notice of exemption filed under 49 C.F.R. §1150.31 may take effect for the very purpose of giving the public and the Board more time to address issues that may be presented by such a notice. Pursuant to that decision, the new notice period went into effect on November 23, 2006. Although it is not entirely clear, it would appear that the new period applies to the Notice of Exemption in this proceeding and would not take effect until 30 days after November 21, 2006, or December 21, 2006. In any event, NS submits that the circumstances in this case warrant the issuance of a housekeeping stay until further order of the Board.

NS also requests the Board to institute a proceeding to consider the issues presented by the Notice of Exemption and this petition and to establish a procedural schedule for the submission of evidence and comments by all interested parties.

CONCLUSION

The Board should issue a housekeeping stay of the effectiveness of the Notice of Exemption filed in this proceeding until further order of the Board and should institute a proceeding and establish a procedural schedule for the submission of evidence and comments by all interested parties.

Respectfully submitted,



John V. Edwards
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*Attorneys for
Norfolk Southern Railway Company*

November 27, 2006

CERTIFICATE OF SERVICE

I certify that I have this 27th day of November, 2006, caused copies of the foregoing Petition of Norfolk Southern Corporation and Norfolk Southern Railway Company to Petitioner's Second Discovery Requests to be served by first class mail, postage prepaid, and, in the case of James Riffin, by overnight delivery, on the following:

John K. Enright
Assistant General Counsel
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(By Federal Express)


Richard A. Allen

Before The
Surface Transportation Board

Finance Docket No. 34963

JAMES RIFFIN, DBA THE RARITAN VALLEY CONNECTING RAILROAD – ACQUISITION AND OPERATION EXEMPTION – ON RARITAN VALLEY CONNECTING TRACK (Line Code 0326, Sub. No. 1038), BETWEEN THE NORTHERLY SIDELINE OF THE LEHIGH VALLEY LINE (AT FORMER DELAWARE & BOUND BROOK MP 57.25), MANVILLE BOROUGH, AND THE INTERSECTION OF THE LINE WITH THE SOUTHERLY SIDELINE OF THE FORMER RARILTAN VALLEY LINE, NOW NEW JERSEY TRANSIT'S RIARTIAN VALLEY COMMUNTER LINE, IN BRIDGEMWATER TOWNSHIP (AT FORMER DELAWARE & BOUND BROOK MP 58.50), ALL IN SOMERSET COUNTY, NEW JERSEY, A DISTANCE OF APPROXIMAGELY 1.25 MILES.

VERIFIED STATEMENT OF ROBERT D'ZURO

1. My name is Robert D'Zuro. I am a paralegal employed in the law department of Consolidated Rail Corporation ("Conrail"). I am giving this statement in support of a motion to stay the subject proceeding being filed this date by Norfolk Southern Corporation.
2. I have been employed as a paralegal by Conrail since February 28, 1995. During most of my employment with Conrail, I have been the principal paralegal assigned to assist with abandonment proceedings filed by Conrail with the Surface Transportation Board (and previously the Interstate Commerce Commission). As part of that responsibility, I maintain and update as necessary the legal files for all of the abandonments that have been filed (or considered for filing) by Conrail since its creation in 1976.
3. In connection with the subject Notice of Exemption, I have reviewed the abandonment files with respect to The Raritan Valley Connecting Track (the "Line"). A Notice of Insufficient Revenue was filed by Conrail with respect to the Line on or about October 31, 1985. I also located in the file a memo from Charles Mechem, Esq., a former attorney in Conrail's Law Department, dated April 17, 1986, which identified the Line as one of several for which Mr. Mechem had "not drafted or filed applications (for abandonment) for one or more of several reasons, including – (a) low priority... (b) lack of exhibits, and/or (c) lack of senior management approval." There is no application or notice of abandonment or of discontinuance of service in the file; accordingly, it appears that Conrail never filed for abandonment or discontinuance of service with respect to the Line. There is an e-mail from a Conrail property manager, dated December 2, 1988, confirming that a notice of abandonment or discontinuance of service for the Line was never filed.

VERIFICATION

I, Robert D'Zuro, verify under penalty of perjury that I have read the foregoing verified statement and know its contents, and that it is true and correct to the best of my knowledge and belief. I further certify that I am qualified and authorized to make this statement.

Executed on November 27, 2006

Robert D'Zuro
Robert D'Zuro