

**Before the
Surface Transportation Board**

JR - 3

238819

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

ENTERED
Office of Proceedings
July 14, 2015
Part of
Public Record

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

NOTICE OF INTENT TO FILE AN OFFER OF FINANCIAL ASSISTANCE

AND

MOTION FOR A CONDITION

WITH THE FOLLOWING EXHIBITS:

**EXHIBIT A: COPY OF RIFFIN'S NOTICE OF INTENT TO FILE AN OFA,
FILED IN AB 156 (SUB. NO. 27X)**

**EXHIBIT B: D&H'S FEBRUARY 25, 1982 FILING IN AB 167 (SUB NO. 451N)
GIVING NOTICE REGARDING THE D&H'S TRACKAGE RIGHTS**

**EXHIBIT C: CONRAIL'S ABANDONMENT APPLICATION AND THE ICC'S
DECISION IN AB 167 (SUB NO. 623N) – WHEREIN CONRAIL
ACKNOWLEDGES THE D&H'S TRACKAGE RIGHTS**

Filed July 14, 2015 by:

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

**JAMES RIFFIN'S NOTICE OF INTENT TO FILE
AN OFFER OF FINANCIAL ASSISTANCE
AND
MOTION FOR A CONDITION**

1. James Riffin herewith provides his Notice of Intent to File an Offer of Financial Assistance (“**R.J. Corman Notice**”) in the above entitled proceeding, to acquire and operate the Delaware and Hudson Railway Company’s (“**D&H**”) trackage rights over the line segment that is the subject of this proceeding.

BACKGROUND INFORMATION – LINE CODE 503A

2. **Line Code 503A**, is the former Lehigh Valley Railroad main line of railroad that lies between **MP 93.3, in Allentown, PA, and MP 119.3, in Lehigh, PA.**

3. Conrail acquired Line Code 503A pursuant to the Final System Plan.

4. Pursuant to the Final System Plan, and pursuant to an **April 25, 1979 Operating Agreement** between Conrail and the D&H, the D&H was granted trackage rights over Line Code 503A. (A copy of the April 25, 1979 Operating Agreement was appended to Riffin’s Initial Comments, JR-2, filed May 20, 2015.)

5. The discontinuance of the D&H’s trackage rights over Line Code 503A, is the subject of *Delaware and Hudson Railway Company, Inc. – Discontinuance of Trackage Rights Exemption – In NY, PA, NJ, MD, VA and DC*, STB Docket No. AB-156 (Sub-No. 27X).

6. The portion of Line Code 503A that lies between LVRR **MP 98.0 and MP 119.3**, was the subject of a Conrail abandonment application that was filed on November 30, 1981, and was docketed **AB 167 (Sub. No. 451N)**. Abandonment authority was granted on **March 11, 1982**, over the following segment of LVRR Main Line:

“[B]etween Catasauqua (milepost 98.0) and Leighton (sic) (milepost 119.3) in Lehigh and Carbon Counties, PA.”

7. The portion of Line Code 503A that lies between LVRR **MP 96.6 and MP 98.0**, was the subject of a Conrail abandonment application that was filed on May 25, 1984, and was docketed **AB 167 (Sub. No. 623N)**. Abandonment authority was granted on **July 19, 1984**, over the following segment of LVRR Main Line:

“The Leighton Secondary Track in Catasauqua from 200 feet west of the west side of Race Street Bridge, UG #96.59 (approximately Milepost 96.6), to point of prior abandonment (approximately Milepost 98.0);”

8. Since Conrail abandoned its common carrier rights and obligations over the LVRR Line Code 503A, between MP 96.6 and MP 119.1, upon the discontinuance of the D&H’s trackage rights over this line segment, **“the affected line will [NOT] continue to be operated.”**

9. The portion of Line Code 503A that lies between LVRR **MP 93.3** (the beginning point of Line Code 503A, in Allentown, PA) **and MP 96.6**, was the subject of a Conrail line sale, and was docketed **FD 35897**. This portion of Line Code 503A was sold to R.J. Corman Railroad Company / Allentown Lines, Inc., the Applicant in the above entitled abandonment proceeding.

ARGUMENT

10. The D&H’s Discontinuance of Trackage Rights Exemption is presently scheduled to become effective on **August 4, 2015**. However, on July 13, 2015, Riffin filed a Notice of Intent to File an Offer of Financial Assistance (“**D&H Notice**”) in the D&H’s Discontinuance of Trackage Rights proceeding. The filing of Riffin’s D&H Notice automatically extends the effective date of the D&H’s Discontinuance proceeding. In addition, on July 13, 2015 Riffin also filed a Petition to Stay the D&H’s Discontinuance Proceeding. Riffin intends to file a Petition to Toll the Due Date for an OFA, and intends to file a Petition to Revoke the D&H’s Exemption Notice. So while the D&H’s Discontinuance of Trackage Rights Exemption was scheduled to

become effective **before** the R.J. Corman's abandonment exemption was scheduled to become effective, there is a reasonable probability that the R.J. Corman abandonment exemption will become effective **before** the D&H's Discontinuance of Trackage Rights Exemption becomes effective.

11. In the event that the R.J. Corman abandonment exemption becomes effective **before** the D&H receives authority to discontinue the D&H's trackage rights over that portion of Line Code 503A that lies between MP 93.3 and MP 96.6, then the D&H will be the "last carrier standing" (Last carrier with common carrier rights and obligations), over the portion of Line Code 503A which is the subject of R.J. Corman's abandonment exemption

12. Normally, in a trackage rights discontinuance proceeding, the only type of OFA that may be filed, is an offer of financial assistance to subsidize operation of the line(s) for one year. See *Delaware and Hudson Railway Company, Inc. – Discontinuance of Trackage Rights Exemption – In PA and NY*, STB Docket No. AB-156 (Sub-No. 25X), Served March 30, 2005, wherein the STB explained:

"From a regulatory standpoint, when trackage rights are discontinued, a common carrier obligation remains with the line owner. Only when a full abandonment (**or discontinuance by the only party with a common carrier obligation**) is approved is a complete loss of service threatened. It is this loss of service that may be forestalled by purchase of the line, in the case of an abandonment, or by subsidy of existing operations, in the case of a discontinuance." Bold added.

13. In this proceeding, there will be a line segment where the Delaware and Hudson Railway Company ("**D&H**") may will be "the only party with a common carrier obligation," following abandonment by R.J. Corman of its common carrier obligations over the line segment at issue. If that were to occur, then the discontinuance of the D&H's trackage rights would be subject to the Offer of Financial Assistance ("**OFA**") procedures.

14. Since there is a real probability that the D&H's trackage rights over the line segment that is the subject of this R.J. Corman abandonment proceeding, will become subject to the OFA procedures, Riffin is filing this R.J. Corman Notice to put R.J. Corman, and all other interested parties, on notice that:

- A. The R.J. Corman line segment is subject to the D&H's trackage rights.
- B. Riffin has filed his D&H Notice in the D&H's AB 156 (Sub. No. 27x) proceeding, to acquire / subsidize operation over, those D&H trackage rights. A copy of that filing is appended hereto, and is incorporated by reference herein.
- C. In the event that the D&H is the last carrier standing on the R.J. Corman line segment, Riffin intends to file to acquire the D&H's trackage rights over the R.J. Corman line segment.
- D. In the event that the D&H is the last carrier standing on the R.J. Corman line segment, R.J. Corman **should not salvage** the track infrastructure on the R.J. Corman line segment, prior to full abandonment of **all** common carrier obligations impressed upon the R.J. Corman line segment.

THE LINE IS NEEDED FOR CONTINUED RAIL SERVICE

15. About three miles north of where R.J. Corman's tracks end, there is a Lafarge Cement manufacturing plant, located adjacent to the former Lehigh Valley RR right-of-way. The General Manager of the Lafarge Cement plant has expressed to Riffin (and to Conrail and to R.J. Corman), a desire to have rail service. (Upon information and belief, Lafarge asked R.J. Corman for rail service. R.J. Corman indicated that it would provide rail service only if Lafarge paid the cost of putting 3 miles of track back on the ground. Lafarge offered to ship a large quantity of rail cars, but refused to fund the restoration of 3 miles of track. An impasse was reached. Lafarge presently trucks its cement to distant sites.)

NOTICE OF INTENT TO FILE AN OFA TO ACQUIRE AND OPERATE

16. Consequently, Riffin gives notice of his intent to file an OFA to acquire the D&H's trackage rights over those line segments described above, and gives further notice of Riffin's intent to file an OFA to subsidize operation over those D&H trackage rights where the line segments will continue to have a second carrier (be it R.J. Corman, Norfolk Southern, Reading and Blue Mountain, or some other carrier).

PRAYER FOR A CONDITION

17. Riffin herewith prays that the Surface Transportation Board impose a condition upon the R.J. Corman abandonment exemption, to wit:

R.J. Corman is ordered **not to salvage** any of the track infrastructure, nor encumber the right-of-way with any agreement which would restrict the continued use of the right-of-way for continued freight rail purposes, until the D&H's trackage rights issue has been resolved.

Respectfully,

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

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of July, 2015, a copy of the foregoing R.J. Corman Notice was served on the parties noted below, by E-mail.

James Riffin

E-mail:

R.J. Corman
R.J. Corman

Audrey L. Brodrick: abrodrick@fletcher-sippel.com
Robert A. Wimbish: rwimbish@fletcher-sippel.com

EXHIBIT A

COPY OF RIFFIN'S NOTICE OF INTENT TO FILE AN OFA

FILED IN AB 156 (SUB. NO. 27X)

**Before the
Surface Transportation Board**

JR - 15

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

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

NOTICE OF INTENT TO FILE AN OFFER OF FINANCIAL ASSISTANCE

Filed July 13, 2015 by:

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

JAMES RIFFIN'S NOTICE OF INTENT TO FILE

AN OFFER OF FINANCIAL ASSISTANCE

1. James Riffin herewith provides his Notice of Intent to File an Offer of Financial Assistance (“OFA”) in the above entitled proceeding.

2. Normally, in a trackage rights discontinuance proceeding, the only type of OFA that may be filed, is an offer of financial assistance to subsidize operation of the line(s) for one year. See *Delaware and Hudson Railway Company, Inc. – Discontinuance of Trackage Rights Exemption – In PA and NY*, STB Docket No. AB-156 (Sub-No. 25X), Served March 30, 2005, wherein the STB explained:

“From a regulatory standpoint, when trackage rights are discontinued, a common carrier obligation remains with the line owner. Only when a full abandonment (**or discontinuance by the only party with a common carrier obligation**) is approved is a complete loss of service threatened. It is this loss of service that may be forestalled by purchase of the line, in the case of an abandonment, or by subsidy of existing operations, in the case of a discontinuance.” Bold added.

3. In this proceeding, there are a number of line segments where the Delaware and Hudson Railway Company (“D&H”) is **“the only party with a common carrier obligation.”**

LINE SEGMENTS RIFFIN OFFERS TO ACQUIRE

4. The D&H has trackage rights between MP 1.7 (Oak Island) and MP 72.1 (Phillipsburg, NJ), on the former CNJ main line. See paragraph IV, in Exhibit B to the D&H’s Exemption.

5. On information and belief, Conrail received discontinuance authority over the CNJ main line between MP 11 (Spring Street, West End of Elizabeth Port Yard), to MP 15 (Aldene) several decades ago. Circa 1985.

6. On information and belief, Conrail connected the CNJ to the LVRR at MP 66 (a bit East of Warren Glen Road in Warren County, NJ. See NJ Map 8.), then discontinued service on the CNJ between MP 66 and MP 70.48 (Kent Street, Phillipsburg, NJ. See NJ Map 6.), several decades ago. Circa 1985. This was alluded to in Paragraph IV of the D&H's Exhibit B to its Exemption. ("The line west of Glen Gardner, NJ [See NJ Map 12.] was removed following construction of the I-78 extension near Alpha, NJ." [See NJ Map 7.]

7. On information and belief, where Conrail connected the CNJ and LVRR at MP 70.48 (Kent Street, Phillipsburg, NJ. See NJ Map 6.), Conrail began using the CNJ line exclusively between MP 70.48 (Kent Street) and MP 72.5, which is in Easton, PA. (See NJ Map 6.) After this connection between the CNJ and LVRR at MP 70.48 was made, Conrail discontinued its common carrier obligation over the former LVRR between Kent Street, in Phillipsburg, NJ, and the West end of the LVRR bridge that carried the LVRR over the Delaware River at Phillipsburg, NJ / Easton, PA, several decades ago. Circa 1985. See NJ Map 6.

AB 167 (Sub. No. 864N)

8. Conrail's AB 167 (Sub. No. 864N) **application was filed on October 31, 1983.**

9. **Abandonment authority was granted on July 19, 1984,** over the following segment of CNJ Main Line:

"The Raritan Valley Line from the south side of Main Street in High Bridge (approximately Milepost 52.24) to Valuation Station 3170+00 in Bethlehem Township (approximately Milepost 60.1). This line is owned by New Jersey Transit."

AB 167 (Sub. No.931N)

10. Conrail's AB 167 (Sub. No. 931N) **application was filed on January 21, 1986.**

11. **Abandonment authority was granted on May 1, 1986**, over the following segment of CNJ Main Line:

“The Raritan Valley Line owned by New Jersey Transit, from a point in Bloomsbury 1954 feet east of the center line of the Bloomsbury-Warren Glen Road, County Route 639 (approximately Milepost 66.53) to the projection of the Westerly side line of Market Street in Phillipsburg (approximately Milepost 72.23).”

LVRR LINE SEGMENT BETWEEN MP 98.0 AND MP 119.3

12. In the April 25, 1979 Operating Agreement between the D&H and Conrail, [see Exhibit 2 of the D&H’s May 8, 2015 Reply to Riffin’s Petition to Revoke: p. 1 of 3 of Ex. A, Line Code 503A], the D&H was granted trackage rights over that portion of the Lehigh Valley Railroad’s (“**LVRR**”) Line Code 503A, that lies between Allentown, MP 93.3, and Leighton, MP 119.1.

13. The line segment between LVRR MP 98.0 and MP 119.3 was the subject of AB 167 (Sub. No. 451N).

14. The AB 167 (Sub. No. 451N) **application was filed on November 30, 1981.**

15. **Abandonment authority was granted on March 11, 1982**, over the following segment of LVRR Main Line:

“[B]etween Catasauqua (milepost 98.0) and Leighton (sic) (milepost 119.3) in Lehigh and Carbon Counties, PA.”

16. Since Conrail abandoned its common carrier rights and obligations over the LVRR Line Code 503A, between MP 98.0 and MP 119.1, upon the discontinuance of the D&H’s trackage rights over this line segment, **“the affected line will [NOT] continue to be operated.”**

LVERR LINE SEGMENT BETWEEN MP 96.6 AND MP 98.0

17. In the April 25, 1979 Operating Agreement between the D&H and Conrail, [see Exhibit 2 of the D&H's May 8, 2015 Reply to Riffin's Petition to Revoke: p. 1 of 3 of Ex. A, Line Code 503A], the D&H was granted trackage rights over that portion of the Lehigh Valley Railroad's ("**LVERR**") Line Code 503A, that lies between Allentown, MP 93.3, and Lehigh, MP 119.1.

18. The line segment between LVERR MP 96.6 and MP 98.0 was the subject of AB 167 (Sub. No. 623N).

19. The AB 167 (Sub. No. 623N) **application was filed on May 25, 1984.**

20. **Abandonment authority was granted on July 19, 1984,** over the following segment of LVERR Main Line:

"The Lehigh Secondary Track in Catasauqua from 200 feet west of the west side of Race Street Bridge, UG #96.59 (approximately Milepost 96.6), to point of prior abandonment (approximately Milepost 98.0);"

21. Since Conrail abandoned its common carrier rights and obligations over the LVERR Line Code 503A, between MP 96.6 and MP 98.0, upon the discontinuance of the D&H's trackage rights over this line segment, **"the affected line will [NOT] continue to be operated."**

22. When Conrail received its abandonment authority over the segments described above, the only carrier left with a common carrier obligation on the CNJ segments described above, and on the Phillipsburg LVERR segment described above, and on the Allentown - Lehigh segment described above, was the D&H.

23. Consequently, if the STB were to grant the D&H authority to discontinue its trackage rights on the above segments, there would no longer be a carrier with a common carrier obligation over these segments.

24. When the last carrier on a line files to discontinue its common carrier obligations on a line, that is when the OFA remedy becomes available.

LVRR LINE SEGMENT BETWEEN MP 93.3 AND MP 96.6

25. In the April 25, 1979 Operating Agreement between the D&H and Conrail, [see Exhibit 2 of the D&H's May 8, 2015 Reply to Riffin's Petition to Revoke: p. 1 of 3 of Ex. A, Line Code 503A], the D&H was granted trackage rights over that portion of the Lehigh Valley Railroad's ("LVRR") Line Code 503A, that lies between Allentown, MP 93.3, and Lehigh, MP 119.1.

26. The line segment between LVRR MP 93.3 and MP 96.6 is the subject of AB 550 (Sub. No. 3X). See: *R.J. Corman Railroad Company / Allentown Lines, Inc. – Abandonment Exemption – In Lehigh County, PA.*, AB 550 (Sub. No. 3X), filed May 1, 2015.

27. Abandonment authority is scheduled to be granted on August 19, 2015.

28. Once R.J. Corman abandons its common carrier rights and obligations over the LVRR Line Code 503A, between MP 93.3 and MP 96.6, upon the discontinuance of the D&H's trackage rights over this line segment, **“the affected line will [NOT] continue to be operated.”**

29. When R.J. Corman receives its abandonment authority over the segment described above, the only carrier left with a common carrier obligation on the LVRR segment described above, will be the D&H.

30. Consequently, if the STB were to grant the D&H authority to discontinue its trackage rights on the above R.J. Corman segment, there would no longer be a carrier with a common carrier obligation over this segment.

31. When the last carrier on a line files to discontinue its common carrier obligations on a line, that is when the OFA remedy becomes available.

32. About three miles north of where R.J. Corman's tracks end, there is a Lafarge Cement manufacturing plant, located adjacent to the former Lehigh Valley RR right-of-way. The General Manager of the Lafarge Cement plant has expressed to Riffin (and to Conrail and to R.J. Corman), a desire to have rail service. (Upon information and belief, Lafarge asked R.J. Corman for rail service. R.J. Corman indicated that it would provide rail service only if Lafarge paid the cost of putting 3 miles of track back on the ground. Lafarge offered to ship a large quantity of rail cars, but refused to fund the restoration of 3 miles of track. An impasse was reached. Lafarge presently trucks its cement to distant sites.)

NOTICE OF INTENT TO FILE AN OFA TO ACQUIRE AND OPERATE

33. Consequently, Riffin gives notice of his intent to file an OFA to acquire those line segments described above.

NOTICE OF INTENT TO FILE AN OFA TO SUBSIDIZE THE OPERATION OF PORTIONS OF THE D&H'S TRACKAGE RIGHTS

34. Riffin herewith gives Notice of his Intent to Subsidize the Operation of the following Portions of the D&H's Trackage Rights:

- A. Between Oak Island, NJ and a point of interchange with the Delaware and Lackawanna, in the vicinity of Scranton, PA. Commodity: Municipal Solid Waste, in sealed containers. Quantity: Approximately 250,000 tons per year. (About 2,500 cars per year.)

- B. Between Oak Island, NJ and Buffalo, NY. Commodity: Silica. In private hopper cars. Quantity: Approximately 400,000 tons per year. (Approximately 4,000 cars per year.)

- C. Between Norfolk Southern's Orangeville Yard, in Baltimore, MD, and Perryville, MD (to a point one mile north of where the D&H's trackage rights leave Amtrak's NorthEast corridor in Perryville, MD). Commodity: Single-stacked Containers on flat cars. Quantity: Approximately 20,000 cars per year.

- D. Between Norfolk Southern's Orangeville Yard, in Baltimore, MD, and Enola (Harrisburg), PA. Commodity: Single-stacked Containers on flat cars between Baltimore and Perryville. Quantity: Approximately 20,000 cars per year. Double-stacked containers on flat cars between Perryville and Enola, PA. Quantity: Approximately 10,000 cars per year.

35. Riffin herewith demands that the D&H provide Riffin with the following 49 CFR 1152.27 (a) information:

- A. An estimate of the annual subsidy to provide the service identified in paragraph 34 above.

- B. The minimum purchase price for the track segments identified in paragraphs 5 through 32 above.

Respectfully,

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

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of July, 2015, a copy of the foregoing Notice of Intent to File an OFA, was served on the parties noted below, by E-mail, and by first class mail.

James Riffin

E-mail:

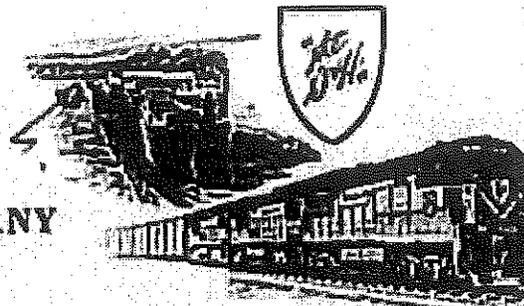
Brotherhood of MOW Employees:	Richard Edelman:	REdelman@odsalaw.com
Brotherhood of Locomotive Engineers & Trainmen:	Kevin Moore:	bletdiv191@hotmail.com
CNJ / Alma / Pace Glass:	Thomas McFarland:	mcfarland@aol.com
D&H Railways:	Karl Hansen:	karl.hansen@stinsonleonard.com
D&H Railways:	David Rifkind:	david.rifkin@stinsonleonard.com
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Saratoga & N. Creek Ry:	John D. Heffner:	John.Heffner@strasburger.com
Seda-Cog Railroads:	Jeffery K. Stover:	jra@seda-cog.org
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R.J. Corman	Audrey L. Brodrick:	abrodrick@fletcher-sippel.com
R.J. Corman	Robert A. Wimbish	rwimbish@fletcher-sippel.com

EXHIBIT B

**D&H'S FEBRUARY 25, 1982 FILING IN AB 167 (SUB NO. 451N)
GIVING NOTICE REGARDING THE D&H'S TRACKAGE RIGHTS**

DELAWARE AND HUDSON RAILWAY COMPANY

ALBANY, NEW YORK 12207



Dependable Transportation Since 18

KINGA M. LeCHAPELLE

General Attorney

February 25, 1982

Mrs. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

RE: CONSOLIDATED RAIL CORPORATION'S APPLICATION UNDER SECTION 308 OF THE REGIONAL RAIL REORGANIZATION ACT OF 1973, AS ENACTED BY SECTION 1156 OF THE NORTHEAST RAIL SERVICE ACT OF 1981, FOR ABANDONMENT OF THE LEHIGHTON SECONDARY TRACK IN THE STATE OF PENNSYLVANIA DOCKET NO. AB 167 (SUB-NO. 451N)

Dear Mrs. Mergenovich:

Enclosed please find original and six copies of Delaware and Hudson Railway Company's (D&H's) statement concerning the above application of Consolidated Rail Corporation (Conrail) to abandon the Lehigh Secondary Track.

Such statement is filed with the Commission both to request relief and to call attention to the fact that D&H is a common carrier which has operating rights over the line in question pursuant to rights granted D&H under the Regional Rail Reorganization Act of 1973 (3R Act).

Very truly yours,

Encl.

bc: Wayne Michel, Esq. 
Room 5420
Interstate Commerce Commission

BEFORE THE
INTERSTATE COMMERCE COMMISSION

CONSOLIDATED RAIL CORPORATION'S
APPLICATION UNDER SECTION 308 OF
THE REGIONAL RAIL REORGANIZATION
ACT OF 1973, AS ENACTED BY SEC-
TION 1156 OF THE NORTHEAST RAIL
SERVICE ACT OF 1981, FOR ABANDON-
MENT OF THE LEHIGHTON SECONDARY
TRACK IN THE STATE OF PENNSYLVANIA

INTERSTATE
COMMERCE COMMISSION

MAR 2 1982

ADMINISTRATIVE SERVICE
MAR 1982

DOCKET NO. AB 167 (SUB-NO. 451N)

STATEMENT OF
DELAWARE AND HUDSON RAILWAY COMPANY

Kings M. LaChanelle
Attorney for Delaware
and Hudson Railway Company
40 Beaver Street
Albany, New York 12207

Dated: February 25, 1982

BEFORE THE
INTERSTATE COMMERCE COMMISSION

CONSOLIDATED RAIL CORPORATION'S
APPLICATION UNDER SECTION 308 OF
THE REGIONAL RAIL REORGANIZATION
ACT OF 1973, AS ENACTED BY SEC-
TION 1156 OF THE NORTHEAST RAIL
SERVICE ACT OF 1981, FOR ABANDON-
MENT OF THE LEHIGHTON SECONDARY
TRACK IN THE STATE OF PENNSYLVANIA

DOCKET NO. AB 167 (SUB-NO. 451N)

STATEMENT OF
DELAWARE AND HUDSON RAILWAY COMPANY

Comes now Delaware and Hudson Railway Company (D&H) making this statement whereby it requests that the Commission in keeping with its authority to regulate the rail service over the Lehighton Secondary Track (Subject Line), restrict any proposed disposition by Consolidated Rail Corporation (Conrail) of the properties and appurtenances involved in the Application for Abandonment of the Subject Line, in the above designated proceeding.

1. D&H is a common carrier by rail subject to the jurisdiction of the Interstate Commerce Commission and to the

provisions of the Interstate Commerce Act (Title 49 U.S.C. Subtitle IV) with its principal office located at 40 Beaver Street, Albany, New York 12207.

2. Conrail is a common carrier by rail subject to the jurisdiction of the Interstate Commerce Commission and to the provisions of the Interstate Commerce Act (Title 49 U.S.C. Subtitle IV) with its principal offices located at 6 Penn Center Plaza, Philadelphia, Pennsylvania 19104.

3. D&H has operating rights over the Subject Line pursuant to trackage rights granted it by Conrail's predecessor in title the Trustees of the former Lehigh Valley RR Co. and Lehigh Coal and Navigation Company.

4. Title to the Subject Line was granted to Conrail subject to the trackage rights granted to D&H.

5. The rights were granted to D&H pursuant to provisions of the Regional Rail Reorganization Act of 1973 (3R Act) and were authorized by the Special Court as well as approved by the Commission.

6. On April 25, 1979 Conrail and D&H entered into a thirty year agreement specifying, among other items, the charges to be paid by D&H for operating over the Subject Line. A copy of said agreement will be filed should the Commission so require.

7. Pursuant to said agreement Conrail has the contractual duty to maintain the line.

8. Pursuant to the provisions of the Northeast Rail Service Act of 1981 (NERSA) Conrail seeks to abandon the Subject Line and in the event no offer of financial assistance is made, the Application is likely to be granted.

9. D&H does not specifically object to Conrail's abandonment of its own service over the line but D&H wants to make certain that neither the duties imposed on Conrail by the grant of trackage rights to D&H nor the duties undertaken by Conrail in the April 25, 1979 agreement are abrogated.

10. D&H as a carrier subject to the Commission's authority may not abandon its trackage rights over the Subject Line without permission and D&H is not seeking such permission.

11. Whatever Conrail may be permitted to do to dispose of the Subject Line to a potential purchaser under NERSA, and pursuant to NERSA's provisions by the Commission, must be conditioned by, and be subject to, D&H's existing rights in the Subject Line.

12. D&H makes this statement both to request relief and to clarify its position to Conrail, the Commission and to any potential purchaser, that D&H asserts its rights under the grant and does not intend that any existing D&H rights be impaired through the actions of Conrail or third parties.

13. Although Conrail under NERSA has wide latitude to abandon lines, discontinue service and dispose of property, Conrail can only dispose of its share of any property it owns. It does not have a right of exclusive possession of the track and appurtenances of the Subject Line. D&H's interests and rights in the continued integrity of the rail facility may not be abrogated.

14. The Commission, although it is limited in its authority to control Conrail's abandonment of any lines to which Conrail has unencumbered title, is not so limited with respect to D&H. The Commission retains its traditional authority under the Interstate Commerce Act (Now 49 U.S.C. Subtitle IV) to protect the integrity of D&H's rights and operations. In keeping with its authority, the Commission may restrict the disposition of property used or usable in interstate commerce by a carrier subject to its jurisdiction (D&H) even though the owner of the property (Conrail) in its capacity as owner may not be subject to Commission authority. The limitation on the Commission's jurisdiction over Conrail abandonments imposed by NERSA does not apply to the Commission's authority over Conrail as the owner of encumbered property used or usable in interstate commerce by another carrier. The purpose of NERSA was to lift the burden from Conrail of the necessity to render unprofitable common carrier service, not to free it from its contractual obligations as landlord.

Therefore, D&H requests that the Commission order Conrail to refrain from disposing of the Subject Line and to refrain from disposing of any rail properties or dismantling any facilities used or usable in rail service which are appurtenant to the Subject Line or lines over which D&H has statutory trackage rights, unless arrangements satisfactory to D&H and the Commission have been made to assure that D&H's operations over the Subject Line will be unimpaired.

Respectfully submitted
on behalf of Delaware and
Hudson Railway Company.

By _____
Kinga M. LaChapelle
General Attorney

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

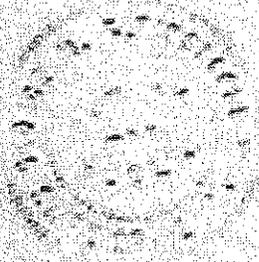
W. W. COLLINS, being duly sworn, deposes and says:
That he is Vice President-Administration and Strategic
Planning of Delaware and Hudson Railway Company in the
above entitled proceeding; that he has read the foregoing
statement and knows the contents thereof; that the same
is true to his own knowledge, except as to the matters
therein alleged upon information and belief, and that as
to those matters he believes it to be true.

He further says that this verification is made by
him for the reason that the said Delaware and Hudson Railway
Company is a corporation and he is an officer thereof, to wit:
its Vice President Administration and Strategic Planning.

W W Collins

Sworn to before me this 25th
day of February 1982.

[Signature]
Notary Public
State of New York

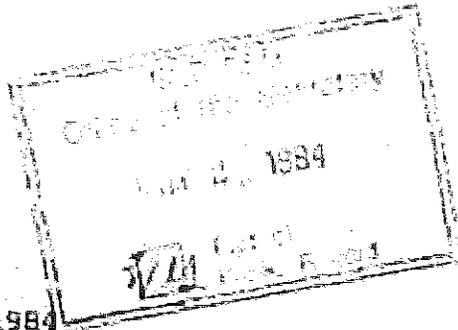
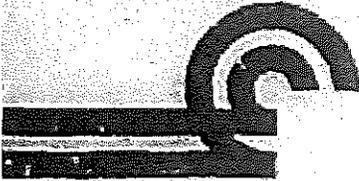


GEORGE H. WILSON
Notary Public
Qualified in New York
Not. Exp. 21
Commission Expires 12/31/83

EXHIBIT C

**CONRAIL'S ABANDONMENT APPLICATION AND THE ICC'S
DECISION IN AB 167 (SUB NO. 623N) – WHEREIN CONRAIL
ACKNOWLEDGES THE D&H'S TRACKAGE RIGHTS**

CONRAIL



April 6, 1984

Mr. James H. Bayne
Acting Secretary
Interstate Commerce Commission
Room 1312
12th and Constitution Avenues, NW
Washington, DC 20423

Re: Application Under Section 308(c) of the Regional Rail Reorganization Act of 1973, as enacted by Section 1156 of the Northeast Rail Service Act of 1981, for abandonment of the Lehigh Secondary Trac and the Ironton Industrial Cluster in Lehigh County, Pennsylvania
Docket No. AB 167 (Sub No. 623N)

Dear Mr. Bayne:

Enclosed for filing with the Commission are the original and six copies of the above described application. This application is submitted under Section 308(c) of the Regional Rail Reorganization Act of 1973, as enacted by Section 1156 of the Northeast Rail Service Act of 1981. Notice of Insufficient Revenue was filed October 18, 1983.

The Lehigh line, which is one of the subjects of this application, is subject to D&H trackage rights. This application will not affect such rights unless and until the Commission approves their discontinuance.

Copies of the application have been served on the shippers and other persons designated on the attachment to this letter.

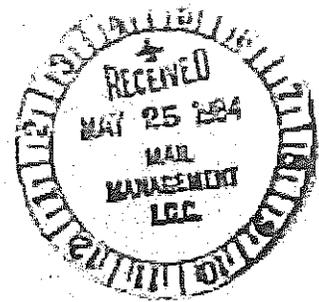
Please stamp and return the enclosed extra copy of this letter to acknowledge receipt.

Very truly yours,

Charles E. Mechen
Charles E. Mechen
Senior General Attorney
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5017

FILED

INTERSTATE
COMMERCE COMMISSION



BEFORE THE
INTERSTATE COMMERCE COMMISSION

APPLICATION OF CONSOLIDATED RAIL : DOCKET NO. AB 167
CORPORATION PURSUANT TO SECTION : (SUB NO. 623N)
308(c) OF THE REGIONAL RAIL REOR- :
GANIZATION ACT OF 1973, AS AMENDED :
BY SECTION 1156 OF THE NORTHEAST :
RAIL SERVICE ACT OF 1981, FOR :
APPROVAL OF THE ABANDONMENT OF :
THE LEHIGHTON SECONDARY TRACK :
AND IRONTON INDUSTRAIL CLUSTER IN :
LEHIGH COUNTY, PENNSYLVANIA :

Charles E. Rechen
General Attorney
Consolidated Rail Corporation
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5017

April 6, 1984

BEFORE THE
INTERSTATE COMMERCE COMMISSION

APPLICATION OF CONSOLIDATED RAIL : DOCKET NO. AB 167
CORPORATION PURSUANT TO SECTION : (SUB NO. 623N)
308(c) OF THE REGIONAL RAIL REOR- :
GANIZATION ACT OF 1973, AS AMENDED :
BY SECTION 1156 OF THE NORTHEAST :
RAIL SERVICE ACT OF 1981, FCR :
APPROVAL OF THE ABANDONMENT OF :
THE LEHIGHTON SECONDARY TR AND :
THE IRONTON INDUSTRIAL CLUSTER IN :
LEHIGH COUNTY, PENNSYLVANIA :

TO THE INTERSTATE COMMERCE COMMISSION, WASHINGTON, DC:

1. The name of applicant is Consolidated Rail Corporation (Conrail). Correspondence relating to this application should be addressed to Charles E. Mechem, General Attorney, 1138 Six Penn Center, Philadelphia, Pennsylvania 19103.

2. Applicant is a common carrier by railroad subject to the Northeast Rail Service Act of 1981 (NERSA).

3. Conrail files this application pursuant to Section 308(c) of the Regional Rail Reorganization Act of 1973 (RRR Act), as amended by Section 1156 of NERSA. A copy of said statute is attached hereto as Exhibit A.

4. By this application Conrail requests the Commission's approval of the abandonment of the lines of rail,

approximately 10.1 miles in length, described below and situated in Lehigh County, Pennsylvania:

- (1) The Lehigh Secondary Track* in Catasauqua from 200 feet west of the west side of Race Street Bridge, UG #96.59 (approximately Milepost 96.6), to point of prior abandonment (approximately Milepost 98.0);
- (2) The Ironton Industrial Track (formerly Main Line of Ironton Railroad) from Ironton (approximately Milepost 1.0) to Coplay, the end of the line (approximately Milepost 5.5); and
- (3) The Ironton Industrial Track from point of intersection with the former Main Line of the Ironton Railroad (approximately Milepost 0.0) in Egypt to Catasauqua, the end of the line (approximately Milepost 4.2).

The above-described lines will hereafter be referred to as the Subject Lines.

5. Attached as Exhibit B is a map showing the location of the Subject Lines.

6. Attached hereto as Exhibit C is a summary, or condensed statement, based on the most recent studies available to Conrail, setting forth (a) "revenues attributable," (b) an estimate of avoidable costs for the Subject Lines, and

*Abandonment to include approximately 3,200 feet ± of additional right of way extending westwardly from the Lehigh Secondary at Milepost 97.4 to the junction of the former Lehigh Valley Railroad and Ironton Railroad.

(c) an estimate of the subsidy that would be required to keep the lines in operation. Exhibit C includes an estimate of the cost of the work that would be required to preserve the Subject Lines in FRA Class 1 condition. Attached hereto as Exhibit D is an estimate of the value of the Subject Lines, including the real estate value of the underlying right-of-way. Pursuant to Section 308(d) of the RIR Act the aforesaid revenue, cost, and subsidy information and valuation estimate will be furnished, on request, to any responsible person other than a recipient of this application who seriously desires to consider making an offer of financial assistance.

7. Within fifteen days after the filing of this application, persons desiring a more detailed statement setting forth the basis upon which the subsidy estimate was calculated, may request such information in writing. Such detailed statement will be furnished within fifteen days after receipt of the request.

8. Finally, if a financially qualified person seriously considering purchase of the Subject Lines submits a request received by Conrail within 15 days after the date of filing of this application, Conrail, within 45 days after the request, will provide an appraisal of the real estate value

of the lines, together with any adjustments to the estimated subsidy that may be necessitated by the appraisal.

9. All requests for information specified above as well as offers of financial assistance should be made in writing to C. E. Mechem, Room 1138 Six Penn Center, Philadelphia, PA 19103. Copies of such requests and offers, including the applicable docket number, should be sent to the Office of the Secretary, Case Control Branch, Room 1312, Interstate Commerce Commission, Washington, DC 20423. The following notation should be typed in bold face type at the lower left hand corner of envelopes containing offers: "Rail Section AB-OFA."

10. Recipients of this application are advised that any person requesting information or assistance with respect to the abandonment provisions of the Northeast Rail Service Act or the requirements and procedures governing offers of financial assistance (including proof of financial responsibility) may contact the ICC Office of Proceedings, Rail Section (telephone 202-275-7245).

WHEREFORE, Applicant requests that the Commission, within 90 days after the filing hereof, approve the abandonment of the Subject Lines identified in Paragraph 4 above.

Respectfully submitted,



Charles E. Mechen
General Attorney
1138 Six Penn Center Plaza
Philadelphia, PA 19103
(215) 977-5017

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF PHILADELPHIA :

G. M. WILLIAMS, JR. makes oath and says that he is Assistant Vice President, Regional Market Development of Consolidated Rail Corporation, the applicant herein; that he has been authorized by proper corporate action on the part of said applicant to verify and file with the Interstate Commerce Commission the foregoing application; that he has general knowledge of the facts and matters relied upon in such application; and that all representations set forth therein are true and correct to the best of his knowledge, information and belief.


G. M. WILLIAMS, JR.

Sworn to and Subscribed :
before me this *22* day :
of *Sept*, 1984. :


NOTARY PUBLIC
Notary C. Williams
Notary Public, Phila., Phila. Co.
My Commission Expires May 2, 1987

EXHIBIT B
LOCATIONS AND MAP

LIGHTON SECONDARY/IRISTON INDUSTRIAL CLUSTER

See Exhibit B Page 2 of 2

State(s): PA Counties: Lehigh

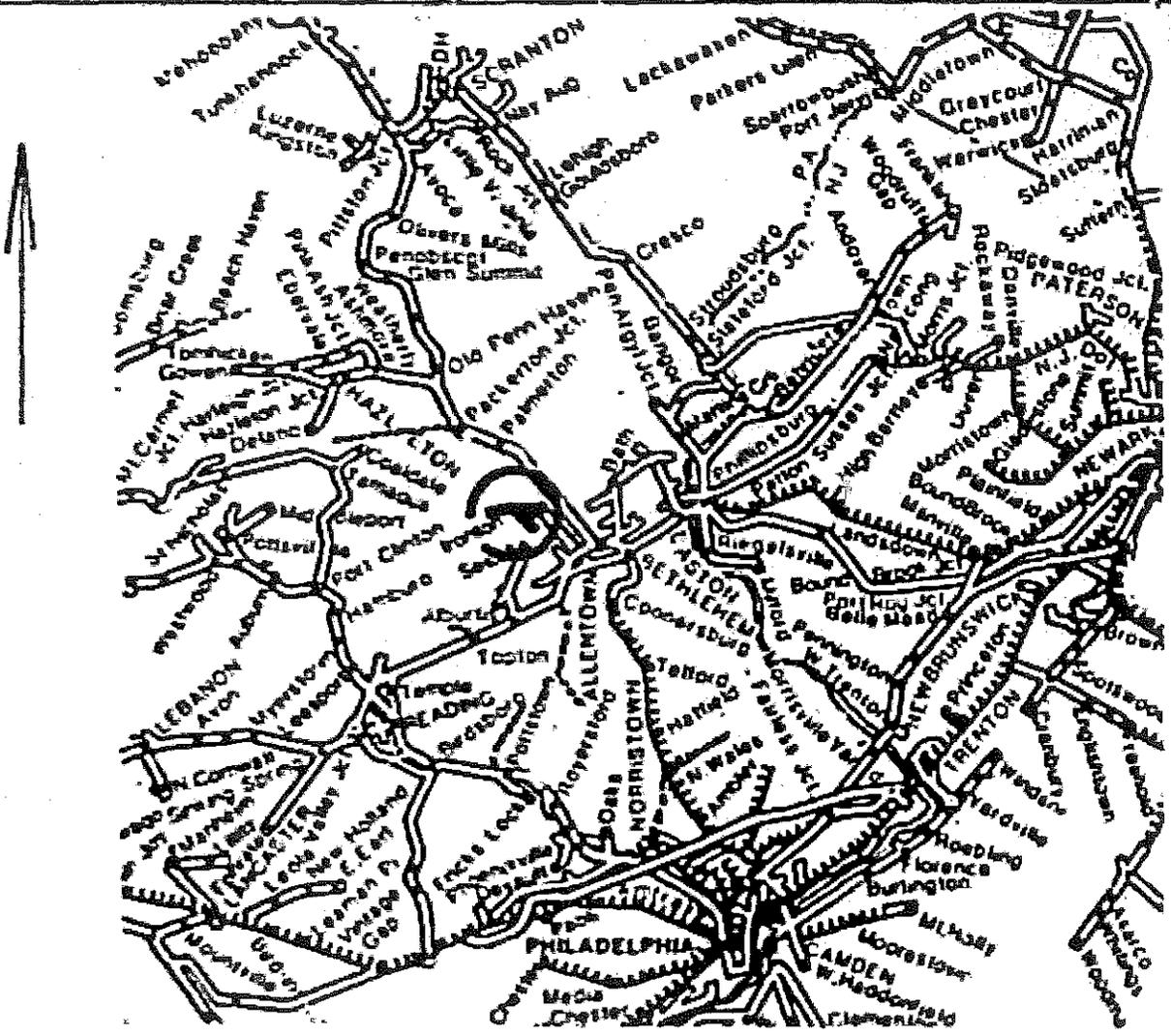


EXHIBIT B
LOCATION AND MAP

LEHIGHTON SECONDARY/IRONTON INDUSTRIAL CLUSTER

State(s): PA Counties: Lehigh _____

LEHIGHTON SECONDARY TRACK*

At Catasauqua
200 Feet West of the West Side of Race St. Bridge UG# 96.59
(Approx. M.P. 96.6) to
Point of Prior Abandonment (Approx. M.P. 98.0)

IRONTON INDUSTRIAL TRACK

(Formerly Main Line of Ironton Railroad)
Ironton (Approx. M.P. 1.0) to
Coplay-End of the line (Approx. M.P. 5.5)

IRONTON INDUSTRIAL TRACK

Egypt-Pt. of Intersection with the former Main Line of the
Ironton Railroad (Approx. M.P. 0.0) to
Catasauqua-End of the line (Approx. M.P. 4.2)

Note: *
Abandonment to include approximately 3,200 ft. * of additional
right-of-way extending westwardly from the Lehighton Secondary
at M.P. 97.4 to the junction of the former Lehigh Valley Railroad
and Ironton Railroad.

EXHIBIT C
REVENUE AND COST DATA

LEHIGHTON SECONDARY/IRONTON INDUSTRIAL CLUSTER

Revenue and Cost Data calculated using the cost methodologies and standards prescribed by 49 CFR, Part 1121, as modified by the Commission in Finance Docket 29623.

LINE NO	FOOTNOTES
4F	Conrail pays no state revenue taxes as a result of an exemption from such taxes provided to Conrail by Section 217 (c) of the Regional Rail Reorganization Act of 1973, as amended by the Northeast Rail Service Act of 1981.
4G	Conrail pays no state-levied property taxes as a result of an exemption from such taxes provided to Conrail by Section 217 (c) of the Regional Rail Reorganization Act of 1973, as amended by the Northeast Rail Service Act of 1981. Conrail continues to pay property taxes levied by political subdivisions of States, as such taxes are not subject to the exemption.
7	Rehabilitation required during first subsidy year only. Five year rehabilitation is estimated at \$ <u>417,515</u> .
11B	See Exhibit D (Estimated Net Liquidation Value) of this application for an explanation of the basis for establishing the Net Salvage Value.
11C	See Exhibit D (Estimated Net Liquidation Value) of this application for an explanation of the basis for establishing the Estimated Value of Real Estate.

INTERSTATE COMMERCE COMMISSION
CERTIFICATE AND DECISION

SERVICE DATE

JUL 19 1984

Socket No. AB-147 (348-No. 6234)

OVERALL ABANDONMENT IN LEHIGH COUNTY, PA

Decided: July 13, 1984

On April 7, 1984, Consolidated Rail Corporation (Conrail) filed an application pursuant to section 308 of the Regional Rail Reorganization Act of 1973^{1/} to abandon a total of 10.1 miles of track. The Abandonment consists of three segments: (a) The Lehighton Secondary Track^{2/} in Catasauque from 200 feet west of the West Side of the Race Street Bridge, C.O. 496.59 (approximately Milepost 95.6) to the point or prior abandonment (approximately Milepost 98.3); (b) The Ironton Industrial Track (formerly Main Line of Ironton Railroad) from Ironton (approximately Milepost 1.0 to Coplay, the end of the line (approximately Milepost 5.3); and (c) The Ironton Industrial Track from the point of intersection with the former Main Line of the Ironton Railroad (approximately Milepost 0.0) in Egypt to Catasauque, the end of the line (approximately Milepost 8.2), in Lehigh County, PA.

Under section 308(e) the Commission must grant any application for abandonment filed by Conrail within 90 days after the date such application is filed unless an offer of financial assistance is made pursuant to section 308(d) during that 90-day period.

The time for the filing of offers of financial assistance has expired without a bona fide offer. In the absence of such an offer, an appropriate certificate and decision should be entered.

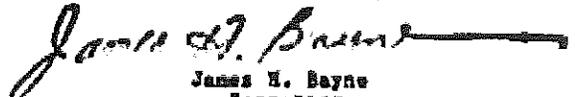
It is certified: Conrail is authorized to abandon the line described above.

It is ordered:

(1) This certificate and decision is effective upon service.

(2) If the authority granted by this certificate and decision is exercised, Conrail shall advise this Commission in writing, immediately after abandonment of the line of railroad, of the date on which the abandonment actually took place.

By the Commission, the Review Board, Members Carleton, Williams and Powell.


James H. Bayne
Secretary

(SEAL)

^{1/} This section was added by the Northeast Rail Service Act of 1981. Pub. L. 97-15.

^{2/} The Abandonment includes approximately 1,200 feet of additional Right-of-Way extending westwardly from the Lehighton Secondary Track at Milepost 97.8 to the Junction of the former Lehigh Valley Railroad and Ironton Railroad.