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September 8, 2011

**VIA ELECTRONIC FILING**

Cynthia T. Brown  
Chief of the Section of Administration,  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

**Re: Docket No. 35527, Eric Strohmeyer and James  
Riffin—§ 10901 Acquisition and Operation  
Application—Valstir Industrial Track—In  
Middlesex and Union Counties, NJ**

**ENTERED  
Office of Proceedings**

SEP 08 2011

**Part of  
Public Record**

Dear Ms. Brown:

Consolidated Rail Corporation (“Conrail”) has received an Application filed with the Board on September 1, 2011, by Eric Strohmeyer and James Riffin, seeking authorization under 49 U.S.C. § 10901 to acquire and operate an industrial track they assert would interchange traffic with Conrail. The purpose of this letter is to ask that the Board either reject the Application or hold in abeyance the Board’s acceptance of the Application, because it omits much of the core information required by the Board’s regulations for proper analysis of a § 10901 application.

The purpose of an application under § 10901 is to demonstrate the fitness of the applicant to provide common carrier service and the feasibility of its plans. Among other things, pursuant to 49 C.F.R. Part 1150, a § 10901 applicant must provide copies of all relevant agreements, traffic projection studies, an operating plan, information about the operating experience and record of the proposed operator, expected operating economies, information about the full costs of the acquisition and operation of the property, and details about the manner in which the applicant proposes to finance the acquisition and operation. See 49 C.F.R. §§ 1150.3-1150.6. Applicants Strohmeyer and Riffin have provided none of that information. Instead, citing 49 C.F.R. § 1150.10(a), they ask for a “temporary waiver” of their obligation to provide it. Application, ¶ 11. They assert that further information will be forthcoming when they file a Motion for Protective Order at a later date. Application, ¶¶ 5(a), 5(b), 6, 7(b), 11(d).

None of this makes the slightest legal sense. As a matter of law, a § 10901 application that does not, on its face, include the most basic financial and operational information is deficient and must be rejected. Under 49 C.F.R. § 1150.10(a), “[p]rior to filing an application, prospective applicants may seek an *advance* waiver” of required information that is “unavailable or not necessary or useful in analysis of the proposal.” *Id.* (emphasis added). Strohmeyer and Riffin did not seek a waiver in advance; nor do they claim that the key information they have

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omitted is unavailable or that it is not necessary or useful for analysis of their Application.<sup>1</sup> Their only argument appears to be that they do not wish to provide the necessary information until they file a Motion for Protective Order. The short answer to that argument is that unless and until they provide the necessary information, their Application is defective as a matter of law. The Board should either reject it without prejudice to refiling if and when they provide the necessary information or the Board should hold its acceptance of the Application in abeyance until the complete information is provided.<sup>2</sup>

Sincerely yours,



Robert M. Jenkins III

Counsel for Consolidated Rail Corporation

cc: James Riffin  
Eric Strohmeyer

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<sup>1</sup> Conrail recognizes that 49 C.F.R. § 1150.10(a) states that replies to motions for *advance* waiver are not permitted, but Strohmeyer and Riffin did not seek an advance waiver. Instead, they sought to file an application which they admit is incomplete without any permission from the Board to do so.

<sup>2</sup> We doubt that a Motion for Protective Order is justified for the information that Strohmeyer and Riffin have withheld, but we will reserve our response to that motion until such time as it is filed.